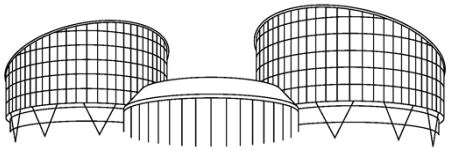

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KANDARAKIS v. GREECE

(Applications nos. 48345/12 and 2 others)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Locus standi denied to practising lawyers who applied to have the lawyers' fees awarded in expropriation proceedings, which had been temporarily deposited in a consignment fund, transferred to the bar association with which they were registered • Lack of a clear, practical and effective opportunity to assert claim, either in this manner or an alternative • No loss of victim status following eventual payment of fees after action brought by bar association • Restriction disproportionate

STRASBOURG

11 June 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kandarakis v. Greece,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Pere Pastor Vilanova,
Jovan Ilievski,
Raffaele Sabato, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 48345/12, 48348/12 and 67463/12) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Greek nationals, Mr Alexandros Kandarakis and Mr Michail Kandarakis ("the applicants"), on 18 July 2012;

the decision to give notice to the Greek Government ("the Government") of the complaints under Article 6 and Article 1 of Protocol No. 1 to the Convention;

the parties' observations;

Having deliberated in private on 19 May 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicants are lawyers registered with the Athens Bar Association. After representing a number of clients in three sets of expropriation proceedings, a certain amount was awarded to those clients for court expenses incurred, including lawyers' fees. Pursuant to domestic legislation, that amount was deposited in the Consignment Deposits and Loans Fund (*Ταμείο παρακαταθηκών και Δανείων*) to the benefit of the bar association with which the representatives of the person whose property was expropriated were registered. Under the law, such money should be deposited in the Fund so that the relevant bar association can then request the money and – having withheld for itself a percentage prescribed by law – forward the remainder to the lawyer concerned. The applicants complained under Articles 6 of the Convention and 1 of Protocol No. 1 to the Convention about the judgments delivered by the domestic courts dismissing their applications to have those amounts handed over to the Athens Bar Association, holding that only the relevant bar association could directly initiate proceedings seeking the payment of that amount and that the applicants could only bring a subrogation action.

THE FACTS

2. The applicants were born in 1938 and 1979 respectively and live in Athens. The applicants were represented by the first applicant in his capacity as a lawyer, Mr V. Chirdaris and Ms E. Salamoura, lawyers practising in Athens.

3. The Government were represented by their Agent's delegate, Mrs G. Papadaki, Senior Advisor at the State Legal Council.

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

A. Application no. 48345/12

5. The applicants, who are lawyers registered with the Athens Bar Association, represented certain clients in expropriation proceedings before the single-member first-instance civil court of Kalavryta (*Μονομελές Πρωτοδικείο Καλαβρύτων*), after being authorised to do so (*νομιμοποίηση*) by a lawyer registered with the Kalavryta Bar Association.

6. By judgment no. 56/2007, the single-member first instance civil court of Kalavryta fixed the provisional amount of compensation to be awarded. It additionally fixed the amount to be awarded for costs at 320 euros (EUR) and for the lawyers' fees at EUR 54,387.75.

7. The company ERGOSE AE, which was ordered to compensate the persons whose property had been expropriated, deposited the above-mentioned amounts in the Consignment Deposits and Loans Fund to the benefit of the Kalavryta Bar Association.

8. The applicants lodged an application with the single-member first-instance civil court of Athens against ERGOSE AE, seeking that the amounts fixed as costs and lawyers' fees be deposited to the benefit of the Athens Bar Association, with whom they were registered. They invoked as reason that they were the only lawyers who had represented the client and the lawyer registered with the Kalavryta Bar Association had merely authorised their presence before the Kalavryta court. By judgment no. 119/2009, the single-member first-instance civil court of Athens dismissed the applicants' application, holding that the applicants lacked *locus standi* because, pursuant to Articles 8 and 18 of Law no. 2882/2001, the beneficiary of the amounts awarded as costs and lawyers' fees was the relevant bar association. The applicants could only bring a subrogation action (*πλαγιαστική αγωγή*), but in order to do so they had to plead that the Athens Bar Association had neglected or refused to pursue such an action itself.

9. The applicants lodged an appeal against that judgment; that appeal was dismissed by judgment no. 5140/2010 of the Athens Court of Appeal on the basis of the same reasoning as that contained in the first-instance

judgment. Following a further appeal on points of law, the appellate court's judgment was upheld by judgment no. 694/2012 of the Court of Cassation (*Άρειος Πάγος)*, issued on 24 April 2012

10. On 15 November 2013, the Athens Bar Association lodged an application with the single-member first-instance civil court of Athens against ERGOSE AE seeking that the amounts fixed as costs and lawyers' fees by judgment no. 56/2007 of the single-member first-instance civil court of Kalavryta be deposited to its benefit. The first-instance civil court of Athens by judgment no. 5955/2014 rejected the application as unsubstantiated and, in any event, as not having been lodged under the right procedure. The Athens Bar Association lodged an appeal against that judgment; that appeal was allowed by judgment no. 1768/2017 of the Athens Court of Appeal. The appeal court ruled that the application had been substantiated and should be referred to the Patras Court of Appeal. At the time that the parties' observations were filed with the Court, the case was pending before the Patras Court of Appeal.

B. Application no. 48348/12

11. The applicants represented a client in expropriation proceedings before the single-member first-instance civil court of Korinthos (*Μονομελές Πρωτοδικείο Κορίνθου*), after being authorised to do so by a lawyer registered with the Korinthos Bar Association.

12. By judgment no. 54/2007, the single-member first-instance civil court of Korinthos fixed the provisional amount of compensation to be awarded. It additionally fixed the amount to be awarded as costs to 120 euros (EUR) and for the lawyers' fees at EUR 18,405.

13. The company ERGOSE AE, which was liable for compensating the persons whose property was expropriated, deposited the above-mentioned amounts in the Consignment Deposits and Loans Fund to the benefit of the Korinthos Bar Association.

14. The applicants lodged an application with the single-member first-instance civil court of Athens against ERGOSE AE seeking that the amounts fixed as costs and lawyers' fees be deposited to the benefit of the Athens Bar Association, with whom they were registered. They invoked as reason that they were the only lawyers who had represented the client and the lawyer registered with the Korinthos Bar Association had merely authorised their presence before the Korinthos court. By judgment no. 118/2009, the single-member first-instance civil court of Athens rejected the applicants' application, holding that the applicants lacked *locus standi*, because, pursuant to Articles 8 and 18 of Law no. 2882/2001, the beneficiary of the amounts awarded as costs and lawyers' fees was the relevant bar association. The applicants could only bring a subrogation action, but in order to do so they had to plead that the Athens Bar

Association had neglected or refused to pursue such an action itself. In addition, they had not noted in their application that judgment no. 54/2007 of the single-member first-instance civil court of Korinthos had become final and, thus, enforceable.

15. The applicants lodged an appeal, which was rejected by judgment no. 5139/2010 of the Athens Court of Appeal on the basis of the same reasoning as that contained in the first-instance judgment. Following an appeal on points of law by the applicants, the appellate court's judgment was upheld by judgment no. 693/2012 of the Court of Cassation, issued on 24 April 2012.

16. On 15 November 2013 the Athens Bar Association lodged an application with the single-member first-instance civil court of Athens against ERGOSE AE, seeking that the amounts fixed as costs and lawyers' fees by judgment no. 54/2007 of the single-member first-instance civil court of Korinthos be deposited in the Consignment Deposits and Loans Fund to its benefit. The court, by judgment no. 1360/2015, rejected the application as unsubstantiated and in any event, as not having been lodged under the right procedure.

17. The first applicant, who had intervened in the proceedings before the first-instance court, lodged an appeal against that judgment. By judgment no. 1624/2018, the Athens Court of Appeal noted that, having regard to the documents before it, half of the amount that had been awarded as lawyers' fees had already been deposited by the Korinthos Bar Association with the Athens Bar Association. Therefore, the outstanding sum that remained to be paid to the Athens Bar Association consisted of the amounts of EUR 9,203.25 (that is to say the other half part of the lawyers' fees – see paragraph 12 above) and EUR 120 that had been awarded as costs. However, the applicants' claim concerning their fee had become time-barred on 31 December 2012. On the basis of the above-mentioned considerations, the application was dismissed.

C. Application no. 67463/12

18. The applicant represented certain clients in expropriation proceedings before the single-member first-instance civil court of Athens (*Μονομελές Πρωτοδικείο Αθηνών*).

19. Following an appeal and an appeal on points of law against the judgments setting the provisional amount of compensation, by judgment no. 4531/2002, the Athens Court of Appeal fixed the amount for costs and expenses, including the lawyers' fees, at EUR 40,683.91.

20. In 2004 the Ministry for the Environment, Regional Development and Public Works, which was liable for compensating persons whose property had been expropriated, deposited the above-mentioned amount of EUR 40,683.91 in the Consignment Deposits and Loans Fund to the benefit

of the Athens Bar Association. However, the Consignment Deposits and Loans Fund declined to pass on that amount to the Athens Bar Association.

21. The applicant lodged an application with the single-member first-instance civil court of Athens, seeking that the Consignment Deposits and Loans Fund be ordered to pay the above-mentioned amount of EUR 40,683.91 to the Athens Bar Association, with whom he was registered. By judgment no. 1635/2005, the single-member first-instance civil court of Athens rejected the applicant's application. Following an appeal by the applicant, the Athens Court of Appeal allowed the application and by its judgment no. 5162/2005, ordered the Consignment Deposits and Loans Fund to deposit the relevant amount with the Athens Bar Association. Following an appeal on points of law, on 15 December 2008 the Court of Cassation issued judgment no. 1922/2008, by which it reversed the appellate court's judgment on the basis that only the relevant bar association could initiate proceedings to secure the amount in question, and not the lawyer who would benefit indirectly.

22. On 14 November 2013 the Athens Bar Association lodged an application with the single-member first-instance civil court of Athens against the Consignment Deposits and Loans Fund seeking that the amounts fixed as costs and lawyers' fees by judgment no. 4531/2002 of the Athens Court of Appeal be paid to the Athens Bar Association. The domestic court by its judgment no. 6516/2014 allowed the application. An appeal lodged by the Consignment Deposits and Loans Fund was rejected by judgment no. 3582/2015, as was an appeal on points of law lodged with the Court of Cassation by judgment no. 702/2016.

23. On the basis of the above-mentioned judgments, the Consignment Deposits and Loans Fund paid the above-mentioned amount to the Athens Bar Association, which withheld for itself the amount provided by law and gave the rest to the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Law no. 1093/1980

24. The relevant provisions of Law no. 1093/1980, which amended Legislative Decree no. 3026/1954 ("the Lawyers' Code" – see paragraph 25 below), read as follows:

Article 9

"...

5. The provisions of Articles 178 and 179 of the Code of Civil Procedure do not apply to proceedings conducted under the special procedure for compulsory expropriations. The court costs are always imposed in full, and exclusively to the detriment of the person liable for [paying] compensation, subject to the provisions of

L.D. 446/1974. In any case, the court shall determine the fees of the lawyers of both parties, respectively, calculated on the basis of the agreement provided for by paragraph 3 of article 92 of the L.D. 3026/1954, or, in its absence, in accordance with the provisions of Articles 100 et seq. of the same L.D.

6. The person liable [for paying] compensation [for the expropriation] shall withhold the fees of the lawyer of the person against whom the expropriation was carried out... If they are not withheld and the fees are deposited in the Deposits and Loans Fund, then the latter has the obligation to withhold them. The person liable [for paying] compensation and the Consignment Deposits and Loans Fund shall give the withheld fees to the bar association with whom the entitled lawyer was registered..."

25. Under Article 161 of Legislative Decree no. 3026/1954, which included at the material time the provisions for the Lawyers' Code, and in the meantime has been repealed by Article 166 § 2 of Law no. 4194/2013, the relevant bar association may withhold a percentage of the lawyers' fees for distribution to its members.

B. Law no. 2882/2001

26. The relevant provisions of Law no. 2882/2001 ("the Expropriation Code") read as follows:

Article 8

"The person liable for paying compensation, court expenses pursuant to Article 18 § 4, and lawyers' fees, as fixed by the court, shall deposit in the Consignment Deposits and Loans Fund that compensation to the benefit of the right-holder, and the court expenses and lawyers' fees to the benefit of the bar association with whom the lawyers are registered."

Article 18

"...

4. [Payment of] court expenses, as well as lawyers' fees, shall be the obligation of the person liable for compensation, shall be fixed by the court by the same judgment, if not otherwise provided under the present law, and shall be deposited in the Consignment Deposits and Loans Fund to the benefit of the bar association ..."

C. Code of Civil Procedure

27. The Code of Civil Procedure provides as follows:

Article 68
Capacity to bring proceedings of parties

"Any person who can establish a direct legitimate interest may seek judicial protection."

Article 72
Subrogation action («*πλαγιαστική αγωγή*»)

"Creditors may apply for judicial protection, exercising the rights of their debtors in the event of the latter's failure to exercise them, except rights of a close personal nature."

Article 189
Expenses to be awarded

"Only expenses [incurred] in and out of court that were necessary for the defence during a trial shall be awarded, ... in particular: ... c) lawyers' fees or the fees of other representatives and of court employees, in accordance with the applicable rates ...

D. Domestic case-law

28. According to the jurisprudence of the Court of Cassation, court expenses, as awarded by a court that rules on expropriation, include lawyers' fees, which constitute the largest part of such expenses. However, they are to be awarded to the party that wins the proceedings in question, and not to his or her lawyer. Therefore, court expenses and lawyers' fees constitute two different concepts: court expenses belong to the party that wins a set of proceedings and shall be paid by the person to the benefit of whom the expropriation in question took place; lawyers' fees relate to the internal relationship between a client and his lawyer and is fixed by an agreement concluded between them, provided that that agreement is in accordance with established legal standards (Court of Cassation judgment no. 1778/2001 and judgment no. 2073/2007). The law provides for the deposit of the lawyers' fees by the person liable for compensation, so as to ensure that the amount that the beneficiary would receive is not reduced (Court of Cassation judgment no. 702/2016).

29. A lawyer may bring a legal action seeking the payment of his fee under the special procedure provided by the Code of Civil Procedure in respect of disputes concerning fees for the provision of services (Ioannina Court of Appeal judgment no. 283/2009 and Court of Cassation judgment no. 321/2017).

30. Following the Court's judgment in *Philis v. Greece (no. 1)*, 27 August 1991, Series A no. 209), the Special Supreme Court (*Ανώτατο Ειδικό Δικαστήριο*) issued judgment no. 26/1993, which ruled that the Technical Chamber of Greece was not the only interested party entitled to bring proceedings seeking the payment of fees owed to a certain engineer.

THE LAW

I. JOINDER OF THE APPLICATIONS

31. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicants complained that the dismissal of their actions, by which they had sought that the Consignment Deposits and Loans Fund hand over the respective amounts fixed as lawyers' fees to the Athens Bar Association, on the grounds that they had lacked *locus standi*, had violated their right of access to a court, as provided in Article 6 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' arguments

33. The Government submitted that the application should be rejected for the applicants' lack of victim status. In particular, citing the relevant domestic judgments and law (see paragraphs 24 - 30), they argued that court expenses – including lawyers' fees, as fixed by the respective domestic courts – belonged to that party to the proceedings to whom the judgment in question awards costs and expenses. The amount awarded as lawyers' fees by a domestic court merely constitutes a reference amount for the purposes of withholding a certain percentage for distribution to the members of the relevant bar association. A lawyer's fee relates to the internal relationship that that lawyer has with his client and is fixed by an agreement concluded between them; in the event that the agreement is not valid, then the fee is fixed by the applicable provisions of the Lawyers' Code. By contrast, court expenses are fixed on the basis of Article 189 of the Code of Civil Procedure. The applicants could have lodged an action against their clients, seeking the payment of their respective fees based on their agreement or, in the absence thereof, based on the fees as fixed by the Lawyers' Code.

34. In addition, in the Government's view, the issue in the present case was that of which bar association was the beneficiary of the costs and expenses deposited in the Consignment Deposits and Loans Fund. In particular, in cases 48345/12 and 48348/12, the applicants complained of an alleged violation of their rights under Article 6 of the Convention and Article 1 of Protocol 1 to the Convention because their actions had been rejected for lack of *locus standi*; however, even if it had been accepted that

they had had legal standing, the issue would not have been resolved as lawyers from various bar associations had authorised the applicants to defend the cases before courts in other cities. What the applicants sought from the Strasbourg Court, given the circumstances of the instant cases, was a judgment concerning the compatibility *in abstracto* of the relevant legislative provisions with the Convention. In any event, in cases 48345/12 and 48348/12, in which the applicants had been authorised by other lawyers to appear before the domestic courts of other cities, the applicants had been paid a certain amount of what had been fixed as lawyers' fees, and in case 67463/12 the applicant had received the full amount. Therefore, they could no longer claim to be victims of a violation of the Articles of the Convention.

35. Lastly, the Government argued that the applicants had not exhausted the domestic remedies; in particular, they had failed to bring a subrogation action seeking that the Consignment Deposits and Loans Fund deposit the relevant amounts with the Athens Bar Association. On the contrary, they had brought a direct action, without pleading that the Athens Bar Association had neglected or refused to pursue such an action. In any event, as regards case no. 48345/12, there were still proceedings pending before domestic courts and the application should therefore be rejected. The same considerations applied also to case 48348/12, in which there was a two-year deadline for lodging an appeal on points of law against the judgment that had ruled that the applicants' claim had been time-barred (see paragraph 16 above).

36. The applicants referred to their application and argued that they had exhausted all domestic remedies. In addition, the fact that they had received some or even all the amounts awarded in those cases had not had any bearing on their access to a court, which had still been impeded. They did not provide any comment in relation to the rest of the Government's objections.

2. The Court's assessment

37. The Court considers that the issues raised by the Government regarding the issue of admissibility are closely linked to the substance of the applicants' complaint under Article 6 § 1. It therefore joins them to the merits.

38. The Court additionally notes that neither party contested the applicability of Article 6 of the Convention; the Court, however, is not precluded from examining it on its own motion.

39. In this connection, the Court refers to its general principles concerning the applicability of the civil limb of Article 6 § 1 (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44 -45, 25 September 2018).

40. Turning to the circumstances of the present case, the Court observes first of all, that there was a "dispute" concerning the deposit of the amounts

fixed as lawyers' fees by the courts ruling on the expropriations. Turning to whether there was a relevant "right" that could be said, at least on arguable grounds, to be recognised in domestic law, the Court recalls in this regard that, pursuant to domestic legislation, the person liable for paying compensation, in these cases the State or State-owned companies, shall deposit the lawyers' fees, as fixed by the court, in the Consignment Deposits and Loans Fund to the benefit of the bar association with whom the lawyers are registered (see paragraph 26 above). It follows that the applicants, in their capacities as the lawyers who had represented certain clients in expropriation proceedings, had the right to such fees and could require their payment, after the Bar Association, to the benefit of which the fees were deposited, had withheld the relevant amounts. The Court therefore concludes that the dispute in question concerned the applicants' right under the domestic law to receive the amounts fixed as lawyers' fees by the court ruling on the expropriation.

41. The Court notes that the applicants' complaint under Article 6 is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

42. The applicants, referring to the Court's case-law (*Philis v. Greece (no. 1)* (27 August 1991, Series A no. 209)) and to domestic case-law (see paragraph 30 above), argued that there was rich jurisprudence clarifying that a person who had provided services was entitled to pursue a direct action, provided that he or she requested that the amount be deposited with the relevant bar association. In their view, there was no provision in the Greek legal system (i) stipulating that a lawyer could not bring a direct action seeking that such a fee be deposited with the relevant bar association or (ii) explicitly authorising that bar association to bring a direct action seeking the payment of the fee of the lawyer in question, as determined by the relevant domestic judgments. Therefore, the limitation barring the applicants from seeking the payment of their fees for the services that they had provided had been arbitrary and had prevented the applicants from directly demanding their fee, thus rendering the exercise of their right to those fees dependent on the will of third parties, namely their respective bar associations.

43. The Government submitted that the right of access to a court was not absolute and that the domestic provisions stipulating who was to be the beneficiary of an amount deposited in the Consignment Deposits and Loans Fund were within the acceptable limitation imposed on that right. In particular, the said provision served the legitimate aim of ensuring that a lawyer would receive his fee, rather than that fee being withheld by his client, and that the bar association in question should not suffer any damage

in so far as the percentage to be distributed to its members was concerned. Accordingly, the said provision was to the benefit of both the lawyer in question and all the members of the bar association to whom he belonged. The efficiency of that system was proved by the outcome of case 67463/12, in which the action brought by the Athens Bar Association had resulted in the applicant receiving his fees. It followed from the domestic legislation and relevant case-law that a lawyer was not hindered in seeking the payment of his fees, as he had two possibilities: he could either bring a subrogation action seeking that the amount deposited in the Consignment Deposits and Loans Fund be handed over to his bar association, or he could bring a direct action against his client in accordance with the procedure applicable to disputes arising from the provision of services and demand the fee that had been agreed upon. In view of the above-mentioned considerations, the Government were of the view that there had been no violation of the applicants' right of access to a court.

2. The Court's assessment

(a) General principles

44. The right of access to a court guaranteed by Article 6 was established in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power that underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 116; see also *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 91, ECHR 2001-V; *Cudak v. Lithuania* [GC], no. 15869/02, § 54, ECHR 2010 and *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

45. Article 6 § 1 may therefore be relied on by anyone who considers that an interference with the exercise of one of his or her (civil) rights is unlawful and complains that he or she has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1. Where there is a serious and genuine dispute as to the lawfulness of such an interference, going either to the very existence or the scope of the asserted civil right, Article 6 § 1 entitles the individual concerned "to have this question of domestic law determined by a tribunal" (see *Z and Others*, cited above, § 92; see also *Markovic and Others v. Italy* [GC], no. 1398/03, § 98, ECHR 2006-XIV, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 85, 29 November 2016).

46. The right of access to a court must be "practical and effective", not theoretical or illusory (see, to that effect, *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in

respect of the guarantees provided by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII). For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that constitutes an interference with his or her rights (see *Nunes Dias v. Portugal* (dec.), nos. 2672/03 and 69829/01, ECHR 2003-IV, and *Bellet*, cited above, § 36). Equally, the right of access to a court includes not only the right to institute proceedings but also the right to obtain a "determination" of the dispute by a court (see, for example, *Fălie v. Romania*, no. 23257/04, §§ 22 and 24, 19 May 2015, and *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II).

47. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Zubac*, cited above, § 78, and *Lupeni Greek Catholic Parish and Others*, cited above, § 89, with further references).

48. Lastly, it is indeed in the first place for the national authorities, and notably the courts, to interpret domestic law. However, the Court has to verify the compatibility with the Convention of the effects of such an interpretation (see *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII; *Garzičić v. Montenegro*, no. 17931/07, § 32, 21 September 2010; and *Jovanović v. Serbia*, no. 32299/08, § 50, 2 October 2012). This applies in particular to the interpretation by courts of rules of a procedural nature, given that their particularly strict interpretation may deprive an applicant of the right of access to a court (see *Běleš and others v. the Czech Republic*, no. 47273/99, § 60, 12 November 2002, and *Zvolský* and *Zvolská v. the Czech Republic*, no. 46129/99, 12 November 2002). The Court's role in such cases is to determine whether the procedural rules were intended to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty (see, *mutatis mutandis*, *Efstathiou and Others v. Greece,* no. 36998/02, §§ 24, 27 July 2006*,* and

Syngelidis v. Greece, no. 24895/07, § 41, 11 February 2010) and whether the applicant was able to count on a coherent system that struck a fair balance between the authorities' interests and his own interests (see, *Maširević v. Serbia*, no. 30671/08, § 48, 11 February 2014).

(b) Application of the above principles in the present case

(i) Preliminary remarks

49. The Court notes at the outset that apart from the applicants' right of access to a court, the parties put forward arguments in respect of the issue of which bar association should be the beneficiary of the amounts fixed as lawyers' fees. However, the Court's task in the present case, having regard to the complaints before it, is to review whether the applicants' right of access to a court was impeded owing to the rejection of their action by the domestic courts.

(ii) The restriction on the applicants' right of access to a court

50. The applicants, after representing certain clients in expropriation proceedings, lodged actions with the domestic courts seeking that the amounts fixed as lawyers' fees be deposited by the Consignment Deposits and Loans Fund with the bar association with which they were registered, only to see their actions be rejected for lack of *locus standi*. The Court notes that the domestic courts' dismissal of the applicants' actions (on the grounds that they were not entitled to lodge them) clearly amounts to an interference with the applicants' right of access to a court. In so doing, the domestic courts cited Articles 8 and 18 of Law no. 2882/2001, which provided that amounts awarded as costs and expenses and as lawyers' fees in expropriation proceedings should be deposited in the Consignment Deposits and Loans Fund to the benefit of the relevant bar association. The domestic courts accordingly concluded that only a bar association could bring a direct action, although the applicants could bring a subrogation action.

51. The Court will examine whether the restriction in question was justified, that is to say, whether it pursued a legitimate aim and it presented a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

(iii) Whether the restriction pursued a legitimate aim

52. The Court observes that, according to the Government, the impugned legislation served the legitimate aim of ensuring that a lawyer would receive his fee and that the bar association would receive the amounts corresponding to the percentage to be distributed to its members. The Court sees no reason to doubt that in rejecting the applicants' actions, domestic courts pursued a legitimate aim, namely to secure that both the lawyer in charge of the cases and the bar association would receive the amounts that

were due to them pursuant to the legislation. It should thus be ascertained whether, in the light of all the relevant circumstances of the case, there was a reasonable relationship of proportionality between that aim and the means employed to attain it.

(iv) Whether the restriction was proportionate

53. In order to assess the proportionality on the applicants' restriction of access to a court, the Court will have regard to two criteria, namely a) whether that restriction was foreseeable based on the domestic legal framework and the deriving case-law (see, among other authorities, *Lupaş and Others v. Romania*, nos. 1434/02 and 2 others, § 69, ECHR 2006 XV (extracts)), b) whether the applicants had other legal remedies to assert their claims (see, *mutatis mutandis*, *Dimitras v. Greece*, no. 11946/11, § 41, 19 April 2018).

54. The Court notes that it does not have to assess the Greek system governing the payment of lawyers' fees in expropriation proceedings; rather, it must confine its attention as far as possible to the issue raised by the specific case before it. It must nevertheless examine the relevant provisions to the extent to which the impediment to the individual's right of access was in fact the result of their being applied (see, *mutatis mutandis*, *Philis*, cited above, § 61, and *De Geouffre de la Pradelle v. France*, 16 December 1992, § 31, Series A no. 253-B).

55. In this connection, the Court firstly observes that the provisions applicable to the present case refer solely to the lawyers' fees in the context of expropriation proceedings and do not concern the general system governing the lawyers' fees (see paragraph 24 above). In particular, Articles 8 and 18 of Law no. 2882/2001 provided that both court expenses and lawyers' fees should be fixed by the court ruling on compensation for the expropriation in question and should be deposited in the Consignment Deposits and Loans Fund to the benefit of the relevant bar association. However, there is no provision explicitly authorising solely a bar association to demand that amount or – for that matter, excluding a party to proceedings or that party's lawyer from demanding it so as to be deposited with the bar association.

56. In this regard, the Court considers it significant that the applicants' actions were aimed at securing the deposit of the relevant amounts with their bar association, pursuant to the domestic legislation. Therefore, their actions aimed at ensuring that the relevant amounts were indeed deposited with their respective bar associations and thus, the law's purpose would have been served if the applicants' actions had been allowed (see paragraph 52 above). It is not clear from the domestic framework provided why the applicants' actions (seeking to have the amounts awarded to their clients as lawyers' fees deposited with their respective bar associations) were rejected – especially if one takes into account

judgment 25/1993 issued by the Special Supreme Administrative Court by which such a right was recognised in respect of engineers for the recovery of fees against their clients (see paragraph 30 above). None of the provisions cited in the domestic judgments explicitly deprived the applicants of the right to bring a relevant action. The Court considers that the present cases and the system governing the lawyers' fees in expropriation proceedings differs from the case of engineers, which the Court examined in *Philis* (cited above) and resulted in the adoption of the aforementioned judgment of the Supreme Administrative Court. However, they share a common feature, given that, in *Philis*, as well as in the present cases, the beneficiaries were denied direct *locus standi* to assert their claims, in addition to the possibility offered by the domestic law to the relevant professional bodies to lodge a relevant action**.**

57. The Court takes note of the Government's argument that the lawyers' fees had constituted the largest part of the amounts fixed as costs and expenses and had been awarded to the persons whose property had been expropriated, the applicants' clients. The Court observes, however, that that argument is contradicted by the wording of Articles 8 and 18 of Law no. 2882/2001, in which the court expenses are cited separately from the lawyers' fees, as well as from the domestic judgments which cited the two amounts separately. In addition, while the domestic courts have ruled that an amount awarded as lawyers' fees belongs to the party that wins the proceedings in question, the Court notes that, under the relevant domestic legislation, the beneficiary is considered the respective bar association.

58. Having regard to what precedes, the Court concludes that the relevant legislative framework and the way it was applied by the domestic courts did not offer to the applicants a clear, practical and effective opportunity to assert their claims, as it did not follow with sufficient clarity who could bring an action seeking the amount awarded as lawyers' fees by the courts ruling on the expropriations. In order to conclude, however, that there was a violation of the applicants' right of access to a court, the Court has to ascertain whether there were other domestic remedies available to the applicants in order for them to be able to assert their claims.

59. In this regard, the Court has to examine the other possibilities that the Government alleged that the domestic law offered – namely the possibility to bring a subrogation action and the possibility to bring a direct action against their clients. As regards the subrogation action, the Court notes that it is generally agreed that such an action constitutes a *sui generis* action aimed at safeguarding the property of a debtor in the interests of a creditor. A person who brings a subrogation action must prove that he is the creditor of a debtor who has neglected to exercise his rights (see *Philis*, cited above, § 52). However, the Government have not adduced any domestic judgments in which a subrogation action brought by a lawyer seeking to have fees fixed by domestic courts in expropriation proceedings

deposited with a bar association have been accepted by the domestic courts. What is more, the provisions relating to the possibility to bring a subrogation action relate to the relationship between a creditor and a debtor; therefore, the interpretation taken by the domestic courts was not easily inferred.

60. The same considerations apply to a direct action brought by a lawyer against his client. Under the relevant domestic legislation this could constitute an effective remedy in proceedings in which a fee has been agreed upon by a lawyer and his client; however, in expropriation proceedings a lawyer's fee is fixed by the court and it appears that the system governing the lawyers' fees in expropriations differs from the ordinary system (see domestic legislation cited in paragraph 24 above). The Court takes note of the domestic judgments holding that that amount is separate from the actual fee agreed by a lawyer and his client. However, while those judgments affirmed a lawyer's right to seek independently and directly his fee from his client (irrespective of what the expropriation court had awarded), the Court has not been apprised of any actual instance of a lawyer successfully bringing such an action following expropriation proceedings. In this regard, the Court reiterates that the Convention is intended to guarantee rights that are practical and effective and not theoretical and illusory (see, among many other authorities, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 272, 13 September 2016). The fact that there exist some remedies available in theory should not lead the Court to ascertain that they are available in practice, especially when the Government have failed to provide any relevant domestic decision illustrating the effectiveness of such remedy. In the present cases, the domestic decisions adduced by the Government refer to procedures other than expropriation, which, however, as said above, is governed by a different system relating to lawyers' fees.

61. In that regard, the Court reiterates that the authorities should respect and apply domestic legislation in a foreseeable and consistent manner and that the prescribed elements should be sufficiently developed and transparent in practice in order to provide for legal and procedural certainty (see *Jovanović v. Serbia*, no. 32299/08, § 50, 2 October 2012).

62. Having regard to the above, the Court concludes that the restriction imposed on the applicants' right of access to a court was not proportionate. In particular, the Court is not satisfied that the relevant rules applicable in the present case met the quality-of-law requirement under the Convention and were sufficiently foreseeable. The applicants were entitled to expect a coherent system based on a clear, practical and effective opportunity to assert their claims (see *De Geouffre de la Pradelle*, cited above, § 34), which was not the case here. The above-mentioned conclusions are not contradicted by the fact that the applicants in the end received some, or even all, the fees awarded in the respective cases, following the actions brought

by the Athens Bar Association. The applicants were still faced with the lack of a coherent system to assert their claims, namely to request that the amounts fixed as lawyers' fees by the courts ruling on expropriation be deposited to the Bar Association with whom they were registered, and, in the absence of an alternative domestic remedy, could claim to be victims of a violation of their right of access to a court.

63. In view of the foregoing, the Court dismisses the Government's objections concerning the applicants' lack of victim status and the non-exhaustion of domestic remedies. It accordingly concludes that there has been a violation of the applicants' right of access to a court.

64. There has accordingly been a violation of Article 6 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

65. The applicants complained that the dismissal of their actions by the domestic courts had violated their right to the peaceful enjoyment of property, as provided in Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' arguments

66. The Government submitted that the complaint should be rejected for non-exhaustion of domestic remedies. In particular, the applicants had never lodged with the domestic courts any complaints raising the issue of their right to the peaceful enjoyment of their property. Besides, it could not be argued that their complaint relating to access to a court comprised a complaint relating to the enjoyment of their property, as those were two distinct rights.

67. The Government submitted also that the applicants' complaint should be rejected as incompatible *ratione materiae*. However, even if it was considered that there had been an interference with the applicants' property, the Government argued that that interference had been provided for by law, had been in the general interest and had secured a fair balance between the competing interests. In particular, as mentioned above, the law served a legitimate dual aim: on the one hand, for a client to not withhold

his lawyer's fees, and, on the other hand, for that lawyer's bar association to get a percentage of that fee, to be distributed to its members. That system had been efficient, as had been proved by the outcome in case 67463/12, in which the action brought by the Athens Bar Association had resulted in the applicant receiving his fees. In any event, a lawyer could also lodge either a (i) subrogation action seeking that the amount deposited in the Consignment Deposits and Loans Fund be handed over to the relevant bar association, or (ii) a direct action against his client seeking the sum that had been agreed upon between them.

68. The applicants argued that they had been the only lawyers to have provided services to their respective clients and that, on account of the arbitrary domestic judgments, they had been deprived of their fees. In case 48348/12, the Korinthos Bar Association had sent half the amount fixed as lawyers' fees (see paragraph 17 above) to the Athens Bar Association; therefore, they were still victims of that violation to the extent that they were still owed the remaining amount.

B. The Court's assessment

69. The Court notes that the Government have submitted various objections concerning the admissibility of the present complaints. In this connection, the Court considers it opportune here to distinguish the applications.

1. Application no. 67463/12

70. As regards application no. 67463/12, the Court considers that, for the reasons set out below, there is no objective justification for continuing to examine this complaint and that it is thus appropriate to apply Article 37 § 1 of the Convention, which provides as follows:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

71. In order to ascertain whether Article 37 § 1 (b) applies to the present case, the Court must answer two questions in turn: first, whether the circumstances complained of directly by the applicant still obtain and, second, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy*

(striking out) [GC], no. 36732/97, § 42, 24 October 2002, and *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 30, 20 December 2007).

72. In respect of the first criterion, it is not in doubt that the circumstances complained of by the applicant do not anymore obtain. In particular, following an action brought by the Athens Bar Association, the applicant received the amount that was awarded as lawyer's fees in the expropriation proceedings in which he represented his client (see paragraph 23 above). In addition, having regard to the nature of the alleged violation, the Court considers that the effects of the possible violation have also been addressed by the applicant having received the relevant amount. The Court finds therefore that both conditions for the application of Article 37 § 1 (b) of the Convention are met. The matter giving rise to the applicant's complaints can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*. Consequently, the case should be struck out of the list in so far as the complaint under Article 1 of Protocol No. 1 to the Convention is concerned.

2. Applications no. 48345/12 and 48348/12

73. The Court notes that part of the Government's preliminary objections (see paragraph 66 above) related to the applicants' non-compliance with the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention which, in so far as relevant, reads as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

74. The Court refers to the general principles regarding the exhaustion of domestic remedies set out in the cases of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), and *Gherghina v. Romania* ([GC] (dec.), no. 42219/07, §§ 83-88, 9 July 2015).

75. The Court reiterates in particular that Article 35 § 1 requires that complaints intended to be lodged with it should have first been made to the appropriate domestic body – at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law; furthermore, any procedural means that might prevent a breach of the Convention should be used. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared

inadmissible for failure to exhaust domestic remedies (see *Vučković and Others*, cited above, § 72).

76. Turning to the circumstances of the present cases, the Court notes that the applicants brought actions in the domestic courts seeking that the relevant fees that had been awarded as lawyers' fees in expropriation proceedings in which they had represented certain clients be deposited with their bar association. The Court notes that in none of their actions did the applicants expressly rely on or raise an issue under Article 1 of Protocol No. 1 to the Convention. Moreover, the applicants did not raise any specific arguments about an alleged violation of their right to the peaceful enjoyment of their property (even in substance) before the domestic courts. Instead, the applicants confined themselves to challenging the domestic courts' interpretation of the relevant domestic legislation as regards their *locus standi*.

77. In this connection, the Court notes that it follows from its case-law that the mere fact that an applicant has submitted his or her case to the relevant court does not of itself constitute compliance with the requirements of Article 35 § 1 of the Convention, as even in those jurisdictions where the domestic courts are able, or even obliged, to examine the case of their own motion, applicants are not dispensed from the obligation to raise before them a complaint subsequently made to the Court. Thus, in order properly to exhaust domestic remedies it is not sufficient for a violation of the Convention to be "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must actually have complained (expressly or in substance) about it in a manner that leaves no doubt that the same complaint that is subsequently submitted to the Court was indeed raised at the domestic level (ibid.; see also *Peacock v. the United Kingdom* (*dec*.), no. 52335/12, § 38, 5 January 2016).

78. In the case at issue, for the reasons set out above, it cannot be accepted that the applicants raised their complaints under Article 1 of Protocol No.1 to the Convention before the domestic courts prior to raising that complaint before the Court.

79. In these circumstances, the Court takes the view that the applicants did not properly exhaust domestic remedies and thus did not provide the national authorities with the opportunity – which is in principle intended to be afforded to Contracting States under Article 35 § 1 of the Convention – of addressing (and thereby preventing or putting right) the particular Convention violation alleged against them (see, for example, *Association Les Témoins de Jéhovah v. France* (dec.), no. 8916/05, 21 September 2010; *Habulinec and Filipović v. Croatia (*dec.), no. 51166/10, § 30, 4 June 2013; *Merot d.o.o. and Storitve Tir d.o.o v. Croatia* (dec.), no. 29426/08 and 29737/08, § 38, 10 December 2013; and *Peacock*, cited above, § 40).

80. The Court therefore finds that the applicants in applications nos. 48345/12 and 48348/12 have failed to exhaust domestic remedies in

respect of their complaints under Article 1 of Protocol No. 1 to the Convention and that these complaints must therefore be rejected as inadmissible under Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. Article 41 of the Convention provides:

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

A. Damage

82. As regards pecuniary damage, the applicants claimed EUR 54,707.75 for application no. 48345/12 and EUR 9,202.50 for application no. 48348/12. No claim for pecuniary damage was submitted for application no. 67463/12. As regards non-pecuniary damage, the applicants claimed EUR 100,000 jointly for each of applications nos. 48345/12 and 48348/12; the applicant in application no. 67463/12 requested EUR 50,000.

83. The Government contested those claims, arguing that the sums claimed in respect of non-pecuniary damage were excessive in view of the circumstances of the cases. As regards the sums claimed in respect of pecuniary damage, the Government argued that the issue in the instant case was who the beneficiary should be, a mater that was still pending before the domestic courts following the actions lodged by the Athens Bar Association.

84. The Court, having regard to its conclusions concerning the alleged violation of Article 1 of Protocol No. 1 to the Convention, does not discern any causal link between the violation found under Article 6 § 1 of the Convention and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicants EUR 10,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable in respect of all applications jointly.

B. Costs and expenses

85. The applicants also claimed EUR 1,000 in each application for costs and expenses incurred before the Court (a total of EUR 3,000 in respect of all three applications), enclosing the relevant receipts for the sums paid to their representative.

86. The Government submitted that only documented and sufficiently detailed claims should be reimbursed and that the applicants' claim should therefore be rejected as they lacked a detailed account of the costs incurred.

In any event, they found this claim excessive and unsubstantiated, especially in view of the fact that no hearing had taken place.

87. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 jointly for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

C. Default interest

88. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Joins* to the merits the Government's preliminary objections concerning the admissibility of the complaint under Article 6 of the Convention and dismisses them;

3. *Declares* the complaint under Article 6 § 1 admissible and the remainder of the applications 48345/12 and 48348/12 inadmissible;

4. *Decides* to strike the application no. 67463/12 out of the list in so far as the complaint under Article 1 of Protocol No. 1 to the Convention is concerned;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros) to each of the applicants in respect of all applications jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses in respect of all applications jointly;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Ksenija Turković
Deputy Registrar	President