

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

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

Mr R. Ryssdal, President,
Mr F. Gölcüklü,
Mr L.-E. Pettiti,
Mr N. Valticos,
Mrs E. Palm,
Mr I. Foighel,
Mr A.B. Baka,
Mr B. Repik,
Mr P. Kuris,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 29 June and 24 October 1996,

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

Notes by the Registrar

1. The case is numbered 72/1995/578/664. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 September 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 19385/92) against the Hellenic Republic lodged with the Commission on 24 October 1991 under Article 25 (art. 25) by three Greek nationals, Mr Savvas Katikaridis, Mr Nicolaos Katikaridis and Mr Stergios Tormanidis, and by Agrotikes Syneteristikes Ekdosis, AE, a limited company incorporated under Greek law.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 of the Convention (art. 6-1) and Article 1 of Protocol No. 1 (P1-1).

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

who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 29 September 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr L.-E. Pettiti, Mrs E. Palm, Mr I. Foighel, Mr R. Pekkanen, Mr B. Repik and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr A.B. Baka, substitute judge, replaced Mr Pekkanen, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants' memorial on 25 March 1996 and the Government's memorial on 15 April 1996. On 20 May the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 June 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr V. Kondolaimos, Adviser, Legal Council of State,	Delegate of the Agent,
Mrs V. Pelekou, Legal Assistant, Legal Council of State,	Counsel;

(b) for the Commission

Mr L. Loucaides,	Delegate;
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(c) for the applicants

Mr C. Horomidis, Mr I. Horomidis, both of the Salonika Bar,	Counsel.
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The Court heard addresses by Mr Loucaides, Mr I. Horomidis and Mr Kondolaimos.

AS TO THE FACTS

I. Circumstances of the case

A. Background

6. On 28 July 1981, by means of a joint decision of the Ministers of Finance and Public Works taken under Law no. 653/1977 "on the obligations of adjoining owners where major roads are built", the State expropriated part of each of the properties belonging to the applicants for the purpose of constructing a flyover on the road between Salonika and Langadas.

Law no. 653/1977 creates a presumption that the owners of properties on major roads benefit when such roads are widened and provides that they must accordingly contribute to the cost of

expropriation if they are expropriated (see paragraph 29 below).

The properties, which bordered the road, were used for business purposes.

The first two applicants, Mr Savvas Katikaridis and Mr Nicolaos Katikaridis, sold car tyres from their premises, of which they lost 174.38 sq. m. The third applicant, Mr Tormanidis, who was in the fuel business, owned a service station, of which he lost 68.68 sq. m. The fourth applicant, Agrotikes Syneteristikes Ekdosis, AE, a publishing and printing firm, had 347.36 sq. m expropriated.

B. Court proceedings to determine compensation

7. In 1982 the State applied to the Salonika Court of First Instance to have a provisional unit amount per square metre assessed for the compensation.

8. On 10 June 1982 (in judgment no. 3008/1982) the court set the amount in question at 14,000 drachmas per square metre.

In a judgment of 8 December 1983 (no. 2445/1983) the Salonika Court of Appeal determined that the final amount should be 14,500 drachmas per square metre.

C. Proceedings to identify those entitled to compensation

9. On 4 June 1984 the Salonika Court of First Instance made a declaration to the effect that the applicants were entitled to the compensation finally assessed in 1983 (judgment no. 3648/1984).

10. On account of the application of the presumption created by Law no. 653/1977, however, the State did not compensate the applicants for the fifteen-metre-wide area laid down in that law.

D. Proceedings to recover the compensation

1. In the Salonika Court of First Instance

11. On 20 July 1984 the applicants applied to the Salonika Court of First Instance seeking payment of the compensation that had been assessed. They stated in their application that since the building of the flyover, their properties - which had previously given on to the major road, thirty metres wide - had been on a secondary road that was only five to seven metres wide. Furthermore, there was no link between the secondary road and the main road, which now passed six metres above their properties.

12. The State argued that pursuant to the presumption created by Law no. 653/1977, the applicants, who owned properties fronting the road to be widened, benefited from the expropriation and were therefore not entitled to compensation.

13. The Salonika Court of First Instance gave its ruling on 27 June 1985 (judgment no. 2190/1985). It allowed the State's objection and dismissed the applicants' action on the ground that the statutory presumption was irrebuttable and applied in their case.

2. In the Salonika Court of Appeal

14. On 12 July 1985 the applicants appealed against that judgment.

15. On 24 June 1986 the Salonika Court of Appeal held (in judgment no. 934/1986) that the application of the irrebuttable

presumption contravened Article 17 of the Constitution. It ordered the applicants to adduce evidence that the building of the flyover had not been to their advantage.

16. On 9 June 1987 (in judgment no. 1882/1987) the Court of Appeal found in the applicants' favour after having taken the evidence requested. It noted that the applicants' business premises, which before the flyover had been built had fronted the main road, had been highly profitable because of the amount of traffic using that road; since the flyover had been built, however, trade on those premises had fallen off considerably and some of the businesses had had to close as they were making losses. The court held that the State was to pay 2,528,510 drachmas to Mr Katikaridis, 995,860 drachmas to Mr Tormanidis and 5,036,720 drachmas to Agrotikes Syneteristikes Ekdoxis, AE.

3. In the Court of Cassation

17. On 30 September 1987 the State lodged an appeal on points of law. The hearing was set down for 28 September 1988 and deliberations were held on 17 October 1988.

18. In a judgment (no. 672/1989) of 13 June 1989 the Third Division of the Court of Cassation held:

"... The provisions of section 1 of Law no. 653/1977 apply not only to the building or widening of a road in an area not covered by a town development plan but also to the building of an interchange and slip roads linking the expropriated properties to the major road. Section 1 (3) of Law no. 653/1977 creates an irrebuttable presumption in law that owners of property fronting a newly built major road or slip road giving access to an interchange derive a benefit. The creation of such a presumption is in principle acceptable under the Constitution where there are reasonable grounds for it based on everyday experience. In the instant case the presumption imposes an obligation on adjoining owners to contribute to the cost of the road improvements, which is borne by the State, by means of 'self-compensation'. The obligation rests on the owners of properties on both sides, in other words on owners whose properties front the newly built road or the interchange. These owners are deemed to derive a benefit and are obliged [to contribute to the cost of building] an area of a width equal to half that of the road built, provided that it does not exceed half the surface area of the property concerned. The premise on which this obligation is based is that the construction of a major road or interchange completely alters a region's economy and increases the value of the properties on either side of the road improvements, thus causing unjust enrichment of the owners; if this enrichment were not offset by the loss incurred through the taking of part of their property, it would make it very difficult or even impossible for the State to acquire land essential to the implementation of road-building programmes ... Of course, it is possible that in certain cases owners who derive benefit from the development of an entire region may simultaneously suffer detriment. The shape or size of their property may be altered to the point where its use is diminished or made impossible; likewise, such use (until the building works are completed) or the implementation of plans to enhance the value of their property may prove difficult or impossible. However, in such cases, owners who have suffered detriment can obtain compensation under Article 13 para. 4 of Legislative Decree no. 797/1971, which also applies to cases covered by Law no. 653/1977. Consequently, the provisions of

this Law are not contrary to Articles 17 and 4 para. 1 of the Constitution, because they do not create exceptions in relation to adjoining property owners that are unjustified ..."

The Third Division referred the case to the Fourth Division of the Court of Cassation.

19. Notice of the proceedings before the Fourth Division of the Court of Cassation was served on the applicants on 20 January 1990; they filed their pleading on 10 July 1990. The date set for the hearing was 21 September 1990.

On 30 November 1990 the Fourth Division of the Court of Cassation held (in judgment no. 1841/1990) that section 1 (3) of Law no. 653/1977 (taken in conjunction with section 62 (9) and (10) of Law no. 947/1979) did not apply to expropriation for the construction of an interchange (flyover) in an area not covered by a town development plan; such a construction did not benefit adjoining property owners as it was intended solely to ensure a rapid and safe flow of traffic; further, it deprived them of direct, immediate access to the original major road which their properties had previously fronted. In addition, the court held that the presumption created by this section was rebuttable as otherwise the section would be unconstitutional. Finally, it referred the case to a full court of the Court of Cassation for resolution of the conflict between the two divisions (Article 580 para. 4 of the Code of Civil Procedure).

20. Notice of proceedings before the full court of the Court of Cassation was served on the applicants on 6 December 1990; on 20 January 1991 they lodged a pleading in which they relied on Article 6 of the Convention (art. 6) and Article 1 of Protocol No. 1 (P1-1). The hearing date was set for 21 February 1991.

On 6 June 1991 the Court of Cassation, sitting as a full court (thirty-two judges), found in favour of the view taken by the Third Division in the following terms (judgment no. 14/1991):

"...

In accordance with section 62 (9) of Law no. 947/1979 'on areas where building is permitted', the provisions of section 1 of Law no. 653/1977 also apply where existing roads are improved by means of rerouting or widening in whole or in part. The list of types of improvement ... is given by way of example and is not exhaustive. It follows that on a true construction of this provision, improvements to a major road include the building of an interchange. The expropriation of property for widening such a road and building access roads to the interchange in parallel to it are governed by [sections 1 (1), (3), (4) and (5) and 2 (2) of Law no. 653/1977]. Besides, as appears from the provisions of section 1 (1) and (3) of Law no. 653/1977, the presumption [that the owners derive a benefit from such improvements] is irrebuttable. The Law does not permit proceedings to be brought to prove that an improvement to a road does not confer any benefit, and thus to rebut that presumption.

Lastly, the statutory provision laying down the presumption also makes it possible to identify the persons who can claim compensation for the expropriation of their property, and the property owners' right to compensation is unaffected. It follows that the provision of this Law and the irrebuttable presumption it creates do not infringe Article 17 para. 2 of the Constitution, which requires full compensation to be paid

to owners of expropriated property ..."

However, a minority of thirteen judges considered that the conflict should have been resolved in favour of the view taken by the Fourth Division. According to four of them, section 62 (9) of Law no. 947/1977 did not apply to improvements brought about by the building of interchanges, and consequently the adjoining owners did not derive any benefit. In the view of four others, the presumption was rebuttable, not irrebuttable, since, where interchanges were concerned, the difference in level obstructed access to the major road and this was detrimental to the adjoining properties. Lastly, five judges were of the opinion that the irrebuttable presumption deprived owners of their right to reimbursement of the true value of their property at the date of expropriation.

21. The case was subsequently sent to the Fourth Division so that it could rule on the merits of the applicants' action. However, since the action was bound to fail after the Court of Cassation's judgment of 6 June 1991, the applicants did not resume the proceedings.

II. Relevant domestic law

A. The Constitution

22. The relevant Articles of the 1975 Constitution provide:

Article 17

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

2. No one may be deprived of his property unless it is for the public benefit, which must be duly proved, in the circumstances and manner laid down by law and only after 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 an application is made for immediate final determination of compensation, regard shall be had to the value of the expropriated property at the time of the court hearing of the application.

..."

Article 93 para. 4

"The courts shall not apply laws whose content is contrary to the Constitution."

B. Legislative Decree no. 797/1971 on expropriations

23. Legislative Decree no. 797/1971 of 30 December 1970 and 1 January 1971 is the main legislative provision governing expropriations. It applies the principles set out in the constitutional provisions.

24. Chapter A of the legislative decree lays down the procedures and prerequisites for announcing expropriations.

Article 1 para. 1 (a) provides that expropriations of urban or rural properties and claims to rights in rem over them, if authorised by law in the public interest, are made known by a joint decision of the Minister having authority in the sphere concerned by the intended expropriation and the Minister of Finance.

Article 2 para. 1 sets out the prerequisites for a decision announcing an expropriation: in particular, (a) a cadastral plan showing the area to be expropriated, and (b) a list of the owners of the land, its surface area, its extent and the main characteristics of the buildings on it.

25. Chapter B of the legislative decree specifies the procedures for carrying out an expropriation.

Compensation must be paid to the person concerned in accordance with precisely worded conditions. The acquisition of ownership by the person for whose benefit the expropriation was ordered (Articles 7 para. 1 and 8 para. 1) starts on the date of payment or (in cases where the identification of the beneficiaries has not yet been completed, or where the property is charged or where the identity of the true beneficiary is in issue) on the date of publication of notice in the Official Gazette that compensation has been deposited with the Bank for Official Deposits.

If the expropriation does not take place in accordance with the foregoing conditions within a period of one and a half years from the date of the judgment determining the compensation, it automatically lapses (Article 11 para. 1).

26. Chapter D sets out in detail the procedure for assessing compensation.

Article 14 provides that the parties to the proceedings are (a) any party required to pay compensation; (b) any party for whose benefit the expropriation is ordered; (c) any party who claims ownership of, or other rights in rem over, the property.

Article 17 para. 1 lays down that compensation is to be assessed by the courts. It expressly provides that the court determines only the unit amount of compensation and not who is entitled to compensation or who is obliged to pay it.

By Article 13 para. 1, compensation is calculated by reference to the real value of the expropriated property on the date of publication of the decision giving notice of the expropriation.

Paragraph 4 of that Article provides:

"Where part of a property is expropriated and the part remaining in the owner's possession suffers substantial depreciation in value or is rendered unusable, the judgment in which compensation is assessed shall also include a determination of the special compensation for that part. This special compensation shall be paid to the owner together with the compensation for the expropriated part."

27. The procedure for assessing compensation may comprise two phases.

Firstly, the provisional assessment phase, in respect of which a single judge of the court of first instance for the area in which the expropriated property is situated has jurisdiction once a party concerned has lodged an application (Article 18).

Secondly, the final assessment phase, in respect of which the Court of Appeal for the area in which the expropriated property is situated has jurisdiction on application by the parties concerned within thirty days from the date on which the provisional assessment decision was served, or six months from the date of its publication if

it is not served (Article 19 paras. 1 and 2).

Paragraph 6 of that Article provides that only a person who has lodged such an application with a view to an increase or decrease in the provisionally assessed amount may benefit from it.

The provisionally assessed amount becomes final for any person not filing an application expeditiously.

Further, an application may be lodged directly with the Court of Appeal in order that a final decision may be obtained against which no appeal will lie (Article 20).

28. Chapter E of the legislative decree provides a special procedure for obtaining a court order identifying persons entitled to compensation.

A single judge of the court of first instance for the area in which the expropriated property is situated has jurisdiction to make such an order (Article 26).

Article 27 para. 1 provides that entitlement is determined on the basis of information on the cadastral plan and on the list of landowners drawn up by a qualified engineer duly approved by the Ministry of Public Works, and any other information supplied by the parties or considered by the court of its own motion.

No appeal lies against the decision taken at the end of this special procedure (Article 27 para. 6).

By paragraph 4 of Article 27, the court shall not give a decision if

(a) it is established at the hearing or by means of a declaration by the State that a person can claim full ownership of the expropriated property or some other right in rem;

(b) there is any dispute between one or more persons allegedly entitled to compensation as to ownership or any other right in rem such that an inquiry has to be made into the claims put forward, which inquiry must include a hearing for each party concerned who has brought an action;

(c) it is established at the hearing that a party claiming to be entitled to compensation is unable to show that he has any right in rem.

By paragraph 2 of Article 8 of Legislative Decree no. 797/1971, a final decision as to a given person's entitlement is necessary before the Bank for Official Deposits can pay out the sum that was deposited as compensation once that had been assessed by the courts.

C. Law no. 653/1977 on the obligations of adjoining owners where major roads are built

29. The relevant provisions of section 1 of Law no. 653/1977 of 25 July and 5 August 1977 provide:

"1. Where a major road up to thirty metres wide is built in an area not covered by a town development plan, adjoining owners who derive a benefit shall be required to pay for an area fifteen metres wide, thus contributing to the cost of expropriating the properties bordering the road. However, the area to which this obligation applies shall not

exceed half the surface area of the property concerned.

...

3. For the purposes of this section, adjoining owners whose properties front the roads that have been built shall be deemed to have derived benefit.

4. Where those entitled to compensation on account of an expropriation are themselves liable for payment of part of that expropriation, there shall be a set-off between rights and obligations.

5. The method and procedure for apportioning the compensation between the State and the adjoining owners shall be laid down in a decree to be published on a proposal by the Minister of Public Works.

..."

D. Law no. 947/1979 on areas where building is permitted

30. Section 62 of Law no. 947/1979 of 10 and 26 July 1979 provides:

"...

9. The provisions of section 1 of Law no. 653/1977 ... shall also apply where existing roads are improved by means of rerouting or widening in whole or in part, as specified in a decision of the Minister of Public Works ...

10. The provisions of section 1 of Law no. 653/1977 ... shall also apply to secondary, municipal or local roads up to fifteen metres wide ..."

PROCEEDINGS BEFORE THE COMMISSION

31. The applicants applied to the Commission on 24 October 1991. They alleged breaches of Article 6 para. 1 of the Convention (art. 6-1) and Article 1 of Protocol No. 1 (P1-1).

32. On 31 August 1994 the Commission declared the application (no. 19385/92) admissible as to the applicants' complaints concerning the length of the proceedings and the interference with their right to the peaceful enjoyment of their possessions; the remainder of the application it declared inadmissible. In its report of 28 June 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 6 para. 1 of the Convention (art. 6-1) and Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-V), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

33. In their memorial the Government asked the Court,

"as [their] primary submission, to declare the application inadmissible for failure to exhaust domestic remedies ...

and, in the alternative, to dismiss the application as being unfounded".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

34. As before the Commission, the Government's primary submission was that the applicants had not exhausted domestic remedies as they had failed both to rely on Article 1 of Protocol No. 1 (P1-1), on which they now relied, before the domestic courts and to resume the proceedings before the Fourth Division of the Court of Cassation.

35. The Court reiterates that Article 26 of the Convention (art. 26) must be applied "with some degree of flexibility and without excessive formalism"; it is sufficient that the complaints intended to be made subsequently before the Convention organs should have been raised "at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law" (see the *Castells v. Spain* judgment of 23 April 1992, Series A no. 236, p. 19, para. 27). In addition, the only remedies Article 26 (art. 26) requires to be exhausted are those that are available and sufficient and relate to the breaches alleged (see, as the most recent authority, the *Manoussakis and Others v. Greece* judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV, pp. 1359-60, para. 33).

36. With regard to the first limb of the objection, the Court, like the Commission, notes that in the proceedings before the full court of the Court of Cassation the applicants expressly referred to Article 6 of the Convention (art. 6) and Article 1 of Protocol No. 1 (P1-1) (see paragraph 20 above).

As to the second limb, it observes, like the Commission, that the proceedings before the Fourth Division of the Court of Cassation would have had no prospect of success after the full court's judgment of 6 June 1991.

37. The Court therefore dismisses the objection.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

38. The applicants complained of the length of the proceedings to obtain compensation. They alleged a violation of Article 6 para. 1 of the Convention (art. 6-1), which provides:

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

39. The Government, relying on the complexity of the case and the excessive number of cases pending before the courts, contested that submission.

The Commission accepted it. In particular, it considered that the Government had not provided a satisfactory explanation to justify the length of time which it found the proceedings in the Court of Cassation had taken.

A. Period to be taken into consideration

40. The relevant period began on 20 November 1985, when the declaration whereby Greece accepted the right of individual petition took effect. The proceedings ended on 6 June 1991, when the full court of the Court of Cassation delivered its judgment (see paragraph 20

above). However, in order for the reasonableness of the period of time which elapsed to be determined, regard must be had to the stage which the case had reached in 1985 (see, as the most recent authority, Stran Greek Refineries and Stratis Andreadis v. Greece judgment of 9 December 1994, Series A no. 301-B, p. 82, para. 52).

B. Reasonableness of the length of proceedings

41. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case, which here call for an overall assessment, and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, as the most recent authority, the Ausiello v. Italy judgment of 21 May 1996, Reports 1996-III, p. 722, para. 19).

42. The proceedings in the Salonika Court of First Instance and the Salonika Court of Appeal lasted two years and approximately ten months in all, of which one year and four months elapsed before Greece's declaration under Article 25 of the Convention (art. 25). Those proceedings are not open to criticism. The proceedings in the Court of Cassation lasted a little over three years; their length resulted from the fact that the matter came before three differently composed benches of the court in succession and is explained by the conflict between the judgments delivered by the Third and Fourth Divisions, which the full court had to resolve.

43. Having regard to the circumstances of the case, and especially its complexity, the Court reaches the conclusion that there has been no violation of Article 6 para. 1 of the Convention (art. 6-1).

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

44. The applicants alleged that the presumption created by section 1 (3) of Law no. 653/1977 and the fact that the Court of Cassation had held that it was an irrebuttable one had prevented them from obtaining in the courts the compensation to which they were entitled by virtue of a final court decision following the expropriation of part of their properties. They relied on Article 1 of Protocol No. 1 (P1-1), which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions (P1-1) 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."

45. It was not contested that the applicants had been deprived of their property in accordance with the provisions of Legislative Decree no. 797/1971 and Law no. 653/1977, so that improvements could be made to a major road, and that the expropriation thus pursued a lawful aim in the public interest.

46. The applicants objected to the irrebuttable presumption that adjoining owners derived a benefit from improvements to major roads and the basis for it - everyday experience - indicated by the Court of Cassation in its judgment of 13 June 1989 (see paragraph 18 above). They submitted that in certain decisions of the Salonika Court of Appeal and the Court of Cassation, and in the

dissenting opinions of several of the Court of Cassation judges, it had been questioned whether the presumption was irrebuttable where, as here, it was evident that adjoining owners not only did not derive any benefit from the expropriation but, on the contrary, sustained a loss in the value of the remaining part of their property. They complained that the burden of expropriations for the purpose of making improvements to major roads, which benefited society as a whole, fell mainly on the shoulders of the adjoining owners. The amount of benefit derived by those owners varied from case to case and should not have been predetermined irrebuttably in a provision of general application.

47. In the Government's submission, the presumption did not of itself warrant the conclusion that there was a real or apparent disproportion between the general interest pursued and the expropriated owners' alleged loss. Even supposing that the wording of section 1 of Law no. 653/1977 at first sight suggested such a disproportion, it would be reduced to a minimum as the section limited adjoining owners' contributions to the cost of expropriation to an area fifteen metres wide on either side of the road and provided that that obligation could not exceed half the surface area of the property concerned (see paragraph 29 above).

48. In the Commission's opinion, the fact that, owing to the application of the presumption which had been held to be irrebuttable, it was impossible for the applicants to obtain the compensation declared due to them amounted to a violation of Article 1 of Protocol No. 1 (P1-1).

49. The Court recognises that when compensation due to the owners of properties expropriated for roadworks to be carried out is being assessed, it is legitimate to take into account the benefit derived from the works by adjoining owners.

It observes, however, that in the system applied in this instance the compensation is in every case reduced by an amount equal to the value of an area fifteen metres wide, without the owners concerned being allowed to argue that in reality the effect of the works concerned either has been of no benefit - or less benefit - to them or has caused them to sustain varying degrees of loss.

This system, which is too inflexible, takes no account of the diversity of situations, ignoring as it does the differences due in particular to the nature of the works and the layout of the site. It is "manifestly without reasonable foundation" (see, *mutatis mutandis*, the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98, p. 32, para. 46, and the *Mellacher and Others v. Austria* judgment of 19 December 1989, Series A no. 169, p. 26, para. 45). In the case of a large number of owners, it necessarily upsets the fair balance between the protection of the right to property and the requirements of the general interest.

50. In the instant case the applicants had strong arguments to put forward in an attempt to show that the construction of a flyover near their premises, instead of increasing the value of the properties they retained, reduced their value by depriving them of direct access to the major road, which had by then been raised six metres. Moreover, the Salonika Court of Appeal had found that the applicants had sustained loss as a consequence of the works and held that the State was to pay commensurate compensation (see paragraph 16 above).

51. The applicants thus had to bear an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of obtaining payment of the compensation in question.

There has therefore been a violation of Article 1 of

Protocol No. 1 (P1-1).

IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

52. Article 50 of the Convention (art. 50) provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

53. The applicants referred to the amounts assessed by the Salonika Court of Appeal (see paragraph 8 above), to which was to be added default interest at the rate of 25% per annum for the period from 1 September 1985 to 31 October 1990 and 30% for the period from 1 November 1990 to 25 June 1996. They also claimed 1,000,000 drachmas each in respect of the excessive length of the proceedings.

54. The Government submitted that any pecuniary damage sustained could not exceed the figure obtained by multiplying the judicially determined unit amount for the expropriated properties by the number of square metres belonging to each applicant.

55. The Delegate of the Commission expressed no view.

56. In the circumstances of the case, the Court considers that the question of the application of Article 50 (art. 50) is not ready for decision as far as pecuniary damage is concerned and must be reserved, due regard being had to the possibility of an agreement between the respondent State and the applicants (Rule 54 paras. 1 and 4 of Rules of Court A).

B. Costs and expenses

57. The applicants also claimed payment of 3,000,000 drachmas for lawyers' fees and sundry costs incurred in the proceedings before the national courts, together with 5,000,000 drachmas for the proceedings before the Convention institutions.

58. The Government contested the necessity and reasonableness of these costs. They pointed out, with regard to the proceedings before the Convention institutions, that there had been no hearing before the Commission.

59. The Delegate of the Commission did not express an opinion.

60. Having regard to the finding of a violation of Article 1 of Protocol No. 1 (P1-1) and to the complexity of the case, the Court, making its assessment on an equitable basis as required by Article 50 of the Convention (art. 50), awards the applicants 4,000,000 drachmas for costs and expenses.

C. Default interest

61. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that there has not been a violation of Article 6 para. 1 of the Convention (art. 6-1);
3. Holds that there has been a violation of Article 1 of Protocol No. 1 (P1-1);
4. Holds that the respondent State is to pay the applicants, within three months, 4,000,000 (four million) drachmas for costs and expenses, on which sum simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
5. Holds that the question of the application of Article 50 of the Convention (art. 50) as regards the claim for pecuniary damage is not ready for decision;

accordingly,

(a) reserves the said question in that respect;

(b) invites the Government and the applicants to submit, within the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;

(c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 November 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar