[TRANSLATION]

...

THE FACTS

The 257 applicants, whose names are listed in the Annex, are Greek nationals. They were represented before the Court by Mr I. Stamoulis, of the Athens Bar.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants are relatives of the victims of the massacre perpetrated by the Nazi occupation forces in Distomo on 10 June 1944.

Proceedings for damages

On 27 November 1995 the applicants brought an action for damages against Germany in the Livadia Court of First Instance.

On 30 October 1997 the court found for the applicants and ordered Germany to pay them various sums in compensation for their pecuniary and non-pecuniary loss (decision no. 137/1997).

On 24 July 1998 Germany appealed to the Court of Cassation. Referring to its sovereignty and to customary international law, it argued, in particular, that the Greek courts lacked jurisdiction to rule on the case.

On 4 May 2000 the appeal was dismissed by the Court of Cassation, which, after analysing points of customary international law and the relevant international agreements, held that it had jurisdiction to examine the case. Decision no. 137/1997 accordingly became final. In its judgment the Court of Cassation observed in particular that State immunity was a rule of customary international law which formed part of the Greek legal system. The institution derived from the principle of the sovereign equality of States and was designed to avoid disturbances in international relations. The Court of Cassation held, however, that the principle of absolute immunity was increasingly being called into question and that the theory of relative immunity was tending to predominate. According to the latter theory, States enjoyed immunity for sovereign or public acts (*acta jure imperii*) but not for acts of a commercial or private-law character (*acta jure gestionis*). This predominance of relative immunity had led to the adoption of the European Convention on State Immunity of 1972 ("the Basle Convention"). At the time of the Court of Cassation's examination of the case, eight States (Germany, Austria, Belgium, Cyprus, Luxembourg, the Netherlands, the United Kingdom and Switzerland) had ratified that convention. The fact that it had not been ratified by other European

countries did not mean that they were opposed to its principles, since the European countries, as a whole, accepted and habitually applied the principle of relative immunity. Some of them – Italy, France and Greece for example – had even been pioneers in the application of this principle. Furthermore, the Basle Convention had been a source of inspiration for many other countries. Article 11 provided that "a Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the state of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred". The Court of Cassation concluded from this that States had jurisdiction to examine actions for damages against a foreign State even if the impugned acts were *jure imperii*. Admittedly, State immunity could not be dispensed with for military acts, but the exception to the immunity rule should apply where the offences for which compensation was sought (especially crimes against humanity) had not targeted civilians generally, but specific individuals in a given place who were neither directly nor indirectly connected with military operations. The Court of Cassation found, in the instant case, that the organs of the Third Reich had misused their sovereignty and violated the *jus cogens* rules with the result that Germany had tacitly waived its immunity.

However, in a dissenting opinion the President of the Court of Cassation and three other judges expressed the view that Germany's claim for immunity should be granted. They considered, in particular, that States enjoyed immunity from any claim arising from a situation of armed conflict and that a violation of the *jus cogens* rule did not result in the withdrawal of their immunity (judgment no. 11/2000).

Enforcement proceedings

On 26 May 2000 the applicants brought proceedings under the Code of Civil Procedure to recover their debt. They served the German authorities with a copy of decision no. 137/1997 and a claim for payment of the amounts due. Germany did not comply with the above decision, however, and refused to pay the amounts awarded by the Livadia Court of First Instance. The applicants then stated their intention to apply for expropriation of certain German property in Greece.

Under Article 923 of the Code of Civil Procedure the prior consent of the Minister of Justice is a precondition for enforcing a decision against a foreign State. The applicants made the relevant application to the Minister of Justice, but received no reply.

Despite not having the Minister of Justice's consent, the applicants instituted enforcement proceedings in respect of decision no. 137/1997 of the Livadia Court of First Instance. On 17 July and 2 August 2000, relying on Article 923 of the Code of Civil Procedure, Germany lodged an objection (ανακοπή) and a request for the proceedings to be stayed. On 19 September 2000 the Athens Court of First Instance stayed the enforcement proceedings (decision no. 8206/2000).

On 10 July 2001 the court dismissed Germany's objection. It held that Article 923 of the Code of Civil Procedure was incompatible with Article 6 § 1 of the Convention and Article 2 § 3 of the International Covenant on Civil and Political Rights (decisions nos. 3666 and 3667/2001).

On 12 July 2001 Germany appealed against decisions nos. 3666 and 3667/2001 and made a further request for the proceedings to be stayed. On 18 July 2001 the President of the Athens Court of First Instance stayed the proceedings pending the appeal hearing. The applicants then complained that it was contrary to Articles 937 § 1 and 938 § 4 of the Code of Civil Procedure to stay the proceedings. On 20 July 2001 some of them lodged an action against the President of the Athens Court of First Instance for miscarriage of justice (αγωγή κακοδικίας).

On 14 September 2001 the Athens Court of Appeal set aside the Court of First Instance's judgment and upheld the objection lodged by Germany. It held, in particular, that the limitation imposed by Article 923 of the Code of Civil Procedure pursued an aim that was in the public interest, namely to avoid disturbances in the country's international relations, and was proportionate to that aim. The provision in question did not affect the main kernel of the right to effective judicial protection because it did not provide for an absolute prohibition on enforcing a decision against a foreign State, but required – as a precondition – the prior approval of the Minister of Justice, and therefore of the Government, which was the sole body responsible for the country's foreign policy. If a private individual were able to have a judicial decision against a foreign State enforced without obtaining the prior consent of the executive, the country's national interests would be compromised and its foreign policy placed in the hands of individuals. In any event, the right to enforcement could be exercised in another country or subsequently at a more appropriate time. The Court of Appeal held that the restriction imposed by Article 923 of the Code of Civil Procedure was contrary neither to Article 6 of the Convention nor to Article 2 § 3 of the International Covenant on Civil and Political Rights nor to Article 1 of Protocol No. 1 to the Convention (judgments nos. 6847/2001 and 6848/2001).

On 4 October 2001 the applicants appealed to the Court of Cassation.

On 19 February 2002 the Seventh Division of the Court of Cassation referred the case to the full court (judgments nos. 301/2002 and

302/2002). The applicants did not at this stage ask the President of the Court of Cassation – who had previously examined the case in the proceedings for damages – to stand down, because they considered that he would have "the good sense" to withdraw from the proceedings of his own accord. He did not withdraw from them, however. The appeal was heard on 16 May 2002. On 29 May 2002 the applicants learned of the remarks made by a vice-president of the Court of Cassation who, in an administrative plenary session on 21 May 2002, had stated that "the president ha[d] negotiated and exchanged the German reparations case for the renewal of his term of office as president of the Court of Cassation for a further year". It is likely that the person in question was referring to the constitutional reform that had been implemented in 2001 and dealt, among other things, with matters relating to the length of the term of office of presidents of the supreme courts. On 30 May 2002 the applicants applied to challenge the President of the Court of Cassation. On 13 June 2002 the Court of Cassation, sitting in plenary and presided over by another judge, declared their application inadmissible on the ground that it had been lodged outside the statutory time-limit (five days before the hearing in the case or, in exceptional circumstances, up until the end of the hearing – see Article 27 of the Code of Civil Procedure) and that in any event it could not be examined by the Court of Cassation of its own motion since, contrary to the requirements of Article 56 of the Code of Civil Procedure, it had not been accompanied by a proposal from the president or the prosecutor to that effect (judgment no. 26/2002).

On 28 June 2002, in judgments nos. 36/2002 and 37/2002, the Court of Cassation, sitting in plenary session, upheld judgments nos. 6847/2001 and 6848/2001 of the Athens Court of Appeal. Referring, among other things, to the Court's judgments in the cases of *Al-Adsani* and *McElhinney* (*Al-Adsani v. the United Kingdom* [GC], no. 35763/97, ECHR 2001-XI, and *McElhinney v. the United Kingdom* [GC], no. 31253/96, ECHR 2001-XI), it held that the limitation imposed on the applicants' right to obtain enforcement of decision no. 137/1997 against Germany was compatible with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

COMPLAINTS

1. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the Greek and German authorities' refusal to comply with decision no. 137/1997 of the Livadia Court of First Instance.

2. Relying on Article 6 § 1 of the Convention taken alone, they also alleged bias on the part of the President of the Court of Cassation and complained that they had not had access to a tribunal to have their request for his removal examined.

THE LAW

1. The applicants submitted that the Greek and German authorities' refusal to comply with decision no. 137/1997 of the Livadia Court of First Instance had infringed their right to the effective judicial protection of their relevant civil rights and their right to peaceful enjoyment of their possessions. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

The relevant parts of Article 6 § 1 of the Convention provide:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an ... impartial tribunal..."

Article 1 of Protocol No. 1 provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The Greek Government's submissions

The Greek Government gave a detailed analysis of international law relating to State immunity in support of their submission that the Minister of Justice had rightly refused to allow the applicants to enforce the judgment against German property.

They also maintained that the limitation imposed on the applicants' right was prescribed by law (Article 923 of the Code of Civil Procedure), pursued a legitimate aim, namely to avoid disturbances in international relations, and was proportionate to that aim. They pointed out in that connection that the refusal to enforce the judgment was not absolute and that although it could not be enforced in Greece, it could, however, be enforced in Germany.

B. The German Government's submissions

The German Government submitted that the applicants were not subject to the jurisdiction of the German courts in respect of the rights set forth in Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, to which they had referred in their application. Article 1 of the Convention provided that the High Contracting Parties had to secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention. Article 1 therefore limited the scope of application of the Convention *ratione personae*, *ratione materiae* and *ratione loci*. Not every act or omission by a State Party to the Convention capable of adversely affecting the rights of other individuals automatically brought those individuals within that State's sovereign power. Thus, not all acts or omissions by a State were necessarily to be judged from the point of view of their compatibility with the rights and freedoms guaranteed by the Convention. The decisive factor was whether or not the persons concerned were subject to the sovereign power of the Contracting State in question. The fact that they were nationals of one of the Contracting States was entirely irrelevant to the issue of jurisdiction. Nor did the act complained of have to have occurred within the territory of the State against which the application was lodged. The decisive factor was whether, in the exercise of its sovereign power in a particular case, the Contracting State had brought the individuals in question within its sphere of jurisdiction. It was inherent in the notion of "sovereign power" that an act or omission by a State had to be connected, in the widest sense, with the exercise of its sovereign power.

The German Government added that Germany was a party to enforcement proceedings and was therefore on an equal footing with the applicants. It was thus inconceivable that Germany could be deemed to be exercising its sovereign power over the applicants. Given its lack of decision-making power, Germany was not therefore in a position to infringe, autonomously, the applicants' Convention rights. Only the Greek courts dealing with the case had a decision-making and sovereign power in respect of the applicants. Accordingly, the applicants were not subject to the jurisdiction of the German courts, as they would have to have been for their application to be admissible for the purposes of Article 1 of the Convention.

The German Government submitted that the application was in any event unfounded. They stressed that, were State immunity to be lifted in this type of case, past armed conflicts would give rise *ex post facto* to countless individual claims for damages, of which neither the date of introduction nor the volume were foreseeable. The political solutions that had long since been adopted would accordingly become otiose. Peaceful coexistence would be considerably undermined as a result, with

unforeseeable consequences for any State that had been involved in an armed conflict.

C. The applicants' submission

The applicants replied that, by acting in this way, the Greek and German States had persistently refused to comply with the principle of the rule of law. They considered themselves powerless in the face of State arbitrariness and expressed the view that if both States refused to comply with their commitments under the Convention in order to avoid compromising their good relations, it would be better for them to denounce the Convention and no longer be members of the Council of Europe. Lastly, they stressed that the Court of Cassation, in judgment no. 11/2000, had definitively rejected the argument that Germany should enjoy immunity from jurisdiction. They therefore considered it pointless to argue this point further.

D. The Court's assessment

1. In so far as the application is directed against Greece

(a) As regards the complaint under Article 6 § 1 of the Convention

The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (*Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36). The right of access to a tribunal would be illusory if a Contracting State's legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6. The Court has already recognised that the effective protection of litigants and the restoration of legality presuppose an obligation on the administrative authorities' part to comply with a judgment of the State's highest administrative court (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, §§ 40 et seq.).

The right of access to the courts is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such

an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

In the instant case the applicants were found to be entitled to compensation from the German State, but were unable to obtain payment of the amounts in question on account of the Greek State's refusal to allow them to bring enforcement proceedings against Germany. That refusal was confirmed by the Greek courts. In the Court's view, this amounted to a restriction imposed on the applicants' right of access to a tribunal.

The Court must first determine whether the restriction pursued a legitimate aim. It notes in this connection that sovereign immunity of States is a concept of international law, developed out of the principle *par in parem non habet imperium,* by virtue of which one State shall not be subject to the jurisdiction of another State. The Court considers that the grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States.

The Court must next assess whether the restriction was proportionate to the aim pursued. It reiterates that the Convention has to be interpreted in the light of the rules set out in the Vienna Convention of 23 May 1969 on the Law of Treaties and that Article 31 § 3 (c) of that treaty indicates that account is to be taken of "any relevant rules of international law applicable in the relations between the parties". The Convention, including Article 6, cannot be interpreted in a vacuum. The Court must be mindful of the Convention's special character as a human rights treaty, and it must also take the relevant rules of international law into account (see, *mutatis mutandis, Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports* 1996-VI, p. 2231, § 43). The Convention should be interpreted in harmony with other rules of international law of which it forms part, including those relating to the grant of State immunity.

It follows that measures taken by a High Contracting Party which reflect generally recognised rules of public international law on State immunity cannot generally be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1. Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the community of nations as part of the doctrine of State

immunity (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, ECHR 2001-XI, §§ 52-56).

In the light of the foregoing considerations, the Court considers that although the Greek courts ordered the German State to pay damages to the applicants, this did not necessarily oblige the Greek State to ensure that the applicants could recover their debt through enforcement proceedings in Greece. Referring to judgment no. 11/2000 of the Court of Cassation, the applicants appeared to be asserting that international law on crimes against humanity was so fundamental that it amounted to a rule of *jus cogens* that took precedence over all other principles of international law, including the principle of sovereign immunity. The Court does not find it established, however, that there is yet acceptance in international law of the proposition that States are not entitled to immunity in respect of civil claims for damages brought against them in another State for crimes against humanity (see *Al-Adsani*, cited above, § 66). The Greek Government cannot therefore be required to override the rule of State immunity against their will. This is true at least as regards the current rule of public international law, as the Court found in the aforementioned case of *Al-Adsani,* but does not preclude a development in customary international law in the future.

Accordingly, the Minister of Justice's refusal to give the applicants leave to apply for expropriation of certain German property situated in Greece cannot be regarded as an unjustified interference with their right of access to a tribunal, particularly as it was examined by the domestic courts and confirmed by a judgment of the Greek Court of Cassation.

It follows that this complaint must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) As regards the complaint under Article 1 of Protocol No. 1

The Court reiterates that this Article comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.

It is not disputed in the instant case that, by decision no. 137/1997 of the Livadia Court of First Instance, the applicants obtained an enforceable claim against the German State that amounted to a "possession" within the meaning of Article 1 of Protocol No. 1 (see,

mutatis mutandis, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). Nor is it disputed that the applicants, who are currently unable to obtain payment of the amounts owed to them, are victims of an interference with the exercise of their right to peaceful enjoyment of their possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1. Accordingly, the Court must examine the justification for this interference under the clause in question.

(i) "Provided for by law"

The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, pp. 850-51, § 50).

In the instant case the interference complained of was prescribed by Article 923 of the Code of Civil Procedure, which provides that enforcement proceedings cannot be brought against a foreign State unless the Minister of Justice's approval is obtained first. The accessibility and clarity of this provision are not in issue between the parties.

(ii) "In the public interest"

The Court must now determine whether the interference pursued a legitimate aim, that is whether it was in the public interest within the meaning of the second rule laid down in Article 1 of Protocol No. 1.

The Court is of the opinion that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment of the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation.

Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a

wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see, *mutatis mutandis*, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 32, § 46). This is necessarily – if not *a fortiori* – true of political decisions that call a country's foreign relations into question.

The Court is therefore in no doubt that the Greek State's refusal to expropriate certain German property situated in Greece was in the "public interest", since it was intended to avoid disturbances in relations between Greece and Germany.

Proportionality of the interference

An interference with the right to the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p.26, § 69). The search for this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim pursued by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38). In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III).

In the instant case the Court has already found that the Minister of Justice's refusal to authorise enforcement proceedings did not amount to a disproportionate interference with the applicants' right of access to a tribunal. It stressed in that connection that the Greek Government could not be required to override the principle of State immunity against their will and compromise their good international relations in order to allow the applicants to enforce a judicial decision delivered at the end of civil proceedings. That is also a relevant consideration in the examination of this complaint.

In any event, the applicants could not have been unaware of the risk they were taking in bringing enforcement proceedings against the German State without first obtaining the consent of the Minister of Justice. Having regard to the relevant applicable legislation, namely, Article 923 of the Code of Civil Procedure, their only realistic hope was

that Germany would pay the amounts determined by the Livadia Court of First Instance of its own accord. In other words, by instituting enforcement proceedings, the applicants must have known that, without the prior consent of the Minister of Justice, their application was bound to fail. The situation could not therefore reasonably have founded any legitimate expectation on their part of being able to recover their debt (see*, mutatis mutandis*, *Fredin v. Sweden*, judgment of 18 February 1991, Series A no. 192, p. 18, § 54). Lastly, the applicants have not lost the debt owed them by Germany. As the Court has noted above, they might be able to enforce it later, at a more appropriate time, or in another country, such as Germany.

In the circumstances, the Greek courts' refusal to authorise the enforcement proceedings which could have secured the recovery of the applicants' debt did not upset the relevant balance that should be struck between the protection of the individual's right to peaceful enjoyment of his or her possessions and the requirements of the general interest.

It follows that this complaint must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

2. In so far as the application is directed against Germany

The Court must first determine whether the facts complained of by the applicants are such as to engage the responsibility of Germany under the Convention. The Court has consistently held that the responsibility of a State is engaged if a violation of one of the rights and freedoms defined in the Convention is the result of non-observance by that State of its obligation under Article 1 according to which "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 57, §§ 25-26). The Court must therefore determine whether the applicants were "within the jurisdiction" of Germany within the meaning of this provision. In other words, it must be established whether, despite the fact that they did not take place on German soil, the impugned proceedings engaged Germany's responsibility.

The Court considers that, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial. The case-law of the Court shows that it has only exceptionally acknowledged that a Contracting State has exercised its jurisdiction extraterritorially: it has done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the government of that territory, exercises some or all of the public powers normally to be exercised by that government (see *Drozd and*

Janousek v. France and Spain, judgment of 26 June 1992, Series A no. 240, p. 29, § 91, and *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, § 71, ECHR 2001-XII)).

As the Court held in the *Soering* case:

> "Article 1 ... sets a limit, notably territorial, on the reach of the Convention. In particular, the engagement undertaken by a Contracting State is confined to "securing" ("*reconnaître*" in the French text) the listed rights and freedoms to persons within its own "jurisdiction" (*Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 33, § 86).

In line with this approach, the Court has recently found that the participation of a State in the defence of proceedings against it in another State does not, without more, amount to an exercise of extraterritorial jurisdiction (see *McElhinney v. Ireland and the United Kingdom* (dec.) [GC], no. 31253/96, 9 February 2000). The Court ruled as follows:

> "In so far as the applicant complains under Article 6 § 1 ... about the stance taken by the Government of the United Kingdom in the Irish proceedings, the Court does not consider it necessary to address in the abstract the question of whether the actions of a Government as a litigant before the courts of another Contracting State can engage their responsibility under Article 6 § 1 of the Convention. The Court considers that, in the particular circumstances of the case, the fact that the United Kingdom Government raised the defence of sovereign immunity before the Irish courts, where the applicant had decided to sue, does not suffice to bring him within the jurisdiction of the United Kingdom within the meaning of Article 1 of the Convention."

In the instant case the Court notes that Germany, which was the defendant in proceedings brought by the applicants to enforce payment of compensation, did not exercise any jurisdiction over them: the proceedings were conducted exclusively in Greece and the Greek courts were the only bodies with sovereign power over the applicants. It is clear that the German courts had no direct or indirect influence over the decisions and judgments delivered in Greece. Moreover, having regard to the particular circumstances of the case, the fact that the German Government raised the defence of sovereign immunity before the Greek courts, where the applicants had decided to institute proceedings, does not suffice to bring the applicants within the jurisdiction of Germany for the purposes of Article 1 of the Convention (see *McElhinney,* cited above). There is no other factor justifying a different conclusion.

Accordingly, Germany's responsibility cannot be engaged in respect of the situation of which the applicants complain, namely the Minister of Justice's refusal to allow them to institute enforcement proceedings and the confirmation of that decision by the judgments of the Greek courts. Germany was the defendant to an action brought by the applicants in the Greek courts. In that respect it could be likened to a private individual

against whom proceedings are instituted. The Court therefore considers that the applicants have failed to show that the proceedings in question brought them "within the jurisdiction" of the German State.

It follows that this part of the application is incompatible with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. Relying on Article 6 § 1 of the Convention, the applicants also alleged that, in the enforcement proceedings, the President of the Court of Cassation had been biased against them. They asserted in that connection that he had already examined the case in the proceedings for damages. They maintained, further, that in negotiations with the Greek Government he had agreed to dismiss their application to institute enforcement proceedings in exchange for the renewal of his term of office for a further year. They complained, lastly, that they had not had access to a tribunal to have their application to challenge the president examined by a court. They complained particularly that the Court of Cassation had refused to examine the merits of their application, declaring it inadmissible on the ground that it did not satisfy the statutory conditions of admissibility.

A. In so far as the complaint concerns alleged bias on the part of the President of the Court of Cassation

The Court reiterates that the existence of impartiality for the purposes of Article 6 § 1 is determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among many other authorities, *Gautrin and Others v. France*, judgment of 20 May 1998, *Reports* 1998-III, pp. 1030-31, § 58).

As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 26). As to the objective test, it consists in determining whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. In this respect even appearances may be of some importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of those claiming that he or she is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Delage and Magistrello v. France* (dec.), no. 40028/98, ECHR 2002-II).

In the instant case the applicants disputed both the subjective and the objective impartiality of the President of the Court of Cassation. They asserted, in particular, that, in order to secure the renewal of his term of office for a further year, he had promised the Greek Government to find against the applicants in the proceedings against the German State. The Court does not find any evidence, however, to corroborate the applicants' allegations, which are merely speculative.

The applicants also complained that the President of the Court of Cassation had examined the application to institute enforcement proceedings despite the fact that he had previously dealt with the original proceedings for damages. Even if this situation may have raised doubts in the applicants' minds, the Court must examine whether those doubts were objectively justified.

In that connection the Court reiterates that the answer to that question depends on the circumstances of the case. It has already held that the mere fact that a judge has already taken pre-trial decisions cannot by itself be regarded as justifying concerns about his or her impartiality. What matters is the scope and nature of the measures taken by the judge before the trial. Likewise, a judge's detailed knowledge of the case does not entail any prejudice on his or her part that would prevent him or her from being regarded as impartial when the decision on the merits is taken. Nor, lastly, does a preliminary analysis of the available information mean that the final analysis has been prejudged. What is important is for that analysis to be carried out when judgment is delivered and to be based on the evidence produced and argument heard at the hearing (see, *mutatis mutandis*, *Hauschildt v. Denmark*, judgment of 24 May 1989, Series A no. 154, p. 22, § 50; *Nortier v. the Netherlands*, judgment of 24 August 1993, Series A no. 267, p. 15, § 33; and *Saraiva de Carvalho v. Portugal*, judgment of 22 April 1994, Series A no. 286-B, p. 38, § 35).

In the instant case the Court does not find that the actions of the judge in question undermined the guarantee of impartiality of the Court of Cassation. The mere fact that, in his capacity as President of the Court of Cassation, the judge in question presided over that court first in the proceedings on the merits and then in the enforcement proceedings did not affect the Court of Cassation's impartiality, given that although there was a factual nexus between the two sets of proceedings before the Court of Cassation, they related to two different issues: civil proceedings for damages and enforcement proceedings (see *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, p. 28, § 73, and *Lie and Berntsen v. Norway* (dec.), no. 25130/94, 16 December 1999). The Court notes that the case was examined by the Court of Cassation in plenary session and at no time by the president of that court

alone (contrast *Procola v. Luxembourg*, judgment of 28 September 1995, Series A no. 326, p. 16, § 45).

Having regard to the foregoing (and assuming that the domestic remedies were properly exhausted), as the applicants' application to challenge the judge in question was inadmissible, the Court concludes that the applicants' fears were not objectively justified in the instant case.

It follows that this part of the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

B. In so far as the complaint concerns the applicants' right of access to a tribunal

The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or lodging of appeals (see *Perez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 43). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention.

In the instant case the Court notes that the application to challenge the president, made by the applicants after the hearing, was declared inadmissible for failure to comply with the statutory conditions of admissibility. There is no evidence to suggest that this decision was arbitrary or that the parties could not have foreseen that the relevant domestic legislation would be applied. The Court therefore considers that it was the applicants' negligence that resulted in their application being declared inadmissible. They cannot therefore complain of an infringement of their right of access to a tribunal (contrast *S.A. Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, ECHR 2000-XII).

It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court,

by a majority,

Declares the application inadmissible in so far as it is directed against Greece, and

unanimously

Declares the application inadmissible in so far as it is directed against Germany.