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

COURT (CHAMBER)

CASE OF STRAN GREEK REFINERIES AND STRATIS ANDREADIS v. GREECE

(Application no. 13427/87)

JUDGMENT

STRASBOURG

09 December 1994

In the case of Stran Greek Refineries and Stratis Andreadis v. Greece*,

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

Mr R. RYSSDAL, *President*,
Mr B. WALSH,
Mr R. MACDONALD,
Mr C. RUSSO,
Mr N. VALTICOS,
Mr S.K. MARTENS,
Mr R. PEKKANEN,
Mr F. BIGI,
Mr L. WILDHABER,

and also of Mr H. PETZOLD, *Acting Registrar*,

Having deliberated in private on 22 April and on 21 November 1994,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 July 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13427/87) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by a Greek private limited company, Stran Greek Refineries, and the latter's sole shareholder, Mr Stratis Andreadis, on 20 November 1987. The second applicant died in 1989 and his son and heir, Mr Petros Andreadis, expressed the wish to continue with the application.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory

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* The case is numbered 22/1993/417/496. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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

jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 (art. 6) of the Convention and Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 August 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr B. Walsh, Mr R. Macdonald, Mr C. Russo, Mr S.K. Martens, Mr R. Pekkanen, Mr F. Bigi and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 13 January 1994 and the applicants' memorial on 19 January. On 21 February the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 19 April 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr P. GEORGAKOPOULOS, Senior Adviser,
Legal Council of State, *Delegate of the Agent*,
Mrs K. GRIGORIOU, Legal Assistant,
Legal Council of State, *Counsel*;

- for the Commission

Mr C.L. ROZAKIS, *Delegate*;

- for the applicant

Mr M. BELOFF, QC, *Counsel*,
Mr P. MARTYR, solicitor,
Mrs T. FOSTER, solicitor,
Mr K.D. KERAMEUS, Professor of Law
at Athens University, *Advisers*.

The Court heard addresses by Mr Georgakopoulos, Mr Rozakis and Mr Beloff, and also their replies to its questions.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. Stran Greek Refineries ("Stran") is a company currently in liquidation. Its registered address is in Athens and Mr Stratis Andreadis was its sole shareholder.

A. Background to the case

7. Under the terms of a contract concluded on 22 July 1972 with the Greek State, which at the time was governed by a military junta, Mr Andreadis undertook to construct a crude oil refinery in the Megara region, near Athens. The refinery was to be built, at an estimated cost of 76,000,000 US dollars, by a company which it was proposed to form, Stran Greek Refineries, of which the second applicant was to be the sole owner. All the latter's rights and obligations were to be automatically transferred to the company upon its incorporation.

The Government ratified the contract by Legislative Decree no. 1211/1972, published in the Official Gazette of 26 July 1972. Under Article 21 of the contract, the State undertook to purchase, not later than 31 December 1972, a plot of land in Megara suitable for the construction of the refinery. On 27 July 1972, by a Royal Decree (no. 450), issued pursuant to Legislative Decree no. 2687/1953 on "the Investment and Protection of Capital Funds from Abroad", the State authorised Mr Andreadis to import 58 million US dollars to finance the scheme.

8. However, the project stagnated because the State failed to fulfil its obligation. On 28 November 1973 the Ministers of Industry and Agriculture announced at a press conference in Megara the Government's decision to return to the proprietors the land which had already been expropriated in accordance with Article 21 of the contract. The following day the Megara police ordered that the work should cease.

In December 1973 Stran protested to the relevant authorities and sought permission to proceed with the work. On 27 February 1974 it even issued an extra-judicial summons inviting the State to ratify the purchase of the land in question, but the State refused to revoke the police order prohibiting the continuation of the work.

9. Once democracy had been restored, the Government took the view that the contract and Decree no. 450 were prejudicial to the national economy; they relied on Article 2 para. 5 of Law no. 141/1975 on the termination of preferential contracts (kharistikes symvasseis) concluded under the military regime (1967-74). This Law, which was enacted by

special authorisation under the 1975 Constitution (Article 107 - see paragraph 24 below), possessed superior force.

The applicants did not respond to a proposal addressed to them by the Minister for Co-ordination on 19 November 1975 inviting them to enter negotiations for the revision or termination of the contract. Accordingly, a ministerial committee on the economy terminated the contract on 14 October 1977. The applicants did not challenge this decision in the courts.

B. The proceedings in the Athens Court of First Instance

10. Prior to the termination of the contract, Stran had incurred expenditure in connection with the scheme. In particular, it had concluded contracts for the supply of goods and services with foreign and Greek undertakings and had taken out loans.

A dispute then arose between Stran and the State. On 10 November 1978 Stran brought an action (anagnoristiki agogi) in the Athens Court of First Instance for a declaration that the State should pay it compensation in the amounts of 251,113,978 drachmas, 22,799,782 US dollars and 877,466 French francs. It argued that the State had been in breach of its obligations during the period of validity of the contract, in particular in so far as it had, since 27 November 1973, prohibited the continuation of work on the construction of the refinery at Megara and had not, since 9 February 1974, taken any steps to expropriate the land required for that construction. It also sought the return of a cheque for 240 million drachmas which it had lodged with the Ministry of the National Economy as security for the proper performance of the contract; it further claimed reimbursement of the commission and the fiscal stamp fee paid to the Commercial Bank of Greece.

The State challenged the jurisdiction of the court. It contended that the dispute should be referred to arbitration in accordance with Article 27 of the contract, the relevant paragraphs of which were worded as follows:

> "1. Any difference, dispute or disagreement arising between the State and the Concessionaire as to the application of this Agreement and relative to the interpretation of the terms and conditions thereof and the extent of the rights and obligations deriving therefrom shall be resolved exclusively by arbitration by three arbitrators according to the following procedure, no other arbitration agreement being required.
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> ...
>
> 9. The arbitration award shall be definite, final and irrevocable, and shall constitute an enforceable instrument requiring no further action for enforcement or any other formality. It shall be liable to no ordinary or extraordinary judicial remedies, nor shall it be subject to cancellation or suspension before ordinary courts of justice. The party failing to comply with the provisions of the arbitration award shall be obligated to

make good any and all damage (damnum emergens or lucrum cessans) caused to the other party."

11. In a preliminary decision (no. 13910/1979) of 29 September 1979, the Athens Court of First Instance rejected the State's main submission. It held that the arbitration clause concerned solely the settlement of disputes arising from the performance of the contract and not the failure of one of the parties to perform the contract. It found further that the ministerial committee on the economy had terminated the contract in issue in its entirety (see paragraph 9 above) which had the effect of rendering the arbitration clause void as it was not an autonomous provision. In addition, the court dismissed the State's argument that two of the conditions subsequent contained in the contract, namely the lodging of a cheque as security and the payment of the second part of the minimum capital, had not been satisfied. Finally, the court ordered additional investigative measures, including the hearing of five witnesses, in order to determine the existence and extent of the damage alleged by Stran.

