

EUROPEAN COMMISSION OF HUMAN RIGHTS

Applications Nos. 13092/87 and 13984/88

THE HOLY MONASTERIES

Ano Xenia, Ossios Loucas, Aghia Lavra Kalavryton,
Metamorphosis Sotiros in Megalo Meteoro, Assomaton
Petraki, Virgin Chryssoleontissa in Egina, Phlamourion Volou
and Mega Spileo Kalavriton

against

GREECE

REPORT OF THE COMMISSION

(adopted on 14 January 1993)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The applications

2. The applications were introduced by 8 individuals monks and 8 Holy Monasteries. In particular, Application No 13092/87 was introduced by the Men's Holy Monastery Ano Xenia, the Holy Monastery Ossiou Loucas of Boeotia, the Holy Monastery Aghia Lavra Kalavryton in Achaia, the Holy Monastery Metamorphosis Sotiros in Megalo Meteoro and the Holy Monastery Assomaton Petraki. Application No 13987/88 was introduced by the Holy Monastery of the Virgin Chryssoleontissa in Egina, the Holy Monastery Phlamourion Volou and the Holy Monastery Mega Spileo Kalavryton.

The applicants are represented before the Commission by Mr. P.M. Bernitsas, a lawyer practising in Athens.

3. The applications are directed against Greece. The respondent Government were initially represented by their Agent, Mr. Constantinos Economides, Head of the Special Legal Department of the Ministry of Foreign Affairs. They are now represented by their Agent, Mr. George Sgouritsas, President of the Legal Council of the State (Nomiko Symvoulío tou Kratous).

4. The applications concern Law 1700/1987 modifying the rules of administration of the applicant monasteries' patrimony and providing for the transfer of a large part of the monastic estate to the Greek State. The applicant monasteries allege that as from the entry into force of the above law they were arbitrarily deprived of their properties, that they have been prevented from having access to domestic courts, that their rights to freedom of religion and to freedom of association were violated and that they have been discriminated against. They invoke Article 1 of Protocol No. 1 to the Convention and Articles 6, 9, 11, 13 and 14 of the Convention.

B. The proceedings

5. Application No. 13092/87 was introduced on 16 July 1987 and registered on 21 July 1987.

6. The Commission decided on 5 May 1988 to bring the application to the notice of the respondent Government, inviting them to submit written observations on the admissibility and merits of the case.

7. The Government submitted their written observations on 22 September 1988 after an extension of the fixed time-limit for the submission had been granted by the President of the Commission. The applicants submitted their observations in reply on 9 January 1989 after having been granted an extension of the time-limit for the submissions.

8. Application No. 13984/88 was introduced on 15 May 1988 and registered on 28 June 1988.

9. The Commission decided on 10 March 1989 to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits of the case.

10. The Government submitted their observations on 26 June 1989. The applicants presented their observations in reply on 22 September 1989 after an extension of the time-limit for the submissions had been granted by the President.

11. On 4 December 1989 the Commission decided to join the applications and to invite the parties to a hearing on the admissibility and merits of the applications.

12. The hearing was held on 5 June 1990. The Government were represented by their Agent, Mr. Constantinos Economides, and by Mrs. Maria Vondikaki-Telalian, Legal Adviser, of the Special Legal Department of the Ministry of Foreign Affairs, Mrs. Artemis Papathanassiou, Secretary to the Special Legal Department of the Ministry of Foreign Affairs, and Mr. Charalambos Chrissanthakis, barrister, as Counsel.

The applicants were represented by Mr. Panayiotis Bernitsas and Mrs. Domna Mirasyesi, a lawyer practising in Athens.

Two of the individual applicants, Priest-Friar Konstantinos Ramiotis and Priest-Friar Athanasios Athanasiou, were present at the hearing.

13. Following the hearing, the Commission declared the applications admissible as far as introduced by the Holy Monasteries. It declared the applications inadmissible as far as introduced by the individual monks.

14. The Commission's decision was communicated to the parties on 16 July 1990. The parties were invited to submit any further evidence or additional observations that they wished to put before the Commission. The parties did not submit such observations.

15. On 7 December 1991, the Commission decided to invite the parties to submit, if they so wished, information on the status of implementation of the challenged legislation.

16. The Government submitted such information on 19 February 1992 and the applicants presented their comments on it on 31 March 1992.

17. After declaring the case admissible, the Commission, acting in accordance with Article 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. Active consultations with the parties took place between 16 July 1990 and 24 April 1992. The Commission now finds that there is no basis on which such a settlement can be achieved.

C. The present Report

18. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS

19. The text of the Report was adopted by the Commission on 14 January 1993 and is now transmitted to the Committee of Ministers in accordance with Article 31 para. 2 of the Convention.

20. The purpose of the Report, pursuant to Article 31 para. 1 of the Convention, is:

- (1) to establish the facts, and
- (2) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

21. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

22. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. General historical background

23. The applicant monasteries were created between the 9th and 13th century A.D. They accumulated extensive patrimony mainly by donations before the formation of the Greek State in 1829. A great part of this patrimony was expropriated in the first years of the existence of the Greek State. Moreover, large segments of the monastic estate were offered by the monasteries to the State or to landless people.

24. The monasteries' rights over this estate have not been challenged by the Greek State. "Usucapio" (hrisiktesia, adverse possession) has always been invoked by the monasteries as a subsidiary means to prove ownership of land in cases where the original byzantine or ottoman titles were either destroyed or could not be produced.

25. Apart from the aforementioned patrimony acquired over the centuries, the monasteries own land and buildings acquired by them in recent times by normal civil law procedures such as purchase, donation or inheritance.

26. The monasteries are legal entities of public law (Article 1 para. 4 of the Statutory Charter of the Church of Greece). According to Article 19 of the Statutory Charter of the Church of Greece, the Holy Monasteries are religious institutions for the asceticism of men and women living in them pursuing the monastic principles, the holy rules on asceticism and the traditions of the Orthodox Church of Christ.

27. According to Law 4684/1930 the monasteries' estate was designated as patrimony "to be sold" (ekpoiitea periousia) or "to be maintained" (diatiritea periousia). The patrimony to be maintained was deemed to be the possessions necessary for the functioning of the monasteries and included all acquisitions after the publication of Law 4684/1930. Patrimony to be sold was deemed to be the remaining possessions. The classification of which possessions fell within which category has been effected by decrees issued separately for each monastery.

28. The management of the patrimony to be maintained was left to the Holy Monasteries and was exercised according to the laws and decrees issued, the decisions of the Holy Synod (Iera Synodos) of the Church of Greece and the internal regulations of each monastery.

29. The patrimony to be sold was deemed to remain in the ownership of the monasteries but the management was exercised by a church institution, the ODEP (Organisation for the administration of Church property - Organismos dioikisis ekklesiastikis periousias). The ODEP was under the supervisory authority and control of the Holy Synod

which appointed the members of its board. In respect of its administration of monastic property the ODEP had full legal capacity to act in all legal proceedings concerning the monasteries. The liquidation of patrimony to be sold by the ODEP presupposed an authorization by the Board of each monastery.

B. Particulars of the applicant monasteries

i. The men's Holy Monastery Ano Xenia

30. This monastery was founded in the 9th century A.D. on the Mount Orthrys in Thessaly. It was recognised as a separate legal entity of public law on 5 May 1962 by ministerial decision of the Minister of National Education and Religion (Decision No. 45855). The monastery's estate includes, inter alia, a forest of 278,70 hectares which surrounded the monastery buildings as well as numerous olive groves, vineyards and other agricultural land with several annex buildings and a house and apartments in the town of Volos. According to the applicants' submissions the value of the monastery's real estate exceeds 180.000.000 Drs.

ii. The Holy Monastery Ossiou Loucas in Boeotia

31. This monastery was created in 947 A.D. and was an important cultural centre in the byzantine times. The monastery complex and its 11th century mosaics are considered as most important byzantine art creations. The monastery's estate includes a hotel in Athens, a farm and several agricultural plots surrounding the monastery buildings. A Ministerial Decree dated 25 January 1933 contains a detailed list of the monastery's assets. According to the applicant's submissions the value of the monastery's estate which is commercially exploitable exceeds 130.000.000 Drs. This estimation does not take into account the monastery's complex, its treasure or the agricultural land surrounding the monastery.

iii. The Monastery Aghia Lavra Kalavryton

32. This monastery was founded in 961 A.D. and was an important cultural centre in the Peloponnese. It was destroyed during the Greek ethnic revolution in 1826 and was rebuilt in 1830. Apart from the various buildings of the monastery's complex and a number of churches and annex buildings and the surrounding area the monastery's estate includes several agricultural land plots, a forest, oil treatment installations as well as several apartments, offices and shops in Athens and Patras. The monastery's estate is evaluated by the applicant at more than 485.000.000 Drs. The monastery's complex and churches are not comprised in this evaluation.

iv. The Holy Monastery Metamorphosis Sotiros in Megalo Meteoro

33. This monastery was built in Meteora in 1344 A.D. and acquired enormous prestige both because of its location and as an art and cultural centre. The monastery's estate comprises large forest areas, a farm, shops in the city of Trikala and Kalambaka as well as a flat. A Ministerial Decree of 16 October 1933 contains a list of agricultural land owned by the monastery. The applicant's estimate of the property amounts to more than 465.000.000 Drs.

v. The Holy Monastery Assomaton Petraki

34. This monastery was founded in 1000 A.D. It developed in particular during the 17th and 18th centuries. The monastery has acquired important patrimony which includes several buildings in Athens, large agricultural and forest areas, touristic installations and urban land plots. The monastery's estate further comprises marble quarries in Parnitha. A list of the assets deemed to be owned by this monastery in 1933 is included in a Ministerial Decree of 14 February 1933.

vi. The Holy Monastery of the Virgin Chryssoleontissa in Egina

35. This monastery was founded in the 13th century on the island of Egina. Originally a men's monastery, it was converted into a women's monastery in 1935. It is submitted that a large part of the monastery's estate - including desert islands - were expropriated at the beginning of the century. The monastery's estate includes, apart from the monastery's complex itself, several agricultural land plots olive plantations, houses and apartments in Egina as well as several stores, offices and apartments in Athens. It is submitted that the value of its estate exceeds 880.000.000 Drs.

vii. The Holy Monastery Phlamourion Volou

36. This monastery is located on the western side of Mount Pelion. Its patrimony comprises two forests of 8.241 and 1.049 hectares respectively, agricultural land plots and urban assets in Volos.

viii. The Holy Monastery Mega Spileo Kalavryton

37. This monastery is located in Achaia. It was destroyed in 840 A.D. and re-established in 1280. The monastery's estate includes - apart from the monastery's complex and the wooded area surrounding it - several agricultural land plots, forest areas and offices in Athens, the value of which, it is submitted, exceeds 950.000.000 Drs.

C. Law 1700/1987

38. On 6 May 1987 Law 1700/1987 was published in the Official Gazette of Greece. It modified the rules concerning the management administration and representation of monastic estate providing that these were assigned to the ODEP, whose composition was modified in that the majority of its members was appointed by the State. Law 1700/1987 further provided that, within six months from its publication, the State would become the owner of all monastic assets, unless the monasteries proved to have a right of ownership (kyriotita) over the asset deriving either from a legal title duly registered (meteggrammeno) or from an irrevocable court decision against the State. It is to be noted that according to Law TS/1895 only transactions over immoveables which took place after 1856 were to be registered.

39. In particular, Article 1 para. 1 of this Law reads as follows:

(Translation)

"On the coming into force of this law the Organisation for the administration of church property (ODEP) is assigned ipso jure the exclusive administration, management and representation of all the immoveables of the monasteries in relation to which it has from now on active and passive legitimatio (nomimopoiesi), regardless of whether such property belongs in accordance with the legislation in force to the category of patrimony 'to be maintained' or patrimony 'to be sold'."

40. Paragraph 3 of the above Article reads:

"By Presidential Decree issued following the proposal of the Minister of National Education and Religion, the Minister of Economy and the Minister of Agriculture, there shall be laid down, in modification of the legal provisions in force, the terms and procedure for the sale, lease, concession of use and development by the ODEP ... of movable and immovable monastic estate and any other question related to the administration and management of such estate in general. The same decree may also authorise other administrative bodies to regulate every detail of its application by regulatory decisions. Specifically in case of the sale of buildings or building land belonging to monasteries or a concession of any real property right thereon, it is necessary to have the consent of the Holy Monastery which is the owner, failing which the relevant contract is null and void."

41. Further, Article 8 of this Law provides that members of the ODEP are to be appointed by ministerial decision of the Minister of National Education and Religion. According to this Article the Central Administrative Board of the ODEP has the following membership:

a) the Chairman who is appointed together with his deputy by the Government following the proposal of the Minister of National Education and Religion;

b) three members appointed together with their deputies by the Permanent Holy Synod; and

c) three members appointed with their deputies by the Minister of National Education and Religion.

42. Articles 2 and 3 of Law 1700/1987 read as follows:

Article 2

"1. All the immoveable assets of the monastic estate which on the coming into force of this law is in the ownership (kyriotita) or possession (katohi) of the <ODEP>, the Holy Monasteries or any third party, may be disposed of by the ODEP by concession of their use for ... development and exploitation, preferably to farmers who are members or by such concession become members of agricultural cooperatives, as well as to agricultural cooperatives and State agencies. In exchange for such a concession the ODEP shall pay to the Holy Monastery concerned 5 % of the gross revenue from the concession which will be used for the monastery's needs.

Immoveable assets within the meaning of this provision are agricultural land and land liable to agricultural exploitation, forest areas in general, pastures, grass meadows or other agricultural areas in general, as well as quarries, mines and fish farms.

2. Within a deadline of six months from the coming into force of this law the ODEP ... may transfer to the Greek State by contract to be signed between the former, as representative of the Holy Monasteries, and the Ministers of National Education and Religion, Agriculture and Economy, as representatives of the Greek State, the ownership of the aforementioned monastic immoveables as well as the land belonging to Holy Monasteries which has become part of city plans (building land) after 1952. This transfer of ownership to the Greek State does not affect the validity of a concession of use which has been granted in accordance with the terms of the previous paragraph, with the exception of the term concerning the payment of a percentage of the revenue, which percentage will now be paid to a corporation to be created ... and

will be used for educational needs. Until the creation of the above mentioned corporation this percentage of the revenue will be deposited in a special account of the Bank of Greece on behalf of the Ministry of National Education and Religion.

3. Immoveables belonging to the Holy Monasteries and destined exclusively for cultivation by the monks themselves is exempted from the provisions of this Article. These areas are to be determined for each monastery depending on the number of monks living therein, as well as the needs of each monastery for environmental protection. Areas owned by the monasteries destined for camps and for the purposes of other church foundations are also exempted.

Such areas are determined by decisions of the Ministers of National Education and Religion, Agriculture and Environment and Public Works, which decisions are to be issued following the opinion of the ODEP for each Holy Monastery, camping and church foundation.

Article 3

1. Should the deadline in paragraph 2 of Article 2 expire without results, the property rights over monastic assets are regulated in accordance with the following provisions:

A) Immoveables which are under the use (nomi) or possession (katochi) of the Holy Monasteries at the time of the entry into force of this law are deemed to be in the ownership of the Greek State, regardless of their form of administration, management or exploitation, unless the property rights of the monastery a) is derived from a legal title issued before the day of deposit of the bill which has been registered or will be registered within an exclusive deadline of six months from the beginning of the validity of this law, b) has been recognised by law or by an irrevocable court decision against the State. The same applies in cases of immoveables which are used or possessed by a monastery but have been occupied by third persons.

B) The use and possession of the immoveables whose ownership is transferred to the State in accordance with the preceding clause and whose ownership was not transferred to the State in accordance with Article 2 comes to an end and is transferred ipso jure to the Greek State. Any form of administration, management and exploitation of such property ceases, regardless of the category to which this property belongs in accordance with the legislation in force. The State exercises from now on, against any third party, the Holy Monasteries and the organisations for the management of their patrimony the rights derived from ownership, use and possession of these

assets. Their management and administration is henceforth exercised by the Ministry of Agriculture in accordance with the provisions of the legislation formerly in force and this law. This change does not affect the validity of a concession of use which has been effected in accordance with Article 2 para. 1 of this law, with the exception of the term concerning the percentage of the revenue, which will be paid to the corporation provided for in Article 9 of this law and will be used for the needs of education. Until the creation of the above mentioned corporation the percentage of the revenue will be deposited in a special account at the Bank of Greece on behalf of the Ministry of National Education and Religion.

2. Immoveables within the meaning of this Article are agricultural land and land liable to agricultural exploitation, forest areas in general, pastures, grass meadows or other agricultural areas in general, as well as quarries, mines and fish farms. Immoveables are also building plots, even if they have been included in city plans, provided this inclusion in city plans took place after 1952.

3. To Holy Monasteries which do not own sufficient immoveable property there may be conceded free of charge land which is already in their possession in accordance with paragraph 1 of this Article, exclusively for cultivation by the monks themselves. The extent of such land will be determined for each monastery depending on the number of monks living therein as well as the needs of each monastery for environmental protection. This concession shall take place within an exclusive deadline of one year from the end of the deadline in paragraph 1 of this Article, by contract between the State, represented by the Ministers of National Education and Religion, Environment and Public Works and Agriculture, and the legal person administering the monastery's assets in accordance with the legislation in force."

43. Article 4 of Law 1700/1987 provides that within a deadline of two months from the end of the above six month time-limit (Article 3 para. 1 (a)) any person being in possession of an immoveable asset considered to be the property of the State should "deliver" it (i.e. complete the contract of transferring ownership) to the competent State authorities. An administrative expulsion procedure (compulsory transfer) will be used to ensure "delivery". Moreover, the contractual rights of third parties over immoveable property cease ipso jure six months after the transfer of the property.

Article 4 paras. 4 to 7 provide for remedies which may be pursued in the context of the transfer procedure:

" 4. The person 'expelled' is entitled to appeal asking for invalidation of the transfer document, if the document was issued in violation of an essential form or without the legal prerequisites therefor.

5. The appeal must be made within 60 days of notification of the transfer document. This deadline and the appeal do not suspend the enforcement. The administrative court of appeal is competent to determine the appeal. In all other respects the provisions of the Administrative Procedure Code are applicable.

6. The decision of the administrative court of appeal is subject to cassation appeal before the Council of State in accordance with the provisions of Law 170/1973. The cassation appeal is submitted by all the parties which are entitled thereto within 60 days of notification of the decision of the court of appeal.

7. Regardless of the appeal against the transfer document, the person 'expelled' and any third party are entitled to bring an action before the competent civil court in accordance with the general civil procedure provisions, claiming rights over the immovable. This action may be introduced within a strict time-limit of one year starting: a) in case of voluntary transfer of the ownership, on the date of the relevant transfer and transfer document and b) in case of compulsory transfer, if an appeal has not been introduced in time, the date of the receipt of the compulsory transfer document and where an appeal has been introduced against that document, on the date of notification of the decision of the administrative court of appeal."

D. Proceedings concerning law 1700/1987

44. By decision of 10 July 1987 the Council of Ministers appointed the President of the Central Administrative Board of the ODEP. On 16 July 1987 the Minister of National Education issued a decision concerning the organisation of the Central Administrative Board of the ODEP in accordance with Article 8 of Law 1700/1987.

45. The applicants in the Application No. 13984/88 challenged the latter decisions before the Council of State (Symvoulío tis Epikrateias), alleging that Law 1700/1987 was contrary to the Greek Constitution and the Convention. They invoked in particular Articles 3 and 17 of the Constitution which provide as follows:

Article 3 para. 1:

"Relations of Church and State

The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating therefrom and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of 29 June 1850 and the Synodical Act of 4 September 1928."

Article 17:

"1. Property (idioktisia) is protected by the State; rights deriving therefrom, however, may not be exercised contrary to the public interest.

2. No one shall be deprived of his property except for the public benefit, which must be duly proven, when and as specified by law and always following full compensation, corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered.

3. Any change in the value of expropriated property occurring after publication of the act of expropriation and resulting exclusively therefrom shall not be taken into account.

4. Compensation shall in all cases be determined by civil courts. Such compensation may also be determined provisionally by the court after hearing or summoning the expropriator, who may be obliged, at the discretion of the court, to furnish a commensurate guarantee for collecting the compensation as provided by law. Prior to payment of the final or provisional compensation determined by the court, all rights of the owner shall be maintained intact and occupation of the property by the expropriator shall not be allowed.

Compensation in the amount determined by the court must in all cases be paid within one and a half years at the latest from the date of promulgation of the decision on the provisional compensation payable and, in cases of a

direct request for the final determination of compensation, on the date of promulgation of the court decision, otherwise the expropriation shall be revoked ipso jure. The compensation as such is exempt from any taxes, deductions or contributions."

46. In its judgment of 7 December 1987 the Council of State stated the following:

"The provisions of Article 3 para. 1 of the Constitution ratify the holy canons and traditions of the Orthodox Church. However, such constitutional ratification, referring to holy canons and dogmatic traditions and concerning the sphere where the sovereign rights of the Church are exercised cannot be considered as extending to the canons and traditions related to matters of exclusively administrative nature. Such matters, under the influence of time and newer concepts, are necessarily liable for modification for the purpose of promoting the mutual interest of the Church and the State and are settled by the common legislator in accordance with social needs, pursuant to the provisions of Article 72 of the Constitution. Nevertheless the legislator cannot, according to the spirit of such provisions, modify by law the fundamental and essential administrative institutions which have long been established in the Orthodox Church. Furthermore, these provisions enshrine the self-government of the Church. This includes its power to decide on its affairs through its own organs composed as provided for by law and recognises the right of the Church to be administered by the Holy Synod and the Permanent Holy Synod organised in accordance with the law and the provisions of the Patriarchal Tome of 29 June 1850 and the Synodical Act of 4 September 1929 concerning the composition of these bodies. In accordance with the majority opinion of this Court, the provisions of the 1700/1987 entrusting the ODEP, a public law entity, whose Central Administrative Board members are appointed in their majority by the State, with the administration and management of the property of holy monasteries are not contrary to the constitutional principle of the self-government of the Church or to religious freedom and Articles 9 and 11 of the Rome Convention, the Charter of the United Nations of 16 February 1946 and the Final Act of Helsinki of 1 July 1976. These questions, which are not related to dogma and cult are of a purely administrative nature and are not even related to fundamental administrative church institutions. Moreover, the provisions of Law 1700/1987 do not fundamentally modify ecclesiastical institutions since the administration and management of the monastic and church property had already been assigned to the ODEP, whose Central Administrative Board when first formed consisted in its majority of lay members proposed by the State.

Therefore, the allegations made are ill-founded and must be rejected.

However, one of the members of this Court supported the following view, which was followed by one of the assessors. The provisions of Article 3 of the Constitution disposing that the Church of Greece is administered by 'the Synod of serving Metropolitans' does not only protect the self-government of the Church in the sense that it is governed by Metropolitans but also its right to administer, manage and dispose of, according to its own will, as any owner, any movable or real property belonging to it and to the other church entities in order to achieve its non-lucrative objectives, i.e. the establishment and promotion of the orthodox faith of its members. Monastic communities constitute essential parts of this Church which, despite their characterisation (by Article 1 para. 4 of Law 590/1977) as public law entities, are derived, like the Church, from the area lying outside the jurisdiction of the State. Monastic life has also constituted a fundamental mode of cult of God. Therefore, the deprivation by the provisions of Law 1700/1987 (Article 1 paras. 1 and 3) of all monasteries of the administration and management of their existing and future property (movable and real property, building and agricultural land), and the assignment of such powers, without the monasteries' consent, to the ODEP most of whose members are appointed by the State and which is therefore alien to the administrative structure of the Church, limits in an impermissible manner the self-government of the monasteries and consequently the principle of the self-government of the Church, in view of the fact that in accordance with the Holy Canons monks must be landless. Such a regulation violates first the above-mentioned article of the Constitution which does not permit modification of administrative institutions of the Church to such an extent as to reverse its self-government, and secondly, it seriously hinders the exercise of cult by means of monastic life, since monastic cult cannot be exercised 'without hindrance' as guaranteed in Article 13 para. 2 of the Constitution. Finally it should be noted that since 1953 the ODEP had an Administrative Board appointed in its majority by the Church and was presided over by the Archbishop of Athens. The precedents to the contrary invoked by the majority opinion refer to isolated particular cases and not to the administration of monastic real estate as a whole. Therefore, in accordance with the opinion of the minority the allegations of the applicants are well-founded.

It is further alleged that the provisions of Law 1700/1987 entrusting the ODEP, an entity being alien to the Church and not controlled by it, with the administration of monastic real estate and permitting the transfer of such

real estate to the State without any exchange, are contrary to Articles 17 and 7 para. 3 of the Constitution since they impose a non-permissible confiscation of the above-mentioned property, deprive the monasteries of their property and impose restrictions on property rights which are not permitted by the Constitution.

Article 7 para. 3 of the Constitution provides that general confiscation is prohibited. Article 17 of the Constitution rules that property is under the protection of the State, but the rights derived therefrom may not be exercised to the detriment of the public interest (para. 1). No one can be deprived of his property unless for reasons of duly proven public interest, according to the law and always following prior complete indemnisation which must correspond to the value of the expropriated property. This last constitutional provision prohibits deprivation of a person's property without the fulfilment of the conditions specified therein. However, the legislator is not hindered from introducing on the basis of objective criteria and in the public interest limitations on property, provided that these limitations do not abolish or inactivate property rights (cf. Council of State decisions 1034/1978, 6711/1979, 3466/1980, 1503/1982 etc.).

In accordance with the majority opinion of this Court the stipulations of Law 1700/1987 which provide for the transfer to the Greek State of the ownership (kyriotita) on monastic agricultural and other land being in the possession of the monasteries without lawful ownership titles are not contrary to Article 17 of the Constitution. These provisions do not deprive the monasteries of their property (idioktisia), since the law precisely requires that the immoveables concerned do not belong to the monasteries. Moreover, the provisions of the same law, which refer to the sale of the urban assets of the holy monasteries or the concession of rights thereon by decision of the ODEP, a body functioning within the framework of the administrative organisation of the Church, do not offend the property rights of the monasteries, since their implementation requires the consent of the monastery owning the asset. Without such consent the contract is absolutely null and void. Finally, the provisions referring to the exploitation by the ODEP of the urban assets, mines, quarries and vivariums belonging to monasteries or any other church institution, and those concerning the administration and management of the agricultural property of the monasteries in general, are not contrary to the Constitution. As regards (...), administration and management of agricultural property of the monasteries in general and the exploitation and further exploitation of urban assets, the relevant stipulations do not entail deprivation of property since the property as such of the land concerned remains with

the monasteries and in any event the income from the management of the above-mentioned property by the ODEP is used for church purposes. This regulation imposes limitations which are permitted by the Constitution and are imposed in the interests of the monasteries and in the public interest as well. Therefore, the allegations of the applicants relating to the violation of Articles 12 paras. 5 and 6 and 20 of the Constitution and Article 1 of the Additional Protocol of Paris of 20 March 1952 to the Convention of Rome, which contain provisions similar to Article 17 of the Constitution, are ill-founded and must be rejected.

Two of the members of this Court supported the following opinion, which was followed by one of the assessors. The assignment under the above conditions of the administration and management of all monastic patrimony in general to the ODEP even 'in modification of the provisions in force' (Article 1 para. 3 of Law 1700/1987) does not merely constitute a limitation of property tolerated by the Constitution, but affects in a non-permissible manner and without complete indemnisation the very essence of the monasteries' property rights. This becomes more evident from the fact that the sole power left to the monasteries is to agree or disagree to the sale of their urban assets or the concession of real rights thereon by the ODEP but they may not decide on such sale or concession, since such decision may be made only by the ODEP which resolves dominantly, that is without even the opinion of the monastery, on the sale of agricultural land and the 'exploitation or further exploitation' of their real property in accordance with Article 7 of Law 1700/1987. As regards the movable property of the monasteries, some of which is of particularly high value (e.g. icons of monastery museums, valuable relics, shares etc.) these are managed by the ODEP without any limitations whatsoever. Besides, it should be noted that Law 1700/1987 does not specify the fate of the income from exploitation of monastic property. On the contrary, it appears from Articles 2 para. 2, 3 para. 1 (b) and 9 of Law 1700/1987 that the income from 'exploitation or concession of use of monastic and church property in general' becomes the possession of a private law entity, created under Article 9, which has no church objects. Thus the provisions of Law 1700/1987 are in acute opposition not only to Article 17 of the Constitution but also to the provisions of the Rome Convention (Article 1 of the Additional Protocol) and the EEC Treaty. The provisions of these treaties prevail over any provisions of law (Article 28 para. 1 of the Constitution) and create international responsibility for the Greek State. Therefore, in accordance with the minority opinion, the allegations of the applicants are well-founded.

It is further submitted that the provisions of Article 8 para. 1 of Law 1700/1987 are contrary to the constitutionally protected independence of the Orthodox Church of Greece (Article 3 para. 1 of the Constitution). This allegation is ill-founded, since the above-mentioned provisions of Law 1700/1987 are not related to the independence of the Orthodox Church of Greece declared in Article 3 para. 1 of the Constitution.

It is further alleged that the provisions of Law 1700/1987 violate Article 4 para. 1 of the Constitution since they introduce an unjustified discriminatory treatment of the Orthodox Church of Greece in comparison to monasteries belonging to the œcumenic Patriarchate and the œcumenic Patriarchate itself, the Patriarchates of Alexandria, Jerusalem, the Holy Sepulchre, the Holy Monastery of Sinai and monasteries of other confessions or religions. This allegation is ill-founded since the Orthodox Church of Greece, being an instrument and expression of the prevailing religion, according to Article 3 para. 1 of the Constitution, is not under the same conditions in relation to the other Orthodox churches, confessions or religions.

Therefore the legislative stipulations concerned do not violate the constitutional principle of equal treatment.

It is moreover submitted that the stipulations of the Law 1700/1987 violate Article 5 para. 1 of the Constitution in that orthodox citizens who desire to financially support monasteries are hindered in the free development of their personality since, against their will, the administration and management of the donated property will not be entrusted to the monasteries but to the ODEP. Furthermore, it is alleged that these stipulations affect the individual right of religious freedom of the members of monastic communities, as well as of the persons desiring to found a monastery. The reasons invoked are ill-founded since the individual right of free development of personality, which is guaranteed in Article 5 para. 1 of the Constitution is not absolute but is subject to the limitations of the Constitution and the law. In this case the limitations imposed by the above-mentioned provisions of Law 1700/1987 do not violate Article 5 para. 1 of the Constitution. As regards its second aspect, the allegation is inadmissible since it vaguely relates to eventual and future damage to the applicants.

It is claimed that the provisions of Law 1700/1987 violate the constitutional principles of protected confidence, proportionality and necessity. This allegation is ill-founded. The principle of protected confidence is not directly protected by the Constitution. The principles of necessity and proportionality are not violated since the stipulations concerned are adequately justified."

E. Law 1811/1988

47. On 11 May 1988 The Permanent Holy Synod entered into an agreement with the Greek State. According to the provisions of the agreement 149 monasteries, among them the Holy Monasteries of Assomaton Petraki, Ossiou Loucas and Phlamourion Volou, conceded their agricultural land to the State. The agreement was ratified by the Parliament (Law 1811/1988) on 13 October 1988.

48. Rule 2 of the agreement provides that agricultural and forest land being part of the monasteries' patrimony is transferred to the State. The land surrounding any monastery complex is excluded from the transfer operation. Churches or other annex buildings belonging to the monasteries together with the area surrounding them are also excluded. Moreover, each contracting monastery is allowed to exempt from the transfer operation a percentage of its original land property provided that the total surface of such land will not exceed 500.000 sq.m. of forest or 200.000 sq.m. of agricultural land. Finally, any property rights deriving from donation or heritage to the monastery are excluded from the transfer operation.

49. In exchange for the property transferred the Greek State undertakes to pay salaries to 85 ecclesiastical employees (ierokeryx) and to allocate 1% of the public expenditure for the Church for financially supporting the contracting monasteries.

50. Rule 3 para. 1 of the agreement provides for the abolition of the ODEP after the property transfer operations have been accomplished. Para. 2 of the same Rule provides that the contracting monasteries will manage and administer the agricultural and building land which is classified as patrimony to be maintained. The patrimony to be sold will be managed and administered by the Church of Greece.

51. Rule 5 para.1 second sentence provides that

"as from the date of publication of the law ratifying the agreement in the Official Gazette, ... the (contracting) Holy Monasteries become undisputed owners (kyrioi), users (nomeis) and possessors (katochoi) of the areas they withheld in accordance with the agreement ... in relation to which they have active and passive legitimatio".

52. According to Article 2 of Law 1811/1988 the provisions of Law 1700/1987 do not apply to the real property which is the subject matter of the agreement. The ODEP is abolished and the administration of the estate of non-contracting monasteries is entrusted to the Permanent Holy Synod of the Church of Greece. The provisions of Law 1700/1987 apply in respect of the non-contracting monasteries' estate.

F. Implementation of Laws 1700/1987 and 1811/1988

53. By a circular letter dated 5 January 1989 the Minister of Agriculture invited the Prefectures to proceed to the establishment of the committees which, according to Law 1811/1988, shall define the parts of the monastic estate which are to be conceded to the State in accordance with the agreement.

A further circular letter dated 20 February 1989 drew the attention of the authorities to the fact that the ownership of the non-contracting monasteries' immoveables had been transferred to the State in accordance with Law 1700/1987. The authorities were also reminded of the possibility to concede parts of the monastic immovable patrimony to agricultural cooperatives. Finally, the circular stated that the expulsion procedure provided in Article 4 of Law 1700/1987 could start. However, the delivery operations have not so far been completed, in particular as regards the procedure with a view to defining the property which is to be transferred to the State, be that under Law 1700/1987 or 1811/1988. Moreover, several problems arose as to the delimitation of the forest areas which are deemed to be owned by the State.

54. The applicants have submitted that parts of their estate have been ceded to agricultural co-operatives. Furthermore they have submitted two judgments of first instance courts which annul proceedings between another monastery and the State (judgment 455/1987 of the Ioannina First Instance Court) or declare inadmissible an action brought by a monastery because of lack of locus standi (judgment 335/1987 of the Lassithi First Instance Court).

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

55. The Commission has declared admissible the complaints by the applicant monasteries that:

- the provisions of Law 1700/1987 providing for the transfer of their property to the State amount to an unconditional expropriation prohibited by the Convention;
- the provisions of Law 1700/1987 arbitrarily deprive them of their right to manage and dispose of their property in that such management is assigned to the State institution ODEP;
- the provisions of Law 1700/1987 deprive them of the means needed to preserve the monastic communities and hinder them in the exercise of their religious rights;
- the same provisions prohibit in practice the creation of new monastic communities and arbitrarily restrict their freedom of association;
- the applicant monasteries have no effective remedy under Greek Law in order to assert their rights under the Convention.
- the Law 1700/1987 arbitrarily discriminates against them in that it applies only to monasteries belonging to the Greek Orthodox Church and to no other religious community in Greece;
- the provisions of Law 1700/1987 deprive them of locus standi before domestic courts, and thus prevent them from having access to courts in litigations concerning their property rights and further lead to the annulment of pending domestic proceedings to which they are parties.

B. Points at issue

56. Accordingly, the following points are at issue in the present case:

- whether the transfer of the monastic property to the State constitutes an expropriation contrary to Article 1 of Protocol No. 1 to the Convention;
- whether the rules providing for administration of the applicants' property by the ODEP constitute an interference with their right to peaceful enjoyment of their possessions contrary to Article 1 of Protocol No. 1;
- whether as a result of the challenged provisions the applicants have been deprived of the necessary means for religious practice in violation of Article 9 of the Convention;

- whether as a result of the challenged legislation the applicants are hindered in the exercise of their rights to freedom of association in violation of Article 11 of the Convention;
- whether there has been a violation of the applicants' right under Article 13 of the Convention to have an effective remedy before a national authority to assert their rights under the Convention;
- whether the applicant monasteries are discriminated against in violation of Article 14 in conjunction with Articles 6, 9 and 11 of the Convention and Article 1 of Protocol No. 1.
- whether there has been a violation of the applicants' right to a fair trial guaranteed under Article 6 para. 1 of the Convention;
- whether there has been a violation of the applicants' right of access to court guaranteed under Article 6 para. 1 of the Convention;

C. Preliminary question

57. The Commission has first considered the applications in the light of the Government's submission that following the coming into force of Law 1811/1988 on 13 October 1988, the subject matter of the case has been resolved.

The Government observe in this respect that the applicant monasteries have entered into an agreement with the State under the provisions of which their possessions are transferred to the State. This agreement, which was subsequently ratified by the Parliament, further provides that the challenged legislation, i.e. the Law 1700/1987, will no longer apply with regard to any monastic property subjected to the agreement.

58. The applicants submit in reply that only the Holy Monasteries Assomaton Petraki, Phlamourion Volou and Ossios Loucas are parties to the said agreement. The remaining applicant monasteries are not parties to it and Law 1700/1987 applies in their case. Moreover, the agreement was signed under duress and the domestic legislation on acts of transfer of property has not been observed.

59. The Commission notes that the applicant monasteries Ano Xenia, Aghia Lavra Kalavryton, Metamorphosis Sotiros in Megalo Meteoro, Virgin Chryssoleontissa in Egina and Mega Spileo Kalavryton are not parties to the agreement and that the challenged provisions of law 1700/1987 apply in their cases. Consequently, a violation of the Convention cannot be excluded on the ground advanced by the Government.

60. The Commission further notes that the Holy Monasteries Assomaton Petraki, Phlamourion Volou and Ossios Loucas have conceded their agricultural land to the State by virtue of the agreement of 11 May 1988, ratified by the Parliament. The names of these monasteries appear, under Nos 2, 29 and 46 respectively, in the list of the signatories of the agreement which is annexed to Law 1811/1988. The question is therefore raised whether as a result of the above agreement there can be any violation of the Convention to the detriment of these monasteries .

61. The Commission finds, however, that it is not necessary to examine this issue, since it finds no breach of the applicant monasteries' rights under the Convention for the following reasons.

D. As regards all applicant monasteries

1. Alleged violations of Article 1 of Protocol No. 1

a) Whether there has been a violation of Article 1 of Protocol No.1 in that Law 1700/1987 provides for the transfer of the ownership of the monastic estate to the State

62. The applicant monasteries complain that their property was unconditionally expropriated in breach of Article 1 of Protocol No. 1 to the Convention which reads as follows:

"1. 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.

2. 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."

63. The applicant monasteries submit that within six months from the coming into force of Law 1700/1987 their property has been automatically transferred to the State. Most of their rights derive from unregistered legal titles since according to the provisions of Law TS/1856, only acts of transfer of property subsequent to 1 January 1857 had to be registered. Besides, since the property rights of the monasteries have never been challenged by the Greek State, no court decisions recognising the monasteries' property rights have been given. The applicants also note that they cannot, within the six months limit set by Law 1700/1987, register their titles, nor can they obtain a court decision confirming their property rights vis-à-vis the Greek State, since they are deprived,

as from the publication of the law, of their right of active or passive legitimation. In order to prove their property rights, the applicants refer to the governmental decrees by which their patrimony was classified as "patrimony to be maintained" or "patrimony to be sold". Such decrees explicitly describe the land belonging to each monastery, as well as its extent and boundary.

64. The applicants further submit that no public interest can be found for their expropriation. They denounce the extreme inflexibility of Law 1700/1987, as well as a lack of fair balance between the legitimate aim pursued by the law and their property rights.

65. Finally, they submit that no full, prior compensation is provided by Law 1700/1987, which omission violates not only the Greek Constitution but also the general principles of international law.

66. The Government submit that the provisions of Articles 2 and 3 of Law 1700/1987 have not been so far implemented. Therefore no expropriation has taken place.

67. The Commission will first examine whether Article 1 of Protocol No. 1 applies to the rights affected in the present case. It must in this respect have regard to the nature of these rights.

68. The Commission recalls that "by recognising that everyone has the right to the peaceful enjoyment of his possessions, Article 1 is in substance guaranteeing the right of property" (Eur.Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 27, para. 63). It prohibits any arbitrary confiscation of property. The present applicants submit that the challenged legislation affects "their property". They "own" the major part of this property by virtue of usucapio and their rights had never been challenged. The respondent Government have not refuted this submission.

69. The Commission notes that the Council of State in its judgment 5057/1987 of 7 December 1987 considered that the applicant monasteries were not deprived of their property (*idioktisia*) because they had no registered legal titles of ownership (*nomimous titlous kyriotitas*). However, the challenged legislation expressly refers to the "monasteries' patrimony" (*periousia ton Monon*) and to "transfer of ownership" over this estate. The question is thus raised whether the applicant monasteries' rights, must be regarded as "possessions" within the meaning of Article 1 para. 1 of Protocol No. 1, irrespective of whether they are property rights protected under Greek law or not.

70. In this respect the Commission recalls that the term "possessions" in Article 1 of Protocol No 1 includes not only rights in rem but also rights in personam (No 7775/77, Dec. 5.10.78, D.R. 15, p.143), shares (cf. Eur. Court H.R., Lithgow and Others judgment of 8 July 1986, Series A no. 102), rights from contributions to social funds (cf. No 5849/72, Müller v. Austria, Comm. Report 1.10.75, D.R. 3 p. 25) or even the "clientèle" (cf. Eur. Court H.R., Van Marle and Others judgment of 26 June 1986, Series A no. 101, p.

13, para 41; H. v. Belgium judgment of 30 November 1987, Series A no. 127, para. 47). It follows from the above that the term "possessions" in Article 1 of Protocol No. 1 may include rights not recognised as "property rights" in the domestic law of the High Contracting Parties.

71. The Commission accordingly considers that the applicant monasteries' rights on the "monastic patrimony" can be regarded as "possessions" within the meaning of Article 1 of Protocol No. 1 even in cases where these rights did not derive from a legal title duly registered. Consequently, the measures provided for in Law 1700/1987 whereby the ownership over immoveables which are parts of the monastic estate was transferred to the State amount to an interference with the applicants' rights under Article 1 of Protocol No. 1.

72. Article 1 comprises "three distinct rules": the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, is concerned, amongst other things, with a right of a State to control the use of property (Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p. 24, para. 61). These rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (Eur. Court H.R. James and others judgment of 21 February 1986, Series A no. 98, p. 30, para. 37 in fine).

73. In the light of the above-mentioned case-law the Commission has to determine what form of interference is at issue in the present case. It finds that a distinction should be made between the applicants' rights deriving from legal titles duly transcribed and those which do not derive from such titles but merely rely on usucapio. Only the latter category is directly affected by Article 3 para. 1 of Law 1700/1987 according to which the monastic estate is deemed to be in the ownership of the Greek State as from 6 November 1987. Although the material transfer of property is regulated in Article 4 of Law 1700/1987 and notwithstanding the fact that in accordance with the Government's submission the material transfer has not yet taken place, the Commission is of the opinion that Article 3 para. 1 of Law 1700/1987 amounts to an ex lege deprivation of property. Not only the text of Article 3 but also the circular letters of the Minister of Agriculture (cf. para. 51 above) clearly indicate that the ownership on the monastic estate must be regarded as having been transferred to the State.

74. In order to be compatible with the requirements of Article 1 of Protocol No. 1 the deprivation of property must be "in the public interest" and "subject to the conditions provided for by law". Moreover, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. This latter requirement was expressed in the above-mentioned judgments in the cases of *Sporrong and Lönnroth* (p. 26, para. 69) and *Lithgow and others* (p. 50, para. 120).

75. The phrase "subject to the conditions provided for by law" in Article 1 requires in first place the existence of and compliance with adequately accessible and sufficiently precise domestic legal provisions (*Lithgow and others* judgment, loc. cit. p. 47, para. 110). In the present case the deprivation complained of is provided for in Law 1700/1987 whose accessibility and precision has not been contested. It is true that the applicants have contested the constitutionality of this law before the Commission and have argued that the challenged provisions, being unconstitutional, do not offer a valid legal basis for the deprivation of property complained of. However, the applicants' complaints of the unconstitutionality of Law 1700/1987 have been examined and rejected by the Council of State in its judgments of 7 December 1987 (cf. para. 45 above). The Commission observes that it is in the first place for domestic authorities, notably the courts to interpret and apply the domestic law and to decide on issues of constitutionality. Having regard to the judgment of the Council of State the Commission cannot find that Law 1700/1987 was unconstitutional. To sum up, the deprivation was provided for by law, as required by Article 1 of Protocol No. 1.

76. It also appears from the provisions of Law 1700/1987 and from the circular letters of the Ministry of Agriculture that the land taken by the State is to be ceded to agricultural cooperatives and to landless farmers who by such concessions will become members of these cooperatives. Such aims being in the framework of the State's social policy the Commission considers the measures taken for this purpose as being in the public interest.

77. It remains to be examined whether the principle of proportionality has been observed in the present case. The Commission recalls in this respect that a "fair balance" must be struck between the demands of the public interest and the requirements of the protection of fundamental rights. The requisite balance will not be found if the person concerned has to bear an individual and excessive burden (above-mentioned *Sporrong and Lönnroth* judgment, p. 28 para. 73 and *Lithgow and others* judgment, p. 50, para. 120). The applicants' submissions focus on this requirement: the lack of any compensation for the deprivation of their property compromises, in their view, the fair balance between the general interest and their fundamental rights.

78. The Commission recalls that the taking of property without payment of compensation reasonably related to its value would normally constitute a disproportionate interference. A total lack of compensation can be considered as justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (Lithgow and others judgment, pp. 50-51, paras. 120-121).

79. In the present case the Commission notes that the monastic estate which is the subject matter of Law 1700/1987 is land which has been acquired by the applicant monasteries in the Middle Ages, when religious institutions such as the applicants exercised important social, cultural and educational functions. The property thus acquired was mainly destined and used for such social, cultural and educational purposes. The Commission also notes that religious institutions such as the applicant monasteries have continued to play an important role in the field of social welfare and education even after the creation of the Greek State. However, as a result of the development of the social and educational functions of the State the monasteries' functions and their operational needs in this field were reduced while the needs of the State increased accordingly.

80. The Commission is therefore satisfied that the monastic estate which is the subject matter of the challenged legislation was acquired and used by the applicant monasteries when the latter exercised functions which, if seen in the contemporary context, may be regarded as functions of State organs or institutions. It finds that this element constitutes an exceptional circumstance within the meaning of the Court's above case-law.

81. The Commission has also noted the close links between the Greek State and the Greek Orthodox Church, from which the applicant monasteries depend. Notwithstanding the present state of separation between Church and State under the Constitution of 1975, the former continues to depend on the State.

82. Moreover, the Commission has taken into consideration the fact that the areas surrounding the monasteries and, in particular, those which are destined for cultivation by the monks are exempted from the challenged provisions.

83. Having regard to the State's wide margin of discretion in laying down the terms and conditions on which the unregistered monastic property was to be taken, the Commission finds that the lack of compensation in the circumstances of the present case cannot be regarded as manifestly without reasonable foundation (cf. *mutatis mutandis* the above mentioned Lithgow judgment, p. 51, para. 122).

84. As regards the applicant monasteries' assets which were not acquired under the conditions described above, Law 1700/1987 indicates that the property acquired by the applicant monasteries and duly registered after 1856 is not affected by its transfer of ownership provisions. The same applies to assets on which the monasteries have a property right deriving from an irrevocable court decision. The Commission, having regard to the possibility for the applicant monasteries to exempt from the transfer of ownership the above-mentioned segments of the monastic estate, finds that the provisions of Article 3 of Law 1700/1987 do not deprive the applicants of all their assets, as they allege.

85. To sum up, the Commission finds that the transfer of ownership provisions of Law 1700/1987 do not deprive the applicant monasteries of their property rights deriving from duly registered legal titles and irrevocable court decisions. These provisions deprive the applicants of their rights from usucapio on immovables of the so called monastic patrimony. However, having regard to the exceptional circumstances of the present case, i.e. the manner in which the patrimony was acquired and used, the dependency of the applicants on the Church of Greece and the latter's dependency on the Greek State, this deprivation of property is justified under Article 1 para. 1 of Protocol No. 1 to the Convention.

Conclusion

86. The Commission concludes, unanimously, that the transfer of the property provided for by Law 1700/1987 does not violate the applicants' rights under Article 1 of Protocol No 1 to the Convention.

b) Whether there has been a violation of Article 1 of Protocol No 1 in that, according to Law 1700/1987, the monastic estate is administered by the State institution ODEP

87. The applicants monasteries submit that the provisions of Law 1700/1987 arbitrarily deprive them of their right to manage and dispose of their property in that such management is assigned to the State body ODEP. They note that as of the day of the entry into force of Law 1700/1987, the use of their property is transferred to third parties and governmental institutions or agencies. The provisions complained of affect also the movable property of the monasteries which includes not only icons and objects destined for the Holy Service, but also items of commercial value.

88. The Government submit that, following the coming into force of Law 1811/1988, the administration of the property of all the monasteries is no longer entrusted to the ODEP.

89. The Commission notes that according to Law 1700/1987 all properties left to the monasteries after the transfer of ownership on the monastic estate to the Greek State were initially managed and administered by the ODEP. Since the latter's abolition in accordance with Law 1811/1988, the monasteries' property is managed and administered either by the monasteries themselves or by the Church of Greece (cf. Rule 3 para. 2 of the agreement ratified by Law 1811/1988, para. 50 above and Article 2 of Law 1811/1988, para. 52 above), upon which the applicants depend.

90. In view of the above the Commission finds that the challenged legislative provisions whereby the monastic property was administered by the State institution ODEP were in force for a very limited time and are no longer applicable. Consequently, no breach of Article 1 of Protocol No 1 is established.

Conclusion

91. The Commission finds, unanimously, that the provisions in Law 1700/1987, as modified by Law 1811/1988, concerning the management and administration of the property of the monasteries do not violate the applicants' rights under Article 1 of Protocol No. 1 to the Convention.

2. Alleged violations of Articles 9, 11, 13 and 14 of the Convention

a) Article 9 of the Convention

92. The applicant monasteries submit that by the provisions of Law 1700/1987 they have been deprived of the means needed to preserve the monastic communities and are hindered in the exercise of the practice of their religious convictions of asceticism. They allege a violation of Article 9 of the Convention which reads as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

93. The Commission notes that the challenged provisions refer to the monastic patrimony and do not in any way concern the religious practice of ascetism. Moreover, the applicants have not shown that any objects or other assets necessary for the religious practice and worship are affected by the provisions complained of. It is true that the management of the monasteries' movable property was initially entrusted to the ODEP and is now entrusted to the Church of Greece. However, this fact does not as such hinder the applicants in the exercise of their right to freedom of religion.

94. Consequently, the Commission finds no interference with the applicants' right to freedom of religion.

Conclusion

95. The Commission finds, unanimously, that there has been no violation of Article 9 of the Convention.

b) Article 11 of the Convention

96. The applicant monasteries allege a violation of their right to freedom of association under Article 11 of the Convention the relevant parts of which read as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

97. The applicants submit that, pursuant to Article 3 para. 3 of Law 1700/1987, areas belonging to the Holy Monasteries and used exclusively for cultivation by the monks themselves are not to be transferred to the State. However, these areas are to be determined for each monastery depending on the number of monks living therein. Consequently the number of monks allowed to live in each monastery will be fixed and cannot be increased. Law 1700/1987 also prohibits the creation of new monasteries since monasteries solely depend on donations and the prospective donors will be discouraged by the fact that their donations will be administered by the ODEP.

98. The Commission finds that these allegations are hypothetical. It finds that no interference with the rights guaranteed under Article 11 has been established in the applicants' case.

Conclusion

99. The Commission finds, unanimously, that there has been no violation of Article 11.

c) Article 13 of the Convention

100. The applicant monasteries further complain that they had no effective remedy in order to assert before a national authority their complaints under the Convention. They invoke Article 13 of the Convention which provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

101. The Commission recalls that this provision does not relate to legislation and does not guarantee a remedy by which legislation could be controlled as to its conformity with the Convention (No 7598/76, Kaplan v U.K., Comm. Report 17.7.78, D.R. 21, p.5; No 10581/83, Dec. 16.5.85, D.R. 44, p. 132).

Conclusion

102. The Commission concludes, by ... votes to ..., that there has been no violation of Article 13 of the Convention.

d) Article 14 of the Convention

103. The applicant monasteries claim that they are victims of discrimination in breach of Article 14 in conjunction with Articles 6, 9 and 11 of the Convention and Article 1 of Protocol No. 1. They submit that only monasteries belonging to the Greek Orthodox Church are affected by Law 1700/1987, whereas the rights of monasteries of other churches remain intact.

104. The Government submit that specific legislative regulation of matters concerning the property of monasteries depending on the Greek Orthodox Church is necessary because of the specific relations between the Greek Orthodox Church and the Greek State.

105. The Commission recalls that Article 14 does not forbid every difference in treatment in the exercise of the rights and freedoms set out in the Convention and its Protocols. The principle of equality of treatment is only violated when the distinction has no objective and reasonable justification (Eur. Court H.R. Belgian linguistic case judgment of 23 July 1968, Series A No 6, p. 34, para. 10).

106. The Commission finds that the specific relationship between the Church of Greece and the Greek State constitutes an objective justification for the adoption of specific rules concerning monasteries belonging to the Greek-Orthodox Church.

Conclusion

107. The Commission concludes, unanimously, that there has been no violation of Article 14 in conjunction with Articles 6, 9 and 11 of the Convention and Article 1 of Protocol No 1.

3. As to the alleged violation of the applicants' right to a fair trial

108. The applicant monasteries complain under Article 6 of the Convention of the annulment of pending proceedings. They submit that the provisions of Article 3 of Law 1700/1978, according to which immoveable assets are deemed to be the property of the Greek State, unless they have been recognised to be the property of the Holy Monasteries by irrevocable court decisions against the Greek State, imply that civil proceedings, which were not terminated within the six months time-limit set out by the same Article, were annulled. This, they allege, constitutes a violation of their right to a fair hearing guaranteed by Article 6 para. 1 of the Convention.

109. The Commission considers that the applicants complain again of a hypothetical situation. The applicants have not shown that proceedings to which they were parties have been actually annulled following the coming into force of Law 1700/1987.

Conclusion

110. The Commission finds, unanimously, that there has been no violation of the right to a fair trial guaranteed under Article 6 para. 1 of the Convention.

E. As regards the monasteries Ano Xenia, Aghia Lavra Kalavryton, Metamorphosis Sotiros in Megalo Meteoro, Virgin Chrysoleontissa in Egina and Mega Spileo Kalavryton

111. The applicant monasteries allege a violation of Article 6 para. 1 of the Convention in that they are unconditionally deprived of their right to litigate before the Greek courts for the purpose of determining their civil rights and obligations. They submit that the fixing of the compensation to which an expropriation gives rise is a matter which concerns the determination of civil rights and obligations and consider that they are being denied the right of access to court, with regard in particular to their civil right to adequate compensation.

112. The Commission recalls that Article 6 para. 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. This Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (Eur. Court H.R. Golder judgment of 21 January 1975, Series A no. 18, p. 18, para. 36; Philis judgment of 27 August 1991, Series A no. 209, p. 20, para. 59).

113. The Commission notes that the restrictions the above applicants complain of derive directly from Article 1 para. 1 of Law 1700/1987, which entrusted the ODEP with the exclusive capacity to bring an action before the courts in relation to a dispute concerning the monasteries' patrimony. Since the abolition of the ODEP under Law 1811/1988 it is the Greek Orthodox Church which is exclusively authorised to litigate.

114. As regards the applicants' particular allegation that they are prevented from instituting proceedings to claim compensation for the transfer of parts of the monastic estate to the ownership of the State, the Commission observes that no right to compensation is provided under Greek law for this particular transfer. It follows that no dispute as to a civil right of the applicants can arise in this respect. Therefore, the impossibility to seize a court on this point does not restrict the applicants' right to institute proceedings in civil matters.

115. As regards the alleged general lack of access to court in relation to disputes over civil rights on the monasteries' property the Commission observes that Article 1 para. 1 of Law 1700/1987 applies even after the transfer of the ownership of the monastic estate to the Greek State in accordance with Article 3 of Law 1700/1987. It essentially deprives the applicants of locus standi before the Greek courts in relation to disputes concerning movables and immovables which remain in the monasteries' property. The Commission finds that on this point the applicants' right of access is affected by the provision as such. This does not, in itself, constitute a breach of Article 6 of the Convention. The right of access is not absolute but may be subject to limitations since, by its very essence, this right calls for regulation by the State. Nonetheless the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent as to impair the very essence of the right (Eur. Court H.R., Ashingdane judgment of 28 May 1985, Series A no. 93, p. 25, para. 57). Therefore, the Commission has to examine whether the lack of the applicants' locus standi is justified in the present case.

116. The Commission finds that the State and the Greek Orthodox Church, upon which the applicants depend, have an undoubted interest in ensuring that the monasteries' property is administered and managed in a proper way. Therefore, the intervention of the State and of the Church in litigations concerning this estate has a reasonable and obvious justification. This is all the more so, since the Church of Greece is entrusted with the administration and management of this property.

117. It is true that, taken literally, the text of Article 1 para. 1 of Law 1700/1987 can be interpreted as preventing the applicants from submitting to the competent courts any claim they may have against third persons and even against the Church of Greece in relation to their property. In the Commission's opinion such a complete and unconditional deprivation of access could raise issues in cases where the applicants' interests would differ from those of the ODEP and of the Church or in cases where the Church would refuse to take action before the courts in order to safeguard the monasteries' interests.

118. However, the applicants have not shown that this is actually the case as far as their civil rights are concerned. They have in particular failed to show that the ODEP or the Church of Greece have refused to act before the civil courts when the applicants required them to do so.

119. Moreover, Article 1 para. 1 of Law 1700/1987 must be read in conjunction with the constitutional guarantee of judicial protection (Article 21 of the Greek Constitution) and Article 6 of the Convention which is directly applicable in Greece and takes precedence over domestic law. In the absence of any case-law as to the interpretation of this provision in cases where it is alleged either that a monastery and the Church have conflicting interests or that the latter refuses to protect effectively a monastery's civil rights, the Commission cannot find that the alleged complete deprivation of access has been established.

120. The Commission finds, therefore, that the restrictions of the applicants' right of access to court do not impair the very essence of this right and that they have a reasonable and objective justification under Article 6 para. 1 of the Convention.

Conclusion

121. The Commission concludes, by 11 votes to 2, that there has been no violation of the right of access to a court guaranteed under Article 6 para. 1 of the Convention.

**F. As regards the monasteries Assomaton Petraki, Phlamourion
Volou and Ossios Loucas**

122. The complaint concerning the alleged lack of access to a court has also been submitted by the above monasteries. However, the Commission notes that Rule 5 of the agreement ratified by Law 1811/1988 provides that the contracting monasteries have active and passive legitimatio in any dispute concerning their property. It follows that no restrictions to the right of access to court are imposed in their case.

Conclusion

123. The Commission concludes, unanimously, that there has been no violation of the right of access to court, guaranteed under Article 6 para. 1 of the Convention.

Recapitulation

124. The Commission concludes,

as regards all applicant monasteries

- unanimously, that the transfer of the property provided for by Law 1700/1987 does not violate the rights under Article 1 of Protocol No 1 to the Convention of the applicant monasteries (para. 86);
- unanimously, that the provisions in Law 1700/1987, as modified by Law 1811/1988, concerning the administration of the property of the monasteries do not violate the applicants' rights under Article 1 of Protocol No. 1 to the Convention (para. 91);
- unanimously, that there has been no violation of Article 9 of the Convention (para. 95);
- unanimously, that there has been no violation of Article 11 of the Convention (para. 99);
- unanimously, that there has been no violation of Article 13 of the Convention (para. 102);
- unanimously, that there has been no violation of Article 14 in conjunction with Articles 6, 9 and 11 of the Convention (para. 107);
- unanimously, that there has been no violation of the applicants' right to a fair trial guaranteed under Article 6 para. 1 of the Convention (para. 110);

as regards the monasteries Ano Xenia, Aghia Lavra Kalavryton, Metamorphosis Sotiros in Megalo Meteoro, Virgin Chrysoleontissa in Egina and Mega Spileo Kalavryton

- by 11 votes to 2, that there has been no violation of the right of access to a court guaranteed under Article 6 para. 1 of the Convention (para. 121);

as regards the monasteries Assomaton Petraki, Phlamourion Volou and Ossios Loucas

- unanimously, that there has been no violation of the right of access to court guaranteed under Article 6 para. 1 of the Convention (para. 123).

Secretary to the Commission


(H.C. KRÜGER)

President of the Commission


(C.A. NØRGAARD)

Concurring Opinion by Mr. J.A. FROWEIN,
joined by Mr. G. JORUNDSSON

Since I have reached the result that there is no violation of Article 1 of Protocol No. 1 in this case by a different reasoning it seems appropriate to briefly explain my position.

The report of the Commission accepts that the estates in question were "possessions"/"biens" of the monasteries in the sense of Article 1 of Protocol No. 1. I am not of this opinion.

It is of course quite correct that not only "property" in the sense of national law falls under the guarantee of Article 1 of Protocol No 1. However, the right must be, in my view, the equivalent of private rights in the wide sense. This is confirmed by the express mentioning in the provision of Article 1 of Protocol No 1 that natural or legal persons have this right.

While the monasteries are legal persons they acquired the estates at a period when they exercised functions today belonging to the Greek State (cf. paras. 79-80 of the Report).

The Greek legal system has made a clear distinction between the monasteries' properties or possessions acquired under the modern private law after 1856 and the estates having come under their control when they assumed public functions. The Greek Council of State has found that these estates are not protected by Article 17 of the Greek Constitution.

Article 1 of Protocol No. 1 does not protect possessions of public institutions as the State or local communities. While the monasteries can today be seen as legal persons enjoying the right under Article 1 of Protocol No 1, this cannot apply to the estates over which they gained control as State-like institutions. Therefore, I am of the opinion that the legislation concerned does not interfere with Article 1 of Protocol No. 1.

Partly dissenting opinion by Mr. C.L. ROZAKIS
and Mrs J. LIDDY

With regret we do not share the opinion of the majority of the Commission that there has been no violation of the right of access to court as regards the non-contracting monasteries, i.e. the monasteries Ano Xenia, Aghia Lavra Kalavryton, Metamorphosis Sotiros in Megalo Meteoro, Virgin Chrysoleontissa in Egina and Mega Spileo Kalavryton (cf. para. 120 of the Report). The reasons are the following.

The Commission has rightly found that Article 1 para. 1 of Law 1700/1987 deprives the above-mentioned monasteries of locus standi before Greek courts in relation to disputes concerning movables or immoveables which remain in the monasteries' property. However, the majority of the Commission found this to be a justifiable interference within the above-mentioned monasteries' right of access to court.

In our view, the fact that the Church of Greece is authorised, in its capacity as administrator of the monasteries' property, to litigate before Greek courts, does not justify the monasteries' complete deprivation of locus standi in litigations where their civil rights and obligations, and in particular their property rights, are at stake. Indeed, as a result of Article 1 para. 1 of Law 1700/1987, the said monasteries are prevented from submitting to the competent courts any claim they may have against the State, any third persons or against the Church of Greece. Moreover, the Government have not explained why it was necessary that initially the ODEP and now the Church of Greece should be exclusively authorised to litigate before courts.

Moreover, these monasteries are prevented from bringing before the competent domestic courts any dispute concerning the nature of their property rights on assets which are deemed to be now owned by the State and to take part in proceedings under Article 4 of Law 1700/1987 concerning their expulsion from the property transferred to the State.

The situation as described above is due to the rigidity of Article 1 para. 1 of Law 1700/1987 which prevents the monasteries from referring any dispute over their civil rights and obligations to the courts. It is true that no judgments concerning these particular monasteries have been submitted. However, in our opinion, since the lack of access to court clearly results from the text of a legal provision applicable to the applicants, the latter cannot be reasonably expected to challenge this situation before the domestic courts. The absence of judgments is not therefore relevant.

To sum up, we find that Article 1 para. 1 of Law 1700/1987 restricts the applicant monasteries' right of access to courts to such an extent that the very essence of their right is impaired. Such a situation is in breach of Article 6 para. 1 of the Convention.

APPENDIX I

HISTORY OF PROCEEDINGS

Date	Item
<u>I. Application No. 13092/87</u>	
16 July 1987	Introduction of the application
21 July 1987	Registration of the application
5 May 1988	Commission's decision to invite the Government to submit their observations on the admissibility and merits of the application
22 September 1988	Government's observations
9 January 1989	Applicants' observations in reply
<u>II. Application No. 13984/88</u>	
15 May 1988	Introduction of the application
28 June 1988	Registration of the application
10 March 1989	Commission's decision to invite the Government to submit their observations on the admissibility and merits of the application
26 June 1989	Government's observations
22 September 1989	Applicants' observations in reply

III. Applications Nos. 13092/87 and 13984/88

4 December 1989 Commission's decision to
join the applications and
to invite the parties to an
an oral hearing

5 June 1990 Oral hearing on
admissibility and merits,
Commission's decision to
declare the application
partly admissible.

Examination of the merits

7 December 1991 Parties invited to submit
further information

21 January 1992 Applicants submit
information

19 February 1992 Government submit
information

6 October 1990)
12 January 1991)
13 April 1991)
5 September 1991) Consideration of the
state of proceedings

31 March 1992 Applicants' comments
on information submitted
by the Government

4 April 1992)
7 September 1992) Consideration of the
state of the proceedings

11 January 1993 Commission's deliberations
on the merits and final
vote

14 January 1993 Adoption of the Report