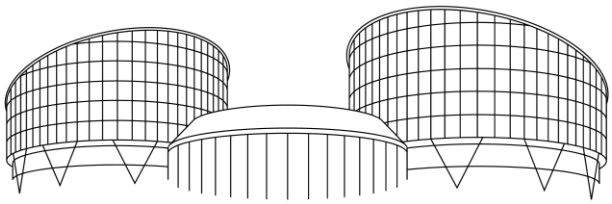

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46745/07
by Pavlos SOURLAS
against Greece

The European Court of Human Rights (First Section), sitting on 17 February 2011 as a Chamber composed of:

Nina Vajić, *President,*
Peer Lorenzen,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
Spyridon Flogaitis, ad hoc *judge,*
and Søren Nielsen, *Section Registrar,*

Mr C. L. Rozakis, the judge elected in respect of Greece, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr S. Flogaitis to sit as an ad hoc judge (Article 27 § 2 of the Convention and Rule 29 § 1).

Having regard to the above application lodged on 23 October 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Pavlos Sourlas, is a Greek national who was born in 1945 and lives in Athens. He is a professor of law at the University of Athens and is represented before the Court by Mr N. Alivizatos and Mr E. Malios, lawyers practising in Athens. The Greek Government ("the Government") are represented by their deputy Agents, Mr G. Kanellopoulos, Adviser, State Legal Council, and Mr I. Bakopoulos, Legal Assistant, State Legal Council.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The expropriation of the applicant's property

In 1989 the applicant bought an apartment of a total surface area of 168.37 square metres, situated on the fifth floor of a block of flats on Mitsaion Street, in the centre of Athens. Mitsaion Street is just off the pedestrian precinct that surrounds the Acropolis and serves as the main access to the broader archaeological site.

On 28 January 1997 the block of flats, including the applicant's apartment, was expropriated by a joint ministerial decision, for the purpose of building the new Acropolis Museum.

2. Proceedings concerning the objective value of the property

On 23 February 2001 the Minister of Finance issued a decision revaluing the "objective value" of the properties in the zone where the applicant's flat was situated, setting it at 360,000 drachmas (around 1,056 euros) per square metre (decision no. 1015544/770/00/ΤΥΔ/23-2-2001).

On 16 May 2001 the applicant applied to the Supreme Administrative Court for judicial review of the above-mentioned ministerial decision, claiming that the amount of the objective value was extremely low.

On 29 May 2002 the Supreme Administrative Court annulled the ministerial decision on the grounds that it had not taken into consideration the specific features of the area and that it was not clear from the case file that the decision had a solid basis and sufficient justification (judgment no. 1585/2002).

3. Proceedings for assessment of compensation by the courts

(a) Proceedings for the assessment of the provisional unit amount for compensation

On 28 February 2002 the Greek State and the Archaeological Receipts Fund (*Ταμείο Αρχαιολογικών Πόρων και Απαλλοτριώσεων*) lodged an action with the Athens Court of First Instance for the assessment of a provisional unit amount for compensation per cubic metre. They submitted that the figure of 1,320.62 euros (EUR) per cubic metre corresponded to the value of the applicant's apartment. In his submissions, the applicant proposed the sum of EUR 2,050 per cubic metre.

On 7 June 2002 the case was heard before the Athens Court of First Instance. On 19 September 2002 the court delivered its judgment, assessing the provisional unit amount for compensation at EUR 1,400 per cubic metre (judgment no. 1885/2002). After taking into consideration a technical report drawn up by an architect, K.C., and two valuations, drafted by B.P and P.K. and submitted by the parties, the court stated that

> "... The building is situated in a privileged location near the centre of Athens and has an excellent view of the Acropolis ... It is a fact that the building in issue, like all the buildings that have been expropriated for the construction of the new Acropolis Museum, is in a prime location on account of its proximity to the historical centre of the city of Athens, [where] real estate demand exceeds existing supply."

The court also relied on comparative data, such as the compensation awarded for the expropriation of two adjacent and three neighbouring buildings and the price obtained from the sale of three neighbouring buildings.

(b) Proceedings for the assessment of the final unit amount for compensation

On 26 February 2003 the Greek State and the Archaeological Receipts Fund lodged an action with the Athens Court of Appeal for the assessment of the final unit amount for compensation, claiming that the amounts awarded by judgment no. 1885/2002 were excessive. With regard to the applicant's apartment, they claimed that its real value was estimated at EUR 1,320.62 per square metre (corresponding approximately to EUR 412.7 per cubic metre).

In reply, the applicant alleged abuse of process by the State since it was proposing an amount considerably lower than the one it had proposed before the Court of First Instance. He maintained, further, that all the relevant reports had been drawn up by the administrative authorities using cubic metres as the unit of measurement of the expropriated apartments, so the calculation ought to have been made in cubic metres. Lastly, the applicant contended that the cadastral plan showing the apartments that were to be expropriated expressed the volume in cubic metres and not the surface area in square metres. Accordingly, the applicant argued that were

the Court of Appeal to estimate the value of his apartment in square metres, the administrative authority concerned would be unable to calculate and pay adequate compensation.

On 27 May 2003 the case was heard before the Athens Court of Appeal. On 10 September 2003 that court delivered its judgment. After having referred to the testimonies of the witnesses who gave evidence before the court and those of the witnesses who had appeared before the Athens Court of First Instance, to three reports drawn up by qualified surveyors, to the technical report drawn up by the architect K.C. and to two valuations submitted by B.P and P.K., the court considered that the following was proven:

> "... Mitsaion Street is part of the historical centre of Athens and is included in the "Unification of Archaelogical Sites of Athens" programme. It is tree-lined, with zero traffic and no noise ... The wider area, defined as a traditional zone of the city of Athens, is characterised by the co-existence of older, protected buildings and more modern dwellings with a view of the Acropolis, such as the fifth and sixth floors of the building in issue. In the technical report, dated 3 July 2002, K.C. certified that the interiors of the apartments are luxurious and in very good condition ...
>
> The objective value of the building amounts to 360,000 drachmas (around EUR 1,056) per square metre according to ministerial decision no. 1015544/770/00/ΤΥΔ/23-2-2001 revaluing the "objective value" of the properties in the zone where the applicant's flat is situated [decision of 23 February 2001]. However, following an application for judicial review submitted before the Supreme Administrative Court, the latter annulled the above ministerial decision on the grounds that it did not state that the specificities of the zone had been taken into consideration (...)
>
> As far as the market value is concerned, according to the experts appointed by the expropriated party ... it varies between EUR 4,500 and 7,000 per square metre. According to their technical expertise the value of the ground floor amounted to EUR 1,050 per cubic metre, to EUR 1,700 per cubic metre as regards the first floor, to EUR 1,870 per cubic metre as regards the second floor and to EUR 1,050 per cubic metre as regards the third floor. The witness called by the expropriating party referred only to the objective value of the building, which amounted to EUR 1,050 per square metre; as far as the market value was concerned he merely noted that the buildings situated in D.Areopagitou Street were in a more privileged location than the ones in Mitsaion Street ... whereas another witness called by [the expropriating party] declared during the proceedings for the assessment of the provisional unit amount for compensation that he agreed with the market value proposed by the State ... The Athens Court of First Instance assessed the provisional unit amount for compensation ... for the fifth floor at EUR 1,400 per cubic metre ...
>
> As far as the market value of the apartments is concerned, it should be noted, however, that the fact that the amounts assessed by the Athens Court of First Instance were only 5% higher than the amounts proposed by the State and the Archaeological Receipts Fund was obviously because they [the State and the Archaeological Receipts Fund] had requested, clearly in error (από προφανή παραδρομή), the assessment in cubic metres, influenced by the measurements used in the cadastral report, which gives the volume [of the apartments] in cubic metres ...
>
> In support of their arguments the parties referred to and submitted the following evidence and comparative information.

The State submitted judgment no. 3195/2001 of the Athens Court of Appeal determining the final unit amount at ... 50,000 drachmas [approximately EUR 146] per square metre for the building situated at 7γδ Hatzihristou Street; judgment no. 2558/2001 of the same court determining the final unit amount of the building situated at 5 Hatzihristou Street at 400,000 drachmas [approximately EUR 1,173] for the third floor; judgments nos. 861/2000 and 1130/2000 of Athens First Instance Court ... determining the unit amount of two buildings situated at 55 and 76 Hatzihristou Street respectively at ... 85,000 drachmas [approximately EUR 248] for the ground floor and 60,000 drachmas [approximately EUR 176] per square metre ... All the foregoing comparative data concern less privileged properties than the building in issue, because Hatzihristou Street is noisier than Mitsaion Street and, moreover, does not have a direct view of the Acropolis. [The State also submitted] judgment no. 3170/2001 of the Athens Court of Appeal determining the final unit price for a building situated in Mitsaion Street at 80,000 drachmas [approximately EUR 234] per square metre. This comparative data concerns a less privileged dwelling than the building in issue ... [The State also submitted] judgment no. 1582/2002 of the Athens Court of Appeal which had determined the final unit price of a building situated in 14 Mitsaion Street at EUR 587 per square metre. This comparative element concerns a less privileged building than the one in issue because it does not have a direct view of the Acropolis and Lycabettus hill ... [The State also produced] judgment no. 3963/2002 of the Athens Court of Appeal determining the final unit amount for a building situated at 15 Dionysiou Areopagitou Street at ... 650,000 drachmas [approximately EUR 1,907] per square metre for the third floor. This comparative data concerns a more privileged building than the one in issue as it is related to one of the most expensive, if not the most expensive, streets in Athens with an "objective value" of 800,000 drachmas [approximately EUR 2,347] per square metre, whereas the objective value of Mitsaion Street amounts to approximately 360,000 drachmas [EUR 1,056] per square metre ... [The State also submitted] judgments nos. 1633/2001 and 1113/2002 of the First Instance Court of Athens which had determined the provisional unit price of buildings situated in 15 and 5-5 α Hatzihristou Street at (...) EUR 733 per cubic metre as regards the ground floor, EUR 880 per cubic metre as regards the first floor and EUR 1 027 per cubic metre as regards the second floor. These judgments do not constitute solid evidence as the prices included are not definitive.

[The expropriated party] submitted judgment no. 8747/2001 of the Athens Court of Appeal determining the final unit amount of a building situated in 12 Mitsaion Street at ... EUR 1,526 per square metre. This comparative data concerns a less privileged building than the one in issue ... [The expropriated party also produced] a sale contract ... of a building ... located at the junction of Dionysiou Areopagitou Street and Mitsaion Street, ... for the price of 1,130,000 drachmas [approximately EUR 3,316] per square metre, namely, 4.5 times higher than the "objective value...". Finally, [the expropriated party] submitted price values taken from small ads published in the newspaper "I Kathimerini", namely (...) 440,200 drachmas (EUR 1,334) per cubic metre for an apartment of 110 square metres located in Mitsaion Street. These prices may only be indicative of the real value of the properties concerned as it is not certain that they will constitute the final price agreed upon by the contracting parties".

The Court of Appeal concluded, having regard to the aforementioned evidence that the real value of the applicant's apartment amounted to EUR 600 per cubic metre (judgment no. 6821/2003).

(c) Proceedings before the Court of Cassation

On 7 September 2004 the applicant appealed to the Court of Cassation on points of law. The applicant alleged, *inter alia*, that the Athens Court of Appeal had taken into consideration the ministerial decision revaluing the "objective value" of the properties in the zone where his flat was situated even though that decision had been annulled by the Supreme Administrative Court's judgment no. 1585/2002. He claimed, further, that the Court of Appeal had distorted the content of judgment no. 1885/2002 of the Court of First Instance, considering that the assessment in cubic metres had been made in error. According to the applicant, that consideration allowed the Court of Appeal to attach less importance to the assessment made by the Court of First Instance and to avoid giving sufficient and solid reasons for the large divergence from its findings.

On 25 April 2007 the Court of Cassation delivered its judgment, dismissing the applicant's appeal (judgment no. 877/2007). It stated, *inter alia*, that

> "In the present case the Court of Appeal considered that ... a report drawn up by the evaluation committee under section 15 of Law no. 2882/2001 did not need to be submitted since the expropriated property was included in the "objective value determination" system; furthermore, it took into consideration the objective value of the expropriated building, which amounted to 360,000 drachmas per square metre, as had been determined by ministerial decision no. 1015544/770/00/ΤΥΔ/23-2-2001, even though that decision had been annulled by judgment no. 1585/2002 of the Supreme Administrative Court. These considerations were sufficiently and clearly reasoned and contained no contradictions ... [the judgment in issue] did not infringe Article 17 of the Constitution or Article 6 para. 1 of the Convention, and did not deal with the latter at all.
>
> ...
>
> [T]he Court of Appeal did not alter the content of that document, since it copied into its judgment in issue ... the operative part of the Athens Court of First Instance's judgment no. 1885/2002. Furthermore, it is true that it provides some explanation (which was not necessary) and notes that: "*As far as the market value of the apartments is concerned, it should be noted, however, that the fact that the amounts assessed by the Athens Court of First Instance were only 5% higher than the amounts proposed by the State and the Archaeological Receipts Fund was obviously due to the fact that they [the State and the Archaeological Receipts Fund] had requested, clearly in error (από προφανή παραδρομή), the assessment in cubic metres*"; however, this does not mean that the Court of Appeal misinterpreted the operative part of the aforementioned judgment or distorted its content by replacing the unit for measuring volume (cubic metres) with the unit for measuring surface area (square metres).
>
> ...
>
> The request before the Court of Appeal is autonomous and is not a remedy against the judgment delivered by the Court of First Instance. Furthermore, in the above-mentioned explanatory note, the Court of Appeal considered that it had been "clearly in error" that the State had requested, before the Court of First Instance, the assessment of a provisional unit amount for compensation per cubic metre, thus

Article 116 [abuse of process by the parties] of the Code of Penal Procedure was not infringed."

B. Relevant domestic law

1. The Constitution

The relevant parts of the Greek Constitution provide as follows:

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 proven 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 the 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.

3. Any change in the value of the expropriated property occurring after and solely as a result of publication of the decision to expropriate shall not be taken into account.

4. Compensation shall in all cases be determined by the civil courts. A court may even make a provisional assessment of compensation after the person entitled has been heard or his attendance requested and, at its discretion, require such person to furnish an appropriate guarantee before receiving the compensation, in accordance with the law...

..."

2. Law no. 2882/2001

Article 3 § 1 (b) of Law no. 2882/2001 provides that the cadastral plan shall contain the surface area of each expropriated property, as well as all the main features of the constructions and other components. Moreover, Law no. 2882/2001 provides that after an expropriation order has been issued, a three-member committee composed of civil servants shall estimate the value of the expropriated properties and the amounts of compensation due. The report drawn up by the committee must be submitted to the courts having jurisdiction and taken into consideration as an advisory opinion. However, such a report is not submitted in cases where an "objective value determination" system (*σύστημα αντικειμενικού προσδιορισμού*) is in force. According to that system, taxable values for the purpose of, *inter alia*, calculating the compensation to be paid in the event of an expropriation, are calculated on the basis of a unit amount fixed by ministerial decision.

In particular, Law no. 2882/2001 provides in so far as relevant:

Section 13

Assessment of the value of the expropriated property

"1. Compensation must be made in full and correspond to the value of the expropriated property on the date of the hearing on the provisional assessment of the compensation, or, in case of an application for final assessment, on the date of the relevant hearing.

...

When determining the value of the expropriated property, the criterion to be taken into consideration is the value of properties adjacent and similar to the expropriated one at the relevant time. That value is determined mainly on the basis of the "objective value", the prices stipulated in ownership transfer deeds concluded at the time of the expropriation order and the income from the expropriated property."

Section 15

Assessment of the expropriated property's value

"1. After an expropriation order is issued, a committee shall assess the value of the expropriated property and the amount of any special compensation due under section 13(4).

...

3. The committee shall be convened by its chairman and, after verifying the data submitted, shall draw up within thirty days of notification of the order appointing an expert, a report describing in detail the situation of the expropriated property and its components, as well as any special features, and assessing in detail its value according to section 13(1) and (2), as well as the amount of any special compensation due under section 13(4). ... The report shall then be submitted ... to the court as part of the proceedings for the assessment of the compensation and shall be taken into consideration as an advisory opinion.

...

6. The foregoing assessment shall not take place with regard to properties which are included in the system of objective assessment of their value under the provisions in force. In this case, the relevant service within the Ministry of Finance shall draw up a report determining the objective value of the expropriated property."

Section 19

Provisional assessment of the compensation

"1. The Court of First Instance in the area where the expropriated property, or the largest part of it is situated, shall have jurisdiction to assess provisionally the amount of compensation due.

..."

Section 20

Final assessment of the compensation

"1. The court which shall carry out the final assessment of the compensation is the Court of Appeal in the area of jurisdiction where the expropriated property or the largest part of it is situated.

...

8. The Court of Appeal shall, after freely examining the evidence produced by the parties, deliver a final judgment within thirty days of the final hearing of the application.

..."

3. Legislative Decree no. 797/1971

Article 24 of Legislative Decree no. 797/1971 provides in so far as relevant:

"...

3. The verification, correction, completion or reconstruction of the cadastre and the cadastral plan shall be made on the basis of the title deeds and ownership records or on the basis of the boundaries or boundary marks indicated by the municipal authority or the rural police.

The land surveyor, having regard to the decision ordering the compulsory expropriation, the cadastral plan, the cadastral register and all the data produced by the parties, shall proceed, after inviting the parties to attend if necessary, to an inspection of the title deeds and shall draw up in three copies and within the set deadline:

a) the cadastral plan of the expropriated land comprising the separate properties and their special features as well as any contestation of rights over these properties, b) the relevant cadastral register including the serial number of the property, the name of each owner, the total surface area of the property, the volume of the main buildings, listed according to the nature of construction and their quality, any other building, listed according to type and category, and any other information that may be useful in assessing the price per unit of the expropriated properties.

..."

COMPLAINTS

The applicant complained under Articles 6 § 1 of the Convention and 1 of Protocol No. 1 that the Athens Court of Appeal dramatically lowered the amount of the compensation due, which had already been fixed by the Court of First Instance, without providing sufficient explanation thereof.

THE LAW

The applicant complained that ambiguities concerning the basis for calculation of the compensation due had allowed the Athens Court of Appeal, without putting forward any solid argument, to award him an amount of compensation that was considerably lower than the amount provisionally fixed by the Court of First Instance. He also alleged that the domestic courts did not comply with the *res judicata* effect of judgment no. 1585/2002 of the Supreme Administrative Court. He relied on Articles 6 § 1 of the Convention and 1 of Protocol No. 1. These provisions read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

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

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."

A. The submissions of the parties

1. The Government

The Government argued that the fact that the property in issue had been expropriated for the public benefit, namely, the construction of a museum in the Acropolis area, justified limiting the compensation awarded and could lead to reimbursement of less than the full market value. The Government contended that the Court of Appeal had evaluated a sufficient amount of evidence relating to the value of the expropriated apartment when determining the final unit amount of compensation. They pointed out that all the comparative data had been taken into consideration and freely evaluated by the Athens Court of Appeal. They stressed that the Court of Appeal was not bound by the conclusions of the Athens Court of First Instance because, according to domestic law, the procedure of lodging an application for determination of the final unit amount was independent from the procedure before the Court of First Instance for determination of the provisional unit amount. The Government argued that, contrary to Legislative Decree no. 797/1971, Law no. 2882/2001 made no explicit reference to the building's volume as a criterion for that calculation.

Nonetheless, the Government contended that this did not exclude mention of the volume in the cadastral plan because that plan could include any element relevant for determination of the market value of the expropriated property. In any event, in the Government's view, the fact remained that the Athens Court of Appeal had determined the final unit price of compensation in cubic metres in respect of the apartments on the expropriated plot of land as the Court of First Instance had also done when determining the provisional unit amount of compensation.

Lastly, the Government asserted that the Athens Court of Appeal had addressed all the essential arguments put forward by the parties. As regards, in particular, the issue of *res judicata* of judgment no. 1585/2002 delivered by the Supreme Administrative Court, the Government acknowledged that administrative decision no. 1015544/770/00/ΤΥΔ/23-2-2001 had indeed been annulled in so far as it had determined the objective value of the expropriated property at 360,000 drachmas per square metre. However, the Government argued that the annulled administrative decision had been taken into account by the Athens Court of Appeal as had all other relevant evidence, without binding it as to the assessment of the final unit amount of compensation. The Government argued that both parties had enjoyed all the judicial guarantees in the course of the procedure before the Athens Court of Appeal required by Article 1 of Protocol No. 1.

2. The applicant

The applicant submitted that at the outset the present case raised an important legal and factual issue pertaining to compliance with the rule of law in the course of expropriation proceedings. In particular, he asserted that it was questionable whether the accomplishment of a major public project, namely the new Acropolis Museum, was an interest justifying the restriction of both substantial and procedural guarantees that safeguard owners throughout the process of compulsory expropriation. The applicant maintained that the present case was an indicative example of the respondent's tactic of unlawfully minimising, to the greatest extent possible, the cost of the necessary expropriations by setting unduly low "objective values" and, subsequently, by misguiding the national courts through the use of a surprise tactic: shifting from the use of cubic to square metres for measuring the apartment in question, whilst keeping the same unit price.

In particular, the applicant stressed that the Court of First Instance had awarded compensation of 754,292 euros (1,400 euros x 538.78 m^3) whereas the Court of Appeal subsequently awarded 323,268 euros (600 euros x 538.78 m^3), namely, a 60% reduction of the amount awarded by the Court of First Instance. The reduction of the compensation awarded for the expropriation of the apartment in issue had resulted from the dramatic change in the respondent's proposal in that respect: while before both jurisdictions the Government had proposed the same unit amount, before the

Court of First Instance they had referred to cubic metres, whereas before the Court of Appeal they had referred to square metres. The applicant admitted that Law no. 2882/2001 conferred significantly wider discretion on the courts for the calculation of the compensation due as it referred only to the surface area of the expropriated land and buildings. Thus, the respondent's shift from cubic to square metres was not illegal. However, it was manifestly misleading and therefore arbitrary because it had resulted in an unprecedented reduction of the compensation due.

The applicant argued that, despite his strong objections before the domestic courts about the respondent's shift in their proposals, the Court of Appeal had endorsed it without in reality giving the slightest explanation for the dramatic reduction this shift had resulted in. Additionally, the applicant submitted that no judicial precedent or other evidence submitted by the parties indicated such a dramatic reduction between compensation awarded at first and second instance. On the contrary, in at least four cases the Court of Appeal's judgments referred to in the impugned judgment had increased the compensation awarded compared with that determined by the respective courts of first instance.

Lastly, the applicant maintained that the administrative decision determining the objective value of the area where his apartment was located at 360,000 drachmas had been annulled by the Supreme Administrative Court. Nonetheless, not only had the respondent subsequently failed to determine a new and higher objective value, but, in addition, the Court of Appeal had reached its decision without requesting a technical evaluation report as required by section 15 of Law no. 2882/2001. The applicant contended that neglecting this aspect of the relevant procedure did not simply breach a minor formality, it deprived him of a procedural guarantee of major significance for the protection of his rights enshrined in the Convention.

B. The Court's assessment

1. *Whether there was a possession within the meaning of Article 1 of Protocol No. 1 and an interference with the right of property*

The Court observes that it was not disputed by the parties that there had been an interference with the applicant's right to the peaceful enjoyment of his possessions, amounting to a "deprivation" of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

The Court must therefore examine whether the interference in issue complied with the requirements of Article 1 of Protocol No. 1.

2. Whether the interference was justified

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 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 *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

The requirement of lawfulness, within the meaning of the Convention, presupposes, among other things, that domestic law must provide a measure of legal protection against arbitrary interferences by the public authorities with the rights safeguarded by the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). However, the mere existence of a basis in domestic law does not satisfy the requirements of legal certainty. The Court is also called upon to examine the quality of the law in question, namely, the existence of rules that are accessible, precise and foreseeable in their application (see, among many other authorities, *Apostolidi and Others v. Turkey*, no. 45628/99, § 70, 27 March 2007). In particular, in the context of Article 1 of Protocol No. 1, the Court has held that the States are under a positive obligation to provide judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any cases concerning property matters (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII, and *Bistrović v. Croatia*, no. 25774/05, § 33, 31 May 2007).

The Court further reiterates that Article 1 of Protocol No. 1 implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedures affording to the individual or entity concerned a reasonable opportunity of presenting their case to the relevant authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see *Vontas and Others v. Greece*, no. 43588/06, § 36, 5 February 2009). In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (see *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

Turning to the facts of the present case, the Court's task is to examine the conformity of the proceedings before the domestic courts with the rule of law and the proper administration of justice. In this context it is to be determined whether the 60% reduction by the Court of Appeal of the amount assessed by the Court of First Instance relied on sufficient and solid reasons. The Court maintains on this point that, in the absence of any

obligation for a judicial authority to give reasons for their decisions, the rights guaranteed by the Convention would be illusory and theoretical (see *Novoseletskiy v. Ukraine*, no. 47148/99, § 111, ECHR 2005 II (extracts), and *Bistrović*, cited above, § 37).

In this connection, the Court observes, firstly, that the applicant contended that the respondent's judicial authorities had not asked the State to produce a technical evaluation report on the value of the expropriated property. At the outset the Court stresses that it is not its task to examine whether the domestic courts have rightly applied domestic law or to reassess the evidence upon which the domestic courts relied when determining the compensation. The Court must only examine whether the manner in which that law was applied to the applicant in the particular circumstances would violate the protection offered to them under Article 1 of Protocol No. 1 to the Convention. Hence, in the present case it is not the Court's function to express an opinion on the interpretation of Law no. 2882/2001 by the Court of Appeal and, in particular, whether that court should or should not have asked for a technical evaluation report or if it should have relied on any other specific evidence put forward by the applicant in the course of the impugned proceedings.

Secondly, the Court notes that the Court of Appeal took into consideration an adequate amount of evidence pertaining to the value of the expropriated apartment, including the opinions submitted by the experts appointed by the expropriated party and the respondent State as well as several judicial decisions determining the price of buildings neighbouring the applicant's apartment. It is true that a certain inconsistency may be observed with regard to the unit by which the value of the buildings adjacent to the expropriated apartment was calculated in the evidence submitted by the parties to the domestic court and the one by which the final compensation price was fixed. In particular, it transpires from judgment no. 6821/2003 that almost all the evidence taken into account by the Court of Appeal contained assessments of the value of buildings in square metres whereas the final unit amount was fixed by the domestic court in cubic metres. Nonetheless, the Court notes that, as it was also admitted by the applicant, Law no. 2882/2001 conferred a significantly wide discretion on the courts as regards the unit to use for the calculation of compensation due as it did not refer specifically to square or cubic metres but only to the surface area of expropriated land and buildings. Consequently, the shift from square to cubic metres in the body of the same judgment can not be considered as illegal or arbitrary. Moreover, the Court observes that some of the price values referred to in judgment no. 6821/2003 were indeed assessed in cubic metres. Finally, the Court of Appeal examined whether the prices of expropriated buildings which had already been determined by judicial authorities referred to neighbouring buildings situated in less or more privileged locations than the applicant's apartment. To sum up, the domestic

court embarked upon a comparative analysis of the value of adjacent buildings with the state of the applicant's property and fixed the final unit amount also on the basis of evidence in the form of assessments of the value of neighbouring apartments in cubic metres.

Lastly, the Court notes that in assessing the final unit amount of compensation due, the Court of Appeal twice took into consideration the ministerial decision revaluing the "objective value" of the properties in the zone where the applicant's apartment was situated at 360,000 drachmas per square metre. In particular, when assessing the evidence submitted by the parties, the Court of Appeal maintained that the objective value of a property situated in Dionysiou Arepagitou Street was 800,000 drachmas per square metre whereas the objective value of a building in Mitsaion Street was 360,000 drachmas per square metre. In addition, the same court held that the price of an apartment situated at sixty metres from the applicant's apartment included in a real estate contract was set at 1,130,000 drachmas, namely, 4.5 times higher than "the objective value". The Court acknowledges that by referring to the objective value of 360,000 drachmas per square metre, the domestic court twice wrongly referred to a ministerial decision which had previously been annulled by judgment no. 1585/2002 of the Supreme Administrative Court. However, the Court points out that the Court of Appeal did not fix the final unit amount by relying exclusively on the objective value determined by the above ministerial decision. As it has already been observed, the domestic court took into account evidence in order to establish the final unit amount. Moreover, the Court of Appeal itself acknowledged that the above-mentioned ministerial decision had been annulled by the Supreme Administrative Court, thus implying that the objective value of 360,000 drachmas per square metre could not play a decisive role in the assessment of the final unit amount in the applicant's case. Consequently, the Court considers that by referring to ministerial decision no. 1015544/770/00/ΤΥΔ/23-2-2001 the Court of Appeal did not aim to ignore a judicial authority that was *res judicata* and thus call into question an issue which had already been determined by the Supreme Administrative Court (see in this connection *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

In the light of the foregoing, the Court considers that the interference with the applicant's peaceful enjoyment of his property was accompanied in the present case by sufficient procedural guarantees affording to him a reasonable opportunity of presenting his case to the relevant judicial authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision.

It follows that the complaint raised under Article 1 of Protocol No. 1 must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 a) and 4 of the Convention.

Finally, as regards the complaint under Article 6 § 1 of the Convention, the Court refers to its considerations above in respect of the adequacy of the procedural guarantees offered to the applicant. In particular, the Court is satisfied that the domestic courts examined the evidence before them and adopted reasoned decisions. As the Court of Cassation admitted in its judgment no. 877/2007, the Court of Appeal's considerations were sufficiently and clearly reasoned and contained no contradictions. In these circumstances, the Court cannot find that the essence of the applicant's right to a fair hearing was impaired, or that the principle of adversarial proceedings or his defence rights were breached.

It follows that this part of the application is also to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Søren Nielsen
Registrar

Nina Vajić
President