



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF PAPAMICHALOPOULOS AND OTHERS v. GREECE

(Application no. 14556/89)

JUDGMENT

STRASBOURG

24 June 1993

In the case of Papamichalopoulos and Others v. Greece*,

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 the Rules of Court, as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. GÖLCÜKLÜ,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mr R. PEKKANEN,

Mr J.M. MORENILLA,

Mr F. BIGI,

Mr L. WILDHABER,

Mr J. MAKARCZYK,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 1 February and 28 May 1993,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 25 May 1992, 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. 14556/89) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by fourteen Greek nationals, Mr Ioannis Papamichalopoulos, Mr Pantelis Papamichalopoulos, Mr Petros Karayannis, Mrs Angeliki Karayanni, Mr Panayotis Zontanos, Mr Nikolaos Kyriakopoulos, Mr Konstantinos Tsapalas, Mrs Ioanna Pantelidi, Mrs Marika Hadjinikoli, Mrs Irini Kremmyda, Mrs Christina Kremmyda, Mr Athanas Kremmydas, Mr Evangelos Zybeloudis and Mrs Konstantina Tsouri, on 7 November 1988.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory

* The case is numbered 18/1992/363/437. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicants 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 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 29 May 1992 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr R. Bernhardt, Mr F. Gölcüklü, Mr A. Spielmann, Mr R. Pekkanen, Mr J.M. Morenilla, Mr F. Bigi and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Greek Government ("the Government"), the Delegate of the Commission and the applicants' lawyers on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants' memorial on 17 November 1992 and the Government's memorial on 20 November. On 14 December the Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

As Mr Ryssdal was unable to take part in the further consideration of the case, his place as President of the Chamber was taken by Mr Bernhardt, the Vice-President of the Court (Rule 21 para. 5, second sub-paragraph); Mr L. Wildhaber, substitute judge, replaced Mr Ryssdal as a member of the Chamber (Rules 22 para. 1 and 24 para. 1).

5. In accordance with the decision of the President, who had given the applicants' lawyers leave to address the Court in Greek (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 26 January 1993. The Chamber had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr P. GEORGAKOPOULOS, Senior Adviser,
Legal Council of State, Delegate of the Agent,
Mr V. KONDOLAIMOS, Adviser,
Legal Council of State,

Counsel;

- for the Commission

Mr L. LOUCAIDES,

Delegate;

- for the applicants

Mr G. VITALIS, dikigoros (lawyer),

Mr J. STAMOULIS, dikigoros (lawyer),

Member of the European Parliament,

Counsel.

The Court heard addresses by Mr Kondolaimos for the Government, Mr Loucaides for the Commission and Mr Vitalis and Mr Stamoulis for the applicants, as well as their replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. The applicants, who are all of Greek nationality, are the owners or co-owners of land in the area of Agia Marina Loimikou, near Marathon, Attica. On 16 March 1963 the Greek Office of Tourism gave its consent for the construction of a hotel complex on the site. At the applicants' request, an American firm of architects drew up plans.

A. The actions for recovery of the land

7. By a Law of 20 August 1967 (anagastikos nomos no. 109 - "Law no. 109/1967"), which was passed some months after the dictatorship was established, the Greek State transferred an area of 1,165,000 sq. m near Agia Marina beach to the Navy Fund (Tamio Ethnikou Stoulou).

Ten of the applicants, who owned part of this land (approximately 165,000 sq. m), applied to State Counsel at the Athens Court of First Instance (Isageleas Protodikon), requesting him to take interim measures and "restore the original position".

On 30 July 1968 State Counsel made three orders granting the applications, as the land in question was not public forest but consisted of agricultural land cultivated by the owners. One of the three orders, however, was revoked by State Counsel at the Athens Court of Appeal on the ground of "lack of urgency", following an application by the Navy Fund.

On 12 April 1969 the Minister of Agriculture informed Navy headquarters that part of the land transferred was not available for disposal and that it was necessary to take steps to "restore the rightful position".

8. Far from restoring the land to its owners, however, the Navy proceeded to construct a naval base and a holiday resort for officers. A royal decree of 12 November 1969 (published in the Official Gazette of 15 December 1969) designated the entire Agia Marina Loimikou region as a "naval fortress".

9. After the fall of the dictatorship in 1974, Mr Petros Papamichalopoulos, the father of the applicants Ioannis and Pantelis Papamichalopoulos, commenced proceedings in the Athens Court of First Instance to establish his title to three parcels of land. In a judgment (no. 3031/1976) given on 28 February 1976 the court held that in 1964 the plaintiff had indeed acquired title to 2,500 sq. m of land by a notarially recorded deed; that the land in question was not public forest but consisted of parcels which had been cultivated and occupied bona fide by various individuals successively since 1890; and that the Navy Fund was therefore obliged to return it.

10. The Athens Court of Appeal upheld this decision on 31 December 1976 (in judgment no. 8011/1976). It considered that the State had not transferred ownership of the land in question in 1967 since it had no title and the presumption of ownership applied only to forests, not to agricultural land.

11. An appeal on points of law by the Navy Fund was dismissed by the Court of Cassation (Arios Pagos) on 14 June 1978 (in judgment no. 775/1978), on the ground that Mr Petros Papamichalopoulos's ascendants had acquired title to their land by prescription and in accordance with the Romano-Byzantine law applicable at the time (1860).

12. On 17 July 1978 Mr Petros Papamichalopoulos sent a bailiff to serve the above-mentioned judgments on the Navy Fund with a view to their enforcement. On 28 September, accompanied by a bailiff, he went to the entrance of the naval base and sought enforcement of the court decisions, but the commanding officer of the base refused to admit them on the grounds that he had been ordered not to and that they required authorisation from Navy headquarters, which was refused. An application to State Counsel at the Court of Cassation was also unsuccessful.

13. In August 1977 Mr Karayannis and the other applicants brought two actions in the Athens Court of First Instance to establish their title to the land in issue. The State intervened in the proceedings in support of the Navy Fund.

In two interlocutory decisions of 1979 (nos. 11903 and 11904/1979) the court ordered further inquiries into the facts. It also held it necessary to commission several experts to examine the title documents in the applicants' and the Navy Fund's possession and file an opinion within five months on whether the land belonged to the plaintiffs or was part of the public forest transferred by Law no. 109/1967. However, the proceedings remained pending.

B. The attempt to obtain land of equal value in exchange

14. On 22 July 1980 the Minister of Defence informed the applicants that the construction of the naval base prevented return of the land in question,

but that proceedings were under way with a view to a grant of other plots of land to replace those occupied by the Navy Fund.

15. On 16 October 1980 the Minister of Agriculture requested the Prefect of East Attica to transfer to the applicants land of equal value situated in that region. He stated that even though the court decisions delivered so far related to only some of the private individuals who had been dispossessed in 1967, future or pending actions brought by other owners would certainly have the same outcome.

Notwithstanding a decree of 19 June 1981 regulating building development within the "Ramnoudos" archaeological site in the Loimiko valley (in which the disputed land was situated), the Navy Fund carried on with the construction of a hotel complex within the perimeter of the naval base.

16. By a joint decision of 9 September 1981 the Minister for Economic Affairs and the Ministers of Agriculture and Defence set up a committee of experts to choose certain of the pieces of land offered in exchange by the Ministry of Agriculture and value them; among these was a plot at Dionysos in Attica (see paragraph 27 below). The committee expressed its findings in a report of 14 January 1982.

17. In section 10 (see paragraph 29 below) of Law no. 1341/1983, published in the Official Gazette of 30 March 1983, it was expressly acknowledged that private individuals who were claiming title to land occupied by the Navy Fund were entitled to apply for other land in exchange, using the procedure laid down in Article 263 of the Rural Code (see paragraph 30 below); for this purpose it provided for a procedure for verifying title to the land in accordance with Article 246 of that code.

The explanatory memorandum on the Law contained the following:

"[S]ection [10] provides for the possibility of settling the case of the properties included in the area ... transferred to the Navy Fund under Law no. 109/1967.

This is an area of approximately 165,000 sq. m. It is claimed by a number of private individuals. Some of these have brought actions in the civil courts and obtained from the Court of Cassation a final decision in which they are acknowledged to be the owners. Having regard to the fact that the other [pending] cases are likely to have the same outcome and that paying compensation would be a solution disadvantageous to the authorities, an enactment must be passed enabling [the remaining private individuals] to replace their properties by others, which belong to the State and are available, subject to prior verification of the owners' title.

..."

18. Under this Law the applicants applied to the Athens second Expropriation Board (Epitropi apallotrioseon), composed of the President of the Athens Court of First Instance and civil-service experts. In decision no. 17/1983 of 19 September 1983 the Board acknowledged their ownership of an area of 104,018 sq. m. It stated the following:

"... it appears from the hearings, written submissions, oral statements and documents in the case file that the applicants ... occupied bona fide in continuous and regular fashion from time immemorial until 1967 an area of approximately [160,000 sq. m] situate at Agia Marina Loimikou ...; that the aforesaid area had for a long time been used for agriculture, as shown by several items of evidence ..."

19. On 8 December 1983 the Navy Fund appealed to the Athens Court of First Instance against this decision. The Greek State joined it by intervening in the proceedings on 25 January 1984.

In a judgment of 31 May 1984 (no. 1890) the Court of First Instance declared the appeal inadmissible; in the court's opinion, only the State and the parties concerned had standing to appeal against the decision in question, and not third parties such as the Navy Fund.

20. On 29 December 1986 the Athens Court of Appeal upheld this decision.

21. The Minister for Economic Affairs lodged an appeal on points of law, which was declared inadmissible by the Court of Cassation on 8 January 1988 (in judgment no. 5/1988) on the following grounds:

"... Law no. 1341/1983 gave third parties ... who claim ownership of the tract contained within the larger area transferred to the Navy Fund the possibility of applying for the claimed land to be exchanged for another plot of equal value Such exchanges will be effected in accordance with the procedure laid down in paragraphs 3, 4 and 5 of Article 263 of the Rural Code, that is to say by a decision of the Minister of Agriculture, after administrative proceedings before a tripartite board and in accordance with Article 263 of the Rural Code. ... In order to ensure that these exchanges are effected quickly and simply, the legislature has given interested parties the possibility of using the simple, quick procedure provided for in Article 246 of the Rural Code in order to have their [title] acknowledged. In adopting the aforementioned provision of section 10 of Law no. 1341/1983, it did not intend to provide, in accordance with Article 246 of the Rural Code, a solution for the dispute which might arise if the Navy Fund claimed against third parties the ownership of the area transferred by Law no. 109/1967. For that purpose the Navy Fund will have to use the procedure of ordinary law. This is apparent not only from the wording and the grammatical interpretation of the aforementioned provision ... but also from the purpose that the legislature sought to achieve ...

... In granting the right to have their title ... acknowledged only to the 'private individuals' (natural and legal persons) that own [these] areas of land ..., the legislature did not introduce any unjustified discrimination against the Navy Fund and did not deprive it of judicial protection, as it is still open to it, under ordinary-law procedure, to secure recognition of its title, which will not, however, enable it to receive other areas of land as this was not the legislature's intention ..."

On 24 June 1988 (in judgment no. 1149/1988) the Court of Cassation dismissed, on the same grounds, an appeal on points of law that had been brought by the Navy Fund.

22. On 25 July 1984 a further decree extended the geographical boundaries of the "naval fortress".

Pursuant to section 10 of Law no. 1341/1983, the Prefect of East Attica informed the Minister of Agriculture and the applicants on 11 September

1985 that some of the parcels of land offered in exchange were subject to special rules of ownership, while others had already been developed, and others again were protected by the legislation on forests.

In November 1987 the Minister of Agriculture suggested to the applicants that they should accept land in the prefecture of Pieria, 450 km from Agia Marina; it asked the Prefect of Pieria to look for land for this purpose. In view of the authorities' silence, three Members of Parliament in November 1988 put questions in Parliament to the Ministers of Defence and Agriculture asking what action had been taken in the matter. In a letter of 25 October 1990 the Pieria Agricultural Department admitted that it had been unable to find suitable land.

C. The actions for damages

23. On 2 December 1979 the applicants had brought two actions in the Athens Court of First Instance against the Navy Fund and the Greek State, represented by the Ministry of Finance, for damages for the loss of use of their property. In two judgments of 21 June 1985 the court adjourned the cases on the ground that verification of the applicants' title to the land had not been completed except in the case of Mr Petros Papamichalopoulos.

24. Earlier, the Navy Fund had asked the Association of Court Experts to produce a valuation of the property in issue. The designated expert obtained from the third applicant, Mr Karayannis, the opinion of all the owners in question on the documents which the Navy Fund had communicated to him. On 20 June 1986 Mr Karayannis asked the Navy Fund for information about the nature of the documents made available to the expert. On 10 March 1987 the Fund refused to provide any on the ground that the matter was of the nature of an internal procedure and this ruled out any intervention by third parties.

25. Several other actions for damages brought over a period up to 1991 were adjourned by the Athens Court of First Instance or else have not yet been heard.

D. Facts subsequent to the Commission's decision on the admissibility of the application

26. On 29 October 1991 the Ministry of Economic Affairs wrote to the State Lands Authority (Ktimatiki Etairia tou Demosiou) asking them to find land which might be used for the proposed exchange; it also drew their attention to the State's obligation to pay the applicants exorbitant sums of money if the exchange did not take place. In its answer the State Lands Authority again stated that there was no land available.

27. By decision no. 131 of the Cabinet, published in the Official Gazette of 17 October 1991, the administrative board of the Defence Fund had

transferred to the Ministry of Economic Affairs ownership of 470,000 sq. m of land belonging to the disused Dounis military camp at Dionysos, Attica, in the vicinity of the land in issue (see paragraph 16 above). This land, which was intended for sale, was included in the land register and given the name "Semeli estate". On 31 May 1992 the State Lands Authority placed advertisements in the press.

On 21 July 1992 the applicants' lawyer wrote to the State Lands Authority, asking whether it would be possible to allocate the new estate to his clients; on the following day he sent an identical letter to all the relevant ministers, the President of the Legal Council of State and the Director of the Navy Fund. The applicants have not yet received any response, apart from a copy of a letter from the Ministry of Economic Affairs department responsible for public property to the State Lands Authority asking the latter to take action under its powers and notify the writer and the other public authorities dealing with the case.

II. RELEVANT DOMESTIC LAW

A. The Constitution

28. Under Article 17 of the Greek Constitution of 1952, which applied at the time the Law in issue was passed,

"1. No one shall be deprived of his property unless it is for the public benefit, which must be duly proved, when and as specified by law and only after full compensation. Compensation shall in all cases be determined by the civil courts. In urgent cases it may also be determined by the courts on a provisional basis after the beneficiary has been heard or summoned, and the court may, at its discretion, require the latter to provide commensurate security, as provided by law. Until payment of the final or provisional compensation determined by the court, all rights of the owner shall be maintained intact and occupation of the property shall not be allowed.

...

4. Special status shall govern requisitioning to meet the needs of the armed forces in the event of war or mobilisation or to meet an immediate social need that is likely to jeopardise public order or public health."

Article 17 of the 1975 Constitution currently in force provides:

"1. Property shall be protected by the State; rights deriving therefrom, however, may not be exercised contrary to the public interest.

2. No one may be deprived of his property unless it is for the public benefit, which must be duly proved, when and as specified by law and only after full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which an application is

made for immediate final determination of compensation, regard shall be had to the value at the time of the court hearing of the application.

3. Any change in the value of expropriated property occurring after publication of the expropriation decision and resulting exclusively from it shall not be taken into account.

4. Compensation shall in all cases be determined by the civil courts. It may also be determined by the courts on a provisional basis after the beneficiary has been heard or summoned, and the court may, at its discretion, require the latter to provide commensurate security before receiving the compensation, as provided by law.

Until payment of the final or provisional compensation determined by the court, all rights of the owner shall be maintained intact and occupation of the property shall not be allowed.

The compensation awarded must be paid within a year and a half at the latest from the date of publication of the decision provisionally determining the compensation payable; in the case of applications for immediate final determination of compensation, this must be paid within a year and a half at the latest from the date of publication of the court ruling, otherwise the expropriation shall automatically be revoked.

The compensation as such shall be exempt from all taxes, deductions and rates.

5. The cases in which a compulsory indemnity shall be payable to the beneficiaries for loss of income from expropriated property until the time of payment of the compensation shall be laid down by law.

6. Where works of public benefit or of general importance to the economy of the country are being carried out, a law may allow the expropriation by the State of areas greater than that of the land needed for the execution of the works. The same law shall lay down the conditions and terms of such expropriation, as well as the arrangements for the disposal or use for public or public-utility purposes in general of expropriated areas not required for the execution of the proposed works.

..."

B. Law no. 1341/1983 of 30 March 1983

29. Under section 10 of Law no. 1341/1983,

"Land of which third parties have claimed ownership and which forms part of the area at Agia Marina Loimikou in Attica which was transferred to the Navy Fund under Law no. 109/1967 ... may, on application by the persons concerned, be exchanged for land of equal value, dedicated for public use (koinokhristes) or available under the legislation on land use, in accordance with the procedure provided for in paragraphs 3, 4 and 5 of Article 263 of the Rural Code.

In order to have their ownership of the said land acknowledged, the persons concerned may follow the procedure laid down in Article 246 of the Rural Code ..."

C. The Rural Code

30. The relevant paragraphs of Articles 246 and 263 of the Rural Code provide:

Article 246 (amended by section 27 of Law no. 3194/1955)

"Acknowledgment of title

1. Where an application is made to it by the parties concerned, the appropriate Expropriation Board shall determine title to the expropriated land in accordance with Law no. 4857 and Article 242 of the present code.

Within not more than three months from the notification of the decision, the State and the parties concerned may challenge the decision in the Court of First Instance that has jurisdiction, which shall make a final ruling in accordance with the procedure laid down in the following Articles.

2. Against judgments given by the courts of first instance under Article 246 of the Rural Code before the present Law comes into force an appeal shall lie within not more than one year from the date of commencement of this Law to the Court of Appeal that has jurisdiction ...

..."

Article 263

"...

4. Persons acknowledged as owners of expropriated land shall be invited by the Minister of Agriculture ... to lodge a notarially recorded certificate in which they declare that they accept the exchange of land effected under the preceding paragraph and waive any claim for compensation.

5. The aforementioned allocation of land belonging to the State, to a municipality or to a cooperative shall take effect by decision of the Minister of Agriculture in lieu of a title deed, which shall be entered in the land register.

..."

PROCEEDINGS BEFORE THE COMMISSION

31. The applicants applied to the Commission on 7 November 1988. They relied on Article 1 of Protocol No. 1 (P1-1), alleging that their land had been unlawfully occupied by the Navy Fund since 1967 and that to date they had not been able either to enjoy their possessions or to obtain compensation.

32. The Commission declared the application (no. 14556/89) admissible on 5 March 1991. In its report of 9 April 1992 (made under Article 31) (art. 31) it expressed the unanimous opinion that there had been a violation of Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion and of the two concurring opinions contained in the report is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

33. The applicants asked the Court to rule

"that the Greek State be ordered to recognise [their] title as owners or co-owners of the area mentioned ... and the shares of each of [them] expressed in square metres; that it be ordered to return this land to each of [them], as set out in decision no. 17/1983 of the Athens Expropriation Board;

alternatively, that the Greek State be ordered to pay [them] the sum of 11,639,547,000 drachmas by way of compensation to be distributed to each of [them] as owner or co-owner according to his share.

This sum shall be paid together with interest at the statutory rate provided by Greek law, from the date of publication of [the Court's] decision up to the date of payment."

34. The Government asked the Court for "the appeal of Ioannis Papamichalopoulos and thirteen others against the Hellenic Republic [to] be totally rejected".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

35. The Government alleged that the applicants, other than the heirs of Mr Petros Papamichalopoulos, could not claim to be "victims" within the meaning of Article 25 para. 1 (art. 25-1); nor had they exhausted domestic remedies as required by Article 26 (art. 26). In respect of both points, they relied on the fact that the applicants' actions to establish title remained pending in the Athens Court of First Instance (see paragraph 13 above).

36. In respect of these two preliminary objections there is an estoppel. The Government never raised the first objection before the Commission,

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 260-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

and they made the second only in respect of the compensation proceedings (see paragraphs 23-25 above); the Delegate of the Commission rightly noted this.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

37. In the applicants' submission, the unlawful occupation of their land by the Navy Fund since 1967 contravened Article 1 of Protocol No. 1 (P1-1), which 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."

The Government rejected this submission but the Commission accepted it.

38. The Government disputed that the applicants - other than the heirs of Mr Petros Papamichalopoulos - had the status of owners, since this had not been acknowledged in any judicial decision and the proceedings brought by the applicants in 1977 had still not ended (see paragraph 13 above). The Government held the applicants responsible for the delay, attributing it to their refusal to facilitate the preparation of the expert opinion commissioned in 1979 (see paragraph 13 above).

39. The Court does not share this view.

As early as 1968 State Counsel at the Athens Court of First Instance allowed the applications made by some of the applicants for interim measures (see paragraph 7 above). Furthermore, the Minister of Agriculture, in his letter of 12 April 1969, asked Navy headquarters to take steps to "restore the rightful position". Lastly, the authorities' conduct during 1980 (see paragraphs 14-15 above) and especially the passing of Law no. 1341/1983 (see paragraph 17 above), together with the decision of the Athens second Expropriation Board (see paragraph 18 above), tell in favour of the applicants' submission.

For the purposes of the present dispute, the applicants must therefore be regarded as the owners of the land in issue.

40. The breach claimed by the applicants began in 1967 with the passing of Law no. 109/1967 (see paragraph 7 above). At that time Greece had already ratified the Convention and Protocol No. 1 (P1), on 28 March 1953; they had already come into force in respect of Greece, on 3 September 1953

and 18 May 1954 respectively. Greece denounced them on 12 December 1969 with effect from 13 June 1970 (under Article 65 para. 1 of the Convention) (art. 65-1) but was not thereby released from its obligations under them "in respect of any act which, being capable of constituting a violation of such obligations, [might] have been performed by it" earlier (see Article 65 para. 2) (art. 65-2); it ratified them again on 28 November 1974 after the collapse of the military dictatorship established by the coup d'état of April 1967.

Admittedly, Greece did not recognise the Commission's competence to receive "individual" petitions (under Article 25) (art. 25) until 20 November 1985 and then only in relation to acts, decisions, facts or events subsequent to that date (Yearbook of the European Convention, volume 28, p. 10), but the Government did not in this instance raise any preliminary objection in this regard and the question does not call for consideration by the Court of its own motion. The Court notes merely that the applicants' complaints relate to a continuing situation, which still obtains at the present time.

41. The occupation of the land in issue by the Navy Fund represented a clear interference with the applicants' exercise of their right to the peaceful enjoyment of their possessions. The interference was not for the purpose of controlling the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1). Moreover, the applicants were never formally expropriated: Law no. 109/1967 did not transfer ownership of the land in question to the Navy Fund.

42. Since the Convention is intended to safeguard rights that are "practical and effective", it has to be ascertained whether the situation complained of amounted nevertheless to a *de facto* expropriation, as was argued by the applicants (see, among other authorities, the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 24, para. 63).

43. It must be remembered that in 1967, under a Law enacted by the military government of the time, the Navy Fund took possession of a large area of land which included the applicants' land; it established a naval base there and a holiday resort for officers and their families.

From that date the applicants were unable either to make use of their property or to sell, bequeath, mortgage or make a gift of it; Mr Petros Papamichalopoulos, the only one who obtained a final court decision ordering the Navy to return his property to him, was even refused access to it (see paragraphs 11-12 above).

44. The Court notes, however, that as early as 1969 the authorities had drawn the Navy's attention to the fact that part of the land was not available for disposal (see paragraph 7 above). After democracy had been restored, they sought means of making good the damage caused to the applicants. Thus in 1980 they recommended, if not returning the land, at least exchanging it for other land of equal value (see paragraphs 15-16 above).

This initiative led to the enacting of Law no. 1341/1983, which was designed to settle as quickly as possible - in the very terms of the Court of Cassation's judgment of 8 January 1988 - the problem created in 1967 (see paragraph 21 above). The Athens second Expropriation Board having recognised them all in 1983 as having title (see paragraphs 18-21 above), the applicants thereafter awaited allocation of the promised land. However, neither the land in Attica nor the land in Pieria was able to be used for the proposed scheme (see paragraph 22 above); in 1992 the applicants attempted to secure part of the "Semeli estate" but again without success (see paragraph 27 above).

45. The Court considers that the loss of all ability to dispose of the land in issue, taken together with the failure of the attempts made so far to remedy the situation complained of, entailed sufficiently serious consequences for the applicants *de facto* to have been expropriated in a manner incompatible with their right to the peaceful enjoyment of their possessions.

46. In conclusion, there has been and there continues to be a breach of Article 1 of Protocol No. 1 (P1-1).

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

47. Under Article 50 (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

48. As their main claim, the applicants sought the return of the disputed land and compensation of 17,459,080,000 drachmas (GRD) for loss of enjoyment; in the event of the land's not being returned, they also sought a sum corresponding to the present value of their properties, which they estimated at GRD 11,639,547,000. They further appeared to claim GRD 6,000,000,000 on account of the enormous non-pecuniary damage that the State's arbitrary conduct had caused them over a period of twenty-five years. Lastly, they claimed a total of more than GRD 2,000,000,000 in respect of costs and expenses in the national courts and before the Convention institutions.

The Government challenged the applicants' method of calculation, finding it arbitrary and wholly illogical. They pointed out that if the applicants won their case in the European Court, the resources of Greek law would afford them a series of effective remedies that would enable them to secure compensation for the loss of their properties or of the use of them. As to their claims for non-pecuniary damage, the Government considered them

quite without foundation as the applicants had themselves dropped the proceedings they had brought in the Greek courts. Lastly, the Government described the costs and expenses of which the applicants were seeking reimbursement as hypothetical.

The Delegate of the Commission considered that the information provided by the Government and the applicants did not provide a reliable basis for making an exact assessment of the damage sustained by the applicants; he thought none of the methods of calculation used for the purpose was satisfactory. He accordingly requested the Court to reserve the question and commission an expert opinion; if, however, it wished to rule in a single judgment on the existence of a breach and on just satisfaction, he would suggest awarding a sum of GRD 620,775,840 plus costs and expenses.

49. In the circumstances of the case, the Court considers that the question of the application of Article 50 (art. 50) is not ready for decision and that it must be reserved, having regard to the possibility of an agreement between the respondent State and the applicants (Rule 54 paras.1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the Government estopped from pleading the applicants' lack of victim status and on failure to exhaust domestic remedies;
2. Holds that there has been and there continues to be a breach of Article 1 of Protocol No. 1 (P1-1);
3. Holds that the question of the application of Article 50 (art. 50) of the Convention is not ready for decision; accordingly
 - (a) reserves it in whole;
 - (b) invites the Government and the applicants to submit, within the forthcoming two months, the names and positions of experts chosen by agreement for the purpose of valuing the disputed land and to inform it, within eight months from the expiry of that period, of any friendly settlement that they may reach before the valuation;
 - (c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 June 1993.

Rudolf BERNHARDT
President

Marc-André EISSEN
Registrar