In the Poiss case*,

---

* Note by the Registrar: The case is numbered 17/1986/115/163. 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 consisting of the following judges:

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

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

Having deliberated in private on 24 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 14 May 1986, 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. 9816/82) against the Republic of Austria, lodged with the Commission under Article 25 (art. 25) by Mr. Leopold Poiss and his children, Josef and Anna, who are all Austrian nationals, in 1982.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Republic of Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision from the Court 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 and Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicants - with the exception of Leopold Poiss, who had died on 30 April 1984 - stated that they wished to take part in the proceedings pending before the Court and designated the lawyer who would represent them (Rule 30).

On 28 May 1986, the President of the Court gave the said lawyer leave to use the German language (Rule 27 § 3).

3. On 5 June 1986, the President of the Court referred the case to the Chamber constituted to consider the case of Ettl and Others (Rule 21 § 6). This 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)). The other five members, chosen by lot on 25 October 1985, were 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 30 June 1986, he directed that the said Agent and lawyer should each have until 15 August 1986 to submit memorials, and that the Delegate should be entitled to file a memorial in reply within two months of the day on which the last filed of these memorials was forwarded to him by the Registrar.

The applicants' memorial reached the registry on 18 August. The Permanent Representative of Austria to the Council of Europe and the Secretary to the Commission informed the Registrar, on 21 August and 22 September respectively, that the Government and the Commission's Delegate did not intend to submit any observations 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 that the oral proceedings should commence on 20 or 21 October 1986, as soon as the hearing in the Erkner and Hofauer case had ended (Rule 38).

On 6 October, the Commission provided the Registrar with a number of documents he had asked for on the President's instructions.

6. The hearing was held in public in the Human Rights Building, Strasbourg, on 20 October. 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. E. Proksch, Rechtsanwalt, Counsel.

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

On 30 December 1986, Mr. Proksch filed with the registry a document giving further particulars of one point in his clients' claim for just satisfaction.

AS TO THE FACTS

7. The applicants, Leopold Poiss - who died on 30 April 1984 - and his children, Josef and Anna, are Austrian farmers, resident at

Palterndorf, Lower Austria. They complain of consolidation proceedings (Zusammenlegungsverfahren) taken in respect of their land.

I. The circumstances of the case

1. The consolidation measures

8. On 13 September 1965, the Lower Austrian District Agricultural Authority (Agrarbezirksbehörde - "the District Authority") issued a consolidation plan it had adopted on 1 September. It had already ordered, on 22 April 1963, the provisional transfer of the parcels of land concerned. The scheme affected 530 people, including 428 owners of agricultural land.

The applicants considered that their land was superior in quality to the plots offered in compensation and they accordingly appealed against the plan between 27 and 30 September 1965, but the Provincial Land Reform Board (Landesagrarsenat - "the Provincial Board") upheld it on 9 July 1968.

The applicants appealed within two weeks against the Provicial Board's decision, claiming specifically that some of their original land - vineyards located near the farmhouse (Hausweingärten) - should have been scheduled as building land. On 5 May 1971, their appeal was dismissed by the Supreme Land Reform Board (Oberster Agrarsenat - "the Supreme Board"), which declared that the land in question was designated in the Palterndorf municipal zoning plan as being for agricultural use. This decision was served on 8 September 1971.

The applicants then made an application to the Constitutional Court, which dismissed their appeal on 24 February 1972; the judgment was served on them on 23 May.

2. The reopening of the proceedings

9. On 7 September 1971, i.e. the day before the Supreme Board's decision was served on the applicants, the municipal planning authority had adopted (but not published) a provisional zoning plan in which the applicants' vineyards were designated as building land. The mayor of Palterndorf-Dobermannsdorf confirmed this in a letter to the Poiss family on 5 September 1974.

(a) The Supreme Board's new decision

10. The next day, the applicants applied to the Supreme Board to have the proceedings reopened. Relying on section 69(1)(b) of the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz), they argued in particular that as they had not received confirmation of the existence of a provisional zoning plan until the previous day, they had not been able to cite the redesignation of their land in the earlier proceedings.

The Supreme Board granted their application on 1 October 1975. Reconsidering the original appeal, it held that, as building land, the land in question was of special value within the meaning of section 18(1) of the Lower Austrian Agricultural Land Planning Act of 1975 (Flurverfassungslandesgesetz - see paragraphs 26 and 33 below) and must therefore be left in the hands of its former owners or else be replaced by land of equal value. This decision was served on the applicants on 16 December.

(b) The first phase of the reopened proceedings

11. Since the consolidation plan would have to undergo an alteration that would automatically affect the interests of the other parties to the redistribution procedure, the matter was remitted to

the District Authority for further investigation and a fresh decision.

On 5 April 1976, the District Authority refused to acknowledge that the land in dispute was land of special value, since the provincial municipal zoning plan of 7 September 1971 had not been finally approved by the appropriate provincial authority. It added that the land could not be regarded as natural building land, since it was some distance away from the village's residential zone.

12. The Poiss family appealed to the Provincial Land Reform Board on 3 May 1976, but the latter failed to give a decision within the six months stipulated in section 73(1) of the General Administrative Procedure Act, and the applicants accordingly applied to the Supreme Land Reform Board on 24 January 1977 to assume jurisdiction under section 73(2) (see paragraph 41 below).

On 6 July 1977, the Supreme Land Reform Board allowed both the application for transfer of jurisdiction and the appeal. It remitted the case to the District Authority, ruling that the latter was bound by the Supreme Board's opinion of 1 October 1975. This decision was served on the applicants on 30 August 1977.

(c) The second phase of the reopened proceedings

13. The District Authority once again refused to comply, however: it decided on 23 August 1978 to postpone a decision until the final zoning plan had been adopted. It held that the provisional plan had still not been approved by the appropriate provincial authorities; that there were serious doubts as to whether the land in question could be classified as building land; and that to take a decision in the absence of a plan would be contrary to the Federal Constitution (Bundes-Verfassungsgesetz) and the case-law of the Administrative Court (Verwaltungsgerichtshof).

14. On an appeal by the applicants on 8 September 1978, the Provincial Land Reform Board quashed this decision on 6 April 1979. It found that a final zoning plan was no longer an essential prerequisite for settling the dispute, since under section 113(2) of the Agricultural Land Planning Act (see paragraph 26 below) - as amended on 23 February 1979 - the provisions of consolidation plans had the same effect as regional-planning decisions. Local planning decisions must not conflict with (regional) consolidation plans, and this meant that the municipal authorities were not entitled to obstruct application of the consolidation plan for Palterndorf-Dobermannsdorf; nor could the local planning authorities classify as building land any zones shown in the consolidation plan as farming land. In short, there was no reason why a determination of the merits of the applicants' claim should be postponed.

This decision was served on the applicants on 13 April 1979.

15. Subsequently, the Poiss family applied to the District Authority under section 18(4) of the Agricultural Land Planning Act (see paragraph 33 below) with a view to having their land recognised as being of special value. No decision was given on this application.

16. The applicants also applied - on 2 May 1979 - to the Supreme Board to have the Provincial Board's decision set aside. This application was refused on 7 May 1980. The Supreme Board ruled that the District Authority must itself take a speedy decision. It held that the special value of the Poiss family's land could not be disputed, although it was not designated as building land in any final zoning plan. Several houses had been built in the same zone in the meantime, and the District Authority was still bound by the Supreme Board's earlier decision.

This decision was served on the applicants on 23 May 1980.

3. Proceedings concerning the authorities' failure to act

(a) The first set of proceedings

17. The District Authority took no further decision within the statutory six-month period (see paragraph 41 below), and on 21 January 1981 the applicants accordingly applied to the Provincial Board.

On 29 May 1981, the Provincial Board refused to entertain the application. It found that the District Authority had taken steps to satisfy the Poiss family's claims but had not so far succeeded in securing a final settlement. The delay was due neither to the District Authority nor to the applicants. The other parties having received their compensation in land in 1965, the original intention had been to compensate the applicants with a parcel of municipally owned land, but insuperable difficulties (unüberwindliche Hindernisse) had arisen because the parcel in question was not of the right size. Although this phase of the proceedings had lasted longer than six months, this was not unreasonable in relation to the length of the proceedings as a whole, which had begun in 1965. Having regard to all the circumstances, the conditions for a transfer of jurisdiction had not been met.

This decision was served on the applicants on 2 July 1981.

18. The applicants appealed to the Supreme Board on 13 July 1981, claiming that there had been no insuperable difficulties, but the Supreme Board upheld the Provincial Board's decision on 4 November 1981. It ruled that the District Authority's conduct had not been unreasonable in the circumstances of the case. This decision was served on the applicants on 16 December.

19. The applicants appealed to the Administrative Court on 25 January 1982. Their contention was that the District Authority's endeavours to reach an agreement with the municipal authority had not been sufficient to discharge its obligation to provide a basis for a legal decision on their claims for compensation; and that in view of the length of the earlier proceedings and their slowness, there was no justification for further postponing such a decision.

On 15 June 1982, the Administrative Court allowed the appeal: having regard to section 73 of the General Administrative Procedure Act (see paragraph 41 below), the application for a decision had been wrongly refused; as for the steps taken by the District Authority, they were insufficient to justify the delay.

This judgment was served on the applicants on 3 August.

(b) The second set of proceedings

20. On 3 November 1982, the Supreme Board quashed the Provincial Board's decision of 29 May 1981 (see paragraph 17 above) for the reasons given by the Administrative Court, and ruled that the Provincial Board accordingly now had jurisdiction to determine the merits.

The applicants were served with this decision on 10 December.

The Provincial Board failed to give a decision within the statutory six-month period (see paragraph 41 below). It merely inspected the land in the spring of 1983 and subsequently held several meetings with the parties with a view to securing a friendly settlement.

21. On 28 September 1983, the Poiss family applied to the Supreme

Board to assume jurisdiction under section 73 of the General Administrative Procedure Act (see paragraph 41 below). On 7 December 1983, the Supreme Board granted the application; its decision was served on the applicants on 23 January 1984.

The Supreme Board held a hearing on 6 March 1985 and on the same day drew up a new consolidation plan, which was communicated to the applicants on 30 October 1985. The Board confirmed the earlier consolidation measures and allotted the applicants some building land made available by the municipality of Palterndorf-Dobermannsdorf; it rejected the complaint that this land did not compensate for the land of special value that the applicants had lost; since the law was silent on the point, the Board also refused to award the applicants any financial compensation for the damage caused to them by the authorities' having throughout the proceedings withheld the compensatory parcels of land lawfully due to them.

22. On 11 December 1985, the applicants appealed to the Administrative Court. In a judgment delivered on 15 July 1986 and served on 9 October, the Administrative Court quashed the Supreme Board's decision as regards the land in compensation, on grounds of procedural irregularity, but dismissed it as to the rest, in particular - for want of any statutory basis - as regards the claim for financial compensation.

No new consolidation plan for Palternsdorf has been adopted to date (24 March 1987).

II. The relevant legislation

1. In general

23. 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.

24. 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).

2. The consolidation of agricultural land

25. The basic rules applying to the consolidation of agricultural land are embodied in the Federal Agricultural Land Planning (General

Principles) 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).

26. In Lower Austria, consolidation is governed by the Agricultural Land Planning Act 1975 ("the Provincial Act"). This replaced an Act of 1934 and was itself amended in certain respects by an Act of 23 February 1979.

27. The purpose of consolidation is to improve infrastructure and the pattern of agricultural holdings in a given area. It comprises communal measures and facilities and redistribution of land. The operation takes place in the following stages:

- the initial proceedings and determination of the consolidation area (sections 2 and 3 of the Provincial Act);

- ascertainment of the occupiers of the land in question and assessment of its value (sections 10-12);

- planning of communal measures and facilities (sections 13-15);

- provisional transfer of land, where appropriate (section 22);

- adoption of the consolidation plan (sections 16-21).

Normally, none of these stages may begin until the previous stage has been terminated with a final decision. There are, however, some exceptions to this rule, particularly as regards the valuation, which must be made at an early stage in the proceedings, in accordance with precise statutory criteria (section 11 of the Provincial Act). Any valuation may, however, be appealed against until such time as there is a final consolidation plan (section 12(5) of the Provincial Act and section 68(4) of the General Administrative Procedure Act).

28. The initial proceedings, which are instituted officially, serve to determine the consolidation area, which, in addition to farmland and forest, may include land required for communal facilities. The owners form an association (Zusammenlegungsgemeinschaft), which is a corporate body governed by public law.

The institution of proceedings means that land use is restricted until the proceedings are concluded; any change in use must be approved by the appropriate agricultural authority.

29. The agricultural authority then ascertains who are the occupiers of the land and assesses its value. Its decision (Besitzstandsausweis und Bewertungsplan) determines the value of the land in accordance with precise statutory criteria. Each of the landowners involved may - until such time as the consolidation plan comes into force - challenge the valuation not only of his own land but also of the land of the others.

30. Communal measures (e.g. soil improvement, alterations to terrain or landscape) and communal facilities (e.g. private roads, bridges, ditches, drainage and irrigation) are ordered where they are needed to provide suitable access to or permit effective cultivation of the compensatory parcels of land, or if they otherwise assist the consolidation scheme in the interests of the majority of the parties concerned. Alteration, relocation or removal of existing facilities may also be ordered. All these matters are embodied in a specific decision by the relevant authority (Plan der gemeinsamen Massnahmen und Anlagen), which must also settle the question of costs, usually shared by the landowners.

31. The relevant agricultural authority takes these last three decisions (see paragraphs 29-30 above) one after the other or

simultaneously; it may take them all together when it adopts the consolidation plan (sections 12(4), 14(3) and 21 of the Provincial Act).

32. Under section 22 of the Provincial Act, land may be provisionally transferred if at least two-thirds of the owners agree and if:

- the communal-facilities plan has been adopted; and

- a draft consolidation plan has been prepared and compensatory parcels have been marked out.

The main purpose of provisional transfer is to ensure that the consolidation area is rationally cultivated during the interim period. The land transferred becomes the property of the transferees subject to a condition subsequent: it reverts if the allocation is not confirmed in the final consolidation plan (Eigentum unter auflösender Bedingung).

33. At the end of the proceedings, the agricultural authority adopts the consolidation plan (Zusammenlegungsplan). Since 1977, this has had to be published within three years of the final decision to provisionally transfer parcels of land (section 7a(4) of the Federal Agricultural Proceedings Act). The adoption of the plan is an administrative act which is supported by maps and other technical data, and whose main function is to determine the compensation due to the landowners who are parties to the proceedings. The Provincial Act includes the following regulations on this matter:

- "Any party whose land is included in the consolidation scheme ... shall be entitled to compensation ... in land which shall as far as possible be of equal value" (section 17(1));

- "The value of the land offered in exchange must correspond fairly closely to the amount of compensation due. Discrepancies of up to 5% are permissible .... Such discrepancies may be made good by cash payments" (section 17(7));

- "Both the type and the agricultural value of the land awarded to a party in compensation must correspond as closely as possible to those of the land belonging to him which has been included in the consolidation scheme. It must enable him to secure better, or at least the same, results without his making any substantial change to the nature of his farm or to its equipment ..." (section 17(8)).

Section 18 of the Act has the following to say about land of special value:

"Land which has special value because it is particularly suited to the growing of specific crops or on account of a non-agricultural use shall be restored to its owner or replaced by equivalent plots of land, having due regard to their market value and the requirements of the holding concerned. Such land includes:

(a) land which has been built on or for which planning permission has been granted;

(b) land designated as building land in a regional or simplified regional zoning plan under the Lower Austrian Regional Planning Act of 1976; ...".

Since 1979, the Provincial Act has stipulated that the parties must secure recognition of their land's special value before the valuation schedule has been adopted (section 18(4)).

The provincial legislation does not provide for any financial

compensation for damage which landowners who have successfully challenged the lawfulness of compensation received in land suffer before a final consolidation plan comes into force.

3. The agricultural authorities

34. 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 (Amt der Landesregierung), and the Supreme Board, set up within the Federal Ministry of Agriculture and Forestry (Bundesministerium für Land- und Forstwirtschaft).

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".

35. 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.

36. 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.

37. 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. ..."

38. 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)).

39. 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 23 above). The decisions can be challenged in the Administrative Court (section 8 of the Federal Act).

40. 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).

4. Procedure before land reform boards

41. Procedure before the land reform boards is governed by the Federal Agricultural Proceedings Act (see paragraph 24 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 it considers the findings of fact 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).

5. Appeals to the Constitutional Court and the Administrative Court

42. 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).

43. 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).

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 the relevant 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 34 and 40 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).

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

44. In their application of 25 January 1982 to the Commission (no. 9816/82), Leopold, Josef and Anna Poiss claimed that they had not had a hearing within a reasonable time by an independent and impartial tribunal as required by Article 6 § 1 (art. 6-1) of the Convention. They also complained that their right of property under Article 1 of the Protocol No. 1 (P1-1) had been infringed.

45. The Commission declared the application admissible on 9 March 1984. In its report of 24 January 1986 (made under Article 31 of the Convention) (art. 31), it reached the conclusion that there had been a breach of Article 6 § 1 (art. 6-1) of the Convention (unanimously) and of Article 1 of Protocol No. 1 (P1-1) (eleven votes to one).

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

FINAL SUBMISSIONS TO THE COURT

46. At the hearing on 20 October 1986, the Government requested the Court "to hold that in the present case Article 6 § 1 (art. 6-1) of the Convention and Article 1 of Protocol No. 1 (P1-1) have not been violated, and that therefore the facts of the case do not disclose any breach of the requirements of the Convention by the Republic of Austria".

In his memorial of 18 August 1986, counsel for the applicants asked the Court, inter alia, to concur with the Commission and find that the Republic of Austria had been responsible for a human-rights violation.

AS TO THE LAW

I. ALLEGED BREACH OF ARTICLE 6 § 1 (art. 6-1) OF THE CONVENTION

47. The applicants claimed that their case had not been heard within a "reasonable time"; that the land reform boards sat in private and were not independent and impartial tribunals. They relied on 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 fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Government maintained that there had been no breach. For its part, the Commission considered that the length of the proceedings had exceeded a "reasonable time"; it did not give an opinion on the applicants' other submissions.

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

48. The Palterndorf agricultural consolidation plans concerned, inter alia, land belonging to the Poiss family, 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)

(a) "Independent and impartial tribunal" - "public hearing"

49. Before the Court, the applicants cited the fact that the hearings before the land reform boards were not held in public, and they contended that the boards were not independent and impartial. As regards the latter contention, they relied on the organisational charts of the Federal Ministry of Agriculture and Forestry and the Office of the Provincial Government of Lower Austria to point to the existence of hierarchical links between the civil-servant members, the participation in the vote by civil servants responsible for preparing expert opinions, and the short term of office (five years).

These were new complaints. They were not raised as such before the Commission and were not based on the facts as found by the Commission

within the framework fixed by its decision on admissibility. That being so, the Court has no jurisdiction to entertain them (see in particular, mutatis mutandis, the Bozano judgment of 18 December 1986, Series A no. 111, p. 27, § 62).

(b) "Reasonable time"

(i) Period to be considered

50. In civil proceedings, the "reasonable time" referred to in Article 6 § 1 (art. 6-1) normally begins to run from the moment the action was instituted before the "tribunal" (see, as the most recent authority, the Deumeland judgment of 29 May 1986, Series A no. 100, p. 26, § 77), and in the instant case there is nothing in the evidence adduced which would lead the Court to hold that the dispute ("contestation") arose at any earlier date.

As to the close of the period to be taken into consideration, the Government argued before the Commission that the determination of civil rights as mentioned in Article 6 § 1 (art. 6-1) does not necessarily imply a final judgment. They maintained that there had been an initial provisional determination of the parcels of land to be allotted to the applicants and then an adjustment whereby the applicants became entitled to better compensation.

Like the Commission, the Court is not convinced by this argument. It has consistently held in relation to the application of Article 6 § 1 (art. 6-1) that the period whose reasonableness falls to be reviewed takes in the entirety of the proceedings in issue, including any appeals (see, inter alia, the above-mentioned Deumeland judgment, ibid.). That period accordingly extends right up to the decision which disposes of the dispute ("contestation") (see the Guincho judgment of 10 July 1984, Series A no. 81, p. 13, § 29).

51. In the instant case there were two phases in the proceedings.

52. The first phase began between 27 and 30 September 1965 when the applicants appealed against the consolidation plan of 1 September 1965 (see paragraph 8 above).

It ended on 23 May 1972, when they received notification of the Constitutional Court's judgment of 24 February (ibid.). The proceedings in the Constitutional Court are material, because although that Court had no jurisdiction to rule on the merits, its decision was nonetheless capable of affecting the outcome of the dispute (see the above-mentioned Deumeland judgment, ibid.).

The first phase therefore lasted six years, seven months and twenty-three days (30 September 1965 - 23 May 1972).

53. In the Commission's view, the second phase began on 1 October 1975, when the Supreme Board agreed to reopen the proceedings (see paragraph 10 above). The Court is not of the same opinion. It considers it must take the relevant date as being 6 September 1974, when the applicants requested the reopening of proceedings, challenging - on the basis of the zoning plan of 7 September 1971 - the valuation of some of their former land (ibid.).

This second phase is still under way; it has already lasted more than twelve and a half years (6 September 1974 - 24 March 1987).

54. Consequently, the total length of time to be considered amounts to more than nineteen years.

(ii) Relevant criteria

55. The reasonableness of the length of proceedings is to be assessed according to the particular circumstances and having regard to the criteria stated in the case-law of the Court, especially the degree of complexity of the case, the applicants' behaviour and the conduct of the relevant authorities (see, inter alia, the Buchholz judgment of 6 May 1981, Series A no. 42, pp. 15-16, § 49, and the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 11, § 24).

56. Any land consolidation is by its nature a complex process. Usually - and quite legitimately - the proper valuation of parcels of land to be surrendered and to be received in exchange is at the forefront of the landowners' concerns. The difficulties inherent in such an assessment are often exacerbated by farmers' traditional attachment to their fields and meadows. Furthermore, the operation is designed to increase the profitability of holdings and develop the infrastructure of the area concerned; it therefore affects the interests not only of individuals but also of the community as a whole.

The consolidation in dispute concerned 530 people, including 428 landowners (see paragraph 8 above). As early as September 1965, the applicants asserted that some of their former parcels of land consisted of building land, of greater value than the compensatory plots (ibid.). This was essentially a question of fact, to be resolved by obtaining relevant information such as whether a zoning plan existed and what was the area of the parcels of land, their use, geographical situation and so forth. After the successful appeals by the Poiss family, however, the appropriate authorities were under a duty to draw up a new plan. No doubt they were not obliged to start completely afresh, but it was necessary for them first to give each of the landowners concerned a hearing. As the Government pointed out, this task must have been all the more difficult as, at the time the proceedings were reopened, the first plan had been in force for about three years and four months (23 May 1972 - 1 October 1975: see paragraphs 8 and 10 above).

In these circumstances, the application of the law appears to have raised issues of fact of considerable complexity.

57. In the Government's submission, the applicants bear some responsibility for the delays of which they complain: they took advantage of every avenue of appeal available to them, even those without any real prospect of success, and did everything possible - particularly after they had lodged their petition with the Commission - to prolong the proceedings in Austria. In particular, the Government claimed that they were wrong to apply several times to a higher body, thereby interrupting the work of the lower authority.

The Court does not accept this submission.

It points out, in the first place, that it has consistently held that applicants cannot be blamed for making full use of the remedies available to them under domestic law (see, mutatis mutandis, the Eckle judgment of 15 July 1982, Series A no. 51, p. 36, § 82). In the instant case, as the Commission rightly pointed out, the remedies resorted to were mostly successful (see paragraphs 10, 12, 14, 19, 20, 21 and 22 above).

As for the applications seeking rulings from the higher authority instead of the one having jurisdiction at lower instance, the law allowed the applicants to make these once six months had elapsed (see paragraph 41 above). In each case they in fact waited longer - eight months, three weeks; approximately eight months; and nine months, eighteen days (see paragraphs 12, 17 and 21 above) - and all these appeals were successful.

The applicants' behaviour, in itself legitimate, nonetheless constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account for the purpose of determining whether or not the reasonable time referred to in Article 6 § 1 (art. 6-1) has been exceeded (see, mutatis mutandis, the above-mentioned Eckle judgment, ibid.).

58. As to the competent authorities, the Court notes that, in accordance with the law, they had initiated the consolidation process of their own motion and that they were responsible for the conduct of it (see paragraphs 28 and 41 above). Further and more particularly, they had decided as early as April 1963 on a provisional transfer of the land concerned (see paragraph 8 above). They were accordingly under a special duty to act expeditiously. The Austrian legislature, moreover, itself recognises the existence of such an obligation: it has retained in relation to land-consolidation proceedings the general rule that a decision must be made within six months (see paragraph 41 above) and in 1977 enacted a provision whereby consolidation plans must be published at the latest three years after a final decision on provisional transfer (see paragraph 33 above).

59. The applicants have not complained specifically about the length of the initial proceedings (six years, seven months and twenty-three days - see paragraph 52 above). Although this was a not inconsiderable period - especially having regard to the fact that land had been provisionally transferred in April 1963 -, it was doubtless substantially accounted for by the circumstances of the case, which the authorities were having to deal with for the first time.

The same does not apply, however, to several periods of time in the second phase.

In the first place, the Supreme Board took fifteen months and ten days to reopen the proceedings (6 September 1974 - 16 December 1975: see paragraph 10 above). Yet the questions it had to resolve do not seem at all complex: the Board had to ascertain whether the relevant statutory requirements had been satisfied and, if so, whether, as the applicants maintained, there was in existence a zoning plan designating the parcels of land in issue as building land. It is somewhat difficult to understand why it did not take a decision until more than fifteen months after the matter had been referred to it.

More striking is the fact that nearly ten years elapsed before the applicants received notification of a new consolidation plan (16 December 1975 - 30 October 1985: see paragraphs 10 and 21 above). The main reason for that was that on two occasions the District Authority did not comply with the Supreme Board's order that the proceedings should be reopened (see paragraphs 11 and 13 above). The first appeal against this refusal took almost sixteen months, mainly because of the Provincial Board's failure to act (3 May 1976 - 30 August 1977: see paragraph 12 above). The District Authority then in substance maintained its position for virtually a year (30 August 1977 - 23 August 1978: see paragraphs 12 and 13 above); thereafter the Provincial Board took a little over seven months to remit the case to it (8 September 1978 - 13 April 1979: see paragraph 14 above); and, finally, it took the Supreme Board a year and three weeks to confirm the Provincial Board's decision (2 May 1979 - 23 May 1980: see paragraph 16 above). As the Commission rightly noted, these lapses of time, amounting in all to some four years, were unreasonable.

The same is true of the length of the subsequent proceedings before the District Authority (see paragraphs 16-17 above). The failure by this authority to take any decision within the statutory time allowed triggered off a succession of appeals, the proceedings in which lasted until the notification - eighteen months and thirteen days later - of the Administrative Court's judgment in the applicants' favour

(21 January 1981 - 3 August 1982: see paragraphs 17-19 above). The Administrative Court, considering that the measures taken by the District Authority were not such as to justify its dilatoriness, held that the Provincial Board should have allowed the applicants' appeal and decided the case itself (see paragraph 19 above). Even then, the applicants had to wait four months and one week before receiving the text of the Supreme Board's decision giving effect to the Administrative Court's judgment and quashing the decision of the Provincial Board (3 August 1982 - 10 December 1982: see paragraph 20 above).

It was now for the Provincial Board to take a decision again; yet the case remained at a standstill. Consequently, after more than nine months (10 December 1982 - 28 September 1983: see paragraphs 20-21 above), the applicants applied to the Supreme Board. It assumed jurisdiction in the case in a decision notified to the applicants approximately four months after they had lodged their application (28 September 1983 - 23 January 1984: see paragraph 21 above). It took the Supreme Board another twenty-two months and twenty-three days to adopt the new consolidation plan (7 December 1983 - 30 October 1985: see paragraph 21 above). While not overlooking the difficulties inherent in carrying out such a task, the Court considers that there were undue delays in this phase too.

The same does not apply to the appeal proceedings which followed the Supreme Board's decision. The Administrative Court notified its judgment barely ten months after the appeal was lodged (11 December 1985 - 9 October 1986: see paragraph 22 above), and only about five and a half months have elapsed since then.

60. In all, the proceedings complained of have already lasted more than nineteen years (see paragraph 54 above). Notwithstanding the complexity of the case, such a length of time is unreasonable in the circumstances, having regard in particular to the special duty to act expeditiously entailed by the provisional transfer of land. The various unjustified delays that have been noted were not attributable to the applicants themselves but to some of the authorities dealing with the case. The Government, moreover, admitted that such delays had occurred. As a result of these delays, viewed together and cumulatively, the applicants' case was not heard within a reasonable time as required by Article 6 § 1 (art. 6-1).

II. ALLEGED BREACH OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

61. In the applicants' submission, the provisional transfer of their land in 1963 interfered with their right of property. They claimed that they had still not received the compensation in land to which they were entitled under the provincial legislation and that they had on this account suffered an "annual loss of 25,700 schillings in yield" and "45,000 schillings in interest". They alleged a breach of Article 1 of Protocol No. 1 (P1-1), which provides:

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

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government challenged this contention, whereas the Commission accepted it in substance.

62. There has indisputably been an interference with the applicants' right of property as guaranteed in Article 1 of the

Protocol (P1-1) (see the Marckx judgment of 13 June 1979, Series A no. 31, p. 27, § 63): on 22 April 1963, their land was allocated to other landowners, who were parties to the consolidation scheme, or else used for communal measures or facilities, and they have not so far secured, by a final decision, the compensation in kind stipulated by the provincial legislation (see paragraphs 8, 10, 12, 21 and 22 above).

63. It remains to be determined whether this interference contravenes Article 1 of Protocol No. 1 (P1-1).

This provision "comprises three distinct rules". The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property; the second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions; and the third rule, stated in the second paragraph, recognises that States are entitled, amongst other things, to control the use of property in accordance with the public interest. The Court has to consider the applicability of the last two rules before determining whether the first one has been complied with. However, the three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, as the most recent authority, the AGOSI judgment of 24 October 1986, Series A no. 108, p. 17, § 48).

64. The Court notes first of all that the Austrian authorities did not effect either a formal expropriation or a de facto expropriation (see the Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p. 24, §§ 62-63). The transfer carried out in April 1963 was a provisional one; only the entry into force of a consolidation plan will make it irrevocable (see paragraph 32 above). The applicants may therefore recover their land if the final plan does not confirm the distribution made at the earlier stage of the proceedings. Accordingly, it cannot be said that the applicants have been definitively "deprived of their possessions" within the meaning of the second sentence of the first paragraph of Article 1 (P1-1).

Nor was the provisional transfer essentially designed to restrict or control the "use" of the land (second paragraph of Article 1) (P1-1), but to achieve an early restructuring of the consolidation area with a view to improved, rational farming by the "provisional owners" (see paragraph 32 above). The transfer must therefore be considered under the first sentence of the first paragraph of Article 1 (P1-1).

65. For the purposes of this provision, the Court must inquire whether a proper balance was struck between the demands of the community's general interest and the requirements of protecting the fundamental rights of the individual (see the above-mentioned Sporrong and Lönnroth judgment, p. 26, § 69).

66. It should first be recalled that nearly twenty-four years have already elapsed since the provisional transfer (22 April 1963 - 24 March 1987: see paragraph 8 above) without the applicants' having received, under a final consolidation plan, the compensation in land provided for by law.

According to the Government, the length of the proceedings is not a matter for consideration under Article 1 of Protocol No. 1 (P1-1) if the Court hasalready ruled it to have been in breach of Article 6 § 1 (art. 6-1) of the Convention. Such an argument is inconsistent with the Court's case-law, from which it is apparent that one and the same fact may fall foul of more than one provision of the Convention and Protocols (see, for example, the Airey judgment of

9 October 1979, Series A no. 32, p. 17, §§ 31-33). Moreover, the complaint made under Article 6 § 1 (art. 6-1) can be distinguished from the complaint relating to Article 1 of the Protocol (P1-1). In the former case, the question was one of determining whether the length of the consolidation proceedings had exceeded a "reasonable time", whereas in the latter case their length - whether excessive or not - is material, together with other elements, in determining whether the disputed transfer was compatible with the guarantee of the right of property.

67. It should also be pointed out that the relevant provincial legislation did not permit any reconsideration of the provisional transfer, notwithstanding the applicants' successful appeals against the consolidation plans. Nor does it provide for the possibility of compensating the applicants financially for the loss they may have sustained on account of the forced exchange of their land for other, inferior land pursuant to the provisional transfer (see paragraphs 21, 22 and 33 above).

68. The Court is not unmindful of the legislature's concern, however. In authorising a provisional transfer at an early stage of the consolidation process, its intention is to ensure that the land in question can be continuously and economically farmed in the interests of the landowners generally and of the community. Furthermore, although the applicants lost their land in consequence of the transfer decided on in 1963, they received other land in lieu, even if they are not satisfied with it. The applicable system, however, suffers from a degree of inflexibility: before the entry into force of a consolidation plan, it provides no means of altering the position of landowners or of compensating them for damage they may have sustained in the time up to the final award of the statutory compensation in land.

69. In the circumstances of the present case, therefore, the necessary balance between protection of the right of property and the requirements of the public interest was lacking: the applicants, who remain uncertain as to the final fate of their property, have been made to bear a disproportionate burden. There is no need at this stage to determine whether they have suffered actual prejudice (see the above-mentioned Sporrong and Lönnroth judgment, p. 28, § 73).

70. The Court accordingly finds that there has been a breach of Article 1 of Protocol No. 1 (P1-1).

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

71. The applicants are claiming compensation in the sum of 919,100 schillings for pecuniary damage and reimbursement of lawyers' fees, which they put at 248,125.48 schillings.

The Government and the Commission have not yet expressed a view on the matter, which is consequently not ready for decision. It must be reserved and the further procedure fixed, due regard being had to the possibility of an agreement between the respondent State and the applicants (Rule 53 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 § 1 (art. 6-1) of the Convention as regards observance of the "reasonable time" requirement;

2. Holds that it has no jurisdiction to entertain the other complaints made by the applicants under this provision;

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

4. Holds that the question of the application of Article 50 (art. 50) of the Convention is not ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) invites the Government to submit to the Court, within the forthcoming two months, their written observations on the said question and, in particular, to notify the Court of any friendly settlement which they may reach with the applicants;

(c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

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

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar