



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

FIRST SECTION

CASE OF VONTAS AND OTHERS v. GREECE

(Application no. 43588/06)

JUDGMENT

STRASBOURG

5 February 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Vontas and Others v. Greece,

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

Nina Vajić, *President*,

Christos Rozakis,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 January 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 43588/06) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Greek nationals, Mr Christos Vontas, Mrs Anna Kapetanaki and Mrs Filia Vontas (“the applicants”), on 3 October 2006.

2. The applicants were represented by Mr S. Tsakyrakis and Mr N. Chatzis, lawyers practising in Athens. The Greek Government (“the Government”) were represented by their deputy Agents, Mr S. Spyropoulos, Adviser, State Legal Council, and Mrs Z. Hatzipavlou, Legal Assistant, State Legal Council.

3. On 12 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

A. The applicants' property and their title deeds

4. The applicants are the owners of a house and a surrounding plot of land with a surface area of 769 square metres, located on the island of Spetses. The plot is adjacent to the promenade of the Port of Spetses. The title deeds relating to this property, duly deposited in the Land Registry, date back to 1912.

5. In particular, on 11 September 1912 G.P. bought the plot at a public auction conducted by the Registrar of the Spetses Magistrates' Court. On 5 January 1914 G.P. sold the plot to K.D., who sold it to her daughter F.V. on 8 April 1921. The latter donated a part of the plot to her daughter, the third applicant, on 16 June 1965. On 29 April 1975 F.V. donated the remaining part of the plot to her son, the first applicant. On 9 March 1990 the first applicant granted himself a life interest in the property and settled the remainder on his daughter, the second applicant.

6. All these transactions were executed by deeds of public notaries duly deposited in the transcription registry. The applicants have always declared the property to be in their ownership and have paid the relevant taxes on it.

B. The proceedings before the domestic courts

7. In autumn 1991 the first applicant applied to the Planning Office of the municipality of Spetses for a permit to start minor building works.

8. On 5 September 1991 the municipality of Spetses claimed that the northern part of the land in question constituted land for public use. On 6 July 1992 the Planning Office rejected the first applicant's request on the ground that the topographical survey submitted by the applicants was inaccurate, as it wrongly included public land among their property.

9. On 24 June and 15 December 1993 the municipality of Spetses and the applicants filed opposing claims with the Piraeus Court of First Instance, each asking to be declared the owners of the disputed piece of land.

10. In 1994 the Piraeus Court of First Instance delivered an interlocutory judgment ordering a number of expert assessments. In particular, the court appointed T.A., a civil engineer, to conduct an expert assessment in order to clarify whether the disputed land was included in the applicants' title deeds (decision no. 464/1994).

11. On 8 March 2002 T.A. took into consideration the applicants' title deeds, the planning legislation in force and the official topographical and planning charts of the Planning Office of the Piraeus Prefecture and produced his expert report. After having prepared a topographical survey, he concluded that the disputed land was included in the applicants' title deeds.

12. On 25 September 2003 the Piraeus Court of First Instance dismissed the applicants' claims, holding that an area of 220 square metres on the northern side of the applicants' garden constituted public land (judgment no. 4328/2003). In particular, the Piraeus Court of First Instance took into account several witnesses' testimonies and aerial photographs and attached particular importance to the fact that the applicants had never exercised any ownership rights over that part of the land, since they had never cultivated it or planted trees or erected a fence there.

13. On 24 November 2003 the applicants appealed to the Piraeus Court of Appeal.

14. On 28 February 2005 the Piraeus Court of Appeal dismissed the applicants' appeal (judgment no. 213/2005). In particular, it held that according to a rule of Byzantine-Roman law (*vetustas*), which had been applied in Greece before the introduction of the Civil Code in 1946, a property could be considered to be "for public use" (*κοινόχρηστο*) if it had been in common use for "an indefinite number of years in human memory" (*αμνημονεύτου χρόνου αρχαιότητα*). It further explained that, for this rule to be applied, two generations of people, each one spanning forty years had to remember that the disputed land had been in public use in the past. This eighty-year period in human memory must have been completed by 23 February 1946, the date on which the Civil Code had come into force, since the Code did not provide for such a rule.

15. Subsequently, the Piraeus Court of Appeal applied the above rule and found that it was proved from the testimonies of the witnesses put forward by the municipality of Spetses that the disputed land had been freely used by local people from 1866 to 1946 and had thus become public. It concluded that, independently of the question whether the disputed land was included in the applicants' title deeds, it had become land "for public use", and thus part of the municipality's property. Furthermore, it considered that the fact that the land in issue did not appear as public property in the official planning charts of the island of Spetses was of no importance since the land had become public because of its public use.

16. On 14 June 2005 the applicants appealed to the Court of Cassation.

17. On 15 February 2006 the Court of Cassation dismissed the appeal. It held that the Piraeus Court of Appeal had correctly applied Byzantine-Roman law to the facts of the case. It accepted that it had been proved that the disputed land had been in common use since 1866 and concluded that the applicants had never become its owners (judgment no. 299/2006). Its judgment was "finalised" (*καθαρογραφή*) on 12 April 2006.

THE LAW

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

18. The applicants complained that the result of the proceedings before the Greek courts amounted to a deprivation of possessions contrary to Article 1 of Protocol No. 1 to the Convention, which reads 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.”

A. Admissibility

The Government’s objection of non-exhaustion of domestic remedies

19. The Government argued that the applicants had failed to exhaust domestic remedies, since they had not claimed before the national courts, even in substance, that the application of the *vetustas* rule of Byzantine-Roman law violated their right to the peaceful enjoyment of their possessions. They asserted that neither the applicants nor their lawyer had alleged at any stage of the proceedings before the civil courts that the above rule was contrary to the principles of legal certainty and the rule of law.

20. The applicants claimed that according to the Court’s case-law, the requirement of Article 35 was satisfied if the arguments presented before national courts covered the substance of the complaints under the Convention. In their submission, they had clearly raised before the national courts the issue concerning their right of property, since their dispute with the municipality of Spetses concerned the ownership of a piece of land.

21. The Court reiterates that in the context of machinery for the protection of human rights the rule on exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time it requires in principle that the complaints intended to be made subsequently at international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38,

ECHR 2004-III, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

22. In the present case, the Court points out that the applicants instituted proceedings before the civil courts, asking to be declared the owners of the disputed piece of land, and that the subject matter of their claims undoubtedly concerned the protection of their property rights. Furthermore, by appealing to the Court of Cassation they exercised all the ordinary remedies available to them in that respect. In the Court's view, by asking to be recognised as the owners of the disputed land and by challenging the State's ownership, the applicants also contested, albeit implicitly, the application of the *vetustas* rule. Therefore, it cannot be said that they did not afford the domestic courts the opportunity to redress by their own means the alleged violation of Article 1 of Protocol No. 1. Consequently, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

23. Moreover, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

24. The Government submitted that Article 1 of Protocol No. 1 did not apply in the present case, since the applicants could not claim to be the owners of a "possession" within the meaning of that provision. None of their claims had been recognised and determined by a judicial decision having final effect. Yet that was the condition for a claim to be certain, enforceable and, accordingly, protected by Article 1 of Protocol No. 1. Furthermore, they pointed out that the national courts had thoroughly examined the applicants' claims for recognition as the owners of the disputed land and had dismissed them in conformity with the legislation. In their submission, the relevant decisions had duly indicated the reasons relied upon.

25. In the alternative, the Government claimed that even if Article 1 of Protocol No. 1 were applicable in the present case, the requirements of that provision, namely the requirements of legal certainty, had been satisfied in full. Relying on the case of *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*, they alleged that the *vetustas* rule of Byzantine-Roman law was precise, foreseeable in its application and justified by the demands of the general interest of the community.

26. The applicants claimed that it was beyond any doubt that they had a property right or at least an exceptionally strong legitimate expectation for

the purposes of Article 1 of Protocol No. 1, since they had acquired the disputed property through lawful transactions and were in possession of title deeds dating back to 1912. Furthermore, they alleged that the Greek State had always treated them and their ancestors, at least since 1912, as the owners of the disputed land. Accordingly, the applicants claimed that they had a substantive interest which fell within the scope of Article 1 of Protocol No. 1.

27. The applicants further submitted that although they had every reason to believe that their rights as owners would be recognised and respected by the authorities, the authorities and the national courts had deprived them of their rights by applying a rule of Byzantine-Roman law that did not satisfy the requirements of legal certainty. In their submission, the Greek courts had based their conclusion on the testimony of witnesses who claimed that the land was public. Moreover, the applicants pointed out that the present case was not similar to the *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd* case, contrary to the Government's assertion, since it did not concern the application of a clear and foreseeable rule on adverse possession. Lastly, the applicants pointed out that if the judgments of the Greek courts were found to be compatible with the Convention then no property was safe in Greece.

2. The Court's assessment

(a) Whether there was a "possession" within the meaning of Article 1 of Protocol No. 1

28. The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is independent from the formal classification in domestic law (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). The issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicants title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 60, ECHR 2000-XII).

29. Turning to the facts of the present case, the Court points out that according to the title deeds, the property in question has belonged to the applicants and their predecessors from at least 1912. This view is confirmed by the civil engineer's expert report, which concluded that the disputed land was included in the applicants' title deeds. Furthermore, it is undisputed that both the public auction and the subsequent transfers of the disputed property were conducted by public officials and were formally registered in compliance with the publicity requirements established by the relevant law.

30. Furthermore, the Court cannot overlook the fact that at least until 1991, when the municipality of Spetses claimed for the first time that the land in question constituted land for public use, the Greek State always

treated the applicants as the lawful owners of the disputed land. In particular, not only did the land in question appear as private property in the official planning charts of the island of Spetses, but the applicants also paid taxes on it.

31. In view of all the above, it emerges that the applicants were the owners of the disputed land. Therefore, the Court is of the opinion that they have a substantive interest that constitutes a “possession” for the purposes of Article 1 of Protocol No. 1, which is applicable to the instant case.

(b) Whether there has been an interference with the right of property

32. Having accepted that the applicants peacefully enjoyed possession of the disputed land, based on title deeds dating back to 1912, the Court considers that the Piraeus Court of Appeal’s judgment no. 213/2005 qualifying the disputed land as being “for public use” constituted an interference with the applicants’ right to the peaceful enjoyment of their possessions which amounted to a “deprivation” of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

33. The Court must therefore examine whether the interference in issue complied with the requirements of Article 1 of Protocol No. 1.

(c) Whether the interference was justified

34. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only “subject to the conditions provided for by law” and the second paragraph recognises that States have the right to control the use of property by enforcing “laws”. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

35. The requirement of lawfulness, within the meaning of the Convention, presupposes, among other things, that domestic law must provide a measure of legal protection against arbitrary interferences by the public authorities with the rights safeguarded by the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). However, the mere existence of a basis in domestic law does not satisfy the requirements of legal certainty. The Court is also called upon to examine the quality of the law in question, namely the existence of rules that are accessible, precise and foreseeable in their application (see, among many other authorities, *Apostolidi and Others v. Turkey*, no. 45628/99, § 70, 27 March 2007). Furthermore, in the context of Article 1 of Protocol No. 1, the Court has held that the States are under a positive obligation to provide

judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any cases concerning property matters (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII; *Bistrović v. Croatia*, no. 25774/05, § 33, 31 May 2007).

36. This means in particular that Article 1 of Protocol No. 1 implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the relevant authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 134, ECHR 2005-XII). In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (see *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

37. Turning to the facts of the present case, the Court observes that the municipality of Spetses brought proceedings against the applicants, without their action being subject to time-limits, and claimed that the land was public despite the applicants' title deeds. In fact, the Greek courts found the State to be the rightful owner of the disputed land on the basis of a rule of Byzantine-Roman law: the *vetustas* rule, which had been applied in Greece before the introduction of the Civil Code in 1946, and which provided that if a piece of land had been in common use for "an indefinite number of years in human memory", namely an eighty-year period completed before the Civil Code's entry into force, then it belonged to the local municipality. The Court notes that in using the *vetustas* rule the applicants, as well as any other property owners, could not consider themselves to be the rightful owners, despite their valid title deeds, unless they could prove that between 1866 and 1946 the disputed land was not in public use.

38. Therefore, contrary to the Government's submissions, the present case is different from the *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd* case, which concerned the applicant companies' loss of ownership of agricultural land through "adverse possession" to a neighbour who had used the land for more than twelve years without permission. In that case, the Court accepted that even where title to real property was registered, the legislature could attach more weight to lengthy, unchallenged possession than to the formal fact of registration (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 74, 30 August 2007). However, the present case does not concern the applicants' loss of ownership through "adverse possession" to the municipality due to the fact that the land in question was subsequently used by local people for a certain period of time. In the present case, the domestic courts concluded that the applicants had never acquired ownership because the land had previously been in public use.

39. Having said that, the Court stresses that it is not its task to examine whether the domestic courts have rightfully applied domestic law, but it must examine whether the manner in which that law was applied to the applicants in the particular circumstances would violate the protection offered to them under Article 1 of Protocol No. 1 to the Convention.

40. In doing so, the Court is satisfied that the procedural guarantees offered by domestic law satisfied the requirements of Article 1 of Protocol No. 1. Furthermore, the Court does not find it necessary to determine whether the interference was “lawful”. The Court notes, however, that the Court of Appeal reached the conclusion that the disputed land had been freely used by local people from 1866 to 1946 basing itself mainly on the testimonies of the witnesses put forward by the municipality of Spetses. It disregarded several weighty items of evidence submitted by the applicants – such as the existence of title deeds covering a period between 1912 and 1990, the report drafted by the expert designated by the Piraeus Court of First Instance, confirming that the disputed land was part of the applicants’ land, and the official planning charts of the island of Spetses, in which the land in issue appeared as private property. In fact, in the present case, the only reason the Court of Appeal put forward in disregarding the applicants’ title deeds, the expert’s report and the official planning charts of the island was that this evidence was of no importance since the land had become public under Roman-Byzantine law. This approach was confirmed in the judgment of the Court of Cassation.

41. The Court finds that the way in which the domestic courts assessed the elements submitted before them when applying the *vetustas* rule and the consequences this had for the applicants amounted to an unjustified interference with their property rights. It recalls that in most contemporary legal systems property rights are clearly defined by law and a system of title deeds exists in order to ensure legal certainty as to the ownership of land. Subsequently, these titles can be relied upon by owners as proof that a piece of land belongs to them. The fact that in the present case the domestic courts ignored concrete evidence pointing to the applicants’ ownership and concluded that the disputed land had become part of the municipality’s property because the applicants were unable to prove events which took place in the distant past was in the Court’s view and in the circumstances of this case contrary to the principle of legal certainty and has led to injustice (see, to similar effect, *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 51, *Reports of Judgments and Decisions* 1996-IV, and *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd*, cited above, §§ 68-69).

42. In the light of the foregoing, the Court concludes that the Greek courts’ interpretation of domestic law led to an interference with the applicants’ rights which was not justified for any of the reasons set out in

Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Valová, Slezák and Slezák v. Slovakia*, no. 44925/98, § 54, 1 June 2004).

43. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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 and costs and expenses

45. The applicants pointed out that the municipality of Spetses had started further proceedings, which were still pending, in order to enforce the judgment of the Court of Cassation. Thus, they asked the Court to invite the domestic courts to dismiss the enforcement proceedings. In their view this was the most appropriate remedy in the present case. If nonetheless the Court would consider that they should be awarded monetary compensation, they stressed that an expert report was required in order to assess the market value of the disputed land.

46. The applicants further claimed 4,560 euros (EUR) in reimbursement of the fees paid to the municipality of Spetses by order of the domestic courts, and EUR 7,200 for their lawyers' fees in the proceedings before the Court. In support of their claim the applicants produced two bills of costs, and a disbursement bill in the amount of EUR 733, charged by the expert who had prepared the valuation report for the proceedings before the Piraeus Court of First Instance, amounting to EUR 12,493 in total.

47. The Government stressed that it was not the Court's task to substitute itself for the domestic authorities and that it was primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation and assessment of evidence. They argued that in the present case the domestic courts had found that the applicants were not the owners of the disputed land. Therefore, there was no room for *restitutio in integrum*, since that would amount to reversing the judgment of the domestic courts and ruling in favour of the applicants. The Government also argued that the applicants should not be awarded any sum in respect of pecuniary damage, since they had not specified their claim.

48. As regards costs and expenses, the Government submitted that there was no causal link between the amounts claimed in respect of the domestic proceedings and the alleged violation of Article 1 of Protocol No. 1. They further stated that the legal fees for the proceedings before the Court were

excessive and that a total sum not exceeding EUR 3,000 would be appropriate in respect of legal costs.

49. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

50. In view of the circumstances of the present case and the specific reasons which have led it to find a violation of Article 1 of Protocol No. 1, the Court considers that the restoration of the applicants' ownership rights would put them as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1.

51. Further, the Court notes that according to its established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

52. In the present case, having regard to the evidence before it and the above-mentioned criteria, the Court finds that the costs and expenses in the proceedings brought in Greece and at Strasbourg to prevent or redress the situation it has held to be contrary to Article 1 of Protocol No. 1 were necessarily incurred, are reasonable as to quantum and have been fully substantiated. Therefore, the Court considers it reasonable to award the applicants jointly the sums claimed for the proceedings before the domestic courts and the Court in full, namely EUR 12,493 plus any tax that may be chargeable to them on that amount.

B. Default interest

53. 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. *Declares* the application admissible unanimously;
2. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* by 6 votes to 1 that the respondent State is to restore, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the applicants' ownership rights over the disputed land;
4. *Holds* unanimously
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,493 (twelve thousand four hundred and ninety-three euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 5 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Malinverni is annexed to this judgment.

S.N.
N.V.

PARTLY DISSENTING OPINION
OF JUDGE MALINVERNI

(*Translation*)

1. I voted with the majority in favour of a finding of a violation of Article 1 of Protocol No. 1. As the judgment rightly states, this violation is to be found in the manner in which the Greek courts interpreted, then applied the domestic law.
2. I also share the majority view that the Court's finding of a violation of the Convention "imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach" (§ 49) (*restitutio in integrum*).
3. It is also exact that "if the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it" (*idem*).
4. Where I am unable to follow my colleagues is when they affirm that "[i]n view of the circumstances of the present case and the specific reasons which have led it to find a violation of Article 1 of Protocol No. 1, the Court considers that the restoration of the applicants' ownership rights would put them as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1" (§50).
5. The majority based its reasoning on the fact that the land at issue actually belonged to the applicants (paragraphs 31 and 41). The authorities therefore had an obligation to return it to them. However, that was not the opinion of the Greek courts.
6. Upholding the judgment of the first-instance court, the Piraeus Court of Appeal held that "independently of the question whether the disputed land was included in the applicants' title deeds, it had become land "for public use", and thus part of the municipality's property" (§ 15). The case was then referred to the Court of Cassation, which found that "the applicants had never become [the land's] owners" (§ 17). We may therefore conclude that, in the opinion of the Greek courts, "the applicants had never acquired ownership" (§ 38).
7. If, as the Greek courts maintain, the applicants never owned the disputed land, it is difficult to see how the Court could order the authorities to return it to them. The authorities could rely on the judgments of the domestic courts recognising their ownership rights, which have since become *res judicata*. Without a reopening of the domestic proceedings, which does not appear to be possible in Greek law, the solution proposed by the majority (*restitutio in integrum*) is

not the most appropriate *in casu*. For that reason I voted against point 3 of the operative part.

8. In my opinion the Court should rather, in this case, have ordered the payment of compensation to the applicants for the damage sustained as a result of the unfair hearing they were given, which “has led to injustice” (§41). In this case the violation of Article 1 of Protocol No. 1 is of a far more procedural than substantive nature. It was the incorrect application of domestic law (the *vetustas* rule instead of other rules) that led to a violation of Article 1 of Protocol No. 1.