C. The arbitration proceedings

12. On 12 June 1980 the State filed an arbitration petition and appointed an arbitrator. It requested the arbitration court to declare that all the claims for compensation against the Greek State lodged by Stran in the Athens Court of First Instance (see paragraph 10 above) were unfounded.

In its memorial of 28 June 1980 Stran - which had appointed a professor of law at Athens University as arbitrator - maintained primarily that the arbitration court lacked jurisdiction and requested that the arbitration be stayed until the proceedings instituted on 10 November 1978 had been concluded; in the alternative and in order to rebut the State's arguments on the merits, it referred the arbitrators to its pleadings in the Athens Court of First Instance.

13. The arbitration court was constituted on 3 July 1980; its president was chosen jointly by the two other arbitrators (Article 27 para. 3 of the contract). It made its award on 27 February 1984.

It found that it had jurisdiction in that, in its view, the disputes arising from the total failure to perform the contract were also subject to arbitration, which was not restricted to those deriving from non-performance of individual clauses as had been argued by the State. The wording of the arbitration clause in Article 27 (see paragraph 10 above) was sufficiently general and clear to rule out such distinctions.

On the merits, the arbitration court relied on the evidence adduced by the parties before the Athens Court of First Instance on 10 November 1978 (see paragraph 10 above). It found that responsibility for the losses sustained by Stran was shared - 70% for the State and 30% for the company. The latter had commenced work on land which had been the subject of a contested

expropriation order and without first obtaining the necessary planning permission. It therefore held Stran's claims to be well-founded in an amount not exceeding 116,273,442 drachmas, 16,054,165 US dollars and 614,627 French francs, plus interest at 6% from 10 November 1978; however, this reference to interest did not appear in the operative part of the decision. Finally, the court declared that the State was unlawfully retaining the cheque lodged as security (see paragraph 10 above).

14. On 24 July 1984 the applicant company sought an order from the Athens Court of First Instance requiring the State to return the security, but the court stayed the proceedings pending the conclusion of those instituted on 10 November 1978 (see paragraph 10 above).

D. The appeals against the arbitration award of 27 February 1984

1. In the Athens Court of First Instance

15. On 2 May 1984 the State had asked the Athens Court of First Instance to set aside the arbitration award of 27 February 1984.

It argued that the arbitration court had lacked jurisdiction to hear disputes arising from the contract in issue and Stran's financial claims against the State. In the alternative, it affirmed that the contracting parties had intended to limit the jurisdiction of the arbitration court to disputes concerning the performance and interpretation of the clauses of the contract and the scope of the rights and duties deriving therefrom; its jurisdiction could not therefore extend to disputes relating to the total failure to perform the contract. It followed that the dispute in question was a matter for the ordinary civil courts, as the Athens Court of First Instance had recognised in its judgment no. 13910/1979. In the further alternative, the State argued that the arbitration court's lack of jurisdiction was confirmed by the fact that Stran's claims against it had become statute-barred following the termination of the contract. Finally, it stressed the declaratory nature of the action brought by Stran on 10 November 1978 (see paragraph 10 above).

16. In a judgment (no. 5526/1985) of 21 April 1985 the Athens court dismissed the State's application, holding that the decision terminating the contract had not rendered the arbitration clause void. That clause continued to produce its effects in relation to disputes which had arisen during the period of validity of the contract.

17. On 19 December 1986 the applicant company withdrew its first action in the Athens Court of First Instance (see paragraph 9 above), but sought to pursue its action for the return of the cheque lodged as security (see paragraph 14 above).

When this action was heard in the Athens Court of First Instance, on 6 February 1987, the State, relying on Article 294 of the Code of Civil Procedure, opposed the discontinuance of the first action. It maintained that

the latter action would have resulted in a finding unfavourable to Stran and that the State thus had a legitimate interest in seeking a final decision.

However, the court again stayed the proceedings (decision no. 2877/1987) on account of the appeal on points of law which was pending (see paragraph 19 below).

2. In the Athens Court of Appeal

18. In a judgment (no. 9336/1986) of 4 November 1986, the Athens Court of Appeal, basing its decision on the same grounds, upheld the judgment of 21 April 1985.

It ruled, inter alia:

> "In modern Greek legislation the principle of the autonomy of an arbitration clause in relation to the contract prevails. The termination of the contract, for whatever reason, does not bring an end to the power of the arbitrators designated to hear disputes which have arisen during the period of validity of the contract ... The decision of the ministerial committee on the economy did not annul the arbitration clause contained in Article 27 of the contract and, accordingly, it does not preclude the arbitrators from examining the merits of the dispute."

3. In the Court of Cassation

19. On 15 December 1986 the State appealed to the Court of Cassation.

The hearing was initially set down for 4 May 1987, but on that date it was postponed to 1 June 1987 at the State's request, on the ground that a draft law concerning the case in question was before Parliament.

In reply to a question put by the European Court at the hearing on 19 April 1994, the applicants' lawyer maintained that the Court of Cassation's judge-rapporteur had sent his opinion, which had been favourable to the applicants' arguments, to the parties before 4 May and this affirmation was not disputed by the Government.

20. On 22 May 1987 Parliament enacted Law no. 1701/1987 on "the compulsory participation of the State in private undertakings ... and the redemption of shares", which entered into force upon its publication in the Official Gazette of 25 May 1987. This Law dealt principally with the renegotiation of a concession for the prospecting for and extraction of oil and natural gas in an area of the Sea of Thrace. However, Article 12 of the Law was worded as follows:

> "1. The true and lawful meaning of the provisions of Article 2 para. 1 of Law no. 141/1975 concerning the termination of contracts entered into between 21 April 1967 and 24 July 1974 is that, upon the termination of these contracts, all their terms, conditions and clauses, including the arbitration clause, are ipso jure repealed and the arbitration tribunal no longer has jurisdiction.
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> 2. Arbitration awards covered by paragraph 1 shall no longer be valid or enforceable.

3. Any principal or ancillary claims against the Greek State, expressed either in foreign or local currency, which arise out of the contracts entered into between 21 April 1967 and 24 July 1974, ratified by statute and terminated by virtue of Law no. 141/1975, are now proclaimed time-barred.

4. Any court proceedings at whatever level pending at the time of the enactment of this statute, in respect of claims within the meaning of the preceding paragraph, are declared void."

21. On 10 July 1987, after hearing the opinion of the judge-rapporteur calling for the appeal to be dismissed, the First Division of the Court of Cassation delivered its judgment (no. 1387/1987). It held that Article 12 was unconstitutional on the following grounds:

"...

Not only does [Article 107] of the Constitution confer superior force on Law no. 141/1975, but it also prohibits subsequent amendments or additions thereto, or even authoritative interpretation thereof, in the form of ordinary legislation. The purpose of that superior force and of the provision in the Constitution requiring that a single law be enacted once and for all within three months of the entry into force of the Constitution was to ensure legislative stability and international confidence for investments in Greece. This opinion is based on the only possible meaning to be attributed to the expression 'single law to be enacted once and for all' and on the ease with which the said provision would be flouted if amendments, additions or authoritative interpretation of that law were allowed ...

It follows that ... the provisions of Article 12 of Law no. 1701/1987 which purport to provide an authoritative interpretation of and to amend and supplement Article 2 para. 1 of Law no. 141/1975 and which were enacted after the expiry of the time-limit laid down in Article 107 para. 2 of the Constitution are contrary to that instrument. In accordance with Article 93 para. 4 of the Constitution the court is therefore precluded from applying them. The Division refuses to apply unconstitutional provisions and, pursuant to Article 563 para. 2 of the Code of Civil Procedure, holds that it is bound to refer the case to the Court of Cassation sitting in plenary session ..."

22. The hearing in the Court of Cassation sitting in plenary session opened on 19 November 1987, but as a result of the death of one of its members Stran sought a new hearing, which was held on 25 February 1988.

The Court of Cassation delivered its judgment (no. 4/1989) on 16 March 1989. It observed, inter alia:

"... [The Constitution] provides for the enactment of 'a single law to be enacted once and for all' which by definition possesses superior force inasmuch as it may be neither supplemented nor amended by ordinary legislation ... However, the prohibition on supplementing or modifying the content of [such] laws does not mean that they may never be interpreted. The fact that they are sui generis, which gives them precedence over ordinary legislation, ... does not preclude their interpretation where the circumstances so require. The purpose of such interpretation is not to amend the substance of the law interpreted, but to clarify its original meaning and to resolve disputes that have arisen in connection with its application or which may do so in the future. [The need for such interpretation] will ultimately be determined by the court which will have to ascertain whether the meaning of the law interpreted actually gave

rise to doubts justifying the intervention of the legislature ... Accordingly, the interpretation of Law no. 141/1975 is not contrary to the Constitution merely because it is a law of superior rank. It must nevertheless be determined, on the one hand, whether the interpretation was necessary in the specific case and, on the other, whether the non-interpretative provisions of this Law, which have a bearing on the solution of the case in issue, are contrary to the Constitution ... The wording [of Article 2 para. 5 of Law no. 141/1975] lacks clarity and creates doubt as to whether the arbitration clause survives the termination of the contract ... and as to the jurisdiction of the arbitration court. In the instant case doubt first arose in the course of the proceedings brought by [the applicants] in the ordinary civil court and again - following the preliminary decision of the Athens Court of First Instance - when those proceedings had been discontinued and recourse was had to arbitration, where diametrically opposed arguments were put forward ... Irrespective of those doubts, the main issue is the acceptance or rejection of the principle of the autonomous character of the arbitration clause and of its scope. For a long time this matter has been the subject of significant differences of opinion in international case-law and among legal writers. In some countries the principle of the survival of the clause to resolve disputes arising prior to the termination of contracts ... prevails. In other countries the dominant view is that termination of the contract entails the annulment of the clause and therefore the referral of all the disputes to the ordinary courts. In other countries again, the accepted view is that the autonomous character of the arbitration clause operates only in respect of certain types of dispute. It was therefore necessary to provide an interpretation of Law no. 141/1975 and that interpretation resolved the problem for the purposes of Greek law by opting for the annulment of arbitration clauses ... and the removal of jurisdiction from the arbitration court. The fact that the intervention of the legislature occurred ... five days before the hearing in the First Division of this Court and following a previous adjournment does not mean that it was not necessary and does not render it contrary to Article 26 paras. 1 and 3 and Articles 77 and 87 of the Constitution. The dispute in question provided the opportunity to resolve a problem which had already arisen. Consequently, it cannot be concluded that, in giving such an interpretation in this case, the legislature interfered with the jurisdiction of the ordinary courts and usurped that jurisdiction. It follows that, contrary to the finding of the First Division, Article 12 para. 1 of Law no. 1701/1987 is not in breach of the Constitution ..."

The Court of Cassation took the view that paragraph 2 of Article 12 was not unconstitutional as it essentially supplemented paragraph 1 and sought to deprive of effect any arbitration awards that were made after the termination of contracts and that would not have been made if the meaning of Law no. 141/1975 had been clarified in time. In addition, the court refused to examine the constitutionality of paragraph 3, finding that it had no bearing on the case before it. Finally, it held that the adoption of paragraph 4 shortly before the hearing purported to remove from the courts the possibility of determining the validity of the contested award. That provision therefore violated the principle of the separation of powers.

23. The Court of Cassation remitted the case to the First Division which, on 11 April 1990, quashed the Court of Appeal's judgment of 4 November 1986 (see paragraph 18 above) and declared void the arbitration award of 27 February 1984 (see paragraph 13 above).

II. RELEVANT DOMESTIC LAW

A. The Constitution

24. The following provisions of the 1975 Constitution are relevant here:

Article 77

"1. The authentic interpretation of the laws shall rest with the legislative power.

2. A law which is not truly interpretative shall enter into force only as of its publication."

Article 93 para. 4

"The courts shall be bound not to apply laws, the contents of which are contrary to the Constitution."

Article 107

"1. Legislation of higher formal rank enacted before 21 April 1967 pertaining to the protection of foreign capital shall continue to possess such rank and shall be applicable to capital imported henceforth.

2. A single law to be enacted once and for all within three months of the date of the entry into force of this Constitution shall specify the terms and the procedure for the termination or revision of preferential administrative agreements or measures concluded or promulgated between 21 April 1967 and 23 July 1974 pursuant to Legislative Decree no. 2687/1953, in so far as such agreements or measures concern the investment of foreign capital ..."

According to legal writers, the reference in Article 107 of the Constitution to Legislative Decree no. 2687/1953 - which provides, inter alia, that arbitration is to constitute the sole means of resolving disputes concerning foreign investment - confers constitutional status on such arbitration (Introduction to Greek Law, edited by K.D. Kerameus and P.J. Kozyris, Deventer/Athens, Kluwer/Sakkoulas, 1988, p. 263).

B. The Code of Civil Procedure

25. The Code of Civil Procedure provides, inter alia, as follows:

Article 294

"The plaintiff may withdraw the action without the consent of the defendant before the latter has filed pleadings on the merits of the case. He may not so withdraw at a

later stage if the defendant objects to the withdrawal on the ground that he has a legitimate interest in the proceedings being concluded by a final decision."

Article 295 para. 1

"The effect of the withdrawal of the action is that it shall be deemed never to have been brought ..."

The VIIth section of the Code of Civil Procedure (Articles 867-903) deals with arbitration. The relevant provisions are as follows:

Article 893 para. 2

"The arbitrator ... shall, unless stipulated otherwise in the arbitration clause, file the original of the arbitration award with the registry of the Court of First Instance within whose jurisdiction the decision was given ..."

Article 895

"1. The ordinary remedies do not lie against arbitration awards.

2. The arbitration agreement may specify an appeal against the arbitration award before different arbitrators ..., but it must at the same time define the conditions, the time-limit and the procedure to be followed for the exercise of such a remedy and for the decision thereon."

Article 896

"If the arbitration agreement does not specify the appeal provided for in Article 895 para. 2 or if the time-limit for filing such an appeal has expired, the arbitration award shall become final ..."

Article 897

"The arbitration award may be annulled, in whole or in part, only by judicial decision and on the following grounds:

(1) where the arbitration agreement is void;

(2) where it was made after the arbitration agreement had ceased to be valid;

(3) where the arbitrators were designated in breach of the terms of the arbitration agreement or of the statutory provisions ...;

(4) where the arbitrators exceeded the powers attributed to them under the arbitration agreement or by statute;

(5) where the provisions of Articles 886 para. 2, 891 and 892 have been infringed;

(6) where it is contrary to public policy and morality;

(7) where it is incomprehensible or where it contains contradictory provisions;

..."

Article 904

"1. Enforcement may be effected solely pursuant to an enforceable decision.

2. The following decisions shall be enforceable:

...

(b) arbitration awards;

..."

Article 918

"1. Enforcement may be effected solely on the basis of the copy of the enforceable decision bearing the stamp conferring authority to execute ...

2. Endorsement with the stamp conferring authority to execute shall be effected:

...

(d) in respect of arbitration awards by the judge of the First Instance Court ...;

..."

C. Law no. 141/1975 "on ... the revision or revocation of agreements ... concluded during the dictatorship period"

26. Law no. 141/1975, which was enacted pursuant to Article 107 para. 2 of the Constitution, made possible the revision or revocation of any administrative measure of ratification, issued between 21 April 1967 and 23 July 1974, and any contract concluded by the State during that period with a legal or a natural person and concerning the investments governed by Legislative Decree no. 2687/1953. Such measures or contracts were to be revised or terminated where they were incompatible with the Constitution or other laws or contrary to morality, and prejudicial to the interests of the State, consumers and the national economy.

The contracts were to be terminated where it proved impossible to revise them in their entirety. Termination could be effected at the written request of the person concerned or unilaterally by the ministerial committee on the economy.

Article 2 para. 5 of the Law described the consequences of termination in the following terms:

"Following the termination of a contract ... the special privileges and agreements shall cease to have effect and the undertaking or investment shall be subject to the ordinary laws governing ordinary undertakings and investments ..."

PROCEEDINGS BEFORE THE COMMISSION

27. Stran Greek Refineries and Mr Stratis Andreadis applied to the Commission on 20 November 1987. They maintained that there had been a breach of Article 6 para. 1 (art. 6-1) of the Convention inasmuch as they had not had a fair trial within a reasonable time. They claimed further that as a result of the length and the dilatory nature of the proceedings and of the provisions of Article 12 of Law no. 1701/1987 their right of property guaranteed under Article 1 of Protocol No. 1 (P1-1) had been infringed.

28. The Commission declared the application (no. 13427/87) admissible on 4 July 1991. In its report of 12 May 1993 (Article 31) (art. 31), it expressed the following opinion:

(a) that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention as regards the right to a fair trial (unanimously), but not as regards the length of the proceedings (twelve votes to two);

(b) that there had been a violation of Article 1 of Protocol No. 1 (P1-1) (unanimously).

The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

29. In their memorial the Government asked the Court:

"[to declare] the application by Stran Greek Refineries ... inadmissible, on the one hand, and [in addition that there had been] no violation of the rights of the applicants as protected by Article 6 para. 1 (art. 6-1) of the Convention ... and Article 1 of the First Protocol (P1-1)".

30. The applicants requested the Court to hold:

"(1) that there has been a violation of Article 6 para. 1 (art. 6-1) as regards the applicants' right to a fair hearing by a tribunal;

(2) that there has been a violation of Article 6 para. 1 (art. 6-1) as regards observance of the reasonable time requirement;

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* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 301-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

(3) that there has been and continues to be a breach of Article 1 of Protocol No. 1 (P1-1);

(4) that the respondent State is to pay the applicants ... the amount claimed as just satisfaction".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

31. The Government maintained that the applicants had failed to exhaust domestic remedies. If the Athens Court of First Instance were to dismiss the application to withdraw filed by the applicants on 19 December 1986 (see paragraph 17 above), the examination of the action that they had brought on 10 November 1978 would proceed and they would then be in a position to plead the incompatibility with the Constitution and the Convention of Article 12 para. 3 of Law no. 1701/1987, the constitutionality of which had not been determined by the plenary Court of Cassation (see paragraph 22 above). If, on the other hand, the Court of First Instance allowed that application, there was nothing to prevent the applicants from bringing a new action based on the same complaints; domestic law, in particular Articles 4, 5, 20 para. 2, 28 and 93 para. 4 of the Constitution afforded them sufficient legal protection.

32. The Court reiterates that it takes cognisance of preliminary objections in so far as the State in question has already raised them, at least in substance and with sufficient clarity, before the Commission, in principle at the stage of the initial examination of admissibility.

33. Before the Commission, the Government contended essentially that the applicants ought to have instituted administrative proceedings in 1977 against the decision of the ministerial committee on the economy of 14 October 1977 terminating the contract. The Commission dismissed this objection on the ground that the Government had not shown that such proceedings would have afforded redress in any way whatsoever for the entry into force of Law no. 1701/1987, its application to the applicants or for the length of the proceedings before the national courts.

34. In their memorial to the Court, the Government referred to the following extract from their additional observations of 6 May 1991 on the admissibility of the application: the applicants "chose to pursue their claims under a procedure ... which is not provided for in the Greek legal system - arbitration - and the application is accordingly inadmissible because they have failed to exhaust the statutory remedies available to them in cases of this nature".

35. Such an assertion cannot suffice, in the Court's view, to sustain the objection raised by the Government at this stage of the proceedings. When a State relies on the exhaustion rule, it must indicate with sufficient clarity the effective remedies to which the applicants have not had recourse; in this area it is not for the Convention bodies to cure of their own motion any shortcomings or lack of precision in respondent States' arguments (see, among many other authorities, the Barberà, Messegué and Jabardo v. Spain judgment of 6 December 1988, Series A no. 146, p. 27, para. 56).

Moreover, the Court notes that it was the Government that initially contested the jurisdiction of the ordinary courts and opted for arbitration as a means of resolving the dispute (see paragraphs 10 and 12 above).

36. There is therefore estoppel in respect of the preliminary objection.

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

37. The applicants alleged two violations of Article 6 para. 1 (art. 6-1) of the Convention, which provides as follows:

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

In the first place the adoption of Article 12 of Law no. 1701/1987 and its application in their case by the Court of Cassation had, they maintained, deprived them of a fair trial. Secondly, the length of the proceedings to determine the validity of the arbitration award of 27 February 1984 had exceeded a "reasonable time".

A. Applicability of Article 6 para. 1 (art. 6-1)

38. At the hearing the Government denied that Article 6 (art. 6) was applicable in the instant case. In their opinion, the subject of the "contestation" (dispute) before the national courts had been the validity of the arbitration clause and consequently that of the arbitration award itself. It had not therefore concerned a "civil right" within the meaning of Article 6 (art. 6). The clause in question had been a privilege accorded within a very specific legislative context and had dealt exclusively with the contractual relations between the military regime and the applicants.

In order for such relations to produce legal effects they had to be ratified by an ad hoc law, in this case Legislative Decree no. 1211/1972 (see paragraph 7 above). In addition, all the legislation on foreign investments in Greece (see paragraph 7 above) pursued a public interest aim, namely the economic development of the country.

39. According to the Court's case-law, the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law. Article 6 para. 1 (art. 6-1) applies irrespective of the

status of the parties, of the nature of the legislation which governs the manner in which the dispute is to be determined and of the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations (see, among many other authorities, the Allan Jacobsson v. Sweden judgment of 25 October 1989, Series A no. 163, p. 20, para. 72).

40. The Court observes that following the termination of the contract concluded between them and the Greek State, the applicants brought an action in the Athens Court of First Instance for a declaration that the State should reimburse them in respect of the expenditure which they had incurred up to that point in connection with the performance of the contract (see paragraph 10 above). Their claim, which was essentially one for damages, was based mainly on the allegation that the State had already been in breach of its obligations under the contract before its termination. Their claim in the arbitration proceedings had a similar basis. The arbitration court allowed the applicants' claims in part (see paragraph 13 above) by a decision which was final, irrevocable and enforceable both under the terms of the contract itself (Article 27 para. 9 of the contract - see paragraph 10 above) and by virtue of Greek law (Article 904 of the Code of Civil Procedure - see paragraph 25 above).

The Court notes that the applicants' right under the arbitration award was "pecuniary" in nature, as had been their claim for damages allowed by the arbitration court. Their right to recover the sums awarded by the arbitration court was therefore a "civil right" within the meaning of Article 6 (art. 6), whatever the nature, under Greek law, of the contract between the applicants and the Greek State (see, mutatis mutandis, the Editions Périscope v. France judgment of 26 March 1992, Series A no. 234-B, p. 66, para. 40). It follows that the outcome of the proceedings brought in the ordinary courts by the State to have the arbitration award set aside was decisive for a "civil right".

41. Article 6 para. 1 (art. 6-1) is accordingly applicable.

B. Compliance with Article 6 para. 1 (art. 6-1)

1. Fair trial

42. The applicants claimed that they had been deprived of a fair trial and even of their right of access to a court. They relied in particular on the Golder v. the United Kingdom judgment of 21 February 1975 (Series A no. 18).

By enacting and applying in respect of the applicants Article 12 of Law no. 1701/1987, the State had effectively removed jurisdiction from the courts called upon to determine the validity of the arbitration award and prevented any proper judicial investigation of the subject of the dispute.

Such an interference was, in the words of the Golder judgment, "indissociable from a danger of arbitrary power" and repugnant to the general principles of international law and the notion of the rule of law inherent in the Convention. The State had determined by legislative action a case in which it was a party. "Legislative legerdemain" had resulted in wholesale inequality of arms in the proceedings in issue.

43. The Government contested this view. Parliament, the source of all power, was fully justified in interpreting authoritatively the laws which it enacted where they were ambiguous. Moreover, the power to do this was expressly conferred on it by Article 77 of the Constitution. Clearly such an interpretation applied to all existing cases, irrespective of whether they were pending before the courts, because it did not introduce new rules and did not amend the provision in question, but merely clarified its true meaning.

Such intervention by the legislature could not be regarded as unlawful interference with the power of the judiciary especially where the latter had at its disposal the means necessary to ensure that there was no arbitrariness. That was the position in the Greek legal system. Article 93 of the Constitution prohibited the courts from applying laws whose content was contrary to that instrument. In the present case, when Article 12 of Law no. 1701/1987 came into force, the dispute concerning the validity of the arbitration award was still pending in the Court of Cassation. That court could therefore ascertain whether the conditions justifying the authoritative interpretation by the legislature of Law no. 141/1975 obtained and whether that interpretation infringed the principle of the separation of powers.

44. The Court takes the view that the proceedings subsequent to the entry into force of Law no. 1701/1987, when the case was pending in the Court of Cassation, are of decisive importance for the purposes of its investigation. However, in order to assess whether the applicants had a fair trial in that court, it is necessary to take account of the earlier proceedings, what was at stake in those proceedings and the attitude of the parties.

The dispute, which was brought before the Athens Court of First Instance by the applicants on 10 November 1978 (see paragraph 10 above), concerned their claim that they were entitled to compensation since the State had already been in breach of its obligations under the contract before its termination. It was referred to the arbitration court on the initiative of the State, which had maintained that the arbitration clause was still valid and had challenged the jurisdiction of the ordinary courts on that basis (see paragraph 10 above).

The applicants, albeit in the alternative, accepted the jurisdiction of the arbitration court and, when the latter court had partly allowed their claim, clearly showed that they intended to abide by its decision (see paragraph 17 above). The State, however, then changed course by bringing the dispute before the ordinary civil courts, before which it contested on this occasion

the validity of the arbitration clause and, consequently, that of the award (see paragraphs 15 and 18 above).

The enactment by Parliament of Law no. 1701/1987 indisputably represented a turning-point in the proceedings, which up to that point had gone against the State.

45. The Government contended that it had been necessary to enact the Law in question on account of the differing opinions of eminent professors of law, contradictory judicial decisions, the formulation of dissenting opinions by judges and the attitude of the parties, who had changed their stances on the validity of the arbitration clause alternately. The growing debate and public policy reasons had thus made it necessary to clarify the intention of the legislature on this question by providing an authoritative interpretation - even twelve years on - of Law no. 141/1975. The democratic legislature had been under a duty to eradicate from public life the residual traces of measures taken by the military regime. Mr Andreadis had been a giant of the economy and the scheme that he had envisaged had at the time been on a huge scale for a country the size of Greece. Moreover, the announcement of the scheme had led, before the fall of the military regime, to one of the largest anti-dictatorship demonstrations.

46. The Court does not question the Government's intention to act in response to the Greek people's concern that democratic legality be re-established.

However, by rejoining the Council of Europe on 28 November 1974 and by ratifying the Convention, Greece undertook to respect the principle of the rule of law. This principle, which is enshrined in Article 3 of the Statute of the Council of Europe, finds expression, inter alia, in Article 6 (art. 6) of the Convention. That provision secures in particular the right to a fair trial and sets out in detail the essential guarantees inherent in this notion as applied to criminal proceedings. As regards disputes concerning civil rights and obligations, the Court has laid down in its case-law the requirement of equality of arms in the sense of a fair balance between the parties. In litigation involving opposing private interests, that equality implies that each party must be afforded a reasonable opportunity to present his case - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see the Dombo Beheer B.V. v. the Netherlands judgment of 27 October 1993, Series A no. 274, p. 19, para. 33).

47. In this connection, the Court has had regard to both the timing and manner of the adoption of Article 12 of Law no. 1701/1987. Shortly before the hearing in the Court of Cassation, which had initially been set down for 4 May 1987, and after the parties had received the opinion of the judge-rapporteur recommending the dismissal of the State's appeal, the State sought the adjournment of the hearing on the ground that a draft law concerning the case was before Parliament (see paragraph 19 above).

This draft law was adopted on 22 May 1987 and entered into force on 25 May after its publication in the Official Gazette (see paragraph 20 above). The hearing was held on 1 June (see paragraph 19 above). Moreover, while Law no. 1701/1987 was principally concerned with the renegotiation of the terms of a contract relating to the prospecting for and extraction of oil and gas - likewise concluded during the dictatorship between the State and companies other than Stran -, Article 12 was an additional provision to that law and was in reality aimed at the applicant company - although the latter was not mentioned by name (see paragraph 20 above).

The Court is fully aware that in order to meet the pressing needs of urgent legislation and to avoid the delays of the legislative machinery, legislatures nowadays often deal with similar matters in the same law.

It is nevertheless an inescapable fact that the legislature's intervention in the present case took place at a time when judicial proceedings in which the State was a party were pending.

48. The Government sought to play down the effect of this intervention. In the first place the applicants could have requested a further adjournment of the hearing to give them more time to prepare their case. Secondly, paragraph 2 of Article 12 was not an autonomous provision and did not in itself render the arbitration award void, because it presupposed judicial examination of the nullity provided for in paragraph 1. Finally, the applicants had had the opportunity to put forward their arguments before the First Division of the Court of Cassation, which had heard the case on its merits in the light of the decision of the plenary court.

49. The Court is not persuaded by this reasoning. The requirement of fairness applies to proceedings in their entirety; it is not confined to hearings inter partes. There can be no doubt that in the instant case the appearances of justice were preserved, and indeed the applicants did not complain that they had been deprived of the facilities necessary for the preparation of their case.

The principle of the rule of law and the notion of fair trial enshrined in Article 6 (art. 6) preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of the dispute. The wording of paragraphs 1 and 2 of Article 12 taken together effectively excluded any meaningful examination of the case by the First Division of the Court of Cassation. Once the constitutionality of those paragraphs had been upheld by the Court of Cassation in plenary session, the First Division's decision became inevitable.

50. In conclusion, the State infringed the applicants' rights under Article 6 para. 1 (art. 6-1) by intervening in a manner which was decisive to ensure that the - imminent - outcome of proceedings in which it was a party was favourable to it. There has therefore been a violation of that Article (art. 6-1).

2. Length of the proceedings

51. It remains to establish whether, as the applicants maintained, a "reasonable time" was exceeded.

The Government and the Commission considered that it was not.

(a) Period to be taken into consideration

52. The relevant period began on 20 November 1985 when the Greek declaration accepting the right of individual petition took effect. In order to determine the reasonableness of the period of time which elapsed after that date, regard must however be had to the stage which the case had reached at that time (see, as the most recent authority, the Billi v. Italy judgment of 26 February 1993, Series A no. 257-G, p. 89, para. 16). It follows that only the proceedings concerning the validity of the arbitration award, which commenced on 2 May 1985, can be taken into account.

53. In their memorial, the Government argued that the "time" to be considered should cover only the total of the periods that elapsed between each hearing and each judgment - approximately two years and two and a half months - because, on account of the nature of the questions in dispute, each court which gave a decision no longer had jurisdiction to pursue the consideration of the case. At the hearing the Delegate of the Agent maintained that the relevant period had ended on 20 November 1987, when the applicants applied to the European Commission. The part of the cassation proceedings that was at issue had been conducted after that date.

54. The Court shares the view of the Commission and the applicants that the whole of the period in question must be taken into consideration. It ended on 11 April 1990, when the judgment of the Court of Cassation declaring the arbitration award void was delivered (see paragraph 23 above). It therefore lasted four years, four months and twenty days.

(b) Reasonableness of the length of proceedings

55. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

The proceedings in the Athens Court of First Instance and the Athens Court of Appeal lasted eighteen months, about six of which were prior to the Greek declaration under Article 25 (art. 25) of the Convention. These proceedings are not open to criticism. The proceedings in the Court of Cassation lasted more than three years, a period that is justified in view of the need to take account of Law no. 1701/1987, and above all the fact that Article 563 para. 2 of the Code of Civil Procedure requires a division of the Court of Cassation to refer a case to the plenary court if it refuses to apply a

law on the ground that it is unconstitutional (see paragraph 21 above in fine).

56. It follows that on this point there has been no violation of Article 6 para. 1 (art. 6-1).

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

57. The applicants also claimed to be victims of a breach of Article 1 of Protocol No. 1 (P1-1), which is worded as follows:

> "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."

In their submission, the enactment and application of Article 12 of Law no. 1701/1987 had the effect of depriving them of their property rights in particular in respect of the debt in their favour recognised by judgment no. 13910/79 of the Athens Court of First Instance and, especially, by the arbitration award of 27 February 1984 (see paragraphs 11 and 13 above).

1. Whether there was a "possession" within the meaning of Article 1 (P1-1)

58. The principal thrust of the Government's argument was that no "possession" of the applicants, within the meaning of Article 1 of Protocol No. 1 (P1-1), had been subject to interference through the operation of Law no. 1701/1987.

In their view, neither judgment no. 13910/79 nor the arbitration award was sufficient to establish the existence of a claim against the State. A judicial decision that had not yet become final, or an arbitration award, could not be equated to the right which might be recognised by such decision or award.

In particular with regard to the arbitration award, an invalid procedure could not produce valid effects. The applicants had known perfectly well that the award would be a precarious legal basis for their financial claims until the question of its validity had been irrevocably settled. Judgment no. 5526/85 of the Athens Court of First Instance (see paragraph 16 above) and judgment no. 9336/86 of the Athens Court of Appeal (see paragraph 18 above), which had initially found in favour of the applicants, were subject to review by the Court of Cassation and, before the latter court's final decision,

could not form the basis of reasonable expectations concerning the right of property. Furthermore the applicants had themselves chosen to institute proceedings in the ordinary civil courts and had strenuously opposed the jurisdiction of the arbitration court.

Finally, the Government contended that the Strasbourg institutions should not themselves carry out an assessment of the applicants' complaints without having regard to all the arguments of the parties and their attitude before the arbitration court. The State had not recognised that there was any basis for Stran's alleged claim, the merits of which it had consistently disputed, first in the Athens Court of First Instance and then before the arbitration court. Even the proceedings to have the award set aside had of necessity entailed an indirect but implicit challenge to the merits of the decision.

59. In order to determine whether the applicants had a "possession" for the purposes of Article 1 of Protocol No. 1 (P1-1), the Court must ascertain whether judgment no. 13910/79 of the Athens Court of First Instance and the arbitration award had given rise to a debt in their favour that was sufficiently established to be enforceable.

60. In the nature of things, a preliminary decision prejudges the merits of a dispute by ordering an investigative measure. Although the Athens Court of First Instance would appear to have accepted the principle that the State owed a debt to the applicants - as the Commission likewise noted -, it nevertheless ordered that witnesses be heard (see paragraph 11 above) before ruling on the existence and extent of the alleged damage. The effect of such a decision was merely to furnish the applicants with the hope that they would secure recognition of the claim put forward. Whether the resulting debt was enforceable would depend on any review by two superior courts.

61. This is not the case with regard to the arbitration award, which clearly recognised the State's liability up to a maximum of specified amounts in three different currencies (see paragraph 13 above).

The Court agrees with the Government that it is not its task to approve or disapprove the substance of that award. It is, however, under a duty to take note of the legal position established by that decision in relation to the parties.

According to its wording, the award was final and binding; it did not require any further enforcement measure and no ordinary or special appeal lay against it (see paragraph 10 above). Under Greek legislation arbitration awards have the force of final decisions and are deemed to be enforceable. The grounds for appealing against them are exhaustively listed in Article 897 of the Code of Civil Procedure (see paragraph 25 above); no provision is made for an appeal on the merits.

62. At the moment when Law no. 1701/1987 was passed the arbitration award of 27 February 1984 therefore conferred on the applicants a right in

the sums awarded. Admittedly, that right was revocable, since the award could still be annulled, but the ordinary courts had by then already twice held - at first instance and on appeal - that there was no ground for such annulment. Accordingly, in the Court's view, that right constituted a "possession" within the meaning of Article 1 of Protocol No. 1 (P1-1).

2. Whether there was an interference

63. In the applicants' submission, although no property was transferred to the State, the combined effect of paragraphs 2 and 3 of Article 12 resulted in a de facto deprivation of their possessions because the result was literally to cancel the debt arising out of a final and binding arbitration award.

64. The Commission considered this to be an infringement of the right to the peaceful enjoyment of possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1).

65. The Government accepted neither of these views. They maintained that paragraph 2 of Article 12 merely described an inevitable consequence of paragraph 1 and had no independent meaning. In this connection they cited their arguments in relation to Article 6 (art. 6) of the Convention (see paragraph 48 above), affirming more specifically that paragraph 2 of Article 12 had no autonomous existence because it presupposed judicial examination of the nullity referred to in paragraph 1 and merely set out the evident consequences of such nullity. The Government added that paragraph 3 introduced a measure whose constitutionality had not been assessed by the national courts, before which an action brought by the applicants was still pending, and that a new action was always possible if the applicants' withdrawal from the first one led to its discontinuance (see paragraph 17 above). However, in the latter situation the applicants would encounter the problem of failure to exhaust domestic remedies.

66. The Court finds that there was an interference with the applicants' right of property as guaranteed by Article 1 of Protocol No. 1 (P1-1). Paragraph 2 of Article 12 of Law no. 1701/1987 declared the arbitration award void and unenforceable. Paragraph 3 provided that any claim against the State arising from contracts like those concluded by the applicants was statute-barred. Admittedly the Court of Cassation left open the question of the constitutionality of paragraph 3 and the applicants theoretically have the possibility, as the Government argued, of pursuing their 1978 action or bringing a new one. However, the prospects of success of such a step appear minimal. Indeed the question arises whether a first-instance court would go so far as to hold this paragraph to be unconstitutional on the basis of general and abstract provisions of the Constitution (see paragraph 31 in fine above), in the light in particular of the plenary Court of Cassation's decision of 16 March 1989 concerning paragraphs 1 and 2 of Article 12 (see paragraph 22 above). Both that decision and the judgment of the Court of Cassation of 11 April 1990 (see paragraph 23 above) had the effect of closing the

proceedings in issue once and for all, which was the real objective of the legislature in enacting Article 12. This may be seen from the actual wording of paragraph 4, which was intended to bring to a conclusion the sole dispute of this nature pending before the courts at the time, namely that between the applicants and the State, and from the wording of paragraph 3, which was designed to exclude any future action.

67. It follows that it was impossible for the applicants to secure enforcement of an arbitration award having final effect and under which the State was required to pay them specified sums in respect of expenditure that they had incurred in seeking to fulfil their contractual obligations or even for them to take further action to recover the sums in question through the courts.

In conclusion, there was an interference with the applicants' property right.

3. Whether the interference was justified

68. The interference in question was neither an expropriation nor a measure to control the use of property; it falls to be dealt with under the first sentence of the first paragraph of Article 1 (P1-1).

69. The Court must therefore determine whether a fair balance was 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, para. 69).

70. According to the Government, Laws nos. 141/1975 and 1701/1987 pursued a public interest aim which in the specific context was of much broader significance than the mere elimination of the economic consequences of the dictatorship. These laws were part of a body of measures designed to cleanse public life of the disrepute attaching to the military regime and to proclaim the power and the will of the Greek people to defend the democratic institutions. The applicants' complaints derived from a preferential contract, prejudicial to the national economy, which had helped to sustain the regime and to give the impression at national and international level that it had the support of eminent figures from the Greek business world. The period that had elapsed between the restoration of democracy and the enactment of Law no. 1701/1987, the State's decision to opt for arbitration - a step of a purely technical nature - and the fact that Stran's claims related solely to the reimbursement of its expenses were immaterial.

71. The applicants did not contest the Government's assertion that the brutal practices of the military regime weighed more heavily on the scales of public interest than claims based on transactions concluded with that regime. However, the public interest that the Court was called upon to assess in the case before it was a different one. It would be unjust if every

legal relationship entered into with a dictatorial regime was regarded as invalid when the regime came to an end. Moreover, the contract in question related to the construction of an oil refinery, which was of benefit to the economic infrastructure of the country.

72. The Court does not doubt that it was necessary for the democratic Greek State to terminate a contract which it considered to be prejudicial to its economic interests. Indeed according to the case-law of international courts and of arbitration tribunals any State has a sovereign power to amend or even terminate a contract concluded with private individuals, provided it pays compensation (Shufeldt arbitration award of 24 July 1930, Reports of International Arbitral Awards, League of Nations, vol. II, p. 1095). This both reflects recognition that the superior interests of the State take precedence over contractual obligations and takes account of the need to preserve a fair balance in a contractual relationship. However, the unilateral termination of a contract does not take effect in relation to certain essential clauses of the contract, such as the arbitration clause. To alter the machinery set up by enacting an authoritative amendment to such a clause would make it possible for one of the parties to evade jurisdiction in a dispute in respect of which specific provision was made for arbitration (Losinger decision of 11 October 1935, Permanent Court of International Justice, Series C no. 78, p. 110, and arbitral awards in Lena Goldfields Company Ltd v. Soviet Government, Annual Digest and Reports of Public International Law Cases, vol. 5 (1929-1930) (case no. 258), and Texaco Overseas Petroleum Company and California Asiatic Oil Company v. Government of the Arab Republic of Libya, preliminary decision of 27 November 1975, International Law Reports, vol. 53, 1979, p. 393).

73. In this connection, the Court notes that the Greek legal system recognises the principle that arbitration clauses are autonomous (see paragraph 18 above) and that the Athens Court of First Instance (see paragraph 16 above), the Athens Court of Appeal (see paragraph 18 above) and, it would appear, the judge-rapporteur of the Court of Cassation (see paragraph 19 above) applied this principle in the present case. Moreover the two courts found that the applicants' claims originating before the termination of the contract were not invalidated thereby.

The State was therefore under a duty to pay the applicants the sums awarded against it at the conclusion of the arbitration procedure, a procedure for which it had itself opted and the validity of which had been accepted until the day of the hearing in the Court of Cassation.

74. By choosing to intervene at that stage of the proceedings in the Court of Cassation by a law which invoked the termination of the contract in question in order to declare void the arbitration clause and to annul the arbitration award of 27 February 1984, the legislature upset, to the detriment of the applicants, the balance that must be struck between the protection of the right of property and the requirements of public interest.

75. There has accordingly been a violation of Article 1 of Protocol No. 1 (P1-1).

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

76. Under Article 50 (art. 50) of the Convention,

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

The applicants claimed compensation for pecuniary damage and the reimbursement of costs and expenses.

A. Pecuniary damage

77. The applicants argued that only the payment in full of the amount awarded by the arbitration decision could achieve the restitutio in integrum required by Article 50 (art. 50).

They therefore claimed as pecuniary damage that amount ("the principal sum") plus interest at a flat rate of 6% - which they maintained had been included in the arbitration award - from 10 November 1978 to the date of violation, making a total of 175,869,155.78 drachmas, 24,282,694.28 US dollars and 929,652.81 French francs. They also sought interest on the amount awarded as pecuniary damage, from the date of violation to the date of the Court's judgment.

In the alternative, they claimed as pecuniary damage the principal sum plus interest at a flat rate of 6% from 10 November 1978 to the date of the Court's judgment. At the date of the hearing before the Court, interest on the principal amounted to approximately 106,898,000 drachmas, 14,790,000 US dollars and 567,000 French francs.

78. The Government contended that the applicants were not entitled to any compensation under Article 50 (art. 50) because they could obtain satisfaction through the domestic remedies available. Even supposing that the application of Article 12 of Law no. 1701/1987 had infringed the applicants' right to a fair trial, it in no way affected their financial claims. The annulment of the award did not prevent them from continuing their 1978 action or from bringing a new action.

In any event, the award did not provide a satisfactory basis for assessing the compensation sought because it had dealt erroneously with the merits of the case. The proceedings for the annulment of the award brought by the State reflected an express criticism of its fairness.

If, on the other hand, the Court found a breach of Article 1 of Protocol No. 1 (P1-1), that finding would constitute sufficient just satisfaction; under no circumstances should such satisfaction exceed one million drachmas for non-pecuniary damage.

Finally, the Government contested the applicants' claims for interest. Relying on the Greek legislation and settled case-law to this effect, they affirmed that neither judgment no. 13910/1987 nor the arbitration award could give rise to the payment of interest because they were declaratory in nature. More specifically the reference to 6% interest appeared only in the grounds of the award (see paragraph 13 above) and was a mere obiter dictum of a wholly erroneous nature. The arbitration court did not repeat it in the operative part of its decision and with good reason. No such claim had been made before it and as the matter had been referred to arbitration by the State the arbitrators could not have ordered the latter to pay interest.

79. The Delegate of the Commission stressed firstly that Article 50 (art. 50) required just satisfaction and not necessarily complete satisfaction. He also drew attention to the fact that the sums mentioned in the award had not been examined by the domestic courts. He invited the Court to subject the sums sought to careful scrutiny.

80. The Court reiterates that it affords "just satisfaction" only "if necessary", without being bound in this respect by domestic legal rules (see the Sunday Times v. the United Kingdom (no. 1) judgment of 6 November 1980, Series A no. 38, p. 9, para. 15).

81. It observes that the operative part of the arbitration award declared Stran's claims against the State unfounded in so far as they exceeded 116,273,442 drachmas, 16,054,165 US dollars and 614,627 French francs. Having regard to its finding at paragraph 75, the Court concludes that the applicants are entitled to the reimbursement of these sums.

82. On the question of interest, the Court takes the view that the arbitration court did not consider it a necessary element for the settlement of the dispute (see paragraph 13 above); it was not therefore included in the right to compensation recognised in the operative part.

However, the adequacy of the compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as the fact that ten years have elapsed since the arbitration decision was rendered.

83. The applicants' claim should accordingly be allowed in part and they should be awarded 6% simple interest on the above-mentioned sums (see paragraph 81 above) for the period running from 27 February 1984 to the date of judgment.

B. Costs and expenses

84. The applicants did not make any claim in respect of the costs of the proceedings conducted in the Court of Cassation after the entry into force of Law no. 1701/1987.

On the other hand, they sought the reimbursement of the costs and expenses incurred before the Convention organs in the amount of £171,041 sterling, plus interest on that sum for the period between the date of the Court's judgment and the actual payment.

A week after the hearing of 19 April 1994, the applicants' lawyers submitted to the Court a claim for a further £34,709.05 sterling in respect of additional costs incurred between the date on which their memorial was filed and that of the hearing.

85. The Government questioned whether the costs sought had been necessarily incurred and whether they were reasonable. They stated that they were prepared to pay 2,800,000 drachmas.

86. The Delegate of the Commission did not express a view on this matter.

87. The Court notes that according to Rule 50 of Rules of Court A claims must be filed at least one month before the date fixed for the hearing. In recent cases it has decided to apply this rule strictly (see the Vendittelli v. Italy judgment of 18 July 1994, Series A no. 293-A, p. 13, paras. 42-43).

In the present case, it finds no trace in the applicants' memorial or in the verbatim report of the hearing of the additional claim or even of an intention to submit such a claim after the hearing. It therefore dismisses it as out of time.

Making an assessment on an equitable basis and with reference to the criteria that it applies in this field, the Court considers it appropriate to reduce the sum set out in the applicants' initial claim. It awards them £125,000 sterling, no interest being payable on that amount.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;

2. Holds that Article 6 para. 1 (art. 6-1) of the Convention applies in this case;

3. Holds that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention as regards the right to a fair trial;

4. Holds that there has been no breach of Article 6 para. 1 (art. 6-1) of the Convention as regards the length of the proceedings;

5. Holds that there has been a breach of Article 1 of Protocol No. 1 (P1-1);

6. Holds that the respondent State is to pay to the applicants, within three months:
(a) for pecuniary damage: 116,273,442 (one hundred and sixteen million two hundred and seventy-three thousand four hundred and forty-two) drachmas, 16,054,165 (sixteen million fifty-four thousand one hundred and sixty-five) US dollars and 614,627 (six hundred and fourteen thousand six hundred and twenty-seven) French francs, plus simple interest at 6% from 27 February 1984 to the date of judgment (see paragraph 83 of the judgment);
(b) for costs and expenses incurred in Strasbourg: £125,000 (one hundred and twenty-five thousand) sterling;

7. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 December 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar