In the case of Kefalas and Others v. Greece (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. Bernhardt,
Mr Thór Vilhjálmsson,
Mr R. Macdonald,
Mr N. Valticos,
Mr S.K. Martens,
Mrs E. Palm,
Mr A.B. Baka,
Mr J. Makarczyk,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 27 January and 25 May 1995,

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

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Notes by the Registrar

1. The case is numbered 4/1994/451/530. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 March 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14726/89) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by five Greek nationals, Mr Alexandros Kefalas, Mr Vassilios Kefalas, Mr Antonios Giannoulatos, Mr Georgios Giannoulatos and Mr Athanasios Giannoulatos on 23 August 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 (art. 6) of the Convention.

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

3. The Chamber to be constituted included ex officio Mr N. Valticos,

the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 March 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr Thór Vilhjálmsson, Mr R. Macdonald, Mr S.K. Martens, Mrs E. Palm, Mr A.B. Baka and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 13 September 1994 and the applicants' memorial on 19 September. On 21 October the Secretary to the Commission informed the Registrar that the Delegate would submit her observations at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 January 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr V. Kondolaimos, Senior Adviser,
Legal Council of State, Delegate of the Agent;

(b) for the Commission

Mrs J. Liddy, Delegate;

(c) for the applicants

Mr P. Bernitsas,
Mr D. Mirasyesi, dikigoroi (lawyers), Counsel.

The Court heard addresses by them and also their replies to questions put by several of its members.

AS TO THE FACTS

I. Circumstances of the case

6. The applicants are shareholders of the Athinaïki Khartopiia company, whose head office is in Athens. The company, one of the largest Greek paper manufacturers and suppliers, owns two factories - one in Athens and one at Drama - and plantations containing eleven million trees. In 1984 its capital amounted to 468,000,000 drachmas and was divided into 468,000 shares of a nominal value of 1,000 drachmas each. The applicants held 63.46% of these shares.

7. On 30 March 1984, on a request by the National Bank of Greece acting as a creditor, the company was made subject, by an order (no. 2544/84) issued by the Minister for the Economy, to the provisions of Law no. 1386/83 concerning businesses "in difficulties" (provlimatikes epikhirissis). Under sections 7 and 12 of Law no. 1386/83 (see paragraph 25 below), management of the company was handed over to a board of directors appointed by the Minister for the Economy.

A. The appeals against Ministerial Order no. 2544/84

1. The application for judicial review to the Supreme Administrative Court

8. On 25 May 1984 the applicants applied to the Supreme Administrative Court to have Ministerial Order no. 2544/84 quashed.

9. In a judgment (no. 1093/87) adopted on 13 March 1987 by seven votes to six, a full court of the Supreme Administrative Court dismissed the application. It held that the appointment by the State of an interim administration in order to ensure the survival and operation of certain businesses of particular economic and social importance was necessary in the public interest and constituted a legitimate restriction on the economic freedom guaranteed in Article 5 para. 1 of the Constitution. Making a business subject to the provisions of Law no. 1386/83 allowed its capital to be increased during the period of interim administration. To effect such an increase, however, a different, independent legal instrument had to be adopted subsequently under section 8 (8) of the Law (see paragraph 25 below); the issue whether that section was constitutional could therefore not be either raised or considered during the instant proceedings, which concerned solely the terms on which the business was made subject to the provisions of Law no. 1386/83.

In so far as the applicants contended that applying those provisions to a business was contrary to the principle of separation of powers and improperly usurped the jurisdiction of the civil courts, to which it normally fell to settle private disputes, the Supreme Administrative Court held as follows:

> "8. ... According to the principle of separation of State powers and by Articles 8, 26 and 94 of the Constitution, the resolution of private disputes comes within the jurisdiction of the civil courts. However, an administrative decision to apply the provisions of Law no. 1386/83 to a business and to appoint an interim board of directors does not determine a private dispute. Assessment of the public interest that requires a business to be made subject to the provisions of Law no. 1386, that is to say of the need to save a business of particular economic and social importance in the interests of the national economy, and the appointment of an interim board of directors come within the discretionary powers of the administrative authorities. These authorities may therefore also decide in making that assessment whether the other conditions for applying the Law, as set out in section 5 (1) (d) [of Law no. 1386/83 - see paragraph 25 below], have been satisfied, even if they concern private-law relationships. The indirect assessment of private-law issues, such as the amount of the business's liabilities and its inability to meet them, likewise cannot be regarded as the resolution of a private dispute. [This incidental assessment], which is always permissible when administrative decisions are being taken, has no binding force and does not prevent the injured party from having recourse to the appropriate remedies (an action for a declaration, for example) in the competent civil courts in order to obtain a final ruling on the issues. In that case, if the decision of those courts ... is contrary to the administrative authorities' incidental assessment, it will deprive the administrative decision of its foundation and will require it to be quashed or revoked, as the case may be."
>
> According to the dissenting opinion of one of the judges:
>
> "State intervention in the management of private businesses, as provided for in Law no. 1386/83, namely by administrative decision, is an unconstitutional usurpation of the jurisdiction of the civil courts. The principle of rescuing heavily indebted businesses is not peculiar to that Law. It is inherent in modern insolvency law and has prevailed over the older principle of satisfying creditors collectively and pro rata; the system of imposed administration of businesses is already governed by it. Under the Constitution, such administration, on account of its

nature, conditions and purpose, comes under the jurisdiction of the civil courts. Assessing a company's contractual relations with its creditors and deciding whether they have developed normally or abnormally - which is done against a background of conflict and uncertainty and leads to the deprivation of a private right (that of managing the company) - settles, by its nature and effect, a private dispute. Such a decision must be taken with the guarantees of independence and the procedural safeguards that only the civil courts can provide. The State can interfere in the management of a private business only through these courts. The administrative authorities are, moreover, prohibited not only from openly dealing with disputes that come under the jurisdiction of the courts but also from disguising private disputes as administrative cases as in this instance. This question is quite distinct from the authorities' generally recognised discretion to make an incidental assessment of private rights. Such an assessment is permissible in purely administrative cases which the authorities deal with by taking an administrative decision, which was not so in this instance."

For the rest, the Supreme Administrative Court upheld Order no. 2544/84 in the following terms:

"18. The evidence shows that the 'Athinaïki Khartopiia' is the largest Greek paper manufacturer and has two factory complexes, one in Athens and one at Drama. The one at Drama is the most modern in the country ... The firm has about 2,500 employees. According to the administrative authorities, if the firm is put on a sound footing, it will be able to survive and contribute to the development of the national economy. Having regard to these factors, the application of Law no. 1386/83 to the firm is legally and sufficiently justified by its particular economic and social importance. The ground alleging the contrary must therefore be dismissed as unfounded.

However, in the opinion of one member of the Court, the file should have shown more clearly what sectors of the national economy were affected by the operation of the firm concerned and in what way.

19. The ... conditions laid down in section 5 (1) (d) of Law no. 1386/83 for making a business subject to the provisions of the Law, namely that it has liabilities five times greater than the sum of its capital and apparent reserves and its inability to meet them, are separate conditions which must both be satisfied. Under the Law, inability to pay may be proved by a declaration by the bank which is the business's main source of finance to the effect that it will not continue to support the business. Such a declaration is manifestly contained in the request in which that bank, as creditor, seeks to have the business made subject to the regime of Law no. 1386/83. In the instant case it is clear from the file that the 'Athinaïki Khartopiia' company's debts to the National Bank of Greece totalled 7,546,400,000 drachmas at 31 December 1983, a figure five times greater than the firm's capital and apparent reserves, which amounted to 1,100,000,000 drachmas. Furthermore, this sum had been made subject to the provisions of Law no. 1386/83 following a request by the creditor bank on 27 March 1984, which proves a manifest inability to honour the aforementioned debts. Consequently, the impugned decision was legally and sufficiently reasoned and the ground maintaining the contrary must be dismissed as unfounded.

However, in the opinion of six members of the Court, the [bank's] declaration to the effect that it would no longer support the firm financially proved only that the firm's liquidity indicators had deteriorated, that is to say that only one of the conditions

laid down in section 5 (2) (c) of Law no. 1386/83, all of which had to be fulfilled in order to establish manifest inability to meet liabilities, had been satisfied. Consequently, in the instant case it should have been considered whether the other two conditions had been met, namely a fall in production and in the number of employees - due to the lack of liquid assets - and an accumulation of debts due."

2. The action for a declaration in the Athens Court of First Instance

10. On 10 July 1987 the applicants brought an action for a declaration in the Athens Court of First Instance. They sought a ruling from the court that the joint conditions laid down in section 5 (1) (d) of Law no. 1386/83 (see paragraph 25 below) had not been satisfied at the time the company in issue was made subject to that Law.

11. In a judgment of 11 March 1988 (no. 1807/88) the court held that the conditions for making a business subject to the Law had been fulfilled and, in consequence, dismissed the applicants' action.

12. On 9 April 1990 the Athens Court of Appeal (in judgment no. 4025/90) set aside the Court of First Instance's judgment.

However, before giving a final ruling, the Court of Appeal ordered further inquiries into the facts and a report to be made by an accountant in order to satisfy itself that, at the time it was made subject to the provisions of Law no. 1386/83, Athinaïki Khartopiia owed 450,708,920 drachmas to the public electricity company and 8,729,045,319 drachmas to the National Bank of Greece.

The expert estimated the latter debt at 8,584,641,153 drachmas.

At the date of the hearing before the Court (24 January 1995), the Court of Appeal had still not given judgment.

B. The alterations in capital

13. In an order (no. 153/86) of 10 June 1986 the Minister for Industry, Research and Technology approved a decision of the Business Revival Agency (Organismos Anasyngrotisseos Epikhirisseon, "the OAE" - see paragraph 24 below) and, under section 8 (8) of Law no. 1386/83 (see paragraph 25 below), increased Athinaïki Khartopiia's capital by 940,000,000 drachmas by issuing 9,400,000 new shares of a nominal value of 100 drachmas each. The order stated that the existing shareholders had an unlimited pre-emptive right, which, however, they had to exercise by making a declaration in writing within one month of the publication of the order in the Official Gazette; it also provided that the company's interim board of directors could freely dispose of shares not bought by the existing shareholders.

The applicants did not avail themselves of their pre-emptive right. The new shares were acquired by the OAE without any cash payment but to offset its claims against the company. It now held 66.76% of all Athinaïki Khartopiia's shares and the applicants 21.09%.

14. On 8 January 1987, at an extraordinary general meeting of the company, the OAE decided to reduce the company's capital to 5,000,000 drachmas, the minimum level permitted for public limited companies under the legislation in force. The Minister for Industry, Energy and Technology approved that decision in an order of 19 March 1987.

15. Lastly, on 9 June 1987, the same Minister made a second increase in the capital, which was raised to 30,900,000,000 drachmas by an issue of new shares acquired by the OAE. On this occasion the order

(no. 360/87) made no provision for a pre-emptive right for existing shareholders.

16. Since these operations the applicants have held 0.003423% of Athinaïki Khartopiia's capital, the OAE 62.3% and the National Bank of Greece 33.9%.

C. The proceedings to challenge the alterations in capital

1. The proceedings to challenge the first increase in capital

17. On 26 June 1986 the applicants made an application to the Supreme Administrative Court for judicial review of Order no. 153/86 (see paragraph 13 above).

18. On 3 April 1987 the Supreme Administrative Court refused the application (judgment no. 1398/87). By way of establishing that it had jurisdiction, it noted that a parallel application could be made in the Administrative Court of Appeal only where a decision to increase capital was based on section 10 of Law no. 1386/83 and not, as in the instant case, on section 8 (8).

The Supreme Administrative Court went on to declare the grounds concerning Ministerial Order no. 2544/84 (see paragraph 7 above) inadmissible because it had already ruled on an action concerning it (see paragraph 9 above). More specifically, it held that "all grounds for review had to be rejected as inadmissible which related to defects not in the ministerial order in issue (no. 153 of 6 June 1986) ... but, according to the applicants, in the previous order (no. 2544 of 30 March 1984) - challenged at the same time in an inadmissible application - making the aforementioned company subject to interim administration by the OAE and whose adoption [was] a prerequisite for the making of the order in dispute".

With regard to the increase in capital, the Supreme Administrative Court held that this did not infringe the applicants' constitutional rights (Articles 5 para. 1 and 17 of the Constitution), since where the authorities acted under section 8 of Law no. 1386/83 it was for them to set the nominal value of the new shares as they were minded; the risks of such a measure for existing shareholders were offset by the pre-emptive right they enjoyed (section 8 (8) - see paragraph 25 below). As to the applicants' assertion that by the time they had been invited to exercise their pre-emptive right, they no longer had the one-month period in which to do so that was provided in the impugned order, the Supreme Administrative Court rejected it as, even supposing that the complaint was made out, it disclosed no defect in the order as such.

19. On 10 November and 23 December 1987 the applicants brought two actions for a declaration in the Athens Court of First Instance seeking, firstly, a ruling that the increase in capital was null and void and, secondly, an order that the OAE should compensate the company's existing shareholders.

In two judgments on 4 November 1988 (nos. 5136/88 and 7817/88) the court found against the applicants.

2. The proceedings to challenge the reduction of capital

20. On 8 May 1987 the applicants made an application to the Supreme Administrative Court for judicial review of the ministerial order approving the OAE's decision to reduce Athinaïki Khartopiia's capital (see paragraph 14 above).

21. On 16 June 1987 the applicants also brought an action for a declaration in the Athens Court of First Instance, which (in judgment no. 1481/88) stayed the proceedings on account of the appeal pending

in the Athens Court of Appeal (see paragraph 12 above). At the date of the hearing before the European Court the proceedings had not ended.

3. The proceedings to challenge the second increase in capital

22. The applications for judicial review of Ministerial Order no. 360/87 (see paragraph 15 above) made by the applicants to the Athens Administrative Court of Appeal and the Supreme Administrative Court on 12 June and 13 July 1987 and their two actions in the Athens Court of First Instance seeking a declaration that the second increase in capital was null and void were still pending at the date of the hearing before the European Court.

D. The actions for damages against the OAE and the State

23. On 24 January 1990 and 29 May and 20 November 1991 the applicants brought four actions for damages against the OAE and the State in the Athens Court of First Instance and the Athens Administrative Court. In these they sought compensation for the damage allegedly caused them by the OAE's management of the company and by the unlawful increases in capital. These actions, which were still pending at the date of the hearing before the Court, were founded on the Civil Code provisions on the State's liability in tort and unjust enrichment.

II. Relevant domestic law

A. Law no. 1386 of 5 August 1983 establishing the Business Revival Agency

24. The OAE was established by Law no. 1386 of 5 August 1983 and is a public limited company under the supervision of the State.

Designed to serve the public interest, it contributes to the country's economic and social development by putting businesses on a sound financial footing, importing and applying foreign technological know-how and developing Greek technological know-how, and setting up and running nationalised or semi-public businesses (section 2 (2) of the Law).

To achieve these objectives the OAE may, among other things, take over the management of businesses being rehabilitated or nationalised, acquire shareholdings in businesses, grant loans to businesses in which it has an interest or give guarantees for such loans, issue debenture loans and transfer shares to employees or to organisations representing them, local authorities or other public-law entities (section 2 (3) of the Law).

25. The relevant provisions of Law no. 1386/83 provide:

Section 5

"Conditions for making a business subject to the provisions of this Law

1. By an order of the Minister for the Economy, issued after consultation of the advisory committee ..., the provisions of this Law may be applied to businesses

(a) which have suspended or ceased their activities for financial reasons;

(b) which have suspended payments;

(c) which are insolvent or have been placed under the management of their creditors or under provisional management or which have gone into liquidation ...

(d) whose total liabilities are five times greater than the sum of their capital and apparent reserves and which are manifestly unable to meet their liabilities ...

(e) which concern the country's defence or are of vital importance for the development of national resources or whose main object is the provision of public services and which are manifestly unable to meet their liabilities;

(f) which request application of the provisions to them.

2. For the purposes of applying the preceding subsection,

...

(c) 'Manifestly unable to meet their liabilities' means: (a) a fall in production and in the number of employees due to the lack of liquid assets; (b) an accumulation of debts due; and (c) a deterioration in the liquidity indicators. This situation may also be proved by a declaration by one or more banks which are the business's main source of finance to the effect that they will no longer maintain their financial support.

..."

Section 6

"Procedure for making a business subject to the provisions of this Law

1. The order by the Minister for the Economy making the business subject to the provisions of this Law ... shall be made

(a) at the request of the business;

(b) ...

(c) at the request of a bank or of the administrative authorities or of a public-law entity where these have matured claims against the business;

(d) at the request of the business's creditors other than those mentioned in sub-paragraphs (b) and (c) whose claims represent at least 20% of the business's outstanding debts ...

(e) at the request of the ... trustee in bankruptcy or of the insolvent firm.

..."

Section 7

"Provisions on the rehabilitation of businesses

The order by the Minister for the Economy ... may provide for

1. the taking over of the management of the business by the OAE, in accordance with section 8;

2. the satisfaction of the business's obligations in such a way as to ensure its viability

(a) by a compulsory increase in the capital by means of contributions of new assets or by the conversion of existing debts into shares ...

...

3. winding-up, in accordance with section 9 of this Law."

Section 8

"Taking over of management

1. ...

When the ministerial order is published, the powers of the business's managerial bodies shall cease. The general meeting of shareholders ... shall continue to be held but may not decide to dismiss the directors appointed by the OAE. The approval of the Minister for the Economy shall be required for the distribution of profits and the establishment of reserves.

...

5. During the interim administration the OAE shall produce a report on the business's viability and negotiate with the shareholders and creditors in order to conclude an agreement on the business's survival ...

...

8. During the interim administration the OAE may, by a decision approved in an order of the Minister for the Economy published in the Official Gazette and as an exception to the provisions governing public limited companies, increase the business's capital. This increase may be made either in cash or by contributions in kind. Payment of the contribution may be made by set-off. All the particulars relating to the increase in capital shall be laid down in the aforementioned ministerial order.

The existing shareholders retain a pre-emptive right, which shall be exercised within a period of time to be laid down by the ministerial order.

9. The OAE or the management appointed by it shall be liable only in the event of fraud or serious negligence."

Section 12

"Transitional period

While the secretariat of the OAE is being set up and until it comes into operation, the Minister for the Economy shall take the measures provided for in sections 7-10 of this Law by means of an order."

B. The Court of Justice of the European Communities' judgment of 30 May 1991

26. A reference for a preliminary ruling having been made to it by the Greek Supreme Administrative Court, the Court of Justice of the European Communities gave judgment on issues relating to the compatibility of Law no. 1386/83 with the Second Council Directive (77/91/EEC) of 13 December 1976 (concerning the formation of public limited companies and the maintenance and alteration of their capital) and more particularly with Article 25 of the Directive, according to which "any increase in capital must be decided upon by the general meeting".

In its judgment of 30 May 1991 (Marina Karella and Nikolaos Karellas v. Minister of Industry, Energy and Technology and Organismos Anasyngrotisseos Epikhirisseon, Reports of Cases before the

Court of Justice and the Court of First Instance, 1991-5, I-2691) the Court of Justice held:

> "Article 25 in conjunction with Article 41 (1) of the Second Directive must be interpreted as meaning that they preclude national rules which, in order to ensure the survival and continued operation of undertakings which are of particular economic and social importance for society as a whole and are in exceptional circumstances by reason of their excessive debt burden, provide for the adoption by administrative act of a decision to increase the company capital, without prejudice to the right of pre-emption of the original shareholders when the new shares are issued."

C. Law no. 2000/91 on the denationalisation, simplification of winding-up proceedings and strengthening of competition rules

27. In 1991 the legislature passed Law no. 2000/91 in order to facilitate the privatisation of certain businesses which had come under State control between 1982 and 1989.

Section 54 of this Law provides that if the increase in the capital of a business in difficulties is quashed in a judgment of the Supreme Administrative Court or a final judgment of another court, the debts of the business that had been capitalised with a view to making the increase and which had been taken over by the business's creditors in the form of shares "revive and shall be deemed never to have been extinguished".

D. Review of administrative decisions and the finality of judgments of the Supreme Administrative Court

28. Article 95 para. 1 (a) of the 1975 Constitution provides:

> "The Supreme Administrative Court's powers shall include the following:
>
> (a) setting aside, on an application for judicial review, of enforceable decisions by administrative authorities that are ultra vires or contrary to law.
>
> ..."

29. Under Article 48 of Legislative Decree no. 18/1989 codifying the statutory provisions relating to the Supreme Administrative Court,

> "The grounds on which an application for judicial review may be based are
>
> (a) lack of jurisdiction in the administrative authority that took the decision;
>
> (b) failure to comply with essential formalities required for the decision;
>
> (c) breach of substantive provisions of law; and
>
> (d) misuse of powers, where the administrative authority's decision, even though it appears lawful as such, was taken for reasons and for a purpose other than those contemplated by the legislature when making provision for such a decision."

30. The Supreme Administrative Court's review of administrative decisions is a review of lawfulness modelled on that carried out by the French Conseil d'Etat on applications for judicial review.

31. Nevertheless, where the question is one of determining whether

statutory requirements have been complied with, the Supreme Administrative Court looks to see whether the findings of the administrative body responsible for the decision correspond with reality. If they do not, there has been a mistake of fact and the decision falls to be quashed. The Supreme Administrative Court also examines the reasons for the decision, in particular whether it is based on substantive provisions or an interpretation of them, the substantive assessment of the circumstances of fact and their possible legal classification and the administrative body's criteria and conclusions in respect of the exercise of its discretion. The reasoning must be derived from the case file; it must be precise and adequate and contain the essential circumstances of the case in order that it may be determined whether the administrative body's application of the legal rules was justified (E. Spiliotopoulos, Enkhiridion Diikitikou Dikeou ("Manual of Administrative Law"), 4th edition, Athens, A.N. Sakkoulas, pp. 475-82).

The administrative authority's mistake of fact must be directly apparent from the file or from evidence produced by the parties (Supreme Administrative Court, judgment no. 3336/78). The applicant cannot rely on facts not previously submitted to the administrative body responsible for the impugned decision (Supreme Administrative Court, judgments nos. 1720/77 and 662/78).

The administrative body's assessment of facts whose reality has not been disputed is not subject to review by the Supreme Administrative Court except where and in so far as the applicant alleges that that assessment went beyond the extreme limits of the administrative authority's discretion (Supreme Administrative Court, judgments nos. 1020/72, 1303/77 and 201/78).

32. Judgments of the Supreme Administrative Court are final. No appeal lies against them other than an application by a third party to set aside a judgment adversely affecting his interests or an application to the Special Supreme Court if there is doubt about the constitutionality of provisions on which a judgment is based. Consequently, an administrative decision held to be valid by the Supreme Administrative Court is covered by res judicata, which cannot be overturned in a judgment of the civil courts.

E. Revocation of administrative decisions

33. The success of an action for a declaration brought in the civil courts against an administrative decision that has been held to be valid by the Supreme Administrative Court does not mean that the decision is quashed; it merely encourages the administrative authorities to cancel it or revoke it if they are so minded.

Administrative case-law is well established on this point. The Supreme Administrative Court has held that, in accordance with a general principle, the administrative authorities are not obliged to revoke their unlawful decisions; this course is merely open to them - where, moreover, such revocation takes place within a reasonable time (which may not exceed five years, according to the Athens Administrative Court of Appeal - judgment no. 1003/82, Armenopoulos 38, p. 153) from the taking of the decision in issue (Supreme Administrative Court, judgments nos. 2575/82 and 2586/82, Epitheorissi Nomologias 1985, p. 502). Such an obligation would have the effect of creating and prolonging unstable situations as there would be no time-limit for challenges to unlawful administrative decisions (Athens Administrative Court of Appeal, judgment no. 334/83, Epitheorissi Nomologias 1983, p. 528).

34. Lastly, the authorities are not required to consider requests to revoke their unlawful decisions (Supreme Administrative Court, judgments nos. 4090/87, 4091/87 and 5352/87, Nomiko Vima no. 38, p. 758). Administrative decisions, even unlawful ones, are deemed

valid and continue to take effect for as long as they are not judicially revoked or quashed (Supreme Administrative Court, judgment no. 1555/80, Nomiko Vima no. 30).

PROCEEDINGS BEFORE THE COMMISSION

35. The applicants applied to the Commission on 23 August 1987 (application no. 14726/89). They made two separate complaints.

The first of these concerned Ministerial Order no. 2544/84 of 30 March 1984 (see paragraph 7 above). The applicants complained that no court had jurisdiction to determine the question whether the conditions for making Athinaïki Khartopiia subject to the regime for businesses in difficulties had been satisfied and, in particular, whether the company really had large debts. They relied on Article 6 (art. 6) of the Convention.

The second complaint concerned the successive increases in the company's capital and the acquisition of new shares by the OAE and the National Bank of Greece (see paragraphs 13-16 above). The applicants alleged that they had been dispossessed of their property and deprived of an effective remedy before a national authority in order to complain of the infringement of their right to the peaceful enjoyment of their possessions. They relied on Article 1 of Protocol No. 1 (P1-1) and Article 13 of the Convention taken together with Article 1 of Protocol No. 1 (art. 13+P1-1).

36. On 20 May 1992 the Commission declared the first complaint admissible, taking the view that it related to the Supreme Administrative Court's judgment of 13 March 1987; the second complaint it declared inadmissible. In its report of 17 January 1994 (Article 31) (art. 31), it expressed the opinion by ten votes to four that there had been no breach of Article 6 para. 1 (art. 6-1) as the first complaint lay outside its jurisdiction ratione temporis. The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment (1).

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1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 318-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT

37. In their memorial the Government asked the Court to reject totally the application brought before it as inadmissible or alternatively as unfounded on the merits.

38. The applicants asked the Court

(a) to hold that their rights under Article 6 (art. 6) of the European Convention had been violated and to award fair compensation of 180,000,000,000 drachmas; and

(b) to award them 15,000,000 drachmas in respect of costs and expenses.

AS TO THE LAW

THE GOVERNMENT'S PRELIMINARY OBJECTIONS

39. The Government argued, as their main submission, as they had before the Commission, that the applicants' complaint lay outside the Court's jurisdiction ratione temporis because it related to facts that had occurred before 20 November 1985, the date when Greece's acceptance

of the right of individual petition had taken effect. Greece's declaration under Article 25 (art. 25) of the Convention provides:

> "... the Government of Greece recognises, for the period beginning on 20 November 1985 and ending on 19 November 1988, the competence of the European Commission of Human Rights to receive petitions addressed to the Secretary General of the Council of Europe, [after 19 November 1985,] by any person, non-governmental organisation or group of individuals claiming, in relation to any act, decision, facts or events subsequent to this date, to be the victim of a violation of the rights set forth in the Convention and in the Additional Protocol (P1) ..."

40. The Commission agreed with the Government. In its view, it was not the fact that Ministerial Order no. 2544/84 of 30 March 1984 had determined civil rights of the applicants which posed a problem under the Convention but the possible lack of any judicial remedy in respect of the order that would have given them an opportunity to have their rights established in full compliance with Article 6 (art. 6). Referring to the Court's judgment in the case of Stamoulakatos v. Greece (26 October 1993, Series A no. 271, p. 14, para. 33), it considered that, as regards ascertaining whether the applicants had available to them a judicial remedy in accordance with Article 6 (art. 6), account had to be taken of the situation at the time when Ministerial Order no. 2544/84 was adopted, namely 30 March 1984 (see paragraph 7 above).

41. A minority of five members, however, considered - as had the Commission when examining the admissibility of the application - that the applicants' complaint was directed not at the relevant ministerial order as such but at the scope of the review carried out by the Supreme Administrative Court in its judgment of 13 March 1987 (see paragraph 9 above), that is to say after 20 November 1985. The Commission should therefore have dealt with the merits of the case.

42. In their memorial to the Court the applicants claimed that the Commission's reasoning conflicted with the Supreme Administrative Court's judgments of 13 March and 3 April 1987 (see paragraphs 9 and 18 above). Ministerial Order no. 2544/84 had to be considered in the light of subsequent orders whereby the interim board of directors had managed to gain control of Athinaïki Khartopiia (see paragraphs 13-16 above). Although Order no. 2544/84 had been made before the critical date of 19 November 1985, it had not become final in Greek law until after that date, on 13 March 1987, when the Supreme Administrative Court had refused their application for judicial review (see paragraph 9 above).

Furthermore, in its judgment of 3 April 1987 the Supreme Administrative Court had, they said, upheld the validity of Order no. 153/86, the most detrimental decision in regard to them (see paragraph 13 above), in reliance, inter alia, on its earlier conclusions as to the lawfulness of Order no. 2544/84 (see paragraph 9 above).

The two judgments of the Supreme Administrative Court had thereby made any effective judicial review of the merits of the applicants' complaints impossible and had thus deprived them of their right of access to a court.

43. The Court points out that in their application to the Commission the applicants made two separate complaints. One of them, based on a breach of Article 6 (art. 6) of the Convention, related to Ministerial Order no. 2544/84; the other, based on a breach of Article 1 of Protocol No. 1 (P1-1) and of Article 13 of the Convention taken together with Article 1 of Protocol No. 1 (art. 13+P1-1) (see paragraph 35 above), related to the subsequent orders whereby their company's capital was successively increased and reduced.

In its admissibility decision of 20 May 1992, which defines the scope of the case, the Commission declared the second complaint inadmissible; it declared the first complaint admissible, expressing the view that it was in reality directed against the Supreme Administrative Court's judgment of 13 March 1987 (see paragraph 36 above).

44. Within the bounds thus laid down, the Court has jurisdiction to consider the complaint referred to it and is not bound by the Commission's interpretation of it (see, mutatis mutandis, the Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, p. 30, para. 59).

45. The Court shares the opinion of the majority of the Commission. In their only complaint before the Court the applicants essentially criticised the impossibility in Greek law of having Ministerial Order no. 2544/84 reviewed by a judicial body with full jurisdiction. Even supposing that this impossibility amounted to a breach of Article 6 (art. 6) of the Convention (the only provision (art. 6) on which this complaint is based), the applicants would have become victims of it on 30 March 1984, when the order in issue was published in the Official Gazette and thereby became binding. However, Greece had not by then recognised the right of individual petition (see paragraph 39 above). The facts possibly constituting a breach are therefore covered by the time limitation in Greece's declaration of acceptance.

Despite its continuing effects, such a breach would only have been momentary in regard to the applicants under Article 6 (art. 6). Consequently, contrary to what they maintained, it was not the Supreme Administrative Court's judgment of 13 March 1987 that deprived them of their right of access to a court: it was Greece's legislation which did not afford them such a right at the time when Ministerial Order no. 2544/84 of 30 March 1984 was adopted. In duly carrying out its review of lawfulness, the Supreme Administrative Court merely highlighted the aforementioned impossibility. As to the Supreme Administrative Court's subsequent judgments, which the applicants also relied on, the Court will do no more than point out that they lie outside the compass of the case before it.

In short, the objection is well-founded.

46. This conclusion makes it unnecessary to consider the Government's other submissions.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it cannot deal with the merits of the case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 8 June 1995.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar