



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

COURT (CHAMBER)

**CASE OF PAPAMICHALOPOULOS AND OTHERS v. GREECE
(ARTICLE 50)**

(Application no. 14556/89)

JUDGMENT

STRASBOURG

31 October 1995

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 Rules of Court A**, 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 H. PETZOLD, *Registrar*,

Having deliberated in private on 24 November 1993, 25 August 1994 and 22 March, 27 June and 25 October 1995,

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 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.

** 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.

2. In a judgment of 24 June 1993 ("the principal judgment") the Court found that there had been a breach of Article 1 of Protocol No. 1 (P1-1), as the applicants' loss of all ability to dispose of their land, taken together with the failure of the attempts made up to that time to remedy the situation complained of, had 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 (Series A no. 260-B, pp. 68-70, paras. 35-46, and points 1-2 of the operative provisions).

3. As the question of the application of Article 50 (art. 50) was not ready for decision, it was reserved in the principal judgment. The Court invited the Government and the applicants to submit, within 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 might reach before the valuation (*ibid.*, pp. 70-71, paras. 47-49, and point 3 of the operative provisions).

4. In letters of 13 and 22 September 1993 the applicants and the Government respectively informed the Court that they had appointed as experts Mr C. Liaskas, President of the Greek Chamber of Technology (Tekhniko Epimelitirio Ellados), Mr C. Vantsis, a civil engineer and a member of the Association of Sworn Valuers (Soma Orkoton Ektimiton), and Mr G. Katsos, a topographer and a member of the same association.

5. At a meeting on 24 November 1993 the Court decided that it should recommend the Government and the applicants to take, by agreement, the necessary steps to enable the experts appointed by them to start their work on 15 January 1994. It also decided that the experts' task would be to determine, firstly, the value of the disputed land in 1967 and, secondly, its current value, since the wording of the operative provisions of the principal judgment in no way precluded pursuing in parallel the possibility of a friendly settlement and the production of the experts' report. However, owing to a number of concerns expressed by the Government on 6 December 1993, the President informed the parties to the dispute that the deadline of 15 January 1994 no longer applied.

6. On 9 February 1994, on the Court's instructions, the Registrar sent the experts the following letter:

"As you already know, the Greek Government and Mr Stamoulis have chosen you as an expert ... to value certain land belonging to the applicants and whose occupation by the Greek Navy has been held by the ... Court ... to be contrary to Article 1 of Protocol No. 1 (P1-1) ...

As the question of compensation for the applicants was not ready for decision at the date of the judgment delivered on 24 June 1993, the Court decided to reserve it, having due regard to the possibility of an agreement between the respondent State and the applicants. Although the time allowed for that purpose expires on 24 April 1994, the prospects of such an agreement seem very slight and the Court will very probably have to determine the issue. It therefore requests you to start your work on that date, or even earlier with the consent of the parties to the case.

The expert opinion is to deal with the value of the land in dispute both at the date of its [occupation] by the Navy (in 1967) and at the present time (in 1994); your report should be filed by 31 July 1994 at the latest.

The Court would also like to receive by the end of April 1994 your estimate of the costs of producing the expert report and the amount of your fees; the President of the Court may tax these, if need be (Rule 42 para. 1 in fine of the Rules of Court). They will ultimately have to be paid by the Greek Government.

..."

On the same day, the Registrar sent a copy of that letter to the Agent of the Government, adding:

"With reference to your letter of 6 December 1993 and my reply of 9 December, I should like to inform you that the costs of producing the expert report and the experts' fees will have to be borne by the Greek State. In its judgment of 24 June 1993 the Court held that the unlawful occupation by the Navy Fund of the land in dispute since 1967 had infringed the applicants' right of property. It follows that the costs incurred by the applicants in order to have that breach established and rectified on the one hand, and the costs of the expert report necessary in this case for the application of Article 50 (art. 50), on the other, will ultimately have to be met by the respondent State. That is the opinion of the President, Mr Bernhardt, but the formal decision will appear in the Court's judgment."

7. On 11 February 1994 counsel for the applicants informed the Registrar that there was no longer any hope of reaching a friendly settlement in the case. In a letter of 7 April 1994 the Agent of the Government said that he had reached the same conclusion and asked for the Court's consent to the appointment of two technical advisers to assist the experts.

