



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

CASE OF IATRIDIS v. GREECE

(Application no. 31107/96)

JUDGMENT

STRASBOURG

25 March 1999

In the case of Iatridis v. Greece,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,

Mr L. FERRARI BRAVO,

Mr GAUKUR JÖRUNDSSON,

Mr L. CAFLISCH,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr B. ZUPANČIČ,

Mrs N. VAJIĆ,

Mr J. HEDIGAN,

Mrs W. THOMASSEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr T. PANȚÎRU,

Mr E. LEVITS,

Mr K. TRAJA,

Mr C. YERARIS, *ad hoc judge*,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 17 December 1998 and on 24 February 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention³, by the Greek Government (“the Government”) on 30 July 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 31107/96) against the Hellenic Republic lodged with the

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

European Commission of Human Rights (“the Commission”) under former Article 25 by a Greek national, Mr Georgios Iatridis, on 28 March 1996.

The Government’s application referred to former Articles 44 and 48. The object of the application 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 13 of the Convention and Article 1 of Protocol No. 1.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A¹, the applicant stated that he wished to take part in the proceedings and designated Mr H. Tagaras and Mrs M.N. Kanellopoulou, of the Athens Bar, as the lawyers who would represent him (former Rule 30).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, the President of the Court at the time, acting through the Registrar, consulted the Agent of the Government and the applicant’s lawyers on the organisation of the written procedure. Pursuant to the order made in consequence on 8 September 1998, the Registrar received the applicant’s memorial on 10 November 1998 and the Government’s memorial on 13 November 1998.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr C.L. Rozakis, the judge elected in respect of Greece (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr L. Caflisch, Mr I. Cabral Barreto, Mr W. Fuhrmann, Mr K. Jungwiert, Mrs N. Vajić, Mr J. Hedigan, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska, Mr T. Panțîru, Mr E. Levits and Mr K. Traja (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr Rozakis, who had taken part in the Commission’s examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr C. Yeraris to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

1. *Note by the Registry.* Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

Later, as Mr Wildhaber was unable to take part in the further consideration of the case, his place as President of the Grand Chamber was taken by Mrs Palm, and Mr Gaukur Jörundsson, substitute judge, replaced him as a member of the Grand Chamber (Rules 10 and 24 § 5 (b)). Likewise, Mr Costa and Mr Fuhrmann, who were also unable to take part in the further consideration of the case, were replaced by Mr J. Casadevall and Mr B. Zupančič, substitute judges (Rule 24 § 5 (b)).

The Court decided that it was not necessary to invite the Commission to delegate one of its members to participate in the proceedings before the Grand Chamber (Rule 99).

5. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 17 December 1998.

There appeared before the Court:

(a) *for the Government*

Mr P. GEORGAKOPOULOS, Senior Adviser, State Legal Council,	<i>Agent,</i>
Mrs V. PELEKOU, Legal Assistant, State Legal Council,	<i>Adviser;</i>

(b) *for the applicant*

Mr H. TAGARAS, of the Salonika Bar,	<i>Counsel,</i>
Mr K. ZAKAROPOULOS, of the Athens Bar,	<i>Adviser.</i>

The Court heard addresses by Mr Tagaras and Mr Georgakopoulos, and also their replies to a question from one of its members.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Proceedings brought by the “owners” of the land on which the “Ilioupolis” cinema was built

6. In 1929 K.N. inherited three-quarters of a tract of land known as the “Karras estate” from his adoptive father. In 1938 K.N.’s adoptive mother sold him the remaining quarter of the “Karras estate”, which she had inherited from her husband. The contract of sale gave the surface area of the “Karras estate” as 12,000,000 sq. m.

7. In 1950, having obtained the necessary permit from the authorities, K.N. built an open-air cinema – the “Ilioupolis” cinema – on part of this land.

8. In 1953 the Minister of Agriculture refused to recognise K.N. as owner of the whole “Karras estate”, taking the view that K.N.’s adoptive father had owned only part of the land, namely an area of between 320,000 and 520,000 sq. m, which did not include the part on which the “Ilioupolis” cinema had later been built. The rest of the area was public forest and was not included in the title deeds submitted by K.N. Thereupon K.N. applied to the Supreme Administrative Court to set aside the decision of the Minister of Agriculture but his application was dismissed. On 8 February 1955 a royal decree designated the area in dispute as land to be reafforested. K.N. applied to the Supreme Administrative Court to set aside the royal decree but the court dismissed the application, holding that the disputed area was forest land belonging to the State.

9. By means of Cabinet decisions of 10 February 1965 and 11 March 1966, which were published in the Official Gazette (Εφημερίδα της Κυβερνήσεως) and entered in the Ilioupolis municipal register, the State transferred a 220,000 sq. m area of the “Karras estate” to the Police Officers’ Housing Cooperative. This area did not include the land on which the “Ilioupolis” cinema had been built.

10. On 28 July 1965 a royal decree ordering the reafforestation of land in Ilioupolis was promulgated. According to the Government, this decree covered an unspecified part of the “Karras estate”. On 2 December 1966 the decree was amended by a further decree, which was published in the Official Gazette.

11. On 3 April 1967 K.N. brought an action against the Police Officers’ Housing Cooperative to establish his title to the land which had been transferred to it. The State, as transferor, intervened in the proceedings in favour of the Cooperative. This action was entered in the Ilioupolis mortgage register. In the margin of the relevant page, the subsequent judgments of the Athens Court of First Instance (no. 16992/1973) and the Court of Appeal (no. 4910/1977 – see paragraph 13 below) dismissing the action and acknowledging the State’s ownership of the disputed area were noted.

12. In 1976 K.N. died and his heirs received an inheritance-tax demand in respect of the land on which the cinema had been built. The State took a mortgage on the land as security for the tax debt. The mortgage was paid off in 1982.

13. K.N.’s heirs continued the proceedings brought on 3 April 1967. On 21 June 1977 the Athens Court of Appeal held that the tract of land transferred to the Police Cooperative belonged to the State. In the reasons for its judgment the court agreed with the Minister of Agriculture, holding that K.N.’s adoptive father had owned only a part of the “Karras estate”, which had not included the part on which the “Ilioupolis” cinema had been built or the part which had been transferred to the Cooperative. The Court of Appeal based this conclusion on, *inter alia*, the fact that in 1905 the “Karras

estate” had been entered in the national forest register as forest land and that the State had since, in good faith, had possession and use of it as owner.

14. Following a decision taken by the Deputy Minister of Finance on 19 September 1984, part of the “Karras estate”, including the part on which the cinema had been built, was entered in the register of State property on 27 June 1985. On 9 July 1985 this fact was noted in the Ilioupolis mortgage register. In 1987 K.N.’s heirs brought proceedings to establish their title to the land that had been entered in the register of State property. In 1988 the Athens Court of First Instance dismissed their application on the ground that on 21 June 1977 the Athens Court of Appeal had held that K.N.’s adoptive father had owned only a part of the “Karras estate”, covering an area of between 320,000 and 520,000 sq. m. K.N.’s heirs appealed against that decision.

15. On 9 February 1989 the Athens Court of Appeal held that in its judgment of 21 June 1977 it had resolved only the matter of ownership of the 220,000 sq. m which had been transferred to the Police Officers’ Housing Cooperative. The other dicta in the grounds of the judgment were not binding on K.N.’s heirs. The Court of Appeal consequently set aside the 1988 decision of the Court of First Instance and ordered that court to deal with the merits of the case.

16. On 29 May 1996 K.N.’s heirs applied to State Counsel at the Athens Court of First Instance for interim measures against the State and Ilioupolis Town Council. State Counsel refused their application on an unspecified date. K.N.’s heirs appealed against this decision. On 30 May 1997 Deputy State Counsel at the Athens Court of Appeal dismissed their appeal.

B. Proceedings brought by the applicant

17. In 1978 K.N.’s heirs leased the “Ilioupolis” open-air cinema to the applicant, who completely restored it.

On 4 July 1985 the Attica prefecture informed the applicant that with effect from 27 June 1985 the land on which the cinema had been built was considered to be State property, and that his retention of it was wrongful. The State would consequently be claiming compensation from him in accordance with Article 115 of the Presidential Decree of 11/12 November 1929, without prejudice to its right to evict him under Law no. 1539/1938 on the protection of State land.

On 16 November 1988 the State Lands Authority (Κτηματική Εταιρεία του Δημοσίου) assigned the cinema to Ilioupolis Town Council. On

24 November 1988 the Attica prefecture notified the applicant of this and ordered him to vacate the cinema within five days, failing which Law no. 1539/1938 would be applied.

18. On 9 February 1989 the Lands Department (Κτηματική Υπηρεσία) of the Attica prefecture ordered the applicant to be evicted, under Law no. 1539/1938 as amended by Law no. 263/1968. The order was “served” on the applicant on 16 March 1989 by being posted on the door of the cinema. The following day, when the members of the Bar were on strike and the applicant was absent, officials from Ilioupolis Town Council executed the order, forcing an entry into the cinema. An inventory was drawn up of a number of items of movable property belonging to the applicant (projectors, chairs, billboards and bar equipment). A Mr G.L., who was professionally connected with the applicant but was not acting as his representative, signed the inventory and asked the Council officials to store the goods.

19. The applicant challenged the eviction order in the Athens District Court, which dealt with the matter under summary procedure and found for the State. The applicant appealed to the Athens Court of First Instance sitting with a single judge, which on 23 October 1989, having heard the appeal under summary procedure, quashed the eviction order. The court ruled that the Lands Department could issue an eviction order only if the property in question belonged to the State, if the State’s title to the property was not in dispute, and if the property was being unjustifiably occupied by a third party.

The court held, further, that these conditions had not been satisfied in the case before it, since the applicant had established the following facts with a fair degree of certainty: proceedings were pending before the courts in an action brought in a dispute between K.N.’s heirs and the State over the land on which the cinema had been built; K.N.’s heirs had considered themselves to be the owners of the land and the cinema for a very long time and had exercised all the rights and performed all the duties associated with ownership; and, lastly, the applicant had occupied the cinema under a lease since 1978.

20. Following that decision, the applicant made several approaches to the appropriate authorities to challenge the continued occupation of the cinema by Ilioupolis Town Council. On 2 April 1990 the Ministry of Finance stated that, since the eviction order had been quashed, the land should be returned to the applicant and the assignment of the cinema to Ilioupolis Town Council revoked. However, if the Council insisted on retaining the cinema, the matter of who was to compensate the applicant would have to be determined in accordance with the law on business tenancies.

21. On 11 July 1991 the State Legal Council (Νομικό Συμβούλιο του Κράτους), in answer to a question put to it by the Ministry of Finance, expressed the view that the cinema had to be returned to the applicant. The applicant's claims in respect of the loss he had sustained owing to the eviction could be entertained only if he applied to the State Legal Council or brought proceedings. Furthermore, the State could assert its claim to be the owner of the land by bringing an action against K.N.'s heirs or by expediting the proceedings in the litigation between it and them, which had been pending before the courts since 1987.

On 15 May 1994 the applicant applied to the State Lands Authority to have the cinema returned to him.

22. On 21 December 1994 the applicant sued the State and Ilioupolis Town Council in tort in the Athens Administrative Court for the loss he had sustained as a result of the failure to return the cinema to him. He claimed compensation in the amount of 32,300,000 drachmas (GRD), plus interest for loss of income from 1989 to 1994 and for the loss of his business equipment.

23. On 5 April 1995 the applicant applied to the mayor of Ilioupolis to have the cinema returned to him. On 5 May 1995 he lodged a criminal complaint against the mayor. On an unspecified date he also lodged a criminal complaint against the chairman of the State Lands Authority.

24. On 26 July 1995 the applicant filed an application in the Athens Court of First Instance for registration of a mortgage against Ilioupolis Town Council as security for lost income amounting to GRD 30,000,000. The court dismissed the application on the ground that there was no obligation to return the property, seeing that no application to that end had been made to the court and that there had been no final court decision in the matter.

25. On 31 July 1995 the State Lands Authority, following a further request from the applicant, recommended that the assignment of the cinema to Ilioupolis Town Council should be revoked and the cinema returned to the applicant, who was to be reinstated as tenant by the Ministry of Finance. That recommendation had to be approved by the Ministry of Finance pursuant to Law no. 973/1979.

The applicant, who had not been notified of the recommendation, applied to the Minister of Finance on 4 October 1995. On 13 October 1995 he asked the Athens Court of First Instance to order interim measures against the mayor of Ilioupolis in the tort proceedings. On 16 October 1995 he applied to the Minister of Finance again.

On 25 October 1995 the Court of First Instance held that there were no grounds for ordering interim measures, since there could be no liability on the part of the mayor. On 7 November 1995, following the intervention of State Counsel, the applicant was notified of the State Lands Authority's decision of 31 July 1995. On 15 November 1995 the applicant requested the Deputy Minister of Finance to approve that decision.

26. On 7 August 1996 the State Legal Council expressed the view that the cinema should not be returned to the applicant, for the following reasons. Although the Athens Court of First Instance had set aside the eviction order of 23 October 1989, it had not ordered the cinema to be returned to the applicant. In its decision of 25 October 1995 the Court of First Instance had held that there was no obligation to return the cinema. Furthermore, under special case-law relating to State-owned property, the lease between K.N.'s heirs and the applicant was not valid. Consequently, the Ministry of Finance would be acting unlawfully if it revoked the assignment of the cinema to Ilioupolis Town Council. On 3 September 1996 the Deputy Minister of Finance approved the opinion of the State Legal Council.

27. On 31 October 1996 the Athens Administrative Court dismissed the action commenced by the applicant on 21 December 1994 on the ground that it should have been brought in the civil courts.

On 17 December 1996 the applicant brought the action in the Athens Court of First Instance, seeking GRD 140,000,000 in damages for the loss of income he had suffered in 1995 and 1996 as a result of being unable to operate his cinema and for non-pecuniary loss. The action was due to be tried on 13 November 1997 but it was still pending on the day of the hearing before the Court.

28. On 7 January 1997 the Committals Division of the Athens Criminal Court decided to commence criminal proceedings against the mayor of Ilioupolis for dereliction of duty.

29. On 27 January 1998 the applicant brought an action against the State and Ilioupolis Town Council in which he sought payment of GRD 32,000,000 plus interest for loss of income during 1997 and for non-pecuniary damage. This action was still pending on the day of the hearing before the Court.

30. The cinema is still being operated by Ilioupolis Town Council and has not been returned to the applicant.

The applicant has not set up an open-air cinema anywhere else.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Administrative eviction orders

31. The immovable property of the State is protected against third parties by Law no. 263/1968 amending and supplementing the provisions on State property.

Section 2(2) and (3) of the Law provides:

“... The relevant tax inspector shall issue an administrative eviction order against any person wrongfully taking over public property. An application to set aside such an order may be filed with the appropriate District Court within thirty days of its being served ... An appeal against the decision of the District Court may be brought within thirty days before the President of the Court of First Instance, who shall hear it under the special procedure provided for in Article 634 of the Code of Civil Procedure. No appeal shall lie against the decision of the President of the Court of First Instance. The decision resulting from the foregoing procedure shall not prevent the parties from asserting their rights by means of ordinary procedure ...”

“... Κατά του αυτογνωμόως επιλαμβανομένου οιοδήποτε δημοσίου κτήματος συντάσσεται παρά του αρμοδίου Οικονομικού Εφόρου Πρωτόκολλο Διοικητικής Αποβολής. Κατ’αυτού επιτρέπεται άσκηση ανακοπής ενώπιον του αρμοδίου Ειρηνοδικείου μέσα σε αποκλειστική προθεσμία 30 ημερών από της κοινοποίησώς του... Κατά της απόφασεως του Ειρηνοδικείου χωρεί έφεση ενώπιον του Προέδρου Πρωτοδικών, που δικάζει με την ειδική διαδικασία του άρθρου 634 Πολ. Δικ., μέσα σε προθεσμία 30 ημερών. Κατά της απόφασεως του Προέδρου Πρωτοδικών ουδέν ένδικο μέσο χωρεί. Η κατά την ανωτέρω διαδικασία εκδιδόμενη απόφαση δεν παρακαλύει την επιδίωξη των εκατέρωθεν δικαιωμάτων κατά την τακτική διαδικασία ...”

Applications to set aside and the entire procedure for challenging administrative eviction orders are concerned solely with the validity of the eviction order and not with recognition of ownership or regulation of possession.

32. Where an administrative eviction order is quashed and it is desired that the decision make provision for the reinstatement of the evicted appellant, an application for reinstatement must be lodged either at the same time as the application to set aside – in which case a consequential order will be made if the application is allowed – or separately with the appropriate court (action for regulation of possession). An application for reinstatement is not subject to the time-limits laid down by section 2 of Law no. 263/1968 for applying to set aside an eviction order, since there is no provision to that effect (Athens Court of Appeal judgment no. 6802/89, Reports 1990, pp. 778-79, Athens Court of First Instance judgment no. 25950/1995, State Legal Council opinion no. 464/96, Annexes 14a and b and 13c).

B. Protection of lessees as possessors of property

33. The lessee of a property is the possessor of the leased property. This right of possession is protected by domestic law. The protection of possession both as a material fact and as a legal relationship is regulated in Greek law by Articles 997 et seq. of the Civil Code.

34. In particular, Article 997 of the Civil Code, entitled “Protection of possessors”, provides:

“In the event of unlawful interference with the possession of property or of a right or in the event of dispossession, the person who, as lessee or bailee or as a consequence of a similar relationship, took possession of the property or right from the person who had use of it shall also have a possession claim against third parties.”

“Επί παρανόμου διαταράξεως της νομής πράγματος ή δικαιώματος, ή αποβολής εξ αυτής, έχει κατά τρίτων τας περί νομής αγωγάς και ο παρά τω νομέως λαβών την κατοχή του πράγματος ή δικαιώματος ως μισθωτής ή θεματοφύλαξ ή συνεπεία άλλης παρομοίας σχέσεως.”

35. The possession claims that the lessee and possessor of the leased property may file are set out in Articles 987 and 989 of the Civil Code.

Article 987 provides:

“A possessor who has been unlawfully dispossessed shall be entitled to claim repossession from the person in unlawful possession. A claim for compensation under the provisions on torts shall not be excluded.”

“Ο νομέας που αποβλήθηκε παράνομα από τη νομή έχει δικαίωμα να αξιώσει την απόδοσή της από αυτόν που νέμεται επιλήψιμα απέναντί του. Αξίωση αποζημίωσης σύμφωνα με τις διατάξεις για τις αδικοπραξίες δεν αποκλείεται.”

Article 989 provides:

“A possessor whose possession has been the subject of unlawful interference shall be entitled to seek an order restraining the interference and prohibiting it in the future. A claim for compensation under the provisions on torts shall not be excluded.”

“Ο νομέας που διαταράχθηκε παράνομα έχει δικαίωμα να αξιώσει την παύση της διατάραξης καθώς και την παράλειψή της στο μέλλον. Αξίωση αποζημίωσης κατά τις διατάξεις για τις αδικοπραξίες δεν αποκλείεται.”

By Article 987, the possessor is protected in the event of dispossession, that is to say deprivation of control of the property. By Article 989, he is also protected in the event of interference, namely interference with his control of the property not amounting to dispossession. A classic example of interference, as held by the domestic courts, is threatening the possessor with prohibition of a specific act of possession.

The purpose of these remedies is to protect possession itself, regardless of whether it is based on a right or not. It is for that reason that Article 991 of the Civil Code provides:

“A defendant in an action for interference or dispossession can invoke a right giving him control over the property only if that right has been upheld in a final decision by a court after proceedings between him and the plaintiff.”

“Ο αναγόμενος για διατάραξη ή αποβολή δεν μπορεί να επικαλεστεί δικαίωμα που του παρέχει εξουσία πάνω στο πράγμα παρά μόνο αν το δικαίωμα έχει αναγνωρισθεί τελεσίδικα σε δίκη ανάμεσα σε αυτόν και τον ενάγοντα.”

In accordance with Article 997 of the Civil Code, a possessor has these rights against third parties and not against the possessor from whom he derives the possession rights. Against the latter he has the rights afforded him by the legal relationship between them.

36. Where a possessor brings an action in possession, it will be either for repossession or for restraint of interference, depending on whether the possessor has been evicted or merely disturbed in the exercise of his control of the property.

Furthermore, the possessor is entitled in the same proceedings to claim compensation for the damage sustained, under the provisions on torts (Articles 914 et seq.).

37. More particularly in respect of the State’s obligation to pay compensation, section 105 of the Introductory Act to the Civil Code is applied, under which unlawful conduct on the part of agents of the State creates an obligation to pay compensation irrespective of whether an offence has been committed by the agents in question. Moreover, where the unlawful situation arises from an administrative act, prior annulment of that act is not required. The court may consider the validity of the administrative act in the course of the proceedings and a specific prior ruling on its validity is not necessary.

C. Protection of lessees against lessors

38. A possessor whose right is created by a lease is also protected against the lessor if it becomes impossible for him to use the leased property.

39. Article 583 of the Civil Code provides:

“If the agreed use of the leased property is taken from the lessee in whole or in part because of a third party’s right (legal defect), Articles 576 to 579 and 582 shall apply. However, the lessee may himself have the legal defect removed at the lessor’s expense.”

“Αν η συμφωνηθείσα χρήση του μισθίου αφαιρεθεί από τον μισθωτή εν μέρει ή εν όλω εξαιτίας δικαιώματος τρίτου νομικό ελάττωμα εφαρμόζονται οι διατάξεις των άρθρων 576 έως 579 και 582. Αλλά ο μισθωτής δεν δύναται να προβεί ο ίδιος στην άρση του νομικού ελαττώματος με δαπάνες του εκμισθωτού.”

40. In that event, the lessee's rights under Articles 576 to 579 and 582, to which Article 583 refers, are the following: the right to reduce the rent or not to pay the rent, the right to compensation, the right to bring an action against the lessor to have the legal defect removed, and the right to terminate the lease.

Apart from the right to bring an action against the lessor to have the legal defect removed, the lessee may still bring an action in possession at his own expense against third parties in his capacity as possessor (Article 997).

The lessor is exempt from liability only if the lessee was aware of the defect at the time when the lease was signed.

D. Commercial leases

41. Lastly, leases of property for carrying on commercial activities (commercial leases) are also governed by all the above provisions under section 29 of Law no. 813/1978, codified by Presidential Decree no. 34/1995. That provision reads as follows:

“Save as hereinafter provided, leases under the present Law shall be governed by the contractual terms and by the provisions of the Civil Code.”

“Αι κατά τον παρόντα νόμον μισθώσεις, εφόσον δεν ορίζεται άλλως εις αυτόν, διέπονται υπό των συμβατικών περί αυτών όρων και των διατάξεων του Αστικού Κώδικος.”

PROCEEDINGS BEFORE THE COMMISSION

42. Mr Iatridis applied to the Commission on 28 March 1996. He alleged a violation of Articles 6 § 1, 8 and 13 of the Convention and Article 1 of Protocol No. 1.

43. The Commission (First Chamber) declared the application (no. 31107/96) partly admissible on 2 July 1998. In its report of 16 April 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 13 of the Convention and Article 1 of Protocol No. 1 (fourteen votes to one) and that it was not necessary to examine the case also under Articles 6 § 1 and 8 of the Convention (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

FINAL SUBMISSIONS TO THE COURT

44. The Government requested the Court to dismiss Georgios Iatridis's application against Greece.

45. The applicant invited the Court

“(a) to declare admissible and founded in fact and in law the complaints pertaining to the violation by the Hellenic Republic of Article 1 of Protocol No. 1 and Articles 8 and 13 of the Convention;

(b) to reach the same conclusion as regards Article 6 of the Convention if it finds no violation of Article 13;

(c) to hold that the Hellenic Republic is to pay the applicant just satisfaction in the amount of 497,337,000 drachmas, plus interest at the rate which applies to commercial transactions payable from the delivery of the judgment;

(d) to order the Hellenic Republic to put an end to the violations found, by permitting the applicant to recover the Ilioupolis cinema.”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Failure to exhaust domestic remedies

46. The Government's principal objection – as before the Commission – was that Mr Iatridis had not exhausted domestic remedies.

First, he had not, when challenging the validity of the eviction order in the Athens Court of First Instance – or even subsequently – made an application (under Articles 987, 989 and 997 of the Civil Code) for return of the land on which the cinema was built. It was settled case-law that without such an application the most that could be achieved by lodging an objection against an eviction order was to have that order quashed; the court simply looked at whether the conditions for issuing the order had been satisfied and did not deal with issues of ownership, use or possession. Moreover, a judicial decision returning the land to the applicant would be enforceable against the State, since section 8 of Law no. 2097/1952 (introducing State immunity from execution) applied only to monetary claims.

Second, certain of the applicant's actions for damages against the State were still pending in the Athens Court of First Instance. The possibility that he might be compensated only for loss of income for the years during which the cinema had been closed was not decisive since he still had his equipment and could have set up his business elsewhere.

Third, if the applicant had been unaware of the dispute over the land, he should have sued K.N.'s heirs for damages under Articles 576-79, 582 and 587 of the Civil Code.

47. The Court reiterates that the only remedies Article 35 of the Convention requires to be exhausted are those that are available and sufficient and relate to the breaches alleged (see the *Tsomtsos and Others v. Greece* judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1713, § 32).

With regard to the first limb of the objection, the Court, like the Commission and the applicant, observes that the applicant made a special application – provided for in section 2(3) of Law no. 263/1968 – to the Athens Court of First Instance, specifically seeking to have the administrative eviction order quashed. The court found in his favour, holding that the conditions for issuing such an order had not been satisfied. The Minister of Finance, however, refused to give approval for the cinema to be returned to him. In the light of the Minister's stance, an action under Articles 987 and 989 of the Civil Code – assuming it had succeeded – would in all probability not have led to a different outcome from that of the application to have the eviction order quashed. The applicant cannot therefore be criticised for not having made use of a legal remedy which would have been directed to essentially the same end and which moreover would not have had a better prospect of success (see, *mutatis mutandis*, the *Mialhe v. France* (no. 1) judgment of 25 February 1993, Series A no. 256-C, p. 87, § 27).

As regards the second limb of the objection, the Court considers that an action for damages may sometimes be deemed a sufficient remedy, in particular where compensation is the only means of redressing the wrong suffered. In the instant case, however, compensation would not have been an alternative to the measures which the Greek legal system should have afforded the applicant to overcome the fact that he was unable to regain possession of the cinema despite a court decision quashing the eviction order. Furthermore, the various proceedings pending in the Athens Court of First Instance are decisive only in respect of an award of just satisfaction under Article 41 of the Convention (see, *mutatis mutandis*, the *Hornsby v. Greece* judgment of 19 March 1997, *Reports* 1997-II, p. 509, § 37).

As to the third limb of the objection, the Court reiterates that Article 35 requires the exhaustion only of remedies that relate to the breaches alleged: suing a private individual cannot be regarded as such a remedy in respect of an act on the part of the State, in this instance the refusal to implement a

judicial decision and return the cinema to the applicant (see the Pine Valley Developments Ltd and Others v. Ireland judgment of 29 November 1991, Series A no. 222, p. 22, § 48).

Accordingly, the objection must be dismissed.

B. Failure to observe the six-month time-limit

48. The Government asked the Court to dismiss the application under Article 35 of the Convention on the ground that the applicant had not applied to the Commission within six months of the date on which the Athens Court of First Instance gave its judgment quashing the eviction order. In their submission, that judgment could not have given rise to a continuing situation, since the court had not ordered the State to return the cinema to the applicant and the latter had no right *in rem* over it; moreover, he could have altered the position, either by applying to be reinstated in the property or by transferring his business elsewhere.

49. The Commission concluded that the Minister of Finance's refusal to comply with the decision of the Court of First Instance had led to a continuing situation, so that the six-month rule did not apply.

50. The Court shares the Commission's view. It also points out that the applicant would not have been able to recover the cinema unless the Minister of Finance had first revoked the assignment of it to Ilioupolis Town Council. The applicant did not receive a copy of the State Lands Authority's opinion recommending that step – an opinion without which no ministerial decision could be given – until 7 November 1995 and he lodged his request for the Minister to approve the recommendation on 15 November (see paragraph 25 above). It follows that, in lodging his application with the Commission on 28 March 1996, the applicant complied with the six-month time-limit.

The objection must therefore be dismissed.

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

51. Mr Iatridis alleged that there had been a breach of Article 1 of Protocol No. 1, which provides:

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

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

52. The applicant stated that in 1978 he had taken a lease of an open-air cinema from K.N., who had acted as the owner of it, and that he had held the leased property until 1985 without any challenge by the State. The Minister of Agriculture's decision in 1953 (see paragraph 8 above) had merely determined the boundary line between that part of the "Karras estate" classified as forest and the urban part, which belonged to K.N. It was clear from the plans that the site of the cinema fell within the latter part – that is to say, squarely within the urban area and a long distance from the tract of land which had been transferred to the Police Cooperative and dealt with in judgment no. 4910/1977. Although the ownership of the cinema was still a matter of dispute between the State and those who had leased the land to the applicant, namely K.N.'s heirs, the State had always treated the heirs as the true owners by levying inheritance tax on the land from them, from the very beginning and right up to the present day; moreover, the permit for the cinema to be built had referred to K.N. as the owner of the land. In its judgment of 21 June 1977 the Court of Appeal had determined only the ownership of the land transferred to the Police Cooperative, not that of the land in question, which was quite separate and a long distance from the other tract of land. In 1978 there had therefore been no reason for the applicant to have the slightest doubt that K.N.'s heirs owned the land.

53. The Government submitted that the administrative eviction order had merely deprived the applicant of the right to use and possess the land in issue and had not prevented him from carrying on his business. The applicant had had four years to find an alternative site for his business, which had consequently suffered no harm on account of the enforcement of the eviction order. Furthermore, a lessee's right to use a leased property is limited in scope and in duration (since the lease can be terminated at any time by either party) and is relative (since it cannot be relied on against a third party with an overriding right over the leased property, such as a property right *in rem*). Hence the lease had never given the applicant a sufficiently well-founded property right enforceable against the State. Any doubt which might have remained as to the State's ownership of the land claimed by K.N.'s heirs had been dispelled by the Court of Appeal's judgment (no. 4910/1977) of 21 June 1977 (see paragraph 13 above), in which it had been held that the whole area in dispute belonged to the State; the applicant could have learned of that by consulting the mortgage registers. The Court of First Instance judgment of 23 October 1989 had not established that the applicant had any right over the land in issue, since the proceedings had been concerned only with the formal validity of the eviction order and not with the property rights the parties might have over the land. Besides, the applicant could have sought redress from the lessors in the form of damages for leasing him land that he was unable to use owing to a legal defect. Lastly and most importantly, it had been open to the

applicant, who still owned the cinema equipment, to set up his business elsewhere.

54. The Court reiterates that the concept of “possessions” in Article 1 of Protocol No. 1 has an autonomous meaning which is certainly not limited to ownership of physical goods: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision (see the *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* judgment of 23 February 1995, Series A no. 306-B, p. 46, § 53).

In this context, the Court observes at the outset that the ownership of the cinema site has been a matter of dispute between the lessors of the cinema and the State since 1953 and that this dispute had still not been resolved by the date of adoption of this judgment. It is not for the Court, in deciding this case, to take the place of the national courts and determine whether the land in question belonged to the State or whether the lease between K.N.’s heirs and the applicant was void under Greek law. It will confine itself to observing that, before the applicant was evicted, he had operated the cinema for eleven years under a formally valid lease without any interference by the authorities, as a result of which he had built up a clientele that constituted an asset (see the *Van Marle and Others v. the Netherlands* judgment of 26 June 1986, Series A no. 101, p. 13, § 41); in this connection, the Court takes into account the role played in local cultural life by open-air cinemas in Greece and to the fact that the clientele of such a cinema is made up mainly of local residents.

55. According to the Court’s case-law, Article 1 of Protocol No. 1, which in substance guarantees the right of property, comprises three distinct rules (see the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98-B, pp. 29-30, § 37): 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, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. 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.

The Court notes that the applicant, who had a specific licence to operate the cinema he had rented, was evicted from it by Ilioupolis Town Council and has not set up his business elsewhere. It also notes that, despite a judicial decision quashing the eviction order, Mr Iatridis cannot regain possession of the cinema because the Minister of Finance refuses to revoke the assignment of it to the Council (see paragraph 26 above).

In those circumstances, there has been interference with the applicant's property rights. Since he holds only a lease of his business premises, this interference neither amounts to an expropriation nor is an instance of controlling the use of property but comes under the first sentence of the first paragraph of Article 1.

56. The applicant drew attention to the fact that, ten years after the Court of First Instance quashed the eviction order, the State was still arbitrarily and unlawfully occupying the cinema and refusing to return it to him.

57. The Government disputed that assertion and pointed out that the site of the cinema was part of a much larger area belonging to the State.

58. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see the *Amuur v. France* judgment of 25 June 1996, *Reports* 1996-III, pp. 850-51, § 50) and entails a duty on the part of the State or other public authority to comply with judicial orders or decisions against it (see, *mutatis mutandis*, the *Hornsby* judgment cited above, p. 511, § 41). It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 26, § 69) becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary.

59. The Government stated that the applicant had been ordered to vacate the premises on two occasions before being evicted (in 1985 and 1988 – see paragraph 17 above). It had therefore been open to him to seek the protection of the courts or to keep his business going by transferring it elsewhere. Further and more especially, the Athens Court of First Instance in its judgment of 23 October 1989 had not ordered the eviction of the Town Council from the cinema and the applicant's reinstatement (see paragraph 19 above). No such reinstatement order could have been made unless the applicant had expressly applied for one, separately from his application to have the eviction order quashed; the Government submitted that there was a large body of case-law to this effect and produced a judgment of the Athens Court of Appeal (no. 6802/1989) in which it had been held that an application for reinstatement could be lodged independently of other proceedings and was not subject to the time-limits for challenging eviction orders.

60. The applicant denied that such an application would have been either appropriate or effective. Even supposing that he had obtained an order for his reinstatement in the cinema, there was no judicial avenue whereby he could have recovered possession of it. If the application was brought against Ilioupolis Town Council, it would be of no practical effect, since the decision would be binding only on the Council and there would be nothing to prevent the State from transferring the cinema to another public body; and even if he brought the application against the State itself, he would have no recourse in the event of a further refusal by the Minister.

61. The Court notes that those appearing before it had diverging views on this point but it is not for it to resolve the dispute, particularly as decision no. 26/1997 of the Committals Division of the Athens Criminal Court, committing the mayor of Ilioupolis for trial on charges of dereliction of duty (see paragraph 28 above), appears to indicate that a special order for the applicant's reinstatement was not necessary. Moreover, that court held that although "neither the report on the administrative inquiry of 2 April 1990, nor opinion no. 508/1991 of the full State Legal Council, nor the recommendation of the governing board of the State Lands Authority of 31 July 1995, [had] binding force or [was] enforceable, that [did] not mean that Ilioupolis Town Council ... was entitled to disobey the law and to await enforcement proceedings like a private individual who deliberately refuses to assume his statutory or contractual obligations".

In the instant case there are also other considerations on which the Court may base its decision. The applicant's eviction on 17 March 1989 certainly had a legal basis in domestic law, namely the administrative eviction order issued on 9 February 1989 by a State-controlled body, the Lands Department of the Attica prefecture, the cinema having in the meantime been assigned to Ilioupolis Town Council by the State Lands Authority. However, on 23 October 1989 the Athens Court of First Instance heard the case under summary procedure and quashed the eviction order on the grounds that the conditions for issuing it had not been satisfied. No appeal lay against that decision. From that moment on, the applicant's eviction thus ceased to have any legal basis and Ilioupolis Town Council became an unlawful occupier and should have returned the cinema to the applicant, as was indeed recommended by all the bodies from whom the Minister of Finance sought an opinion, namely the Ministry of Finance, the State Legal Council and the State Lands Authority (see paragraphs 20, 21 and 25 above). More specifically, the last-named body proposed that the Minister should revoke the assignment of the cinema to the Town Council, restore the use of it to Mr Iatridis and reinstate him in the property he had

leased. The Minister, however, refused to approve that proposal as was necessary if the applicant was to be reinstated in his premises.

62. The Court considers, like the Commission, that the interference in question is manifestly in breach of Greek law and accordingly incompatible with the applicant's right to the peaceful enjoyment of his possessions. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

There has therefore been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

63. Mr Iatridis also relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] 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.”

The applicant submitted that the only remedy afforded by Greek law for challenging an eviction order, namely an application to the civil courts to have it quashed, could not be said to be “effective” within the meaning of Article 13 as even if such an application was successful, return of the property in question was at the relevant State authorities' discretion and depended on their willingness.

64. The Government essentially repeated their arguments concerning the alleged failure to exhaust domestic remedies. The Commission referred to the conclusions it had reached on this point and considered that there had been a violation of Article 13.

65. The Court notes that the complaint under Article 13 arises out of the same facts as those it examined when dealing with the objection of non-exhaustion and the complaints under Article 1 of Protocol No. 1. However, there is a difference in the nature of the interests protected by Article 13 of the Convention and Article 1 of Protocol No. 1: the former affords a procedural safeguard, namely the “right to an effective remedy”, whereas the procedural requirement inherent in the latter is ancillary to the wider purpose of ensuring respect for the right to the peaceful enjoyment of possessions. Having regard to the difference in purpose of the safeguards afforded by the two Articles, the Court judges it appropriate in the instant case to examine the same set of facts under both Articles (see, *mutatis mutandis*, the *McMichael v. the United Kingdom* judgment of 24 February 1995, Series A no. 307-B, p. 57, § 91).

66. The Greek legal system affords a remedy – in the form of an application to have an eviction order quashed – which was available to the applicant not just in theory; he availed himself of it, and successfully, for

the Athens Court of First Instance found in his favour (see paragraph 19 above). However, the Court reiterates that the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95 *in fine*). In the light of the Minister of Finance’s refusal to comply with the judgment of the Court of First Instance in this case, the remedy in question cannot be regarded as “effective” under Article 13 of the Convention.

Consequently, there has been a violation of this Article.

IV. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 8 OF THE CONVENTION

67. The applicant also alleged violations of Articles 6 § 1 and 8 of the Convention, which provide:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal ...”

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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.”

With regard to Article 6 § 1, the applicant submitted that if the Court held that an application to have an eviction order quashed was an effective remedy under Article 13, it would follow that the respondent State had breached its obligations under Article 6 by failing to obey the Athens Court of First Instance’s judgment of 23 October 1989. In support of that submission, Mr Iatridis relied on the Court’s judgment in the *Hornsby* case (judgment cited above).

As to Article 8, the applicant pointed to the circumstances of his eviction, alleging that the authorities had taken him by surprise, forcing an entry into the cinema in his absence and even taking away the cinema equipment and personal belongings of his. He submitted that this had constituted a violation of his right to respect for his home distinct from the violation of Article 1 of Protocol No. 1.

68. In their application bringing the case before the Court the Government referred only the issues under Article 1 of Protocol No. 1 and

Article 13 of the Convention. In their memorial, however, they briefly mentioned the complaints raised under Articles 6 and 8 of the Convention.

69. The Court reiterates that it has full jurisdiction within the limits of the case referred to it, the compass of which is delimited by the Commission's admissibility decision; within the framework so traced, the Court may take cognisance of all questions of fact or law arising in the course of the proceedings instituted before it (see the *Erdagöz v. Turkey* judgment of 22 October 1997, *Reports* 1997-VI, pp. 2310-11, §§ 31-36). However, although it considers that the subject matter of the present case is not confined to the Articles mentioned in the Government's application bringing the case before it, the Court notes that the applicant's complaints under Articles 8 and 6 § 1 of the Convention are essentially the same as those under Article 1 of Protocol No. 1 and Article 13 of the Convention respectively. Thus, having regard to the conclusions set out in paragraphs 62 and 66 above, the Court, like the Commission, does not consider it necessary to examine the complaints under Articles 8 and 6 § 1 separately as in this instance the requirements of those Articles are subsumed under those of Article 1 of Protocol No. 1 and Article 13 of the Convention respectively.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

71. According to the applicant, for the “satisfaction” referred to in Article 41 to be “just”, it should not be limited to compensation for his loss of income and loss of the business itself but should also provide reparation for the non-pecuniary damage suffered by him as a person aged 66 at the time of the eviction and 75 at the time of his submissions to the Court.

Under the head of pecuniary damage, the applicant claimed 364,788,000 drachmas (GRD) for loss of income from ticket sales, advertising and bar takings, for the value of the equipment removed during the eviction and for loss of clientele.

In respect of non-pecuniary damage, he claimed GRD 50,000,000.

Lastly, in respect of legal fees, he claimed a sum equivalent to 20% of whatever amount the Court might award him for pecuniary and non-pecuniary damage if it found a violation. He explained that this claim was based on the terms of an agreement (annexed to his memorial) between himself and his legal representatives, which had been lodged both with the tax authorities and with the Athens Bar. Having regard to his claims for

damages, he thus sought GRD 82,957,000 for costs and expenses; to that had to be added the costs occasioned by his legal representatives' appearance at the hearing of 17 December 1998, amounting to GRD 1,226,500.

72. The Government maintained that, before dealing with the issue of just satisfaction, the Court should take into consideration the fact that the applicant had chosen not to set up his business elsewhere after being evicted from the property in question. They also stated that the applicant's claim for loss of income for the years 1989 to 1993 was now time-barred under Greek law. Further, the Court should not award the applicant compensation for the loss of his business as he had not lost ownership of the business equipment. In addition, the sums claimed under Article 41 differed from those which the applicant had sought in his actions for compensation in the domestic courts, so that the method of calculating the former ceased to be credible. Lastly, the Government invited the Court to have regard to the fact that the applicant might still be awarded certain sums by the national courts in which his actions were pending, so that any decision of the Court under this Article would be premature.

As to the legal fees, the Government stated that they did not consider themselves bound by the agreement between the applicant and his lawyers and that they were willing to reimburse only such costs as were objectively reasonable, whereas the amount put forward by the applicant appeared to them excessive, at least by Greek standards.

73. In the circumstances of the case the Court considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT

1. *Dismisses* by sixteen votes to one the Government's preliminary objection that domestic remedies had not been exhausted;
2. *Dismisses* unanimously the Government's preliminary objection that the six-month time-limit had not been observed;
3. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* by sixteen votes to one that there has been a violation of Article 13 of the Convention;

5. *Holds* unanimously that it is unnecessary to rule on the complaints made under Article 6 § 1 and Article 8 of the Convention;
6. *Holds* unanimously that the question of the application of Article 41 of the Convention is not ready for decision; accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicant to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Grand Chamber the 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 25 March 1999.

Elisabeth PALM
President

Michele DE SALVIA
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Yeraris is annexed to this judgment.

E.P.
M. de S.

PARTLY DISSENTING OPINION OF JUDGE YERARIS

(Translation)

I consider that the Court should declare the application inadmissible on the ground that the applicant has not exhausted domestic remedies. The Greek civil courts have held (see paragraph 32 of the judgment) that a possessor of land who is dispossessed pursuant to an eviction order issued under section 2(2) and (3) of Law no. 263/1968 must lodge an application for reinstatement if he wishes to recover the land. Such an application may be lodged either at the same time as an application to set aside the eviction order or separately. Any judgment allowing such an application is enforceable against the State, a State body or a private individual.

The applicant in the instant case failed to make such an application, which would be a sufficient and effective remedy enabling him to recover the cinema. There was all the more reason to use this legal remedy as the cinema was being operated by a third party, namely Ilioupolis Town Council, which, under the Greek Constitution, is a legal person separate from the State and consequently a party against which a judgment allowing an application for reinstatement would be enforceable.

In the light of the foregoing, I consider that there has been no violation of Article 13 of the Convention, which requires the States to provide for an effective remedy before a national authority.