



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

CASE OF PAPACHELAS v. GREECE

(Application no. 31423/96)

JUDGMENT

STRASBOURG

25 March 1999

In the case of Papachelas v. Greece,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mrs E. PALM,

Mr L. FERRARI BRAVO,

Mr GAUKUR JÖRUNDSSON,

Mr L. CAFLISCH,

Mr I. CABRAL BARRETO,

Mrs F. TULKENS,

Mr W. FUHRMANN,

Mr M. FISCHBACH,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs W. THOMASSEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr T. PANTÎRU,

Mr E. LEVITS,

Mr K. TRAJA,

Mr N. VALTICOS, *ad hoc judge*,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 26 November 1998 and 24 February 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention³, by the Greek Government (“the Government”) on 18 May 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 31423/96) against the Hellenic Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by two Greek nationals, Mr Aristomenis Papachelas and Mr Eugène Papachelas, on 6 February 1996.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

The Government's application referred to former Articles 44 and 48 and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (former Article 46). 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 and Article 1 of Protocol No. 1.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A¹, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (former Rule 30).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr Thór Vilhjálmsson, the Vice-President of the Court at the time, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyers and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicants' memorial on 22 September 1998 and the Government's memorial on 24 September.

4. On 4 June 1998 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the instructions of the President of the Chamber.

5. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr C.L. Rozakis, the judge elected in respect of Greece (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr. L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr Gaukur Jörundsson, Mr L. Caflisch, Mr I. Cabral Barreto, Mr W. Fuhrmann, Mr B. Zupančič, Mr J. Hedigan, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska, Mr T. Panfîru, Mr E. Levits and Mr K. Traja (Rule 24 § 3 and Rule 100 § 4).

Subsequently Mr Rozakis, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr N. Valticos to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1). Later Mrs F. Tulkens, substitute judge, replaced Mr Costa, who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

1. *Note by the Registry.* Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

The Court decided that it was not necessary to invite the Commission to delegate one of its members to participate in the proceedings before the Grand Chamber (Rule 99).

6. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 26 November 1998.

There appeared before the Court:

(a) *for the Government*

Mr M. APESSOS, Adviser,	
State Legal Council,	<i>Delegate of the Agent,</i>
Mrs V. PELEKOU, Legal Assistant,	
State Legal Council,	<i>Adviser;</i>

(b) *for the applicants*

Mr G. FOUFOPOULOS, and	
Mr F. KARAYANNOPOULOS, both of the Athens Bar,	<i>Counsel.</i>

The Court heard addresses by Mr Foufopoulos, Mr Karayannopoulos and Mr Apeossos.

7. The applicants and the Government produced a number of documents, either at the President's request or of their own accord.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

8. On 9 January 1989 the Greek State, in a decision of the Minister for the Environment, Regional Development and Public Works and pursuant to Legislative Decree no. 797/1971 on expropriations and Law no. 653/1977 on the obligations of adjoining owners where major roads are built, expropriated more than 150 properties, some of which belonged to the applicants, in order to build a new major road between Stavros and Elefsina. The property expropriated from the applicants included an area of 8,402 sq. m that was part of a larger piece of land.

Law no. 653/1977 creates a presumption that, on the building of a new major road, adjoining owners whose properties front the road derive benefit.

It accordingly provides that on the expropriation of such properties the owners must contribute towards the costs thereof (see paragraphs 23-24 below).

Applying that presumption, the authorities considered in the instant case that the applicants had derived an economic benefit from the building of the major road which offset their right to compensation for 1,440 sq. m of the expropriated land. Consequently, the applicants were compensated for only 6,962 sq. m.

B. Proceedings for assessment of the compensation by the courts

9. On 5 June 1991 the Greek State brought an action in the Athens Court of First Instance for the assessment of a provisional unit amount for compensation per square metre.

10. On 20 November 1991 the Court of First Instance assessed the provisional unit amount for compensation at 52,000 drachmas (GRD) per square metre (judgment no. 696/1991).

11. On 5 March 1992 the applicants brought an action in the Athens Court of Appeal for the assessment of the final unit amount for compensation.

12. The hearing before the Court of Appeal took place on 9 March 1993. The applicants maintained that the real value of the land was GRD 100,000 per square metre and produced before the Greek courts two expert reports in which it was valued at between GRD 70,000 and 100,000 and at GRD 130,000 per square metre respectively. They also relied in support of their estimation on an official report of the Association of Sworn Valuers (Σώμα Ορκωτών Εκτιμητών), in which the land was valued at GRD 53,621 per square metre.

13. In a judgment of 24 June 1993 (no. 4055/1993) the Athens Court of Appeal assessed the final unit amount for compensation at GRD 52,000 per square metre.

14. On 20 December 1993 the applicants appealed to the Court of Cassation on points of law; however, they did not lodge their submissions with that court until 15 June 1994. In their submissions, they maintained that the Court of Appeal had not given sufficient reasons for its decision and had assessed the final amount for compensation without taking into account the special features of their properties. The hearing took place on 31 May 1995.

15. On 20 June 1995 the Court of Cassation dismissed the applicants' appeal (in judgment no. 1060/1995). Its judgment was "finalised" (καθαρογραφή) on 28 September 1995 and the applicants obtained a copy on 9 October 1995. The Court of Cassation does not serve its judgments.

II. RELEVANT DOMESTIC LAW

A. The Constitution

16. The relevant Article of the 1975 Constitution reads as follows:

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 assessment of compensation. In cases in which an application is made for immediate final assessment of compensation, regard shall be had to the value of the expropriated property at the time of the court hearing of the application.

3. Any change in the value of the expropriated property occurring after and solely as a result of publication of the decision to expropriate shall not be taken into account.

4. Compensation shall in all cases be assessed by the civil courts. A court may even make a provisional assessment of compensation after the person entitled has been heard or his attendance requested and, at its discretion, require such person to furnish an appropriate guarantee before receiving the compensation, in accordance with law.

Until either final or provisional compensation has been paid, all the rights of the owner shall remain intact, occupation of the property being prohibited.

Compensation as assessed shall be paid within a year and a half of publication of the provisional assessment order or, if immediate final assessment is sought, of publication of the final assessment by the court, failing which the expropriation shall automatically lapse.

...”

“1. Η ιδιοκτησία τελεί υπό την προστασία του Κράτους, τα δικαιώματα όμως που απορρέουν από αυτή δεν μπορούν να ασκούνται σε βάρος του γενικού συμφέροντος.

2. Κανένας δεν στερείται την ιδιοκτησία του, παρά μόνο για δημόσια ωφέλεια που έχει αποδειχθεί με τον προσήκοντα τρόπο, όταν και όπως ο νόμος ορίζει, και πάντοτε αφού προηγηθεί πλήρης αποζημίωση, που να ανταποκρίνεται στην αξία την οποία είχε το απαλλοτριούμενο κατά το χρόνο της συζήτησης στο δικαστήριο για τον προσωρινό προσδιορισμό της αποζημίωσης. Αν ζητηθεί απευθείας ο οριστικός προσδιορισμός της αποζημίωσης, λαμβάνεται υπόψη η αξία κατά το χρόνο της σχετικής συζήτησης στο δικαστήριο.

3. Η ενδεχόμενη μεταβολή της αξίας του απαλλοτριουμένου μετά την δημοσίευση της πράξης απαλλοτρίωσης, και μόνο εξαιτίας της, δεν λαμβάνεται υπόψη.

4. Η αποζημίωση ορίζεται πάντοτε από τα πολιτικά δικαστήρια. Μπορεί να οριστεί και προσωρινά δικαστικώς, ύστερα από ακρόαση ή πρόσκληση του δικαιούχου, που μπορεί να υποχρεωθεί κατά την κρίση του δικαστηρίου να παράσχει για την είσπραξή της ανάλογη εγγύηση, σύμφωνα με τον τρόπο που νόμος ορίζει.

Πριν καταβληθεί η οριστική ή προσωρινή αποζημίωση διατηρούνται ακέραια όλα τα δικαιώματα του ιδιοκτήτη και δεν επιτρέπεται η κατάληψη.

Η αποζημίωση που ορίστηκε καταβάλλεται υποχρεωτικά το αργότερο μέσα σε ενάμισι έτος από την δημοσίευση της απόφασης για τον προσωρινό προσδιορισμό της αποζημίωσης και, σε περίπτωση απευθείας αίτησης για οριστικό προσδιορισμό της αποζημίωσης, από τη δημοσίευση της σχετικής απόφασης του δικαστηρίου, διαφορετικά η απαλλοτρίωση αίρεται αυτοδικαίως.

...”

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 § 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 § 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 boundaries 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 § 1 and 8 § 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 § 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 § 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 § 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.”

“Εν περιπτώσει αναγκαστικής απαλλοτριώσεως τμήματος ακινήτου, ως εκ της οποίας το απομένον εις τον ιδιοκτήτην τμήμα υφίσταται σημαντικήν υποτίμησιν της αξίας αυτού, ή καθίσταται άχρηστον δια την δι'ην προορίζεται χρήση, δια της αυτής περί καθορισμού της αποζημιώσεως αποφάσεως προσδιορίζεται και παρέχεται ιδιαιτέρα δι'αυτήν αποζημίωσις εις τον ιδιοκτήτην. Η ιδιαιτέρα αυτή αποζημίωσις καταβάλλεται εις τον ιδιοκτήτην ομού μετά της καταβαλλομένης δια το απαλλοτριούμενον τμήμα.”

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 §§ 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 against which no appeal will lie (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 § 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 § 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 a sum deposited as compensation following assessment 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.

...”

“(1) Προκειμένου περί διανοίξεως, εκτός Σχεδίου πόλεων Εθνικών οδών πλάτους καταλήψεως μέχρι τριάκοντα μέτρων, οι ωφελούμενοι παρόδιοι ιδιοκτήται εκάστης πλευράς, υποχρεούνται εις αποζημιώσιν ζώνης πλάτους δεκαπέντε μέτρων, δια συμμετοχής των εις τας δαπάνας απαλλοτριώσεως των καταλαμβανομένων υπό των οδών τούτων ακινήτων. Η επιβάρυνσις αὕτη δεν δύναται να υπερβαίνει το ήμισυ του εμβαδού του βαρυνομένου ακινήτου.

...

(3) Ωφελούμενοι παρόδιοι ιδιοκτήται δια την εφαρμογήν του παρόντος άρθρου θεωρούνται εκείνοι των οποίων τα ακίνητα αποκτούν πρόσωπον επί των διανοιγομένων οδών.

(4) Οσάκις οι δικαιούχοι αποζημιώσεως δια την απαλλοτρίωσιν είναι και υπόχρεοι δια την πληρωμήν αυτής, επέρχεται συμψηφισμός δικαιωμάτων και υποχρεώσεων.

(5) Ο τρόπος και η διαδικασία καταμερισμού της αποζημιώσεως μεταξύ Δημοσίου και παροδίων ιδιοκτητών κανονίζονται δια Διαταγμάτων εκδιδομένων προτάσει του Υπουργού Δημοσίων Έργων ...”

24. Under the case-law, the presumption created by Law no. 653/1977 is irrebuttable.

D. So-called “objective” value of property

25. The so-called “objective” value of property is calculated by reference to actual prices and indices, regard being had to the characteristic features of the property, and is determined periodically by the Ministry of Finance. This method of assessment must be used for calculating any taxes levied in connection with the purchase, possession or transfer of property.

PROCEEDINGS BEFORE THE COMMISSION

26. Mr Aristomenis Papachelas and Mr Eugène Papachelas applied to the Commission on 6 February 1996. They complained that, contrary to Article 6 § 1 of the Convention, their case had not been heard within a reasonable time. They also maintained that there had been two violations of Article 1 of Protocol No. 1: firstly, by the award of compensation that was less than the value of the expropriated land and, secondly, the application of the presumption created by Law no. 653/1977.

27. The Commission declared the application (no. 31423/96) partly admissible on 2 July 1997. In its report of 14 January 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

28. The Government invited the Court to “dismiss the application as being inadmissible or to declare all the complaints of violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 unfounded”.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

29. As they had done before the Commission, the Government submitted, firstly, that the application was inadmissible for failure to comply with the six-month time-limit. The final domestic decision had been rendered on 20 June 1995; the applicants could have apprised themselves of that decision at any time thereafter and had not needed to wait for it to be “finalised”. There was nothing to show that the applicants, who had not lodged their application with the Commission until 6 February 1996, had been prevented from finding out the Court of Cassation's decision during the six months after its delivery.

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

30. The Court refers to its decision that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision the object and purpose of Article 26, now Article 35 § 1, of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see the Worm v. Austria judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33). Where, as in the present case, the domestic law does not provide for service, the Court considers it appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to find out its content.

31. The Court of Cassation's judgment was finalised on 28 September 1995 and the applicants obtained a copy on 9 October 1995 (see paragraph 15 above). They lodged their application with the Commission less than six months later, on 6 February 1996 (see paragraph 26 above). Consequently, the Government's preliminary objection must be dismissed.

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

32. The applicants complained of the length of the proceedings for the recovery of the compensation. They alleged a violation 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 ...”

33. The Government, relying on the complexity of the case and the applicants' conduct, contested that submission.

34. The Commission accepted it. In particular, it considered that the Government had not provided a satisfactory explanation justifying the delay it had found in the proceedings before the Court of Cassation.

A. Period to be taken into consideration

35. The relevant period began on 5 June 1991, when the Greek State brought an action in the Athens Court of First Instance for the assessment of a provisional unit amount for compensation (see paragraph 9 above). It ended on 20 June 1995, when the Court of Cassation delivered its judgment (see paragraph 15 above).

36. It therefore amounted to four years and fifteen days.

B. Reasonableness of the length of the proceedings

37. The reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, as the most recent authority, the *Cazenave de la Roche v. France* judgment of 9 June 1998, *Reports* 1998-III, p. 1327, § 47).

38. The Government submitted that the length of the proceedings had resulted, in part, from technical difficulties – related to the large number of properties that had been expropriated – which the courts had had to contend with when assessing the amounts of compensation and also from the conduct of the applicants, who had not pursued the proceedings diligently. In that connection, the Government pointed to the fact that the applicants had taken almost six months to produce a copy of their appeal submissions before the Court of Cassation, thus causing the hearing to be put back.

39. The Court finds, firstly, that the case was relatively complex, owing in particular to the number of properties that were expropriated by the same ministerial decision (see paragraph 8 above).

40. The Court reiterates that only delays for which the State can be held responsible may justify a finding that a “reasonable time” has been exceeded (see, as the most recent authority, the *Papageorgiou v. Greece* judgment of 22 October 1997, *Reports* 1997-VI, p. 2290, § 46).

41. It notes that the length of the proceedings before the court of first instance (five months and fifteen days) and the Athens Court of Appeal (fifteen months and nineteen days) was not unreasonable. The proceedings in the Court of Cassation lasted a year and a half, which was not excessive, regard being had in particular to the fact that the applicants lodged their appeal submissions approximately six months after their notice of appeal (see paragraph 14 above).

42. In the light of the facts of the case, the Court holds that there has been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1

43. The applicants maintained that there had been two violations of Article 1 of Protocol No. 1, which reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

44. The applicants complained that compensation had been assessed at less than the value of their expropriated land. They also complained that because the presumption created by section 1(3) of Law no. 653/1977 had been applied, they had been awarded compensation for only 6,962 sq. m of the 8,402 sq. m of land that had been expropriated. The Government contested those allegations, while the Commission agreed with them.

45. It was common ground 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 improvements could be made to a major road, and that the expropriation thus pursued a lawful aim in the public interest. Accordingly, it is the second sentence of the first paragraph of Article 1 of Protocol No. 1 which is applicable in the instant case (see, among other authorities, the *Mellacher and Others v. Austria* judgment of 19 December 1989, Series A no. 169, pp. 24-25, § 42).

A. The amount of compensation as assessed by the domestic courts

46. The applicants said that they had produced before the Greek courts two expert reports valuing their land at between 70,000 and 100,000 drachmas (GRD) and at GRD 130,000 per square metre respectively. They had also produced a report of the Association of Sworn Valuers, in which the land was valued at GRD 53,621 per square metre. Consequently, they argued that by assessing the final unit amount for compensation at GRD 52,000 per square metre the Greek courts had caused them damage of at least GRD 13,619,642.

47. In the Government’s submission, the compensation awarded by the domestic courts was reasonably in line with the value of the expropriated properties. The difference between the final unit amount as assessed by the Greek courts and its value as estimated by the Association of Sworn Valuers was only GRD 1,621 per square metre. In any event, the Government stated that the Court was not a court of fourth instance and had no jurisdiction to re-examine the evidence on which the domestic courts had relied in assessing the compensation.

48. The Court reiterates that an interference with peaceful enjoyment of possessions must strike a “fair balance” between the demands of the general interests of the community and the requirements of the protection of the individual’s fundamental rights (see, among other authorities, the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 26, § 69). Compensation terms under the relevant legislation are material

to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicant. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1. That Article does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of “public interest” may call for less than reimbursement of the full market value (see the *Holy Monasteries v. Greece* judgment of 9 December 1994, Series A no. 301-A, pp. 34-35, §§ 70-71).

49. The Court notes that in the instant case the final unit price for compensation was assessed at only GRD 1,621 less than the price suggested by the Association of Sworn Valuers (see paragraph 12 above). Having regard to the margin of appreciation Article 1 of Protocol No. 1 affords national authorities, the Court considers that the price paid to the applicants bore a reasonable relation to the value of the expropriated land.

50. Consequently, there has been no violation of Article 1 of Protocol No. 1 as regards the amount of compensation per square metre awarded in the present case.

B. Application of the irrebuttable presumption created by Law no. 653/1977

51. The applicants complained that the presumption created by section 1(3) of Law no. 653/1977 had prevented their obtaining compensation through the courts for 1,440 sq. m. of their expropriated land.

52. The Government said that the value of the applicants’ properties had been increased by the building of the new major road.

53. The Court observes 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 and 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, has previously been held by the Court to amount to a breach of Article 1 of Protocol No. 1 in two similar cases (see the *Katkaridis and Others v. Greece* judgment of 15 November 1996, *Reports* 1996-V, pp. 1688-89, § 49, and the *Tsomtsos and Others v. Greece* judgment of 15 November 1996, *Reports* 1996-V, pp. 1715-16, § 40).

54. The Court sees no reason not to follow that case-law in the present case as the applicants were prevented from asserting before the domestic

courts their right to compensation in full for the loss of their property and were awarded compensation for only 6,962 sq. m of the 8,402 sq. m that were expropriated.

They thus had to bear a burden that was individual and excessive and could have been rendered legitimate only if they had had the possibility of proving their alleged damage and, if successful, of receiving the relevant 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 the Tsomtsos and Others judgment cited above, p. 1716, § 42).

55. There has therefore been a violation of Article 1 of Protocol No. 1 as a result of the application of the presumption created by section 1(3) of Law no. 653/1977.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Under Article 41 of the Convention,

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

57. The applicants said that the loss that had resulted from the presumption created by the application of section 1(3) of Law no. 653/1977 amounted to GRD 83,520,000.

58. The Government submitted that any pecuniary damage sustained could not exceed the product of the judicially determined unit amount for the expropriated property multiplied by the number of square metres of land for which no compensation had been awarded.

59. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision as far as pecuniary damage is concerned and must be reserved, due regard being had to the possibility of the respondent State and the applicants reaching an agreement (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

60. The applicants sought in addition payment of GRD 1,000,000 for lawyer's fees and sundry costs incurred in the proceedings before the

national courts and GRD 3,000,000 for the proceedings before the Commission and the Court.

61. The Government said that they were ready to pay the costs and expenses incurred before the Greek courts and the Commission and the Court, provided that they had been necessary, actual and reasonable. With reference to the proceedings before the latter institutions, the Government advised that there had been no hearing before the Commission.

62. Regard being had to the violation of Article 1 of Protocol No. 1 and to the complexity of the case, the Court, ruling on an equitable basis as required by Article 41 of the Convention, awards the applicants GRD 2,000,000 for costs and expenses.

C. Default interest

63. 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. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* by twelve votes to five that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* by fifteen votes to two that there has been no violation of Article 1 of Protocol No. 1 as regards the amount of compensation per square metre awarded in the instant case;
4. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1 as a result of the application of the irrebuttable presumption created by section 1(3) of Law no. 653/1977;
5. *Holds* unanimously that the respondent State is to pay the applicants, within three months, 2,000,000 (two 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;
6. *Holds* unanimously that the question of the application of Article 41 of the Convention 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 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 25 March 1999.

Luzius WILDHABER
President

Michele DE SALVIA
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly concurring and partly dissenting opinion of Mrs Palm;
- (b) partly concurring and partly dissenting opinion of Mr Gaukur Jörundsson;
- (c) partly concurring and partly dissenting opinion of Mrs Tulkens;
- (d) partly concurring and partly dissenting opinion of Mr Zupančič;
- (e) joint partly concurring and partly dissenting opinion of Mrs Thomassen and Mr Panțîru.

L.W.
M. de S.

PARTLY CONCURRING AND PARTLY DISSENTING
OPINION OF JUDGE PALM

I agree with the majority that there was a violation of Article 1 of Protocol No. 1 in this case as a result of the application of the irrebuttable presumption created by section 1(3) of Law no. 653/1977. I join Judge Gaukur Jörundsson's opinion that this breach of Article 1 is fundamental and leads to uncertainty as to whether the compensation granted to the applicants is compatible with Article 1. I find, therefore, that it is neither necessary nor correct for the Court to decide also the question whether the amount of compensation awarded to the applicants amounts to a violation of the same Article.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE GAUKUR JÖRUNDSSON

1. I agree with the majority that the violation of Article 1 of Protocol No. 1 in this case consists in the inflexibility of the system applied in fixing the compensation to be awarded to the applicants (see paragraphs 51-54 of the judgment). This breach of Article 1 is fundamental and leads to uncertainty as to whether the compensation granted to the applicants is compatible with Article 1. Having found a violation of Article 1 on the ground referred to above it is not, in my opinion, necessary to deal with the question whether the amount of compensation was in reality satisfactory.

2. For the following reasons I have found that there has also been a violation of Article 6 § 1 of the Convention in the present case.

The parties disagree as to the length of the proceedings to be considered under Article 6 § 1. In their memorial before the Court, the applicants argue that the proceedings “began with the declaration on 30 March 1970 that expropriation was in the public interest and lasted until the judgment of the Court of Cassation”. The Government are of the view that for the purposes of Article 6 § 1 the period to be considered started early in 1992, when the applicants lodged their application to the Court of Appeal for the determination of the final unit amount for compensation, and ended on 20 June 1995, when the Court of Cassation delivered its judgment. The Commission expressed the opinion (see paragraph 32 of the Commission’s report) that the proceedings had started on 9 January 1989 and ended “at the earliest” on 20 June 1995.

In civil proceedings the “reasonable time” referred to in Article 6 § 1 normally begins to run from the moment the action was instituted before the “tribunal”. It is conceivable, however, that in certain circumstances time may begin to run earlier (see the *Erkner and Hofauer v. Austria* judgment of 23 April 1987, Series A no. 117, p. 61, § 64). If, prior to the judicial proceedings, another action, for instance an administrative appeal (see the *König v. Germany* judgment of 28 June 1978, Series A no. 27, pp. 33-34, § 98, and application no. 7987/77, Commission decision of 8 March 1982 Decisions and Reports 32, p. 94) or a request for a formal confirmation (see the *Schouten and Meldrum v. the Netherlands* judgment of 9 December 1994, Series A no. 304, p. 25, § 62), has to be brought, the starting-point shifts to the commencement of that action. The submission of a preliminary claim for compensation to the administrative authority concerned, as required under national law, has been considered to constitute the starting-point of the relevant period under Article 6 § 1 (see the *Vallée v. France* judgment of 26 April 1994, Series A no. 289-A, p. 17, § 33). The Court has, furthermore,

assessed the reasonableness of the duration of preliminary negotiation proceedings, which were expressly recognised by law, prior to formal expropriation proceedings before a court (see the *Phocas v. France* judgment of 23 April 1996, *Reports of Judgments and Decisions* 1996-II, p. 546, § 69).

By a decision of 9 January 1989 the Greek State expropriated some of the applicants' land in order to build a new major road. On 5 June 1991 the Greek State brought an action for the assessment of compensation and these proceedings ended with the judgment of the Court of Cassation of 20 June 1995, a copy of which the applicants obtained on 9 October 1995. These proceedings were governed by the provisions of Article 17 of the Greek Constitution, which lays down basic principles concerning the expropriation and protection of property (see paragraph 17 of the judgment), by Legislative Decree no. 797/1971 which regulates the different phases of the expropriation proceedings and, in the applicants' case, by Law no. 653/1977 (see paragraphs 18-25 of the judgment).

Although expropriation proceedings are divided into different stages under Greek law, the different phases are interlinked. Thus a valid decision to expropriate inevitably precedes the determination of compensation. Furthermore, specified compensation must be determined and paid within certain time-limits, otherwise the expropriation will automatically lapse.

The fixing of the compensation to which an expropriation gives rise is a matter which concerns the civil rights and obligations of the expropriated party. Article 6 § 1 is accordingly applicable to the court proceedings in which the amount of this compensation is determined, and imposes, *inter alia*, an obligation on the part of the competent authorities to determine the compensation in question within a "reasonable time".

The proceedings with which the Court is here concerned in the first place are the court proceedings taken by the Greek State for determination of the compensation due to the applicants. It is, however, relevant in determining whether the length of the proceedings was reasonable to note that they could only be taken after the administrative procedure, which concerned the decision to expropriate. Both the administrative procedure and the court proceedings, which by their very nature were compulsory, involved, in their entirety, a determination of the applicants' civil rights. When the decision to expropriate had been taken the applicants' property rights had been interfered with and made uncertain, as the applicants were in fact prevented from using their land and disposing of it. That uncertainty lasted until the compensation had been determined and paid. Only when both the administrative procedure and the court proceedings had been brought to an end could the applicants' property rights be said to have been determined within the meaning of Article 6 § 1. Accordingly, and since both the administrative procedure and the court proceedings concerned the same civil rights, the concept of "reasonable time" must be applied at both levels.

The period to be considered under Article 6 § 1 started, therefore, on 9 January 1989, when the decision to expropriate was taken, since the facts of the case, as presented to the Court by the parties, do not warrant any earlier date. It ended on 9 October 1995, when the applicants obtained a copy of the decision of the Court of Cassation. The proceedings lasted, accordingly, six years and ten months.

The reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and with the aid of the following criteria: the complexity of the case and the conduct of the parties and the authorities hearing it.

I find that the proceedings in question were not particularly complex, bearing in mind the rigid system applied in fixing the compensation to be paid to the applicants.

The Government have in their memorial before the Court criticised in the first place what they call the applicants' failure to apply to the Athens Court of First Instance before 5 June 1991, for the determination of provisional compensation. It is clear that under Greek law this possibility was open to the applicants. Nevertheless, the applicants cannot be blamed for having failed to avail themselves of it. The speedy payment of fair compensation was a clear condition for the lawfulness of the expropriation under Greek law and its conformity with Article 1 of Protocol No. 1. It was, therefore, the duty of the State to take the initiative in having the compensation question decided and to take appropriate action in that regard.

The Government secondly criticise the applicants in their memorial before the Court for not producing a copy of their appeal to the Court of Cassation before 15 June 1994, which was approximately six months after their appeal. I accept that the Court of Cassation cannot be blamed for any inactivity during this period.

As to the conduct of the authorities concerned, it is, however, important to note that there was a delay of about two and a half years between the decision to expropriate and the commencement of the State's action to have the compensation determined. The Government have not given any convincing explanation which can justify this delay.

Regard being had to the circumstances of the case and the relevant criteria under Article 6 § 1, the period of six years and ten months must be deemed to have been excessive and accordingly to constitute a violation of Article 6 § 1.

PARTLY CONCURRING AND PARTLY DISSENTING
OPINION OF JUDGE TULKENS

(Translation)

I agree with Mr Gaukur Jörundsson both that there has been a breach of Article 6 § 1 (see point 2 of his opinion) and that it was unnecessary for the Court to consider whether the amount of compensation awarded by the Greek courts was reasonable (see point 1 of his opinion). However, that latter issue was put to the vote and, like the majority, I voted in favour of finding no violation.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE ZUPANČIČ

On the question of unreasonable delay in this case I concur entirely with Judge Gaukur Jörundsson's dissenting opinion. I would add the following remarks.

Determining whether there was unreasonable delay in this case is not, in my opinion, simply a question of counting the months and years when formal proceedings were under way. It concerns the central issue of deciding when litigation in a case such as this, in fact, commences. This is because Article 6 § 1 of the Convention cannot have been intended to operate to speed up only civil and criminal proceedings that have already been instituted. Justice delayed is also justice denied, but this may not be simply a question of formal procedure.

The meaning of the above adage is different in purely private litigation where the State provides a conflict-resolution service in lieu of self help, i.e., to supplant the use of force by the parties. The unacceptability of delay in private litigation is a logical consequence of the fact that the first act of the Hobbesian State is to prevent recourse to arms, as it leads, in the final analysis, to *bellum omnium contra omnes*, i.e., anarchy. It is, therefore, logical that the calculation of delay in such cases should depend on the timing of the initial step of the request of the injured party, the plaintiff, for the State's protection: *volenti non fit injuria*. He who is not willing to fight for his interests in court should suffer the consequences of his or her inactivity.

Yet the matter here differs from the paradigmatic private litigation case.

First, the dispute here is between the State and the individual, not between two private individuals. The issue of delay in this case is somewhat akin to the issue of unreasonable delay in criminal cases. In criminal matters the litigation is between the State and the individual. Of course, in criminal trials the stakes (liberty) are much higher and closer to the central human rights' concern. On the other hand, the establishment of the high probability deriving from probable cause in criminal matters does create an assumption that the initial cause of the (criminal) trial is to be found in the defendant's actions, not in the act of the State accusing him of having committed an offence. But if the State were to put the defendant in pre-trial detention and keep him imprisoned for two and a half years, without, for example, commencing the criminal process, we would most certainly count the delay from the date of the actual loss of liberty.

In the present case the applicants' problem was clearly caused by the decision of the executive branch of the State to expropriate. Had it not been for this executive branch's (administrative) decision the issue of proper compensation would never have arisen in the first place. It is only proper, in my opinion, in a situation in which the executive branch of the State *acto jure imperii* itself causes the situation in which private interests are harmed to arise, for the two branches of that State (the executive branch in an administrative process, the judicial in civil proceedings), to speedily resolve the private dispute the State itself created.

Once the legitimate right (to property) has been interfered with, the conflict of interests is clearly established. As to when that conflict arose, there can be no doubt in this case. In my opinion, only periods of deliberate inactivity on the part of the injured party, clearly indicating a lack of interest in the matter, should be ignored in assessing whether there has been unreasonable delay.

Thus the question arises whether in the initial phase of this expropriation the applicants did in fact fail to protest. The question, in other words, is, what could the applicants in fact have done once the decision to expropriate had been published. If their action was limited only to a constitutional challenge of the administrative act itself (the decision to expropriate if it was a concrete, not an abstract act), then the question is: should they have made such a challenge? However, since this would not have been an ordinary private dispute, I do not think we ought to maintain, for example, that they should have challenged the constitutionality of the decision only in order to prove that they had an interest in receiving proper compensation for the loss of their right to peaceful enjoyment of their property. Clearly, their chances of success in such administrative proceedings would have been very small.

Apart from that, it would not be logical to require them to object to expropriation as such. As good citizens they are entitled to agree to the prevalence of the public interest in the expropriation of their real estate. They should not be legally forced to object to expropriation as such – it may not even have been an issue for them – when their specific interest may only have been to obtain fair compensation for the damage incurred without delay.

This seems to imply that the applicants were legally compelled to await for their civil-damages claim to be processed in court – as an integral part of a total of approximately 180 cases – and properly adjudicated. If the argument here is that this was a complex legal and factual issue authorising the court to take a long time to decide it, then the answer is clearly that, since the initiative and the timing were all in the State's hands, it could have prepared in advance for such an eventuality. The implications for the calculations of time are, I think, clear.

The question of the irrebuttable presumption has been addressed in this and other cases and I agree that it is difficult to accept such an “inflexible approach” to the determination of damage in expropriation cases. However, it would perhaps be useful to explore the real procedural effect of such a *praesumptio juris et de jure*. The effect of irrebuttable presumptions is very similar to the effect of fictions. There were numerous jurisprudential debates – with contributions by writers such as Jeremy Bentham, as common law used to be full of all kinds of fictions and presumptions – as to the real effect of presumptions and fictions upon a particular legal subject matter. But the clear effect of an irrebuttable presumption, such as the Greek presumption of counterbalancing benefit, is simply to block litigation over the issue the presumption addresses.

The aggrieved party affected by the irrebuttable presumption is procedurally prevented from having a normal burden of proof since evidence affecting the damage caused by certain aspects of expropriation is, by virtue of this presumption, deemed inadmissible. The applicants were even precluded from showing that the effect of the abstract presumption was fictitious *in concreto*, i.e., wholly in conflict with the actual reality. This is only logical, since the intent of irrebuttable presumptions is in effect to prevent litigation over (particularly sensitive) issues.

The question then arises whether an irrebuttable presumption, in a situation in which it would not be possible to show that it is a proportionate means to a legitimate aim, in fact represents a denial of access to a court on the issue covered by the presumption. Given that the majority finds the irrebuttable presumption here unacceptable anyway, I do not have to discuss the question of proportionality, etc. The issue for me is simply what should be the effect of the clear unacceptability of the irrebuttable presumption, in this and other cases.

If the irrebuttable presumption was a procedural violation of the right to access to a court (on that particular substantive issue), it would seem that it is the fault of the State Party that the question of damages was not and could not be litigated. If the case comes before the European Court of Human Rights without the amount of damage being clearly established, we are then faced with a situation in which the applicant’s claim to a particular amount of compensation should by then have been specifically refuted by the State Party. By that stage at the latest the refutation by the State Party ought to have been fully detailed and persuasive since it was the State’s own legislature which precluded litigation over that issue before the State Party’s courts.

As regards the amount of damages, both the evidential burden and the risk of non-persuasion before the European Court of Human Rights should have been borne by the State, failing which the damage ought to be awarded in accordance with the applicants' claim. I am not convinced that that should be so in every case, i.e., I am not suggesting that this be adopted as a clear rule of evidence. But in this particular case it cannot be said that the damage resulting from the application of the objectionable presumption amounts only to the equivalent of the value determined by application of the presumption of offsetting benefit (1,500 sq. m), because the issue could not have been tried before the case came here in the first place. The reversal of the burden of proof and the risk of non-persuasion, at least in this particular situation, would seem to me to be the only logical answer to the fact that litigation over this aspect of the case was precluded in the Greek courts.

JOINT PARTLY CONCURRING
AND PARTLY DISSENTING OPINION
OF JUDGES THOMASSEN AND PANTÎRU

We agree with the majority that there has been a violation of Article 1 of Protocol No. 1.

However, unlike the majority, we find that there has also been a breach of Article 6 § 1 of the Convention for the reasons set out in point 2 of the separate opinion of Mr Gaukur Jörundsson.