In the case of Agrotexim and Others v. Greece (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr R. Macdonald,
Mr N. Valticos,
Mr S.K. Martens,
Mr F. Bigi,
Mr L. Wildhaber,
Mr K. Jungwiert,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 23 March and 26 September 1995,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

1. The case is numbered 15/1994/462/543. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 18 May 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14807/89) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by six Greek limited companies, Agrotexim, Viotex, Hymofix, Kykladiki, Mepex and Texema, shareholders in the limited company Karolos Fix Brewery ("Fix Brewery"), on 29 November 1988. Since that date, the Mepex company has been wound up and is therefore no longer a participant in the proceedings before the Court.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 and 13 (art. 6, art. 13) of the Convention and Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant companies stated that they wished to take part in the proceedings and designated the lawyers

who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 (art. 43) of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 28 May 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Macdonald, Mr S.K. Martens, Mr F. Bigi, Mr L. Wildhaber and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 15 November 1994 and the applicant companies' memorial on 16 December. On 20 January 1995 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing. The applicant companies' claims under Article 50 (art. 50) of the Convention reached the registry on 20 February 1995. On 1 March 1995 the President gave them leave to submit an additional memorial on Articles 6 and 13 (art. 6, art. 13) of the Convention, which they lodged on 17 March.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 March 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr P. Georgakopoulos, Senior Adviser,
Legal Council of State, Delegate of the Agent,
Mrs M. Basdeki, Legal Assistant,
Legal Council of State, Counsel;

(b) for the Commission

Mr Gaukur Jörundsson, Delegate;

(c) for the applicants

Mr P. Bernitsas,
Mr D. Mirasyesi, dikigoroi (lawyers), Counsel.

The Court heard addresses by the above-mentioned representatives, and also replies to its questions.

During the hearing the applicant companies' lawyers stated that they intended to send to the Court before the end of the week legal opinions on a specific point of the relevant Greek legislation, drafted by three professors. These documents did not reach the registry until 28 April 1995. The Court decided not to take cognisance of them.

AS TO THE FACTS

I. Circumstances of the case

6. Fix Brewery, which was founded in 1864, was one of the oldest businesses of modern Greece. It was converted into a limited company in 1927.

The applicant companies were shareholders in the company, holding 51.35% of its shares, namely 295,783 shares out of a total of 576,000. Following the liquidation of the Mepex company, which held 108 shares,

this percentage was reduced to 51.33%.

7. According to a report published in October 1993 by the Business Revival Agency (Organismos Anasigrotisseos Epikhirisseon - "the OAE"), since 1975 Fix Brewery had experienced a falling-off of business and had accumulated substantial debts with the National Bank of Greece, its main creditor.

In 1976 Fix Brewery had decided to transfer its two largest factories from their existing premises in Syngrou Avenue and Patission Street in Athens to sites outside the centre of the city. It had at the same time studied the possibility of developing these sites - which had acquired an enormous value - in order to overcome its financial problems. The scheme, to which the National Bank of Greece appeared to give its consent, concerned the construction of an office and shopping complex on the Syngrou Avenue site (a surface area of 9,509 sq. m and a building with usable space of 47,377 sq. m), which was mortgaged for 1,016,600,000 drachmas.

8. In 1976 the Syngrou Avenue factory ceased production. The Patission Street factory, which had been severely criticised for having caused serious environmental nuisance, likewise ceased operating the same year. In 1979 the company obtained from the Athens Town Planning Department and from the Ministry of Town Planning, Housing and the Environment a building permit (no. 2128/79) for the above-mentioned scheme (see paragraph 7 above) and then concluded, by notarial deed of 28 March 1980, a contract with Prokopiou Ltd, a construction company.

9. On 9 September 1979 Athens Municipal Council (Diikitiko Symvoulio Dimou Athineon), by order (praxi) no. 595/79 on planning matters, designated the Patission Street property (10,500 sq. m) as an area to be developed into a youth centre and a public park. This order was confirmed by a further order of 17 March 1980. However, neither of these orders was submitted for the approval of the relevant minister or to the Athens Prefecture (Nomarkhia Athinon), despite the fact that such approval was required for any amendment of the urban development plan (see paragraph 39 below).

10. On 28 April 1980, shortly before work on the demolition of the Syngrou Avenue factory was due to begin (see paragraph 8 above), Athens Municipal Council altered the development plan (order no. 355/80), which now provided for the transformation of the site into a park. On 30 June 1980 the Municipal Council rejected the company's appeal against the new plan (decisions nos. 602/80 and 602a/80) and confirmed its earlier order.

11. According to the applicant companies, following these orders and decisions, the construction company, Prokopiou Ltd, which was to build the office and shopping complex, was unable to begin the work as planned; the resulting dispute was settled through arbitration.

Following a feasibility study undertaken by a leading firm of architects, an agreement was to be concluded with Thanopoulos Ltd, a construction company. On 24 December 1980, that company, which had contacted several banks with a view to financing the scheme, received a favourable reply from the Athens office of the International Bank for West Africa. On 10 February 1981 the Athanassopouloi company also submitted plans for the development of the Syngrou Avenue site.

After these investors had failed in their efforts to have the restrictions imposed by Athens Municipal Council lifted, an engineer representing a group of companies interested in financing the development of the two sites sent between 16 February 1982 and 18 March 1983 several letters to the Prime Minister, the Minister for Economic Affairs and the Minister for Public Works proposing to invest 80 million US dollars on condition that the Greek State undertook not to expropriate the two sites.

All the above-mentioned schemes were based on feasibility studies which, according to the applicant companies, showed that not only would it be possible to reimburse Fix Brewery's entire debt but also there would be substantial profits.

12. On 22 February 1981 Athens Municipal Council had trees planted and benches installed at the Syngrou Avenue site on a plot (2,280 sq. m) whose ownership was contested by the State. On an application by the company, State Counsel at the Athens Court of Appeal ordered, on 3 November 1981, Athens Municipal Council and any third parties to cease occupying the site. The applicant companies claim that Athens municipal employees continued to cultivate the plants and had transformed the part of the site concerned into a public park. On 12 March 1982 Fix Brewery brought an action in the Athens Court of First Instance for a declaration recognising its right of ownership over the contested part of the site; on 30 June 1983 the Court of First Instance declared the action inadmissible on account of a procedural defect.

The Athens court held that, under the relevant provisions of the Towns and Municipalities Code and of Law no. 1539/38 on the protection of public land, a person who asserted a right of ownership in respect of real property in the State's possession had, before applying to the courts, to serve on the State a writ setting out his claims, in particular the right relied on, the nature, surface area, limits and exact position of the property claimed and the title on which his claim was based. Proceedings might be instituted in the courts only after six months had elapsed following service of that writ and provided that the State had not declared that it accepted the claim.

13. In 1981 signs bearing the words "Area to be expropriated" were placed around the Syngrou Avenue factory. Subsequently similar signs were erected at the Patission Street site. The company demanded that the signs be removed, but without success. The Mayor of Athens stated in speeches and to the press that the signs emphasised the City of Athens's intention to acquire the land.

On 18 September 1981 Fix Brewery asked the Athens Municipal Council to determine the permitted hypsometric level for the Patission Street plot. As it received no reply, it repeated its request on 15 March 1982 and again on 21 July 1982, but to no avail. Its appeal to the Supreme Administrative Court against the persistent failure of Athens Municipal Council to reply was dismissed (judgment no. 1446/1992).

In a letter of 24 May 1982, Fix Brewery proposed to the Mayor of Athens - as it had done in 1981 - to hand over to the city free of charge part of the land and of the planned buildings for the city's social, cultural and commercial needs.

14. In August 1982 the National Bank of Greece ceased financing Fix Brewery. According to the applicant companies, all the efforts of the Brewery to obtain loans from other banks failed, because no transaction could proceed without the approval of the three representatives of the National Bank of Greece who sat on the company's board of directors.

15. As the company's business continued to decline, the shareholders' general meeting decided on 30 August 1983 to wind up the company and appointed two liquidators.

16. On 8 August and 9 November 1983 the company brought two actions in the Athens Court of First Instance against the Greek State, the City of Athens and the Mayor of Athens in person. It sought damages (in an amount of 15 billion drachmas for the two sites) to make good the prejudice sustained as a result of the activities and statements of the Municipal Council and the Mayor (see paragraph 22 below).

17. On 8 November 1983 the Minister for Economic Affairs directed - by order no 1802/83 - that the company be liquidated under the special procedure laid down in sections 7 (3) and 9 of Law no. 1386/83 on businesses in difficulties (see paragraph 44 below). On 5 January 1984 Fix Brewery - through its liquidators (see paragraph 15 above) - and the applicant companies Kykladiki and Texema lodged an application with the Supreme Administrative Court to have ministerial order no. 1802/83 quashed. They maintained, inter alia, that the conditions for making their business subject to the provisions of Law no. 1386/83 (section 5 of the Law - see paragraph 44 below) had not been met.

18. In a judgment (no. 298/1985) of 28 January 1985 a full court of the Supreme Administrative Court dismissed the application without examining the merits of the case, after finding that neither Fix Brewery nor Texema were legally represented and that Kykladiki had withdrawn from the proceedings at the hearing.

19. On 21 November 1983 Athens Municipal Council had confirmed (decision no. 1107/83) its plans to expropriate the Syngrou Avenue and Patission Street sites. The city did not, however, commence formal proceedings.

20. On an application by the Minister for Economic Affairs lodged on 12 December 1983, the Athens Court of Appeal appointed, for the purposes of section 9 of Law no. 1386/83 (see paragraphs 17 above and 44 below), a single liquidator, Mr Voridis, head of the legal department of the National Bank of Greece. It took the view that the liquidator had to be chosen from the management of that bank, it being the company's main creditor (judgment no. 880/1984 of 31 January 1984).

As Mr Voridis did not accept this appointment, the OAE submitted a new application on 15 May 1984.

By a judgment (no 6552/1984) of 26 June 1984 the Athens Court of Appeal appointed two liquidators, one representing the interests of the National Bank of Greece and the other those of the company itself, because of the extent of its assets and the size of its debts. The court also decided that the two liquidators should act jointly.

On a more theoretical level, it considered further:

> "... according to sections 5 (1), 7 (3) and 9 (1) of Law no. 1386/83, businesses subject to this liquidation procedure continue, even after they have been placed under the procedure, to be represented by the same persons as before until such time as the Court of Appeal ... has appointed a liquidator. It is only after that appointment that the powers of the executive organs of such businesses to manage and represent the business are removed and vested in the liquidator."

21. On 13 July 1984 the Athens Court of First Instance dismissed (in judgments nos. 10848/1984 and 10849/1984) the two civil actions that Fix Brewery had brought in August and November 1983 (see paragraph 16 above). The court held that the various measures of Athens Municipal Council that the company had challenged could not be regarded as enforceable administrative measures adversely affecting the company's property rights. More specifically, it noted that neither the decision of Athens Municipal Council nor its disclosure to the public were acts incurring the latter's liability capable of giving rise to a right to compensation under sections 105 and 106 of the Introductory Law to the Civil Code (see paragraph 45 below).

The two liquidators did not appeal against these judgments, which accordingly became final.

22. On 5 and 11 November 1985 two major Athens daily newspapers

published a letter from the Mayor of Athens to their readers. It contained the following passages:

> "Finally, I should like to mention the signs bearing the words CITY OF ATHENS - AREA TO BE EXPROPRIATED that we have erected on large plots of land and at disused factories. By these signs we have demonstrated the unshakeable intention of the Municipality to acquire these areas. Thus, in contrast to what happened before we were elected, all these areas have been saved from construction because no one dares build on them. I can cite for instance the case of the two Fix factories for which the representatives of multinational companies have sought an authorisation from the Municipal Council to build multi-purpose commercial centres and proposed to hand over to the Municipality half the land. Naturally we refused their offers. That is why the Fix company has brought against me as Mayor an action for damages claiming 12 billion drachmas for the prejudice that it claims to have suffered as a result of my decision to erect these signs. Mr Fix is evidently protecting his own interests and I, as Mayor, am protecting the interests of the people of Athens.
>
> I take this opportunity to inform you that the City has already begun to purchase some of the sites on which it had erected signs."

23. On 18 July 1986 two of the applicant companies, namely Texema and Kykladiki, called upon the liquidators to take the following measures in order to preserve the value of the two properties in question and the vital interests of the company's creditors and shareholders: they were to notify judgment no 10849/1984 of the Athens Court of First Instance (see paragraph 21 above) to the parties concerned, lodge an application for judicial review of the failure of the competent minister to specify the procedure altering the development plan and finally take any other proceedings that they considered necessary. By an application of 31 May 1988 the liquidators requested the Mayor of Athens to remove the signs. They stressed the unrealistic nature of the expropriation scheme (on account of the enormous amount of compensation that it would entail) and the deterrent effect of the signs on potential purchasers.

24. By an order (no. 431/88) of 1 March 1988, Athens Municipal Council suspended for one year the execution of the building permits relating to the Syngrou Avenue site so that a study of the development of the site could be effected and also to enable the indispensable modification of the development plan which had first to be submitted for the approval of the competent department of the Athens Prefecture. The order entered into force on its publication in the Official Gazette of 24 March 1988.

25. On 8 June 1988 the liquidators asked the Municipal Council to remove the signs.

In a letter of 5 October 1988 the Mayor of Athens replied as follows:

> "The Municipality of Athens has been seeking for years to acquire the sites of the two former factories so as to make them available to the public and allow the city and its inhabitants to use them. That is why since 1979 the Municipal Council has taken a series of decisions.
>
> ...
>
> In the light of the foregoing, the Municipality of Athens has a clear interest in acquiring and improving these sites.
>
> Putting up these signs is an indication of that interest."

26. On 19 July 1988 the planning department of the City of Athens proposed an alteration of the development plan concerning the Syngrou Avenue site which was designated as a "commercial, cultural and exhibition centre". The proposal was aimed at preserving the existing structure of the factory. The amendment was submitted for the approval of the Municipal Council, in accordance with the Presidential Decree of 29 December 1986 (which entered into force on 21 January 1987).

27. On 22 August 1988, through its liquidators, Fix Brewery appealed to the planning department against the above-mentioned proposal, but its appeal was rejected on 7 October 1988. On 4 May 1989 the Municipal Council - which had previously secured the agreement of the Athens Prefecture - adopted the proposal by an order (no. 822/89 of 4 May 1989) published in the Official Gazette of 12 June 1989. The order stated that the alteration of the development plan for the site in question was necessary because "it made it possible to improve an urban district that was problematic yet vital for the city and to release valuable space to set up a social and cultural infrastructure".

28. In the meantime, on 8 December 1988, the planning department had drawn up a new amendment to the development plan concerning, inter alia, the Patission Street site. It aimed to transform the site into a public park, an underground car-park and a pedestrian street. On 8 May 1989 the planning department again rejected Fix Brewery's appeal against this proposal.

29. The Municipal Council adopted the amendment - after it had been approved by the Athens Prefecture - by an order (no. 1772/89 of 23 October 1989) published in the Official Gazette of 5 December 1989.

30. On 8 April 1989 the public works department of the City of Athens demolished the surrounding wall of the Patission Street site and entered the former factory premises to clean up the factory yard which had been used as a public rubbish tip.

31. At the request of the company's liquidators on 10 April 1989, State Counsel at the Athens Court of First Instance ordered, on 9 May 1989 and pursuant to section 22 (1) of Law no. 1539/38 "on the protection of public land" (see paragraph 46 below), the restoration of the site to its former state and directed the parties concerned to refrain from any further interference. This order was confirmed on 22 November 1989 by Principal State Counsel at the Court of Appeal, ruling on an objection lodged by the Municipality. The situation remained unchanged, however.

32. On 23 August 1989 Athens Municipal Council decided (order no. 1480/89, published in the Official Gazette of 9 November 1989) to expropriate the Syngrou Avenue site with a view to building on it a commercial and cultural centre and a car-park.

33. On 5 January 1990 Fix Brewery - through its liquidators - applied to the Supreme Administrative Court for judicial review of that order and the order of 4 May 1989 approving the amendment of the development plan for the site in question (see paragraph 27 above). At the date of the hearing before the European Court, the Supreme Administrative Court had not yet given judgment.

No appeal was lodged against the order concerning the Patission Street site.

34. By a letter of 28 May 1990, served on the liquidators by bailiff, the Viotex, Agrotexim and Kykladiki companies asked them to cancel the auction, due to be held as part of the liquidation procedure, of the Syngrou Avenue and Patission Street sites.

They claimed to represent the majority of Fix Brewery's

shareholders and relied on sections 47 and 48 of Law no. 1892/90 (amending sections 8 and 9 of Law no. 1386/83), according to which the shareholders' general meeting and the most recently elected board of directors remain entitled to defend the company's interests when the liquidators take action against it as a debtor.

They drew the liquidators' attention to the fact that Athens Municipal Council had amended the development plan concerning the two properties in order to proceed with their expropriation. They pointed out that an auction in such circumstances would deter prospective bidders, would significantly affect the reserve price and thus make it possible for Athens Municipal Council to purchase the properties for a derisory sum. The resulting prejudice for the company's creditors and shareholders would be enormous.

35. In a judgment (no. 10261/1990) of 2 October 1990 the Athens Court of Appeal dismissed an application by the OAE to have the two liquidators who had been appointed on 26 June 1984 (see paragraph 20 above) replaced.

The Court of Appeal took the view that a request to have the liquidators replaced might, according to the relevant provisions, be made by anyone with a legitimate interest and on "important grounds", such as the failure of the liquidators to perform, or their belated performance of, the duties entrusted to them. The Court of Appeal noted that from the outset the two liquidators had proceeded with the liquidation in a particularly diligent manner. They had brought several legal actions against a large number of the company's debtors (estimated to number 4,000) and had organised several auctions in towns where the company owned real estate. They had in this way succeeded in meeting the company's debts in relation to its employees and some of its creditors to the extent that at that date the only debts that were outstanding were those of the Greek State (500 million drachmas) and the National Bank of Greece (6 billion drachmas). The delay in selling the Syngrou Avenue and the Patission Street properties was due to circumstances beyond their control, such as the expropriation proceedings instituted by Athens Municipal Council, the applications for judicial review of the decisions relating to those proceedings lodged with the Supreme Administrative Court and the fact that the OAE had itself advised postponing the sale until after the general election - which was imminent at the time - because it was likely to have an effect on the reserve price for the properties. Finally, the Court of Appeal observed that the National Bank of Greece had not made any complaint concerning the two liquidators.

36. On 21 October 1991, on an application by the National Bank of Greece, the Athens Court of Appeal replaced the two liquidators by a single liquidator designated by the bank (judgment no. 9136/1991). The court considered that although the two liquidators had carried out their duties satisfactorily up to September 1990 (see paragraph 35 above), since then there had been an unjustified delay in the sale of the Syngrou Avenue and Patission Street properties. It noted in particular that under section 31 (2) of Law no. 1947/91 amending Law no. 1386/83 it was required to replace a liquidator where such a move was demanded by creditors representing at least 51% of the company's debts. In a judgment (no. 7822/1992) of 28 July 1992, the Court of Appeal placed Fix Brewery under the special procedure provided for in Law no. 1892/90 and entrusted the task of winding up the company to a subsidiary of the National Bank of Greece (section 46 (1) of the Law - see paragraph 47 below).

37. By a joint decision of the Ministers for Finance, the Environment and Public Works of 2 March 1993, the Syngrou Avenue site was expropriated, the cost being borne by a State undertaking responsible for building the Athens underground train system.

38. On 11 June 1993 the National Bank of Greece acquired all the

brewery's remaining movable and immovable assets, situated in Athens and in other Greek towns.

II. Relevant domestic law

A. Legislation concerning development plans

39. The publication and amendment of development plans are governed by the legislative decree of 17 July and 16 August 1923. As regards the authority with competence to draw up such plans, section 3 (2) provides as follows:

> "Development plans with explanatory reports and memoranda shall be approved by presidential order promulgated on a proposal by the Minister for Transport and after the relevant municipal council and the Minister for Public Works have been consulted. The opinion of the municipal council is purely advisory and the minister may in any case reject or vary the plans proposed by municipal councils."

It appears from this provision that the only authority competent to approve a development plan is the Minister for Transport or a provincial governor, who carries out some of the latter's duties. The amendment to the development plan begins to produce its effects once the minister's decision approving it has been published in the Official Gazette.

40. Section 8 (1) of the legislative decree provides:

> "In order to commence the procedure for the implementation of a new development plan, a total ban on building in all or certain sectors of the town or community affected by the development plan may be imposed by presidential order for a maximum period of one year. The same order may define the conditions subject to which construction work may be undertaken. The period of one year may be extended by two years if it is established that studies concerning the new development plan have made clear progress. The above-mentioned restrictions and prohibitions may give rise to an entitlement on the part of any injured party to compensation paid by the State or the Municipality."

41. Proposals for the amendment of a development plan may be made by any private-law or public-law legal person or entity. Municipalities may also submit such proposals in accordance with section 21 (1), (2) and (3) of the decree of 22 April 1929 as amended by the presidential order of 25 June and 21 August 1943, which is worded as follows:

> "1. Development plans or amendments to such plans submitted for the approval of the competent minister shall be accompanied by all the objections raised by members of the public and by the relevant comments of the Municipality concerned ...
>
> 2. No amendment to a development plan shall be submitted to the minister if it does not serve the public interest ... The amendment shall be notified to the persons whose property will be affected by the proposed amendment. The Municipality shall duly certify such notifications.
>
> In addition to the individual notifications mentioned above, a declaration shall be posted up at all the central points of the town ... and the proposed amendment shall be published in the local newspapers ..."

42. As regards the Municipality of Athens, the presidential order of 29 December 1986, which came into force on 21 January 1987, provides that the Municipal Council is to have responsibility for approving amendments to the development plan and is empowered to issue building

prohibitions pursuant to section 8 of the decree of 17 July and 16 August 1923. Section 1 of the presidential order provides, inter alia:

> "In the Municipality of Athens, any amendment of the development plan must be effected by order of the Municipal Council ...
>
> ..."

B. Law no. 1386/83 of 5 August 1983 establishing the Business Revival Agency

43. The Business Revival Agency was established by Law no. 1386/83 of 5 August 1983 and is a limited company under the supervision of the State.

It is intended to serve the public interest and its purpose is to contribute to the country's economic and social development by putting businesses on a sound financial footing, importing and applying technological know-how and developing Greek technological know-how, and setting up and running nationalised or semi-public businesses (section 2 (2) of the Law).

To achieve these objectives the OAE may, among other things, take over the running of businesses being rehabilitated or nationalised, acquire shareholdings in businesses, grant loans to businesses in which it has an interest or give guarantees for such loans, issue debenture loans and transfer shares to employees or to organisations representing them, local authorities or other public-law entities (section 2 (3) of the Law).

44. The relevant provisions of Law no. 1386/83 provide:

> Section 5
>
> "Conditions for making a business subject to the provisions of this Law
>
> 1. By an order of the Minister for Economic Affairs, issued after consultation of the advisory committee ..., the provisions of this Law may be applied to businesses
>
> (a) which have suspended or ceased their activities for financial reasons;
>
> (b) which have suspended payments;
>
> (c) which are insolvent or have been placed under the management of their creditors or under provisional management or which have gone into liquidation ...;
>
> (d) whose total liabilities are five times greater than the sum of their capital and apparent reserves and which are manifestly unable to meet their liabilities; ...
>
> (e) which concern the country's defence or are of vital importance for the development of national resources or whose main object is the provision of public services and which are manifestly unable to meet their liabilities;
>
> (f) which request application of the provisions to them.
>
> 2. For the purposes of applying the preceding subsection,
>
> ...
>
> (c) `manifestly unable to meet their liabilities' means: (a) a

fall in production and in the number of employees due to the lack of liquid assets; (b) an accumulation of debts due; and (c) a deterioration in the liquidity indicators. This situation may also be proved by a declaration by one or more banks which are the business's main source of finance to the effect that they will no longer maintain their financial support.

..."

Section 6

"Procedure for making a business subject to the provisions of this Law

1. The order by the Minister for Economic Affairs making the business subject to the provisions of this Law ... shall be made

(a) at the request of the business;

(b) ...

(c) at the request of a bank or of the administrative authorities or of a public-law entity where these have matured claims against the business;

(d) at the request of the business's creditors other than those mentioned in paragraphs (b) and (c) whose claims represent at least 20% of the business's outstanding debts...;

(e) at the request of the ... trustee in bankruptcy or of the insolvent firm.

..."

Section 7

"Provisions on the rehabilitation of businesses

The order by the Minister for Economic Affairs ... may provide for

1. Management of the firm by the OAE, in accordance with section 8;

2. The satisfaction of the business's obligations in such a way as to ensure its viability

(a) by an increase in the capital by means of contributions of new assets or by the conversion of existing debts into shares ...

...

3. Winding-up, in accordance with section 9 of this Law."

Section 9

"Special winding-up procedure

1. Where no agreement within the meaning of section 8 is concluded ..., the Court of Appeal within whose jurisdiction the registered office of the firm in question is located shall appoint, at the request of the OAE or any other person with a sufficient interest, a liquidator, who must proceed, in accordance with the provisions of the present section, to wind up the business ...

2. Winding-up is governed by the provisions of sections 18-22

of Decree no. 3562/1956 'placing limited companies under the administration and management of creditors and under the special winding-up procedure'.

During the winding-up, the liquidator may continue to run the business or parts of it.

3. In order to reimburse the creditors, the liquidator shall draw up a list pursuant to the provisions of Articles 975-979 and 1007 of the Code of Civil Procedure. The list shall be drawn up after the creditors have made themselves known to the liquidator within a period of two months following the publication of the relevant notice in two daily newspapers ...

4. In distributing the proceeds of the winding-up, preference shall be given to the debts of the OAE incurred during its provisional management of the business and deemed to qualify as preferential debts for the purposes of Article 975 of the Code of Civil Procedure.

..."

C. Introductory Law to the Civil Code

45. The following provisions of the Introductory Law (Isagogikos Nomos) no. 2783/41 to the Civil Code are relevant:

Section 104

"The State shall be liable in accordance with the provisions of the Civil Code concerning legal persons, for acts or omissions of its organs regarding private-law relations or private property."

Section 105

"The State shall be under a duty to make good damage caused by the unlawful acts or omissions of its organs in the exercise of public authority, except where the unlawful act or omission is intended to serve the public interest. The person responsible shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

Section 106

"The provisions of the two preceding sections shall also apply in regard to the liability of municipalities and other public-law persons for the damage caused by the acts or omissions of their organs."

D. Section 22 of Law no. 1539/38 "on the protection of public land" (as supplemented by section 30 of Law no. 3800/57)

46. This provision was kept in force by section 52 (18) of the Introductory Law to the Code of Civil Procedure and applies by analogy to the protection of land owned by local government entities.

Where possession of a specific parcel of land is disputed between a State body and a private individual, the two parties may - the former simply by letter and the latter by a formal application - ask State Counsel at the Court of First Instance to make an interim order resolving the dispute. As soon as he receives the letter or the application, State Counsel must, if possible the same day, visit the site and either order that the site be restored to its original condition or - where there is some doubt as to who is entitled to possession or if the possession does not entail any serious prejudice to third parties - prohibit any step concerning possession of the

property until the court has given its decision.

An appeal lies against State Counsel's decision to State Counsel at the Court of Appeal and must be lodged within two months of the notification of the decision to the State or to the private party.

The case-law has established that State Counsel's competence in this area is to be regarded as an administrative power properly so called. His decision does not have final effect and does not resolve the question of who holds the right of ownership; it merely determines the person with possession of the disputed property.

E. Section 46 (1) of Law no. 1892/90

47. Section 46 (1) of Law no. 1892/90 provides that at the request of creditors representing at least 51% of the total debt of a company, the Court of Appeal is to set in motion the special winding-up procedure provided for in this section. In such circumstances the Court of Appeal must appoint as liquidator a bank legally established in Greece, or a subsidiary of such a bank, to be designated by the creditors themselves. This procedure may also be imposed on a company that is already in liquidation and where substantial assets have not yet been auctioned off.

F. Law no. 2190/1920 on limited companies and the relevant provisions of the Civil Code concerning corporations (Articles 61-78) and of the Code of Civil Procedure

1. The legal personality of limited companies

48. A limited company acquires legal personality as soon as the prefect has approved its setting up and its articles have been entered in the register of companies - kept at the prefecture of the place where the company has its registered address (sections 4 (2) and 7b (10) of the Law). Legal personality gives the company autonomy in relation to its founders and its shareholders, confers on it its own name, nationality and a registered address, as well as legal capacity (Article 62 of the Civil Code) and the right to take legal proceedings (Articles 62 para. 1 and 63 para. 1, sub-paragraph 1, of the Code of Civil Procedure).

Limited companies have their own assets which are distinct from the individual assets of the shareholders. The latter have no right of ownership over their investment in the company. Their participation is solely financial. They are not personally liable for the company's debts.

2. The rights of minority shareholders

49. Shareholders who represent 5% of the capital may request, by application to the board of directors, that an extraordinary general meeting of shareholders be called (section 39 (1) of the Law).

In addition, on an application by shareholders representing a third of the capital, lodged five days before the general meeting - and provided that these shareholders are not represented on the board of directors -, the board must inform them how the company's business is faring and what its assets are (section 39 (5) (a)). The board may for specific reasons mentioned in the minutes of the general meeting refuse to provide this information (section 39 (5) (b)). The same proportion of shareholders may also request the competent court of first instance to order an inspection of the company where it appears that the business is not being run in accordance with the rules of sound management (section 40 (3) (a)). The court then entrusts the duty of carrying out the inspection to one or more special inspectors of companies (section 40a). If the inspectors find that offences have been committed, they must submit their report to the relevant

prosecuting authority (section 40c (1)).

3. Article 786 para. 3 of the Code of Civil Procedure

50. Article 786 para. 3 of the Code of Civil Procedure provides:

> "The court may, at the request of a person having an interest entitling him to take proceedings, replace the interim board or the liquidators on serious grounds ..."

PROCEEDINGS BEFORE THE COMMISSION

51. The applicant companies applied to the Commission on 29 November 1988. They complained of the unlawful interference of the Municipality of Athens with their right to the peaceful enjoyment of their possessions as guaranteed under Article 1 of Protocol No. 1 (P1-1). They further alleged a violation of Articles 6 and 13 (art. 6, art. 13) of the Convention in that it was not possible for them, under Greek law, as Fix Brewery's shareholders to take proceedings in a court and to secure legal protection of their rights.

The Commission declared the application (no. 14807/89) admissible on 12 February 1992. In its report of 10 March 1994 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 1 of Protocol No. 1 (P1-1) (thirteen votes to two), but not of Articles 6 (art. 6) (eleven votes to four) and 13 (art. 13) (nine votes to six) of the Convention.

The full text of the Commission's opinion and of the four separate opinions contained in the report is reproduced as an annex to this judgment (1).

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1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 330-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT

52. In their memorial the Government asked the Court to dismiss the application as "inadmissible or unfounded on the merits".

53. The applicant companies requested the Court:

> "- to hold that their rights under the second rule of paragraph 1 of Article 1 of Protocol No. 1 (P1-1) have been violated and to award fair compensation in respect thereof under Article 50 (art. 50) of the European Convention;
>
> - to award the amount of 20,000,000 drachmas for the costs and expenses incurred."

AS TO THE LAW

54. The applicant companies complained in the first place of a breach of Article 1 of Protocol No. 1 (P1-1) inasmuch as the measures adopted by Athens Municipal Council with regard to the sites owned by Fix Brewery (see paragraphs 9, 10, 12 and 13 above), taken together, amounted to an unjustified interference with their right to the peaceful enjoyment of their possessions. They maintained secondly that there had been a breach of Articles 6 and 13 (art. 6, art. 13) of the Convention in that it was not possible under Greek law for them, as shareholders of the Brewery, to institute proceedings in a court.

I. ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

55. The Government contended by way of primary submission, as they had done before the Commission, that the application was inadmissible because it was incompatible ratione temporis and ratione personae with the provisions of the Convention and because the applicant companies had failed to exhaust domestic remedies and to comply with the six-month time-limit laid down in Article 26 (art. 26) of the Convention.

A. Lack of jurisdiction ratione temporis

56. The Government submitted firstly that the applicant companies' complaints were caught by the temporal restriction contained in Greece's declaration concerning Article 25 (art. 25) of the Convention, which is worded as follows:

> "... the Government of Greece recognises, for the period beginning on 20 November 1985 and ending on 19 November 1988, the competence of the European Commission of Human Rights to receive petitions addressed to the Secretary General of the Council of Europe, [after 19 November 1985,] by any person, non-governmental organisation or group of individuals claiming, in relation to any act, decision, facts or events subsequent to this date, to be the victim of a violation of the rights set forth in the Convention and in the Additional Protocol (P1-1) ..."

The Government argued that the measures alleged to be contrary to the Convention, namely the Mayor of Athens's declarations in 1979 and 1980 of his intention to expropriate the Syngrou Avenue and the Patission Street sites (see paragraphs 9 and 10 above), the putting up of the signs in 1981 (see paragraph 13 above) and the planting of trees on the contested part of the Syngrou Avenue site (see paragraph 12 above) were instantaneous acts which occurred and caused their allegedly prejudicial effects before the critical date of 20 November 1985.

Even if it were accepted that the situation of which the applicant companies complained subsisted after 1985, that would be true only for the company itself and not for its shareholders, who, for their part, had suffered since that date only the consequences of the alleged violation.

Neither the fact that the signs were kept in place nor the planting of trees was sufficient for the alleged violation to acquire a continuous character. The signs had remained because Fix Brewery - which at the time had been under the full control of its shareholders - had failed to institute legal proceedings to have them removed. As regards the trees, State Counsel's order of 3 November 1981 (see paragraph 12 above) had been complied with and Fix Brewery's action of 12 March 1982 for a declaration recognising its right of ownership over that part of the site had been declared inadmissible (see paragraph 12 above).

57. In its decision on the admissibility of the application, the Commission found that the applicant companies' complaints related to a continuing situation because some of the contested measures continued after 20 November 1985 and up to the Commission's decision.

58. A preliminary study of the case leads the Court to conclude that it may be possible to regard the successive actions of Athens Municipal Council as a series of steps amounting to a continuing violation and indicating the existence of a plan by the Municipal Council to purchase the two sites at the lowest possible price.

It does not, however, consider it necessary to give a final ruling on this issue, because it must first examine the objection based on the applicant companies' lack of the status of "victim", which is more fundamental than the objection of lack of jurisdiction ratione

temporis.

B. Lack of the status of "victim"

59. According to the Government, the applicant companies lack the status of "victim" within the meaning of Article 25 (art. 25) of the Convention.

Only a person whose personal interests have been directly affected could have that status. Acts which cause prejudice to a limited company do not directly affect the personal interests of the shareholders, except perhaps where there is only one shareholder, who is at the same time the sole director of the company. The fact that the shareholders suffer the indirect effects of such acts - as do moreover all those who have a financial relationship with the company, such as for instance its creditors - is not in itself sufficient for them to acquire the status of "victims" within the meaning of Article 25 (art. 25).

The Government maintained generally that to accord the shareholders of a limited company such as Fix Brewery the right to apply to the Convention institutions in respect of alleged violations directly affecting such a company would overturn the rules on the setting up and operation of companies and the principles governing the administration of justice. A limited company had its own legal personality and held possessions that were distinct from those of the shareholders so that a measure taken against it would concern only indirectly persons having financial links with it or interests in it such as creditors or shareholders. To allow the latter a right of management or representation of the company or to permit them to substitute themselves for the organs set up under the company's articles would create a source of uncertainty in commercial transactions and relations.

Through the general meeting the majority shareholders admittedly exerted an influence on the management of the company, although such a majority, far from being fixed, varied with the passing of time as new investors bought shares or new alliances were concluded. Certain limits should, however, be imposed on the rights of shareholders in particular where the rights of other persons, for instance creditors, were threatened because of the company's financial difficulties. The piercing of the "corporate veil" was justified in such circumstances to identify - behind the appearances - the true interests at stake.

60. More specifically, since 1975 Fix Brewery's business had considerably declined. In a few years it had accumulated such extensive debts that it had decided to cease payments and to mortgage parts of the Syngrou Avenue and Patission Street sites, with the result that its ownership of these properties was purely theoretical. Moreover the properties in question were the sole guarantee that it would honour at least part of its debts. Consequently, the piercing of the "corporate veil" in favour of a notional majority of shareholders, such as that of the applicant companies, failed to identify the interests that were really affected by the fate of Fix Brewery. The applicant companies' interests were entirely insignificant, or indeed non-existent, compared with those of the creditors. This also explained their inactivity or negligence in exercising their rights, both within the company's organs and in the courts. They had nothing of their own to defend.

As regards the application to Fix Brewery of the procedure provided for in Law no. 1386/83, the liquidators appointed by the Athens Court of Appeal had performed their duties in a wholly satisfactory manner. There had never been any disagreement or conflict between them and the applicant companies justifying the piercing of the "corporate veil" in this respect. Finally, not only had the applicant companies failed to ask the liquidators to avail themselves of certain

remedies, they had also released them from all liability.

61. The applicant companies drew attention to the fact that, as was clear from the judgment of the Athens Court of Appeal (see paragraph 20 above), the special liquidators appointed pursuant to section 9 of Law no. 1386/83 enjoyed, with effect from their appointment, exclusive power to manage and represent the company in liquidation. It followed that not only did the shareholders no longer have the capacity to take proceedings, but the company itself was deprived of its right to challenge in the courts any questionable decision taken by the liquidators.

Furthermore, the liquidators had failed to protect the company's interests. They had not defended those interests in the Supreme Administrative Court. They had not authorised its lawyer to represent it during the proceedings relating to the application to it of Law no. 1386/83 and had not supported the action brought against that decision by the company's first liquidators appointed by the general meeting. They had in short proved loyal to the OAE - which in fact exercised control over their management - and to the National Bank of Greece and had completely disregarded the shareholders.

62. The Court notes at the outset that the applicant companies did not complain of a violation of the rights vested in them as shareholders of Fix Brewery, such as the right to attend the general meeting and to vote. Their complaint was based exclusively on the proposition that the alleged violation of the Brewery's right to the peaceful enjoyment of its possessions had adversely affected their own financial interests because of the resulting fall in the value of their shares. They considered that the financial losses sustained by the company and the latter's rights were to be regarded as their own, and that they were therefore victims, albeit indirectly, of the alleged violation. In sum, they sought to have the company's corporate veil pierced in their favour.

63. In its decision on the admissibility of the application, the Commission reached the conclusion that the question whether a shareholder may claim to be a victim of measures affecting a company cannot be determined solely on the basis of whether he is a majority shareholder. This aspect provides an important, objective indication, but other considerations may also be relevant, regard being had to the specific circumstances of each case.

Thus in some cases the Commission has considered whether an applicant shareholder was carrying out his own business through the company and whether he had a personal interest in the subject-matter of the complaint. In one case the Commission regarded it as decisive that it had been open to the company itself as the direct victim to apply to the Commission. The Commission appears to have relied on the latter criterion to dismiss the Government's objection in the present case. The fact that Fix Brewery was subject to a special liquidation procedure meant that it was essentially and effectively under the control of the State so that it was not reasonably an option for the company to lodge a complaint against Greece.

64. However, in its report the Commission seems to accept that where a violation of a company's rights protected by Article 1 of Protocol No. 1 (P1-1) results in a fall in the value of its shares, there is automatically an infringement of the shareholders' rights under that Article (P1-1).

The Court considers that such an affirmation seeks to establish a criterion - and in the Court's view an unacceptable one - for according shareholders locus standi to complain of a violation of their company's rights under Article 1 of Protocol No. 1 (P1-1).

65. It is a perfectly normal occurrence in the life of a limited

company for there to be differences of opinion among its shareholders or between its shareholders and its board of directors as to the reality of an infringement of the right to the peaceful enjoyment of the company's possessions or concerning the most appropriate way of reacting to such an infringement. Such differences of opinion may, however, be more serious where the company is in the process of liquidation because the realisation of its assets and the discharging of its liabilities are intended primarily to meet the claims of the creditors of a company whose survival is rendered impossible by its financial situation, and only as a secondary aim to satisfy the claims of the shareholders, among whom any remaining assets are divided up.

To adopt the Commission's position would be to run the risk of creating - in view of these competing interests - difficulties in determining who is entitled to apply to the Strasbourg institutions.

The Commission's view would also engender considerable problems concerning the requirement of exhaustion of domestic remedies. It may be assumed that in the majority of national legal systems shareholders do not normally have the right to bring an action for damages in respect of an act or an omission that is prejudicial to "their" company. It would accordingly be unreasonable to require them to do so before complaining of such an act or omission before the Convention institutions. Nor could, conversely, a company be required to exhaust domestic remedies itself, because the shareholders are of course not empowered to take such proceedings on behalf of "their" company.

66. Concerned to reduce such risks and difficulties the Court considers that the piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or - in the event of liquidation - through its liquidators. The Supreme Courts of certain member States of the Council of Europe have taken the same line. This principle has also been confirmed with regard to the diplomatic protection of companies by the International Court of Justice (Barcelona Traction, Light and Power Company Limited, judgment of 5 February 1970, Reports of judgments, advisory opinions and orders 1970, pp. 39 and 41, paras. 56-58 and 66).

67. In the Commission's opinion, the criterion for regarding the applicant companies as "victims" is satisfied as, following the ministerial order of 8 November 1983 (see paragraph 17 above), Fix Brewery was under the control of the State and could therefore reasonably be held to be in a position in which it was impossible for it to apply to the Convention institutions. The Court does not share this view.

68. In the first place, when the applicant companies lodged their application with the Commission in 1988, Fix Brewery, although in the process of liquidation, had not ceased to exist as a legal person. It was at that time represented by its two liquidators, who had legal capacity to defend its rights and therefore to apply to the Convention institutions, if they considered it appropriate. There is no evidence to suggest that at the material time it would have been impossible as a matter of fact or of law for the liquidators to do so.

69. The Court notes in this connection that the ministerial order of 8 November 1983 had not applied the provisions of section 8 of Law no. 1386/83 to the Brewery, which would have led to its being managed by the OAE. That order in fact merely varied the conditions of the liquidation that the company itself had just decided (see paragraph 15 above). Thus the Athens Court of Appeal appointed, just as the general meeting had done, two liquidators, one representing the interests of the main creditor and the other those of the company. There are no grounds for doubting that the task of these liquidators was, like a

trustee in bankruptcy, to liquidate the company's assets in the interests both of the creditors and the shareholders, or that, de facto and de jure, they were free to carry out that task as they saw fit.

70. The Court notes further that there is no reason to suppose that the liquidators failed to perform their duties satisfactorily. On the contrary, there is sufficient evidence to show that they took all the measures that they considered to be in the interests of the insolvent company's assets. This is clear, as regards the properties in issue, from their representations to the Mayor of Athens on 8 June 1988 (see paragraph 25 above), their application to State Counsel at the Athens Court of First Instance on 10 April 1989 (see paragraph 31 above) and the applications lodged with the Supreme Administrative Court for judicial review of the municipal orders amending the development plan and proclaiming the expropriation of the Syngrou Avenue site (see paragraph 32 above). The Athens Court of Appeal found that the liquidators had performed their duties in a particularly diligent manner (judgment no. 10261/1990 of 2 October 1990 - see paragraph 35 above).

Finally, it should be recalled that if it had been otherwise the applicant companies could, according to the Athens Court of Appeal in its decision of 2 October 1990 (see paragraph 35 above), have taken steps to have the liquidators replaced. The applicant companies denied this, but have failed to convince the European Court that the Court of Appeal misconstrued national law. The Court notes in addition that in two letters dated 18 July 1986 and 28 May 1990, served by bailiff, the applicant companies gave the liquidators instructions, indicated their opinion and requested them to take more effective measures to protect the interests of Fix Brewery's creditors and shareholders (see paragraphs 23 and 34 above).

71. In sum it has not been clearly established that at the time when the application was lodged with the Commission it was not possible for Fix Brewery to apply through its liquidators to the Convention institutions in respect of the alleged violation of Article 1 of Protocol No. 1 (P1-1) which is the basis of the applicant companies' complaint. It follows that the latter companies cannot be regarded as being entitled to apply to the Convention institutions.

72. This conclusion makes it unnecessary to examine the other objections raised by the Government in relation to the alleged violation of Protocol No. 1 (P1).

II. ARTICLES 6 AND 13 (art. 6, art. 13) OF THE CONVENTION

73. According to its report the Commission understood the applicant companies' complaint under Articles 6 and 13 (art. 6, art. 13) of the Convention to be the following: they complained that the national legal system did not give them, as Fix Brewery shareholders, the right to take proceedings in the courts to challenge the actions of Athens Municipal Council or to seek damages in respect of such actions.

The Court shares the Commission's opinion that this complaint must be dismissed. Neither Article 6 nor Article 13 (art. 6, art. 13) imply that under the national law of the Contracting States shareholders in a limited company should have the right to bring an action seeking an injunction or damages in respect of an act or omission that is prejudicial to "their" company (see paragraph 65 above).

74. In their additional memorial and their oral argument, the applicant companies claimed that the true issue in relation to Articles 6 and 13 (art. 6, art. 13) was that neither Fix Brewery nor its shareholders had any remedy whatsoever against the steps taken by the liquidators.

75. The Court reiterates that, under the Convention, the compass of the case before it is delimited by the Commission's decision on admissibility (see, among many other authorities, the Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 13, para. 25).

It cannot be ruled out that it may be possible in this context for an applicant to plead before the Court that a different construction should be placed on a complaint declared admissible by the Commission than that adopted by the latter (see the Kefalas and Others v. Greece judgment of 8 June 1995, Series A no. 318-A, p. 19, para. 44). However, the Court observes that the applicant companies have not shown this to be the case and it therefore lacks jurisdiction to take cognisance of this complaint.

FOR THESE REASONS, THE COURT

Holds by eight votes to one that it cannot take cognisance of the merits of the case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 October 1995.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the dissenting opinion of Mr Walsh is annexed to this judgment.

Initialled: R. R.

Initialled: H. P.

DISSENTING OPINION OF JUDGE WALSH

1. Joint stock companies are simply commercial devices for raising capital, particularly when large sums are required which would normally be beyond the private means of individuals. Nevertheless if such a company fails the ultimate losers are the individual shareholders. They have the power to liquidate the company even when it is doing well. They are the beneficial owners of the assets even though the legal ownership rests in the legal entity of the body corporate.

2. While it is true to say that such a body corporate has neither a soul to be damned nor a body to be beaten, nonetheless, the shareholders have and the existence of the corporate entity gives no protection to the shareholders as individuals against the loss in value of their shares or against criminal or civil liability for their individual activities in the commercial advancement of the companies.

3. It appears to me to be anomalous that the defence of human rights in the field of property, or otherwise, should yield to the commercially sacred impenetrability of the "corporate veil".

4. In the present case the fact that the applicants are themselves bodies corporate does not affect the principle because such bodies are composed of individuals each of whom has property rights. Shareholders may complain of the violation of their own rights and insofar as they complain of injustice to their corporate image they are in fact seeking to protect their individual property rights to the extent thereof.

5. Ordinary joint stock companies are to be distinguished from special bodies created by statute or by royal grant which may not in fact have any shareholders.

6. In my opinion the applicant bodies may be treated as the collective face of the individual victims.