



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

GRAND CHAMBER

CASE OF KAKAMOUKAS AND OTHERS v. GREECE

(Application no. 38311/02)

JUDGMENT

STRASBOURG

15 February 2008

This judgment is final but may be subject to editorial revision.

In the case of Kakamoukas and Others v. Greece,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President*,
Christos Rozakis,
Nicolas Bratza,
Boštjan M. Zupančič,
Peer Lorenzen,
Riza Türmen,
Karel Jungwiert,
Josep Casadevall,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Snejana Botoucharova,
Mindia Ugrekhelidze,
Vladimiro Zagrebelsky,
Lech Garlicki,
David Thór Björgvinsson,
Danutė Jočienė,
Mark Villiger, *judges*

and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 7 March 2007 and 9 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 38311/02) against the Greek Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by fifty-eight Greek nationals listed in the Appendix (“the applicants”), on 17 October 2002.

2. The applicants were represented by Mr D. Nikopoulos and Mr K. Gyiokas, of the Salonika Bar. The Greek Government (“the Government”) were represented by their Agent's delegates, Ms G. Skiani and Mr K. Georgiadis, Advisers, State Legal Council.

3. The applicants complained, *inter alia*, under Article 6 § 1 of the Convention, about the length of two sets of proceedings before the Supreme Administrative Court.

4. The application was allocated to the First 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.

5. On 25 March 2004 the application was declared partly inadmissible by a Chamber of that Section, composed of the following judges: Peer Lorenzen, Christos Rozakis, Giovanni Bonello, Françoise Tulkens, Nina Vajić, Elisabeth Steiner and Khanlar Hajiyev, and also of Søren Nielsen, Section Registrar.

6. On 24 March 2005 the remaining part of the application was declared partly admissible (see paragraph 3 above) by a Chamber of that Section, made up of the following judges: Françoise Tulkens, Christos Rozakis, Peer Lorenzen, Nina Vajić, Snejana Botoucharova, Anatoli Kovler and Elisabeth Steiner, and also of Søren Nielsen, Section Registrar.

7. On 22 June 2006 a Chamber of that Section, made up of the following judges – Loukis Loucaides, Christos Rozakis, Françoise Tulkens, Nina Vajić, Anatoli Kovler, Elisabeth Steiner and Khanlar Hajiyev - and also of Søren Nielsen, Section Registrar, concluded unanimously that there had been a violation of Article 6 § 1 on account of the excessive length of the impugned proceedings. The Chamber also decided, by five votes to two, to award each of the applicants various sums in respect of non-pecuniary damage.

8. On 28 July 2006 the Government requested, in accordance with Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber. A panel of the Grand Chamber accepted this request on 23 October 2006.

9. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

10. The Government filed written observations (Rule 59 § 1).

11. A hearing took place in public in the Human Rights Building, Strasbourg, on 7 March 2007 (Rule 59 § 3).

There appeared before the Court:

– *for the Government*

Ms G. SKIANI, Adviser, State Legal Council,
Mr K. GEORGIADIS, Adviser, State Legal Council, *Agent's delegates*,
Mr I. BAKOPOULOS, Legal Assistant, State Legal Council, *Counsel*;

– *for the applicants*

Mr D. NIKOPOULOS, *Counsel*.

The Court heard addresses by Mr Nikopoulos, Ms Skiani and Mr Georgiadis.

THE FACTS

I. THE CIRCUMSTANCES BEHIND THE DISPUTE

A. The background to the case

1. The period 1925-1936

12. On 7 April 1925 the Greek State expropriated an area of land measuring 534,892 m², located on the outskirts of the town of Salonika (Mikra district), for the purpose of building an airport. This area, which now falls within the jurisdiction of Kalamaria Town Council, included plots of land which belonged to the applicants' ascendants.

13. The amount of expropriation allowance was set by judgments nos. 1321/1926 and 703/1929 of the Salonika Court of First Instance, no. 9/1930 of the Salonika Appeal Court and no. 116/1931 of the Court of Cassation.

14. By judgment no. 293/1936 of the President of the Salonika Court of First Instance, the applicants' ascendants were recognised as being entitled to the compensation in question. However, the State refused to pay it. The airport was ultimately constructed elsewhere.

2. The period 1967-1972

15. On 22 June 1967, by a joint decision of the Minister of Finance and the Minister of Public Works (no. E.17963/8019), the State went ahead with expropriation of the above-mentioned area, which included the disputed plots of land, with a view to building housing for workers. As the decision did not fulfil a public-interest aim, it was revoked on 6 July 1972.

3. The period 1972-1988

16. On 29 June 1972 a royal decree designated the land for the construction of a sports centre.

17. On 14 May 1987 the Salonika prefect modified the development plan (ρυμοτομικό σχέδιο) for the area in which the applicants' plots of land were located, which he designated as a "green area" and "sports and leisure zone". This decision was confirmed by a decision of the Minister of the Environment and Public Works dated 31 July 1987 and by a presidential decree of 22 August 1988.

B. The proceedings to amend the 1987 development plan

18. On 28 June 1994 the applicants or their ascendants applied to the Salonika Prefecture requesting that the development plan in force be amended to have the encumbrance affecting their land removed. The prefecture did not reply.

19. On 20 November 1994 the applicants or their ascendants applied to the Supreme Administrative Court, seeking to have set aside the authorities' implicit refusal to remove the encumbrance affecting their land.

20. On 11 January 1996 the Kalamaria Town Council filed its observations on the case. A hearing was held on 26 March 1997.

21. On 20 October 1997 the Supreme Administrative Court granted the applicants' request. In particular, it found that, having failed for a long time to proceed with the expropriation of the land in question in furtherance of the project provided for in the development plan, the authorities were duty bound to lift the encumbrance on the disputed properties. The Supreme Administrative Court sent the case back to the authorities, asking them to take the necessary measures to make available the applicants' land (judgments nos. 4445/1997, 4447/1997 and 4448/1997). Those judgments were finalised and certified as authentic on 25 February 1998.

22. The applicants estimate that the current value of the land in issue is about 24,000,000 euros (EUR).

II. THE CIRCUMSTANCES FORMING THE SUBJECT-MATTER OF THE DISPUTE

A. The proceedings brought by Kalamaria Town Council against the Supreme Administrative Court's judgments nos. 4445/1997, 4447/1997 and 4448/1997

23. On 30 September 1998 Kalamaria Town Council lodged a third-party appeal (τριατανακοπή) against the above-mentioned judgments by the Supreme Administrative Court with regard to the applicants nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58, who had applied to the Supreme Administrative Court in the proceedings which resulted in judgments nos. 4445, 4447 and 4448/1997. This form of appeal, open to persons who have been neither parties to nor represented in proceedings, enables them to contest a decision which adversely affects them. Where the third-party appeal – which does not have suspensive effect – is found to be valid, the impugned judgments are set aside retrospectively and the application to the administrative court is re-examined. In the instant case, as the third-party appeal did not have suspensive effect, judgments nos. 4445/1997, 4447/1997 and 4448/1997 thus remained valid.

24. On 28 November 2001 the Supreme Administrative Court declared the third-party appeal inadmissible (judgments nos. 4148/2001, 4149/2001 and 4150/2001). It held that Kalamaria Town Council could not rely on this form of appeal since it had already had an opportunity to submit its observations on the case. The above-mentioned judgments were finalised and certified as authentic on 17 April 2002.

B. The new urban development plan and the proceedings to have it set aside

25. On 13 May 1999 the Minister for the Environment and Public Works modified the urban development plan of Kalamaria municipality in order to designate the land in question as the site for a sports and leisure centre (decision no. 12122/2761).

26. On 9 September 1999 the applicants or their ascendants applied to the Supreme Administrative Court seeking to have the above-mentioned decision set aside. The sole purpose of this application was to challenge the lawfulness of the impugned administrative decision.

27. On 11 September 2002 they submitted various documents in support of their application, including the title deeds to the properties. The hearing, initially scheduled for 8 November 2000, was postponed several times. It was finally held on 29 October 2003. It appears from the case file that the Supreme Administrative Court has not yet delivered its judgment.

THE LAW

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

28. Applicants nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58 complained about the time taken to examine the third-party appeal lodged with the Supreme Administrative Court by Kalamaria Town Council. In addition, all of the applicants complained about the length of the proceedings to set aside the new urban development plan. They relied on Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. The Chamber's judgment

29. In its judgment of 22 June 2006, the Chamber found that, in the light of the case-law on the matter, the length of the two sets of proceedings had been excessive and had failed to fulfil the “reasonable time” requirement. It therefore concluded that there had been a violation of Article 6 § 1.

B. The parties' submissions

1. The applicants

30. The applicants filed no further observations on this question.

2. The Government

31. The Government argued that the Chamber's judgment ought not to have considered the proceedings concerning the third-party appeal lodged with the Supreme Administrative Court by Kalamaria Town Council. They argued that those proceedings, which had not been brought by any of the applicants, could have had no impact, even indirect, on the main proceedings brought by the applicants before the Supreme Administrative Court.

C. The Court's assessment

32. The Court notes that the third-party appeal lodged by Kalamaria Town Council also concerned the judgments delivered by the Supreme Administrative Court with regard to applicants nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58. Had it been upheld, the impugned judgments would have been set aside retrospectively and the application to the administrative court re-examined. Accordingly, the third-party appeal could have had a direct impact on the applicants' right to freely enjoy their property. Article 6 is therefore applicable to the third-party appeal. Consequently, those proceedings are to be taken into consideration in calculating the total length of the disputed proceedings (see, *mutatis mutandis*, *Voggenreiter v. Germany*, no. 47169/99, §§ 38-43, ECHR 2004-I).

33. In this respect, the Grand Chamber considers, for the reasons set out by the Chamber, that the length of the two impugned sets of proceedings has been excessive and that there has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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.”

A. Damage

1. *The Chamber's judgment*

35. In its judgment of 22 June 2006, the Chamber held that the failure to fulfil the “reasonable time” requirement had undoubtedly caused the applicants non-pecuniary damage which would justify an award. Ruling on an equitable basis, it awarded EUR 8,000 to each of the applicants listed under nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58 and EUR 5,000 to each of the applicants listed under nos. 10-11, 20-22, 24-25, 32, 41, 45 and 50-57 in respect of non-pecuniary damage, plus any tax that might be chargeable.

2. *The parties' submissions*

36. The applicants considered that the awards in respect of just satisfaction made under Article 41 of the Convention must continue to be calculated on an individual basis. Awards made in respect of non-pecuniary damage should not depend on the number of applicants. In their opinion, the understanding of non-pecuniary damage put forward by the Government would amount to creating a new legal concept, namely “shared non-pecuniary damage”. Under this concept, the greater the number of people who sustain non-pecuniary damage as a result of the excessive length of proceedings, the less frustration and anxiety they will experience.

37. The Government submitted that the total amount awarded by the Chamber was exorbitant and inconsistent with the spirit of Article 41, which provided only for the award of just satisfaction for the damage sustained. They added that, when examining other cases concerning Greece in which it had found more serious violations than that of the right to a hearing within a reasonable time, the Court had awarded smaller sums. In their opinion, in cases concerning the length of proceedings, the Court should vary the application of Article 41 depending on the number of individuals involved. In particular, they considered that the costs of proceedings and the legitimate interests in issue were completely different according to whether the litigants had applied to the courts collectively or individually. The same was true in respect of the possible frustration experienced as a result of

undue delay in judicial proceedings. Turning to the impugned proceedings, launched by an application to have a decision set aside, the number of applicants could have had no impact on the eventual outcome. The Government concluded that the Grand Chamber should reduce the total amount awarded by the Chamber in respect of non-pecuniary damage.

3. *The Court's assessment*

38. The Court notes at the outset that the parties have expressed no opinion as to the pecuniary damage that may have been sustained by the applicants. Accordingly, it will examine only the question of an appropriate award in respect of non-pecuniary damage in the instant case, that is, in a case concerning the length of joint proceedings before the domestic courts which were subsequently lodged collectively with the Court.

(a) **The Court's criteria**

39. It should first of all be reiterated that, where it finds a violation of a Convention provision, the Court may award the applicant an amount for the non-pecuniary damage sustained. This amount is intended to make reparation for the state of distress, inconvenience and uncertainty resulting from the violation in question (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV). Consequently, where proceedings have been excessively long, the amount awarded in respect of non-pecuniary damage must take account of the prejudice of this type which the applicant may have sustained.

40. It is impossible, however, to account in detail for the relative importance of each of the factors taken into consideration in calculating the amount to be awarded for non-pecuniary damage, an amount which is determined on an equitable basis. Nonetheless, the case-law provides a number of guidelines on the subject (see, among other authorities, *König v. Germany* (Article 50), judgment of 10 March 1980, Series A no. 36, pp. 16-17, § 19, and *Davies v. the United Kingdom*, no. 42007/98, § 38, 16 July 2002). It is necessary, however, to specify these guidelines with regard to the non-pecuniary damage caused by the excessive length of joint proceedings.

41. In particular, where common proceedings have been found to be excessively long, the Court must take account of the manner in which the number of participants in such proceedings may influence the level of distress, inconvenience and uncertainty affecting each of them. Thus, a high number of participants will very probably have an impact on the amount of just satisfaction to be awarded in respect of non-pecuniary damage. Such an approach is based on the fact that the number of individuals participating in common proceedings before the domestic courts is not neutral from the perspective of the non-pecuniary damage that may be sustained by each of them as a result of the length of those proceedings when compared with the

non-pecuniary damage that would be sustained by an individual who had brought identical proceedings on an individual basis. Membership of a group of people who have resolved to apply to a court on the same factual or legal basis means that both the advantages and disadvantages of common proceedings will be shared.

In addition, where common proceedings are handled and coordinated by the same representative, the costs and fees are usually lower for each applicant than they are in the case of proceedings brought by an individual, which simplifies the process of applying to the courts. Equally, the grouping together of applications usually enables a court to join related cases and may thus facilitate the proper administration of justice; it may also enable proceedings to be conducted more speedily. Thus, such proceedings offer advantages that need to be taken into consideration (see, *mutatis mutandis*, *Scordino v. Italy (No. 1)* [GC], no. 36813/97, § 268, ECHR 2006-...).

42. On the other hand, these last characteristics of common proceedings may in turn give rise on the part of the persons concerned to an expectation that the State will act diligently in dealing with their case. Unjustified delay in this area is therefore likely to exacerbate any prejudice that is sustained.

43. In addition, the Court considers that what is at stake in the impugned proceedings is a relevant factor in assessing any non-pecuniary damage that may have been sustained. The more each applicant's personal interests are at stake in the proceedings, the greater the inconvenience and uncertainty to which they are subjected (see paragraph 39 above).

44. Finally, the Court notes that it enjoys a certain discretion in the exercise of the power conferred by Article 41, as is borne out by the adjective “just” and the phrase “if necessary” (see *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, p. 42, § 114). That being the case, and unless it concludes that the finding of a violation provides sufficient just satisfaction for the non-pecuniary damage sustained, the Court must ensure that the amount awarded is reasonable in terms of the violation that is found. In particular, it must take account in its assessment of the amounts already awarded in similar cases and, in the event of common proceedings, of the number of applicants and the total sum awarded to them.

(b) Application in the present case

45. The Court notes that, of all the elements that may be taken into consideration in assessing the non-pecuniary damage sustained in the instant case, some entail a reduction, others an increase, in the amount to be awarded.

46. With regard to those that would entail a reduction in the amount to be awarded, the Court notes, firstly, that the fifty-eight applicants had acted together in bringing the proceedings in issue before the administrative courts in order to challenge the lawfulness of an administrative decision.

Thus, they did not lodge separate requests before the competent courts, but were all pursuing the same objective, namely that of obtaining an examination by the Supreme Administrative Court of the lawfulness of the decision which was challenged on each occasion. In addition, in proceedings before the administrative courts to have a decision set aside, the number of claimants has no impact whatsoever on the outcome of the proceedings, which concern exclusively the lawfulness of the contested administrative decision. The Court therefore considers that, in comparison with civil proceedings in which claimants lodge individual claims for compensation simultaneously, the shared objective of the impugned proceedings was such as to alleviate the inconvenience and uncertainty experienced on account of their delay.

47. With regard to those elements which would entail an increase in the amount to be awarded, the Court takes the following into account. Admittedly, the financial stakes for the applicants in the impugned proceedings were merely implicit, rather than direct. The sole purpose of those proceedings was to challenge the legality of the disputed administrative decisions. Nevertheless, according to the applicants' own evaluation, the value of their property which remained blocked amounted to about EUR 24,000,000. The Court therefore considers that what was at stake in the impugned proceedings, the outcome of which would directly determine the possibility for the applicants to pursue their own property interests, was such as to exacerbate the prejudice sustained by them on account of the protracted nature of the proceedings.

48. Having regard to the foregoing, the Court considers that the extension of the impugned proceedings beyond a "reasonable time" undoubtedly caused the applicants non-pecuniary damage which would justify an award. It also takes into consideration the number of applicants, the nature of the violation found and the need to determine the amount in such a way that the overall sum is compatible with the relevant case-law and is reasonable in the light of what was at stake in the proceedings in question. On the basis of the above considerations, and ruling on an equitable basis, the Court awards under this head EUR 4,000 to each of the applicants listed under nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58, and EUR 2,500 to each of the applicants listed under nos. 10-11, 20-22, 24-25, 32, 41, 45 and 50-57, plus any tax that may be chargeable.

B. Costs and expenses

1. The Chamber's judgment

49. The Chamber held that the applicants' claims under this head were neither detailed nor supported by the necessary documents. It therefore dismissed their claim for this item.

2. *The parties' submissions and the Court's assessment*

50. The parties did not make any observations on this point. Accordingly, the Court considers it unnecessary to make any award to the applicants under this head.

C. Default interest

51. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*, by fifteen votes to two,
 - (a) that the respondent State is to pay, within three months, EUR 4,000 (four thousand euros) to each of the applicants listed under nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58 and EUR 2,500 (two thousand five hundred euros) to each of the applicants listed under nos. 10-11, 20-22, 24-25, 32, 41, 45 and 50-57, in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses*, unanimously, the remainder of the applicants' claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 February 2008.

Vincent Berger
Jurisconsult

Jean-Paul Costa
President

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:

- concurring opinion of Judge Bratza joined by Judge Rozakis;
- partly dissenting opinion of Judges Zupančič and Zagrebelsky.

J.-P.C.
V.B.

CONCURRING OPINION OF JUDGE BRATZA JOINED BY JUDGE ROZAKIS

While I agree with the result reached by the majority of the Grand Chamber in this case and in the related case of *Arvanitaki-Roboti and Others v. Greece*, I prefer to explain my reasons shortly in my own words.

The starting point for consideration of the question raised in both cases is Article 41 itself. As is clear from the terms of the Article, not only is the grant by the Court of financial or other reparation to the applicant where a violation of the Convention is found a discretionary measure, but any satisfaction awarded to the injured party must be “just”. In the case of damage of a non-pecuniary nature, the term connotes that any sum awarded must reflect the nature of the Convention right violated, the gravity of the violation found and its impact on the individual applicant.

Where a violation of Article 6 of the Convention has been found on the grounds of the excessive length of domestic proceedings, it has been the usual practice of the Court to award financial compensation to the successful applicant to reflect the frustration, anxiety and inconvenience caused to the applicant by the unacceptable delays in the conduct of the proceedings for which the national courts or tribunals are responsible. Where the applicant is an individual litigant or a member of a small group of litigants who are parties to the same domestic proceedings, the award of just satisfaction has not in general caused problems. The Court, acting “on an equitable basis”, will normally award a sum which takes account of the overall length of the proceedings, the number of levels of jurisdiction through which the proceedings have passed and the extent to which the applicant may have contributed to the overall length, as well as the awards made in comparable cases against the same or other respondent States, in order to ensure, so far as possible, consistency of approach.

However, where, as in the present case, the complaint of undue length of proceedings is made by a large number of parties to the same set of civil proceedings, a further consideration comes into play, namely the proportionality of the overall award. Although it is the Convention right of each individual which is found to have been violated, the total amount of the award under Article 41 should not be out of all proportion to the nature and seriousness of the violation found in the case, including the fact that the violation found relates to the excessive length of a single set of proceedings. The importance of upholding this principle justifies the making of a substantial reduction in the amount which would have been awarded to each applicant, had he or she been the only party, or one of a small number of parties, to the proceedings.

In the present case, the sum at stake in the domestic proceedings was admittedly very substantial. However, the issue before the Grand Chamber relates not to pecuniary damage suffered by the applicants but to non-pecuniary damage in respect of the length of the civil proceedings. In my view, an award such as that made by the Chamber, exceeding € 450,000 for the excessive length of a single set of proceedings offends against the totality principle and requires to be substantially reduced.

The applicants argue that awards made in respect of non-pecuniary damage should not depend on the number of applicants and that there is no basis for the proposition that the greater the number of people who sustain damage as a result of the excessive length of proceedings, the less the frustration and anxiety experienced.

I am unable to accept this argument. There are, in my view, as the judgment rightly points out, considerable advantages for the claimants themselves, as well as for the effective administration of justice in joining in a single set of proceedings rather than pursuing identical claims in separate proceedings. The sharing of the responsibility for the conduct of the proceedings, as well as the substantial saving of costs for the individual applicant which would normally follow from being a party to joint proceedings handled and coordinated by a single set of legal representatives, are significant benefits which must be taken into account by the Court when assessing the degree of frustration, anxiety and inconvenience caused to the individual applicants by delays in the proceedings.

While views might legitimately differ as to whether the sums awarded by the Grand Chamber in the present case strike the requisite balance between compensating the individual applicants for a violation of their Convention rights and maintaining the proportionality of the overall award, I am willing to accept the sums awarded by the majority on an equitable basis.

PARTLY DISSENTING OPINION OF JUDGES ZUPANČIČ
AND ZAGREBELSKY

(Translation)

To our regret, we were unable to concur with the majority as regards the application of Article 41 of the Convention once it had been found that there had been a violation of the right to a reasonable length of proceedings in the case in issue.

The question before the Grand Chamber was whether the fact that there were numerous applicants could be included in the criteria to be used in determining the amount of compensation to be awarded in respect of non-pecuniary damage. The majority found (in paragraph 41 of the judgment) that it could, observing that “a high number of participants will very probably have an impact on the amount of just satisfaction to be awarded in respect of non-pecuniary damage”, that “the number of individuals participating in common proceedings before the domestic courts is not neutral from the perspective of the non-pecuniary damage that may be sustained by each of them as a result of the length of those proceedings when compared with the non-pecuniary damage that would be sustained by an individual who had brought identical proceedings on an individual basis” and that “membership of a group of people who have resolved to apply to a court on the same factual or legal basis means that both the advantages and disadvantages of common proceedings will be shared”.

Even though, in line with a practice which we find questionable, the judgment does not make explicit the reasoning which led to the indication of the amount to be awarded (still less does it touch on the issue of whether the level of compensation ought to be the same for each victim of the violation), the significance of the new criterion, which has resulted in a substantial reduction of the compensation in comparison to the Court's general practice, may be discerned.

In our opinion, however, there is no psychological or other reason which can justify the statement of principle adopted by the Grand Chamber. Nor can we identify in this situation any link or similarity with the area of class actions and the criteria which are used in such cases to calculate the amounts to be awarded to each of the successful parties (in respect of pecuniary damage). We consider that, whatever the number of victims, each of them must be compensated, “if necessary”, for the consequences which he or she must have suffered as a result of the violation in question. Just satisfaction is rightly provided for in Article 41 to compensate the victim of a violation in so far as possible. What was at stake in the domestic proceedings and its effects on the person of the applicant are, we believe, the decisive factors to be taken into consideration.

In this connection, we consider that there is no reason to take into consideration the total sum awarded to the applicants, with a view to reducing that sum in a way that affects each victim (see paragraph 44).

That being said, we would add that it is understandable that the Court was concerned by the sheer scale of the amounts in question if they were not to be reduced. In our opinion, however, this is the inevitable consequence of several questionable aspects of the Court's practice with regard to the application of Article 41 in the event of a violation of the right to a reasonable length of proceedings. These range from an almost automatic assumption that non-pecuniary damage has been sustained, without the requirement of any evidence or argument, and the use of mathematical calculation criteria which take into account the entire length of the proceedings, even the period recognised as justified, to the use in this area of scales which are unrelated to the Court's practice concerning violations which cause considerably greater suffering to the victims (Articles 2, 3, 8, 10, etc.).

In our opinion, rather than intervening after the event by introducing a new and highly questionable criterion, the Court ought to re-examine the underlying reasons for the consequences which it was seeking to avoid.

APPENDIX**List of applicants**

1. Georgios KAKAMOUKAS
2. Charisios KAKAMOUKAS
3. Evaggelia KAKAMOUKA
4. Maria LIOUTA
5. Styliani KAKAMOUKA
6. Vassiliki AZA
7. Stavros KAKAMOUKAS
8. Antonios KAKALIANANTIS
9. Vassiliki NYFOUDI
10. Vassiliki KOUSIOTA
11. Styliani AZA
12. Nikolaos KAKAMOUKAS
13. Panagiota KAKAMOUKA
14. Antonios KAKAMOUKAS
15. Vassilios KAKAMOUKAS
16. Christos or Christodoulos KAKAMOUKAS
17. Vassiliki VLACHOU
18. Maria TSIORLINI
19. Anastasia POUFLI or CHATZIPOUFLI
20. Syrmo ARGYROUDI
21. Giannoula MATZIRI
22. Kyriaki PLOUSIOU
23. Ioanna PAPADOPOULOU
24. Maria MATZARLI
25. Vassiliki CHATZISTOGIANNOUDI
26. Dimitrios KYRTSLOUDIS
27. Charilaos KYRTSLOUDIS
28. Vassilios LATTOS
29. Panagiota PATERA
30. Anastasia LATTOU
31. Alexandros Athanassiou LATTOS
32. Evaggelos LATTOS
33. Maria ARGYRIOU
34. Panagiotis LATTOS
35. Georgios LATTOS
36. Dimitrios LATTOS
37. Ioanna or Giannoula KAKALIANTI
38. Alexandros Georgiou LATTOS
39. Konstantinos LATTOS

40. Vassiliki CHOLIDI
41. Niki DIMOUDI
42. Paschalis LATOS-PANOUSIS
43. Stavros PANOUSIS
44. Louiza PASCHALOUDI
45. Andromachi BALOKOSTA
46. Solon KOUFALIOTIS
47. Eleni LATTOU
48. Dimitrios LATTOS
49. Fani KARAKASI
50. Eftychia KONTOULI
51. Chrysi BABARATSA
52. Nikolaos TSOLAKIS
53. Evaggelia ZLATANOU
54. Maria MALIGGOU
55. Athanasios TSIOLAKIS
56. Maria VLACHOPOULOU
57. Fani TSITSAKI
58. Aikaterini GYIOKA