8. On 19 July 1994 the Agent of the Government sought an extension - until the end of 1994 - of the time that had been allowed for filing the expert report. He stated that the Minister of Defence had refused permission for the experts to enter the naval base "for imperative administrative reasons which cannot be disclosed" and "for reasons of national security".

9. In a letter received at the registry on 11 August 1994 the applicants disputed the genuineness of the reasons put forward for the refusal by the Minister and the Agent of the Government. They described the Government's behaviour as a "provocative deception" and added:

"4. We regret having to inform the Court that there was absolutely no 'administrative reason' for denying the experts access to the holiday village in question. It was merely judged that it would be inappropriate if the experts' visit were to coincide with the peak holiday period, during which the village presents the picture of an idyllic coastline whose natural beauty is unique. And it was felt that if the visit was deferred to a time when the holiday-makers had left the village, the picture it presented would probably not have impressed the experts.

5. Obviously, since there were neither any 'administrative reasons' nor any 'reasons of supreme national security', the experts visited the village on 17 July 1994 (St Marina's Day) and had an opportunity to make their investigations, since access was free for all visitors.

We must denounce to the Court the inaccurate statements made by the Greek State in disregard of the obligation on the parties to the proceedings to conduct themselves frankly and in good faith and to facilitate the task of the Court. I must, moreover, point out that the manifestly unethical tactic whereby the State has managed to delay production of the expert report prolongs the proceedings and aggravates the damage to my clients. It is for the Court to judge to what extent this conduct on the part of the authorities of the Hellenic Republic should incur sanctions and be taken into consideration in the award of 'just satisfaction' under Article 50 (art. 50) of the Convention."

10. For their part, the experts had sent the Court, on 10 August 1994, a copy of a letter they had sent to the Government, which read as follows:

"In the letter it sent you and which it has also communicated to us, Department E2 of Navy Headquarters denies us access until 15 October 1994 to the Navy officers' holiday village (naval base in the south of the Gulf of Euboea), where the immovable property in question is situated, for reasons that it was unable to indicate to us and which we think have to do with the end of the naval officers' summer holidays.

However, we were able to visit the immovable property on 17 July 1994, St Marina's Day, with hundreds of religious believers who were making a pilgrimage to the church of that name.

...

Given all the foregoing and in order to supplement the information we already have ... so as to be able to produce an accurate, objective report,

We would ask you to take steps to let us have the following particulars by 5 September 1994 at the latest:

..."

11. On 25 August 1994 the Court met to consider - in the light of the observations by the parties to the dispute and the experts - the progress of the proceedings and to decide how they should be continued. On 29 August the Registrar sent the parties and the experts a letter of which the relevant passage read as follows:

"The Court has noted with regret that the deadline laid down for filing the experts' report has not been complied with. It has expressed its profound concern as to the Greek Government's reluctance to co-operate effectively with the experts ...

It has decided that:

1. the costs of the experts' opinion will fall on the Greek Government: they will be calculated in accordance with the applicable Greek legislation but the Court will assess them with reference to the criteria laid down in its case-law;

2. the Greek Government should immediately afford their assistance to the experts so that the latter may have all the information necessary for producing their report. This should deal with the value of the land in issue at the date of its [occupation] by the Navy (in 1967) and at the present time (in 1994), such value not to include any

damage sustained by the applicants on account of the loss of use of their property during 1967-1994; and

3. the time allowed for filing the experts' report shall expire on 31 October 1994."

12. On 14 November 1994, at the experts' request, the President agreed to a further extension of time for filing their report, until 15 December 1994.

13. The experts filed their report on 19 December 1994 and their claims for costs and fees on 20 January 1995.

14. On 15 February 1995 the Government asked the Court to hold a hearing as they disputed the validity of the experts' report as a whole because one of the three experts, Mr Liaskas, had not contributed to producing it and because the experts had gone beyond their remit by dealing with matters on which the Court had not sought their opinion.

The Court then requested Mr Liaskas - who had never discharged himself from the instructions it had given him - to confirm in writing that he agreed with his colleagues' findings; it did not receive any reply from him, however.

15. The Government and the applicants submitted their observations on the experts' report on 17 and 21 February 1995; on 3 January 1995 the Registrar had received from the Government's technical advisers (see paragraph 7 above) a report containing their own valuation of the land in issue.

The Delegate of the Commission did not submit any written observations.

16. On 22 March 1995 the Court granted the Government's request for a hearing to be held.

In accordance with the President's decision, this took place in public on 22 June 1995 in the old Human Rights Building, Strasbourg. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr V. KONDOLAIMOS, Adviser,

Delegate of Legal Council of State,

Agent,

Mrs M. BASDEKI, Legal Assistant,

Legal Council of State,

Mr V. ROUKHOTAS, civil engineer,

Deputy Director, Department of Works, Navy Headquarters,

Counsel;

- for the Commission

Mr L. LOUCAIDES,

Delegate;

- for the applicants

Mr I. STAMOULIS, dikigoros (lawyer),

elected Prefect of the prefecture of Boeotia,

Mr G. VITALIS, dikigoros,

Counsel.

The Court heard addresses by them and also their replies to its questions. The Delegate of the Agent produced a number of documents at the hearing.

AS TO THE LAW

17. Under Article 50 (art. 50) of the Convention,

"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."

I. VALIDITY OF THE EXPERT REPORT

18. In the first place, the Government disputed the validity of the expert report on the ground that it had been produced by only two of the three experts initially appointed. The fact that Mr Liaskas, the President of the Greek Chamber of Technology, had not taken part in drawing up the expert report - without officially communicating this fact to either the Court or the Government, the latter of which were counting on his experience and judgment - rendered the report null, arbitrary and "scandalously favourable" to the applicants' interests. They requested the Court not to take it into account and to order a fresh expert opinion to be drawn up by all the experts.

19. The applicants pointed out that pursuant to the operative provisions of the Court's judgment of 24 June 1993, the parties to the dispute had agreed at the time to choose three experts, one to be appointed by the Greek Chamber of Technology and the other two by the Association of Sworn Valuers. The first expert, Mr Liaskas, was a Government adviser on technical matters, while Mr Vantsis and Mr Katsos were public servants not remunerated by the State. Mr Liaskas had been present during the early stages of the work on producing the report but did not subsequently take part in inspections of the site, though he was given due notice each time, and did not present himself to sign the report as he had been requested. These facts were duly recorded by Mr Vantsis and Mr Katsos in their report, and that sufficed, under the Code of Civil Procedure (Article 383 para. 3) and Greek private international law, for the expert report to be valid.

20. The Court points out that in its judgment of 24 June 1993 it invited the Government and the applicants to submit the names and positions of experts chosen by agreement for the purpose of valuing the disputed land, but did not specify the number of experts. It took note in September 1993

that the three experts in question had been appointed. In a letter sent by the Registrar on 9 February 1994 it drew the experts' attention to the fact that the time allowed for the parties to the dispute to reach a friendly settlement would expire on 24 April 1994 and requested them to start work on that date or even earlier with the consent of the parties concerned (see paragraph 6 above). It learned of the facts of which the Government complained only from the expert report lodged on 19 December 1994, from a letter of 12 February 1995 from the Agent of the Government and from the Government's observations on the expert report, which were received at the registry on 17 February 1995.

It appears from the report in question that after 17 October 1994 Mr Liaskas did not take part in any further inspection of the site or in the writing of the report, although he had been asked to attend for the latter purpose ten days beforehand; nor did he present himself on 15 December 1994 to sign the report. The Court notes furthermore that Mr Liaskas, who had never discharged himself, did not reply to the letter in which the Court asked him whether he endorsed his colleagues' findings (see paragraph 14 above). The Government, who maintained that Mr Liaskas's participation would have been invaluable to them, did not protest before the report was written at his having completely ceased work. That being so, the Court considers that the Government cannot rely on the third expert's unexplained non-participation to contest the validity of the report.

21. In the second place, the Government alleged that the experts had exceeded their instructions in valuing the buildings and other facilities on the land in issue; they said that the experts had been swayed by assurances allegedly given them by the applicants that they would be remunerated by the applicants themselves if the Court refused to take these buildings and facilities into account.

22. The applicants considered it natural that the expert report should also cover these buildings; the Court would thus be in a better position to rule on the current value of the land and would have a more reliable basis on which to assess the damage sustained by the applicants.

23. The Court points out that when it wrote to the experts on 9 February 1994, it specified that their report should deal with the value of the relevant land both at the date of its occupation by the Navy (in 1967) and in 1994. It notes in this connection that the expert report contains all the information necessary for it to be able to rule on the application of Article 50 (art. 50) in the instant case. The question whether the value of the buildings must be taken into account or not is to be looked at as part of the assessment of the pecuniary damage sustained by the applicants, and the calculation of it by the experts in no way affects the validity of their report.

24. In conclusion, the Court holds that the experts' report is valid and is to be taken into account for the purposes of giving a decision.

II. DAMAGE

A. Pecuniary damage

1. Summary of the expert report and of the experts' findings

25. The expert report, which runs to sixty-five pages and has several appendices, contains an estimate of the value of the land in issue in 1967 and in 1994, and of that of the buildings and other facilities built by the Navy since 1967. At the outset of their report the experts cite as justification for having opted to take these buildings and facilities into account their decisive influence on the land's increase in value and the fact that the Court's decision on the merits of the case might result in compensation that would include them.

26. According to the experts, the region in which the land in issue is situated had not been developed by 1967; the various properties that existed at the time - farms or fallow fields - were not all enclosed. By 1994 the land in question, the land adjoining it and the surrounding woods were fully developed: buildings had been erected and trees and shrubs planted. However, the entire area occupied by the Navy continued not to be covered by the local development plan. The area in issue consisted of seven plots of building land. All building projects were subject to the approval of the Forestry Inspectorate, and that was the only restriction after 3 March 1994, when the ones entailed by the designation of the area as an archaeological site had been lifted. The physical characteristics and situation of the land and also the beauty of the region made it an ideal spot for building a hotel complex; it was one of the few quiet, unspoilt regions of Attica and was exceptionally valuable in commercial terms because of the current shortage of comparable areas of land. These considerations had been decisive for the valuation of the land. Lastly, it would seem that the entire region has been designated as a naval fortress, but the experts record that the Greek State did not produce to them any official document to support that claim.

For the purposes of writing their report, the experts took as a basis the documents provided by the Revenue relating to parcels of agricultural or other land similar to the land in issue, information supplied by the Government and the applicants, and data from the property market. They also had regard to fluctuations in the rate of inflation and to the rise in the price of real property in the region.

The valuation covers an area of 104,018 sq. m that was also recognised in decision no. 17/1983 of 19 September 1983 of the Athens second Expropriation Board. To that is added the coastal area of 7,180 sq. m that is said to have been delimited in a decree of 10 December 1965 and to belong to the State; the experts nonetheless value it as a privately owned tract of

land which could be disposed of, but they state that its ownership will have to be determined by the appropriate courts.

27. After a detailed assessment of the information in their possession, the experts reach the following conclusions:

Value of the land

In 1967: 104,018 sq. m: 27,500,000 drachmas 7,180 sq. m: 2,300,000 drachmas

In 1994: (a) excluding appreciation 104,018 sq. m: 3,500,000,000 drachmas 7,180 sq. m: 300,000,000 drachmas

(b) including appreciation 104,018 sq. m: 4,200,000,000 drachmas 7,180 sq. m: 360,000,000 drachmas

Value of the land and buildings

In 1994

(a) total value of the land excluding appreciation (3,800,000,000 drachmas) + cost of the buildings (1,351,000,000 drachmas): 5,151,000,000 drachmas

(b) total value of the land including appreciation (4,560,000,000 drachmas) + cost and value of the buildings (1,713,490,000 drachmas): 6,273,490,000 drachmas

2. Arguments of those appearing before the Court

(a) The Government

28. The Government disputed both the relevance of the information taken as a basis by the experts and the amounts they had arrived at.

In the first place, they alleged that for the purposes of their valuation the experts had taken into account land other than the land in issue, together with the coastal area of 7,180 sq. m which belonged to the State. More especially, they pointed out that at the time of the publication in the Official Gazette of 10 December 1965 of the decree laying down the sea base lines, the applicants did not challenge it; they were therefore estopped from arguing today that they owned the area.

In the second place, the Government criticised the experts for having taken for the purposes of comparison land which had no similarities with the land in issue; the latter was in an inaccessible steep, rocky and marshy area well suited to the establishment of a naval base. This state of the region had in no way been altered since the installation of the base in 1968, and the only economic activities were quarrying and sporadic farming.

The designation as an archaeological site had been withdrawn only in 1994 and only for the area enclosed by the surrounding wall of the naval base; the remainder of the area was still subject to the restrictions associated with that designation. At all events, restrictions on building applied to all the adjoining region under the 1936 legislation on fortified areas.

29. The Government made their own valuation of the land in issue as follows:

Value of the land

In 1967: 104,018 sq. m: 520,000 drachmas In 1994: 104,018 sq. m: 312,000,000 drachmas

Cost of the buildings

At the time of their construction: 82,900,000 drachmas Currently: 1,525,500,000 drachmas

(b) The applicants

30. At the outset the applicants denounced the Government's attitude since the delivery of the Court's judgment of 24 June 1993. Not only had they refused to conclude a friendly settlement in the case, as the Court had wished, but they had subsequently tried to delay the production of the expert report and to make the experts' task difficult.

31. In their observations on the expert report the applicants stressed the unique beauty and ideal geographical situation of the region in which their properties lay; these accounted for the Navy's wish to turn them into a holiday village for officers and their families. The designation as an archaeological site reflected the Navy's concern to protect the area from judicial intervention in the applicants' favour and from the risk of building in its neighbourhood; it had also been intended to lessen the value of the applicants' land before it was valued - for the State - by a committee of civil servants (see paragraph 16 of the principal judgment). Furthermore, the temple of Nemesis, which had served as a pretext for the designation, had been five kilometres away and no longer existed today. The assertion that the area was a naval fortress was easily refuted by the aerial photographs produced in evidence.

As regards the expert report itself, the applicants criticised it for being based on comparative data that were inappropriate in the instant case and ignoring those adopted by the committee of civil servants, which were more favourable to the applicants. On the other hand, they stated that the experts had been right to value the coastal area of 7,180 sq. m, as the Athens second Expropriation Board had acknowledged their ownership of this area in 1983. Making their own calculations, they submitted that the current value of their properties was 14,455,740,000 drachmas.

The applicants also claimed ownership of the buildings put up by the Navy on their land. They maintained that under Greek legislation (Articles 3 and 13 of Decree no. 797/1971) and the Court of Cassation's case-law (judgment no. 1795/1988), compulsory expropriation of land, as in the instant case, automatically entailed that of its constituent parts. If full compensation was to be provided, therefore, it would have to include the value of those buildings, amounting - according to the experts' report - to 1,714,000,000 drachmas.

Lastly, the applicants claimed compensation for loss of the use of their properties for more than twenty-seven years. Under this head, they sought an annual percentage of 6% on the current value of their properties, that is to say 26,680,071,000 drachmas. They pointed out that the Greek Tourist Office had granted one of the applicants, Mr Karayannis, a building permit (no. 20031/4212, of 25 May 1963) for a hotel complex, and the American company John T. Ratekin and Associates had produced plans.

32. In short, the applicants sought:

(i) as their main claim, return of their land and an award of compensation for loss of use in the amount of 26,680,071,000 drachmas;

(ii) in the alternative, payment of the value of the land and buildings (16,169,740,000 drachmas) and the award of compensation for loss of use (26,680,071,000 drachmas), that is to say 42,849,811,000 drachmas in all; and

(iii) interest for delay on the sum to be awarded, calculated in accordance with Greek legislation, from the date of delivery of the Court's judgment until payment.

(c) The Commission

33. The Delegate of the Commission referred to international arbitration tribunals' and courts' case-law on expropriation and took the view that just satisfaction in the instant case had to consist in compensation to the amount of the full current value of the land in issue. He based that opinion on the fact that the applicants' title deeds had never been transferred to the State and that despite their efforts the applicants had not succeeded in regaining the enjoyment of their properties or in acquiring alternative properties as the State had promised them.

The legal situation as regards their properties had, he continued, at last been determined and established by the Court's judgment of 24 June 1993, and it was therefore on that date that an obligation of *restitutio in integrum* under Article 50 (art. 50) arose. However, as the State had awarded them no compensation in kind since that judgment, they must now be paid its monetary equivalent, increased solely by the appreciation brought about by the existence of the buildings; that method was justified by the special circumstances of the case, in particular the unlawfulness of an expropriation which was continuing indefinitely. As to determining the amount of the compensation, the Delegate invited the Court not to reject the experts' findings.

3. The Court's decision

34. The Court points out that by Article 53 (art. 53) of the Convention the High Contracting Parties undertook to abide by the decision of the Court in any case to which they were parties; furthermore, Article 54 (art. 54) provides that the judgment of the Court shall be transmitted to the

Committee of Ministers which shall supervise its execution. It follows that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach.

The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1) (art. 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow - or allows only partial - reparation to be made for the consequences of the breach, Article 50 (art. 50) empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate.

35. In the principal judgment the Court held that "the loss of all ability to dispose of the land in issue, taken together with the failure of the attempts made [up to then] to remedy the situation complained of, [had] 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" (p. 70, para. 45).

36. The act of the Greek Government which the Court held to be contrary to the Convention was not an expropriation that would have been legitimate but for the failure to pay fair compensation; it was a taking by the State of land belonging to private individuals, which has lasted twenty-eight years, the authorities ignoring the decisions of national courts and their own promises to the applicants to redress the injustice committed in 1967 by the dictatorial regime.

The unlawfulness of such a dispossession inevitably affects the criteria to be used for determining the reparation owed by the respondent State, since the pecuniary consequences of a lawful expropriation cannot be assimilated to those of an unlawful dispossession. In this connection, international case-law, of courts or arbitration tribunals, affords the Court a precious source of inspiration; although that case-law concerns more particularly the expropriation of industrial and commercial undertakings, the principles identified in that field are valid for situations such as the one in the instant case.

In particular, the Permanent Court of International Justice held as follows in its judgment of 13 September 1928 in the case concerning the factory at Chorzów:

"... reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act

had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law." (Collection of Judgments, Series A no. 17, p. 47)

37. In the present case the compensation to be awarded to the applicants is not limited to the value of their properties at the date on which the Navy occupied them. In the principal judgment the Court took as its basis for assessing the impugned interference the length of the occupation and the authorities' inability for years on end to allot the applicants the land promised in exchange. For that reason it requested the experts to estimate also the current value of the land in issue; that value does not depend on hypothetical conditions, as it would if the land was in the same state today as in 1967. It is clear from the expert report that since then the land and its immediate vicinity - which by virtue of its situation had potential for development for tourism - has undergone development in the form of buildings which serve as a leisure centre for naval officers and related infrastructure works. Nor does the Court overlook that the applicants themselves at the time had a scheme for the economic development of their properties, on which work had already begun (see paragraph 31 above).

38. Consequently, the Court considers that the return of the land in issue, an area of 104,018 sq. m - as defined in 1983 by the Athens second Expropriation Board - would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1 (P1-1); the award of the existing buildings would then fully compensate them for the consequences of the alleged loss of enjoyment. As to the claimed area of 7,180 sq. m, the Court notes that although the experts valued it and regarded it as a privately owned tract of land, they pointed out that parts of it were included in the shore as delimited in Decree no. 221 of 10 December 1965 and that its ownership would, if the occasion arose, have to be determined by the appropriate courts. That being so, the Court does not consider that it should take it into account.

Admittedly, as far back as 1980 (see paragraph 14 of the principal judgment) the Government invoked reasons of national defence that prevented restitution, asserting that even if in peacetime the naval base was a holiday resort for officers and their families, it was ready for integration into the country's military structure in wartime.

39. If the respondent State does not make such restitution within six months from the delivery of this judgment, the Court holds that it is to pay the applicants, for damage and loss of enjoyment since the authorities took possession of the land in 1967, the current value of the land, increased by the appreciation brought about by the existence of the buildings, and the construction costs of the latter. As to the determination of the amount of this

compensation, and having regard to the considerable divergence between the methods of calculation employed for the purpose by the parties to the dispute, the Court adopts the findings in the expert report for the assessment of the damage sustained. The amount therefore comes to 4,200,000,000 drachmas for the land and 1,351,000,000 drachmas for the buildings, plus interest at 6% from the expiry of the aforementioned period of six months until payment is actually made.

40. More particularly, as regards the buildings, the Court cannot accept the Government's submission that awarding compensation under this head is a matter coming exclusively within the jurisdiction of the national courts as it requires prior interpretation of national law and complete clarification of the circumstances of the case; the applicants, they said, had available to them in the national legal system effective remedies to satisfy their excessive demands. The Court considers, firstly, that the buildings form part of the *restitutio in integrum* (see paragraph 38 above). It points out, secondly, that it has declared the applicants to be the victims of a breach of Protocol No. 1 (P1); requiring them to exhaust domestic remedies in order to be able to obtain just satisfaction from the Court would prolong the procedure instituted by the Convention in a manner scarcely in keeping with the idea of the effective protection of human rights (see the *De Wilde, Ooms and Versyp v. Belgium* judgment of 10 March 1972, Series A no. 14, pp. 8-9, para. 16, and the *Barberà, Messegué and Jabardo v. Spain* judgment of 13 June 1994, Series A no. 285-C, p. 57, para. 17).

B. Non-pecuniary damage

41. The applicants also sought 6,000 million drachmas in respect of the non-pecuniary damage they had allegedly sustained as a result of the "extraordinary suffering" and the "intolerable mockery" of which they had been the victims during the three decades that their dispute with the State had lasted.

42. The Government found that amount "quite absurd" as it was almost twice as much as the value of the land as assessed by the experts. The non-pecuniary damage alleged by the applicants was attributable exclusively to their own conduct, because they had dropped all the proceedings they had brought in the national courts although those proceedings had not been wholly without prospects of success.

43. The Court considers that the breach of the Convention caused the applicants definite non-pecuniary damage arising from the feeling of helplessness and frustration in the face, firstly, of the Navy's and successive governments' refusal to comply with the decisions of the Greek judicial and administrative authorities (see paragraphs 7-12 of the principal judgment) and, secondly, of the failure of the attempt to recover land of equal value in exchange (see paragraphs 14-22 and 26-27 of the principal judgment).

The Court awards each of the applicants 450,000 drachmas under this head, in other words 6,300,000 drachmas in all.

III. COSTS AND EXPENSES

44. The applicants sought reimbursement of costs and expenses, in particular for lawyers' fees and expenses and for court fees, in a total amount of 3,066,080,830 drachmas, broken down as follows:

(a) costs incurred in Greece in four different sets of proceedings: 1,780,586,530 drachmas;

(b) costs of the proceedings in Strasbourg, including the proceedings relating to the application of Article 50 (art. 50): 1,285,494,300 drachmas.

45. The Government referred to their Agent's written observations on this point, which had been filed before the hearing on the merits, and to his address during that hearing. At the time, he described the costs and expenses of which the applicants were seeking reimbursement as hypothetical and had requested the Court to take into account only those which had been substantiated in full.

46. The Delegate of the Commission expressed no view on the subject.

47. The Court notes that the applicants calculated the above-mentioned sums on the basis of the relevant national scales, in particular Legislative Decree No. 3026/1954 enacting the Barristers' Code, and in proportion to their claims for pecuniary damage. Furthermore, they did not provide vouchers such as to prove the rate of fees and other costs that they had had to pay.

It is settled case-law that the Court is not bound by the rules of domestic practice in this area (see, among many other authorities, the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment of 28 May 1985, Series A no. 94, p. 45, para. 99).

The Court therefore cannot allow in full the applicants' claims, whose quantum is indisputably very large. However, having regard to the circumstances of the case, the multiplicity and length of the national proceedings, both judicial and administrative, the fact that counsel for the applicants took part in the negotiations with a view to a friendly settlement, and the special complexity of the question of the application of Article 50 (art. 50), the Court considers it reasonable to award them 65,000,000 drachmas, including value added tax.

IV. COSTS OF THE EXPERT REPORT

48. The two experts who signed the report sought a total amount of 79,600,000 drachmas, plus value added tax at 18%, for their fees and costs in connection with the production of their report. Their calculations are based on the relevant Greek legislation and take into account the valuation

work itself, the number of hours worked, the inspections of the site, the production of the plans and interpretation of the aerial photographs. They stated that 73% of the amount covered the valuation of the land and the remainder the valuation of the buildings.

49. The Government asserted, as their main submission, that the remuneration of the experts was not their responsibility either under Article 50 (art. 50) or under any other provision of the Convention, as it did not represent an expense incurred by the applicants that might call for reimbursement; on the contrary, it should be met by the Council of Europe or the Court itself, since the expert report had been ordered by the latter and completed on its authority.

In the alternative, if the Court disagreed on that point, the Government requested it to refer the assessment of the remuneration to the appropriate Greek authorities or courts. However, if the Court decided to determine the amount itself, it should be limited to only two of the three experts and to the part of the valuation concerning the land. Lastly, the Government asked the Court to have regard, in this connection, to the relevant Greek legislation as interpreted by the Court of Cassation: such remuneration was to be determined in keeping with the judgment of the reasonable man.

50. The applicants criticised the Government's attitude. They pointed out that during the first inspection of the site the Agent of the Government had informed the experts that the Government would not consider themselves bound by a decision of the Court that they should pay their fees. Moreover, they drew the Court's attention to the numerous obstacles that the Government had put in the way of the experts when the latter were carrying out their task.

51. The Delegate of the Commission maintained that the concept of "just satisfaction" was sufficiently broad to include costs of the kind under consideration.

52. The Court points out, firstly, that the award of compensation is within the Court's discretion and that it is for it to judge whether such compensation is necessary or appropriate, at least as regards specific items.

It agrees that the experts' remuneration does not represent expenses that the applicants would themselves have incurred in the domestic legal system in order to try to prevent a breach or have it rectified or, subsequently, to have it established by the Convention institutions; such remuneration does, however, represent the costs associated with producing an expert report which the Court held to be essential for enabling the applicants to obtain redress for the breach found in the principal judgment. The Court's purpose in asking the parties to choose experts by agreement was to avoid the one-sidedness of the valuation put forward by the applicants in the reports they had filed before and after the hearing on the merits and which the Court had not taken into account.

53. In two letters of 9 February 1994 the Registrar, acting on the instructions of the President of the Chamber, informed the experts and the Agent of the Government that the costs and fees relating to the expert report would ultimately have to be borne by the respondent State and that the formal decision would appear in the Court's judgment (Rule 53 para. 1 (1) of Rules of Court A) (see paragraph 6 above).

54. The Court does not doubt that the two experts actually and necessarily carried out the actions they listed in their claims for costs and fees in order to perform their task as well as possible. However, it is unable to review, in the light of the relevant national legislation and case-law, the reasonableness of the rates of those costs and fees, which seem to be high in respect of certain items.

Making an assessment on an equitable basis, the Court awards each of the two experts 18,000,000 drachmas, that is to say 36,000,000 drachmas in all.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the expert report is valid;
2. Holds that the respondent State is to return to the applicants, within six months, the land in issue of an area of 104,018 sq. m, including the buildings on it;
3. Holds that, failing such restitution, the respondent State is to pay the applicants, within six months, 5,551,000,000 (five thousand five hundred and fifty-one million) drachmas in respect of pecuniary damage, plus non-capitalisable interest at 6% from the expiry of the six-month period (point 2 of the operative provisions) until payment;
4. Holds that the respondent State is to pay the applicants, within three months, 6,300,000 (six million three hundred thousand) drachmas in respect of non-pecuniary damage;
5. Holds that the respondent State is to pay the applicants, within three months, 65,000,000 (sixty-five million) drachmas in respect of costs and expenses, including value added tax;
6. Dismisses the remainder of the claim for just satisfaction;
7. Holds that the respondent State is to pay the two experts, Mr Katsos and Mr Vantsis, within three months, 36,000,000 (thirty-six million)

drachmas in respect of the costs and fees relating to the writing of their report, plus value added tax.

Done in English and in French, and notified in writing on 31 October 1995 pursuant to Rule 55 para. 2, second sub-paragraph, of Rules of Court A.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar