



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

COURT (CHAMBER)

**CASE OF THE HOLY MONASTERIES v. GREECE**

*(Application no. 13092/87; 13984/88)*

JUDGMENT

STRASBOURG

09 December 1994

**In the case of The Holy Monasteries 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 A. SPIELMANN,

Mr N. VALTICOS,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr A.N. LOIZOU,

Mr A.B. BAKA,

Mr L. WILDHABER,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 January, 24 March, 24 August and 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 7 April 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 two applications (nos. 13092/87 and 13984/88) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by eight Greek Orthodox monasteries, Ano Xenia, Ossiou Loukas, Agia Lavra Kalavriton, Metamorphosis Sotiros, Asomaton Petraki, Chrysoleontissa Eginis, Phlamourion Volou and Mega Spileo Kalavriton, on 16 July 1987 and 15 May 1988.

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\* The case is numbered 10/1993/405/483-484. 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.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6, 9, 11, 13 and 14 (art. 6, art. 9, art. 11, art. 13, art. 14) 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 applicant monasteries stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 23 April 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 A. Spielmann, Mr I. Foighel, Mr A.N. Loizou, Mr A.B. Baka and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr Macdonald, who was unable to attend, was replaced by Mrs E. Palm, substitute judge (Rules 22 para. 1 and 24 para. 1).

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 applicant monasteries' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 11 October 1993 and the applicant monasteries' memorial on 23 November. On the latter date 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 26 January 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

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

- for the Commission

Mr J.-C. GEUS, *Delegate;*

- for the applicant monasteries

Mr P. BERNITSAS, dikigoros (lawyer),  
 Mr D. MIRASYESI, dikigoros (lawyer), *Counsel.*

The Court heard addresses by them and also their replies to its questions.

## AS TO THE FACTS

### I. CIRCUMSTANCES OF THE CASE

#### A. General historical background

##### *1. The acquisition of the monasteries' property*

6. The applicant monasteries, which were founded between the ninth and thirteenth centuries, accumulated a considerable amount of property, in particular through donations made before the creation of the Greek State in 1829, but a large part of this property was expropriated during the early years of the State's existence. The monasteries themselves also gave away whole tracts of land to the State or to individuals who had none. During the Byzantine and Ottoman empires the monasteries and religious institutions in general were almost the only institutions discharging important social, cultural and educational functions; even in the nineteenth century after the creation of the modern Greek State, they still discharged some of these functions.

The State never challenged their ownership, and the monasteries always relied on adverse possession as a subsidiary means of establishing it, particularly in cases where Byzantine or Ottoman title deeds were lacking or had been destroyed. On several occasions the State published decrees in the Official Gazette in which their ownership was acknowledged (decrees of 25 January, 28 and 31 March, 14 June, 4 and 18 August 1933, etc.).

7. Apart from property thus amassed over the centuries, the monasteries acquired numerous plots of land and buildings more recently, either as gifts or legacies or through purchase.

8. Under Law no. 4684/1930, their land and buildings were classified as either "property to be realised" (*ekpiitea perioussia*) or "property to be retained" (*diatiritea perioussia*).

The second category included property considered necessary for the needs of a given monastery, having regard, *inter alia*, to the number of its members and to its historic value as a place of pilgrimage, and they were listed in a decree adopted on a proposal by the Minister for Education and Religious Affairs. Responsibility for managing the property to be retained was vested in the Holy Monasteries and its exercise was governed by a decree of 5 March 1932. This provided, among other things, that the revenue arising from this management was to be applied to making good the monasteries' deficit, repairing and maintaining buildings and furthering educational and charitable purposes.

Responsibility for managing the property to be realised was vested in the Office for the Management of Church Property (Organismos diikisis ekklesiastikis perioussias).

9. The 1952 Constitution authorised the government to expropriate land for the benefit of destitute farmers and stockbreeders for a period of three years from its entry into force. In pursuance of this transitional provision (Article 104), the Greek Orthodox Church and the State concluded an agreement which was ratified by the State in a decree (no. 2185) of 8 October 1952. Article 36 para. 5 of that decree stated in substance that the State would from then on waive its rights under Article 104 of the Constitution relating to expropriation or compulsory leasing of property of the Greek Church.

By the agreement, which covered "the purchase by the State of Greek Orthodox Church land for the purposes of restoring it to destitute farmers and stockbreeders", the Church and the monasteries would transfer to the State four-fifths of their agricultural land and two-thirds of their pastures and would receive in return a third of the real value of that property. Annexed were lists giving the type, location and area of the land thus sold to the State and of that kept by the monasteries. Under Article 8(a) agricultural land and pastures that were part of the "property to be retained" of the monasteries of Agia Lavra and Mega Spileo Kalavriton were not covered by the agreement.

## *2. The Office for the Management of Church Property*

10. The Office for the Management of Church Property ("the ODEP"), a public-law entity under the supervision of the Ministry of Education and Religious Affairs, was set up by Law no. 4684/1930 and replaced the General Ecclesiastical Fund that had existed since 1909.

In section 7 of the Law it was made responsible for the management of all the movable and immovable property belonging to the Holy Monasteries, but responsibility for the property to be retained was taken away from it after a time.

The ODEP's function, as laid down in section 2, was (1) to realise the monasteries' property, (2) to manage ecclesiastical property other than that belonging to the churches and (3) to make use of the revenues.

11. The ODEP was run by a board of governors, whose members originally included the Archbishop of Athens, two senior Church dignitaries, a senior member of the Supreme Administrative Court, a legal adviser, the head of the Treasury, a representative of the Bank of Greece and a representative of a commercial bank. Decree no. 2631/1953 reduced the number of members to seven, three of whom were laymen appointed by the Ministry of Education and Religious Affairs. Under regulations issued in 1981, which are still in force, the number of lay members was increased to four.

By Regulation 12, the ODEP's revenue had to be applied to Church purposes, in particular the financing of missionary and educational events and the remuneration of certain members of the clergy.

*3. The legal status of the Greek Orthodox Church and the Holy Monasteries*

12. The ties binding the Hellenic nation - and later the Greek State - to the Orthodox Church go back several centuries. The interdependence of State and Church was already apparent in the administrative reorganisation of the Church which followed the restructuring of the Byzantine State.

The Church's historical role grew more important after the collapse of the Byzantine Empire. The Ecumenical Patriarch of Constantinople was recognised as millet basi - the spiritual leader, at the same time answerable to the Sublime Porte, of the Orthodox community, which became integrated into the administrative machinery of the Ottoman Empire through the Church.

13. The Greek Orthodox Church was proclaimed to be "autocephalous" in a royal decree of 23 July 1833 and was at the same time given its first Charter, which was very noticeably imbued with the spirit of State control; the Church was independent of the State only in matters of doctrine.

Article 3 of the Constitution of 11 June 1975, in its references to the Patriarchal Tome of 1850 and the Synodical Act of 1928, on the one hand, and to the Holy Synod of the Hierarchy ("Synod of serving metropolitans") as the supreme Church authority, on the other, evidences the intention of breaking with the old tradition of State control. The proclaimed independence of the Church is not, however, unlimited, as is shown by the fact that the Greek Orthodox Church is the church of the "dominant religion" and embodies the religion of the State itself.

14. The Law of 27/31 May 1977 (Law no. 590/1977) on the "Charter of the Greek Church" also provides for interdependence of Church and State.

Section 1(4) attributes to the Church and a number of its institutions, including the monasteries, legal personality in public law "as regards their legal relations".

Under section 2, the Church is to co-operate with the State in fields of common interest, such as the Christian upbringing of young people, enhancing the status of the institution of marriage and of the family, caring for those in need of protection and safeguarding sacred relics and ecclesiastical monuments. The Church's role in public life is reflected more markedly by the presence of the Minister for Education and Religious Affairs at the sessions held to elect the Archbishop of Athens and by the participation of the Church authorities in all official State events.

The provisions on the Church's finances and staffing testify even more eloquently to this interdependence. As to financing, the Law provides that the State is to contribute to the Church's expenses (section 46(1)), that the

Church's resources are to be managed in a manner determined by decision of the Standing Holy Synod, approved by the Holy Synod of the Hierarchy (section 46(2)), and that managerial acts are subject to the State's financial supervision (section 46(4)). As to staffing, the provisions governing public servants are to apply by analogy to the staff of Church public-law entities.

15. Section 39(1) of the Law describes the Holy Monasteries as ascetic religious institutions whose members live according to monastic principles, the sacred rules of asceticism and the traditions of the Christian Orthodox Church. The Holy Monasteries come under the spiritual supervision of the local archbishop (section 39(2)). The organisation and furtherance of spiritual life within the monasteries and the running of them are the responsibility of the monastic councils and conform to the holy rules and monastic traditions (section 39(4)).

The Holy Monasteries are public-law entities (section 1(4)). They may be founded, merged or dissolved by means of a presidential decree, adopted on a proposal by the Minister for Education and Religious Affairs after consultation of the local archbishop and with the approval of the Standing Holy Synod (section 39(3)).

The decisions of the monastery councils are preparatory in nature, taking effect only after they have been ratified by the higher Church authority. Judicial review lies only against the decisions of the latter authority.

The Holy Synod of the Hierarchy, the supreme Church authority, has power to regulate the internal organisation and administration of the Church and the monasteries; it scrutinises the decisions of the Standing Holy Synod, of the archbishops and of the other Church legal entities including the monasteries (section 4(e) and (g)), over which the State exercises no authority. The ecclesiastical legal persons which make up the Greek Church, in the broad sense, constitute an entity distinct from the public service and enjoy complete autonomy.

## **B. The applicant monasteries' property**

### *1. The Holy Monastery of Ano Xenia*

16. The monastery of Ano Xenia was founded on Mount Othris in Thessaly in the ninth century. Its possessions include 278.70 hectares of forest surrounding the monastery buildings, olive groves, vineyards and other agricultural land with appurtenant buildings and a house and flats in Volos. The monastery estimates the value of its real property at more than 180 million drachmas (GRD).

### *2. The Holy Monastery of Ossiou Loukas*

17. Founded in the province of Boeotia in 947, the monastery of Ossiou Loukas was a major cultural centre during the Byzantine period. The monastery complex and its mosaics are regarded as important works of Byzantine art. The monastery's immovable property includes a hotel in Athens, a farm and several tracts of farming land around the monastery. A ministerial decree of 25 January 1933 contains a detailed list of these assets. The monastery estimates the value of the commercially exploitable real property at more than GRD 130 million, excluding all the monastery's own buildings and treasures and the adjoining agricultural land.

### *3. The Holy Monastery of Agia Lavra Kalavriton*

18. The monastery of Agia Lavra Kalavriton, founded in the province of Achaia in 961, was likewise a major cultural centre in the Peloponnese. It was destroyed during the revolution of 1826 and rebuilt in 1830. In addition to the monastery complex, its properties include a number of churches and appurtenant buildings and adjoining land, several tracts of farming land, a forest, an oil-processing plant and numerous flats, offices and shops in Athens and Patras. Their value is said to exceed GRD 485 million, excluding the monastery complex and the churches.

### *4. The Holy Monastery of Metamorphosis Sotiros*

19. The monastery of Metamorphosis Sotiros was built in Meteora in 1344 and enjoyed enormous prestige both on account of its location and as a centre for the arts. Its real property includes large areas of woodland, a farm, a flat and shops in Trikkala and Kalambaka. A ministerial decree of 16 October 1933 contains a list of the monastery's agricultural land. The monastery assesses the value of its property at more than GRD 465 million.

### *5. The Holy Monastery of Asomaton Petraki*

20. The monastery of Asomaton Petraki was founded in 1000. Its development was most marked in the seventeenth and eighteenth centuries. It owns a very substantial amount of property, consisting of several buildings in Athens, large areas of agricultural land and forest, tourism facilities and urban land, which it values at GRD 43,230 million; it also owns marble quarries on Mount Parnassus. A ministerial decree of 14 February 1933 lists the monastery's properties.

### *6. The Holy Monastery of Chryssoleontissa Eginis*

21. The monastery of Chryssoleontissa was founded on the island of Aegina in the thirteenth century and states that much of its landed property - in particular, uninhabited islands - was expropriated at the beginning of the



twentieth century. Apart from the monastery complex itself, its immovable property includes agricultural land, olive groves, houses and flats on Aegina, and various shops, offices and flats in Athens. It estimates its wealth at more than GRD 880 million.

*7. The Holy Monastery of Phlamourion Volou*

22. The monastery of Phlamourion Volou stands on the western slopes of Mount Pelion in the province of Magnesia. Its property includes two forests of an area of 8,241 hectares and 1,049 hectares, agricultural land and blocks of flats in Volos.

*8. The Holy Monastery of Mega Spileo Kalavriton*

23. The monastery of Mega Spileo Kalavriton in Achaëa was destroyed in 840 and rebuilt in 1280. Apart from the monastery complex and the surrounding woodland, its property includes several tracts of farming land, forests and offices in Athens; their value is said to exceed GRD 950 million.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### **A. The Law of 5 May 1987 regulating matters of Church property ("Law no. 1700/1987")**

24. Law no. 1700/1987 was published in the Official Gazette of 6 May 1987 and changed the rules on the management and representation of monastery property within the charge of the ODEP, most of whose members were now to be appointed by the State. It also provided that within six months of its publication the State would become the owner of all monastery property unless the monasteries proved title (*kyriotita*) established either by a duly registered deed (*metegrammeno*) or by a statutory provision or by a final court decision against the State.

In this connection, it should be noted that only real-property transactions concluded since 1856 have had to be registered (section 9 of the Law of 30 October 1856 on the registration of immovable property and of rights in rem relating thereto); similarly, the Civil Code has required legacies and inheritances to be registered only since 1946. Except in the Dodecanese, Greece does not have any official land survey.

The factors which prompted the State to enact new rules on Church property are set out in the explanatory memorandum to the bill. The following passages should be noted:

"This bill deals with the question of the immovable property in the Church's possession today, a question that since the beginning of the modern Greek State has

caused friction not only between State and Church but also between the latter and ... the people; under the present system, many national treasures remain unexploited ...

The Church's current possessions are largely the remnants of a period in which the Church's existence was dependent solely on its own property and even on its own labour. Since then, its operating conditions have radically changed. The State covers nearly all its needs. Concurrently with the provisions of this bill, provision is being made for the first time for subsidies from the State budget to the Holy Monasteries and the Church in general, so that they may expand their spiritual mission, which is so necessary for the nation and for the Orthodox faith in Greece and abroad ...

A large part of this immovable property has been wasted in unlawful and disadvantageous transactions or usurped by skilful exploiters, while the rest has largely been abandoned or is being utilised detrimentally by third parties. This national heritage is continually shrinking and tending to disappear as a productive source of wealth for the country's agriculture, stockbreeding and forestry.

Furthermore, most of the lands now in the Church's possession belong to the State. They are occupied without legal title and with the State's toleration. This national property is constantly being diminished by illegal sales and encroachments which lead to usurpations of land and uncontrolled development; this is a situation which undermines the Church's authority.

It should be remembered that since 1952 the State has legislated to make the transfer of four-fifths of the monasteries' property to the State compulsory, for the benefit of those who do not have any land (Decree no. 2185/1952). This statutory obligation has not hitherto been enforced."

## 25. The following provisions are relevant:

### "Section 1

1. As soon as this Law enters into force, the Office for the Management of Church Property (the ODEP) shall automatically be vested with the exclusive management and representation of all the immovable property of the Holy Monasteries, in respect of which it shall henceforth have full power to take or defend legal proceedings, whether the property belongs, under the legislation in force, to the category of 'property to be retained' or to that of 'property to be realised'.

...

3. ... [T]he conditions and procedures governing the sale, leasing, grants of rights of user, and utilisation by the ODEP ... of movable and immovable monastery property, together with any other matter connected with the management of that property, shall be laid down in a presidential decree adopted on a proposal by the Minister for Education and Religious Affairs, the Minister for the Economy and the Minister of Agriculture. The same decree may authorise other administrative bodies to determine the details of its implementation in a regulatory decision. In the specific case of the sale of urban immovable property belonging to the monasteries or of the granting of any right in rem relating to it, the consent of the monastery concerned shall be required, failing which the contract shall be null and void.

### Section 2

1. A right of user over any immovable property of the monasteries which, on the entry into force of this Law, is in the ownership (kyriotita) or the possession (katokhi) [of the ODEP] or of the Holy Monasteries or of third parties may be granted by the ODEP ..., for the purposes of utilisation and development ..., preferably either to farmers already members of agricultural co-operatives or becoming members in virtue of the grant, or to agricultural co-operatives and public bodies. In exchange for such a grant, the ODEP shall pay the monastery concerned 5% of the gross revenue from the grant for the monasteries' needs.

For the purposes of the present provision, the following shall be regarded as immovable property: agricultural land and land capable of agricultural use, forests and wooded areas in general, pastures, meadows ... and quarries, mines and fish farms.

2. Within six months of the entry into force of this Law, the ODEP ... may, by contract to be signed by the Greek State as the representative of the Holy Monasteries and by the Minister for Education and Religious Affairs, the Minister for the Economy and the Minister of Agriculture as representatives of the Greek State, transfer to the State the ownership of the monasteries' immovable property, together with such of the Holy Monasteries' land as was included in the urban development plan after 1952. Such a transfer of ownership to the Greek State shall have no effect on the validity of any grant of a right of user made in accordance with the conditions set out in the preceding subsection, except for the required payment of a percentage of the revenue, which shall be paid to the entity provided for in section 9 of this Law and shall be used for educational purposes. Until this entity is created, the percentage shall be paid to a special account at the Bank of Greece in the name of the Minister for Education and Religious Affairs.

3. Immovable property belonging to the Holy Monasteries which is intended solely for cultivation by the monks themselves shall be exempt from the provisions of this section; it shall be delimited for each monastery according to the number of resident monks and in the light of the requirements of environment protection. Land earmarked for children's holiday camps or to meet the needs of other Church institutions shall likewise be exempt.

This property shall be designated by a decision of the Minister for Education and Religious Affairs, the Minister of Agriculture and the Minister of Public Works and the Environment, after consultation of the ODEP ... in respect of each holy monastery, each children's holiday camp and each Church institution.

### Section 3

1. If nothing has taken place at the end of the six-month period provided for in subsection (2) of section 2, ownership of the monasteries' property shall be regulated in accordance with the following provisions:

A. Immovable property in use (nomi) by or the possession (katokhi) of the Holy Monasteries when this Law comes into force shall be deemed to be the property of the Greek State irrespective of the manner in which it is managed or utilised unless a monastery's ownership (a) derives from a title deed that antedates the day on which the Bill was tabled and has already been registered or will be registered within a strict time-limit of six months from the entry into force of this Law or (b) has been recognised in a statutory provision or in a final court decision against the State. The

same shall apply to buildings which belong to the monasteries or are in their possession but are occupied by third parties.

B. The Holy Monasteries' and third parties' use and possession of immovable property deemed to belong to the State in accordance with the preceding subsection and ownership of which has not passed to the State under section 2 shall be terminated and be transferred automatically to the Greek State. All forms of management or utilisation of these buildings shall cease, irrespective of the category to which the property belongs under the current legislation. From that date the State shall exercise the rights associated with the ownership, use and possession of the property vis-à-vis third parties, the Holy Monasteries and bodies responsible for managing those monasteries' property. The Minister of Agriculture shall henceforth manage this property in accordance with the provisions of the legislation already in force and of this Law. This change shall not affect the validity of any grant of a right of user made under subsection (1) of section 2, except for the requirement relating to the percentage of revenue to be paid to the entity provided for in section 9, which will now be assigned to the national education service ...

2. For the purposes of this section, the following shall be deemed to be immovable property: agricultural land and land capable of agricultural use, forests and wooded areas in general, pastures, meadows ... and quarries, mines and fish farms. Building land shall also be deemed to be immovable property even if it is entered in the urban development plan, on condition that the entry was made after 1952.

3. The Holy Monasteries which do not own sufficient immovable property may be granted, without consideration, land already in their possession in virtue of subsection (1) of this section, but solely for the purposes of cultivation by the monks themselves. Such land shall be delimited according to the number of resident monks and in the light of the requirements of environment protection. Such grants shall be made within a strict time-limit of one year from the deadline provided for in subsection (1) of this section, by means of a contract between the State ... on the one hand and the legal person responsible ... for managing the monasteries' property on the other."

26. Section 4 provides that within two months of the expiry of the six-month period referred to in section 3(1)(A) any legal or natural person in possession of one of the buildings "deemed to belong to the State" must transfer it to the head of the appropriate agriculture or forestry department, failing which the latter will make an administrative eviction order, enforceable within fifteen days of its being served. The evicted person may apply for judicial review of such an order, but this will not have any suspensive effect (subsection (4)); furthermore, it is open to such a person, if he asserts rights in rem over the building, to apply to the civil courts under Articles 1094-1112 of the Civil Code (subsection (7)).

27. The arrangements for implementing sections 3 and 4 are to be specified in a presidential decree, to be adopted on a proposal by the Minister for Education and Religious Affairs, the Minister for the Economy and the Minister of Agriculture. To the Court's knowledge, this has still not been issued.

28. Section 8 provides that the ODEP's governing body shall be composed of a chairman and a vice-chairman, appointed by the Cabinet on a

proposal by the Minister for Education and Religious Affairs, and six other members and their substitutes, half of whom are to be appointed by the Standing Holy Synod and half by the Minister for Education and Religious Affairs.

Section 9 provides for the creation, on a proposal by the Minister for Education and Religious Affairs and the Minister for the Economy, of a private-law entity to be responsible for implementing educational programmes to be established by the Ministry of Education and Religious Affairs.

Section 10 provides for the inclusion in the State budget of an appropriation to support and maintain the monasteries and strengthen the Church's cultural work. The Minister for Education and Religious Affairs is to allocate the available funds with a view to implementing a special programme that he will draw up each year on a recommendation by the Standing Holy Synod.

29. Law no. 1700/1987 provides that it is not to apply to property of the Holy Monasteries which come under the Ecumenical Patriarchate of Constantinople or the patriarchates of Alexandria, Antioch and Jerusalem, or under the Holy Sepulchre or the Holy Monastery of Sinai.

#### **B. The Supreme Administrative Court's judgment of 7 December 1987**

30. The chairman and the other members of the ODEP's governing body were appointed by the Minister for Education and Religious Affairs on 10 and 16 July 1987 (pursuant to section 8 of Law no. 1700/1987).

On 20 July the Greek Church challenged the lawfulness of their appointment in the Supreme Administrative Court (Symvoulío tis Epikratias) by means of an application for judicial review coupled with an application for a stay of execution. On 19 August 1987 the Supreme Administrative Court's committee for hearing applications for stays of execution held that any attempt by the ODEP's new governing body to exercise the powers conferred on it by Law no. 1700/1987 would be likely to compromise relations between Church and State; it consequently allowed the application and stayed the decisions until the Supreme Administrative Court had ruled on the merits.

On 11 September 1987 some of the monasteries, including three of the applicant monasteries and their archimandrites, also appealed against the decisions, alleging, among other things, that Law no. 1700/1987 infringed the Greek Constitution (Articles 3 para. 1, 13 para. 1 and 17) and the European Convention.

31. The Supreme Administrative Court gave its ruling on 7 December 1987 (judgment no. 5057/1987), stating:

"...

The provisions of Article 3 para. 1 of the Constitution safeguard the holy canons and traditions of the Orthodox Church. However, this constitutional protection ... cannot be regarded as extending to the canons and traditions relating to purely administrative matters. Such matters, which are affected by the passing of time and the advent of new ideas, necessarily lend themselves to changes designed to promote the common interests of Church and State. The ordinary legislature regulates them according to society's needs, in accordance with Article 72 para. 1 of the Greek Constitution. It cannot, however, ... by means of the Church's Charter or other statutory provisions, undertake a radical reform of the basic administrative institutions, which have long been solidly established in the Orthodox Church ... Furthermore, the same provisions also guarantee the Church's autonomy, which includes the power to determine its own affairs through its own organs composed as provided for by law and to be governed by the Holy Synod of the Hierarchy and the Standing Holy Synod constituted in accordance with the law and the provisions of the Patriarchal Tome of 29 June 1850 and the Synodical Act of 4 September 1929 concerning the composition of these bodies.

In the view of the majority of this Court, the provisions of Law no. 1700/1987, which vests the management and representation of the Holy Monasteries' property in the ODEP, a public-law entity integrated into the administrative framework of the Church and a majority of whose board of governors' members are appointed by the State, are not incompatible with the Church's autonomy - guaranteed by the Constitution - or with freedom of religion or with Articles 9 and 11 of the Rome Convention ... or with the Charter of the United Nations ... or with the Final Act of Helsinki ..., as these matters, unconnected with doctrine or worship, are purely administrative and unrelated to the Church's basic administrative institutions; consequently, they must be freely regulated by the ordinary legislature ... Furthermore, the provisions of Law no. 1700/1987 do not materially affect those institutions as the management of monastery and Church property had always been vested in the ODEP, whose board of governors - as constituted under Law no. 4684/1930 - was composed, for the greater part, of lay members appointed by the State ... The grounds of nullity are accordingly ill-founded and must be rejected.

However, one of the senior members of the Court has expressed the following opinion, in which he is joined by one of the junior members (paredri). Article 3 of the Constitution, which provides that the Greek Church is to be governed by 'the Synod of serving metropolitans' safeguards not only the Church's autonomy in the sense that it is governed by metropolitans elected by it but also the right to manage and dispose of, at its discretion ..., the movable and immovable property of every kind belonging to it in order to achieve its non-profit-making aims, namely the establishment and promotion of the Orthodox faith of its members. Monastic life in monastic communities, which are vital parts of that Church ... and which, despite their status as public-law entities, derive, like the Church itself, from an area lying outside the jurisdiction of the State, has always constituted a fundamental mode of the worship of God. To deprive all the monasteries of the management and representation of all their existing and future ... property and to assign those powers to the ODEP without their consent ... is consequently an unacceptable restriction of their autonomy and of that of the Church ... These provisions entail, in the first place, a breach of the aforementioned Article of the Constitution, which does not allow the Church's administrative institutions to be altered to the point of removing its autonomy, and, secondly, seriously hamper the practice of worship through monastic life, since they prevent the 'unrestricted' practice of monastic worship, as secured in Article 13 para. 2 of the Constitution. Lastly, it must be pointed out that from 1953 the ODEP was run

by a board of governors a majority of whose members were appointed by the Church and which was chaired by the Archbishop of Athens ...; the precedents to the contrary cited by the majority relate to isolated special cases and not to the monasteries' property as a whole. The minority consequently consider the grounds of nullity to be well-founded.

The applicants also maintained that the provisions of Law no. 1700/1987, which vested the management and representation of the monasteries' property in the ODEP - an entity separate from the Church and not controlled by it - and authorised the transfer of that property to the State without any compensation, were contrary to Articles 17 and 7 para. 3 (a) of the Constitution as they made mandatory provision for an unacceptable transfer of that property, deprived the Holy Monasteries of their ownership and introduced unconstitutional restrictions on property rights.

Article 7 para. 3 (a) of the Constitution prohibits any general confiscation. Article 17 ... provides that ownership is under the protection of the State but that rights deriving from it cannot be exercised to the detriment of the public interest ... No one may be deprived of his property unless in the public interest, duly made out, in the eventualities and according to the procedure laid down by law and in every case subject to full prior compensation ... This latter provision of the Constitution prohibits any deprivation of property that does not satisfy the foregoing conditions; nothing, however, prevents the legislature from restricting the right of ownership on the basis of objective criteria and in the public interest, on condition that such restrictions do not nullify the right and make it ineffective ...

In the view of the majority of the Court, the provisions of Law no. 1700/1987, ... which provide for the transfer to the Greek State of the ownership of the monasteries' agricultural land and of other immovable property owned by the Holy Monasteries without any title deed, are not contrary to Article 17 of the Constitution as they do not deprive the Holy Monasteries of their ownership (*idioktissia*); the Law in fact means that this immovable property does not belong to them. Moreover, the provisions of the Law concerning the sale of the Holy Monasteries' urban immovable property or the granting of rights in rem relating to it by decision of the ODEP ... do not infringe the Holy Monasteries' right of ownership inasmuch as their implementation is subject to the agreement of the Holy Monastery which owns the immovable property, failing which the contract is void. Lastly, the provisions relating to the ... utilisation by the ODEP of urban immovable property and mines, quarries and fish farms belonging to the Holy Monasteries or any other Church institution and those relating to the management and representation of ... agricultural property ... and the present or future utilisation of urban immovable property do not entail any deprivation of ownership since the ownership as such remains in the hands of the Holy Monasteries, and in any case the revenue from the ODEP's management of this property is used for ecclesiastical purposes ...; the provisions lay down constitutional restrictions on ownership which are designed to serve at one and the same time the monasteries' interest and the public interest. In consequence, this ground of nullity, together with the complaints relating to Article 12 paras. 5 and 6 and Article 20 para. 1 of the Constitution and Article 1 of the Paris Protocol of 20 March 1952 (P1-1)...., are ill-founded and must be rejected ...

Two senior members of the Court, joined by one of the junior members, have expressed the following opinion. Transferring the management and representation of the whole of the monasteries' property to the ODEP on the aforementioned terms, even 'as an amendment to the legal provisions in force' (section 1(3) of Law no.

1700/1987), does not amount to a restriction of ownership, which is allowed by the Constitution, but interferes unacceptably and without full compensation with the very essence of the right of ownership. This is all the more evident as the only possibility left open to the monasteries is either to consent or to object to the sale of their urban property or the granting of a right in rem relating to it by the ODEP, without being able to decide the matter for themselves: such a decision belongs exclusively to the ODEP, which has unfettered discretion to determine, without even consulting the monasteries, the sale of agricultural land and ‘the present and future utilisation’ of their immovable property such as is provided for in section 7 of Law no. 1700/1987. As to the monasteries’ movable property, some of which is extremely valuable (icons in monastery museums, precious relics, shares, etc.), they are managed by the ODEP without any restrictions whatever. Furthermore, it should be noted that Law no. 1700/1987 does not specify how the income from monastic property is to be applied; on the other hand, it appears from sections 2(2), 3(1)(B) and 9 of Law no. 1700/1987 that the State’s revenue from the ‘utilisation or granting of the use of monastic and Church property’ is to be transferred to a private-law entity set up under section 9 which does not have any ecclesiastical objectives. The provisions of Law no. 1700/1987 are thus wholly contrary not only to Article 17 of the Constitution but also ... to the provisions of the Rome Convention (Article 1 of the Protocol) and the treaty establishing the European Economic Community, and they engage the Greek State’s international responsibility. Consequently, the minority consider this ground of nullity to be well-founded.

...

As to the submission that the provisions of Law no. 1700/1987 infringe Article 4 para. 1 of the Constitution because they establish discrimination between the Greek Orthodox Church and the monasteries coming under the Ecumenical Patriarchate, the Ecumenical Patriarchate itself, the patriarchates of Alexandria, Jerusalem, the Holy Sepulchre and the Holy Monastery of Sinai and the monasteries of other denominations or religions, the complaint is ill-founded since the Greek Orthodox Church, as an instrument and expression of the dominant religion according to the terms of Article 3 para. 1 of the Constitution, does not occupy the same position as the other Orthodox churches and other denominations or religions, such that the statutory provisions in issue do not offend the constitutional principle of equal treatment of comparable legal situations.

...

Moreover, it is alleged that the provisions of Law no. 1700/1987 infringe Article 5 para. 1 of the Constitution in that Orthodox citizens who wish to support the monasteries financially are impeded in their self-fulfilment since, contrary to their wishes, the management of donations would vest not in the monasteries but in the ODEP.

Furthermore, it is submitted that these provisions infringe the individual freedom of religion of the members of monastic communities and of those who would like to found a monastery by dedicating their assets to that end. The first limb of the ground is ill-founded since the individual right of free self-fulfilment, secured in Article 5 para. 1 of the Constitution, is not an absolute right; it is subject to the restrictions laid down in the Constitution and in law. In the instant case the restrictions deriving from the aforementioned provisions of Law no. 1700/1987 ... do not infringe Article 5 para.



1 of the Constitution. The ground is also ill-founded in its second limb, since it refers vaguely to possible damage sustained by the applicants in the future.

..."

The Supreme Administrative Court nevertheless quashed the Minister for Education and Religious Affairs' decision of 16 July 1987 (see paragraph 30 above), on the ground that the composition of the ODEP's governing body did not satisfy the requirements of section 8 of Law no. 1700/1987.

**C. The Law of 6 October 1988 "ratifying the agreement to transfer to the State the agricultural and forest property of the Holy Monasteries of the Greek Church which are parties to it" ("Law no. 1811/1988")**

32. The passing of Law no. 1700/1987 had produced a sharp reaction from the Greek Church. With a view to calming the situation, the Government and the Holy Synod of the Hierarchy held a series of meetings and concluded a preliminary accord under which the monasteries would, by means of a further agreement, transfer part of their property to the State. An essential condition of the preliminary accord was that the Greek Church would have to seek from each monastery council full powers to sign the further agreement.

33. On 11 May 1988 the Standing Holy Synod duly concluded a further agreement with the State, whereby 149 monasteries, including the applicant monasteries of Asomaton Petraki, Ossiou Loukas and Phlammourion Volou, transferred their agricultural and forest property to the State; 47 monasteries declared that they were not affected by the agreement since they did not have any substantial property of that kind. Parliament ratified the agreement in section 1 of Law no. 1811/1988, section 2(3) of which provided: "On publication of this Law, the management of the urban property of the Holy Monasteries that are not parties to the agreement shall revert to the Standing Holy Synod of the Greek Church. The provisions of Law no. 1700/1987 shall apply to the remainder of these monasteries' property."

Section 2(1) provided that monasteries which were not parties to the agreement could join it within a renewable period of one year from the commencement of the Law; the operation of Law no. 1700/1987 was not, however, suspended during that period.

34. Under clause 2 of the agreement, the monasteries parties to it are to cede to the State all their agricultural and forest property except for the land surrounding them within a radius of 200 metres; a monastery's opinion must be sought before any leisure facilities, restaurants or business are established in its vicinity and operated. Furthermore, the monasteries are authorised to retain a proportion of their original real property - provided that the total area of land retained does not exceed 500,000 sq. m of forest

or 200,000 sq. m of agricultural land - and 20% of land "usable for tourism purposes"; the Greek Church is allotted 40% of land included in the town development plan after 1952. Lastly, land in the monasteries' possession by virtue of a title deed or which has passed to them under a will or a deed of gift is exempt from transfer.

A special committee set up in each prefecture by a decision of the Prefect is to determine which land is to be transferred to the State and which is to be kept by each monastery.

In exchange for the transfer of ownership, the State undertakes to pay a stipend to eighty-five preachers and to spend 1% of the budgetary appropriations earmarked for the Church on financially supporting the monasteries that are parties to the agreement (clause 4).

35. Under clause 3 of the agreement, the ODEP was destined to be wound up once the operations had been concluded; in fact the ODEP was dissolved after Parliament's ratification of the agreement and the members of its staff were assigned to other State bodies in accordance with section 3 of Law no. 1811/1988. The management of the urban property and part of the agricultural and forest property remaining in the ownership of the monasteries parties to the agreement is to be their responsibility, while the Greek Church, having taken over the rights and obligations of the ODEP and having exclusive authority to act, is to be responsible for the property to be realised. The Standing Holy Synod is to lay down in canonical decisions published in the Official Gazette the manner in which ODEP property transferred to the Greek Church on the abolition of the ODEP is to be managed and utilised. Lastly, the monasteries parties to the agreement have capacity to take legal proceedings in any dispute relating to the property they retain under it (clause 5).

36. Some of the monasteries - including Phlamourion Volou - which had authorised the Greek Church to negotiate and sign the agreement with the State applied to the courts, alleging that the agreement was null and void.

They argued, inter alia, that (1) the agreement had been concluded by the Standing Holy Synod, a purely administrative body of the Greek Church with no legal personality of its own or any legal capacity; (2) the archbishops and metropolitans who had taken part in the drawing up of the agreement were not the Standing Holy Synod's statutory representatives; (3) the tracts of land which the monasteries had undertaken to transfer were not precisely delimited and the agreement made no mention of their location, area or boundaries; (4) the Greek State had not acted through its statutory representative; (5) at the time that the agreement was concluded, the ODEP was responsible for the management and representation of the monasteries' property and ownership of that property had already been transferred to the State under section 3 of Law no. 1700; (6) the authorisations issued by the monasteries to the Standing Holy Synod had not been in the form of notarial

documents as required by law; and (7) the conditions that were stipulated by the monasteries for concluding the agreement and which appeared in the authorisations to act were not reproduced in the actual text of the agreement.

37. On 26 January 1990 the Athens Court of First Instance gave judgment against the monastery of Phlamourion Volou.

38. On 4 December 1990 the Athens Court of Appeal dismissed an appeal by the monastery against that judgment. It noted, in particular, like the court below but in more detail, that by Law no. 1811/1988 the legislature had expressed the intention of ratifying the agreement in its entirety even if it contained formal or substantive defects which might have rendered it null and void under enactments in force at the time it was concluded.

Complaint no. 5 was rejected by the Court of Appeal on the ground that the monastery of Phlamourion Volou had no *locus standi*, since at the time the agreement was concluded it had ceased to be the owner of the land in question. As for complaints nos. 3 and 7, the court held that because of the large number of monasteries involved, the agreement could only distinguish in a general way between the land to be transferred and the land to be retained and it assigned the task of laying down the precise boundaries to a committee to be set up in each prefecture.

Furthermore, the wording of clause 2 of the agreement did not suffice on its own to show that the full powers granted to the Standing Holy Synod had been exceeded or that there had been any misuse of powers on the part of the archbishops who had signed the agreement; if that had been the case and if land not covered by the authority to act had been transferred to the State, it would have amounted to a deprivation of property incompatible with Article 17 of the Constitution, a defect that could not have been cured by the ratification. It was, however, impossible to determine whether the full powers had been exceeded as the appellant had not stated whether the relevant committee had already carried out its task.

Lastly, the disputed agreement was an agreement for value, as the State undertook to support the monasteries that were parties to it by transferring to them 1% of the budgetary appropriations earmarked for the Church and to meet the cost of remunerating eighty-five preachers.

#### **D. Implementation of Laws nos. 1700/1987 and 1811/1988**

39. In a circular of 5 January 1989 the Ministry of Agriculture requested prefectures to set up the committees provided for in clause 2 of the agreement of 11 May 1988 (see paragraph 34 above). No action has yet been taken to this end.

Another circular, of 20 February 1989, drew the authorities' attention to the fact that ownership of the immovable property belonging to the monasteries not parties to the agreement had been transferred to the State

under Law no. 1700/1987. The circular also reminded the authorities of the possibility of transferring some of this property to agricultural co-operatives and of using the eviction procedure provided for in section 4 of Law no. 1700/1987 (see paragraph 26 above).

40. In practice, the transfer operations - and in particular the determination of which property is to pass to the State under Law no. 1700/1987 and Law no. 1811/1988 - have not been completed.

41. In the proceedings before the Commission and the Court the applicant monasteries relied on several judgments whereby proceedings brought against the State by non-applicant monasteries had been stayed (judgments no. 455/1987 of the Ioannina Court of First Instance and no. 175/1988 of the Chalcis Court of First Instance) and an appeal by another monastery had been declared inadmissible (judgment no. 335/1987 of the Lasithi Court of First Instance) on the ground that the monasteries concerned had ceased to have *locus standi* once Law no. 1700/1987 had come into force. In particular, proceedings were declared inadmissible in an action brought by a non-applicant monastery for a declaration of ownership arising, according to the monastery, from short adverse possession; the Patras Court of First Instance (in judgment no. 35/1991) also held that the ownership, possession and use of the disputed land had automatically passed to the State under section 3(1)(A) and (B) of Law no. 1700/1987 and pointed out that the monastery in question was not one of those that had signed the agreement of 11 May 1988.

42. In a letter of 7 February 1992 the Ministry of Agriculture replied as follows to a request from the Agent of the Government for information about the implementation of Laws nos. 1700/1987 and 1811/1988:

"... Laws nos. 1700/1987 and 1811/1988, which regulate questions of Church property, have not been implemented as the procedures laid down in them for transferring to the State the land falling to it and for distinguishing that land from the land to be retained by the monasteries have not yet been carried out ... A problem has arisen with the management of the monasteries' forest land ..., because the proceedings whereby the State is to take possession of the land have not been set in motion ... and also because of disagreements between the State and the Holy Monasteries concerning the interpretation of the Laws in question ... [I]t appears from document no. 147224/21.12.1991 of the Regional Development Department of our Ministry ... and from the fact that the Ministry of Education has set up a team to study the problem of Church property that the State intends to re-examine the issue in order to resolve it."

43. Counsel for the applicant monasteries stated at the hearing before the Court that, to date, none of the land in dispute had been transferred to agricultural co-operatives or the State. He maintained, however, that since the entry into force of Law no. 1700/1987 the administrative authorities had refused to grant the authorisations necessary for carrying out certain day-to-day operations.

In this connection he relied on and produced correspondence between the Kalambaka forestry authority, on the one hand, and the co-operative at Vлахava and the monastery of Metamorphosis Sotiros, on the other; the forestry authority had prevented the co-operative from cutting down trees in forests belonging to the monastery by virtue of Decree no. 2185 of 1952 (see paragraph 9 above), although the co-operative had already, in 1985, paid the monastery for the felling.

Similarly, the forestry authority of Almiros in Magnesia had declined to approve the four-year plan for exploiting a forest belonging to the monastery of Ano Xenia, on the ground that there was uncertainty about the ownership of the forest.

## PROCEEDINGS BEFORE THE COMMISSION

44. The applicant monasteries applied to the Commission in the following order: Ano Xenia, Ossiou Loukas, Agia Lavra Kalavriton, Metamorphosis Sotiros and Asomaton Petraki, together with six monks from these monasteries, on 16 July 1987 (application no. 13092/87); and Chrysoleontissa Eginis, Phlamourion Volou and Mega Spileo Kalavriton, together with four monks and clergymen, on 15 May 1988 (application no. 13984/88). They relied on Articles 6, 9, 11, 13 and 14 (art. 6, art. 9, art. 11, art. 13, art. 14) of the Convention and on Article 1 of Protocol No. 1 (P1-1).

45. On 4 December 1989 the Commission ordered the joinder of the two applications. It declared them admissible on 5 June 1990 but only in so far as they were made by the Holy Monasteries; it declared them inadmissible as to the remainder. In its report of 14 January 1993 (Article 31) (art. 31), it expressed the opinion:

(a) as to all the applicant monasteries,

(i) that the transfer of ownership provided for in Law no. 1700/1987 did not violate Article 1 of Protocol No. 1 (P1-1) (unanimously);

(ii) that the provisions of Law no. 1700/1987, as amended by Law no. 1811/1988, did not violate that Article (P1-1) (unanimously);

(iii) that there had been no violation of Articles 9, 11 and 13 (art. 9, art. 11, art. 13) of the Convention (unanimously) or of the applicant monasteries' right to a fair trial within the meaning of Article 6 para. 1 (art. 6-1) (unanimously) or of Article 14 taken together with Articles 6, 9 and 11 of the Convention (art. 14+6, art. 14+9, art. 14+11) and Article 1 of Protocol No. 1 (art. 14+P1-1) (unanimously);

(b) as to the monasteries of Ano Xenia, Agia Lavra Kalavriton, Metamorphosis Sotiros, Chrysoleontissa Eginis and Mega Spileo Kalavriton, that there had been no violation of the right of access to a court, secured in Article 6 para. 1 (art. 6-1) (by eleven votes to two);

(c) as to the monasteries of Asomaton Petraki, Phlamourion Volou and Ossios Loukas, that there had been no violation of the right of access to a court, secured in Article 6 para. 1 (art. 6-1) (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

46. In their memorial the Government asked the Court to "reject the two applications by the Holy Monasteries in their entirety".

47. The applicant monasteries requested the Court to

"... declare that the provisions of Laws nos. 1700/1987 and 1811/1988 and the subsequent acts of the Hellenic Republic violate Article 1 of Protocol No. 1 (P1-1), Article 6 (art. 6) and, subsidiarily, Articles 13, 14, 9 and 11 (art. 13, art. 14, art. 9, art. 11) of the Convention;

... declare the above violations as having been perpetrated against all the applicants;  
and

... award compensation ...".

## AS TO THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

#### **A. The Court's jurisdiction *ratione personae***

48. In the first place, the Government argued that the applicant monasteries were not non-governmental organisations within the meaning of Article 25 (art. 25) of the Convention. They pointed to the Orthodox Church's and its institutions' historical, legal and financial links with the Hellenic nation and State, which were reflected in the 1975 Constitution itself and in legislation, and to the considerable influence which the Greek Church currently had on the State's activities. The attribution of legal personality in public law to the Church and its constituent parts - including

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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-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

the monasteries - showed the particular importance attached to ecclesiastical matters. Furthermore, the Greek Orthodox Church and its institutions played a direct, active part in public administration; they took enforceable administrative decisions whose lawfulness was subject to review by the Supreme Administrative Court like any other public authority's decisions. The monasteries were hierarchically integrated into the organic structure of the Greek Church; they were founded, merged or dissolved by a decree adopted after consultation of the archimandrite and approval by the Standing Holy Synod, on a proposal by the Minister for Education and Religious Affairs. The decisions of monastery councils had to be ratified by the supervising Church authority before they could take effect. Lastly, it was not decisive that the monasteries had legal personality distinct from that of the Church, witness the fact that it was possible for a State's international responsibility to be engaged on account of acts by legal entities distinct from that State.

49. Like the Commission in its admissibility decision, the Court notes at the outset that the applicant monasteries do not exercise governmental powers. Section 39(1) of the Charter of the Greek Church describes the monasteries as ascetic religious institutions (see paragraph 15 above). Their objectives - essentially ecclesiastical and spiritual ones, but also cultural and social ones in some cases - are not such as to enable them to be classed with governmental organisations established for public-administration purposes. From the classification as public-law entities it may be inferred only that the legislature - on account of the special links between the monasteries and the State - wished to afford them the same legal protection vis-à-vis third parties as was accorded to other public-law entities. Furthermore, the monastery councils' only power consists in making rules concerning the organisation and furtherance of spiritual life and the internal administration of each monastery (section 39(4) - see paragraph 15 above).

The monasteries come under the spiritual supervision of the local archbishop (section 39(2)), not under the supervision of the State, and they are accordingly entities distinct from the State, of which they are completely independent.

The applicant monasteries are therefore to be regarded as non-governmental organisations within the meaning of Article 25 (art. 25) of the Convention.

### **B. Exhaustion of domestic remedies**

50. In the second place, the Government maintained that the applicant monasteries had not exhausted domestic remedies in several respects; no court had given a ruling in a case concerning the alleged violation of their rights.

In general, the Government argued that the impossibility in Greek law of having a supposedly unconstitutional provision directly set aside did not in any way impair the effectiveness of the judicial protection afforded to the applicants by the Greek legal system; the preliminary scrutiny that was carried out as a matter of course by the Greek courts had the result that any law held to be unconstitutional was not applied. The reasons relating to the constitutionality of Law no. 1700/1987 of 7 December 1987 that were given in the Supreme Administrative Court's judgment (see paragraph 31 above) were obiter, did not have the force of *res judicata* and did not bind other courts that might have to deal with the same issue in a particular case; only the Special High Court could give a final ruling on such matters in the event of the country's two supreme courts' delivering conflicting judgments (Article 100 para. 1(e) of the 1975 Constitution).

More particularly, the Government stated that Law no. 1700/1987 would not come into force until the ODEP had taken a concrete decision relating to the management of these monasteries' property or had represented the monasteries in respect of their property. The applicant monasteries would then have a series of effective remedies available to them: an application for judicial review of the administrative decisions that would have to be taken in order for Law no. 1700/1987 to be implemented (sections 1(3), 2(3), 4(9), 7(2) and 8(1) and (2)) - which the monasteries had in fact made in respect of the decree appointing the ODEP's governing body (see paragraphs 25, 27 and 30 above) - or of the ODEP's management decisions; an action for a declaration in the civil courts (Article 72 of the Code of Civil Procedure) in order to have their exclusive rights of management and representation of their property legally recognised; and applications under section 4(4) and (7) of Law no. 1700/1987 (see paragraph 26 above).

51. The Court notes that although the issue raised in the Supreme Administrative Court had been the lawfulness of the membership of the ODEP's governing body, that court also considered that the relevant provisions of Law no. 1700/1987 were compatible with Article 17 of the Constitution and with the European Convention (see paragraph 31 above). These were statements by judges of one of the highest courts in the land; moreover, a large part of the reasoning of the judgment of 7 December 1987 was taken up with them. Such statements, even though they were obiter, substantially limited the prospects of success of any other appeal the applicant monasteries might bring.

As to the possibilities mentioned by the Government, the Court observes that some of them relate to provisions which ceased to be material after the abolition of the ODEP or to special arrangements for the implementation of Law no. 1700/1987. In this regard the Court points out that the only remedies which Article 26 (art. 26) of the Convention requires to be exhausted are those relating to the impugned violation and capable of redressing the applicants' complaints (see, among other authorities, the



Airey v. Ireland judgment of 9 October 1979, Series A no. 32, p. 11, para. 19). Lastly, the actions provided in section 4(4) and (7) presuppose that the applicant monasteries have handed over their property or that an eviction order has been made; as that is not the case at the date of adoption of this judgment, they are not relevant.

The objection must therefore be dismissed.

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

52. The applicant monasteries complained of the transfer of part of their real property to the State, and of the management of it by the ODEP and thereafter by the Greek Church under Laws nos. 1700/1987 and 1811/1988. They relied on Article 1 of Protocol No. 1 (P1-1), which provides:

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

The preceding provisions 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."

53. The Government and the Commission did not accept this argument.

### A. Preliminary remarks

54. The applicant monasteries essentially complained that Laws nos. 1700/1987 and 1811/1988 were incompatible with the Convention.

The Government pointed out that to date no practical measures had been taken to apply the Laws to the monasteries.

55. In cases arising from individual petitions made under Article 25 (art. 25) the Court's task is not to review the relevant legislation in the abstract; it must as far as possible examine the issues raised by the case before it (see, among many other authorities, the *Padovani v. Italy* judgment of 26 February 1993, Series A no. 257-B, p. 20, para. 24). To that end in the instant case, it must examine the above-mentioned Laws in so far as the applicant monasteries objected to their consequences for their property.

Such consequences have already begun to be felt on account of the special nature of some of the provisions of Law no. 1700/1987, in particular section 3 (see paragraph 25 above), and because the Law has begun to be applied inasmuch as ministerial circulars have been issued and administrative decisions taken (see paragraphs 39 and 43 above).

The Court notes that the applicant monasteries' agricultural and forest property is now governed by two parallel sets of legal rules: the rules in Law no. 1700/1987, governing the properties of the monasteries of Ano Xenia, Agia Lavra Kalavriton, Metamorphosis Sotiros, Chryssoleontissa Eginis and Mega Spileo Kalavriton, and those in Law no. 1811/1988, governing the properties of the monasteries of Asomaton Petraki, Ossios Loukas and Phlamourion Volou. It therefore considers it necessary to distinguish between three monasteries, which signed the agreement of 11 May 1988, and those which did not.

With regard to the latter, it proposes moreover to look at their position solely under those provisions of Law no. 1700/1987 which continue to apply to the property in question, as many of that Law's other provisions applied only for a limited time or lapsed after the abolition of the ODEP (sections 1(1) and 2(1) and (2) of Law no. 1700/1987 - see paragraph 25 above).

The Court observes lastly that the eight monasteries' urban property is no longer in issue as the management of this has been the responsibility of the Standing Holy Synod since Law no. 1811/1988 came into force (section 2(3) of Law no. 1811/1988 - see paragraph 33 above).

## **B. Position of the monasteries not parties to the agreement of 11 May 1988**

### *1. Whether there has been an interference with the right of property and determination of the relevant rule under Article 1 (P1-1)*

56. As explained in the Court's case-law, Article 1 (P1-1), which guarantees in substance the right of property, comprises three distinct rules (see the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98-B, p. 29, para. 37). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule.

57. The Government argued that the complaints of the applicant monasteries not parties to the agreement of 11 May 1988 - Ano Xenia, Agia Lavra Kalavriton, Metamorphosis Sotiros, Chryssoleontissa Eginis and Mega Spileo Kalavriton - related to illusory violations of the right secured to them by Article 1 of Protocol No. 1 (P1-1), as the provisions of Law no.

1700/1987, especially section 3, were not sufficient to deprive those monasteries by force of law of their rights over the property in issue or to transfer to the State by the operation of law the possession or use of it.

They relied on the wording of section 3(1)(A), and in particular on the terms "shall be deemed to be the property of the ... State", which, they contended, gave the section a special meaning. In reality, the Government argued, the provision created a mere presumption of ownership, a legal fiction, which could easily be rebutted by proof to the contrary. The expression "deemed to be the property of the ... State" did not mean that the State actually acquired ownership of the relevant property; that issue remained in abeyance until the rights asserted by the monasteries were satisfactorily established in law. The conclusion derived from a literal approach of this kind was confirmed by the context of the provision, in particular the legal protection afforded to the monasteries by section 4(4) and (7) of Law no. 1700/1987, which allowed them to prove their assertions before an objective and impartial authority, namely the courts. Moreover, it was for the State to choose the appropriate means of determining doubtful legal situations in the matter of ownership and to establish the procedure for that purpose.

58. The Court considers that by creating a presumption of State ownership, section 3(1)(A) shifts the burden of proof so that it now falls on the applicant monasteries, which can only assert their ownership of the land in issue if it derives from a duly registered title deed, from a statutory provision or from a final court decision against the State. Section 3(1)(A) taken together with section 1(1) thus deprives them of the possibility of relying, in order to adduce proof to the contrary, on all the means of acquiring property provided for in Greek law and by which the applicant monasteries possibly accumulated their property, including adverse possession and even a final court decision against a private individual. This conclusion is corroborated by the Patras Court of First Instance's judgment no. 35/1991 (see paragraph 41 above), which was concerned with a non-applicant monastery but well shows the consequences of the entry into force of section 3.

59. In the Government's submission, several tracts of the relevant land in reality belonged to the State, and the applicant monasteries were occupying them as mere possessors. The Supreme Administrative Court had, moreover, in its judgment of 7 December 1987 (see paragraph 31 above), held that the provisions of Law no. 1700/1987 did not deprive them of their property because it followed from them that the property did not belong to the monasteries in the first place.

60. It is not feasible for the Court to undertake to determine for itself which of the disputed tracts of land can be said under Greek law to belong in reality to the State. It notes, however, that the applicant monasteries, which are primordial constituent parts of the Greek Church and were

established long before the creation of the Greek State, accumulated substantial immovable property over the centuries. Undoubtedly, title deeds acquired during the Byzantine and Ottoman empires have been lost or destroyed. In respect of such land occupied for so long, even if without any legal title, the period of possession required in order that adverse possession might be relied upon both against the State and against third parties had certainly been completed by the time Law no. 1700/1987 came into force. On this point the Court attaches particular importance to the acquisition of property by adverse possession because there is no land survey in Greece and it was impossible to have title deeds registered before 1856 and legacies and inheritances registered before 1946 (see paragraph 24 above).

61. The State, deemed to be the owner of such agricultural and forest property under subsection (1)(A) of section 3, is automatically given the use and the possession of it, pursuant to subsection (1)(B) of the same section (see paragraph 25 above). In the Court's opinion, that is not merely a procedural rule relating to the burden of proof but a substantive provision whose effect is to transfer full ownership of the land in question to the State.

62. The Government emphasised that the wording of section 3(1)(B) went no further than to indicate in the abstract that there were legal bases for such possession. Possession, however, was not a fictitious state of affairs; so long as the State did not assume physical authority over the land in dispute (and it had not done), it could not exercise rights derived from possession and use. They cited as evidence section 4 of the Law, which required any holder of the land to hand it over to the State.

However that might be, the Government argued, there could not be any loss of use and possession until such time as an administrative eviction order was served. Even in that case, section 4 afforded the applicant monasteries effective protection, either through proceedings for judicial review of such an order, during which the courts would also verify the monasteries' rights derived from adverse possession, or through a court action to establish ownership under Articles 1094-1112 of the Civil Code (see paragraph 26 above).

63. The Court cannot accept the Government's submissions on this point. It notes that section 4 of Law no. 1700/1987 amounts to a technical provision designed to implement section 3 of the Law. In its first subsection, section 4 allows the applicant monasteries a period of two months in which to hand over the land in issue to the head of the appropriate agricultural or forestry department, failing which the latter is empowered to make an administrative eviction order. As to the remedies provided in subsections (4) and (7), the first of them has no suspensive effect, while it is a prerequisite of the second that the plaintiffs should have voluntarily ceded their property or that they should not have availed themselves of the first remedy within the time allowed.

64. The Government relied on the fact that none of the applicant monasteries had to date transferred the property in issue to the State and no administrative eviction order had been served on any of the monasteries, as the decree which was to lay down the detailed arrangements for implementing sections 3 and 4 (section 4(9) of the Law) had still not been issued. Having regard to the friendly settlement concluded between the Greek Church and the State on 11 May 1988 and to the State's expressed intention of reconsidering the whole matter of Church property (see paragraph 42 above), the provisions of Law no. 1700/1987 had remained a dead letter.

65. The Court observes, however, that none of the five monasteries became a party to the agreement of 11 May 1988 in the year following its ratification by Parliament, as allowed by section 2(1) of Law no. 1811/1988 (see paragraph 33 above). Consequently, the provisions of Law no. 1700/1987 remained applicable to them. The fact that no administrative eviction order has yet been issued is no guarantee that none will be issued in the future, particularly in view of the circulars of 5 January and 20 February 1989 (see paragraph 39 above), which are still in force, and of the administrative authorities' attitude (see paragraph 43 above) after the agreement was concluded.

66. That being so, there has been an interference with the applicant monasteries' right to the peaceful enjoyment of their possessions which amounts to a "deprivation" of possessions within the meaning of the second sentence of the first paragraph of Article 1 (P1-1).

## 2. *"In the public interest"*

67. The Court must therefore determine whether this deprivation of possessions pursued a legitimate aim "in the public interest", within the meaning of the second rule under Article 1 (P1-1).

68. The applicant monasteries disputed the legitimacy of the aim of Law no. 1700/1987, contending that it was not designed to convey the expropriated land to farmers who had none, but to allow profitable development of it. Section 2(1) of Law no. 1700/1987 made provision - in the form merely of an optional power - for the transfer of the use of the land in issue to farmers who were - or would in the future be - members of agricultural co-operatives, not to destitute farmers. If the legislature had really been pursuing a social policy, it could have achieved the same result without interfering with the applicant monasteries' right of property.

69. The Court notes that the explanatory memorandum to the bill, submitted to Parliament, sets out the reasons for the impugned measure: to end illegal sales of the relevant land, encroachments on it and the abandonment or uncontrolled development of it (see paragraph 24 above). The optional nature of the transfer of the use of the land to farmers or agricultural co-operatives (section 2(1) of the Law - see paragraphs 25 and

68 above) and the inclusion of public bodies among the beneficiaries of such transfers (section 2(1) of the Law) might inspire some doubt as to the reasons for the measures, but they cannot suffice to deprive the overall objective of Law no. 1700/1987 of its legitimacy as being "in the public interest".

### *3. Proportionality of the interference*

70. An interference with peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 26, para. 69). The concern to achieve this balance is reflected in the structure of Article 1 (P1-1) as a whole (*ibid.*), including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence (see paragraph 56 above). In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see the *James and Others* judgment previously cited, p. 34, para. 50).

71. Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicants. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 (P1-1) only in exceptional circumstances. Article 1 (P1-1) does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see the *Lithgow and Others v. the United Kingdom* judgment of 8 July 1986, Series A no. 102, pp. 50-51, para. 121).

72. The applicant monasteries alleged that the provisions of Law no. 1700/1987 did not satisfy the condition of proportionality.

73. The Commission considered that exceptional circumstances - such as the ways in which the property was acquired and used, the monasteries' dependence on the Greek Church and the Church's dependence on the State - justified the absence of compensation.

74. The Court does not agree with this assessment.

In 1952 the Greek legislature took measures to expropriate a large portion of monastery agricultural property. In 1952 as in 1987 the monasteries no longer discharged the same social, educational and cultural functions they had assumed before the Greek State was established (see paragraph 6 above). The legislature nevertheless provided for compensation

of one-third of the real value of the expropriated land (see paragraph 9 above).

However, there is no similar provision in Law no. 1700/1987.

The five per cent provided for in return for the grant to farmers of a right to use the land in issue would be paid, after the transfer of ownership to the State, to the private-law entity to be established under section 9 of the Law for the needs of the national education service (subsection (1)(B) of section 3 - see paragraphs 25 and 28 above). The power to grant land to monasteries which do not have sufficient immovable property "solely for the purposes of cultivation by the monks themselves" (section 3(3) of the Law) and the budgetary appropriation provided for in section 10 (see paragraph 28 above) cannot be regarded as payment of compensation.

75. By thus imposing a considerable burden on the applicant monasteries deprived of their property, Law no. 1700/1987 does not preserve a fair balance between the various interests in question as required by Article 1 of Protocol No. 1 (P1-1).

There is therefore a breach of that Article (P1-1) in the case of the five applicant monasteries which did not sign the agreement of 11 May 1988.

### **C. Position of the three monasteries parties to the agreement of 11 May 1988**

76. These monasteries - Asomaton Petraki, Ossiou Loukas and Phlamourion Volou - contended that Law no. 1811/1988 was likewise contrary to Article 1 of Protocol No. 1 (P1-1). They alleged that they had signed the agreement of 11 May 1988 under duress. They stated that they had been led into error by the Greek Church, as by not complying with the conditions subsequent to the preliminary accord (see paragraphs 32 and 36 above), the Church had exceeded its powers. They had received no compensation for ceding part of their agricultural and forest property to the State, since the quid pro quo provided for in clause 4 of the agreement benefited the Greek Church and not the monasteries parties to the agreement (see paragraph 34 above).

77. In its report the Commission considered it pointless to examine this issue in view of its conclusion regarding the applicant monasteries as a whole.

78. The Court, which has taken a different view of the general issue (see paragraph 55 above), cannot, however, ignore the fact that the three applicant monasteries in question signed the agreement of 11 May 1988. Subsequently one of them applied to the national courts, alleging numerous substantive and formal defects. The Athens Court of Appeal held that Parliament's ratification of the agreement had had the effect of validating it in its entirety (see paragraphs 36-38 above).

On the evidence before the Court, it is not possible to conclude that the three monasteries in question acted under duress. Consequently, the Court must hold that there has been no interference with their right of property.

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

79. The applicant monasteries alleged a violation of Article 6 para. 1 (art. 6-1) of the Convention, which provides:

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

In their submission, section 1(1) of Law no. 1700/1987 deprived them of the right to ask a court to determine, firstly, any dispute (contestation) concerning the management of the property remaining in their ownership and, secondly, any dispute over the fixing of compensation for the expropriation of part of their property.

80. As the Court stated in its *Golder v. the United Kingdom* judgment of 21 February 1975, Article 6 para. 1 (art. 6-1) "embodies the 'right to a court', of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect" (Series A no. 18, p. 18, para. 36). Article 6 para. 1 (art. 6-1) "may [thus] be relied on by anyone who considers that an interference with the exercise of one of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 para. 1 (art. 6-1)" (see the *Le Compte, Van Leuven and De Meyere v. Belgium* judgment of 23 June 1981, Series A no. 43, p. 20, para. 44). In this connection the right of property is without doubt a "civil right" (see, inter alia, the *Sporrong and Lönnroth* judgment previously cited, p. 29, para. 79). However, the "right to a court" secured by Article 6 para. 1 (art. 6-1) "extends only to 'contestations' (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; [Article 6 para. 1] (art. 6-1) does not in itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States" (see, inter alia, the *Lithgow and Others* judgment previously cited, p. 70, para. 192).

81. The first complaint can only be made by monasteries not parties to the agreement of 11 May 1988 as, by virtue of clause 5 of the agreement (see paragraph 35 above), the monasteries that signed it have capacity to take legal proceedings relating to the property they retain.

On the other hand, section 1(1) of Law no. 1700/1987, by which the monasteries not parties to the agreement remain governed, makes them entirely dependent on the Greek Church for the defence of such of their property as is exempt from the transfer of ownership effected by section 3.



82. The Commission considered that the system adopted was justified; the Greek Church, which had taken over from the abolished ODEP the management of this property, had an obvious interest in ensuring that the property was adequately defended in any legal proceedings.

The Government agreed with the Commission on this point and added that the remedies provided in subsections (4) and (7) of section 4 - special provisions which prevailed over the general clause of section 1(1) - gave these monasteries legal standing to protect their rights of property.

83. The Court has already found that the Greek legislation has vested the applicant monasteries with legal personality in public law in their legal relations in order to afford them greater protection (see paragraph 49 above). It notes, moreover, that at the time when the ODEP - a majority of whose governing body's members were appointed by the Church authorities - managed the monasteries' property to be realised, the monasteries had capacity to take legal proceedings.

By depriving them of any further possibility of bringing before the appropriate courts any complaint they might make against the Greek State, third parties or the Greek Church itself in relation to their rights of property, or even of intervening in such proceedings, section 1(1) impairs the very essence of their "right to a court" (see the *Philis v. Greece* judgment of 27 August 1991, Series A no. 209, p. 23, para. 65; and the *Fayed v. the United Kingdom* judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, para. 65).

84. There is therefore a breach of Article 6 para. 1 (art. 6-1) in relation to the first complaint of the applicant monasteries not parties to the agreement of 11 May 1988.

85. As regards the second complaint, the Court, having regard to its conclusion under paragraph 78, notes again that this complaint can only be made by monasteries not parties to the agreement of 11 May 1988.

It is well-established in the Court's case-law that as a matter of principle Article 6 para. 1 (art. 6-1) guarantees a right of access to the courts for the determination of claims (contestations) under domestic law concerning compensation payable for expropriation of property (see, *inter alia*, the *Lithgow and Others* judgment previously cited, p. 70, para. 192). The applicants could not derive any entitlement to compensation from Law no. 1700/1987, which assumed that ownership of the land was not vested in the monasteries (see paragraph 31 above). In view of the previous finding under Article 1 of Protocol No. 1 (P1-1) in respect of the absence of compensation under Law no. 1700/1987 (see paragraph 74 above) and the finding made at paragraph 84 above, the Court does not consider it necessary to examine further this complaint under Article 6 para. 1 (art. 6-1).

#### IV. ALLEGED VIOLATIONS OF ARTICLES 9 AND 11 (art. 9, art. 11) OF THE CONVENTION

86. The applicant monasteries complained of violations of their right to freedom of religion (Article 9 of the Convention) (art. 9) and of their right to freedom of association (Article 11 of the Convention) (art. 11) on the ground that Law no. 1700/1987 deprived them of the means necessary for pursuing their religious objectives and preserving the treasures of Christendom.

Under Article 9 (art. 9) they maintained that the impugned provisions of the Law would impede the carrying out of their ascetic mission. Under Article 11 (art. 11) they pointed out that section 3(3) of the Law would prevent an increase in the number of monks and would deter the faithful from making gifts to them.

87. Like the Government and the Commission, the Court does not accept these assertions. As regards the first complaint, it considers that the provisions held to be contrary to Article 1 of Protocol No. 1 (P1-1) in no way concern the objects intended for the celebration of divine worship and consequently do not interfere with the exercise of the right to freedom of religion. The second complaint would seem to be hypothetical.

88. There is consequently no breach of Articles 9 and 11 (art. 9, art. 11) of the Convention.

#### V. ALLEGED VIOLATION OF ARTICLE 13 (art. 13) OF THE CONVENTION

89. The applicant monasteries asserted that, contrary to Article 13 (art. 13) of the Convention, they had not had an effective remedy before a national authority enabling them to complain of the infringement of the rights secured to them by the Convention.

90. Like the Commission, the Court reiterates that Article 13 (art. 13) does not go so far as to require a remedy whereby the laws of a Contracting State may be impugned before a national authority as being in themselves contrary to the Convention (see the *James and Others* judgment previously cited, p. 47, para. 85). The applicant monasteries' complaint must therefore fail.

#### VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLES 6, 9 AND 11 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 (art. 14+6, art. 14+9, art. 14+11, art. 14+P1-1)

91. The applicant monasteries relied lastly on Article 14 (art. 14) of the Convention, which provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Before the Commission they claimed to be the victims of discrimination in that only the monasteries belonging to the Greek Church were affected by the provisions of Law no. 1700/1987.

92. According to the Court's case-law, Article 14 (art. 14) does not prohibit all differences in treatment in the exercise of the rights and freedoms (see, as the most recent authority, the Hoffmann v. Austria judgment of 23 June 1993, Series A no. 255-C, p. 58, para. 31).

Given the close links between the Greek Church and the applicant monasteries, the distinction made between the latter and the monasteries coming under the Ecumenical Patriarchate of Constantinople or the patriarchates of Alexandria, Antioch and Jerusalem or under the Holy Sepulchre and the Holy Monastery of Sinai or under the churches of other denominations and religions does not lack an objective and reasonable justification. Consequently, there is no breach of Article 14 taken together with the aforementioned Articles of the Convention and of Protocol No. 1 (art. 14+6, art. 14+9, art. 14+11, art. 14+P1-1).

93. In their memorial to the Court the applicant monasteries also complained of the distinction created by Law no. 1811/1988 between the monasteries which signed the agreement of 11 May 1988 and those which did not.

94. In view of the findings in paragraphs 75, 84 and 88 above, the Court does not consider it necessary to rule on the complaint based on Article 14 taken together with Articles 6 para. 1, 9 and 11 of the Convention and Article 1 of Protocol No. 1 (art. 14+6-1, art. 14+9, art. 14+11, art. 14+P1-1).

## VII. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

95. 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."

96. Under this provision, the applicant monasteries sought compensation for pecuniary damage and reimbursement of costs and expenses.

### **A. Pecuniary damage**

97. Under the head of pecuniary damage, the eight applicant monasteries sought 7,640,255,213,120 (seven trillion six hundred and forty billion two hundred and fifty-five million two hundred and thirteen thousand one hundred and twenty) drachmas (GRD).

98. The Government submitted that the monasteries had not identified the property affected by the impugned provisions. Their claims for compensation, which covered the whole of their property: monasteries, churches, urban buildings and property for which there were no legal titles, were too vague to be quantified. To make an accurate assessment, it would be necessary to identify all the applicant monasteries' property, which was scattered all over Greece.

99. The Delegate of the Commission expressed no opinion.

100. In the circumstances of the case, the Court considers that the question of the application of Article 50 (art. 50) in respect of pecuniary damage is not ready for decision and that it must be reserved, having regard to the possibility of an agreement between the respondent State and the applicant monasteries (Rule 54 paras. 1 and 4 of Rules of Court A).

### **B. Costs and expenses**

101. The applicant monasteries also sought payment of GRD 8,400,000 (eight million four hundred thousand drachmas) in respect of lawyers' fees and sundry expenses relating to the proceedings before the Convention institutions.

102. The Government found this claim vague and inflated; they maintained that only a quarter of the amount sought would be consistent with the criteria laid down in the Court's case-law.

103. The Delegate of the Commission did not express any view.

104. Having regard to the finding of a breach with regard to the main aspects of the case, the Court allows the claim in full.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. Dismisses the Government's preliminary objections;
2. Holds that there is a breach of Article 1 of Protocol No. 1 (P1-1) in respect of the applicant monasteries not parties to the agreement of 11 May 1988;

3. Holds that there is no breach of Article 1 of Protocol No. 1 (art. P1-1) in respect of the applicant monasteries parties to the agreement of 11 May 1988;
4. Holds that there is a breach of Article 6 para. 1 (art. 6-1) of the Convention in relation to the first complaint of the applicant monasteries not parties to the agreement of 11 May 1988;
5. Holds that it is not necessary to examine the second Article 6 para. 1 (art. 6-1) complaint of the applicant monasteries not parties to the agreement of 11 May 1988;
6. Holds that there is no breach of Articles 9, 11 and 13 (art. 9, art. 11, art. 13) of the Convention;
7. Holds that there is no breach of Article 14 taken together with Articles 6, 9 and 11 of the Convention and Article 1 of Protocol No. 1 (art. 14+6, art. 14+9, art. 14+11, art. 14+P1-1) in respect of the distinction between the applicant monasteries that come under the Greek Church and the monasteries that come under the patriarchates mentioned in paragraph 92;
8. Holds that it is unnecessary to rule on the complaint based on Article 14 of the Convention taken together with the same Articles (art. 14+6, art. 14+9, art. 14+11, art. 14+P1-1) in respect of the distinction between the applicant monasteries that are parties to the agreement of 11 May 1988 and those that are not;
9. Holds that the respondent State is to pay the applicant monasteries not parties to the agreement 8,400,000 (eight million four hundred thousand) drachmas, within three months, in respect of costs and expenses;
10. Holds that the question of the application of Article 50 (art. 50) of the Convention is not ready for decision in respect of pecuniary damage; accordingly,
  - (a) reserves it in that respect;
  - (b) invites the Government and the applicant monasteries not parties to the agreement of 11 May 1988 to submit, within the forthcoming six months, their observations on the matter and, in particular, to notify the Court of any agreement they may reach;
  - (c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

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

Rolv RYSSDAL  
President

Herbert PETZOLD  
Acting Registrar