

In the case of Tsomtsos 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 F. Gölcüklü,
Mr L.-E. Pettiti,
Mr N. Valticos,
Mrs E. Palm,
Mr I. Foighel,
Mr A.B. Baka,
Mr B. Repik,
Mr P. Kuris,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 29 June and 24 October 1996,

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

Notes by the Registrar

1. The case is numbered 106/1995/612/700. 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) (1 October 1994) 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 8 December 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 20680/92) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by 101 Greek nationals on 3 August 1992. The applicants are as follows: Mr Nikolaos Tsomtsos, Mr Ioannis Velissaropoulos, Mr Asterios Katranis, Mr Vasiliki Katrani, Mrs Athina Sanopoulou, Mrs Konstantina Kagka, Mrs Ekaterini Stylianidou, Mr Georgios Koutsos, Mrs Magdalini Georgiadou, Mrs Despoina Gontsia, Mr Ioannis Tsekmes, Mrs Alexandra Marinou, Mr Christos Tsilas, Mr Dimitrios Karatsovalis, Mrs Fani Kotakou, Mr Konstantinos Kotakos, Mrs Angeliki Mike, Mrs Ekaterini Tsilopoulou, Mr Panagiotis Tsakilis, Mrs Fani Samaroudi, Mr Theodoros Zaralis, Mrs Efthimia Amerani, Mr Thomas Kanakoglou, Mr Polichronis Alpanis, Mr Stergios Thomaidis, Mr Dimitrios Kefalas, Mr Konstantinos Tsekouras, Mrs Vaya Giannakoudaki, Mrs Anastassia Milioni, Mr Panagiotis Moraitis, Mr Konstantinos Papadakis, Mr Theologos Zafiriou, Mrs Ioanna Koufou, Mrs Venetia Patsalaki, Mrs Fani Iliadou, Mrs Evdokia Samara, Mr Dimitrios Papadopoulos, Mr Ioannis Abatzoglou, Mrs Maria Kazaki, Mrs Anastassia Polizou, Mr Vassilios Kazakis, Mrs Vasiliki Tahtsidi,

Mr Iraklis Hilis, Mr Sotirios Hilis, Mrs Diamanto Koboyianni, Mrs Maria Hatz, Mrs Damaskini Panou, Mrs Chrissi Hatziloxandra, Mrs Olympia Mylonaki, Mrs Evgenia Tsimpinou, Mrs Alexandra Maristathi, Mr Dimitrios Fotiou, Mr Dimitrios Mikes, Mrs Thekla Konstantaridi, Mrs Eleni Gouli, Mr Haridimos Tsilopoulos, Mrs Maria Tigiri, Mr Dimitrios Parnavelis, Mrs Zoe Gavezou, Mrs Polymnia Parnaveli, Mrs Anna Parnaveli (acting on her own behalf and on that of her two under-age daughters Varvara Parnaveli and Angela Parnaveli), Mrs Foteini Karagali, Mrs Ekaterini Pessou, Mr Vlassios Karagalis, Mr Grigorios Karagalis, Mr Dimitrios Mamoglou, Mr Konstantinos Psaras, Mr Petros Hatziyovanakis, Mr Ioannis Hatziyovanakis, Mrs Paraskevoula Gani, Mrs Sevasti Pananou, Mr Theodoros Giannelis, Mr Dimitrios Papailias (acting on behalf of his three under-age daughters Eleftheria Papailia, Theodora Papailia and Theopoula Papailia), Mrs Roda Mouraki, Mrs Elissavet Boziou, Mrs Evgenia Mouraki, Mrs Efrossini Vlahou, Mrs Zoe Kassapidi, Mrs Sofia Hyrmpou, Mr Diamantis Hyrmpos, Mrs Angeliki Milia, Mrs Maria Kliatsou, Mr Georgios Arampatzis, Mrs Evdokia Panayiotopoulou, Mr Christos Kraniotis, Mr Iossif Perdikopoulos, Mr Nissim Taramboulous, Mrs Sofia Orfanou, Mr Christodoulos Tsilopoulos, Mr Diamandis Tsakmakas, Mr Emmanouil Stoukos, Mrs Lemonia Liakou, Mr Nikolaos Kyvernitis, Mr Nikolaos A. Kyvernitis, Mr Evgenios Kyvernitis, Mrs Chrissoula Petroulia, Mr Athanassios Drakopoulos, Mrs Stilian Triaridi, Mrs Chrissoula Barbayannidi, Mrs Dimitra Papadimitriou, Mr Dimitris Fotiou.

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 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 applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. On 8 February 1996 the President of the Court decided that, in the interests of the proper administration of justice, this case should be considered by the Chamber constituted on 29 September 1995 to hear the case of Katikaridis and Others v. Greece (1) (Rule 21 para. 7).

1. Case no. 72/1995/578/664.

4. That Chamber 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. 4 (b)); the other seven members, drawn by lot, were Mr F. Gölcüklü, Mr L.-E. Pettiti, Mrs E. Palm, Mr I. Foighel, Mr R. Pekkanen, Mr B. Repik and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr A.B. Baka, substitute judge, replaced Mr Pekkanen, who was unable to take part in the further consideration of the cases (Rules 22 para. 1 and 24 para. 1).

5. As President of the Chamber (Rule 21 para. 6), 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 applicants' memorial on 18 April 1996 and the Government's memorial on 19 April. On 20 May the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

On 10 April 1996 the President had given the applicants' lawyers leave to use the Greek language (Rule 27 para. 3) in the written procedure.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 June 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr V. Kondolaimos, Adviser, Legal Council of State,	Delegate of the Agent,
Mrs V. Pelekou, Legal Assistant, Legal Council of State,	Counsel;

(b) for the Commission

Mr L. Loucaides,	Delegate;
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(c) for the applicants

Mr T. Houliaras, Mr C. Horomidis, Mr I. Horomidis, all of the Salonika Bar,	Counsel.
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The Court heard addresses by Mr Loucaides, Mr I. Horomidis and Mr Kondolaimos.

At the hearing counsel for the applicants and the Delegate of the Agent of the Government lodged documents in which they made further submissions on Article 50 of the Convention (art. 50). The President gave them leave to reply within three weeks, and the applicants did so on 15 July 1996. The Government indicated in a letter of 19 July that they did not wish to make any observations.

AS TO THE FACTS

I. Circumstances of the case

A. Background

7. In a decision of 18 June 1986 the Minister for the Environment, Regional Development and Public Works ordered that Law no. 653/1977 "on the obligations of adjoining owners where major roads are built" should apply to a scheme to improve certain sections of the major road between Salonika and Nea Moudania in Chalcidice.

Law no. 653/1977 creates a presumption that the owners of properties on major roads benefit when such roads are widened and provides that they must accordingly contribute to the cost of expropriation if they are expropriated (see paragraph 23 below).

8. On 20 August 1986, by means of a joint decision of the Minister of Finance and the Minister of Public Works, the State expropriated under Law no. 653/1977 parts - 392,370 sq. m in total - of each of the applicants' properties in the public interest, in particular to build new sections of the major road between Salonika and Nea Moudania. To be more precise, the properties were used to build the road from Nea Kallikratia to Nea Moudania and a service road approximately five metres wide for agricultural vehicles. It was specified in the decision that the expropriation would be for the benefit of the State and that the costs would be borne by the State and adjoining owners who benefited, as provided in the Law.

B. The applications to the Supreme Administrative Court to have

the decision quashed

9. On 27 November 1987 the applicants applied to the Supreme Administrative Court to have the decision of 20 August 1986 quashed (see paragraph 8 above). They submitted, inter alia, that Law no. 653/1977 did not apply in the case, as the planned widening of the road - which, furthermore, had not been classified as a "major" road in the presidential decree of 9 and 20 August 1955 - would be detrimental to their properties. Moreover, the cadastral plan showed only the surface area to be expropriated, not the plots in their entirety or the parts of them that were not to be expropriated so as to enable their drop in value to be calculated.

10. On 10 January 1991 the applicants applied to the Supreme Administrative Court to have the ministerial decision of 18 June 1986 (see paragraph 7 above) quashed. They submitted that the relevant Minister had incorrectly described the road linking Salonika and Nea Moudania as a "major" road whereas it was in fact only a minor road, and that Law no. 653/1977 was consequently not applicable. More precisely, they pointed out that under Law no. 3155/1955, roads were designated as major roads by a once-for-all decree, not by ministerial decision; however, that road was not classified as a major road either in the decree of 9 and 20 August 1955 or in any subsequent legislation.

11. In two judgments (nos. 492/1992 and 493/1992) of 11 February 1992 the Supreme Administrative Court dismissed the two applications. It held that the applications of some of the applicants were inadmissible as they had not produced an authority to act enabling their lawyers to represent them before the court, or alternatively because they had not proved that they had locus standi. The remaining applications were held to be unfounded, in particular on the ground that the road between Salonika and Nea Moudania had been designated a "major" road in a decision of the Minister of Public Works on 31 August 1982 which was an individual Act whose lawfulness could not be reviewed as an ancillary matter. The complaint that the decision of 20 August 1986, in treating the applicants as "adjoining owners who had derived a benefit", contravened Articles 17 and 93 para. 4 of the Constitution was rejected as being inadmissible; the complaint concerned the assessment of compensation - a matter within the jurisdiction of the civil courts - not the lawfulness of the impugned decision.

C. The assessment by the civil courts of the unit amount for compensation

12. On 24 May 1988, on applications by the State and some of the applicants under Legislative Decree no. 797/1971 on expropriations (see paragraph 17 below), the Salonika Court of First Instance assessed the provisional unit amount for compensation. It noted that the applicants' properties were plots of farming land suitable for cultivation (and in some cases irrigated) and were not included in the development plan; they were up to 1,300 metres from the coast and could also be built on. Some of the owners had illegally divided them into small parcels which they had sold to third parties, who had built houses on them without planning permission.

13. On 4 January 1991, on an application by some of the applicants, the Salonika Court of Appeal assessed the final unit amount for compensation (judgment no. 15/1991). It declared that it was unable to consider whether and to what extent the adjoining owners had an obligation to contribute to the expropriation costs or what benefit they might derive in a given case. It rejected the applicants' submission that Law no. 653/1977 was unconstitutional and that all the administrative acts "whereby they had to consider themselves sufficiently compensated because they benefited from the major road" were null and void. It said that the value of the unexpropriated

parcels had decreased where the surface area of the plots of land in issue did not exceed 750 sq. m; for these parcels special compensation was awarded under Article 13 para. 4 of Legislative Decree no. 797/1971. However, the plots of land exceeding 750 sq. m had not suffered any depreciation as neither the applicants nor the experts had proved that it had become impossible to build on them; accordingly, no special compensation was due in respect of those plots of land.

D. Proceedings to identify those entitled to compensation

14. On 18 October 1990 the State invited the Salonika Court of First Instance to determine who was entitled to the compensation assessed in January 1991 (see paragraph 13 above). On 5 March 1991 the court declared that some of the applicants were so entitled (judgment no. 18/1991). It ordered that they should receive compensation (which had been deposited with the Bank for Official Deposits) according to their share of the land and the nature of their title.

15. On account of the application of the presumption created by Law no. 653/1977, however, the State did not compensate the applicants for the fifteen-metre-wide area laid down in that Law. Furthermore, the applicants did not bring an action in the civil courts for payment of the compensation.

II. Relevant domestic law

A. The Constitution

16. The relevant Articles of the 1975 Constitution provide:

Article 17

"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, in the circumstances and manner laid down 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 of the expropriated property at the time of the court hearing of the application.

..."

Article 93 para. 4

"The courts shall not apply laws whose content is contrary to the Constitution."

B. Legislative Decree no. 797/1971 on expropriations

17. Legislative Decree no. 797/1971 of 30 December 1970 and 1 January 1971 is the main legislative provision governing expropriations. It applies the principles set out in the constitutional provisions.

18. Chapter A of the legislative decree lays down the procedures and prerequisites for announcing expropriations.

Article 1 para. 1 (a) provides that expropriations of urban or

rural properties and claims to rights in rem over them, if authorised by law in the public interest, are made known by a joint decision of the Minister having authority in the sphere concerned by the intended expropriation and the Minister of Finance.

Article 2 para. 1 sets out the prerequisites for a decision announcing an expropriation: in particular, (a) a cadastral plan showing the area to be expropriated, and (b) a list of the owners of the land, its surface area, its extent and the main characteristics of the buildings on it.

19. Chapter B of the legislative decree specifies the procedures for carrying out an expropriation.

Compensation must be paid to the person concerned in accordance with precisely worded conditions. The acquisition of ownership by the person for whose benefit the expropriation was ordered (Articles 7 para. 1 and 8 para. 1) starts on the date of payment or (in cases where the identification of the beneficiaries has not yet been completed, or where the property is charged or where the identity of the true beneficiary is in issue) on the date of publication of notice in the Official Gazette that compensation has been deposited with the Bank for Official Deposits.

If the expropriation does not take place in accordance with the foregoing conditions within a period of one and a half years from the date of the judgment determining the compensation, it automatically lapses (Article 11 para. 1).

20. Chapter D sets out in detail the procedure for assessing compensation.

Article 14 provides that the parties to the proceedings are (a) any party required to pay compensation; (b) any party for whose benefit the expropriation is ordered; (c) any party who claims ownership of, or other rights in rem over, the property.

Article 17 para. 1 lays down that compensation is to be assessed by the courts. It expressly provides that the court determines only the unit amount of compensation and not who is entitled to compensation or who is obliged to pay it.

By Article 13 para. 1, compensation is calculated by reference to the real value of the expropriated property on the date of publication of the decision giving notice of the expropriation.

Paragraph 4 of that Article provides:

"Where part of a property is expropriated and the part remaining in the owner's possession suffers substantial depreciation in value or is rendered unusable, the judgment in which compensation is assessed shall also include a determination of the special compensation for that part. This special compensation shall be paid to the owner together with the compensation for the expropriated part."

21. The procedure for assessing compensation may comprise two phases.

Firstly, the provisional assessment phase, in respect of which a single judge of the court of first instance for the area in which the expropriated property is situated has jurisdiction once a party concerned has lodged an application (Article 18).

Secondly, the final assessment phase, in respect of which the Court of Appeal for the area in which the expropriated property is situated has jurisdiction on application by the parties concerned

within thirty days from the date on which the provisional assessment decision was served, or six months from the date of its publication if it is not served (Article 19 paras. 1 and 2).

Paragraph 6 of that Article provides that only a person who has lodged such an application with a view to an increase or decrease in the provisionally assessed amount may benefit from it.

The provisionally assessed amount becomes final for any person not filing an application expeditiously.

Further, an application may be lodged directly with the Court of Appeal in order that a final decision may be obtained; there is no right of appeal against that decision (Article 20).

22. Chapter E of the legislative decree provides a special procedure for obtaining a court order identifying persons entitled to compensation.

A single judge of the court of first instance for the area in which the expropriated property is situated has jurisdiction to make such an order (Article 26).

Article 27 para. 1 provides that entitlement is determined on the basis of information on the cadastral plan and on the list of landowners drawn up by a qualified engineer duly approved by the Ministry of Public Works, and any other information supplied by the parties or considered by the court of its own motion.

No appeal lies against the decision taken at the end of this special procedure (Article 27 para. 6).

By paragraph 4 of Article 27, the court shall not give a decision if

(a) it is established at the hearing or by means of a declaration by the State that a person can claim full ownership of the expropriated property or some other right in rem;

(b) there is any dispute between one or more persons allegedly entitled to compensation as to ownership or any other right in rem such that an inquiry has to be made into the claims put forward, which inquiry must include a hearing for each party concerned who has brought an action;

(c) it is established at the hearing that a party claiming to be entitled to compensation is unable to show that he has any right in rem.

By paragraph 2 of Article 8 of Legislative Decree no. 797/1971, a final decision as to a given person's entitlement is necessary before the Bank for Official Deposits can pay out the sum that was deposited as compensation once that had been assessed by the courts.

C. Law no. 653/1977 on the obligations of adjoining owners where major roads are built

23. The relevant provisions of section 1 of Law no. 653/1977 of 25 July and 5 August 1977 provide:

"1. Where a major road up to thirty metres wide is built in an area not covered by a town development plan, adjoining owners who derive a benefit shall be required to pay for an area fifteen metres wide, thus contributing to the cost of expropriating the properties bordering the road. However, the area to which this obligation applies shall not exceed half the surface area of the property concerned.

...

3. For the purposes of this section, adjoining owners whose properties front the roads that have been built shall be deemed to have derived benefit.

4. Where those entitled to compensation on account of an expropriation are themselves liable for payment of part of that expropriation, there shall be a set-off between rights and obligations.

5. The method and procedure for apportioning the compensation between the State and the adjoining owners shall be laid down in a decree to be published on a proposal by the Minister of Public Works.

..."

D. Law no. 947/1979 on areas where building is permitted

24. Section 62 of Law no. 947/1979 of 10 and 26 July 1979 provides:

"...

9. The provisions of section 1 of Law no. 653/1977 ... shall also apply where existing roads are improved by means of rerouting or widening in whole or in part, as specified in a decision of the Minister of Public Works ...

10. The provisions of section 1 of Law no. 653/1977 ... shall also apply to secondary, municipal or local roads up to fifteen metres wide ..."

E. Case-law of the Court of Cassation

25. In a judgment (no. 672/1989) of 13 June 1989 (Savvas Katikaridis and Others v. Minister for the Economy) the Third Division of the Court of Cassation held:

"... The provisions of section 1 of Law no. 653/1977 apply not only to the building or widening of a road in an area not covered by a town development plan but also to the building of an interchange and slip roads linking the expropriated properties to the major road. Section 1 (3) of Law no. 653/1977 creates an irrebuttable presumption in law that owners of property fronting a newly built major road or slip road giving access to an interchange derive a benefit. The creation of such a presumption is in principle acceptable under the Constitution where there are reasonable grounds for it based on everyday experience. In the instant case the presumption imposes an obligation on adjoining owners to contribute to the cost of the road improvements, which is borne by the State, by means of 'self-compensation'. The obligation rests on the owners of properties on both sides, in other words on owners whose properties front the newly built road or the interchange. These owners are deemed to derive a benefit and are obliged [to contribute to the cost of building] an area of a width equal to half that of the road built, provided that it does not exceed half the surface area of the property concerned. The premise on which this obligation is based is that the construction of a major road or interchange completely alters a region's economy and increases the value of the properties on either side of the road improvements, thus causing unjust enrichment of the owners; if this enrichment were not offset by the loss incurred through the taking of part of their property, it

would make it very difficult or even impossible for the State to acquire land essential to the implementation of road-building programmes ... Of course, it is possible that in certain cases owners who derive benefit from the development of an entire region may simultaneously suffer detriment. The shape or size of their property may be altered to the point where its use is diminished or made impossible; likewise, such use (until the building works are completed) or the implementation of plans to enhance the value of their property may prove difficult or impossible. However, in such cases, owners who have suffered detriment can obtain compensation under Article 13 para. 4 of Legislative Decree no. 797/1971, which also applies to cases covered by Law no. 653/1977. Consequently, the provisions of this Law are not contrary to Articles 17 and 4 para. 1 of the Constitution, because they do not create exceptions in relation to adjoining property owners that are unjustified ..."

26. However, on 30 November 1990 the Fourth Division of the Court of Cassation, to which the Third Division had referred the case, held (in judgment no. 1841/1990) that section 1 (3) of Law no. 653/1977 (taken in conjunction with section 62 (9) and (10) of Law no. 947/1979) did not apply to expropriation for the construction of an interchange (flyover) in an area not covered by a town development plan; such a construction did not benefit adjoining property owners as it was intended solely to ensure a rapid and safe flow of traffic; further, it deprived them of direct, immediate access to the original major road which their properties had previously fronted. In addition, the court held that the presumption created by this section was rebuttable as otherwise the section would be unconstitutional. Finally, it referred the case to a full court of the Court of Cassation for resolution of the conflict between the two divisions (Article 580 para. 4 of the Code of Civil Procedure).

27. On 6 June 1991 the Court of Cassation, sitting as a full court (thirty-two judges), found in favour of the view taken by the Third Division in the following terms (judgment no. 14/1991):

"...

In accordance with section 62 (9) of Law no. 947/1979 'on areas where building is permitted', the provisions of section 1 of Law no. 653/1977 also apply where existing roads are improved by means of rerouting or widening in whole or in part. The list of types of improvement ... is given by way of example and is not exhaustive. It follows that on a true construction of this provision, improvements to a major road include the building of an interchange. The expropriation of property for widening such a road and building access roads to the interchange in parallel to it are governed by [sections 1 (1), (3), (4) and (5) and 2 (2) of Law no. 653/1977]. Besides, as appears from the provisions of section 1 (1) and (3) of Law no. 653/1977, the presumption [that the owners derive a benefit from such improvements] is irrebuttable. The Law does not permit proceedings to be brought to prove that an improvement to a road does not confer any benefit, and thus to rebut that presumption.

Lastly, the statutory provision laying down the presumption also makes it possible to identify the persons who can claim compensation for the expropriation of their property, and the property owners' right to compensation is unaffected. It follows that the provision of this Law and the irrebuttable presumption it creates do not infringe Article 17 para. 2 of the Constitution, which requires full compensation to be paid to owners of expropriated property ..."

However, a minority of thirteen judges considered that the conflict should have been resolved in favour of the view taken by the Fourth Division. According to four of them, section 62 (9) of Law no. 947/1977 did not apply to improvements brought about by the building of interchanges, and consequently the adjoining owners did not derive any benefit. In the view of four others, the presumption was rebuttable, not irrebuttable, since, where interchanges were concerned, the difference in level obstructed access to the main road and this was detrimental to the adjoining properties. Lastly, five judges were of the opinion that the irrebuttable presumption deprived owners of their right to reimbursement of the true value of their property at the date of expropriation.

PROCEEDINGS BEFORE THE COMMISSION

28. Mr Tsomtsos, 138 other persons and a district council applied to the Commission on 3 August 1992. They alleged violations of Articles 6 para. 1 and 13 of the Convention (art. 6-1, art. 13) and Article 1 of Protocol No. 1 (P1-1).

29. On 2 December 1994 the Commission struck the application (no. 20680/92) out of its list in so far as it concerned 38 of the applicants and the Nea Kallikratia District Council. It declared the application admissible as to the claim under Article 1 of Protocol No. 1 (P1-1) and inadmissible as to the remainder (art. 6-1, art. 13). In its report of 18 October 1995 (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 is reproduced as an annex to this judgment (1).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-V), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE APPLICANTS

30. In their memorial the applicants requested the Court to

"grant [their] individual petitions as supplemented and improved by [their] submissions and claims, and in particular, [they] request that

(i) the Greek Government be held to have violated Article 1 of Protocol No. 1 (P1-1) and be ordered to pay [them] just satisfaction;

(ii) the Court regard as just satisfaction the value of the fifteen-metre-wide strip of land as determined in judgment no. 15/1991 of the Salonika Court of Appeal, to which should be added ... default interest from the date of delivery of the Court of Appeal's judgment ... to 25 June 1996;

(ii.a) failing which and in the alternative, as regards [some of] the applicants ... the Court hold that the benefit accruing to [them] corresponds to the compensation payable for a three-metre-wide strip of land and that the Greek Government be ordered to pay as specified ... including interest;

(iii) the Greek Government be ordered to pay [them] three million (3,000,000) drachmas for the legal costs in the domestic courts and four million (4,000,000) drachmas for the costs incurred before the European Commission and Court; and

(iv) the Greek Government be required to pay [them] the above amounts within ... a period of six months from the delivery of the Court's judgment."

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

31. As before the Commission, the Government's primary submission was that the applicants had not exhausted domestic remedies in either the administrative or the civil proceedings that they had brought.

In the first place, in judgments nos. 492/1992 and 493/1992 (see paragraph 11 above) the Supreme Administrative Court had declared the applicants' appeals inadmissible on the ground either, as to some of the applicants, that they had failed to produce an authority for the lawyers representing them to act or, as to others, that they had not proved that they had locus standi, or that it did not have jurisdiction.

In the second place, the applicants had not brought an action in the civil courts to obtain a declaration of entitlement (anagoristiki agogi) or to recover the compensation they claimed was due to them. These were the only proceedings which would have allowed them to challenge the presumption created by Law no. 653/1977.

In the third place, the applicants had at no stage alleged in the national proceedings that the presumption was incompatible with Article 1 of Protocol No. 1 (P1-1).

32. The Court reiterates that the only remedies Article 26 (art. 26) requires to be exhausted are those that are available and sufficient and relate to the breaches alleged (see the Manoussakis and Others v. Greece judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV, pp. 1359-60, para. 33).

33. With regard to the first limb of the objection, the Court, like the applicants and the Commission, considers that the failure to take the formal steps referred to by the Government could only have been relevant under the rule requiring domestic remedies to be exhausted if the Supreme Administrative Court had considered the merits of the appeals of those applicants who had produced the necessary documents, that is to say the authorities to act and the cadastral plan on which the applicants' names appeared. However, the Supreme Administrative Court had held that it did not have jurisdiction.

With regard to the second limb of the objection, the Court notes that on 6 June 1991 - in other words, several months after the unit amount for compensation had been assessed and the persons entitled to it judicially determined (see paragraphs 13 and 14 above) - a full court of the Court of Cassation had delivered a final ruling on the dispute over whether the presumption created by Law no. 653/1977 was an irrebuttable one and had held that it was compatible with Article 17 para. 2 of the Constitution. Any further proceedings brought by the applicants in the civil courts would therefore have been bound to fail.

With regard to the third limb of the objection, the Court notes that it was not raised before the Commission and that there is therefore an estoppel.

34. Consequently, the objection must be dismissed.

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

35. The applicants alleged that the presumption created by

section 1 (3) of Law no. 653/1977 and the fact that the Court of Cassation had held that it was an irrebuttable one had prevented them from obtaining in the courts the compensation to which they were entitled by virtue of a final court decision following the expropriation of part of their properties. They relied on 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 (P1-1) 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."

36. It was not contested that the applicants had been deprived of their property in accordance with the provisions of Legislative Decree no. 797/1971 and Law no. 653/1977, so that new sections of a major road could be built, and that the expropriation thus pursued a lawful aim in the public interest.

37. The applicants objected to the irrebuttable presumption that adjoining owners derived a benefit from improvements to major roads and the basis for it - everyday experience - indicated by the Court of Cassation in its judgment of 13 June 1989 (see paragraph 25 above). They submitted that in certain decisions of the Salonika Court of Appeal and the Court of Cassation, and in the dissenting opinions of several of the Court of Cassation judges, it had been questioned whether the presumption was irrebuttable where, as here, it was evident that adjoining owners not only did not derive any benefit from the expropriation but, on the contrary, sustained a loss in the value of the remaining part of their property. They complained that the burden of expropriations for the purpose of making improvements to major roads, which benefited society as a whole, fell mainly on the shoulders of the adjoining owners. The amount of benefit derived by those owners varied from case to case and should not have been predetermined irrebuttably in a provision of general application.

38. In the Government's submission, the presumption did not of itself warrant the conclusion that there was a real or apparent disproportion between the general interest pursued and the expropriated owners' alleged loss. Even supposing that the wording of section 1 of Law no. 653/1977 at first sight suggested such a disproportion, it would be reduced to a minimum as the section limited adjoining owners' contributions to the cost of expropriation to an area fifteen metres wide on either side of the road and provided that that obligation could not exceed half the surface area of the property concerned (see paragraph 23 above). Further, Article 13 para. 4 of Legislative Decree no. 797/1971 provided for the grant of special compensation where there was a drop in the value of the remaining part of the property. The applicants had been awarded this compensation; when added to the increase in the value of the property they had retained, it had satisfied their compensation entitlement in full. At most, the applicants could argue that the irrebuttable presumption had deprived them of effective access to a court, but the Commission had declared their complaint based on Article 6 of the Convention (art. 6) inadmissible.

39. In the Commission's opinion, there had been a violation of Article 1 of Protocol No. 1 (P1-1). The application of the irrebuttable presumption had prevented the applicants from proving in the Supreme Administrative Court the damage they had allegedly sustained and, consequently, from enforcing their right to full

compensation for the loss of their properties.

40. The Court recognises that when compensation due to the owners of properties expropriated for roadworks to be carried out is being assessed, it is legitimate to take into account the benefit derived from the works by adjoining owners.

It observes, however, that in the system applied in this instance the compensation is in every case reduced by an amount equal to the value of an area fifteen metres wide, without the owners concerned being allowed to argue that in reality the effect of the works concerned either has been of no benefit - or less benefit - to them or has caused them to sustain varying degrees of loss.

This system, which is too inflexible, takes no account of the diversity of situations, ignoring as it does the differences due in particular to the nature of the works and the layout of the site. It is "manifestly without reasonable foundation" (see, *mutatis mutandis*, the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98, p. 32, para. 46, and the *Mellacher and Others v. Austria* judgment of 19 December 1989, Series A no. 169, p. 26, para. 45). In the case of a large number of owners, it necessarily upsets the fair balance between the protection of the right to property and the requirements of the general interest.

41. In the instant case the applicants had strong arguments to put forward in an attempt to show that the construction of the new road between Salonika and Nea Moudania, instead of increasing the value of the properties they retained, in practice contributed to a drop in value of the properties and to a deterioration in housing conditions due to the raising of most of the sections of the road (which had become a road for fast traffic), the lack of direct access from the properties to the major road, the necessity of travelling via an interchange some kilometres away and the tightening of the restriction on the height of buildings.

42. The applicants thus had to bear an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of proving their alleged loss in the courts and, where appropriate, receiving commensurate compensation.

It is not necessary at this stage to determine whether the applicants were in fact prejudiced; it was in their legal situation itself that the requisite balance was no longer to be found (see, *mutatis mutandis*, the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 28, para. 73).

There has therefore been a violation of Article 1 of Protocol No. 1 (P1-1).

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

43. Article 50 of the Convention (art. 50) provides:

"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."

A. Pecuniary damage

44. The applicants submitted that the amount of damage sustained by those of them who had suffered a decrease in value of the retained

part of their properties had to be equal to the value of their properties as assessed by the Salonika Court of Appeal (see paragraph 13 above), to which was to be added default interest at the rate of 30% per annum for the period from 1 January 1991 to 25 June 1996. The damage sustained by the other applicants was the amount of compensation due for the fifteen-metre-wide strip, to which was to be added interest in the same way. The total came to 423,746,930.78 drachmas.

45. The Government submitted that the Court did not have sufficient information to quantify the pecuniary damage sustained by the applicants. In the Greek courts the applicants had not made a precise claim for compensation supported by detailed calculations and evidence of the extent of their loss. It was impossible to establish an exact match between the applicants' names and the numbers corresponding to the properties in issue on the cadastral plan. It appeared that in several cases the relevant decisions of the Greek courts concerned property that had devolved by succession. Whatever the position, the damage could not exceed the figure obtained by multiplying the judicially determined unit amount for the expropriated properties by the number of square metres belonging to each applicant.

46. The Delegate of the Commission expressed no view.

47. 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 as far as pecuniary damage is concerned and must be reserved, due regard being had to the possibility of an agreement between the respondent State and the applicants (Rule 54 paras. 1 and 4 of Rules of Court A).

B. Costs and expenses

48. The applicants also claimed payment of 3,000,000 drachmas for lawyers' fees and sundry costs incurred in the proceedings before the national courts, together with 4,000,000 drachmas for the proceedings before the Convention institutions.

49. The Government considered these claims to be wholly unfounded. They pointed out that for the two sets of proceedings before the Supreme Administrative Court the applicants had paid only 14,000 drachmas as their applications for judicial review had been declared inadmissible. No costs had been incurred on the application for assessment of the unit amount for compensation since Article 17 para. 2 of Legislative Decree no. 797/1971 provided that no applications, writs, documents or decisions were to attract stamp duty or other costs. Paragraph 4 of the same Article provided that the legal costs were borne by the parties liable to pay compensation. Lastly, with regard to the proceedings before the Convention institutions, the Government pointed out that there had been no hearing before the Commission.

50. The Delegate of the Commission did not express an opinion.

51. Having regard to the finding of a violation of Article 1 of Protocol No. 1 (P1-1), the number of applicants and the complexity of the case, the Court, making its assessment on an equitable basis as required by Article 50 of the Convention (art. 50), awards the applicants 4,000,000 drachmas for costs and expenses.

C. Default interest

52. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that there has been a violation of Article 1 of Protocol No. 1 (P1-1);
3. Holds that the respondent State is to pay the applicants, within three months, 4,000,000 (four million) drachmas for costs and expenses, on which sum simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
4. Holds that the question of the application of Article 50 of the Convention (art. 50) as regards the claim for pecuniary damage is not ready for decision;

accordingly,

(a) reserves the said question in that respect;

(b) invites the Government and the applicants to submit, within the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;

(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 15 November 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar