

In the case of Phocas v. France (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr L.-E. Pettiti,
Mr C. Russo,
Mrs E. Palm,
Mr I. Foighel,
Mr J.M. Morenilla,
Mr F. Bigi,
Mr K. Jungwiert,
Mr P. Kuris,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 22 June, 26 September, 24 November 1995 and 26 March 1996,

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

Notes by the Registrar

1. The case is numbered 39/1994/486/568. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 September 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 17869/91) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Léopold Phocas, on 19 November 1990.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 1 of Protocol No. 1 (P1-1) to the Convention.

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

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43

of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr C. Russo, Mrs E. Palm, Mr I. Foighel, Mr J.M. Morenilla, Mr F. Bigi, Mr K. Jungwiert and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence and the extension of time subsequently granted by the President, the registry received the applicant's and the Government's memorials on 1 February and 7 March 1995 respectively. On 13 April the Secretary to the Commission indicated that the Delegate did not wish to reply in writing, and on 24 April he supplied various documents, as did the applicant on 12 and 17 July and 18 and 25 October and the Government on 31 October 1995, as they had all been requested to do by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 19 June 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mrs M. Merlin-Desmartis, administrative court judge on secondment to the Legal Affairs Department, Ministry of Foreign Affairs,	Agent,
Mrs A. Brun, administrative assistant, Architecture and Town Planning Department, Ministry of Regional Development, Infrastructure and Transport,	Counsel;

(b) for the Commission

Mr I. Békés,	Delegate;
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(c) for the applicant

Mr P. Calaffel, avocat,	Counsel.
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The Court heard addresses by Mr Békés, Mr Calaffel and Mrs Merlin-Desmartis.

AS TO THE FACTS

I. Circumstances of the case

6. Mr Phocas was born in 1918 and lives in Montpellier. From 1956 he owned and ran commercial premises occupying 275 sq. m at Castelnau-le-Lez (in the département of Hérault), at the spot where one road (the RN 113) crossed another (the CD 21).

In a decision of 20 May 1960 the Minister of Public Works and Transport adopted a scheme for improving the crossroads in question. In 1962 the applicant, believing that expropriation was imminent, transferred his greengrocery business to other premises.

A. The proceedings relating to planning permission

1. The applications for planning permission

7. Mr Phocas's property was not expropriated and he accordingly decided to convert the building into eight flats by adding two floors. To this end, on 1 March 1965, he applied for planning permission.

(a) The first decision to adjourn the application

8. In an order of 31 July 1965 the Prefect of Hérault decided to adjourn the application "until publication of the decision approving the general development plan of the municipality of Castelnau-le-Lez", on the ground that "in the present state of the surveys undertaken, it appears that the project submitted [by the applicant] is likely to jeopardise the carrying out of the scheme to improve the crossroads ..., which was adopted by the Minister of Public Works and Transport ...".

That decision was confirmed on 30 March 1967 by the département's Director of Infrastructure and Planning, who so indicated in response to a fresh application by the applicant.

9. On 31 July 1967 Mr Phocas sought a final decision from the Prefect, as the period of adjournment had expired.

As he did not receive any reply, he lodged an application with the Montpellier Administrative Court on 2 December 1967 for judicial review of the decisions of 31 July 1965 and 30 March 1967 and the implied refusal of his application of 31 July 1967.

The registrar sent him the following letter, dated 1 September 1971:

"I should like to remind you that on 11 March 1968 you were sent a pleading ... by the Minister of Infrastructure and Housing. In a memorandum of 29 May 1970 you informed us that you were awaiting a decision by the authorities that was due to be taken by May 1971 ... As you have still not sent any pleading to the registry, I am taking the liberty of pointing out that it is desirable that you should send one to me as soon as possible or make known to the Court that you do not intend to reply."

In a letter of 13 October 1971 Mr Phocas informed the Prefect that he was not withdrawing the proceedings.

On 22 September 1972 he nevertheless stated that he was abandoning the action, and this was noted by the court in a judgment of 16 October 1972.

(b) The second decision to adjourn the application

10. The general development plan for Castelnau-le-Lez was published on 20 March 1968. It provided, among other things, for the acquisition of part of the applicant's property by the authorities for the purpose of the crossroads improvement and designated the rest as coming within the area of land on which further building was not permitted.

11. In an order of 9 October 1969 the Prefect of Hérault adjourned a new application for planning permission that Mr Phocas had made on 13 May 1969 until publication of the decision approving the general development plan of the municipality of Castelnau-le-Lez, on the ground that "in the present state of the surveys undertaken, it appears that the project submitted [by the applicant] is likely to jeopardise implementation of the general development plan ... published on 20 March 1968 (building planned on land reserved for the improvement of a crossroads formed by the RN 113 and the CD 21 and included in newly designated areas on which further building is not permitted)".

The general development plan was approved by the Prefect on the

same day.

12. On 2 January 1970 the Ministry of Infrastructure and Housing informed the applicant that the decision to defer was maintained but that it was open to him under Article 28 of Decree no. 58-146 of 31 December 1958 (see paragraph 36 below) to ask the local authority that was benefiting from the improvement scheme to purchase the reserved part of the land within a period of three years.

13. In a letter of 13 October 1971 to the Prefect Mr Phocas requested a decision on his application for planning permission that had been registered on 13 May 1969 (see paragraph 11 above) as the period of adjournment had expired.

(c) The third decision to adjourn the application

14. The proceedings to abandon his property having failed (see paragraphs 18-26 below), the applicant made a fresh application for planning permission on 17 July 1976, which the Prefect adjourned in an order of 21 September 1976 on the ground that the Castelnau-le-Lez land-use plan (the POS) - which was then being drawn up, pursuant to a prefectural order of 1 June 1973 - showed the property in question as coming within an area reserved for the crossroads improvement.

On 15 November 1976 Mr Phocas lodged an application for judicial review with the Montpellier Administrative Court. The Minister of Infrastructure produced his observations on 16 June 1977 and documents on 29 June 1977. The hearing took place on 15 December 1978. On 8 January 1979 the court refused the application as follows:

"Under Article L. 123-5 of the Town Planning Code, the administrative authority may, where a draft land-use plan is to be drawn up, adjourn applications for permission relating to buildings that would be likely to jeopardise implementation of the plan. It is established that the prefectural order of 1 June 1973 required a land-use plan to be drawn up for the municipality of Castelnau-le-Lez. It appears from the evidence that the roadworks envisaged in the plan include the widening of the RN 113 and of the CD 21 at the very spot occupied by the property of Mr Phocas's concerned in the building project referred to in the planning application of 15 July 1976. That project was likely to jeopardise the roadworks. It follows that Mr Phocas, who - seeing that the impugned order was not based on the development plan approved on 9 September 1969 - cannot rely on the expropriations judge's decision of 19 March 1976 [see paragraph 26 below], in which it was held that Mr Phocas's property was not subject to any reservation under the plan, has no grounds for maintaining that the order of 21 September 1976 in which the Prefect of Hérault adjourned his application for planning permission is unlawful."

2. The constructive planning permission

15. At the end of the period of adjournment on 21 September 1976, Mr Phocas sent the mayor of Castelnau-le-Lez a letter confirming his application for planning permission.

The mayor received the letter on 12 October 1978 and refused the application in a decision of 12 December 1978 that was served on the applicant on 14 December.

16. On an application made by Mr Phocas on 9 February 1979, the Montpellier Administrative Court set aside that decision on 7 February 1980 on the following grounds:

"It appears from the documents submitted in evidence that at

the end of the period of validity of the adjournment decided on by the Prefect Mr Phocas confirmed to the mayor of Castelnau-le-Lez his application for planning permission. The mayor received this letter of confirmation on 12 October 1978. As the mayor failed to notify his decision to Mr Phocas before the expiry of the two-month period allowed by the provisions of Article L. 111-8 of the Town Planning Code, Mr Phocas had constructive permission with effect from 13 December 1978. The mayor of Castelnau-le-Lez's decision of 12 December 1978, notified on 14 December 1978, must be regarded as having the effect of withdrawing that constructive permission.

But the constructive permission which the applicant had could not lawfully be withdrawn within the time allowed for appeal unless it was itself unlawful. Although Articles R. 111-3-1 and R. 111-4 of the aforementioned Code allow the relevant authority to refuse permission or to grant it, in the cases referred to in the aforesaid Article R. 111-3-1 and in paragraph 2 of Article R. 111-4 subject to compliance with special directions, it was for the authorities to examine, during the process of considering the planning application, which had been reopened by the confirmation of 12 October 1978, whether ... the building to which it was proposed to make alterations ... was liable to be exposed to serious nuisance within the meaning of the aforementioned Article R. 111-3-1 and to assess whether access to the land affected by the project was insufficient within the meaning of the aforesaid Article R. 111-4 and whether the means of access to the building endangered the safety of those using them. By failing to notify a refusal within the time provided for in Article L. 111-8 of the Town Planning Code, the authorities must be deemed to have taken the view that there was no reason in this case to refuse permission under Articles R. 111-3-1 and R. 111-4 of that Code. It does not appear from the evidence that there was any manifest error in that assessment. Accordingly, the permission tacitly granted to Mr Phocas was not unlawful. It follows from the foregoing that the mayor of Castelnau's decision of 12 December 1978, which had the effect of withdrawing that permission, is unlawful and must be set aside.

..."

17. On 19 May 1983 the Conseil d'Etat dismissed an appeal brought by the Minister for the Environment and the Quality of Life on 14 April 1980:

"Whether there was constructive planning permission

Under Article L. 111-8 of the Town Planning Code, '... when the period of validity of the adjournment expires, a decision must, on confirmation by the person concerned of his application, be taken by the administrative authority responsible for granting permission, within two months of that confirmation. Failing notification of the decision within this time, permission shall be deemed to have been granted as applied for'. The date of notification shall be that shown by the Post Office date-stamp on the recorded-delivery form that has to be signed by the applicant when he receives notification of the authorities' decision on his planning application.

It appears from the evidence that on expiry of the adjournment decided on by the Prefect of Hérault, Mr Phocas confirmed his planning application in a letter received by the mayor of

Castelnau-le-Lez on 12 October 1978. Not having received notification of a decision by the mayor of that municipality within the two-month period laid down in the aforementioned Article of the Town Planning Code, Mr Phocas had constructive planning permission. When, on 14 December 1978, Mr Phocas received notification of the mayor of Castelnau-le-Lez's decision of 12 December 1978 whereby planning permission was refused, that decision had to be regarded as withdrawing the constructive permission.

The lawfulness of the impugned decision

By the terms of the second paragraph of Article R. 111-4 of the Town Planning Code, planning permission 'may lawfully be refused if the means of access endanger the safety of users of the highway or persons using those means of access'. It was for the authorities to determine during the process of considering the planning application which had been reopened by the confirmation of 12 October 1978 whether access to the block of eight flats planned by Mr Phocas constituted a danger to users of the highways. In failing to notify a refusal, the authorities determined that there was no reason in this case to refuse permission under Article R. 111-4 of the aforementioned Code. It does not appear from the evidence that there was any manifest error in the authorities' assessment. The original permission was thus in no way unlawful and consequently could not be lawfully revoked. Accordingly, the Minister has no grounds for maintaining that the Administrative Court was wrong to set aside the decision of 12 December 1978 whereby the mayor of Castelnau-le-Lez withdrew the constructive planning permission granted to Mr Phocas."

The applicant thus retrospectively had constructive planning permission from 12 December 1978.

B. The proceedings to abandon property

1. The applicant's requests to have his property purchased

18. In response to the letter of 2 January 1970 from the Ministry of Infrastructure and Housing (see paragraph 12 above), Mr Phocas applied in writing to the département's Director of Infrastructure on 27 May 1970 for "steps to be taken as soon as possible to purchase [his] property".

He referred to this last letter when writing to the Prefect on 13 October 1971 (see paragraph 13 above), and on 13 May 1972 sent the Prefect the following letter:

"Pursuant to Article 28 of Decree no. 58.146 of 31 December 1958 I am writing to confirm my letter of 27 May 1970 ...

Inasmuch as it may be necessary, I am hereby renewing that application and would point out that it is being sent to you in your capacity as representative of the State and also in your capacity as representative of the département of Hérault.

I am at your department's disposal for the purpose of reaching an agreement on the purchase price.

..."

19. In a telephone conversation on 17 July 1972 an official from the State Lands Department allegedly invited the applicant to an interview in order to settle the purchase price by agreement. A meeting is said to have taken place on 26 January 1973, followed by

several telephone conversations, but without result.

20. On 2 June 1973 Mr Phocas sent the Prefect of Hérault the following letter:

"...

After the interview at your offices on Tuesday 29 May last, during which a promise was made that the formalities for purchasing my property at Castelnau-le-Lez ... would be carried out very speedily, I feel it necessary, in order that this unfortunate matter may be dealt with as satisfactorily as possible, to assure you that I have not changed my mind. I would thus like to point out to your department that with reference to my letter of 27 May 1970, in which I requested, pursuant to my rights, that my property should very speedily be purchased, I am earnestly reiterating that request, as the three-year period provided for in law has now elapsed.

..."

2. The administrative authorities' purchase offer

21. On 7 November 1974 the département's Director of Infrastructure wrote to the applicant making an offer to purchase for the sum of 142,500 French francs (FRF).

22. On 20 January 1975 Mr Phocas sent the Director the following letter in reply:

"Thank you for your letter of 7 November 1974, received after considerable delay, replying after a wait of four and a half years to the one I sent on 27 May 1970 requesting that my property should be purchased.

Seeing that the State Lands Department set their procedure in motion on 17 July 1972 (they sent you letters on 18 May 1972 and 13 September 1972, without receiving any reply incidentally), it is really very surprising that your offer could not have been made within a more reasonable time. The small amount offered is equally surprising, since how can you suppose that with the derisory sum of 142,500 francs I can buy a property more or less the same as the one which has been the subject of such unfortunate disagreements. As the victim of an unacceptable situation over so many years, I can obviously only maintain my original application. May I, lastly, point out that when asked about the value of my property by Mr Péliissier, an engineer in the Department of Infrastructure, I gave him the figure in reply of 300,000 francs some days afterwards, in the presence of Mr Miguel, the engineer's secretary.

I await a proper assessment.

..."

23. The département's Director of Infrastructure replied as follows on 4 February 1975:

"Thank you for your letter of [illegible] January in which you refused the offer of compensation for the property you own at Castelnau-le-Lez and ask for a higher offer to be made with reference to your own [illegible] of 1962.

I am sorry to have to tell you that the scheme justifying the purchase of your property relates to the improvement of the RN [illegible], for this [illegible], compensation for buildings

lies within the exclusive discretion of the Commissioner of Revenue.

That is why, in my letter of 7 November, I referred to that head of department's opinion.

As the potential purchasing department, I have no discretion to alter offers [illegible] by the Revenue.

If, therefore, you maintain your formal application [illegible] purchase by the State, you must, in accordance with the legislative provisions (Article [illegible] of the Town Planning Code) apply to the expropriations judge to fix the compensation due to you."

24. On 16 May 1975 the département's Director of Infrastructure sent Mr Phocas the following letter:

"I write to confirm my letter of 4 February, in which I told you, firstly, of the Revenue's decision and, secondly, of the means afforded you by current legislation of securing an adjustment of the amount of the dispossession compensation that I had offered you for your property ...

I do not think that you have, to date, applied to the appropriate judicial authority. I am therefore entitled to assume that you have withdrawn your application to the administrative authorities to purchase the property in question.

I should be very grateful if you would let me know whether that assumption is correct or whether you are still maintaining the formal application you have already made. Unless I hear from you within eight days, I shall assume that you have given up your project and, in that case, I shall put back at the disposal of the higher authorities the budgetary appropriation that had been made available to me to meet the foreseen expenditure on purchase."

25. Mr Phocas's lawyer wrote to his client as follows on 22 May 1975:

"I have seen the Department of Infrastructure's letter of 16 May.

I would advise you to send a registered letter with recorded delivery to the département's Director of Infrastructure ... immediately, worded as follows:

'In reply to your letter ... of 16 May, I am writing to inform you that I have not given up my intention of demanding expropriation.

I am currently assembling the information that will enable me to justify the expropriation compensation that I shall be claiming."

3. The application to the expropriations judge

26. On 20 October 1975 the applicant applied to the Hérault expropriations judge in order to have the purchase price determined.

On 8 December 1975 the département's Director of Infrastructure wrote to Mr Phocas as follows:

"I am sending you herewith a memorandum setting out the particulars of and justification for the dispossession

compensation offered by the expropriating authority for the parcel of land ... in respect of which an expropriation order is likely to be made.

The purchase offer, which you have not to date accepted, was notified to you by registered letter with recorded delivery on 7 November 1974.

...

PS. By the same post I am sending the expropriations judge two photocopies of the memorandum and of this letter."

The expropriations judge made a visit to the site on 15 December 1975 and held a hearing on 29 January 1976. On 19 March 1976 he delivered the following judgment:

"...

The function of the expropriations judge is confined to fixing the amount of expropriation compensation.

In the instant case Mr Phocas, having failed to secure planning permission, made an application to the Director of Infrastructure in a letter of 27 May 1970 seeking to have [the] property purchased, an application that was renewed in a letter to the Prefect of Hérault on 13 May 1972.

The Department of Infrastructure offered a purchase price of 142,500 francs, which was not accepted, and Mr Phocas then applied, in written submissions of 16 October 1975 ..., for the price of the property to be fixed.

As the land is no longer subject to the restriction laid down in the development plan approved on 9 June 1969 and has not been purchased or expropriated within three years of the application, in accordance with the provisions of the Decree of 31 December 1958, the owner is again able to dispose of it freely.

It further appears from the circumstances of the case, in particular from the mayor of Castelnau's letter of 15 March 1976, that the land-use plan of the municipality of Castelnau-le-Lez has not yet been published or implemented.

In these circumstances no valid application may be made to the expropriations judge to value the land, and still less the building on it, as Article 123-9 of the Town Planning Code is not applicable in this case.

For these reasons,

I, ..., expropriations judge for the département of Hérault
...,

Declare that I have no jurisdiction.

..."

C. The expropriation proceedings

27. On 7 March 1980 the Prefect of Hérault ordered a public inquiry prior to expropriation and then, on 25 September 1980, declared the crossroads improvement scheme to be in the public interest and urgent. On 23 February 1981 he declared Mr Phocas's property liable to expropriation.

28. The expropriation order was made on 2 March 1981.

Whereas the applicant had claimed FRF 2,903,000, compensation for his expropriation was assessed on 19 June 1981 at FRF 385,000 by the expropriations judge of Hérault, to whom an application had been made on 15 December 1980, and then, on appeal, at FRF 394,440 by the Expropriations Division of the Court of Appeal of Hérault on 22 January 1982.

In an order of 23 June 1982 the President of the Court of Cassation recorded that Mr Phocas had withdrawn an appeal on points of law that he had lodged against the Court of Appeal's judgment.

D. The proceedings to obtain compensation

1. The first set of compensation proceedings

(a) The application to the Minister of Town Planning and Housing

29. On 8 January 1982 the applicant submitted a preliminary compensation claim to the Minister of Town Planning and Housing, who refused it on 18 May 1982 in the following terms:

"... you sought compensation in the amount of FRF 2,750,000 for damage resulting from actions by the administrative authorities amounting to an interference with your building plans.

It should be pointed out that payment of compensation to members of the public in town-planning matters is subject to its being established that there has been fault arising from an unlawful act and definite direct, pecuniary damage.

As to the first point, it appears that between 1 March 1965 and 8 January 1979 the decisions adverse to you that were taken all became final, either because they were not challenged or because their lawfulness was confirmed by the Administrative Court.

The only head of damage on which you might be able to rely would be that arising if the Conseil d'Etat were to affirm the Montpellier Administrative Court's judgment of 7 February 1980.

This case, however, is still pending in the Conseil d'Etat, with which I lodged an appeal against the aforementioned judgment on 14 April 1980.

As to the second point, it should be noted that any fault stemming from the unlawfulness of the refusal of planning permission on 12 December 1978 would only be able to have any consequences if there was definite direct, pecuniary damage.

The breakdown you have supplied, however, is based on loss of capital in real property and of expected income from real property, together with the interest on that income. That damage is contingent, and the courts have consistently held that such damage cannot give rise to compensation.

Lastly, I would point out that in respect of the existing building, you have already received expropriation compensation of FRF 394,440.

It follows from the foregoing that I cannot grant your application."

(b) In the Montpellier Administrative Court

30. On 16 June 1982 Mr Phocas lodged a claim for compensation with the Montpellier Administrative Court. He argued that through their conduct the authorities had unlawfully infringed his right of property and had caused him damage that he assessed at FRF 3,212,235.

