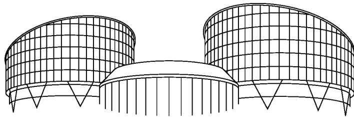

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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21.07.2016

The "haircut" on bonds held by individuals geared to restructuring the Greek public debt during the crisis did not violate their property rights

In today's **Chamber** judgment[1] in the case of Mamatas and Others v. Greece (application nos. 63066/14, 64297/14 and 66106/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights;

no violation of Article 14 (prohibition of discrimination) of the Convention, in conjunction with Article 1 of Protocol No. 1 to the Convention.

The case concerned the forcible participation by the applicants, who are private individuals holding Greek State bonds, in the effort to reduce the Greek public debt by exchanging their bonds for other debt instruments of lesser value. In 2012 a new law amended the conditions governing the bonds by dint of Collective Action Clauses enabling bond-holders to conclude a collective agreement with the State, deciding by an enhanced majority. That majority having been obtained thanks, in particular, to the participation of the institutional investors (banks and credit organisations), the new conditions came into force in respect of all bond-holders, including the applicants, despite the latter's refusal. Their bonds were cancelled and replaced by new securities worth 53.5% less in terms of nominal value.

This forcible participation amounted to an interference with the applicants' right to respect for their property for the purposes of Article 1 of Protocol No. 1 to the Convention. Nevertheless, that interference pursued a public-interest aim, that is to say preserving economic stability and restructuring the national debt, at a time when Greece was engulfed in a serious economic crisis. The Court therefore held that the applicants had not suffered any special or excessive burden, in view, particularly, of the States' wide margin of appreciation in that sphere and of the reduction of the commercial value of the bonds, which had already been affected by the reduced solvency of the State, which would probably have been unable to honour its obligations under the clauses included in the old bonds before the entry into force of the new Law. The Court also considered that the collective action clauses and the restructuring of the public debt had represented an appropriate and necessary means of reducing the public debt and saving the State from bankruptcy, that investing in bonds was never risk-free and that the applicants should have been aware of the vagaries of the financial market and the risk of a possible drop in the value of their bonds, considering the Greek deficit and the country's large debt, even before the 2009 crisis.

The Court also found that the bond exchange procedure had not been discriminatory, in particular because of the difficulty of locating bond-holders on such a volatile market, the difficulty of establishing precise criteria for differentiating between bond-holders, the risk of jeopardising the whole operation, with disastrous consequences for the economy, and the need to act rapidly in order to restructure the debt.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicants are 6,320 Greek nationals who, as private individuals, hold Greek State bonds of amounts ranging from 10,000 euros (EUR) to EUR 1,510,000.

Between 2009 and 2011 Greece experienced one of its worst ever economic crises; unable to meet its financial obligations, it was forced to borrow from the IMF and various Eurozone States, and had also to seek the assistance of the private sector in reducing its public debt. In the framework of this participation, the institutional investors, that is to say the banks and other credit organisations, negotiated a “haircut” on their shares – a reduction in the nominal value of their shares and an adjusted mode of reimbursement of the remainder – and the compensations they could expect in return. On the other hand, the private individuals holding bonds to a total of some 1% of the overall public debt did not take part in those negotiations, the Greek and European authorities having declared that they were not concerned by the measures.

In December 2011, however, the IMF invited the Greek authorities to bring in all their individual creditors as well. Law No. 4050/2012 on the rules amending State emission or guarantee securities was adopted on 23 February 2012. That Law provided for activating “collective action clauses” in order to require anyone not wishing to take part in the operation to participate, provided that at least two thirds of the individual bond-holders acceded to the agreement. The Council of Ministers decided which securities were to be used in the exchange programme as from 24 February 2012, including those held by the applicants, who refused the “haircut” on their bonds and did not respond to the State’s invitation to take part in the exchange procedure.

In March 2012 the Governor of the Bank of Greece, who had been appointed to manage the procedure, declared that the bond-holders had agreed to the proposed amendments and that 91.05% of the outstanding receivables had been covered by the procedure. The Council of Ministers ratified the result, which now covered all the capital constituted by the selected bonds, including those held by the applicants. The old bonds were exchanged for new ones worth 53.5% less in terms of nominal value. In April 2012 the applicants lodged an action with the Court of Cassation to set that decision aside, arguing, in particular, that it had violated their right to protection of property; however, their action was dismissed by the plenary Supreme Administrative Court.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property), the applicants complained that the exchange of their bonds as required under Law No. 4050/2012 had amounted to a *de facto* expropriation which had deprived them of their property or, in the alternative, an interference with their right to respect for their property. Under Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1, the applicants in application no. 66106/14 also complained that they had suffered discrimination as compared with other creditors, particularly the major creditors holding bonds to a total value of several billion euros.

The applications were lodged with the European Court of Human Rights on 17 September, 19 September and 1 October 2014 respectively. Judgment was given by a Chamber of seven judges, composed as follows:

Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”), *President*,
Ledi **Bianku** (Albania),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),

and also Abel **Campos**, *Section Registrar.*

Decision of the Court

Article 1 of Protocol no. 1 to the Convention (protection of property)

Existence of a "possession" and an interference

Greek State bond-holders, including the applicants, held, on expiry of their securities, a financial credit *vis-à-vis* the State of an amount equivalent to the nominal value of their bonds. They could therefore claim reimbursement of their bonds in pursuance of the legislation in force at the time of subscribing to the bonds. They therefore had a "possession" within the meaning of the first sentence of Article 1 to Protocol No. 1. However, the entry into force of Law No. 4050/2012 altered those conditions by introducing collective action clauses (a collective agreement with the State, deciding by an enhanced majority). These clauses imposed new conditions on the applicants, who had not consented to the amendment proposed under the Law, leading to a 53.5% reduction in the nominal value of their bonds. Their forced participation in the "haircut" procedure therefore amounted to an interference with their right to respect for their property for the purposes of the first sentence of Article 1 of Protocol No. 1 to the Convention; yet the interference was prescribed by law[2].

A public-interest aim

The international financial crisis which began in 2008 has had major repercussions on the Greek economy. In April 2009 Greece was facing an enormous deficit. In 2010 it was incapable of paying its debts, and over the ensuing years the crisis worsened. The Court therefore considered that during that period of severe crisis the authorities should have endeavoured to find solutions, and agreed that the State could have legitimately taken action to maintain economic stability and restructure the debt in the general interests of the community. The exchange operation reduced the Greek debt by approximately 107 billion euros (EUR). By the end of 2012, 85% of the debt was transferred from private individuals to the Eurozone States. In 2013 the cost of servicing the debt fell sharply: the interests scheduled for 2012, which were initially estimated at EUR 17.5 billion, dropped to EUR 12.2 billion following the exchange and remained under EUR 6 billion in 2013. Consequently, the interference pursued a public-interest aim.

Proportionality of the interference

As a result of the collective action clauses, the applicants had seen their securities annulled and replaced by new ones, which had resulted in a reduction in the amount they might have expected to receive when (if) the old bonds had matured. The exchange of securities had led to a 53.5% loss of capital for the applicants; in fact the loss had been even greater in view of the change in the prospective date of maturity. Although at first sight that loss appeared substantial, it was nonetheless not large enough to amount to a legislative means of ensuring the termination of or an insignificant return on the applicants' investment in the State bonds. The benchmark for assessing the extent of the loss sustained by the applicants was not the amount which they had expected to receive when their bonds matured. Although the nominal value of a bond reflected the amount payable to its holder on the date of maturity, it did not represent the bond's real monetary value on the date on which the State had adopted the impugned regulations, that is to say 23 February 2012, with the enactment of Law No. 4050/2012. The nominal value had no doubt already been affected by the slide in State solvency which had begun in mid-2010 and continued through 2011. This reduction in the monetary value of the applicants' bonds would suggest that on 20 August 2015 the

[2] The interference was based on Law No. 4050/2012, the two decisions of the Council of Ministers of 24 February and 9 March 2012, the 9 March 2012 decision of the Deputy Minister for Economic Affairs and the 9 March 2012 decision of the Governor of the Bank of Greece.

State would have been unable to honour its obligations under the contractual clauses included in the old bonds, before the enactment of Law No. 4050/2012.

The fact that, unlike other bond-holders, the applicants had not consented to the exchange operation, which had therefore been imposed on them under the new collective action clauses, did not, as such, affect the assessment of the proportionality of the interference. If dissident bond-holders such as the applicants had feared that the value of their bonds would decrease as soon as the collective action clauses were implemented, they could have exercised their rights as bond-holders and sold their bonds on the market up until the time-limit mentioned in the invitation which they had received to declare whether or not they agreed to the exchange. Indeed, collective action clauses were common practice on the international money markets and had been included[3] in all new euro area government securities, with maturity above one year. Furthermore, if a consensus had had to be reached among all the bond-holders on the plan to restructure the Greek debt, or if the operation had been confined exclusively to those having consented, the whole plan would almost certainly have collapsed. Moreover, one of the conditions laid down by the international institutional investors for reducing their receivables was the implementation of the said collective action clauses. Had those clauses not been introduced, a larger cut would have been applied to the receivables of bond-holders who were prepared to accept a “haircut” and would have helped deter a great many of them from joining in the procedure. It thus transpired that the collective action clauses and the consequent restructuring of the public debt had been an appropriate and necessary means of reducing the Greek public debt and saving the respondent State from bankruptcy.

Investing in bonds is never risk-free; between the time of issue of such a security and the date on which it becomes mature there is a considerable time-lapse during which unforeseeable events occur which can substantially affect the issuer’s solvency, even if the issuer is a State, and thus cause the bond-holder subsequent financial losses. In particular, the General Court of the European Union dismissed an appeal by 200 Italian nationals holding Greek State bonds on the grounds that, in view of the economic situation in the Hellenic Republic, the private investors in question could not claim to have acted as careful, well-informed economic operators who could adduce certain legitimate expectations, and that they were supposed to be aware of the highly instable economic situation causing fluctuations in the value of the Greek debt instruments which they had purchased, as well as the considerable risk of State bankruptcy. The transactions in question had been conducted on highly volatile markets which were often subject to uncontrollable vagaries and risks in relation to the declining or increasing value of the bonds, which might encourage holders to speculate in order to secure high yield in a very short time. Even supposing that all the applicants had not been involved in speculative transactions, they ought to have known of the said vagaries and risks as regards possibly large drops in the value of the bonds purchased. This was especially true as even before the financial crisis in 2009 the Greek State had already faced high debts and a large deficit.

Consequently, the Court considered that by adopting the impugned measures Greece had not upset the requisite balance between the public interest and the protection of the applicants’ property rights, and had imposed no exceptional or excessive burden on them. It therefore found that in view of the wide margin of appreciation of the Contracting States in this sphere, the impugned measures had not been disproportionate to their legitimate aim and that **there had been no violation of Article 1 of Protocol No. 1**.

[3] Pursuant to Article 12 § 3 of the Treaty Establishing the European Stability Mechanism.

Article 14 (prohibition of discrimination), combined with Article 1 of Protocol no. 1 to the Convention

The applicants submitted that they had been subjected to the same treatment in respect of different, incomparable situations, because the exchange procedure had originally been aimed at legal entities holding State bonds, and private individuals had only been included at the last minute. They argued that private individuals, including small investors (usually with a capital of less than EUR 100,000), had a limited life expectancy and lacked the detailed professional insights available to legal entities in the financial sphere, which entities accepted the economic risks with full knowledge of the facts. Even supposing the applicants' allegation that different situations had been treated in the same way was justified, the Court noted a series of grounds showing that the exchange procedure had not infringed their right to non-discrimination in the exercise of their right under Article 1 of Protocol No. 1.

First of all, the Court noted that the difficulty of locating the persons concerned was a cogent argument, as the bond market was highly volatile and many of the individual bond-holders had purchased their securities on the secondary rather than the primary market. Sifting through all the Greek and international money markets would have necessitated putting the exchanges on hold, excessively protracting the procedure at a time when the country's financial needs had become urgent.

Secondly, the Court noted the difficulty of laying down detailed criteria to differentiate between the bond-holders. On the one hand, it would have been problematic to draw a distinction between natural and legal persons or between professional and non-professional investors, because the rights bestowed by the holding of bonds could not be treated differently depending on the status of the bond-holder. On the other hand, it would have been difficult, in legal or even in practical terms, to delineate the small-investor status as demanded by the applicants, given that some of the applicants, as private individuals, had invested considerable sums, often in excess of EUR 100,000, in the bonds at issue. Even supposing that that amount could theoretically have been taken as a threshold for drawing a distinction, the Court considered that it would have been unfair to exclude an individual who had invested 100 000 EUR from the operation while including a company which had invested a much smaller amount on the ground that the latter was a legal entity or an investor.

Thirdly, the Court took into account the Government's argument concerning the risk of jeopardising the whole operation, with calamitous consequences for the Greek economy. A simple announcement by the authorities that specific categories of bond-holders were exempted from the exchange operation would have resulted in a mass transfer of bonds into the exempted categories, which would not only have reduced the capital required for the restructuring operation but also have triggered more drastic cuts in the nominal value of the non-exempted bonds. Furthermore, such a transfer would have jeopardised the exchange procedure and might even have led to the bankruptcy of the Greek State, which, at the time, had been excluded from the international markets and which only its European partners had been prepared to finance, on the proviso that the private sector also participated.

Fourthly, the Court took into consideration the need to maintain the dynamics of the operation and to act quickly. Demanding that the authorities draw a distinction between different types of investors/bond-holders and that they exclude some of them from the exchange operation would have forced them to undertake an extremely difficult task, which would, moreover, have risked rendering the whole operation counter-productive in terms of the viability of the exchange and of the dynamics required for ensuring the success of the debt-restructuring process.

Consequently, the Court found that **there had been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 to the Convention.**

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.