



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

CASE OF PAFITIS AND OTHERS v. GREECE

(163/1996/782/983)

JUDGMENT

STRASBOURG

26 February 1998

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SUMMARY¹

Judgment delivered by a Chamber

Greece – length of proceedings in the Supreme Administrative Court and the civil courts

I. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Purpose of proceedings to settle a dispute (*contestation*) over civil rights and obligations: applicants, as shareholders of a bank, could arguably claim right under Greek and European Community legislation to vote on increase in its capital and thus participate in decisions concerning value of their shares.

Conclusion: Article 6 § 1 applicable (unanimously).

B. Compliance*1. General considerations concerning all the sets of proceedings complained of*

Dispute raised serious questions of Greek and European Community law – outcome would have important repercussions not only for parties to various sets of proceedings but also for country's economy in general – complexity alone not sufficient to justify such lengthy delays as occurred in case.

Apart from complexity of case – and conduct of parties and judicial authorities – three additional factors contributed to prolongation of proceedings, namely:

- proceedings before Court of Justice of European Communities: Court could not take these into consideration; to do so would adversely affect system instituted by Article 177 of EEC Treaty and work against aim pursued in substance in that Article;

- strike by members of Athens Bar: in calling on its members to withdraw their services, Bar was taking action designed to protect their professional interests, not exercising one of functions of a public authority; delays caused by strike could not therefore be attributed to State;

- close connection between the different sets of proceedings: in circumstances of case fact that proceedings in certain actions were stayed and relinquishment of jurisdiction by Fourth Division of Supreme Administrative Court in favour of plenary court were compatible with fair balance to be struck between various aspects of principle of the proper administration of justice.

Delays due to above three factors therefore beyond jurisdiction of domestic legal system.

1. This summary by the registry does not bind the Court.

2. Considerations specific to each set of proceedings

(a) Proceedings for judicial review in Supreme Administrative Court, brought by some of the applicants

Start: application to court.

End: judgment.

Total: five years, four months and sixteen days.

Seven adjournments ordered by Supreme Administrative Court of its own motion.

Conclusion: violation (unanimously).

(b) Proceedings concerning action no. 10429/1986

(i) In so far as action brought by some of the applicants

Start: application to Athens District Court.

Still pending in Court of Cassation.

Proceedings stayed for about five years pending outcome of judicial review proceedings.

Proceedings detrimentally affected by delays noted in Supreme Administrative Court.

Conclusion: violation (unanimously).

(ii) In so far as action brought by certain other applicants

Application lodged with court on 12 May 1992.

Most of delays since then due to proceedings before Court of Justice of European Communities and strike by members of the Athens Bar.

Conclusion: no violation (unanimously).

(c) Proceedings concerning action no. 5220/1989

Start: application to Athens District Court.

Still pending in Court of Cassation.

Only a delay of five months imputable to District Court.

Conclusion: no violation (eight votes to one).

(d) Proceedings concerning action no. 11301/1990

Start: application to Athens District Court.

Still pending in Court of Cassation.

Only a delay of five months imputable to District Court.

Conclusion: no violation (eight votes to one).

(e) Proceedings concerning action no. 6137/1991

Start: application to Athens District Court.
Still pending in Court of Cassation.
Only a delay of seven months imputable to District Court.

Conclusion: no violation (eight votes to one).

(f) Proceedings concerning action no. 5055/1993

Start: application to Athens District Court.
Still pending in Court of Cassation.
District Court adjourned case pending outcome of reference to Court of Justice of European Communities.

Conclusion: no violation (unanimously).

(g) Proceedings concerning action no. 23/1994

Start: application to Athens District Court.
Still pending in Court of Cassation.
Until date when District Court gave judgment, proceedings had lasted one year and twenty-eight days; such a period cannot be regarded as excessive.

Conclusion: no violation (unanimously).

(h) Proceedings concerning action no. 45/1994

Start: application to Athens District Court.
Still pending in Court of Cassation.
No delay imputable to District Court.

Conclusion: no violation (unanimously).

(i) Proceedings concerning action no. 7968/1994

Start: application to Athens District Court.
Still pending in Court of Cassation.
Hearing put back on account of related subject matter of another case – District Court decided to stay proceedings pending judgment of Court of Justice of European Communities and its own judgments in the previous cases.

Conclusion: no violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

A. Damage

Overall sum awarded for non-pecuniary damage.

B. Costs and expenses

Numerous adjournments caused applicants to incur costs which were not inconsiderable.

Overall sum awarded.

Conclusion: respondent State to pay six of the applicants specified sums (unanimously).

COURT'S CASE-LAW REFERRED TO

12.10.1992, Boddaert v. Belgium; 31.10.1995, Papamichalopoulos and Others v. Greece (Article 50)

In the case of Pafitis and Others v. Greece¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr THÓR VILHJÁLMSSON, *President*,

Mr F. GÖLCÜKLÜ,

Mr B. WALSH,

Mr N. VALTICOS,

Mr A.N. LOIZOU,

Mr L. WILDHABER,

Mr G. MIFSUD BONNICI,

Mr P. JAMBREK,

Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 25 October 1997 and 30 January 1998,

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

PROCEDURE

1. The case was referred to the Court by the Greek Government (“the Government”) on 9 December 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 20323/92) against the Hellenic Republic lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by one hundred and thirty-two natural or legal persons of that State on 30 June 1992. Only thirty-five of those have the status of applicants before the Court (see paragraph 83 below). Having initially been designated by their initials during the proceedings before the Commission, they subsequently consented to the disclosure of their identities. The names of the applicants before the Court are as follows:

Notes by the Registrar

1. The case is numbered 163/1996/782/983. 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

Mr M. Anatolitis, Mr C. Economidis-Doumbas, Mr T. Frangos, Mr S. Georgiadis, Mrs M. Georgiadou-Michaïl, Mrs A. Gogora, Mr M. Iliadis, the Investment and Shipping Enterprises Establishment company, Mr P. Kallifatidis, Mr G. Karageorgopoulos, Mr N. Karatzas, Mr P. Kouniniotis, Mr H. Makrygiorgos, Mrs M. Makrygiorgou, Mr C.P. Pafitis, Mr P. Pafitis, Mr P. Panagiotopoulos, Mrs A. Panagiotopoulou, Mrs L. Panagiotopoulou, Mr G. Papadimitroulas, the Parthenon company, Mr G. Poulis, the Sterea company, Mr T. Therapiotis, Mr A. Toskos, Mr P. Toskos, Mr T. Triantafyllidis, Mrs E. Tsekoura, Mr J. Tsekouras, Mr K. Vayiotis, Mrs P. Vossinaki, Mr N. Vossinakis, Mr D. Voudouris, Mr V. Xeromeritis and Mr J. Zoungos.

The Government's application referred to Articles 44 and 48 of the Convention. The object of the application 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 6 § 1 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 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. The Chamber to be constituted included *ex officio* Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 20 January 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr B. Walsh, Mr A.N. Loizou, Mr L. Wildhaber, Mr G. Mifsud Bonnici, Mr P. Jambrek and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5).

As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence on 25 February 1997, the Registrar received the memorials of the applicants and the Government on 11 and 20 June 1997 respectively. On 17 September 1997 the applicants filed an additional memorial on the application of Article 50 of the Convention.

4. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 October 1997. The Court had held a preliminary meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr V. KONDOLAIMOS, Adviser, State Legal Council,	<i>Delegate of the Agent,</i>
Mrs V. PELEKOU, Legal Assistant, State Legal Council,	<i>Counsel,</i>
Mr M. BAKHAS, Technical Adviser, Ministry of Finance,	<i>Adviser;</i>

(b) *for the Commission*

Mr C.L. ROZAKIS,	<i>Delegate;</i>
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(c) *for the applicants*

Mr P.H. DUKARIS, of the Athens Bar,	
Mrs S. SPILIOPOULOS-KOUKOULI, of the Athens Bar,	
Mr E.P. SPILIOPOULOS, Professor, University of Athens,	<i>Counsel.</i>

The Court heard addresses, and replies to its questions, from Mr Rozakis, Mr Dukaris, Mrs Spiliotopoulos-Koukouli, Mr Spiliotopoulos and Mr Kondolaimos.

On the day of the hearing the applicants produced various documents, on their own initiative. The President gave the Government leave to reply, which they did on 24 November 1997.

5. Subsequently Mr Thór Vilhjálmsson, substitute judge, replaced Mr Ryssdal, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. The Bank of Central Greece ("the BCG") is a company incorporated under Greek law, whose head office is in Athens. On 13 September 1984 its

capital amounted to 670,000,000 drachmas (GRD), divided into 670,000 shares of a nominal value of GRD 1,000 each.

7. On 13 September 1984 the Governor of the Bank of Greece, exercising the powers conferred on him by Presidential Decree no. 861/1975, ratified by Law no. 236/1975, in conjunction with Law no. 1266/1982, placed the BCG under the control of a temporary administrator (*Prosorinos Epitropos*). The Governor took this decision in the light of the following circumstances: (1) the result of an inquiry conducted by the competent authorities of the Bank of Greece, who had concluded that a series of illegal transactions had been carried out by the BCG's directors; (2) the fact that the BCG's directors had attempted to obstruct the inquiry; and (3) "the urgency of the situation, the public interest and that of the BCG, its shareholders and the third parties concerned". Pursuant to paragraph 2 of this decision of the Governor of the Bank of Greece (decision no. 397/13.9.84), from the time when decision no. 397/84 was published in the Official Gazette (*Efimerida Kyverniseos*), the BCG's organs lost all their previous powers, which were transferred, together with responsibility for the bank's administration, to the temporary administrator. The latter was ordered to submit to the Governor of the Bank of Greece, within two months, a detailed report on the BCG's finances, accounts and management.

8. On 13 November 1984 the temporary administrator (Mr I. Oikonomopoulos) submitted his report and tendered his resignation, with effect from 18 December 1984. On that date the Governor of the Bank of Greece appointed a second temporary administrator (Mr I. Papakonstantinos), who submitted his report on 28 January 1985.

9. On 28 July 1986 the Governor of the Bank of Greece invited the BCG to increase its capital within ninety days to GRD 1,500,000,000, by issuing new fully paid-up shares. On 29 July 1986 the temporary administrator, exercising powers normally conferred at the general meeting of shareholders, decided, by decision no. 70/86, to increase the BCG's capital to GRD 1,700,000,000, at the same time amending the relevant provision (Article 6) of its articles of association. By a notice published in a daily newspaper, the BCG invited its shareholders to exercise by 27 August 1986 the option to purchase the new shares which they were guaranteed under the articles of association and to pay one quarter of the value of these shares within two months (first increase in capital).

10. On 24 September 1986 the temporary administrator adopted decision no. 71/86, modifying decision no. 70/86. The only notable change was that those who were interested in purchasing the new shares were invited to pay for them in full by 27 October 1986. Considering that this new decision

introduced only “changes of form”, the temporary administrator expressly provided therein that it was to apply retrospectively from the date of publication of decision no. 70/86. As a result, in accordance with the decision’s express wording, the time-limit for exercising the shareholders’ option was still 27 August 1986. The applicants did not exercise that option.

11. On 2 October 1986 the Governor of the Bank of Greece approved decision no. 71/86 and on 7 October 1986 the Prefect of Athens approved the necessary amendment to the BCG’s articles of association. On 31 October 1986 the temporary administrator decided to allocate the new shares to: (a) G. Koskotas, (b) “Edrassi – X. Psallidas Ate”, (c) G. Galanopoulos, (d) M. Maissis and (e) D. Mitropoulos. However, Mr G. Koskotas became the BCG’s majority shareholder (with 1,025,565 of the 1,030,000 shares).

12. On 1 November 1986 the Governor of the Bank of Greece appointed a new temporary administrator (Mr S. Kalamitsis), on the ground that the previous one had contravened the law in his decision as to how the new shares were to be allocated.

13. On 5 November 1986 the new temporary administrator rescinded the decision taken by his predecessor on 31 October 1986 and decided to allocate the shares previously transferred to Mr G. Koskotas to the Agricultural Bank of Greece, a public-sector company, which accordingly became the BCG’s majority shareholder. However, existing shareholders were not invited to exercise their option.

14. On 13 November 1986 the Governor of the Bank of Greece appointed an administrator to run the BCG, stipulating in the appointment decision that the administrator was to hand over management to an elected board of directors as soon as possible. On 15 February 1987 a new board of directors was elected by the general meeting of BCG shareholders.

15. On 16 February 1987 Parliament enacted Law no. 1682/1987, pursuant to which a number of administrative decisions concerning the BCG, including all those mentioned above, acquired the force of law. Law no. 1682/1987 also amended the articles of association of the Agricultural Bank of Greece, which had been laid down by a previous law, so as to enable it to take part in the increases in the share capital of other banks.

16. On 14 June 1987 the general meeting of BCG shareholders decided to increase the capital to GRD 3,300,000,000 (second increase).

17. On 1 June 1989 Parliament enacted Law no. 1858/1989, which applied retrospectively and established an authoritative interpretation of Presidential Decree no. 861/1975. According to this interpretation, temporary administrators had the power to increase the capital of the banks they had been appointed to run.

18. On 11 June 1989 the BCG's capital was increased by a further GRD 125,000,000 (third increase).

19. On 30 September 1990 the general meeting of BCG shareholders decided to apply to have its shares listed on the Athens stock exchange, to increase its capital by GRD 1,282,250,000, to offer the new shares for sale on the stock market and to amend Articles 6 and 7 of the BCG's articles of association accordingly (fourth increase).

20. On 9 November 1990 the Monetary and Financial Affairs Committee (*Epitropi nomismaton kai pistotikon thematon*) of the Bank of Greece approved the above-mentioned amendment of the BCG's articles of association. On 11 December 1990 the Capital Market Committee (*Epitropi kefaleagoras*) authorised the BCG to allocate the new shares by offering them for sale on the stock market.

21. On 22 June and 22 October 1993 the BCG's capital was increased by GRD 256,250,000 (fifth increase).

22. On 29 July and 17 August 1994 the BCG's capital was increased by GRD 8,055,000,000 (sixth increase).

B. Judicial proceedings to challenge the increases in capital

1. The proceedings in the Supreme Administrative Court

23. On 1 December 1986 some of the applicants challenged in the Supreme Administrative Court decisions nos. 854/2.10.86 and 21543/7.10.86 by which the Governor of the Bank of Greece and the Prefect of Athens had approved the first increase in the BCG's capital. In their application for judicial review they alleged that the temporary administrator was not empowered under Greek law to order an increase in capital, which should have been done by a resolution of the general meeting of shareholders.

24. On 10 December 1986 the President of the Fourth Division of the Supreme Administrative Court decided to hear the case on 2 June 1987.

25. On 2 June 1987 the Fourth Division of the Supreme Administrative Court decided of its own motion to adjourn until 27 October 1987 consideration of the application for judicial review lodged on 1 December 1986. On 27 October 1987 the Supreme Administrative Court decided of its own motion to adjourn the case until 2 February 1988 and later until 19 April 1988. According to the Government, the reason for all these adjournments was the importance and complexity of the legal questions which the reporting judge had to consider.

26. On 19 April 1988 the Fourth Division of the Supreme Administrative Court heard the application for judicial review. On 14 June 1988 it held, in decision no. 2668/88, (a) that the temporary administrator had not been empowered under Greek law to order the increase in capital of 24 September 1986; (b) that Law no. 1682/1987 could not be taken into account because it had been enacted after the application for judicial review had been made, contrary to the constitutional principle of the separation of powers; (c) that the two applicants could not challenge the administrative decisions in question because before 13 September 1984 they had held less than 5% of the capital; and (d) that because of its importance the case should be referred to the plenary court.

27. On 12 September 1988 the President of the Supreme Administrative Court decided that the application for judicial review would be heard on 2 December 1988. On that date the Supreme Administrative Court decided of its own motion to adjourn the case until 12 May 1989 and later until 6 October 1989. On the latter date the Supreme Administrative Court decided of its own motion to adjourn the case until 9 February 1990 and later until 27 April 1990. According to the Government, all these adjournments were prompted by the same considerations as those referred to above.

28. On 27 April 1990 the Supreme Administrative Court decided of its own motion to adjourn consideration of the application for judicial review until 26 October 1990. According to the applicants, this adjournment was accepted by all the parties. The Government maintained that it was requested by the applicants and supplied a certificate to that effect from the registry of the Supreme Administrative Court.

29. On 26 October 1990 the Supreme Administrative Court again decided to adjourn the case, this time until 8 March 1991. According to a certificate from the registry of the Supreme Administrative Court, the court decided of its own motion to adjourn the hearing. According to the Government, record no. 41/1990 of the plenary court proves that the applicants requested the adjournment concerned pending the judgment of the Court of Justice of the European Communities in a similar case and that the respondents opposed that request. The reporting judge considered that the case should be adjourned.

30. On 8 March 1991 the Supreme Administrative Court decided of its own motion to adjourn consideration of the application for judicial review until 17 May 1991. On that date it once again adjourned the case, until 11 October 1991. The applicants maintained that all parties had been present at the hearing on 17 May 1991 and that they had requested that the case be tried. However, as the respondents objected, the Supreme Administrative Court had adjourned the case of its own motion. According to the

Government, the case could not be heard on 17 May 1991 because of a strike by lawyers, as attested by a certificate issued by the Athens Bar Association. They also submitted in that connection a certificate from the registry of the Supreme Administrative Court, dated 31 October 1995.

31. On 11 October 1991 the application for judicial review came before the Supreme Administrative Court. However, the National Union of Bank Employees (*OTOE*), which had intervened in the proceedings, requested an adjournment. The Supreme Administrative Court allowed this request and adjourned the case until 22 November 1991. According to the applicants, the request was supported by the respondents, whereas they themselves had insisted that the hearing should take place. The State authorities had themselves requested this adjournment, as was proved by, *inter alia*, a written request submitted on 26 September 1991 by the Minister for Economic Affairs, who had intervened in the proceedings concerning the application to the Supreme Administrative Court for judicial review.

32. On 22 November 1991 the application lodged on 1 December 1986 was finally considered. On 17 April 1992, in judgment no. 1544/1992, the plenary of the Supreme Administrative Court dismissed the application. It observed that, pursuant to Law no. 2190/1920, a decision taken by the general meeting of shareholders of a company set up in accordance with that Law could be challenged only by shareholders who held at least 5% of the capital, had been present at the meeting when the decision was taken and had opposed it. Parliament had had good reasons to restrict the right of access to the courts in such a way. The right to challenge decisions of the general meeting should be vested only in shareholders who were closely associated with the company's activities, in which small shareholders were usually not interested. In addition, the company's competitors could very easily acquire a small number of shares and attempt to harm its interests. The same restrictions applied to the right of access to a court for the purpose of challenging administrative decisions approving those of the general meeting of shareholders. Shareholders who held less than 5% of the capital could challenge an administrative decision of this type only if they could prove that it affected them personally. An increase in the company's capital could not in itself harm the interests of a shareholder who held less than 5% of the capital. Moreover, the same rules were applicable where the decision to increase the capital had been taken by a temporary administrator. In the instant case, on 29 July 1986 the applicants had held 3.35% of the BCG's capital (one having 0.37% and the other 2.98%) and would therefore not have been able to challenge the increase in capital if it had been decided upon by a resolution of the general meeting of shareholders. The applicants could not rely on the fact that they now held a lower proportion of the shares in order to establish that their personal interests had been harmed by the decision to increase the capital. Nor had they pleaded any other fact which could warrant such a conclusion. Accordingly, the Supreme

Administrative Court decided by a majority to dismiss the application for judicial review, on the ground that the applicants did not have *locus standi*.

2. The proceedings in the civil courts

(a) The judicial proceedings concerning actions nos. 10429/1986, 5220/1989, 11301/1990, 6137/1991 and 5055/1993

33. On 22 December 1986 some of the applicants brought action no. 10429/1986 against the BCG and others in the Athens District Court, seeking a declaration (a) that the first increase in capital was null and void on the ground that the second temporary administrator (Mr I. Papakonstantinos) had not been empowered under Greek law to take such a decision, which was the prerogative of the general meeting of shareholders, and (b) that the allocation of 1,030,000 new shares to the defendant shareholders by the third temporary administrator (Mr S. Kalamitsis) had been unlawful and was null and void, and that in law it had not conferred on any of these persons the status of shareholder, a right to attend general meetings of BCG's shareholders or any other right vested in its shareholders. A hearing was listed for 4 February 1987.

34. However, on 14 January 1987 two of the applicants withdrew from action no. 10429/1986. In their notice of discontinuation (no. 1025/1987), they declared to the court that they expressly, unreservedly and irrevocably recognised as absolutely legal, valid and unchallengeable all the transactions carried out by the two temporary administrators concerned (see paragraph 33 above).

35. On 4 February 1987 the Athens District Court decided to adjourn consideration of action no. 10429/1986 until 18 February 1987. According to the applicants, this adjournment was ordered at the defendants' request.

36. On 18 February 1987 the Athens District Court tried action no. 10429/1986. In its decision no. 3427/87 of 29 April 1987, the court decided to stay the proceedings pending delivery of the Supreme Administrative Court's judgment on the related application for judicial review lodged on 1 December 1986 (see paragraph 23 above). According to the applicants, the court took this decision at the defendants' request. On the other hand, the Government referred to the text of the decision, which stated that it was necessary to adjourn consideration of action no. 10429/1986 because its outcome depended on the validity of the appointment of the third temporary administrator (Mr S. Kalamitsis) and the legality of the decision taken by the previous temporary administrator (Mr I. Papakonstantinos) on the increase in capital, these being matters in issue in another case then pending in the Supreme Administrative Court (Article 249 of the Code of Civil Procedure).

37. On 13 June 1989 some of the applicants brought action no. 5220/1989 against the BCG in the Athens District Court, seeking a declaration that the second increase in capital had been in breach of Greek law and was null and void. They argued that, because the first increase in capital was not legally valid, the general meeting of shareholders which had passed the resolution authorising the second increase had not been duly and properly constituted. A hearing was listed for 11 October 1989.

38. On 11 October 1989 the Athens District Court decided to adjourn consideration of action no. 5220/1989 until 31 January 1990. According to the applicants, this adjournment was ordered at the defendant's request.

39. At the hearing on 31 January 1990 the case was not called because it had not been placed on the court's list, as certified by its registrar. According to the Government, this delay was imputable to the applicants, who had not taken the necessary steps to have their action placed on the court's list.

40. On 23 November 1990 some of the applicants brought action no. 11301/1990 against the BCG in the Athens District Court, seeking a declaration that the fourth increase in capital (resolution of the general meeting of shareholders on 30 September 1990 – see paragraph 19 above) had been in breach of Greek and European Community law and was null and void. Again it was contended that the first increase and the allocation of the 1,030,000 new shares to new shareholders – ordered by the then temporary administrator – had been unlawful and were null and void. A hearing was set down for 5 June 1991.

41. On 5 June 1991 the Athens District Court's hearing on action no. 11301/1990 was adjourned because of a lawyers' strike on that day.

42. On 7 June 1991 some of the applicants brought action no. 6137/1991 against the BCG in the Athens District Court, seeking a declaration that the third increase in capital (resolution of the general meeting of shareholders on 11 June 1989) had been in breach of Greek and European Community law and was null and void. They put forward the same arguments as had been used in the previous civil cases. A hearing was set down for 2 October 1991.

43. On 23 July 1991 the plaintiffs in actions nos. 10429/1986 (concerning the first increase in capital), 5220/1989 (concerning the second increase) and 11301/1990 (concerning the fourth increase), including some of the applicants, asked the Athens District Court to fix a new hearing date for these cases. The court decided to hear the cases on 18 December 1991.

44. On 2 October 1991 the Athens District Court decided to adjourn consideration of action no. 6137/1991 (concerning the third increase in capital) until 18 December 1991.

45. On 18 December 1991 the Athens District Court decided to adjourn consideration of actions nos. 10429/1986, 5220/1989, 11301/1990 and 6137/1991 until 1 April 1992 and on the latter date it ordered a further adjournment until 27 May 1992. According to the Government, these adjournments were necessary in view of the fact that the Supreme Administrative Court had not yet given judgment on the application for judicial review, a precondition that had been laid down in the decision (no. 3427/87) to adjourn consideration of the first action (no. 10429/1986).

46. On 12 May 1992 some of the applicants intervened in the proceedings concerning action no. 10429/1986, supporting the plaintiffs. A hearing was set down for 27 May 1992.

47. On 27 May 1992, although the Supreme Administrative Court's judgment no. 1544/1992 had been delivered on 17 April 1992 (see paragraph 32 above), the hearing arranged for trial of all the actions was adjourned because of another strike by members of the Athens Bar.

48. On 29 July 1992 the plaintiffs, including some of the applicants, asked the Athens District Court to fix a new hearing date for actions nos. 10429/1986, 5220/1989, 11301/1990 and 6137/1991. The court decided to consider these actions on 11 November 1992.

49. On that date, however, the hearing in respect of the four pending actions was adjourned on account of the strike by Athens lawyers. On 16 December 1992 the plaintiffs asked for a new hearing date to be fixed and the court decided to hear these cases on 17 January 1993. The applicants asserted in their memorial to the Court that their object in taking out all the above-mentioned summonses (*klissis*) had been to expedite the proceedings in the civil courts (Article 230 of the Code of Civil Procedure).

50. On 27 January 1993 the Court again decided to adjourn consideration of actions nos. 10429/1986, 5220/1989, 11301/1990 and 6137/1991 until 12 May 1993.

51. In the meantime, on 5 May 1993, some of the applicants brought action no. 5055/1993 in the Athens District Court, in support of the actions brought on 22 December 1986 (no. 10429/1986) and 12 June 1989 (no. 5220/1989). In their third-party action they sought a declaration that the decisions concerning the first and second increases in capital had been taken in breach of Articles 25 § 1 and 29 of the Second Directive of the Council of the European Communities (Directive 77/91/EEC). A hearing was set down for 12 May 1993.

52. On that date the Athens District Court tried cases nos. 10429/1986, 5220/1989, 11301/1990, 6137/1991 and 5055/1993.

53. On 3 August 1993 the Athens District Court gave its judgment no. 5785/1993 on the above-mentioned cases. Considering that some of the applicants had not given the lawyers who had appeared in court to represent them valid authority to act, it gave judgment against them. It also decided not to entertain the applicants' arguments concerning the impossibility in practice of exercising their option, since they had not been raised in time. It likewise dismissed the four actions in so far as they concerned the allegation that the decisions concerning the increases in capital had not been taken in accordance with Greek law. However, the court referred to the Court of Justice of the European Communities, for a preliminary ruling, the questions of Community law raised by the cases. It reserved its decision on the defendants' objection concerning the plaintiffs' abuse of rights (Article 281 of the Greek Civil Code) until it had learned how the Court of Justice of the European Communities had applied European law. On 22 February 1996 the Luxembourg Court gave notice that it would give judgment on 12 March 1996.

(b) The judicial proceedings concerning actions nos. 23/1994, 45/1994 and 7968/1994

54. On 3 January 1994 some of the applicants brought action no. 23/1994 against the BCG and others, asking the Athens District Court to refer another question to the Court of Justice of the European Communities for a preliminary ruling, namely whether the objection based on Article 281 of the Greek Civil Code, concerning abuse of rights, could render inapplicable the provisions of Community law, those being, in the instant case, Articles 25 and 29 of Directive 77/91/EEC on companies. The hearing to consider their action was set down for 16 February 1994.

55. On 4 January 1994 some of the applicants brought action no. 45/1994 in the Athens District Court, seeking a declaration that the fifth increase in capital (resolutions of 22 June and 22 October 1993) had been in breach of Greek and Community law and was null and void. The arguments submitted were the same as in the previous actions. The hearing was likewise set down for 16 February 1994.

56. On 9 February 1994 the Ministry of Finance intervened in the proceedings concerning action no. 45/1994. A hearing was set down for 25 May 1994.

57. Although the Athens Bar had called on its members to strike, the applicants' lawyers informed the defendants on 15 February 1994 that the Bar had authorised them to appear in the Athens District Court on 16 February 1994 to request an adjournment of cases nos. 23/1994 and 45/1994. On 16 February 1994 the court did adjourn these cases until

25 May 1994. According to the applicants, that decision was taken at the defendants' insistent request.

58. On 22 February 1994 the applicants asked the court to consider actions nos. 23/1994 and 45/1994 on 16 March 1994. Their request was granted.

59. Although the Athens Bar had called on its members to strike, the applicants' lawyers informed the defendants on 11 March 1994 that the Bar had authorised them to appear in the Athens District Court on 16 March 1994. On 15 March 1994, however, the Athens Bar decided to rescind that authorisation. According to the applicants, this decision was taken at the request of the Governor of the Bank of Greece, who had intervened in the proceedings. The hearing listed to take place on 16 March 1994 in cases nos. 23/1994 and 45/1994 was, in the event, adjourned.

60. On 3 March 1994 the union of BCG employees intervened in the proceedings concerning action no. 45/1994. A hearing was set down for 25 May 1994.

61. On 25 May 1994 the hearing concerning action no. 23/1994 was cancelled because the plaintiffs had not taken the necessary steps to have the case placed on the court's list. According to the applicants, their lawyers were not present at the hearing on 25 May 1994 because the Athens Bar had again called on its members to strike and their opponents had used improper manoeuvres to obtain the cancellation of the hearing concerning action no. 23/1994 and the adjournment of case no. 45/1994.

On 25 May 1994 case no. 45/1994 was adjourned until 1 February 1995.

62. On 12 July 1994 the applicants asked the court to fix a new hearing date in order to expedite the proceedings relating to actions nos. 23/1994 and 45/1994. The court set down a hearing for 18 July 1994. However, the applicants did not appear on that day and consideration of these actions was adjourned.

63. On 24 August 1994 the applicants asked for a new hearing date to be fixed for their third-party action no. 23/1994 and the Athens District Court decided to resume consideration of the case on 2 November 1994.

64. On 5 September 1994 the applicants asked for an earlier date to be fixed for the hearing in their action (no. 45/1994) concerning the fifth increase in the BCG's capital. The court decided to hear the case on 2 November 1994.

65. In the meantime, on 26 September 1994, some of the applicants brought action no. 7968/1994 against the BCG and others in the Athens District Court seeking a declaration that the sixth increase in capital had been in breach of Greek and Community law and was null and void. The

arguments submitted were the same as in the previous actions. A hearing was likewise set down for 2 November 1994.

66. On 2 November 1994, at the defendants' request, the court decided to adjourn the hearing concerning action no. 45/1994 until 1 February 1995; it also adjourned to the same date consideration of action no. 7968/1994. Still on 2 November 1994 it tried case no. 23/1994. Its judgment was given on 31 January 1995. The court held that it could not rule on that part of the action which concerned the claim submitted by Mr G. Papadimitroulas, on the ground that he had not been one of the applicants who had asked the court, on 7 November 1994, to resume consideration of the case. The court decided to dismiss the claims of the other applicants concerned, holding that the action raised no problem regarding the interpretation of Community law and that the Greek courts alone had jurisdiction to rule on the defendants' objection concerning the plaintiffs' abuse of rights (Article 281 of the Civil Code).

67. On 7 November 1994 the Athens District Court, at the applicants' request, decided to resume consideration of actions nos. 45/1994 and 7968/1994 on 14 December 1994. According to the Government, it was not legal to bring the trial in the present case forward in this way.

68. On 30 November and 12 December 1994 the applicants' lawyer complained to the Athens Bar of the improper manoeuvres allegedly used by the defendants' lawyers on 25 May 1994.

69. On 7 December 1994 the applicants again asked the court to try action no. 7968/1994 on 14 December 1994.

70. On 14 December 1994 the Athens District Court decided to adjourn consideration of the pending actions nos. 45/1994 and 7968/1994 until 1 February 1995.

71. On 1 February 1995 the Athens District Court heard these two cases. In a decision (no. 5883/1995) of 29 May 1995 it ordered a stay of the proceedings concerning actions nos. 45/1994 and 7968/1994 pending the judgment of the Court of Justice of the European Communities on the questions for a preliminary ruling submitted to it on 3 August 1993 and the court's own judgment on the previous actions nos. 10429/1986, 5220/1989, 11301/1990, 6137/1991 and 5055/1993. The court was obliged to order this adjournment because the last two actions, nos. 45/1994 and 7968/1994, challenging the fifth and sixth increases in the BCG's capital, had the same factual and legal basis as the first five of the above-mentioned actions. It was therefore necessary to adjourn the cases until the conclusion of the proceedings on the first five actions, which raised exactly the same issues.

(c) The judgment of the Court of Justice of the European Communities and the subsequent proceedings

72. On 6 June 1995 the Court of Justice of the European Communities held a hearing on the questions for a preliminary ruling referred to it by the Athens District Court on 3 August 1993.

73. On 12 March 1996 it gave judgment on the reference for a preliminary ruling, holding that an increase in the capital of a bank constituted in the form of a public limited liability company by administrative measure was contrary to Article 25 of the Second Directive on companies, which guaranteed each shareholder the right to vote on the issue. It also rejected the BCG's new board of directors' argument that the applicants' civil action constituted an abuse of rights, declaring: "... the uniform application and full effect of Community law would be undermined if a shareholder relying on Article 25 § 1 of the Second Directive were deemed to be abusing his rights merely because he was a minority shareholder of a company subject to reorganization measures or had benefited from the reorganization of the company. Since Article 25 § 1 applies without distinction to all shareholders, regardless of the outcome of any reorganization procedure, to treat an action based on Article 25 § 1 as abusive for such reasons would be tantamount to altering the scope of that provision."

74. On 20 March 1996 the applicants again asked the Athens District Court to fix a hearing date for all their actions. A hearing was listed for 25 September 1996. However, this summons to fix an earlier hearing was never served on the defendants.

75. On 28 March 1996 the applicants, by two further summonses, (nos. 1302 and 1303/96), asked the Athens District Court to bring forward the date of the hearing for all their actions, on the ground that the Court of Justice of the European Communities had given an *ad hoc* interlocutory decision on certain legal aspects of the case. A hearing was set down for 29 May 1996.

76. On 16 April 1996 the court decided, in response to a summons (*klisis*) from the defendants, to resume consideration of actions nos. 10429/1986, 5220/1989, 11301/1990, 6137/1991 and 5055/1993 on 25 September 1996.

77. On 21 May 1996 seventy-four former shareholders lodged an additional third-party application in support of the BCG. The Athens District Court decided to hear the case on 25 September 1996.

78. On 29 May 1996 the court adjourned the cases pending before it until the hearing on 25 September 1996, the date already fixed for consideration of the third-party application lodged in support of the BCG. It ruled that this application had not been lodged in order to prolong the proceedings.

79. In the event, it was not possible to hold the hearing on 25 September 1996, as the Greek courts did not sit between 18 and 25 September 1996 on account of a general election.

80. Following two summonses (nos. 3047/96 and 3048/96) taken out by the applicants on 12 September 1996, the Athens District Court tried cases nos. 10429/1986, 5220/1989, 11301/1990, 6137/1991, 5055/1993 and cases nos. 45/1994 and 7968/1994 on 13 November 1996. On 27 February 1997 final decisions nos. 1499/1997 and 1500/1997, which dismissed all these actions, were published. The applicants asserted that the court dismissed all their claims “without taking into account the decisions of the Court of Justice of the European Communities” and that this, which was unprecedented in Greek law, constituted a serious breach of Community law. They asserted that the defendants – represented by the Minister for Economic Affairs and other parties under his control – had asked the Athens District Court in their written submissions to ignore completely the Luxembourg Court’s *ad hoc* judgment.

81. However, the proceedings in the civil courts are still pending on account of an appeal (*anairessi*) to the Court of Cassation lodged by the applicants.

PROCEEDINGS BEFORE THE COMMISSION

82. The one hundred and thirty-two applicants applied to the Commission on 30 June 1992. They alleged a number of violations of Articles 6 § 1, 13 and 25 of the Convention and Article 1 of Protocol No. 1.

83. On 18 January 1996 the Commission (First Chamber) declared the application (no. 20323/92) admissible in so far as it concerned the complaints of thirty-five of the applicants relating to the length of the proceedings in the Supreme Administrative Court and the Athens District Court and declared the remainder of the application inadmissible. In its report of 4 September 1996 (Article 31), it expressed the unanimous opinion that Article 6 § 1 of the Convention had been breached in two of the nine sets of proceedings complained of. The full text of the Commission’s opinion is reproduced as an annex to this judgment¹.

1. *Note by the Registrar*: for practical reasons, this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission’s report is available from the registry.

FINAL SUBMISSIONS TO THE COURT

84. In their memorial the Government asked the Court to “dismiss the application before it”.

85. At the hearing the applicants asked the Court to hold that Article 6 of the Convention had been breached “in all the civil proceedings, not just in those where the Commission [had] found a violation”.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

86. The applicants complained of the length of the proceedings in the Supreme Administrative Court and the Athens District Court. They alleged a breach of Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Applicability of Article 6 § 1

87. The Court notes that, when they applied to the Supreme Administrative Court, the applicants were seeking annulment of the decisions of the Governor of the Bank of Greece and the Prefect of Athens approving the first increase in the capital of the Bank of Central Greece (“the BCG”). In addition, in their eight actions in the Athens District Court, they challenged the lawfulness under Greek and European Community law of the six increases in the BCG’s capital – on the ground that they had not been ordered by a duly constituted general meeting of shareholders – or requested the court to refer to the Court of Justice of the European Communities for a preliminary ruling a question connected to the reference for a preliminary ruling of 3 August 1993.

Like the Commission, the Court considers that the purpose of the proceedings in question was to settle a dispute (“*contestation*”) over the applicants’ “civil rights and obligations”, since, as BCG shareholders, they could arguably claim under Greek and European Community legislation the right to vote on the increase in the bank’s capital and thus participate in decisions concerning the value of their shares.

Article 6 § 1 is therefore applicable in the case.

B. Compliance with Article 6 § 1

88. According to the Government, neither the Greek courts nor the applicants' opponents could be considered responsible for the delays which occurred between 22 December 1986, when the applicants brought their first action in the Athens District Court, and 12 March 1996, when the Court of Justice of the European Communities gave judgment: a delay of five and a half years had been due to the proceedings in the Supreme Administrative Court, another, of one year, to the strike by members of the Athens Bar and a third, of two years and eight months, to the proceedings concerning the reference to the Luxembourg Court for a preliminary ruling.

The outcome of all the actions in which the applicants challenged the lawfulness of the decisions of the general meeting of shareholders depended on the District Court's view of the validity of the first increase in the BCG's capital. All of the delays which had held up consideration of these actions were without significance because the court would in any case have adjourned trial until its judgment on the first action had become final.

On 18 February 1987 the District Court decided, in accordance with Article 249 of the Code of Civil Procedure, to reserve judgment until the Supreme Administrative Court had ruled on the applicants' application for judicial review. As a result, from the beginning of the proceedings in the District Court (on 22 December 1986) to the end of the proceedings in the Supreme Administrative Court (on 17 April 1992), the Greek courts and the State bore no responsibility whatsoever, irrespective of the reasons – and these were in any event valid – for which the proceedings conducted during that period had been adjourned. It was the applicants who had first applied to the Supreme Administrative Court and they could accordingly not complain of delays caused by the proceedings in that court. The Supreme Administrative Court had to review the conformity of certain provisions of banking legislation with the Greek Constitution and with Community law; the nature of the case and its major importance fully justified the adjournments ordered by the Supreme Administrative Court of its own motion. It was indeed the first time in the history of the Greek courts that it had been required to determine such issues, whose consequences were not limited to the relations between the opposing parties but affected the economy of the entire country.

Furthermore, the delivery of the Supreme Administrative Court's judgment had coincided with the long strike by members of the Athens Bar, which had delayed trial of the applicants' first civil action by about a year.

Lastly, it was the applicants who had asked the District Court to refer a question to the Court of Justice of the European Communities for a preliminary ruling. But the Court of Justice had not delivered its judgment until 12 March 1996, which meant that, even if the applicants' civil actions had been heard before that date, the court would certainly have stayed the proceedings until the Court of Justice had given its ruling.

89. The applicants submitted that, in all the domestic proceedings, their opponents had been the Bank of Greece, the Agricultural Bank and the BCG, all owned or controlled by the State; their conduct could thus be equated with that of the State.

Out of a total of twelve adjournments before the Supreme Administrative Court, eleven were imputable to the State. The size of the file, which had been mentioned by the Government, could not give a serious indication of the complexity of the case. The argument relating to the reporting judge's heavy workload in fact confirmed the State's responsibility. Lastly, it had been unnecessary and unjustified for the Fourth Division of the Supreme Administrative Court to relinquish jurisdiction in favour of the plenary court.

From the procedural point of view, the decision of the Governor of the Bank of Greece and the Prefect of Athens to approve the increase in the BCG's capital was an individual administrative decision which had been contested by the applicants by means of their application to the Supreme Administrative Court for judicial review; for as long as that decision had not been set aside, the Athens District Court had the power and the duty to review its lawfulness, independently of the judicial review proceedings, and – if it found it to be unlawful – to declare it null and void.

The strike by members of the Athens Bar could not validly be pleaded, since an adjournment for such a reason was certainly not compulsory; even if all the parties were not present in the courtroom, the courts had discretion whether to proceed with the hearing, and in any case no lawyer was in any danger of being penalised by the Bar Association's disciplinary council for ignoring the Bar's call to strike.

90. The Commission expressed the opinion that there had been a violation of Article 6 § 1 of the Convention in the judicial review proceedings in the Supreme Administrative Court and in the proceedings relating to action no. 10429/1986 (in so far as this had been brought by some of the applicants only) in the Athens District Court, but not in the other proceedings.

1. General considerations concerning all the sets of proceedings complained of

91. The Court does not question the complexity of the case or the importance of what was at stake for the parties to the proceedings in issue. It accepts the Government's submission that the dispute the Supreme

Administrative Court and the Athens District Court were required to settle raised serious questions regarding the interpretation of Greek and European Community law and that the outcome would have important repercussions not only for the parties to the various sets of proceedings but also for the country's economy in general. However, the dispute's complexity alone is not sufficient to justify such lengthy delays as occurred in the present case.

More decisive in that respect is the conduct of the parties and of the relevant judicial authorities.

92. The applicants and the Government blamed each other for numerous adjournments in the nine sets of proceedings complained of. The Government complained of procedural sharp practice on the applicants' part, particularly the fact that they had registered the actions on the District Court's list reserved for cases in which the preparations for trial were complete. On the other hand, the applicants stressed all the efforts they had made to have the hearing dates brought forward.

93. The Court observes that only delays imputable to the relevant judicial authorities can justify a finding that a reasonable time has been exceeded, contrary to the Convention. Even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial required by Article 6 § 1.

94. Apart from the complexity of the case – and the conduct of the parties and the judicial authorities, which will be considered below – the Court notes that in the present case three additional factors contributed to the prolongation of the proceedings concerned. These were the reference to the Court of Justice of the European Communities for a preliminary ruling, the strike by members of the Athens Bar for nearly a year (see paragraph 96 below) and the close connection between the nine sets of proceedings.

95. As regards the proceedings before the Court of Justice of the European Communities, the Court notes that the Athens District Court decided on 3 August 1993 to refer a question to the Court of Justice, which gave judgment on 12 March 1996. During the intervening period the proceedings in the actions concerned were stayed, which prolonged them by two years, seven months and nine days. The Court cannot, however, take this period into consideration in its assessment of the length of each particular set of proceedings: even though it may at first sight appear relatively long, to take it into account would adversely affect the system instituted by Article 177 of the EEC Treaty and work against the aim pursued in substance in that Article.

96. As regards the strike by members of the Athens Bar, this lasted from 20 May 1992 to 8 March 1993 and started again on 28 June 1993. The Court is aware of the damaging consequences of such a long strike; not only does it aggravate the judicial system's structural problems, by adding to the courts' backlog of business, but it also affects the rights and interests of

those whom lawyers have a solemn duty to protect, namely litigants, who find that their cases are held up by one extra delay after another. However, notwithstanding the Bar's legal personality under public law, it is essentially a professional association; in calling on its members to withdraw their services it was taking action designed to defend their professional interests, not exercising one of the functions of a public authority. The delays caused by the strike cannot therefore be attributed to the State.

97. On the question of the close connection between the different sets of proceedings, the Court notes that the Athens District Court adjourned a number of the cases concerned (in particular those relating to actions nos. 45/1994 and 7968/1994) in order to await the outcome of those relating to actions nos. 10429/1986, 5220/1989, 11301/1990, 6137/1991 and 5055/1993 and that the Fourth Division of the Supreme Administrative Court relinquished jurisdiction in favour of the plenary court. In that connection, the Court observes that, although Article 6 of the Convention requires judicial proceedings to be conducted expeditiously, it also lays down the more general principle of the proper administration of justice. In the circumstances of the case, the fact that the proceedings in these actions were stayed and the reference to the plenary court were compatible with the fair balance which has to be struck between the various aspects of this fundamental requirement (see the *Boddaert v. Belgium* judgment of 12 October 1992, Series A no. 235-D, p. 82, § 39).

The delays due to the above three factors were therefore beyond the jurisdiction of the domestic courts in general and the Supreme Administrative Court and the Athens District Court in particular. The Court will accordingly take into consideration only the delays that the latter could, in one way or another, have avoided or reduced.

2. Considerations specific to each set of proceedings

(a) The proceedings for judicial review in the Supreme Administrative Court, brought by Mr T. Frangos, Mr C.P. Pafitis and Mr P. Pafitis

98. These proceedings began on 1 December 1986 and ended on 17 April 1992 with the judgment of the plenary court, in whose favour the Fourth Division had relinquished jurisdiction on 14 June 1988. They therefore lasted five years, four months and sixteen days.

There is no doubt that this was a very lengthy period, caused partly by the reference of the case to the plenary court and partly by the twelve adjournments, eight of which – as the Government admitted – were ordered by the Supreme Administrative Court of its own motion (on 2 June and 27 October 1987, 2 February and 2 December 1988, 12 May and 6 October 1989, 9 February 1990 and 8 March 1991); the first seven of these caused a

continuous period of inactivity which lasted two years and three months. Two further adjournments were requested by the parties (on 26 October 1990 and 11 October 1991) and one was due to the strike by members of the Athens Bar (on 17 May 1991).

99. The Government submitted that the adjournments ordered by the Supreme Administrative Court were explained by the quantity of documents the reporting judge had to study, the complexity of the legal issues raised and the major importance of the grounds of annulment relied on. The applicants argued that all the questions of law and of fact had already been answered in the opinion of the reporting judge when the case was pending in the Fourth Division of the Supreme Administrative Court, so that no adjournment on account of that judge's excessive workload could be justified after the reference to the plenary court.

100. Having regard to the foregoing, and to its considerations on the complexity of the case (see paragraph 91 above), the Court cannot consider reasonable in the present case a period of five years, four months and sixteen days.

There has accordingly been a breach of Article 6 § 1 as regards these proceedings.

(b) The proceedings concerning action no. 10429/1986 in the Athens District Court

(i) In so far as it was brought by Mr T. Frangos, Mr C.P. Pafitis, Mr P. Pafitis, the

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101. These proceedings began on 22 December 1986 and are still pending in the Court of Cassation.

The Court notes, in the first place, that the proceedings in the District Court were stayed for about five years pending the outcome of the judicial review proceedings, that is from 29 April 1987 to 17 April 1992, when the Supreme Administrative Court gave judgment. On 3 August 1993 the court referred a question for a preliminary ruling to the Court of Justice of the European Communities, which did not give judgment until 12 March 1996. Lastly, the proceedings remained dormant from 12 May 1992 to 12 May 1993 on account of the strike by members of the Athens Bar.

Only the first delay is imputable to the court, and this was due to the length of the proceedings in the Supreme Administrative Court.

102. Considering that the District Court had a responsibility for this delay separate from that of the Supreme Administrative Court, the Commission expressed the opinion that there had been a breach of Article 6 § 1 in this respect.

103. The Government maintained that such a conclusion breached the *non bis in idem* principle.

104. The Court notes that the proceedings complained of began on 22 December 1986 and continued, before the District Court gave judgment, over a period of ten years, two months and five days. The progress of the proceedings, in so far as this depended on the court, was detrimentally affected by the delays noted in the Supreme Administrative Court. As in the latter instance, therefore, there has been a breach of Article 6 § 1 as regards the applicants concerned.

(ii) In so far as it was brought by Mr P. Kallifatidis, the Parthenon company, Mr T. Therapiotis, Mr M. Anatolitis, Mr C. Economidis-Doumbas, Mr S. Georgiadis, Mrs M. Georgiadou-Michail, the Investment and Shipping Enterprises Establishment company, Mr G. Karageorgopoulos, Mr N. Karatzas, Mr H. Makrygiorgos, Mrs M. Makrygiorgou, Mr P. Panagiotopoulos, Mrs A. Panagiotopoulou, Mrs L. Panagiotopoulou, Mr G. Papadimitroulas, Mr G. Poulis, Mrs E. Tsekoura, Mr J. Tsekouras, Mr D. Voudouris, Mr V. Xeromeritis and Mr J. Zoungos

105. These applicants applied to the District Court on 12 May 1992, after the Supreme Administrative Court had given judgment. However, most of the delays which occurred after that date were due, firstly, to the proceedings concerning the reference to the Court of Justice of the European Communities for a preliminary ruling, and secondly to the strike by members of the Athens Bar.

Like the Commission, the Court concludes that there has been no breach of Article 6 § 1 as regards these applicants.

(c) The proceedings concerning action no. 5220/1989 in the Athens District Court, brought by Mr P. Kouniniotis, Mr C. Economidis-Doumbas, Mr T. Frangos, the Investment and Shipping Enterprises Establishment company, Mr C.P. Pafitis, Mr P. Pafitis, Mr P. Panagiotopoulos, Mrs A. Panagiotopoulou, Mrs L. Panagiotopoulou, the Sterea company, Mrs P. Vossinaki and Mr N. Vossinakis

106. The proceedings began on 13 June 1989, with the application to the Athens District Court, and are still pending in the Court of Cassation. The District Court gave judgment on 27 February 1997. Until that date, therefore, the proceedings had lasted seven years, eight months and two weeks.

Like the Commission, the Court notes that only a delay of five months is imputable to the District Court, which adjourned of its own motion the hearings set down for 18 December 1991 and 1 April 1992.

From 27 May 1992 until the day when the court gave judgment the proceedings followed the same course as those concerning action no. 10429/1986; however, during that period no delay can be attributed to the court.

There has accordingly been no breach of Article 6 § 1 as regards these proceedings.

- (d) The proceedings concerning action no. 11301/1990 in the Athens District Court, in so far as this was brought by Mr M. Anatolitis, Mr P. Kouniniotis, Mr C. Economidis-Doumbas, Mr T. Frangos, Mr S. Georgiadis, Mrs M. Georgiadou-Michail, Mrs A. Gogora, Mr M. Iliadis, the Investment and Shipping Enterprises Establishment company, Mr G. Karageorgopoulos, Mr N. Karatzas, Mr H. Makrygiorgos, Mrs M. Makrygiorgou, Mr C.P. Pafitis, Mr P. Pafitis, the Sterea company, Mr P. Toskos, Mr T. Triantafyllidis, Mrs E. Tsekoura, Mr J. Tsekouras, Mrs P. Vossinaki, Mr N. Vossinakis, Mr D. Voudouris, Mr V. Xeromeritis and Mr J. Zoungos

107. The proceedings began on 23 November 1990, with the application to the Athens District Court, and are still pending in the Court of Cassation. The District Court gave judgment on 27 February 1997. Until that date, therefore, the proceedings had lasted six years, four months and four days.

Like the Commission, the Court notes that only a delay of five months is imputable to the District Court, which adjourned of its own motion the hearings set down for 18 October 1991 and 1 April 1992. The hearing fixed for 5 June 1991 was adjourned on account of the strike by members of the Athens Bar.

From 18 December 1991 onwards the proceedings followed the same course as those concerning actions nos. 10429/1986 and 5220/1989.

That being the case, the Court considers that there has been no breach of Article 6 § 1 as regards these proceedings.

- (e) The proceedings concerning action no. 6137/1991 in the Athens District Court, in so far as this was brought by Mr M. Anatolitis, Mr C. Economidis-Doumbas, Mr T. Frangos, Mr S. Georgiadis, Mrs M. Georgiadou-Michail, the Investment and Shipping Enterprises Establishment company, Mr N. Karatzas, Mr H. Makrygiorgos, Mrs M. Makrygiorgou, Mr C.P. Pafitis, Mr P. Pafitis, Mr G. Papadimitroulas, Mr G. Poulis, the Sterea company, Mr A. Toskos, Mr P. Toskos, Mrs E. Tsekoura, Mr J. Tsekouras, Mr K. Vayiotis, Mr D. Voudouris, Mr V. Xeromeritis and Mr J. Zoungos

108. The proceedings began on 7 June 1991, with the application to the Athens District Court, and are still pending in the Court of Cassation. The District Court gave judgment on 27 February 1997. Until that date, therefore, the proceedings had lasted five years, eight months and twenty days.

Like the Commission, the Court notes that only a delay of seven months is imputable to the District Court, which adjourned of its own motion the hearings set down for 2 October and 18 December 1991 and 1 April 1992.

From 12 May 1992 onwards the proceedings followed the same course as those concerning actions nos. 10429/1986, 5220/1989 and 11301/1990.

There has therefore been no breach of Article 6 § 1 as regards these proceedings.

- (f) **The proceedings concerning action no. 5055/1993 in the Athens District Court, brought by Mr C. Economidis-Doumbas, Mr T. Frangos, the Investment and Shipping Enterprises Establishment company, Mr C.P. Pafitis, Mr P. Pafitis and the Sterea company**

109. These proceedings began on 5 May 1993, with the application to the Athens District Court, and are still pending in the Court of Cassation. The District Court gave judgment on 27 February 1997. Until that date, therefore, the proceedings had lasted three years, nine months and twenty-two days.

The Court notes that a hearing was held on 12 May 1993, that is seven days after the action was brought, and that on 3 August 1993 the District Court adjourned the case pending the outcome of the reference to the Court of Justice of the European Communities for a preliminary ruling. From the date of the hearing onwards the proceedings followed the same course as those concerning the previous actions.

Again, therefore, there has been no breach of Article 6 § 1 as regards these proceedings.

- (g) **The proceedings concerning action no. 23/1994 in the Athens District Court, in so far as this was brought by Mr M. Anatolitis, Mr C. Economidis-Doumbas, Mr T. Frangos, Mr S. Georgiadis, Mrs M. Georgiadou-Michaïl, the Investment and Shipping Enterprises Establishment company, Mr G. Karageorgopoulos, Mr N. Karatzas, Mr H. Makrygiorgos, Mrs M. Makrygiorgou, Mr C.P. Pafitis, Mr P. Pafitis, Mr P. Panagiotopoulos, Mrs A. Panagiotopoulou, Mrs L. Panagiotopoulou, Mr G. Poulis, the Sterea company, Mrs E. Tsekoura, Mr J. Tsekouras, Mr D. Voudouris, Mr V. Xeromeritis and Mr J. Zoungos**

110. These proceedings began on 3 January 1994, with the application to the Athens District Court, and are still pending in the Court of Cassation. The District Court gave judgment on 31 January 1995. Until that date, therefore, the proceedings had lasted one year and twenty-eight days. Such a period cannot be regarded as excessive for the purposes of Article 6 § 1, regard being had, in addition, to the fact that the four adjournments were due, in the first case, to the strike by the members of the Athens Bar, and in the other three cases to the conduct of the applicants' lawyers.

There has therefore been no violation of Article 6 § 1 as regards these proceedings.

- (h) The proceedings concerning action no. 45/1994 in the Athens District Court, brought by Mr M. Anatolitis, Mr C. Economidis-Doumbas, Mr T. Frangos, Mr S. Georgiadis, Mrs M. Georgiadou-Michaïl, the Investment and Shipping Enterprises Establishment company, Mr P. Kallifatidis, Mr G. Karageorgopoulos, Mr N. Karatzas, Mr H. Makrygiorgos, Mrs M. Makrygiorgou, Mr C.P. Pafitis, Mr P. Pafitis, Mr P. Panagiotopoulos, Mrs A. Panagiotopoulou, Mrs L. Panagiotopoulou, Mr G. Poulis, the Sterea company, Mrs E. Tsekoura, Mr J. Tsekouras, Mr D. Voudouris, Mr V. Xeromeritis and Mr J. Zoungos

111. These proceedings began on 4 January 1994, with the application to the Athens District Court, and are still pending in the Court of Cassation. The District Court gave judgment on 27 February 1997. Until that date, therefore, the proceedings had lasted three years, one month and twenty-three days.

The Court notes that hearings were adjourned on 16 February, 16 March and 25 May 1994 on account of the strike by members of the Athens Bar. On 29 May 1995 the District Court stayed the proceedings pending the outcome of those concerning actions nos. 10429/1986, 5220/1989 and 5055/1993.

Accordingly, no delay is imputable to that court.

There has therefore been no breach of Article 6 § 1 as regards these proceedings.

- (i) The proceedings concerning action no. 7968/1994 in the Athens District Court, brought by Mr M. Anatolitis, Mr C. Economidis-Doumbas, Mr T. Frangos, Mr S. Georgiadis, Mrs M. Georgiadou-Michaïl, the Investment and Shipping Enterprises Establishment company, Mr P. Kallifatidis, Mr G. Karageorgopoulos, Mr N. Karatzas, Mr H. Makrygiorgos, Mrs M. Makrygiorgou, Mr C.P. Pafitis, Mr P. Pafitis, Mr P. Panagiotopoulos, Mrs A. Panagiotopoulou, Mrs L. Panagiotopoulou, Mr G. Poulis, the Sterea company, Mr T. Therapiotis, Mrs E. Tsekoura, Mr J. Tsekouras, Mr D. Voudouris, Mr V. Xeromeritis and Mr J. Zoungos

112. These proceedings began on 26 September 1994, with the application to the Athens District Court, and are still pending in the Court of Cassation. The District Court gave judgment on 27 February 1997. Until that date, therefore, the proceedings had lasted two years, five months and one day.

The Court notes that the hearing initially set down for 2 November 1994 was put back so that it could be held on the same day as the hearing fixed for action no. 45/1994 (on 1 February 1995), on account of the related subject matter of the two cases (Article 246 of the Code of Civil Procedure). On 29 May 1995 the District Court decided to stay the proceedings pending the judgment of the Court of Justice of the European Communities and its own judgments in the previous cases.

There has therefore been no breach of Article 6 § 1 as regards these proceedings.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

113. Under Article 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.”

A. Damage

114. For non-pecuniary damage and what they described as general pecuniary damage (in order to distinguish it from the special damage they also considered they had sustained, which is made up of the costs resulting from the length of the proceedings), the applicants claimed 30 million drachmas (GRD).

They pleaded their immense disappointment, anxiety and distress during the long periods of inactivity on the part of the Greek courts. They observed that the disconcerting waste of time and energy every time a hearing was adjourned was well known in every legal system as a means of exhausting an opponent in the courts. They pointed out that the State, represented by the Minister for Economic Affairs, was the principal defendant in the proceedings before the Supreme Administrative Court and that it had also intervened in each of the eight sets of proceedings in the Athens District Court. In addition, the damage they had sustained had been aggravated by the prolongation of their uncertainty as to the legal status and market value of their shares.

115. The Government submitted that the Court should award compensation only for that portion of the proceedings considered to be unreasonable and in the light of the fact that the Supreme Administrative Court and the Athens District Court had dismissed the applicants' actions.

116. The Delegate of the Commission considered that the applicants were entitled to compensation.

117. Making an assessment on an equitable basis, the Court awards jointly to Mr C.P. Pafitis, Mr P. Pafitis, Mr T. Frangos, the Sterea company, Mrs P. Vossinaki and Mr N. Vossinakis – whom it has held to be victims of a breach of Article 6 § 1 – the overall sum of GRD 7,500,000 for non-pecuniary damage.

B. Costs and expenses

118. The applicants claimed GRD 585,700,000 for the proceedings in the Supreme Administrative Court, for the proceedings in the Athens District Court concerning action no. 10429/1986 and for the proceedings before the Court of Justice of the European Communities. They sought a further GRD 390,525,000 for the proceedings before the Strasbourg institutions. The first of these sums includes not only lawyers' fees but also reimbursement of the cost of numerous procedural steps, such as summonses, notices served on each defendant and the parties who had intervened in the applicants' support, notices of applications to expedite the proceedings, certified copies, etc. Lawyers' fees are calculated on the basis of the national scales and fixed at a percentage of the value of the sums claimed in the various actions.

119. The Government were prepared to accept only reasonable costs which had been necessarily and actually incurred through the excessive length of the proceedings. They pointed out that all the actions concerned were pending in the Court of Cassation, which would award the applicants costs if it upheld their claims. Lastly, they emphasised that in Greece the costs of an adjournment did not exceed the equivalent in drachmas of 50 French francs.

120. The Delegate of the Commission submitted that before the Court awarded any sum under this head it should first verify whether there was a causal connection between the costs claimed and (a) the length of the proceedings (in the Greek courts); (b) the complaints in respect of which it had found a violation (as regards the Strasbourg proceedings).

121. The Court observes that, according to its established case-law, it is not bound by the rules of domestic practice in this area (see, among many other authorities, the *Papamichalopoulos and Others v. Greece* judgment of 31 October 1995 (*Article 50*), Series A no. 330-B, p. 62, § 47).

However, the numerous adjournments of the proceedings in the Supreme Administrative Court and the Athens District Court, when the latter ruled on action no. 10429/1986, caused the applicants to incur costs which were not inconsiderable.

Making an assessment on an equitable basis, the Court awards to the applicants mentioned in paragraph 117 above, jointly, the overall sum of GRD 9,000,000 for costs and expenses.

C. Default interest

122. 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

1. *Holds* unanimously that Article 6 § 1 of the Convention is applicable in the case;
2. *Holds* unanimously that there has been a breach of Article 6 § 1 as regards Mr C.P. Pafitis, Mr P. Pafitis, Mr T. Frangos, the Sterea company, Mrs P. Vossinaki and Mr N. Vossinakis in the proceedings for judicial review in the Supreme Administrative Court and in the proceedings concerning action no. 10429/1986 in the Athens District Court;
3. *Holds* by eight votes to one that there has been no breach of Article 6 § 1 as regards the other twenty-nine applicants;
4. *Holds* unanimously
 - (a) that the respondent State is to pay Mr C.P. Pafitis, Mr P. Pafitis, Mr T. Frangos, the Sterea company, Mrs P. Vossinaki and Mr N. Vossinakis jointly, within three months, 7,500,000 (seven million five hundred thousand) drachmas for non-pecuniary damage and 9,000,000 (nine million) drachmas for costs and expenses;
 - (b) that simple interest at an annual rate of 6% shall be payable on these sums from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* by eight votes to one the remainder of the claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 February 1998.

Signed: Thór VILHJÁLMSSON
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the partly dissenting opinion of Mr Mifsud Bonnici is annexed to this judgment.

Initialled: T. V.
Initialled: H. P.

PARTLY DISSENTING OPINION
OF JUDGE MIFSUD BONNICI

1. I form part of the majority on all the operative parts of the judgment except for points 3 and 5 where the majority found that there had been no violation of Article 6 § 1 with regard to cases nos. 5220/1989, 11301/1990 and 6137/1991 and, accordingly, I think that compensation is due for these last-mentioned three cases.

2. These cases lasted seven years and eight months, six years and four months and five years and eight months respectively.

3. These three cases lasted for such an unreasonable length of time because in all of them the court awaited the decision which was to be given in case no. 10429/1986. Because of this factor the majority took the view that there had been no breach of the guarantee of a hearing within a reasonable time in Article 6 § 1.

4. It is on this point that I dissent. In my view the applicants in the three above-mentioned cases had a right to expect that their cases would be heard within a reasonable time, irrespective of whether, in the opinion of the judges hearing the cases, it was expedient to await the outcome of case no. 10429/1986. That case was not heard within a reasonable time. The applicants in that case therefore suffered a breach of the basic right guaranteed by Article 6 § 1 and I cannot agree that the applicants in the three subsequent cases did not suffer the same kind of breach, just because their cases were made to depend on the first one. Surely it follows – logically and juridically – that the breach of the reasonable time requirement in the first case cannot be said to have purged the unreasonable delay in the three cases which followed it simply because it was juridically convenient to tie them up with the previous case which was already unreasonably long.

5. The judgment on this point appears (at least) to imply that the length of the proceedings in the first case serves as a justification for the length of proceedings in subsequent cases. The violation suffered by the applicants in these three cases cannot be so justified and these applicants should have been granted a remedy for the breach they suffered even though it was due to the breach suffered by others before them.