



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

SECOND SECTION

CASE OF PIALOPOULOS AND OTHERS v. GREECE

(Application no. 37095/97)

JUDGMENT

STRASBOURG

15 February 2001

FINAL

15/05/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Pialopoulos and Others v. Greece,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr C.L. ROZAKIS,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 19 October 2000 and on 25 January 2001,

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

PROCEDURE

1. The case originated in an application (no. 37095/97) against Greece lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Greek nationals, Mr Michael Pialopoulos, Mr Aristophanes Alexiou, Mr Nikolaos Georgakopoulos and Mrs Aristeia Pialopoulos (“the applicants”), on 7 March 1997.

2. The applicants were represented by Mr P. Bernitsas, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by their Agent, Mr E. Volanis, President of the Legal Council of State.

3. The applicants alleged, in particular, that they had been unable to enjoy their property since 1987, as a result of a series of building prohibitions and attempted expropriations and that the authorities failed to comply with a court decision revoking one of the expropriations. They invoke Article 1 of Protocol No. 1 and Articles 6 § 1 and 13 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 15 June 1999 the Court declared the application admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 19 October 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr P. GEORGAKOPOULOS, Senior Adviser,
Legal Council of State, *Agent*,
Mrs K. GRIGORIOU, Adviser, Legal Council of State,
Mr S. SPYROPOULOS, Legal Assistant, Legal Council of State, *Counsel*;

(b) *for the applicants*

Mr P. BERNITSAS, of the Athens Bar, *Counsel*.

The Court heard addresses by Mr Bernitsas and Mrs Grigoriou.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The first applicant is a Greek citizen, born in 1951 and living in Pefki in Attika. The second applicant is also a Greek citizen born in 1930 and living in Filothei in Attika. The third applicant is the first applicant's stepbrother. He is a Greek citizen, born in 1964 and living in Athens. The fourth applicant is the first applicant's sister. She is a Greek citizen, born in 1949 and living in Geneva.

10. On 11 February 1987 the first two applicants bought a plot of land in Neo Psihiko of a total surface of 7,723 m² (block No 16 on the town plan). The first applicant became the owner of 83% of the plot and the second applicant of the rest. On 12 February 1987 the Prefecture (*Nomarchia*) of Eastern Attika gave the two applicants permission to demolish some old buildings that existed on the plot.

11. On 18 February 1987 the two applicants applied to the Prefecture for a permit to build a multi-storey shopping centre thereon.

12. On 25 February 1987 at a meeting of the Municipal Council of Neo Psihiko the mayor informed the councillors that urgent action had to be taken to block the proposed development and accepted that unusual means

were being used to forestall the delivery of the permit. However, a councillor drew the mayor's attention to the fact that the municipality lacked adequate means to expropriate the applicants' plot.

13. On 1 June 1987 the Prefect of Eastern Attika decided not to issue any new building permits in respect of commercial premises of a certain size (buildings exceeding 1/4 of the maximum authorised size) in Neo Psihiko for a year (decision no. 10311/1987 published in the Official Gazette on 10 June 1987). He exempted commercial premises for which an application had already been lodged, provided that the file was "complete" in accordance with the presidential decree of 8 September 1983.

14. On 5 June 1987 the Ministry for the Environment, Town Planning and Public Works advised the first two applicants that the file which they had submitted together with their application for a building permit was "complete". Given the Prefect's decision of 1 June 1987, the file "would continue to be considered complete pending resumption of the delivery of new building permits".

15. On 31 July 1987 the Prefect of Eastern Attika decided "to extend the freeze on new building licences in respect of block No. 16 in Neo Psihiko by six months as from 13 September 1987".

16. On 1 March 1988 the Prefect decided to change the authorised use of the applicants' plot from development land to park land (decision no. 13580/277/87/1988 published in the Official Gazette on 24 March 1988). Following this decision, the first two applicants requested the town planning authorities of the prefecture to decide who should compensate them for the expropriation of their plot of land. On 16 June 1988 the town planning authorities decided that the applicants should be expropriated by, among others, the Municipality of Neo Psihiko (act no. 51/88). The municipality appealed to the Prefect who, on 26 September 1988, confirmed act no. 51/88 of the town planning authorities and ordered the municipality to compensate the two applicants in respect of 5,697 m². The municipality appealed against the prefect's decision of 26 September 1988 to the Secretary General of the Ministry for the Environment, Town Planning and Public Works claiming that it should not bear on its own the cost of compensating the applicants for the 5,697 m² in question. On 4 January 1989 the Secretary General confirmed the decision of 26 September 1988 of the prefect (decision no. 84888/4910/1989).

17. On 19 January 1989 the first two applicants asked the single-member first instance civil court (*monomeles protodikio*) of Athens provisionally to determine their compensation. On 16 November 1989 the court decided that the two applicants should receive 732,300,000 drachmas.

18. On 20 February 1989 the Municipality of Neo Psihiko applied to the Council of State (*Simvulio Epikratias*) for judicial review of decision no. 84888/4910/1989 of the Secretary General of the Ministry for the

Environment, Town Planning and Public Works. The first two applicants intervened in favour of the Secretary General.

19. On 28 September 1989 the Secretary General of the Ministry for the Environment, Town Planning and Public Works approved a new town plan for Neo Psihiko, which was published in the Official Gazette on 9 October 1989.

20. On 21 May 1990 the Prefect of Eastern Attika decided to amend the new town plan of Neo Psihiko. It was provided that the applicants' plot could only be used as a park and for underground parking. The decision was published in the Official Gazette on 5 June 1990.

21. On 31 July 1991 the first two applicants requested the Court of Appeal (*efetio*) of Athens to declare under Article 17 § 4 of the Constitution and Article 11 of legislative decree no. 727/1971 that the Prefect's decision no. 13580/277/87/1988 concerning the expropriation had been revoked *ipso jure* on 16 May 1991 because the compensation fixed provisionally had not been paid within eighteen months from the first instance civil court's decision of 16 November 1989. The State and the Municipality of Neo Psihiko were parties to the proceedings. On 8 November 1991 the Athens Court of Appeal acceded to the applicants' request (decision no. 9779/1991).

22. On 21 and 26 February 1992 the Municipal Council of Neo Psihiko discussed the future of the applicants' plot. On the second occasion, the mayor stated that he had been unable to conclude a loan in order to compensate the applicants in full. He also stated that the owners of neighbouring plots of land had informed him that they lacked the funds to pay part of the applicants' compensation. Some councillors made proposals which would have lowered the value of the applicants' plot.

23. On 4 March 1992 the first two applicants received a letter from the Municipality of Neo Psihiko referring to negotiations which had been conducted with them. The two applicants were invited to agree to a plan for the development of the plot. According to the plan, the municipality would acquire part of the plot and transform it into a park. The applicants would be allowed to construct a building with a two-storey underground garage. There would be shops on the ground floor and offices on the other floors.

24. On 23 March 1992 the Legal Council of State (*Nomiko Simvulio tu Kratus*) decided not to appeal in cassation against the decision of the Court of Appeal. On 13 May 1992 it informed the Prefecture of Eastern Attika and the Ministry for the Environment, Town Planning and Public Works accordingly and requested them to take the necessary steps to give effect to that decision.

25. On 6 July 1992 the Municipal Council of Neo Psihiko discussed the outcome of the negotiations with the first two applicants. The mayor invited the members of the council not to lose sight of the fact that the municipality risked finding itself in a position where it would be unable to pay full

compensation to the two applicants for the expropriation of their plot. In the end, the council decided to request the prefecture to expropriate the plot (decision no. 96/92). It proposed the creation of a park, an underground garage and a public building. The two applicants protested.

26. On 8 July 1992 the first two applicants requested the Prefect of Eastern Attika formally to revoke decision no. 13580/277/87/1988, as he was required to do by the law.

27. On 30 November 1992 the Council of State examined the Municipality of Neo Psihiko's application for judicial review of decision no. 84888/4910/1989 of the Secretary General of the Ministry for the Environment, Town Planning and Public Works. The first two applicants, who had intervened in favour of the Secretary General, claimed that this decision did not produce any legal effects because on 8 November 1991 (decision no. 9779/1991) the Court of Appeal had declared that it had been *ipso jure* revoked. However, the Council considered that, the decision of the appeal court notwithstanding, the administration was under an obligation formally to revoke decision no. 13580/277/87/1988 expropriating the plot. As long as this had not happened, decision no. 84888/4910/1989 could be judicially reviewed. Moreover, the Council considered that the Secretary General of the Ministry for the Environment, Town Planning and Public Works had illegally ordered the Municipality of Neo Psihiko to bear on its own the cost of compensating the applicants for the 5,697 m² in question. The owners of other neighbouring property were liable as well. The Council of State, therefore, decided to quash decision no. 84888/4910/1989 (decision no. 3730/1992).

28. On 3 December 1992 the town planning authorities of the Prefecture of Eastern Attika asked the Municipality of Neo Psihiko whether it wished to expropriate the applicants' plot again and drew its attention to the conditions for doing so. On 19 February 1993 the town planning authorities informed the municipality that, if it wanted the plot to be expropriated, a decision by the municipal council concerning the necessary funds should be adopted before 26 April 1993. On both occasions the town planning authorities informed the municipality that, if it did not take the necessary measures for a fresh expropriation, the prefecture would proceed to the revocation of the first expropriation as it was required to do by law.

29. On 23 March 1993 the first two applicants applied to the prefecture for a building permit.

30. On 12 April 1993 the Ministry for the Environment, Town Planning and Public Works informed the Prefecture of Eastern Attika that, decision no. 3730/1992 of the Council of State notwithstanding, the prefecture had to comply with decision no. 9779/1991 of the Athens Court of Appeal and officially revoke the expropriation decision. The ministry also considered that the amendment of the town plan of 21 May 1990 amounted to a new expropriation. According to the case-law of the Council of State, this would

be lawful only if there was a serious town-planning need and the money for the compensation was readily available.

31. On 25 May 1993 the Municipal Council of Neo Psihiko requested the Prefect of Eastern Attika to re-issue act no. 51/88 on the persons liable to pay compensation taking into consideration decision no. 3730/1992 of the Council of State or else to adopt a new decision expropriating the applicants' plot of land. The municipal council declared that it was ready to pay the compensation required in order for the expropriation to be completed (decision no. 87/1993).

32. On 17 June 1993 the first two applicants, with a view to reaching a friendly settlement, applied for a building permit offering, at the same time, to construct at their expense a public building for the municipality.

33. On 19 August 1993 the Prefect of Eastern Attika considered that the municipality's case for a new expropriation was not convincing and decided to free part of the applicants' plot for development (decision no. 26224/839/1993 published in the Official Gazette on 3 September 1993). On 20 October 1993 the Municipality of Neo Psihiko applied to the Council of State for judicial review of this decision. The first two applicants intervened in the proceedings in favour of the Prefect.

34. On 10 July 1995 the Council of State considered that its previous decision no. 3730/1992 could not affect the obligation of the Prefect of Eastern Attika to comply with decision no. 9779/1991 of the Athens Court of Appeal of 8 November 1991 and officially revoked the first expropriation decision. The Council of State found that the Prefecture of Eastern Attika had complied with the above-mentioned decision of the Court of Appeal by issuing decision no. 26224/839/1993. However, this decision had not taken into consideration the fact that the Municipality of Neo Psihiko had fully cooperated in the first expropriation procedure. Neither had it taken into consideration the fact that the main reason for the non-completion of the first expropriation procedure had been the dispute which had arisen as to who should have compensated the first two applicants. In the light of all the above, the Council found that the Prefect of Eastern Attika's decision not to accede to the municipality's request for a second expropriation did not contain adequate reasons. The Council of State, therefore, quashed decision no. 26224/839/1993 of the Prefect of Eastern Attika (decision no. 3927/95).

35. On 2 May 1996 the second applicant requested the Mayor of Neo Psihiko to provide him with a certified copy of the municipality's budget and of the minutes of the meeting of the municipal council at which the budget had been approved.

36. On 9 May 1996 the town planning authorities of the Prefecture of Athens, which had taken over the functions of the Prefecture of Eastern Attika, informed the Municipality of Neo Psihiko that, since decision no. 26224/839/1993 of the Prefect of Eastern Attika had been quashed, it was still under an obligation to comply with decision no. 9779/1991 of the

Athens Court of Appeal. It also invited the municipality to inform it within 30 days whether there existed a serious town-planning need for the expropriation of the applicants' plot of land and whether there existed sufficient funds in the municipality' budget for compensating the applicants. Finally, the prefecture warned the municipality that, in the absence of a prompt reply, it would change the authorised use of the applicants' plot to development land.

37. The Mayor of Neo Psihiko replied to the Prefecture of Athens on 9 July 1996 requesting that the applicants' plot should be expropriated for the following reasons. On the one hand, a number of supermarkets and banks had been recently built in the area, which attracted 5,000 persons and a lot of traffic every day. On the other hand, there were no parks or parking space. As a result, if a new development were authorised, the situation would become intolerable. The mayor referred to the Prefect of Eastern Attika's decision of 21 May 1990 according to which the applicants' plot could only be used as a park and for underground parking. The mayor also informed the prefecture that provision had been made for 450,000,000 drachmas in the municipality's budget for 1996 and an additional sum would be made available in 1997.

38. On 27 September 1996 the Prefecture of Athens asked the municipality to clarify within ten days whether the sum of 450,000,000 drachmas had been earmarked for the expropriation of the applicants' plot, what was the estimated total cost of the expropriation, whether the additional sum required existed and, if not, which were the sources from which it could be obtained and what were the prospects of obtaining it. The municipality was again threatened with a decision changing the authorised use of the applicants' land.

39. On 16 November 1996 the first two applicants invited the Prefect to comply with decision no. 3927/1995 of the Council of State and decision no. 9779/1991 of the Athens Court of Appeal.

40. Having received no reply, on 6 February 1997 the second applicant requested the Prefecture of Athens to inform him of the conditions for the development of his plot in Neo Psihiko. On 14 February 1997 the Prefecture of Athens informed the second applicant that, according to the decision of the Prefect of Eastern Attika of 21 May 1990, the plot could only be used as a park and for underground parking. Decision no. 26224/839/1993 of the Prefect of Eastern Attika had been quashed by the Council of State. When the two applicants had originally applied for a building permit there were no restrictions on their plot of land. However, on 1 June 1987 and 31 July 1987 the prefect of Eastern Attika had decided to suspend the delivery of building permits of the kind requested by the two applicants.

41. On 14 October 1997 the second applicant applied to the town planning authorities of the prefecture for permission to construct an open-air parking area on his plot. The authorities turned his application down

referring, *inter alia*, to the decision of the Prefect of Eastern Attika of 21 May 1990. On 17 October 1997 the second applicant applied to the town planning authorities for permission to construct an underground garage. On 4 November 1997 the authorities replied that the garage would be built by the appropriate organ after the conclusion of the expropriation.

42. Following a further query by the first two applicants, on 11 December 1997 the Prefecture of Athens informed them that, according to the decision of the Prefect of Eastern Attika of 21 May 1990, their plot of land could only be used as a park and for underground parking and that the decision in question had not been revoked.

43. On 19 December 1997 the first applicant transferred 20.75% of the plot to the third applicant and 20.75% to the fourth applicant.

44. On 16 March 1998 the town planning authorities of the Prefecture of Athens informed the Legal Council of State that the decision of 21 May 1990 of the Prefect of Eastern Attika amounted to an expropriation of the applicants' plot. However, when the town planning authorities wrote to the Municipality of Neo Psihiko on 9 May 1996, they were not aware of this decision. Following the quashing of decision no. 26224/839/1993 of the Prefect of Eastern Attika by the Council of State, the use of the applicants' plot is governed by the decision of 21 May 1990. The town planning authorities, further to a request by the Municipality of Neo Psihiko, were in the course of determining those liable to pay compensation because of the expropriation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

45. According to decision no. 3284/86 of the Council of State, an expropriation that has been revoked may be re-imposed only if there is a serious town-planning need and the authorities are able to pay appropriate compensation immediately. In 1986 the Ministry for the Environment, Town Planning and Public Works issued a circular informing the authorities of this development (circular no. 141/1986).

46. According to the case-law of the Council of State, amendments to town plans must be published in the Official Gazette together with a detailed plan. Otherwise they are null and void (decisions nos. 488/91 and 489/91).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

47. The applicants complain that their plot has been expropriated contrary to Article 1 of Protocol No. 1. They submit in this connection that it has not been substantiated that this expropriation has been imposed in the public interest and that there is no fair balance between the act of interference and the legitimate aim pursued. Moreover, domestic law has been violated since the authorities refuse to comply with court judgments and to pay the applicants compensation as provided for under the Constitution. They maintain that since 1987, they cannot enjoy, use or dispose of their property. Article 1 of Protocol No. 1 provides as follows:

“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.”

48. The Government submit that the Prefect’s decision of 21 May 1990, which provides that the applicants’ plot can only be used as a park and for underground parking, is a reasonable measure taken in good faith in order to protect the environment. Governments enjoy a broad margin of appreciation in the difficult area of town planning. In any event, turning the applicants’ plot into a park was the only measure which can achieve the goal pursued by the authorities. National law has been complied with. Moreover, a proper balance has been struck between the public interest and individual rights. The time that has lapsed since the last expropriation effected by the revival of the decision of 21 May 1990 is reasonable. The municipality has the means for compensating the applicants. In any event, the applicants did not try to expedite the expropriation proceedings.

49. As regards the restrictions to which the applicants’ property was previously subjected, the Government submit that the freeze imposed on building permits on 1 June 1987 was a temporary measure necessary for town-planning reasons under Article 1 § 2 of Protocol No. 1. Moreover, although no building permits are issued in respect of plots of land that are in the process of being expropriated, there was nothing preventing the applicants from obtaining a building permit between 8 November 1991 and 10 July 1995. Their situation is not in any way comparable to that examined

by the Court in its *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982 (Series A no. 52).

50. The applicants submit that since 1987 their property has always been in the process of being expropriated. The first expropriation remains in force, the Prefect's decision no. 13580/277/87/1988 not having been officially revoked. The Prefect's decision of 21 May 1990 was a second expropriation, as admitted in the prefecture's letter of 16 March 1998. However, it was ignored by the authorities for a number of years, as evidenced in the prefecture's letters of 27 September 1996 and 16 March 1998. The second expropriation (Prefect's decision of 21 May 1990) is null and void because no detailed plan was published in the Official Gazette together with it. However, this did not prevent the authorities from starting invoking it as from 14 February 1997 in order to prevent the applicants from enjoying their property. In any event, this expropriation should now be revoked given that no compensation has been paid in eight years.

51. The applicants could not have relied on the partial freeing of their plot for development, which occurred on 3 September 1993, given that the relevant decision of the Prefect (no. 26224/839/1993) was immediately challenged in the Council of State. In any event, the second expropriation of 21 May 1990 had already been decided.

52. Moreover, the applicants argue that it is apparent from the minutes of the municipal council that the authorities did not act in good faith. Their aim was not to protect the environment. This is clear from the changes in the authorised use of the land in the various expropriation decisions, the last of which allows for the development of part of the property. It is also clear from the municipality's proposal to have a public building constructed on the plot. The aim of the authorities was the spoliation of the applicants' property. The authorities acted illegally when postponing the revocation of the first expropriation in order to facilitate the enactment of a fresh one, as evidenced by the prefecture's letters of 3 December 1992 and 19 February 1993. The time that has lapsed is not reasonable and the municipality does not have the required funds to compensate them. No reasonable balance has been struck, given that the applicants have not been paid any compensation for the years during which they have been unable to enjoy their property. In addition to all the above, the applicants are now threatened with a fourth expropriation.

53. The Court recalls that Article 1, which guarantees in substance the right of property, comprises three distinct rules (see the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98-B, § 37). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the

Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule.

54. The Court notes that the applicants' property has been affected by the following measures. Between 1 June 1987 and 13 September 1997 the applicants could not obtain a clear answer as to whether a building freeze applied to their property. Between 13 September 1987 and 1 March 1988 there was a building freeze on the applicants' property. On 1 March 1988 the applicants' property was expropriated (first expropriation). On 21 May 1990 a town planning measure was adopted the legal effect of which is disputed between the parties. On 31 July 1991 the Council of State ordered the revocation of the first expropriation. On 19 August 1993 a fresh expropriation was ordered. On 10 July 1995 the Council of State quashed the order of 19 August 1993. On 9 July 1996 the municipality proposed yet another expropriation. On 14 February 1997 the authorities informed the applicants that their property was in the process of being expropriated by virtue of the decision of 21 May 1990.

55. The Government contend that the decision of 21 May 1990 was not an expropriation decision from the very beginning. It became one only in 1995. As a result, the Government submit that between 8 November 1991 and 10 July 1995 the applicants remained free to develop their property. The Court does not find this argumentation convincing. In the letter of 12 April 1993 (see paragraph 30 above) the ministry had accepted that the 1990 decision was a proper expropriation decision. Moreover, the Government have not explained why the applicants' applications of 23 March 1993 and 17 June 1993 for building permits remained unanswered.

56. The Court notes that the measures in question did not involve a deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 because the applicants owners' right remained intact. The measures did not amount to control of the use of property either since they did not pursue such an aim. The Court considers that the situation of which the applicants complain falls to be dealt with under the first sentence of the first paragraph of Article 1 because the impugned measures undoubtedly restricted the applicants' rights to use their possessions.

57. It remains to ascertain whether the interference infringed Article 1 of Protocol No. 1. It is thus necessary to determine whether a fair balance was struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights (see the *Katte Klitsche de la Grange v. Italy* judgment of 27 October 1994, Series A no. 293-B, § 42).

58. The Court does not doubt that the impugned measures aimed at protecting the environment and town planning in an area overburdened by heavy construction.

59. In the Court's view, the applicants are right in arguing that since 1987 they have been unable to enjoy their property without having received any compensation. It could be argued, of course, that they cannot complain about the building freeze between 13 September 1987 and 1 March 1988 because they could have obtained the annulment of the prefect's decision of 31 July 1987 (although the Government do not plead non-exhaustion in this respect, the failure of the applicants to use appropriate procedures to defend their rights can influence the merits, see the above-mentioned *Katte Klitsche de la Grange v. Italy* judgment, § 46). However, this would not change the situation substantially in favour of the Government.

60. The Court notes that on 17 February 1987 the applicants had applied for a permit to build a multi-storey shopping centre on their plot. On 1 March 1988 the applicant's property was expropriated and on 16 November 1989 the First Instance Court of Athens fixed provisionally the amount of the relevant compensation. However, as compensation was not paid within the time-limits provided for by law, the Court of Appeal of Athens declared the Prefect's decision concerning the expropriation revoked *ipso jure* on 8 November 1991. On 21 May 1990 the Prefect amended the town plan of Neo Psihiko and this amendment was considered to amount to a new expropriation. On 19 August 1993 a fresh expropriation was ordered, which would have been in accordance with the Convention, if the applicants had been paid adequate compensation. This involved allowing the applicants use of the underground area of their plot for the construction of a carpark and compensation for the use of the surface which would have been transformed into a parking building (see paragraph 25 above). However, that alternative fell through and the applicants remained deprived of the use of their plot, having also regard to the events and the attitude of the competent authorities since 9 July 1997 (see paragraphs 37-44 above).

61. The Court finds that there was no reasonable balance struck between the public interest and the requirements of the protection of the applicants' fundamental rights.

62. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

63. The applicants complain under Articles 6 § 1 and 13 of the Convention that they do not have an effective remedy for the violation of their property rights, because they cannot enforce the court decisions in their

favour given that all the public authorities involved enjoy immunity from execution.

64. Article 6 § 1 of the Convention, in so far as relevant, provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...”

65. Article 13 of the Convention provides as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

66. The Government submit that the authorities have complied with all the decisions issued in the applicants’ favour. In particular, they have complied with decision no. 9779/91 of the Court of Appeal by amending the town plan for Neo Psihiko on 19 August 1993 (prefect’s decision no. 26224/839/1993). The revival of the prefect’s decision of 21 May 1990 amounted to a new expropriation of the applicants’ plot and ensured that decision no. 3927/95 of the Council of State was also complied with. There was no need to comply with decision no. 3730/92 of the Council of State given that it concerned the first expropriation which has been revoked.

67. The applicants submit that the Court of Appeal’s decision no. 9779/91 has not been complied with because the first expropriation (prefect’s decision no. 13580/277/87/1988) has not been officially revoked. The expropriation of 19 August 1993 (prefect’s decision no. 26224/839/1993) was quashed by the Council of State (decision no. 3927/95), while the expropriation of 21 May 1990 is not valid because no detailed plan was published in the Official Gazette together with it.

68. The Court recalls that execution of a judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6. This principle is of even greater importance in the context of administrative proceedings concerning a dispute whose outcome is decisive for a litigant’s civil rights. By lodging an application for judicial review with the State’s highest administrative court the litigant seeks not only annulment of the impugned decision but also and above all the removal of its effects. The effective protection of a party to such proceedings and the restoration of legality presuppose an obligation on the administrative authorities’ part to comply with a judgment of that court. The Court observes in this connection that the administrative authorities form one element of a State subject to the rule of law and their interests accordingly coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (judgment of *Hornsby v. Greece* of 19 March 1997, Reports 1997-II, §§ 40-41).

69. The Court notes that on 12 April 1993, in a letter addressed to the prefecture, the ministry for the Environment, Town Planning and Public Works had considered that there existed an obligation to formally revoke the first expropriation decision (of 1 March 1988) even though another expropriation had been imposed on 21 May 1990. As a result, the Court considers that, despite the two subsequent expropriations, the first expropriation still remains in force not having been officially revoked by the Prefecture. It follows that the applicants are correct in arguing that the authorities have failed in their obligation to comply with decision no. 9779/91 (see paragraph 21 above).

70. There has accordingly been a breach of Article 6 § 1 of the Convention.

71. Having regard to its conclusions concerning Article 6 § 1, the Court does not deem it necessary to rule on the complaint under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

“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.”

73. The applicants recalled that pursuant to judgment no. 833/89 of the First Instance Court, the compensation due to them as regards the first expropriation of their land was set at 732 300 000 drachmas (GRD). The price fixed by that court at the time was lower than it should have been due to the fact that the administrative act by virtue of which the first expropriation was effected restricted the use of the land, thus affecting its value, and the said compensation was fixed thirteen years ago, at a time of high inflation, and should be readjusted.

74. The applicants also reiterated that in their original application, they sought compensation of 7 862 014 000 GRD plus interest for delayed payment. This amount represented the value of the property at stake at the time of the introduction of the application. In addition, the applicants requested that they be awarded a compensation for lost profits that they would derive from the commercial centre, which they had intended to build, and which would amount, until the end of 1996, to 7 340 063 285 GRD. In view of the fact, that up to date, the applicants still suffer from the deprivation of their property and have received no compensation from the State, the compensation currently due to them amounts to 9 356 000 000 GRD for the value of their property, plus 9 017 000 000 GRD, for loss of income, until 31 December 1999. These figures are substantiated by the appraisal report of the site prepared by the

internationally reputed firm of Consultants, Surveyors and Valuers “Lambert Smith Hampton”, which has been submitted to the Court.

75. The Government submitted that if the Court were to find a breach of Article 1 of Protocol No. 1, the issue of just satisfaction would depend upon the grounds on which the Court would base its decision.

76. The Court considers that the applicants cannot claim any compensation in respect of the period from 5 June 1987 to the end of February 1988 since they did not try to challenge the building prohibition on their property.

77. As regards the period starting from 1st March 1988, the Court considers that compensation should correspond to the income the applicants have lost as a result of their inability to use their property and should be based on the different options open to the national authorities under domestic law and the Convention for determining the future of the applicant’s property. On the one hand, and in relation to the first expropriation (by virtue of decision no. 13580/277/1.3.1988), the applicants’ loss can be said to correspond to the interest the applicants would have received to-date from the compensation provisionally fixed by the First instance Court of Athens, on 16 November 1989. On the other hand, and in relation to the second expropriation initiated by decision no. 13515/90, the loss would correspond to the applicants’ profit from the underground parking from after June 1990 until today and the interest they would have received from the compensation for the use of the surface.

78. Although, there exist some elements in the case-file that could help calculate these sums, the Court considers that the question of application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the Government and the applicants (Rule 75 § 1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine the case under Article 13 of the Convention;
4. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,

- (a) *reserves* the said question in whole;
- (b) *invites* the Government and the applicants to submit, within six months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
- (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 15 February 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President