The court received observations from the Minister of Town Planning and Housing on 10 October 1983 and pleadings in reply from the applicant on 20 and 22 November 1984. It held a hearing on 23 November and decided on 27 November to reopen the inquiry into the facts:

"... the applicant lodged with the Court two pleadings registered on 20 and 22 November 1984, to which the administrative authorities were not able to reply as they had been lodged late. In the final version of his submissions Mr Phocas relied, in support of his compensation claim, on, among other things, the 'dishonest conduct' of which he had been the victim on the part of the authorities, who had continually blocked the reiterated applications for planning permission that he had made since 1962. The fact that the decisions are final does not preclude pleading, in support of a compensation claim, that the decisions taken by the administrative authorities on those applications were unlawful. That being so, further inquiries into the facts should be ordered, so as to allow the administrative authorities to reply to the arguments set out in the aforementioned pleadings."

Following that judgment, the court registered pleadings from the Minister on 21 January and 23 July 1985 and from the applicant on 23 May, 12 August and 25 September 1985.

It held a hearing on 21 March 1986, and on 3 June 1986 it delivered its judgment, in which the following reasons were given:

"Mr Phocas sought compensation for damage he had allegedly sustained as the result of successive unlawful decisions taken by the authorities since 1968 which had had the effect of preventing him from building on a parcel of land that had been expropriated and compensation for which was assessed in a judgment of 19 June 1981.

In the first place, in so far as Mr Phocas intended to challenge in the Administrative Court the amount of expropriation compensation awarded him ... on the ground that the court had not had regard to the right that he considered he had to build on the parcel of land in question, his submissions must be rejected as having been made to a court without jurisdiction to entertain them. Nor can he secure compensation on the basis of the provisions of Article L. 160, second paragraph, of the Town Planning Code, seeing that for want of planning permission or a prior agreement, he could not rely on an established right preceding the imposition of the restriction placed on his land.

In the second place, while a decision on the building project submitted by Mr Phocas has been deferred on three successive occasions, it does not appear from the inquiries into the facts that those adjournments ... were unlawful. The public interest in the improvement scheme planned on Mr Phocas's land cannot be seriously contested. Mr Phocas, however, had obtained planning permission on 12 December 1978 which was withdrawn unlawfully, as held in a judgment of this Court on 7 February 1980. An irregularity of this kind amounts to misfeasance such as to engage the State's responsibility.

As to damage

Mr Phocas cannot be compensated for the increase in the cost of building when he never carried out any building works or for the mere possibility of loss of the income he expected to derive from letting the future flats, any more than he can be for the expenses he had to incur as a result of transferring his business to the wholesale market for agricultural produce at Montpellier, which are unconnected with the unlawful decision.

Mr Phocas, however, needlessly incurred expenditure on preparing the application for the planning permission which was unlawfully withdrawn, notably architect's fees; these expenses as a whole may be fairly assessed in the instant case at 10,000 francs. The State must accordingly be ordered to pay Mr Phocas the sum of 10,000 francs, including all interest up to the date of this judgment."

(c) In the Conseil d'Etat

31. On 11 August 1986 Mr Phocas appealed to the Conseil d'Etat. He filed a supplementary pleading that was registered on 10 December 1986. He also produced a pleading in reply to defence observations submitted by the Minister of Infrastructure.

The Conseil d'Etat held a hearing on 11 May 1990, and on 25 May 1990 it upheld the judgment of 3 June 1986 as follows:

"...

In his claim for compensation Mr Phocas sought compensation for damage allegedly caused him by the successive decisions of the administrative authorities in response to applications he had submitted since 1965 for planning permission for extending and adding storeys to a building he owned at the crossroads of the RN 113 and the CD 21 at Castelnau-le-Lez.

It appears from the inquiry into the facts that the planned crossroads improvement scheme cited as the reason for decisions whereby Mr Phocas's applications were refused was in the public interest. The adjournment decisions of 31 July 1965 and 9 October 1969 were lawfully taken on the basis of Article 18 of the ... Decree of 30 December 1958, which was then in force.

Admittedly, on 12 December 1978 Mr Phocas had secured planning permission, which was unlawfully withdrawn. While that irregularity amounts to misfeasance such as could render the State liable, Mr Phocas did not adduce in support of his submissions any factual evidence that would make it possible to take into account damage dismissed by the Administrative Court as contingent, which arose from the loss of earnings sustained because it was impossible for the applicant to undertake the works to extend his building. It does not appear from the inquiry into the facts that the Administrative Court assessed the circumstances of the case inaccurately when it ordered the State to pay compensation in the amount of FRF 10,000.

..."

2. The second set of compensation proceedings

(a) In the Montpellier Administrative Court

32. On 12 December 1990 the applicant applied to the Administrative Court, seeking an order that the State should pay him compensation in the amount of FRF 2,998,000 for the losses caused him by the administrative decisions on planning permission and expropriation taken

in his regard: losses of capital in real property and of income from real property and the interest on it; loss of the letting right (droit au bail); and losses resulting from the transfer of the goodwill.

33. The court dismissed the application on 4 November 1992 on the following grounds:

"...

As to the orders sought against the State

Mr Phocas's ... submissions are based on, inter alia, decisions he considers unlawful whereby his applications for planning permission were adjourned or refused. In the earlier proceedings ... the Court gave a ruling in a judgment of 3 June 1986, upheld by the Conseil d'Etat on 25 May 1990, and refused the applications for compensation based on the same legal grounds and in respect of damage of the same nature as that alleged in the instant application ...

The Prefect consequently has good cause to maintain that the submissions in the present proceedings, in so far as they are directed against the State on the basis of administrative decisions taken by his officials, raise matters that are res judicata and must accordingly fail, without there being any need to consider the grounds based on a violation of Articles 1 and 6 (art. 1, art. 6) of the European Convention on Human Rights.

As to the application against the département of Hérault

...

Mr Phocas bases the above-mentioned application against the aforementioned département on the slowness, amounting in his view to misfeasance, with which the administrative authorities dealt with his application to them of 27 May 1970, confirmed on 13 May 1972, to purchase his property. In this connection, it is apparent from the provisions of Article 28 of the Decree of 31 December 1958 that 'an owner of reserved land may request the public authority for whose benefit the land has been reserved to purchase the land within a period of three years from the date of the application. Failing agreement between the parties, the price shall be determined as for an expropriation, the land being deemed to have ceased to be reserved. If the purchase has not taken place within the aforementioned period, the owner shall be able to dispose of his land freely again'. Furthermore, Article 18 of the Town Planning and Housing Code, as worded following Law no. 67-1253 of 30 December 1967 provides that 'an owner of land reserved in a land-use plan for a public highway or other public works ... may, from the day on which the plan was published, ..., require the local authority ... for whose benefit the land has been reserved to purchase the land within a maximum period of three years from the date of the application ... Failing agreement between the parties at the end of the period referred to ..., the expropriations judge, on an application by the owner, shall declare ownership to have been transferred and shall determine the price of the land ...'. It was therefore for Mr Phocas to take the initiative of applying to the expropriations judge within the allotted time after the failure, noted at the end of the discussions on 24 January 1973, of attempts to agree a purchase price for his property. It appears from the evidence that Mr Phocas did not apply to the expropriations judge until 20 October 1975. Mr Phocas therefore has no cause to maintain that the département

of Hérault was guilty of misfeasance in not acting promptly on the request to purchase his land. Since the statute itself has, by means of the procedure laid down in the aforementioned Articles, provided for compensation for owners affected by a reservation of land for the benefit of a public authority, Mr Phocas cannot in any event claim compensation from the département of Hérault on the basis that there has been a breach of equality vis-à-vis public burdens.

Nor has any fact been made out against the département of Hérault, the expropriating authority, which discloses a misuse of powers or could amount to an interference with the proper conduct of the expropriation proceedings brought in April 1980, which resulted in the expropriation order of 22 April 1981 and gave rise, for the purposes of Articles 1 and 6 (art. 1, art. 6) of the European Convention on Human Rights, to the appeal to the appellate court, which increased the expropriation compensation that had been fixed by the expropriations judge.

..."

(b) In the Bordeaux Administrative Court of Appeal

34. On 6 January 1993 the applicant appealed against that judgment to the Bordeaux Administrative Court of Appeal.

On 6 February 1995 he requested it to stay its decision pending the judgment of the European Court of Human Rights.

In a judgment of 9 March 1995 the Administrative Court of Appeal found against him and ordered him to pay FRF 3,000 to the département of Hérault pursuant to the provisions of Article L. 8-1 of the Administrative Courts and Administrative Courts of Appeal Code (expenses incurred by the département that were not covered by costs). It said the following as to the application against the département:

"It appears from the inquiry into the facts that the scheme to improve the crossroads of the RN 113 and the CD 21 at Castelnau-le-Lez was adopted by the Ministry of Transport on 10 May 1960. It was on that ground that on 1 March 1965 a planning application by Mr Phocas was adjourned for the first time. The scheme was abandoned in 1970 and then taken up again by the département of Hérault in 1971. Subsequently, two further adjournments and a number of refusals of planning permission were notified to the applicant because the site was shown in the various planning documents as being reserved for the improvement of the crossroads. As early as 27 May 1970 Mr Phocas sought to have his property purchased, and his application to that effect was confirmed on 13 May 1972, 2 June 1973 and 7 November 1974. Although he himself delayed in applying to the expropriations judge under the provisions of Article 28 of the Decree of 21 December 1958, following the failure to agree on a purchase price, this does not alter the fact that the expropriation did not finally take place until 2 March 1981. While such a delay is in itself capable of rendering the expropriating authority liable on the basis of a breach of equality vis-à-vis public burdens, it is at all events for the applicant to prove special, abnormal damage.

In this connection, Mr Phocas cannot be compensated for the cost of building works that were never carried out. As regards the loss of the income he expected to derive from letting the future flats, Mr Phocas did not adduce in support of his quantified claim any evidence relating specifically to the stage reached by the extension project or to his means of financing that would enable the definite, direct nature of the

damage to be established.

Lastly, it does not appear that the expenses which Mr Phocas had to incur on account of the transfer of his business in 1962 to the wholesale market for agricultural produce at Montpellier had any direct link with the expropriation proceedings, which had not been set in motion by then. That being so, Mr Phocas, who was not deprived of the enjoyment of his property at any stage during the administrative phase of the expropriation, has not made out any special, abnormal damage such as would entitle him to compensation.

..."

II. Relevant domestic law

35. Below are set out the main rules relating to general development plans and land-use plans that were applicable in the instant case.

A. General development plans

36. Development plans were governed by Decree no. 58-146 of 31 December 1958. The provisions of the decree relevant to the instant case are the following:

"Article 1

The general development plan shall lay down the general outline of development and determine the essential features ...

General development plans ... shall apply either to municipalities or to parts of municipalities or to groups of municipalities or parts of municipalities with interests in common.

...

Chapter I - Subject-matter of development plans

Article 2

The general development plan shall contain

firstly,

a designation of land in zones according to use;

the routes of the main trunk roads to be retained, changed or built, with their width and characteristics;

the sites reserved for the main public facilities and open spaces;

...

secondly,

(Decree no. 62-460 of 13 April 1962) 'Regulations laying down rules and restrictions on the use of land which are justified by the nature of the region or of the built-up area or by general or local needs and by the needs of civilian disaster relief or the running of public services.'

These restrictions may, where appropriate, include a prohibition on building.

...

Chapter II - Drawing up of development plans

...

Article 8

A prefectoral order shall list, for each département, the groups of municipalities, municipalities or parts of municipalities in which development plans must compulsorily be drawn up.

This list ... shall be published in the département's compendium of administrative decisions.

...

Section I - General development plans

Article 10

After consultation of the authorities concerned, the general development plan shall be submitted to a conference between the departments concerned.

It shall then be made public, either by a decision of the Prefect where the departments concerned have made known their agreement, or by a decision of the Minister of Construction in other cases.

...

Article 12

The general development plan shall be the subject of a public inquiry as provided for in respect of an expropriation.

...

Article 13

Approval of development plans shall be given

by the Prefect, where the development plan concerns a municipality or group of municipalities with a population of less than 50,000 and where, furthermore, the findings of the public inquiry and the opinions of the departments concerned and of the public authorities are not unfavourable;

...

Section II - Detailed development plans

...

Section III - Summary development plans

...

Chapter III - Protection and implementation measures

Section I - Protection measures prior to approval of development plans

Article 17

The protection measures provided for in this section shall apply to general development plans from the time of the publication referred to in Article 8 above until publication of the decisions approving the plans.

...

Article 18

...

Where a building is likely to jeopardise implementation of the development plan or make it more expensive, the Prefect may decide, in a reasoned order served on the petitioner and the mayor within the time and in the manner provided in Article 87 of the Town Planning and Housing Code, to adjourn the application [for planning permission].

...

Article 23

...

Once the decision has been taken whereby the general development plan has been published pursuant to Article 10 above, decisions to adjourn can only be founded on provisions contained in the plan.

Within two months of their notification, decisions to adjourn may be referred to the Minister of Construction, who may either confirm the adjournment or grant the permission sought.

Article 24

In no case may an adjournment exceed two years.

At the end of that period a final decision must, on an application by the applicant in a registered letter, be taken by the authority responsible for giving permission in the prescribed manner and within the prescribed time. Permission may not be refused for reasons derived from provisions of a development plan that has not yet been approved, unless it has been published and contains provisions that expressly preclude the carrying out of the envisaged project.

...

Section II - Measures to implement development plans

Article 26

No public or private works to be undertaken within the area covered by the development plan may be carried out unless they are compatible with that plan.

...

Article 27

...

Where a building is to be erected on a site reserved, in an approved development plan, for a road, open space or public service, planning permission shall be refused.

Article 28

An owner of reserved land may request the local authority or public institution for whose benefit the land has been reserved to purchase the land within a period of three years from the date of the application.

Failing agreement between the parties, the price shall be determined as for an expropriation, the land being deemed to have ceased to be reserved.

If the purchase has not taken place within the aforementioned period, the owner shall be able to dispose of his land freely again.

..."

B. Land-use plans

37. Pursuant to the Land Planning Act of 30 December 1967, general development plans were gradually replaced by land-use plans (POS), which contain at least a zoning plan and rules on the siting of buildings and may also, among other things, designate areas reserved for public roads and other works and for facilities for the benefit of the public (see, in particular, Article L. 123-1 and the transitional provisions of Article L. 124-1 of the Town Planning Code).

38. Where a POS is to be drawn up, the relevant authority may, in a reasoned decision and for a period not exceeding two years, decide to adjourn applications for permission relating to buildings, installations or operations which would be likely to jeopardise implementation of the future plan or make it more expensive (Article L. 123-5 of the Town Planning Code).

On expiry of the period of validity of the adjournment, if the applicant confirms his application within two months, the authority responsible for giving permission must take a final decision within two months of that confirmation. If the decision has not been notified within this period, permission is deemed to have been granted in the terms in which it was requested (Article L. 111-8, fourth paragraph, of the Town Planning Code).

PROCEEDINGS BEFORE THE COMMISSION

39. Before the Commission, to which he applied on 19 November 1990, Mr Phocas complained of an infringement of his right of property (Article 1 of Protocol No. 1) (P1-1) and of the slowness of the proceedings in the French administrative courts (Article 6 para. 1 of the Convention) (art. 6-1).

40. The Commission declared the application (no. 17869/91) admissible on 29 November 1993. In its report of 4 July 1994 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 1 of Protocol No. 1 (P1-1) and that it was unnecessary to consider the complaint based on Article 6 para. 1 (art. 6-1) of the Convention.

The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions - 1996-II), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

41. The applicant sought "judgment against the French State and an order that it should pay damages".

42. The Government asked the Court "to dismiss the application".

AS TO THE LAW

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

43. The applicant complained of the restrictions imposed on his right of property on account of the scheme for improving the crossroads where his property was situated. In his submission, their duration and the French authorities' conduct amounted to 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."

44. It must be ascertained whether there was an interference with the right in question and, if so, whether it was justified.

A. Whether there was an interference with the applicant's right of property

45. It was not contested that the measures relating to Mr Phocas's property amounted to an interference with his right to the peaceful enjoyment of his possessions, but the duration of that interference was disputed.

46. The applicant maintained that the interference with the peaceful enjoyment of his possessions had begun in 1962, when, believing that expropriation was imminent, he had transferred his business to other premises, and had ended on 22 January 1982, when the Expropriations Division of the Court of Appeal of Hérault had fixed his expropriation compensation on appeal.

47. In the Government's submission, the events that had taken place before France ratified Protocol No. 1 (P1) on 3 May 1974 could not be taken into consideration since Mr Phocas's complaints did not concern a continuous situation. At all events, the starting-point of the interference could not be earlier than 31 July 1965, when the applicant's first application for planning permission had been adjourned. The interference had ended in the middle of 1973, when the expropriations judge would have fixed the purchase price if Mr Phocas had applied to him within the statutory time-limit.

48. The Commission considered that the events which had affected the enjoyment of the applicant's possessions before 3 May 1974 could be taken into account inasmuch as they had affected the situation in which the applicant found himself after that date. Nevertheless, it did not determine the precise length of the interference in question.

49. The Court notes that on 31 July 1965 the Prefect of Hérault decided to adjourn the application lodged by Mr Phocas on 1 March 1965 "until publication of the decision approving the general development plan of the municipality of Castelnau-le-Lez", on the ground that "in the present state of the surveys undertaken, it appears that the

project submitted [by the applicant] is likely to jeopardise the carrying out of the scheme to improve the crossroads ..., which was adopted by the Minister of Public Works and Transport ..." (see paragraph 8 above). From that moment up to 22 January 1982, the date of the judgment in which the Expropriations Division of the Court of Appeal of Hérault finally determined the expropriation compensation (see paragraph 28 above), the crossroads scheme was an obstacle to the development of the applicant's property but the applicant was not compensated for this. During the period thus delimited, there was the necessary continuity in Mr Phocas's situation for the Court to be able to take into account events that occurred before France ratified Protocol No. 1 (P1).

In short, from 31 July 1965 to 22 January 1982 there was an interference with the right secured to the applicant by Article 1 of that Protocol (P1-1).

B. Justification for the interference with the applicant's right of property

50. It remains to be determined whether that interference contravened Article 1 (P1-1).

1. The applicable rule

51. Article 1 (P1-1) guarantees in substance the right of property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph (P1-1) and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph (P1-1), covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph (P1-1), recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the 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. They must therefore be construed in the light of the general principle laid down in the first rule (see, among other authorities, the *Mellacher and Others v. Austria* judgment of 19 December 1989, Series A no. 169, pp. 24-25, para. 42).

52. Like the Commission and the Government, the Court considers that the first of those rules applies in the instant case; Mr Phocas did not complain of a deprivation of his property within the meaning of the second sentence of the first paragraph (P1-1) or of specific measures restricting the use of it within the meaning of the second paragraph (P1-1), but of an infringement of his right of property resulting from the authorities' general conduct.

2. Compliance with the rule laid down in the first sentence of the first paragraph (P1-1)

53. For the purposes of the first sentence of the first paragraph (P1-1), the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 26, para. 69).

(a) The general interest

54. The interference in issue was designed to enable an urban development scheme to be carried out. The applicant noted that it had taken twenty-seven years for the project to materialise, and he consequently questioned the genuineness of its public interest.

55. Like the Government and the Commission, the Court reiterates that the Contracting States enjoy a wide margin of appreciation in order to implement their town-planning policy (see the *Sporrong and Lönnroth* judgment previously cited, p. 26, para. 69). The Court regards it as established that the interference answered the needs of the general interest.

(b) Striking a fair balance between the opposing interests

56. The applicant alleged that for twenty years he had suffered disproportionate restrictions on the enjoyment of his right of property. It was the threat of expropriation that had caused him to transfer his business to other premises in 1962; he could not reasonably have let his property to a trader as it was, since in the event of expropriation, he would have had to compensate him for the loss of the business and for non-renewal of the lease; furthermore, he had been prevented from converting the building. He had, he continued, tried to have it purchased by the authorities under his right of abandonment, but he had not been able to do otherwise than refuse the price, which he said had been derisory, that the authorities had offered him - FRF 142,500, whereas ten years later, the Expropriations Division of the Court of Appeal of Hérault set his expropriation compensation at FRF 394,440.

Mr Phocas further alleged that the authorities' aim in not allowing his various applications for planning permission had been purely speculative. In the event of expropriation, the compensation paid to the owner would be determined according to the value of the property concerned on the day it was expropriated. If he had been able to convert his property as he wished, the cost of the operation would therefore have been greater. Furthermore, the expropriation proceedings had begun on 7 March 1980 because of the Montpellier Administrative Court's judgment of 7 February 1980, in which that court had held that the applicant had constructive planning permission.

57. The Government acknowledged that urban development schemes were a matter of long-term planning and that that could lay major burdens on certain landowners. The owner of land reserved in a development plan for an amenity in the public interest, such as Mr Phocas, nevertheless had the possibility of remedying such a situation. Article 28 of the Decree of 31 December 1958 had provided for a so-called abandonment procedure allowing the landowner to have the land in question purchased by the benefiting local authority within three years. Failing an agreement, the price could be set by the expropriations judge.

In the instant case, the Government continued, the applicant had lodged his application to abandon his property with the authorities on 24 May 1970, and the failure of the price negotiations had been acknowledged at the end of the interview on 26 January 1973. The expropriations judge, to whom the applicant had applied only on 20 October 1975, after the three-year period had expired, had therefore been bound to hold that he had no jurisdiction to fix the purchase price. In short, Mr Phocas had been responsible for the failure of that procedure, which afforded him the chance of putting an end to the burden on his right of property.

The weight of that burden had, moreover, to be put in perspective. Mr Phocas's rights as an owner had for the most part been preserved; he could make use of his building - and, in particular, continue to use it for business purposes - or let it as it was. Furthermore, if it had proved difficult to sell the building because of the restriction affecting it, the possibility of having it purchased by the authorities had been open to him.

In sum, the balance between the community's interests and those

of Mr Phocas had not been upset.

58. The Commission observed that for a long period before 3 May 1974, when France ratified Protocol No. 1 (P1), the applicant had not managed either to secure planning permission or to sell his property to the authorities pursuant to his right of abandonment. That situation had continued after that date. Thus on 21 September 1976 the Prefect had adjourned his fresh application for planning permission, although the expropriations judge in his decision of 19 March 1976 had found that Mr Phocas was "again able to dispose of [his land] freely" (see paragraph 26 above). Moreover, the applicant had been prevented by the commencement of expropriation proceedings on 7 March 1980 from benefiting from the Montpellier Administrative Court's judgment of 7 February 1980, in which he had been held to have constructive planning permission.

Having regard also to the slowness of the proceedings relating to the applicant's property, the Commission concluded that the acts of the French authorities and courts had made Mr Phocas's right of property so unstable and uncertain over a very long period that a fair balance had not been struck between the public interest and the private interest.

59. The Court notes that there were various interferences with Mr Phocas's full enjoyment of his property as a result of different kinds of proceedings. The threat of expropriation and the restrictions on building were undoubtedly an obstacle to continuing to run his business on the premises and made it doubtful that he could sell them or let them to a trader. Nor was the applicant able to convert his building as he wished, since three of his applications for planning permission were adjourned and one refused (see paragraphs 8-15 above).

60. Such a situation is in principle incompatible with the fair balance required by Article 1 of Protocol No. 1 (P1-1) (see paragraph 53 above).

The Court observes, however, that the law applicable at the material time, namely Article 28 of the Decree of 31 December 1958 (see paragraph 36 above), afforded the applicant a remedy. That provision allowed the owner of land reserved in an approved development plan, such as Mr Phocas, to have the land in question purchased by the local authority or public institution for whose benefit the land had been reserved within three years of the application; failing agreement, an application could be made to the expropriations judge to determine the price.

In the instant case the general development plan of the municipality of Castelnau-le-Lez was approved on 9 October 1969 (see paragraph 11 above). It was not until 27 May 1970, however, that Mr Phocas applied to the département's Director of Infrastructure to abandon his property (see paragraph 18 above), after the Ministry of Infrastructure and Housing had suggested this course of action on 2 January 1970 (see paragraph 12 above). Furthermore, having had no response from the authorities, the applicant, instead of applying to the expropriations judge, renewed his application on 13 May 1972 (see paragraph 18 above). The negotiations which followed failed (see paragraph 19 above). Instead of immediately applying to the expropriations judge, the applicant again renewed his application, on 2 June 1973 (see paragraph 20 above). When the applicant did finally apply to the judge on 20 October 1975, the judge could not but hold that he had no jurisdiction because the statutory three-year time-limit had been exceeded (see paragraph 26 above).

It thus appears that even if the authorities delayed in replying to Mr Phocas's applications to have his property purchased, the failure of the abandonment proceedings was attributable to the applicant, who first rejected the purchase offer made to him (see

paragraphs 21-25 above) and then applied to the expropriations judge out of time (see paragraph 26 above). At all events, the applicant finally accepted the expropriation compensation awarded by the Expropriations Division on 22 January 1982 (see paragraph 28 above). The procedures provided in domestic law therefore afforded a remedy sufficient to ensure protection of the right to the peaceful enjoyment of one's possessions.

In short, there has not been a breach of Article 1 of Protocol No. 1 (P1-1).

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

61. Mr Phocas also complained of the length of the proceedings brought in the French courts. He relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides:

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

62. As it had already done before the Commission, the Government raised an objection to admissibility.

A. The Government's preliminary objection

63. The Government pleaded that the complaint based on Article 6 para. 1 (art. 6-1) was out of time as the applicant had made it for the first time in his supplementary pleading of 30 December 1992, after the six-month period laid down in Article 26 (art. 26) of the Convention had expired.

64. Mr Phocas rejected that submission, contending that he had raised the complaint in substance in his application to the Commission.

65. The Delegate of the Commission pointed out that it was for the Commission to characterise the facts submitted to it and that it had declared the complaint in question admissible after observing that the applicant had complained of the length of the proceedings in the French courts.

66. The Court notes that in his application Mr Phocas raised the slowness of the proceedings in the national courts and thus, in substance, relied on Article 6 para. 1 (art. 6-1). Having regard also to the Commission's decision on admissibility, it dismisses the objection.

B. Merits of the complaint

67. The Government did not plead on the merits of this complaint and the Commission expressed no view (see paragraph 40 above).

68. The Court points out, firstly, that the applicant provided no particulars in support of his complaint. It notes further that he initiated various distinct sets of proceedings, which must be assessed separately.

The proceedings in connection with the application for judicial review made to the Montpellier Administrative Court on 2 December 1967 do not fall under the Court's scrutiny as they were terminated on 16 October 1972 (see paragraph 9 above), that is to say before 3 May 1974, when France ratified the Convention. The same is true of the second set of proceedings to obtain compensation (see paragraphs 32-34 above); these were instituted on 12 December 1990, after the application to the Commission on 19 November 1990.

69. While the length of the preliminary, amicable stage of the proceedings to abandon property is open to criticism, it was mainly attributable to the conduct of the applicant (see paragraph 60 above). The proceedings before the expropriations judge and the Expropriations Division, on the other hand, took place speedily. The expropriations judge of Hérault, to whom application was made on 20 October 1975 to have the purchase price fixed, ruled on 19 March 1976 (see paragraph 26 above). Similarly, on the application made on 15 December 1980 to have the expropriation compensation assessed, the same judge gave judgment on 19 June 1981. On appeal, the Expropriations Division gave its ruling on 22 January 1982 (see paragraph 28 above).

70. It remains to consider the length of the proceedings brought in the Montpellier Administrative Court on 15 November 1976 (see paragraph 14 above) and 9 February 1979 (see paragraphs 16 and 17 above) and those relating to Mr Phocas's first application for compensation (see paragraphs 29-31 above).

71. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, for example, the *Terranova v. Italy* judgment of 4 December 1995, Series A no. 337-B, p. 21, para. 20) and the importance of what is at stake for the applicant in the litigation (see, among other authorities, the *Allenet de Ribemont v. France* judgment of 10 February 1995, Series A no. 308, p. 19, para. 47).

72. As regards the length of the first of the three sets of proceedings mentioned above (about two years and two months), the Court notes that it went through its various stages at a regular pace. The application was lodged on 15 November 1976, the Minister of Infrastructure filed his observations on 16 June 1977 and documents on 29 June 1977, the hearing took place on 15 December 1978 and judgment was delivered on 8 January 1979.

The second set of proceedings lasted a little over four years and three months. Mr Phocas sought to have quashed the decision whereby the mayor of Castelnau-le-Lez had refused his last application for planning permission. Only one year elapsed between the lodging of the application with the Montpellier Administrative Court (9 February 1979) and the delivery of the judgment (7 February 1980). The Conseil d'Etat did not proceed so rapidly. Having received the appeal on 14 April 1980, it did not hold a hearing until 21 January 1983 and delivered its judgment only on 19 May 1983. The case, however, had become pointless for the applicant after 7 March 1980, when the expropriation proceedings were commenced (see paragraphs 27 and 28 above), making any building work impossible.

The third set of proceedings lasted eight years and nearly five months, between the filing of the preliminary compensation claim (8 January 1982) and the judgment of the Conseil d'Etat (25 May 1990). The Court observes, however, that those proceedings were to some degree complex as they raised the issue of the State's liability. It also notes that the main delay was to be ascribed to the applicant, who did not reply to the observations filed with the Administrative Court by the Minister of Town Planning and Housing on 10 October 1983 until 20 and 22 November 1984, when the hearing was to take place on 23 November. On 27 November the court consequently ordered further inquiries into the facts so as to allow the authorities to reply. Several pleadings were subsequently exchanged, with the result that judgment was not given until 3 June 1986. The Conseil d'Etat, to which Mr Phocas applied on 11 August 1986, subsequently filing a supplementary pleading on 10 December of the same year, admittedly did not deliver its judgment until 25 May 1990. It does not appear from

the evidence, however, that Mr Phocas made any special effort to speed up the proceedings.

73. In conclusion, there has been no breach of Article 6 para. 1 (art. 6-1) of the Convention.

FOR THESE REASONS, THE COURT

1. Holds by seven votes to two that there has been no breach of Article 1 of Protocol No. 1 (P1-1);
2. Dismisses unanimously the Government's preliminary objection that the complaint based on Article 6 para. 1 (art. 6-1) of the Convention was out of time;
3. Holds unanimously that there has been no breach of Article 6 para. 1 (art. 6-1) of the Convention in respect of the application for judicial review lodged on 15 November 1976;
4. Holds by seven votes to two that there has been no breach of Article 6 para. 1 (art. 6-1) of the Convention in respect of the application for judicial review lodged on 9 February 1979;
5. Holds by five votes to four that there has been no breach of Article 6 para. 1 (art. 6-1) of the Convention in respect of the compensation proceedings instituted on 8 January 1982.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 April 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) joint dissenting opinion of Mr Russo and Mrs Palm, joined in part by Mr Bigi;
- (b) joint dissenting opinion of Mr Foighel and Mrs Palm.

Initialed: R. R.

Initialed: H. P.

JOINT DISSENTING OPINION OF JUDGES RUSSO AND PALM,
JOINED IN RESPECT OF PARAGRAPH 3 BY JUDGE BIGI

(Translation)

Unlike the majority, we voted in favour of finding that there had been a breach of Article 6 para. 1 (art. 6-1) of the Convention as regards the proceedings instituted by the applicant on 9 February 1979 and 8 January 1982.

In the first set of proceedings Mr Phocas sought to have quashed the decision whereby the mayor of Castelnau-le-Lez had refused his last application for planning permission. The fact that the case had become pointless for the applicant owing to the commencement of expropriation proceedings cannot, in our view, justify on its own a duration of four years and three months, including three years and one month before the Conseil d'Etat alone.

The second set of proceedings was undeniably complex to some degree as it raised the issue of the State's liability, and the main delay was no doubt to be ascribed to the applicant. Nevertheless, the Conseil d'Etat, to which Mr Phocas applied on 11 August 1986, did not deliver its judgment until 25 May 1990. And while, as the Court notes, "it does not appear from the evidence ... that Mr Phocas made any special effort to speed up the proceedings", the same evidence does not disclose any justification for that delay of nearly four years.

JOINT DISSENTING OPINION OF JUDGES FOIGHÉL AND PALM

1. In relation to Article 1 of Protocol No. 1 (P1-1), we agree with the majority that there were various interferences with Mr Phocas's full enjoyment of his property as a result of different kinds of proceedings (paragraph 59).

Like the Commission, we also find that the acts of the French authorities and courts had made Mr Phocas's right of property unstable and uncertain over a very long period.

Such a situation is in principle incompatible with Article 1 of Protocol No. 1 (P1-1).

2. It is true that domestic law afforded a remedy - the abandonment procedure (paragraph 36) - which in principle could to some extent ensure protection of possessions. But we disagree with our colleagues that the failure of the domestic abandonment proceedings was attributable to the applicant alone.

Mr Phocas's first request to abandon his property was made on 27 May 1970 (paragraph 18). But it was not until he renewed his application on 13 May 1972 that the authorities reacted by inviting him to a meeting said to have taken place on 26 January 1973 (paragraph 19).

A further meeting took place on 29 May 1973 at the office of the Prefect of Hérault. What happened at this meeting is not clear, but it seems to follow from Mr Phocas's letter of 2 June 1973 to the Prefect that negotiations were still going on and that the Prefect during the last meeting had made "a promise ... that the formalities for purchasing [the applicant's] property ... would be carried out very speedily" (paragraph 20).

Moreover, on 7 November 1974, the département's Director of Infrastructure wrote to the applicant making an offer to purchase (paragraph 21). Mr Phocas replied on 20 January 1975, asking for "a proper assessment" (paragraph 22). On 4 February 1975 the Director of Infrastructure sent him a letter - confirmed on 16 May 1975 - stating notably that he had "no discretion to alter offers" and that it was for the applicant to apply to the expropriations judge to fix the compensation due to him (paragraph 23).

This conduct on the part of the authorities could reasonably lead the applicant to believe that negotiations were continuing and that a solution was imminent. The failure of the domestic abandonment proceedings was therefore not attributable to the applicant alone.

3. Whatever the case may be, it took a further year and five months after Mr Phocas's letter of 2 June 1973 for an offer of payment to be made on 7 November 1974 (paragraph 21).

It was thus four and a half years before Mr Phocas received a concrete reply to his request of 27 May 1970. This delay put him in an awkward and unreasonable situation: either he had to accept this offer or else he had to give up the abandonment as the three-year time-limit had passed while he was waiting for the authorities to answer his request.

Against this background and taking the case as a whole, we cannot accept that a fair balance was struck in relation to Mr Phocas. We therefore hold that there has been a breach of Article 1 of Protocol No. 1 (P1-1).

4. We further find that Article 6 para. 1 (art. 6-1) of the Convention has been violated since the proceedings instituted on 8 January 1982 were not conducted within a reasonable time.