

In the case of Ettl and Others*,

* Note by the Registrar: The case is numbered 12/1985/98/146. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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 the Rules of Court, as a Chamber composed of the following judges:

Mr. R. Ryssdal, President,
Mr. G. Lagergren,
Mr. F. Gölcüklü,
Mr. F. Matscher,
Mr. B. Walsh
Sir Vincent Evans,
Mr. C. Russo,

and also of Mr. M.-A. Eissen, Registrar, and H. Petzold, Deputy Registrar,

Having deliberated in private on 23 October 1986 and 24 March 1987,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 18 October 1985, within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 9273/81) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by Mr. Anton Ettl, Mrs. Leopoldine Ettl, Mr. Anton Schalhas, Mrs. Rosa Schalhas, Mr. Franz Gunacker, Mrs. Maria Gunacker, Mr. Anton Haas and Mrs. Maria Haas, all Austrian nationals, in 1980.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 (art. 6-1) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicants - including Mr. Josef Haftner and Mrs. Maria Haftner, beneficiaries of Mr. Gunacker, deceased - stated that they wished to take part in the proceedings pending before the Court and designated the lawyer who would represent them (Rule 30).

3. The Chamber of seven judges to be constituted included ex officio Mr. F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 25 October 1985, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr. D. Evrigenis, Mr. F. Gölcüklü, Mr. B. Walsh, Sir Vincent Evans and Mr. C. Russo (Article 43 in fine

of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mr. Evrigenis died, and his place was taken by Mr. G. Lagergren, substitute judge (Rules 22 § 1 and 24 § 1).

4. Having assumed the office of President of the Chamber (Rule 21 § 5), Mr. Ryssdal consulted - through the Deputy Registrar - the Agent of the Austrian Government ("the Government"), the Commission's Delegate and the applicants' lawyer on the need for a written procedure (Rule 37 § 1). On 10 January 1986, he directed that the Agent should have until 28 February 1986 to file a memorial and that the Delegate should be entitled to reply within two months of receiving such memorial from the Registrar.

On the same day he gave the applicants' lawyer leave to use the German language (Rule 37 § 3).

The Government's memorial reached the registry on 13 March. By letter of 13 May the Secretary to the Commission informed the Registrar that the Delegate would not be replying in writing.

5. Having consulted - through the Deputy Registrar - the Agent of the Government, the Commission's Delegate and the applicants' lawyer, the President directed on 25 September 1986 that the oral proceedings should commence on 20 October 1986 (Rule 38).

On 6, 14 and 16 October, the Registrar received a number of documents which the President had instructed him to obtain from the Commission and the applicants, together with the applicants' claims for just satisfaction.

6. The hearing was held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. H. Türk, Legal Adviser, Ministry of Foreign Affairs, Agent,

Mr. D. Okresek, Federal Chancellery,

Mr. D. Hunger, Federal Ministry of Agriculture and Forestry,
Advisers;

- for the Commission

Mr. F. Ermacora, Delegate;

- for the applicants

Mr. R. Wandl, Rechtsanwalt, Counsel,

Mr. E. Pawel, engineering consultant, Adviser.

The Court heard addresses by the above, as well as their replies to its questions. The Government produced documents at the hearing.

AS TO THE FACTS

7. The applicants are Austrian farmers resident at Obritzberg in Lower Austria. They complain of consolidation proceedings (Zusammenlegungs-verfahren) in respect of their land in July 1973.

I. The circumstances of the case

1. The proceedings before the land reform boards

8. On 30 July 1973, the Lower Austrian District Agricultural Authority (Agrarbezirksbehörde - "the District Authority") published a consolidation plan for Obritzberg which included the applicants' land. The applicants lodged an appeal with the Provincial Land Reform Board (Landesagrarsenat - "the Provincial Board"), claiming that they had not received land compensation as provided for in the Lower Austrian Agricultural Land Planning Act (Flurverfassungs-Landesgesetz - see paragraph 15 below). The grounds of appeal differed from one applicant to the other according to the way in which the consolidation plan affected each individual's property.

9. The Provincial Board gave its decisions on 26 and 27 May 1975, after hearing the parties and several other landowners affected by the changes the applicants were seeking. It determined the appeal on the basis of the case-file and after some of the members had inspected the site, and it made a number of variations in the land compensation awarded to the applicants.

In accordance with section 5(2) of the Federal Agricultural Authorities Act (Agrarbehördengesetz 1950, as amended in 1974 - see paragraph 15 below), the Provincial Board was composed of three judges - all three from the Court of Appeal on 26 May 1975, two from the Court of Appeal and one from the Regional Court on 27 May 1975 - and five civil servants from the Office of the Lower Austrian Provincial Government (Amt der Landesregierung). The chairman was the head of Division VI 4 of the Office, and the rapporteur was a civil servant in that Division; a third member of the Board belonged to Division VI 11. The remaining two members do not appear in the Office's organisational chart for 1975/76, which was filed by the Government, but do appear in the one for 1976/77 (i.e. of later date than the Provincial Board's decision in the case); at that time, together with the chairman and the rapporteur, they were in Division VI 3, which, according to the Government, was set up in 1976 following a reorganisation of the Office's administrative departments. In its report (paragraph 97) the Commission relied not on the 1975/76 chart but on the 1976/77 one; it noted that at the time the Provincial Board took its decision, four of its ordinary members and their substitutes came from Division VI 3 and the chairman, the rapporteur and two other members worked in Division VI 4.

10. The applicants then appealed to the Supreme Land Reform Board (Oberster Agrarsenat - "the Supreme Board"). On 6 October 1976, the Supreme Board allowed the appeals of the Ettls and the Schalhases to the extent that they were complaining of a danger that some of the parcels of land allotted to them in compensation for their original land might be eroded by water, and it consequently ordered that a number of drainage measures should be taken; for the rest, their appeals were dismissed, as were those of the Gunackers and the Haases in their entirety.

The Supreme Board was composed of three judges - members of the Supreme Court (Oberster Gerichtshof) - and five civil servants from the Federal Ministry of Agriculture and Forestry (Bundesministerium für Land- und Forstwirtschaft) (section 6(2) of the Federal Agricultural Authorities Act - see paragraph 18 below). Two of the civil servants - the chairman and the rapporteur - belonged to Division I 7, which was responsible among other things for providing the Board's secretariat; the other three belonged to Divisions II C 7, II C 8 and V A 3 respectively.

2. The proceedings in the Constitutional Court and the Administrative Court

11. The applicants then lodged complaints with the Constitutional Court (Verfassungsgerichtshof). In particular they claimed that they had been deprived of their right to a decision by the lawful judge

(gesetzlicher Richter - Article 83(2) of the Federal Constitution (Bundes-Verfassungsgesetz)), because under the legislation on the organisation of the agricultural authorities several experts had to sit on the Provincial Board and the Supreme Board. The applicants found it unreasonable that these members should have voting rights in cases where the issue under consideration was outside their field of expertise or where they had themselves prepared the relevant expert opinion. In addition, they claimed that there had been an infringement of their right of property, secured in the Constitution. They also referred in a general way to the relevant provisions of the Human Rights Convention.

In judgments on 1 February (in the case of Mr. and Mrs. Haas), 28 February (in the case of Mr. and Mrs. Gunacker) and 19 March 1980 (in the case of Mr. and Mrs. Ettl and Mr. and Mrs. Schalhas), the Constitutional Court rejected the complaints as unfounded. It pointed out *inter alia* that Article 12(2) of the Federal Constitution expressly provided for the participation of experts. At the applicant's request, the court referred the cases to the Administrative Court (Verwaltungsgerichtshof) for the latter to determine whether any non-constitutional rights had been infringed.

12. In the Administrative Court the applicants challenged the lawfulness of the land compensation awarded them. They claimed that the requirements of the Lower Austrian Agricultural Land Planning Act had not been complied with and also that there had been an infringement of the provisions of the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz) concerning the impartiality of the administrative authorities and the right to a fair trial - the experts had voted on a matter outside their professional competence; there had been no written expert opinion; and none of the boards had informed the parties of the findings of the investigation (Ermittlungsverfahren).

On 11 November (in the case of Mr. and Mrs. Ettl and Mr. and Mrs. Gunacker) and 25 November 1980 (in the case of Mr. and Mrs. Schalhas and Mr. and Mrs. Haas), the Administrative Court held that there had been a breach of the applicants' procedural rights; it dismissed the other complaints.

The judgments, which were worded in similar terms, may be summarised as follows (paragraph 52 of the Commission's report):

- Inasmuch as the applicants were accusing the expert members of the Supreme Board of bias, their submissions were without foundation, as the composition of the Board had been in accordance with the law.

- In so far as they were complaining that there had been no written expert opinion on certain points, they had not indicated what relevant facts had not been brought to the Supreme Board's knowledge for want of such an opinion. Accordingly, there had not been any material procedural irregularity (wesentlicher Verfahrensmangel).

- As to the investigation, they should have been informed both of the findings of fact (Befund) and of the expert opinion itself (Gutachten). However, as they did not specify what additional evidence they would have adduced had they known the outcome of the investigation, they again did not succeed in establishing that there had been any material procedural irregularity.

- Lastly, the complaints that the Agricultural Land Planning Act had not been complied with were without foundation. The Supreme Board had, however, ordered a number of measures to be taken - drainage of the land allocated to the Ettls, the Schalhases and the Haases, and construction of an access way in the case of the Gunackers - without specifying all the works that were necessary, without giving sufficient reasons for its decisions and without having established

all the material facts. In the case of the Ettls, the Board had obtained an opinion (Stellungnahme) from its agronomist member on the problem of the erosion of certain land but had not communicated it to the applicants, who had accordingly not been able to comment on it.

The Administrative Court consequently quashed the impugned decisions on these points on grounds of procedural irregularity and remitted the cases to the Supreme Board.

13. The Supreme Board allowed the applicants' appeals on 3 March 1982. The District Authority subsequently published a new consolidation plan, which the applicants challenged before the Provincial Board in the autumn of 1985.

The Court has not been informed of the progress of these proceedings.

II. The relevant legislation

1. In general

14. Powers in respect of land reform in Austria are divided between the Federation and the Länder. Legislation establishing general principles is the responsibility of the Federation, while implementing legislation and law enforcement is the responsibility of the Länder (Article 12(1)(3) of the Federal Constitution). By Article 12(2) of the Federal Constitution, decisions at final instance and at Land level are taken by boards consisting of a "chairman, judges, civil servants and experts"; "the board which decides at final instance shall be set up within the appropriate Federal Ministry". "Provision shall be made in a Federal Act for the organisation, functions and procedure of the boards and for the principles for organising the other authorities concerned with land reform". This Act must provide that the executive shall not be able to set aside or vary the boards' decisions; it cannot exclude appeals to the provincial board against decisions by the authority of first instance.

15. Within this constitutional framework the Federal Parliament has passed three Acts dealing with the following matters:

(i) the legal principles applicable to land reform (Federal Agricultural Land Planning (General Principles) Act (Flurverfassungs-Grundsatzgesetz 1951), as amended in 1977);

(ii) the organisation of the land reform boards and the principles for organising the authorities of first instance (Federal Agricultural Authorities Act (Agrarbehördengesetz 1950), as amended in 1974);

(iii) proceedings before agricultural authorities (Federal Agricultural Proceedings Act (Agrarverfahrensgesetz 1950), which refers to the General Administrative Procedure Act).

The Länder have regulated the matters for which they are made responsible under the Federal legislation in provincial agricultural land planning Acts (Flurverfassungs-Landesgesetze). In Lower Austria, consolidation is governed by the Agricultural Land Planning Act 1975. This replaced an Act of 1934 and was itself amended in certain respects by an Act of 23 February 1979.

2. The agricultural authorities

16. The first-instance authority in Lower Austria is the District Agricultural Authority, which is a purely administrative body. The higher authorities are the Provincial Board, established at the Office of the Provincial Government, and the Supreme Board, set up within the Federal Ministry of Agriculture and Forestry.

Decisions (Bescheide) of the District Authority can be challenged by

way of appeal (Berufung) to the Provincial Board, whose decision is final except where it has varied the decision in question and where the dispute concerns one of the issues listed in section 7(2) of the Federal Agricultural Authorities Act, such as the lawfulness of the compensation in the event of land consolidation; in such cases an appeal lies to the Supreme Board.

In Austrian law the land reform boards are classified as boards whose members include judges (Kollegialbehörden mit richterlichem Einschlag) and which constitute a kind of "specialised administrative tribunal".

17. The Provincial Board has eight members, all appointed by the Government of the Land (section 5(2) and (4) of the Federal Agricultural Authorities Act), viz.:

- one Land civil servant, who is legally qualified (rechtskundig), and acts as chairman;
- three judges;
- a legally qualified Land civil servant with experience in land reform, who acts as rapporteur;
- a senior Land civil servant (Landesbeamter des höheren Dienstes) with experience in agronomic matters;
- a senior Land civil servant with experience in forestry matters; and
- an agricultural expert within the meaning of section 52 of the General Administrative Procedure Act.

18. The Supreme Board likewise has eight members (section 6(2) and (4) of the Federal Agricultural Authorities Act), viz.:

- one legally qualified senior civil servant from the Federal Ministry of Agriculture and Forestry, who acts as chairman;
- three members of the Supreme Court;
- a legally qualified senior civil servant from the Federal Ministry of Agriculture and Forestry with experience in land reform, who acts as rapporteur;
- a senior civil servant from the Federal Ministry of Agriculture and Forestry with experience in agronomic matters;
- a senior civil servant from the Federal Ministry of Agriculture and Forestry with experience in forestry matters; and
- an agricultural expert within the meaning of section 52 of the General Administrative Procedure Act.

The judicial members are appointed by the Federal Minister of Justice, and the others by the Federal Minister of Agriculture and Forestry.

19. Section 52 of the General Administrative Procedure Act, which is referred to in sections 5(2) and 6(2) of the Federal Agricultural Authorities Act, provides:

"1. If it becomes necessary to take expert evidence, the authority shall rely on the services of the official experts (Amtssachverständige) attached to it or put at its disposal.

2. However, by way of exception, the authority may also consult other suitable persons sworn as experts if no official experts are available or if it becomes necessary having regard to the particular circumstances of the case. ..."

20. Members of land reform boards are appointed for five years and may be re-appointed (section 9(1) of the Federal Agricultural Authorities Act). They cease to hold office before the expiry of their term if, inter alia, they no longer satisfy the conditions of appointment (section 9(2)). Any member may, at his own request, be relieved of his office on health grounds or for professional reasons which prevent him from properly discharging his duties (section 9(3)). If a judicial or civil-servant member is suspended from duty by decision of a disciplinary tribunal, he shall automatically also be suspended from duty as a member of a land reform board (section 9(4)).

21. The members of these boards discharge their duties independently and are not subject to any instructions (section 8 of the Federal Agricultural Authorities Act and Article 20(2) of the Federal Constitution). The executive can neither set aside nor vary their decisions (section 8 of the Federal Act and Article 12(2) of the Federal Constitution - see paragraph 14 above). The decisions can be challenged in the Administrative Court (section 8 of the Federal Act).

22. The pattern of organisation described above was the outcome of a legislative change in 1974 following a judgment of the Constitutional Court in the same year.

In the Constitutional Court's view, the land reform boards as constituted under the 1950 Act could not be regarded as being independent and impartial tribunals within the meaning of Article 6 § 1 (art. 6-1) of the Convention - their members included at that time a Minister from the Federal Government (in the case of the Supreme Board) or the relevant provincial government (in the case of the provincial boards), and the other members could be dismissed at any time by the relevant authorities (judgment of 19 March 1974, *Erkenntnisse und Beschlüsse des Verfassungsgerichtshofes*, 1974, vol. 39, no. 7284, pp. 148-161).

The new legislation excluded from the boards anyone who was a member of either the Federal Government or a provincial government, introduced provisions governing the term of office and the dismissal of members and provided for appeal to the Administrative Court (sections 5(2), 6(2), 8 and 9 of the Federal Agricultural Authorities Act 1974).

3. Procedure before land reform boards

23. Procedure before the land reform boards is governed by the Federal Agricultural Proceedings Act (see paragraph 15 above), section 1 of which stipulates that the General Administrative Procedure Act shall apply - except for one section of no relevance in the instant case - subject to the variations and additional provisions made in the Federal Act.

The boards are responsible for the conduct of the proceedings (section 39 of the General Administrative Procedure Act). By section 9(1) and (2) of the Federal Act, the boards take their decisions after a private hearing. This is normally attended by the parties, who may consult the file (section 17 of the General Administrative Procedure Act). The parties may appear in person or be represented (section 9(3) of the Federal Act). The chairman may call witnesses and, in order to obtain information, civil servants who contributed to the decision at first instance and to the preparation of the decision (section 9(5)).

Hearings begin with a report by the rapporteur; the board then clarifies the subject-matter of the dispute by hearing evidence from the parties and the witnesses and by looking at the legal and economic situation in detail (*eingehend*) (section 10(2)). It proceeds on the basis of the facts found by the authority below, but can also order

further investigations to be made by that authority or by one or more of its own members (section 10(1)). The parties must be able to acquaint themselves with the findings made as a result of the taking of evidence (Beweisaufnahme) and to submit their comments (section 45(3) of the General Administrative Procedure Act).

The boards deliberate and vote without the parties being present. After discussing the outcome of the hearing, the rapporteur submits conclusions (Antrag); anyone wishing to submit different conclusions (Gegen- und Abänderungsanträge) must give reasons for them (section 11(1) of the Federal Act). The chairman determines the order in which the conclusions are put to the vote (ibid). The rapporteur votes first, followed by the judges and then the other members, including the chairman, who votes last and has a casting vote if the votes are divided equally (section 11(2)).

If an appeal is brought - within the prescribed two weeks (section 7(3)) - and is held to be admissible, the appropriate board will, if the findings of fact are so defective that a new hearing appears to be unavoidable, quash the disputed decision and remit the case to the authority below; otherwise it will determine the merits of the case itself (section 66(2) and (4) of the General Administrative Procedure Act). It may vary either the operative part of the impugned decision or the reasons given for the decision (section 66(4)).

Boards must determine cases without undue delay (ohne unnötigen Aufschub) and in any event not later than six months after an application has been made to them (section 73(1)). If the board's decision (Erkenntnis) is not notified to the parties concerned within that time, the parties may apply to the higher authority, which will thereupon acquire jurisdiction to determine the merits (section 73(2)). If the latter authority fails to give a decision, jurisdiction passes - on an application by the interested party - to the Administrative Court (Article 132 of the Federal Constitution and section 27 of the Administrative Court Act).

Reasons must be given for the boards' decisions, which must summarise clearly (klar und übersichtlich) the findings of the investigation, the assessment of the evidence, and the ruling - on the basis of that material - on the legal issues arising in the case (sections 58(2) and 60 of the General Administrative Procedure Act). Decisions are sent to the parties; a board may, however, choose to give its decision forthwith (section 13 of the Federal Act).

4. Appeals to the Constitutional Court and the Administrative Court

24. The decisions of land reform boards can be challenged in the Constitutional Court. The latter reviews whether there has been any infringement of an applicant's rights under the Constitution and whether any decree (Verordnung) unauthorised by statute law or any unconstitutional statute or international treaty unlawful (rechtswidrig) under Austrian law has been applied (Article 144 of the Federal Constitution).

25. As an exception to the general rule laid down in Article 133(4) of the Federal Constitution, section 8 of the Federal Agricultural Authorities Act provides for an appeal to the Administrative Court against the decisions of land reform boards. Application may be made to the Administrative Court before or after an application to the Constitutional Court, which, if it rules that there has been no infringement of the right relied on in the application to it, will refer the case to the Administrative Court if the applicant so requests (Article 144(3) of the Federal Constitution).

26. Under Article 130 of the Federal Constitution, the Administrative Court hears applications alleging the unlawfulness of an administrative act (Bescheid) or coercion (Befehls- und

Zwangsgewalt) against an individual or the breach by a competent authority of its duty to take a decision. It also hears appeals against decisions by boards whose members include judges - such as the land reform boards - where such jurisdiction is conferred on it by statute (see paragraphs 16, 22 and 25 above).

If the Administrative Court does not dismiss the application as unfounded, it will quash the decision appealed against; it determines the merits itself only where the relevant authority has failed in its duty to give a decision (section 42(1) of the Administrative Court Act (Verwaltungsgerichtshofgesetz)).

When reviewing the lawfulness of an administrative act or of a decision by a board whose members include judges, the Court does so on the basis of the facts found by the authority concerned and solely in the light of the complaints made, unless the authority has acted ultra vires or procedural requirements have not been complied with (section 41 of the Administrative Court Act). In this connection the Act specifically provides that the Court shall quash the act appealed against - on grounds of procedural irregularity - where the facts the administrative authority held to have been established are contradicted in a vital respect by the file, or where they are incomplete in such a respect or where there has been a failure to comply with rules which, if they had been correctly applied, might have resulted in a different decision (section 42(2)(3) of the aforementioned Act).

If, during the consideration of a case, grounds emerge which were previously unknown to the parties, the latter must be given an opportunity to be heard by the court, which must adjourn the proceedings if necessary (section 41(1) of the Act).

27. Procedure consists mainly in an exchange of pleadings (section 36), followed (except in certain cases specified in the Act) by a hearing inter partes, which will normally be held in public (sections 39 and 40).

PROCEEDINGS BEFORE THE COMMISSION

28. The applicants applied to the Commission on 27 October 1980 (application no. 9273/81). They claimed that they had not had a hearing by an independent and impartial tribunal as required by Article 6 § 1 (art. 6-1) of the Convention.

29. The Commission declared the application admissible on 9 March 1984. In its report of 3 July 1985 (made under Article 31) (art. 31), it reached the conclusion that there had been a breach of Article 6 § 1 (art. 6-1) (ten votes to two).

The full text of the Commission's opinion and of the separate opinions contained in the report is annexed to this judgment.

FINAL SUBMISSIONS TO THE COURT

30. At the hearing on 20 October 1986, the Court was asked

- by the Government "to hold that in the present case the provisions of Article 6 § 1 (art. 6-1) of the European Convention on Human Rights have not been violated and that therefore the facts underlying the dispute do not indicate any breach by the Republic of Austria under the Convention";
- by the Commission's Delegate to uphold the Commission's opinion; and
- by the applicants to find in their favour.

AS TO THE LAW

31. The applicants claimed that they had not had a "public" hearing by an "independent and impartial tribunal". In their submission, the Provincial and Supreme Land Reform Boards were not sufficiently independent of the executive; at least some of their members could not be considered to be impartial; and proceedings did not take place in public. Subsequent review by the Administrative Court had not, they contended, provided a remedy: it was available only after lengthy administrative proceedings and had not been sufficiently wide in scope, since it was in principle confined to consideration of points of law. They argued that there had consequently been a breach of Article 6 § 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... public hearing ... by an independent and impartial tribunal established by law. ..."

The Government disputed these contentions; the Commission agreed with the applicants that their right to a hearing by an "independent and impartial tribunal" had not been respected.

1. Applicability of Article 6 § 1 (art. 6-1)

32. The Obritzberg agricultural consolidation plan concerned, inter alia, land belonging to the Ettl, Schalhas, Gunacker and Haas families, which was taken from them in exchange for land previously belonging to other owners. The applicants contested - and continue to contest - the lawfulness of the compensation obtained. Any decision - whether favourable or unfavourable - by the authorities dealing with the matter consequently affected, affects or will in the future affect their property rights. The outcome of the proceedings complained of is accordingly "decisive for private rights and obligations" (see the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 39, § 94, and the Sramek judgment of 22 October 1984, Series A no. 84, p. 17, § 34), so that Article 6 § 1 (art. 6-1) applies in the instant case; the Government, moreover, conceded this.

2. Compliance with Article 6 § 1 (art. 6-1)

33. The dispute ("contestation") related to the consolidation plan adopted and then published in July 1973 by the Lower Austrian District Agricultural Authority. The dispute was submitted to the Provincial Board, the Supreme Board, the Constitutional Court and the Administrative Court in turn. It must therefore be determined whether recourse to those authorities satisfied the requirements of Article 6 § 1 (art. 6-1).

(a) "Independent and impartial tribunal"

34. The Provincial and Supreme Boards, the Administrative Court and the Constitutional Court are clearly tribunals established by law (see, mutatis mutandis, the above-mentioned Sramek judgment, p. 17, § 36). It is further necessary that they should have been independent and impartial.

35. The Administrative Court and the Constitutional Court undoubtedly satisfied that requirement, but, in the applicants' submission, the same was not true of the Provincial and Supreme Boards, mainly on account of their membership: the Provincial and Supreme Boards comprised a majority of civil servants in a hierarchical relationship with one another and three of whom sat as experts, while the other two occupied the key positions of chairman and rapporteur. The applicants also contended that the members' term of office was too short. In their view, members should be appointed for life, in order to ensure that they were not subject to any pressure.

The Government saw these boards as "specialised administrative tribunals" (see paragraph 16 above) such as have existed in Austria since the last century. They maintained that the boards' members had the necessary independence - in 1974, the legislature had adjusted the organisation of the boards to comply with the requirements of Article 6 (art. 6) as the Court had interpreted it in its judgment of 16 July 1971 in the Ringeisen case.

In the view of the Commission, on the other hand, the Provincial and Supreme Boards did not have sufficient independence in the instant case, as they contained a majority of officials some or all of whom were from the same civil-service departments and in a position of hierarchical subordination in respect of their other duties (see paragraphs 97 and 98 of the Commission's report and paragraphs 9 and 10 above).

36. The Court notes that, at the time in question, the Provincial Board included three judges; the head of Division VI 4 of the Office of the Lower Austrian Provincial Government, who acted as chairman; a member of the same division, as rapporteur; a member of Division VI 11; and two other civil servants from the Office of the Provincial Government, one of them sitting as an agricultural expert (see paragraph 9 above).

The Supreme Board consisted of three Supreme Court judges and five civil servants from the Federal Ministry of Agriculture and Forestry - the chairman and the rapporteur came from Division I 7, the other three from Divisions II C 7, II C 8 and V A 3 (see paragraph 10 above).

37. The independence and impartiality of the judge members is not in issue.

There remain the civil servants whom the Provincial Board and the Supreme Board included as members pursuant to the Federal Agricultural Authorities Act (see paragraphs 17 and 18 above).

38. It should be noted first of all that the fact that these civil servants sat, and even constituted a majority, on the bodies concerned does not in itself contravene Article 6 § 1 (art. 6-1) of the Convention. The Federal Constitution and the Federal Agricultural Authorities Act make provision for their independence and prohibit public authorities from giving them any instructions concerning their judicial duties (see paragraph 21 above; and the above-mentioned Ringeisen judgment, Series A no. 13, pp. 39-40, §§ 95-97, and the above-mentioned Sramek judgment, Series A no. 84, p. 19, § 41). Nor did the applicants claim that the civil servants who heard their case had received any such instructions as to the matters in dispute.

The boards were independent not only of the executive but also, *inter alia*, of the parties to the case, namely the owners of the land concerned (see the above-mentioned Ringeisen judgment, p. 39, § 95, and the Campbell and Fell judgment of 28 June 1984, Series A no. 80, p. 39, § 78). It should be emphasised that neither the Provincial Government nor the Federal Government was a party to the case; in this respect the present case is similar to the Ringeisen case and differs from the Sramek case (see the above-mentioned Sramek judgment, *ibid.*).

39. Given the situation in law and in fact as found in the present case, the hierarchical links which existed in other contexts between civil servants from the same division are of no consequence from the point of view of Article 6 (art. 6) either. It would appear, moreover, that such links existed only between the chairman and the rapporteur in each of the two boards.

40. As to the three civil servants who, pursuant to the Act, sat

on account of their experience of agronomy, forestry and agriculture, their membership cannot give rise to doubts about the independence and impartiality of the boards. They were experts in their fields; such experts are needed in cases concerning land consolidation, which is an operation that raises issues of great complexity and affects not only the owners directly concerned but the community as a whole. The boards' composition enables them to reach balanced decisions, having regard to the various interests at stake. Besides, the domestic legislation of the Council of Europe's member States affords many examples of tribunals in which professional judges sit alongside specialists in a particular sphere whose knowledge is desirable and even essential in settling the disputes within the tribunals' jurisdiction.

Where these civil servants prepare a written opinion on a given issue, section 45(3) of the General Administrative Procedure Act requires that it be communicated to the parties, who must be given an opportunity to submit their comments (see paragraph 23 above). The adversarial nature of the proceedings before the boards under the Federal Agricultural Authorities Act and the General Administrative Procedure Act (see the above-mentioned Sramek judgment, p. 18, § 38) is accordingly quite unaffected by the participation of the "civil-servant experts". In the case of the Ettls, the Administrative Court in fact quashed the Supreme Board's decision, precisely on the ground that the opinion of the member who was an agronomy expert had not been brought to the applicants' knowledge (see paragraph 12 above).

41. As regards the length of the term of office of members of the boards, the Federal Agricultural Authorities Act likewise satisfies the conditions laid down in Article 6 § 1 (art. 6-1): the five-year term, coupled with virtual irremovability during that period (see paragraph 20 above), does not put the independence and impartiality of these boards in doubt (see the above-mentioned Sramek judgment, *ibid.*).

(b) "Public hearing"

42. In accordance with the Act, the sittings of the boards which heard the instant case were attended by the parties but were not held in public (see paragraph 23 above).

This lack of any public hearing, which is normally contrary to Article 6 § 1 (art. 6-1), is covered, however, by the reservation Austria made when ratifying the Convention. On this point, the Court refers to its above-mentioned judgment in the Ringeisen case; it sees no reason to depart from that judgment (pp. 40-41, § 98).

43. Accordingly, there was no breach of Article 6 § 1 (art. 6-1) in respect of the Provincial and Supreme Boards. It is consequently unnecessary to determine whether the Administrative Court's review - taken by itself or in conjunction with the Constitutional Court's review - complied, as regards its scope, with the requirements of Article 6 § 1 (art. 6-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no breach of Article 6 § 1 (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 April 1987.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

