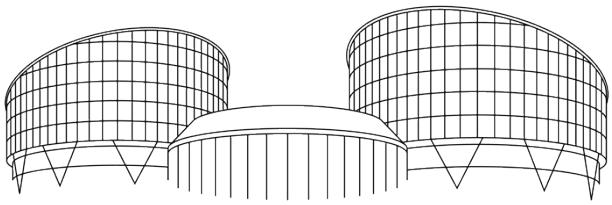

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZOLOTAS v. GREECE (No. 2)

(Application no. 66610/09)

JUDGMENT
[Extracts]

STRASBOURG

29 January 2013

FINAL

29/04/2013

This judgment has become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Zolotas v. Greece (no. 2),

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

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,
and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 8 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 66610/09) 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 a Greek national, Mr Anastasios Zolotas ("the applicant"), on 7 December 2009.

2. The Greek Government ("the Government") were represented by their Agent's delegates, Ms F. Dedoussi, Adviser at the State Legal Council, and Ms Z. Hadjipavlou, Legal Assistant at the State Legal Council.

3. The applicant alleged, in particular, a violation of the right guaranteed by Article 1 of Protocol No. 1.

4. On 31 August 2011 the Government were given notice of the application. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

5. The applicant was born in 1924 and died on 27 February 2011, while his application was pending before the Court. His son, Mr Panayotis Zolotas, stated that he wished to continue the proceedings.

I. THE CIRCUMSTANCES OF THE CASE

6. On 11 July 1974 the applicant, who at that time was a practising lawyer, opened a bank account with the General Bank of Greece, into which

he paid the sum of 660,000 drachmas (1,936.90 euros (EUR)). From the second half of 1981 until 2003, he did not perform any transactions on the account (cash withdrawals or deposits or entering of interest in the booklet provided for that purpose). As both he and his wife had severe and disabling health problems, the applicant was obliged to live abroad for many years. On 6 February 2003 he requested the bank to inform him of the status of his account. The bank replied that, because there had been no transactions on the account since the second half of 1981, all his claims in respect of the account had become time-barred. However, it informed the applicant that it still kept an up-to-date file concerning him in its records, in which it entered the interest accruing on the account.

7. On 3 June 2003 the applicant brought an action against the bank in the civil courts, claiming the sum he had deposited with the bank, plus interest, giving a total amount of EUR 30,550.74. In judgment no. 1481/2005 of 21 April 2005 the Athens Court of First Instance dismissed his action, finding that the applicant's claims were barred by the twenty-year limitation period laid down in respect of claims arising out of an agreement on the deposit of fungible goods (*Ανώμαλη παρακαταθήκη*) within the meaning of Article 830 of the Civil Code (see paragraphs 18 and 19 below). In particular, the court stated as follows:

> "... [The applicant] relies on Article 1 of Protocol No. 1 ... and on the Paris Protocol of 20 March 1952 concerning protection of property; these are not applicable in the present case since the institution of statutory limitation under domestic law prevails over them. This statutory limitation [provided for by Article 247 of the Civil Code] is independent of the fact that, in accordance with Article 3 of Legislative Decree no. 1195/1942, cash deposits with national banks and the corresponding interest are transferred permanently to the State where they have not been claimed by the account holder for a period of twenty years for the deposits and a period of five years for the interest ..."

8. The applicant appealed against that judgment, basing his arguments on the relevant provisions of domestic law and on Article 1 of Protocol No. 1. He submitted that the limitation period had been suspended by *force majeure* or had stopped running in accordance with Article 260 of the Civil Code, since the bank had updated his file every six months, entering the interest that had accrued.

9. By judgment no. 2452/2006 of 6 April 2006 the Athens Court of Appeal dismissed the appeal, taking the view that the twenty-year limitation period applicable to agreements on the deposit of fungible goods had been justified by an aim in the public interest, namely that of terminating, in the interests of the community (*Κοινωνική οικονομία*), legal relationships that had been created so long before that their existence had become uncertain. The fact that the bank had continued to enter the interest accruing on the applicant's account did not, in the Court of Appeal's view, amount to a recognition of the applicant's claims capable of stopping the running of the twenty-year limitation period. In the case of bank deposits, the running of that period

could be interrupted only by a new deposit or withdrawal, by a transfer of funds or by the payment of interest. The Court of Appeal also based its decision on Legislative Decree no. 1195/1942, according to which sums of money in bank accounts that had remained dormant for twenty years were transferred to the State on expiry of that period.

10. The Court of Appeal also rejected the objection raised by the applicant to the effect that the limitation period had been suspended by *force majeure* (his and his wife's health problems). The court considered that there had been no *force majeure* in the case before it since the applicant and his wife had not been continuously ill throughout the limitation period, and particularly during the last six months of the period, with the result that it had not been impossible for the applicant to withdraw the sum deposited and the corresponding interest, either in person or via a representative.

11. The applicant appealed on points of law, relying on Article 1 of Protocol No. 1.

12. On 12 January 2009 the Court of Cassation dismissed the appeal as unfounded, on the ground that the application of the legislation in question had not infringed the applicant's right to the peaceful enjoyment of his possessions as defined by Article 1 of Protocol No. 1 (judgment no. 50/2009). More specifically, the Court of Cassation found as follows:

> "... [O]wing to the fact that the above-mentioned limitation period, like any statutory limitation period, is laid down in the public interest, which requires the regularisation of relationships that lie in the past and have therefore become uncertain, and is also dictated by the interest of the community, the impugned provisions are not contrary [to Protocol No. 1]."

13. That judgment was finalised and certified as authentic on 9 June 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Article 3 of Legislative Decree no. 1195/1942 on the statutory limitation of bank deposits and other securities and claims to the benefit of the State reads as follows:

Statutory limitation of deposits and interest to the benefit of the State

> "Cash deposits with national banks and the corresponding interest ... shall be transferred permanently to the State where they have not been claimed by the account holder or have not been the subject of any account transactions for a period of twenty years from the date on which they became available and, in the case of interest, for a period of five years from the date on which it became payable."

15. Legislative Decree no. 1195/1942 was ratified by Cabinet decision no. 315 of 30 May 1946 and remained in force after the enactment of the Civil Code.

16. Under the terms of the legislative decree, the time-barring of certain debts and claims, instead of benefiting the debtor as is the case under the ordinary law, benefits the State. In addition to deposits with banks and credit institutions, these debts and claims also encompass those arising out of the capital and income from securities held with banks and limited companies.

...

18. The relevant provisions of the Civil Code read as follows:

Article 247
Statutory limitation of claims

"The right to require another to perform or refrain from performing an act (claim) shall be subject to statutory limitation."

Article 249
Twenty-year limitation period

"Except where otherwise provided, the limitation period for claims shall be twenty years."

Article 260
Interruption – Recognition

"The limitation period shall stop running when the claim is recognised, by whatever means, by the debtor."

Article 830
Deposit of fungible goods

"The deposit of a sum of money or other fungible goods shall, in the event of doubt, be considered as a loan if the deposit taker is authorised to make use of the goods. However, as regards the time and place for return of the goods, the provisions concerning deposits shall apply in the event of doubt. ..."

19. The term "deposit of fungible goods" refers to the deposit, following agreement between the parties, of money or other fungible goods for safekeeping by the other party, where the latter is authorised to use the goods. According to well-established legal theory and case-law, the depositing of money in a bank at the normal interest rate and with the possibility of immediate withdrawal is characterised as an agreement for the deposit of fungible goods.

20. Under Article 260 of the Civil Code, the limitation period stops running when the debtor recognises the claim by whatever means. It is generally accepted that such recognition simply requires some act or conduct which demonstrates clearly that the debtor recognises his or her obligation and the creditor's claim. This may take the form of partial

reimbursement of the debt, the payment of interest, the provision of a security, a request for additional time or a request to be discharged from the debt (Georgiadis-Stathopoulos, *Civil Code – Interpretation article by article*, p. 461).

21. In order for the act of recognition by the debtor to stop the limitation period running (Article 260 of the Civil Code), it must be addressed to the creditor and must reach him or her (Court of Cassation judgment no. 1178/1976, *Nomiko Vima* 25/710). The mere fact of the debtor entering the debt in his or her records does not amount to recognition of the claim within the meaning of Article 260 and is therefore not capable of stopping the running of the limitation period (Court of Cassation judgment no. 924/1977, *Nomiko Vima* 26/726).

22. As to the limitation period for claims by account holders in respect of their accounts, it is accepted that the period ceases to run with any new deposit or withdrawal or any action resulting in a change to the account. Time does not cease to run as a result of interest accruing on the account, even if the interest is capitalised, or as a result of the six-monthly update of the account holder's file (Court of Cassation judgments nos. 739/2004 and 50/2009).

...

24. In a similar vein, the Court of Cassation ruled that banks were not obliged to notify account holders when the limitation period was due to expire. As the banks issued each customer with an account booklet, it was up to the customer to have it kept up to date, since it constituted proof of the sum deposited in the account and the performance of transactions on the account (Court of Cassation judgments nos. 432/1990 and 1623/1995).

THE LAW

I. GENERAL OBSERVATION

25. The Court must first of all determine the issue whether Mr Panayotis Zolotas is entitled to pursue the application originally lodged by the applicant, who died in February 2011.

26. The Court points out that in a number of cases in which an applicant died in the course of the proceedings, it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings (see, for example, *Deweer v. Belgium*, 27 February 1980, §§ 37-38, Series A no. 35; *X v. the United Kingdom*, 5 November 1981, § 32, Series A no. 46; *Vocaturo v. Italy*, 24 May 1991, § 2, Series A no. 206-C; *G. v. Italy*, 27 February 1992, § 2, Series A

no. 228-F; *Pandolfelli and Palumbo v. Italy*, 27 February 1992, § 2, Series A no. 231-B; *X v. France*, 31 March 1992, § 26, Series A no. 234-C; *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A; *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; and contrast *Scherer v. Switzerland*, 25 March 1994, §§ 31-32, Series A no. 287).

27. In the instant case the Court notes that Mr Panayotis Zolotas is the applicant's son and joint heir to his estate by intestate succession, and that the right protected by Article 1 of Protocol No. 1 is eminently transferable. Mr P. Zolotas therefore has a legitimate interest which gives him standing to complain on behalf of his deceased father.

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

28. The applicant complained that the domestic civil courts, basing their findings on the twenty-year limitation period laid down by the Civil Code and on Legislative Decree no. 1195/1942, had held that his claims *vis-à-vis* the bank where he held an account were time-barred and that the balance of the account went to the State, as the ultimate beneficiary of dormant bank accounts. He alleged a violation of Article 1 of Protocol No. 1, which provides:

> "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."

...

B. Merits

1. The parties' submissions

(a) The Government

30. The Government stressed that the main aim of Legislative Decree no. 1195/1942 was to serve the general interest by preventing banks, limited companies and other legal entities from collecting the capital or income from securities when the holders of the securities had remained inactive; this was due in most cases to their having died without descendants or having decided to renounce their claims.

31. The applicant's claims had become time-barred under the general provisions of the Civil Code, which existed in parallel with those of the legislative decree and independently of them. The legislative decree differed from Articles 247 et seq. of the Civil Code in that sums in respect of which claims had become time-barred went to the State and not to the bank where the dormant account was held. The application of the provisions of the legislative decree in the applicant's case had had no particular impact on the limitation period since, in the Government's view, his claim would in any event have been time-barred even on the basis of the Civil Code alone, the only difference being that the bank rather than the State would have been the beneficiary.

32. In the Government's submission, the bank had not been obliged to notify the applicant when the limitation period was due to expire. As the bank had issued him with an account booklet, it had been up to him to ensure that it was kept up to date, since it constituted proof of the sum deposited in his account and the performance of transactions on the account (the Government referred to Court of Cassation judgments nos. 432/1990 and 1623/1995 – see paragraph 24 above).

33. Accordingly, the six-monthly update of the applicant's account statements by the bank, in the form of entry of the interest accruing on the account, did not stop the running of the limitation period, since that act was not addressed to the applicant and did not reach him but merely concerned the updating of the bank's data, which was an internal bank procedure. The act in question had not been notified to the applicant, as the latter had not come forward to perform a transaction or to have the changes to his account recorded in his booklet.

34. The Government further criticised the applicant for not having shown a minimum of diligence. Lastly, they pointed out that the domestic courts had rejected the grounds of *force majeure* advanced by the applicant in support of his argument that the limitation period had been suspended on account of his own and his wife's health problems.

(b) The applicant

35. The applicant submitted that his intention, at the time of opening the account and in the spirit of freedom of contract, had been to take out a life annuity. The application of a limitation period, when it was clear that there was no threat to public order, had been incompatible in his view with the principles of good faith, morality and reciprocal practices. Moreover, the capitalisation of the deposit by means of the accrual of interest could not, in his view, be time-barred in so far as the bank had thereby recognised his claim, in an indirect but nevertheless certain manner. Furthermore, the capitalisation of interest constituted grounds for suspension of the limitation period.

36. The applicant stressed that the bank should have informed him of the risk he ran of losing his money, and that the State should have kept the funds for a reasonable minimum time after expiry of the limitation period in order to protect his property and that of his heir. The applicant cited the examples of the French, Italian and German legislation, which provided for persons to be informed in this way.

37. In the applicant's view, the fact that there had been no transactions on his account during the limitation period had been due to *force majeure*, particularly between the last six months of the period and the date (6 February 2003) on which he had requested the bank to inform him of the status of his account.

38. Lastly, the applicant submitted that Legislative Decree no. 1195/1942 had never been ratified and did not have the force of a valid legal instrument. He considered it damning that a democratic country like Greece should apply legislation dating from the era of occupation by Nazi Germany and confiscate individuals' money without informing them. In his view, public-interest grounds could not be invoked to the detriment of the private interests at stake in the present case, in the absence of legislation allowing the persons concerned to receive compensation for the loss of their property.

2. The Court's assessment

(a) Recapitulation of the applicable principles

39. The Court points out that Article 1 of Protocol No. 1, the essential object of which is to protect the individual against unjustified interference by the State with the peaceful enjoyment of his or her possessions, may also entail positive obligations requiring the State to take certain measures necessary to protect the right of property, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII; *Păduraru v. Romania*, no. 63252/00, § 88, ECHR 2005-XII; *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V; and *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII). Even in horizontal relations there may be public-interest considerations involved which may impose some obligations on the State. In *Broniowski* (cited above, § 143), for instance, the Court held that positive obligations under Article 1 of Protocol No. 1 might require the State to take the measures necessary to protect property rights (see *Kotov v. Russia* [GC], no. 54522/00, § 109, 3 April 2012).

40. The boundaries between the State's positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analysed in terms of a positive duty of the State or in terms of

interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. Both an interference with the peaceful enjoyment of possessions and an abstention from action must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52, and *Kotov*, cited above, § 110).

41. The Court has also held that, in certain circumstances, Article 1 of Protocol No. 1 may impose "certain measures necessary to protect the right of property ... even in cases involving litigation between individuals or companies" (see *Sovtransavto Holding*, cited above, § 96). This principle has been applied extensively in the context of enforcement proceedings against private debtors (see *Fuklev v. Ukraine*, no. 71186/01, §§ 89-91, 7 June 2005, and *Kesyan v. Russia*, no. 36496/02, §§ 79-80, 19 October 2006; see also *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 84, 20 April 2010; *Marčić and Others v. Serbia*, no. 17556/05, § 56, 30 October 2007; and, *mutatis mutandis*, *Matheus v. France*, no. 62740/00, §§ 68 et seq., 31 March 2005).

42. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the relevant compensation terms – if the situation is akin to the taking of property – but also the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Tunnel Report Limited v. France*, no. 27940/07, § 39, 18 November 2010).

43. The Court further reiterates its case-law to the effect that the fact that an applicant's claims are subject to a limitation period does not by itself raise any issue with regard to the Convention. Limitation periods are a common feature of the domestic legal systems of the Contracting States, designed to ensure legal certainty and finality and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 68, ECHR 2007-III, and *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 51, *Reports of Judgments and Decisions* 1996-IV).

44. Lastly, the Court stresses that the notion of "public interest" in the second sentence of the first paragraph of Article 1 of Protocol No. 1 is

necessarily extensive. The national authorities are in principle better placed than the international judge to appreciate what is in "the public interest". The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is in the public interest unless that judgment is manifestly without foundation. The possible existence of alternative solutions does not in itself render the contested legislation unjustified. Provided that the legislature remains within the bounds of its margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislature's discretion should have been exercised in another way (see *J.A. Pye (Oxford) Ltd v. the United Kingdom*, no. 44302/02, §§ 43-45, 15 November 2005).

(b) Application of these principles to the present case

45. In the present case the Court notes first of all that when the applicant went to his bank on 6 February 2003 to enquire about the status of his account, he learnt that, since there had been no transactions on the account since the second half of 1981, all claims in relation to it were time-barred. It is clear from the decisions of the domestic courts that, on opening the account, the applicant had entered into an agreement with the bank which, according to consistent case-law and legal theory in Greece, constituted an agreement on the deposit of fungible goods (Article 830 of the Civil Code). The applicant's claims arising out of that agreement were subject to the twenty-year limitation period laid down by the Civil Code (Articles 247 and 249).

46. The Court also notes that the domestic courts to which the applicant took his case based their findings on Article 3 of Legislative Decree no. 1195/1942, under the terms of which cash deposits and the corresponding interest held with banks were transferred permanently to the State where they had not been claimed by the account holder or where there had been no transactions on the account for a period of twenty years. The Court of Appeal, moreover, held that the limitation period had neither stopped running – as the entry in the bank's records of the interest accruing on the applicant's account did not cause time to stop running (see paragraph 9 above) – nor had it been suspended by *force majeure* as argued by the applicant (see paragraph 10 above).

47. In the Court's view, the time-barring of the applicant's claims in respect of his own account constituted interference with his property rights. The interference in question was neither an expropriation nor a measure to control the use of property; it therefore falls to be dealt with under the first sentence of the first paragraph of Article 1 (see, *mutatis mutandis*, *Optim and Industerre v. Belgium* (dec.), no. 23819/06, § 35, 11 September 2012). It must therefore be determined whether a fair balance was struck between

the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

48. The Court does not doubt that the limitation period imposed under Articles 247 and 249 of the Civil Code and Article 3 of Legislative Decree no. 1195/1942 pursued a legitimate aim. As the Court of Appeal stressed in its judgment of 6 April 2006, the twenty-year limitation period for agreements on the deposit of fungible goods was justified by an aim in the public interest, namely that of terminating, in the interests of the community, legal relationships that had been created so long before that their existence had become uncertain.

49. Regard being had, among other factors, to its case-law concerning statutory limitation (see paragraph 43 above), the Court considers that the Greek system of statutory limitation referred to above is reasonable; the limitation period of twenty years is a long one and it is not difficult or impossible for the persons concerned to stop it running.

50. In ruling on the applicant's case the Greek courts followed and applied the relevant legislation and case-law in force: firstly, Article 3 of the legislative decree, which stated that the limitation period in respect of an account holder's claims stopped running only when the account holder claimed back his or her deposit or performed a transaction on the account; and secondly, Article 260 of the Civil Code, which stated that the limitation period stopped running when the debtor – in this case, the bank – recognised the claim. In that regard the Court of Cassation held that the act of recognition had to have been addressed to the creditor and to have reached him or her, and that the mere fact of entering the debt in the bank's records did not amount to recognition of the claim for the purposes of Article 260 and was therefore not capable of stopping the running of the limitation period (see paragraphs 18 and 21 above).

51. However, the Court considers that such a drastic measure as the time-barring of claims in respect of a bank account, on the ground that there have been no transactions on the account for a certain time, coupled with the case-law according to which the entering of interest in the records does not constitute an account transaction, is apt to place account holders, especially when they are ordinary citizens unversed in civil or banking law, at a disadvantage *vis-à-vis* the bank or even the State in cases where Article 3 of the legislative decree is applicable.

52. The Court notes that under Article 830 of the Civil Code, if a person who deposits a sum of money in a bank transfers to the latter the right to use the sum in question, the bank must keep it and, if it uses it for its own purposes, must return an equivalent sum to the depositor on termination of the agreement. Account holders are therefore entitled to believe, in good faith, that their deposits are safe, especially if they see that interest has been credited to their account. They can legitimately expect to be informed of any situation that might jeopardise the agreement they entered into with the

bank or their financial interests, so that they can take the necessary steps in advance to comply with the law and protect their property rights. Such a relationship of trust is inherent in banking transactions and banking law.

53. The Court further reiterates that the principle of legal certainty is implicit in all the Articles of the Convention and constitutes one of the fundamental aspects of the rule of law (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 56, 20 October 2011). In the Court's view, the State has a positive obligation to protect citizens and to require that banks, in view of the potentially adverse consequences of limitation periods, should inform the holders of dormant accounts when the limitation period is due to expire and thus afford them the possibility of stopping the limitation period running, for instance by performing a transaction on the account. Not requiring any information of this kind to be provided is liable to upset the fair balance that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

54. In the Court's view, the absence of such information placed an excessive and disproportionate burden on the applicant which cannot be justified either by the need to terminate legal relationships whose existence has become uncertain – as asserted by the Court of Appeal in the instant case – or in order to ensure the proper functioning of the banking system.

55. Accordingly, there has been a violation of the applicant's rights under Article 1 of Protocol No. 1.

...

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant's son first claimed compensation for the pecuniary damage sustained by his father. He referred in that regard to his father's application to the Court, in which the latter had requested reimbursement of the sum of 660,000 drachmas which he had deposited with the bank, plus interest, giving a sum of 30,550.74 euros (EUR), as indicated in his action of 3 June 2003 before the Athens Court of First Instance. He also claimed EUR 100,000 in respect of non-pecuniary damage.

61. With regard to pecuniary damage, the Government submitted that the applicant's son had not lodged a specific claim expressed in the currency of the respondent State and within the time allowed, as required by Rule 60 § 2 of the Rules of Court. He had simply referred to the application form, which did not contain a clearly formulated claim and which in turn referred to the applicant's action before the Athens Court of First Instance. As to non-pecuniary damage, not only was the amount claimed unfounded and excessive, but the applicant's son was also not entitled to compensation under this head as the person affected by the measure in question had been the applicant himself and in no sense his heirs.

62. The Court considers that the applicant's son did not fail to present his claims in respect of pecuniary damage in the proper manner, as he claimed the sum which the applicant himself had sought in his action of 3 June 2003 before the Athens Court of First Instance and which had been clearly expressed in euros, namely the sum of EUR 30,550.74.

63. The Court observes, firstly, that it has found a violation of the first sentence of the first paragraph of Article 1 of Protocol No. 1 in the instant case and, secondly, that it cannot speculate as to the amount that the Greek courts would have awarded the applicant had his action succeeded. However, it considers it appropriate to award the applicant's son the sum of EUR 15,000 to cover all heads of damage.

B. Costs and expenses

64. The applicant's son also claimed EUR 5,000 in respect of costs and expenses, without however specifying whether this amount related to the costs incurred before the domestic courts or this Court, or both.

65. The Government stressed that the applicant's son had not furnished any evidence in support of his claims.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were reasonable as to quantum. In the present case the Court notes that the applicant did not produce any invoices in relation to the costs incurred before the domestic courts or this Court. His claim in respect of costs and expenses must therefore be dismissed.

C. Default interest

67. The Court considers it appropriate that the default interest rate 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, UNANIMOUSLY,

...

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds*
(a) that the respondent State is to pay the applicant's son, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sum of EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of all heads of damage;
(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 29 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President