



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

COURT (CHAMBER)

CASE OF PRÖTSCH v. AUSTRIA

(Application no. 15508/89)

JUDGMENT

STRASBOURG

15 November 1996

In the case of Prötsch v. Austria¹,

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 B², as a Chamber composed of the following judges:

MM. R. RYSSDAL, *President*,

F. GÖLCÜKLÜ,

F. MATSCHER,

I. FOIGHEL,

Sir John FREELAND,

MM. M.A. LOPES ROCHA,

L. WILDHABER,

B. REPIK,

P. JAMBREK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 June and 22 October 1996,

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

PROCEDURE

1. The case was referred to the Court by the Government of the Republic of Austria ("the Government") on 18 August 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 15508/89) against Austria lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) on 12 June 1989 by two Austrian nationals, Mr Ludwig and Mrs Maria Prötsch. The Government's application referred to Article 48 (art. 48). The object of the application 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).

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicants stated that they wished to take part in

¹ The case is numbered 67/1995/573/659. 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 of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

the proceedings and designated the lawyer who would represent them (Rule 31).

3. The Chamber to be constituted included ex officio Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 5 September 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr I. Foighel, Mr R. Pekkanen, Sir John Freeland, Mr M.A. Lopes Rocha, Mr B. Repik and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently, Mr L. Wildhaber, substitute judge, replaced Mr Pekkanen, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 20 March 1996. On 22 May 1996 the applicants filed claims for just satisfaction under Article 50 of the Convention (art. 50). On 3 June 1996 the Commission produced various documents from the proceedings before it, as requested 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 24 June 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr F. CEDE, Ambassador, Legal Adviser,
Federal Ministry of Foreign Affairs, *Agent*,
Mr D. HUNGER, Federal Ministry of Agriculture and Forestry,
Ms I. SIESS, Constitutional Department, Federal Chancellery,
Ms E. BERTAGNOLI, International Law Department,
Federal Ministry of Foreign Affairs, *Advisers*;

- for the Commission

Mr A. WEITZEL, *Delegate*;

- for the applicants

Mr E. PROKSCH, Rechtsanwalt, Vienna Bar, *Counsel*.

The Court heard addresses by Mr Weitzel, Mr Proksch and Mr Cede and also replies to its questions.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

6. The applicants are Austrian citizens and own a farm at Niederthalheim, Upper Austria.

A. The consolidation measures

7. Agricultural land-consolidation proceedings (Zusammenlegungsverfahren) under the Upper Austria Agricultural Land Planning Act (Flurverfassungs-Landesgesetz - see paragraph 20 below) were instituted by the Gmunden District Agricultural Authority (Agrarbezirksbehörde - "the District Authority") in 1972. They concerned 153 landowners and covered some 606ha. The valuation (Bewertungsplan - see paragraph 23 below) was adopted in December 1978 without opposition from the interested parties. On 7 October 1980 the District Authority ordered the provisional transfer of the compensatory parcels (Grundabfindungen) on the basis of a draft consolidation scheme (Neueinteilungsplan - see paragraph 25 below). An appeal lodged by the applicants against this order was rejected by the Upper Austria Land Reform Board (Landesagrarsenat - "the Upper Austria Board") on 24 April 1981.

8. The consolidation scheme (Zusammenlegungsplan - see paragraph 26 below) was published in October 1983 and, in its essence, confirmed the situation created by the provisional transfer order.

9. On 24 May 1984, following an appeal from the applicants, the Upper Austria Board held that the parcels allotted to the applicants were of approximately the same value as the old ones. The Board pointed out that it did not share the opinion expressed in the private expert opinion submitted by the applicants, according to which the yield of their compensatory parcels was below that of the applicants' former property. On the contrary, it held that, on the whole, the agricultural performances under the new situation were at least as good as under the old one and dismissed the bulk of the applicants' arguments. However, with reference to a plot measuring 2.2ha (plot no. 4738), the Board held that while not illegal its configuration could be rendered more functional (zweckmäßiger). It therefore quashed the part of the consolidation scheme concerning that plot and ordered that the District Authority re-examine the issue. The applicants appealed against this decision.

10. On 3 April 1985 the Supreme Land Reform Board (Oberster Agrarsenat - "the Supreme Board") quashed the decision of 24 May 1984 and referred the case back to the Upper Austria Board following the applicants' argument that the appeal could not be partly dismissed, as the

applicants' claims for compensatory parcels were an indivisible whole. It further held, *inter alia*, that the question of lawfulness (*Gesetzmäßigkeit*) also included considerations of functionality.

11. On 11 July 1985, in compliance with the Supreme Board's decision, the Upper Austria Board set the consolidation scheme aside. The Board again pointed out that it did not share the opinion expressed in the private expert opinion submitted by the applicants. It established that the compensatory parcels attributed to the applicants were, on the whole, more advantageous, but that they also contained some negative aspects. The advantages were (a) the reduction of the splitting up of the plots and the resulting increase in the average size of the plots; (b) the reduction of the length of boundaries and the concomitant abolition of unproductive plots; (c) a better balance between length and width of the plots; and (d) better access. The negative aspects were (e) the diminution of the average comparative values of the parcels (by 2.3%); (f) the increase of average distance from the farm (by 2%); (g) the slight increase of forest border; (h) the inappropriate configuration of plot no. 4733; (i) the hook-like form of plot no. 4738 and the circuit line pylons on this plot part of which was unproductive.

12. The Board concluded that the lawfulness of the compensatory measures was still in question. The file was referred to the District Authority for the adoption of a new scheme.

13. In January 1986 the District Authority published a new consolidation scheme. The applicants also appealed against this scheme. Although they were now in agreement with the new land allocation, they demanded that the boundaries of one of their plots be straightened (*Grenzbegradigung*) and that their share in the costs of communal measures and facilities - 95,000 Austrian schillings (ATS) - (see paragraph 24 below) - be scrapped or reduced to a minimum.

14. On 18 September 1986, the Upper Austria Board dismissed the applicants' appeal. It observed that the number of plots in the applicants' possession had been reduced from seventeen to nine, whilst the difference in value between the new and the old land did not even attain 1%, well below the statutory maximum of 20%. All in all, the consolidation measures had led to an increase in productivity which compensated for certain small disadvantages. The applicants lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*), which, in summary proceedings, refused to deal with the complaint and referred the case to the Administrative Court (*Verwaltungsgerichtshof*) which, in its turn, decided to discontinue the proceedings for procedural reasons in February 1988.

B. The application for financial compensation

15. On 26 January 1988 Mr and Mrs Prötsch had applied for financial compensation in respect of the damages allegedly caused to them by the fact that they had received insufficient compensatory parcels by the provisional transfer which at that time was still in force. They submitted an expert opinion according to which they had suffered a loss of crops in the amount of approximately ATS 210,000 between 1980 and 1987.

16. On 22 February 1988 the District Authority rejected the applicants' claim as being inadmissible. It observed that the Agricultural Land Planning Act did not provide for any compensation in respect of damage suffered in the period between the provisional transfer and the assignment of lawful compensatory parcels by the final consolidation scheme (see paragraph 27 below). In addition, the agricultural authorities were only competent to decide on facts concerning the implementation of the consolidation.

17. The applicants' appeal to the Upper Austria Board was dismissed on 7 July 1988 on the ground that there was neither a legal nor a factual basis for a claim for financial compensation in their case. In the latter respect, the Board pointed out that it had examined and rejected the applicants' private expert opinion already in its decision of 11 July 1985 (see paragraph 11 above). Although the original consolidation scheme had had to be quashed in consequence of the applicants' appeal, this did not mean that the applicants had suffered damage. In the instant case, it had been found in the earlier decision that among the total of 17ha of compensatory parcels allotted to the applicants only the configuration of one measuring some 2.2ha (no. 4738) was objectionable. On the other hand, the applicants had also gained certain advantages. Therefore the Board maintained the opinion already expressed in its earlier decisions that the applicants had not suffered any damage as far as yield and exploitation conditions were concerned.

18. The applicants challenged this decision before the Administrative Court alleging that the authorities had the duty to apply the provisions of the civil law. The Administrative Court, however, found that the administrative authorities were not competent to decide on compensation claims of a civil-law nature and dismissed the complaint on 27 September 1988.

19. The applicants lodged a complaint with the Constitutional Court invoking Article 6 of the Convention (art. 6) and Article 1 of Protocol No. 1 (P1-1). The Constitutional Court considered that in the light of its constant case-law the complaint did not have any prospects of success and, on 28 February 1989, refused to deal with it. In summary proceedings it observed, *inter alia*, that the facts in the applicants' case were different from those in the case of *Erkner and Hofauer v. Austria* (judgment of 23 April 1987, Series A no. 117 - see paragraph 38 below) in that the consolidation scheme had already been published and that the applicants had never complained of the unreasonable length of the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Agricultural legislation

1. The consolidation of agricultural land

20. The basic rules applying to the consolidation of agricultural land, as applicable to the present case, are embodied in the Federal Agricultural Land Planning (General Principles) Act (Flurverfassungs-Grundsatzgesetz 1951), as amended in 1977. Each Land has enacted its own agricultural and land planning legislation (Flurverfassungs-Landesgesetze) to regulate the matters of its competence within the federal framework. In the Land of Upper Austria, consolidation is governed by the Agricultural Land Planning Act 1979 ("the 1979 Act").

21. The purpose of consolidation is to improve the infrastructure and the pattern of agricultural holdings in a given area (section 1 (1) of the 1979 Act). It comprises communal measures and facilities and redistribution of land. The operation takes place in the following stages:

- initial proceedings;
- ascertainment of the occupiers of the land in question and assessment of its value;
- planning of communal measures and facilities;
- provisional transfer of land, where appropriate;
- adoption of the consolidation scheme. None of these stages may begin until the previous stage has been terminated with a final decision.

22. The initial proceedings, which the authorities institute of their own motion, serve to determine the consolidation area, which, in addition to farmland and forest, may include land voluntarily offered for consolidation and land required for communal facilities (sections 2 and 3). 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. This authority has exclusive jurisdiction, inter alia, over disputes concerning ownership and tenure of land in the consolidation area (section 102).

23. Once the decision to open proceedings has become final, the agricultural authority ascertains who are the occupiers of the land and assesses its value (sections 11 and 12). Its decision (Besitzstandsausweis und Bewertungsplan) determines the value of the land in accordance with precise statutory criteria (section 13). Each of the landowners involved may challenge the valuation not only of his own land but also of the land of the others. Once the agricultural authority's decision has become final, however, it is binding on all of them.

24. Communal measures (such as soil improvement, alterations to terrain or landscape) and communal facilities (private roads, bridges, ditches, drainage and irrigation) are ordered, where they are needed, in a specific decision by the relevant authority (Plan der gemeinsamen Maßnahmen und Anlagen), which must also settle the question of costs, these usually being shared by the landowners.

25. Under section 22 of the 1979 Act, land may be provisionally transferred before the adoption of the consolidation scheme, even if some owners object. Decisions by the competent authorities ordering provisional transfers are not appealable; but section 7 of the Federal Agricultural Authorities Act 1950 (Agrarbehördengesetz, as amended in 1974 - "the 1950/1974 Federal Act") provides that the final decision shall lie with the Land Board (Landesagrarsenat), except in cases where an appeal lies to the Supreme Board (Oberster Agrarsenat - see paragraph 30 below). 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: ownership of it reverts to the original owner if the allocation is not confirmed in the final consolidation scheme (Eigentum unter auflösender Bedingung, section 22 (2)). This provisional, conditional ownership is, as a rule, not entered in the land register since it is possible that the parties concerned may be allotted other parcels once the proceedings are completed. The District Authority has to authorise any entry in the land register (sections 94 et seq.).

26. At the end of the proceedings, the agricultural authority adopts the consolidation scheme (Zusammenlegungsplan, section 21). Since 1977 this has to be published within three years of the final decision provisionally to transfer parcels of land (section 7a (4) of the 1950/1974 Federal Act), failing which the person concerned may request the higher authority to assume jurisdiction. The adoption of the scheme 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 1979 Act includes the following regulations on this matter:

- when compensatory parcels are being determined, regard shall be had to the wishes of the parties directly concerned in so far as this can be done without infringing statutory provisions or interfering with important public interests served by the consolidation scheme;
- any landowner whose land is included in the consolidation scheme shall be entitled to compensation in the form of other land of equal value included in the same scheme or, if that is not possible, to be reallocated his previous parcels, including building land (section 19);
- changes in the value of land which come about in the course of the proceedings, including those occurring after the provisional transfer, must

be taken into account in the final allocation under the consolidation scheme (section 14 (1));

- claims for financial compensation have to be submitted within six months from the date on which the consolidation scheme becomes final (section 20 (6)).

27. The legislation of the Länder did not at the material time provide for any financial compensation for damage suffered, before a final consolidation scheme came into force, by landowners who had successfully challenged the lawfulness of compensation received through transfer of land.

28. Following the judgments of the European Court of Human Rights of 23 April 1987 in the cases of *Erkner and Hofauer* cited above and *Poiss v. Austria* (Series A no. 117), Austrian legislation has been amended to the effect, inter alia, that, once it is found that compensatory parcels were not lawfully allocated, the concerned parties may apply for financial compensation (section 10 (5) to (7) of the Federal Agricultural Land Planning (General Principles) Act). The new legislation came into force on 1 January 1994.

2. The agricultural authorities

29. The first-instance authority in Upper Austria is the District Agricultural Authority, which is a purely administrative body. The higher authorities are the Upper Austria Land Reform Board, established at the Office of the Land Government (Amt der Landesregierung), and the Supreme Land Reform Board, set up within the Federal Ministry of Agriculture and Forestry (Bundesministerium für Land- und Forstwirtschaft). These boards include judges and constitute a kind of "specialised administrative tribunal".

30. Decisions of the District Authority can be challenged by way of appeal to the Land Board, whose decision is final except where it varies the decision in question and where the dispute concerns one of the issues listed in section 7 (2) of the 1950/1974 Federal Act, such as the lawfulness of the compensation in the event of land consolidation; in such cases an appeal lies to the Supreme Board. The executive can neither set aside nor vary the decisions of these three bodies, but they can be challenged in the Administrative Court (section 8 of the 1950/1974 Federal Act and Article 12 para. 2 of the Federal Constitution).

31. Procedure before the land-reform boards is governed by the 1950/1974 Federal Act, section 1 of which stipulates that the General Administrative Procedure Act - except for one section of no relevance in the instant case - shall apply, subject to the variations and additional provisions made in the 1950/1974 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 1950/1974 Federal Act, the

boards take their decisions after a private hearing. 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 is not notified to the parties concerned within that time, they 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 within the statutory time-limit, 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).

B. Appeals to the Constitutional Court and the Administrative Court

32. The decisions of land-reform boards can be challenged in the Constitutional Court which will determine, inter alia, whether there has been any infringement of the applicant's rights under the Constitution (Article 144 of the Federal Constitution).

33. As an exception to the general rule laid down in Article 133 para. 4 of the Federal Constitution, section 8 of the 1950/1974 Federal 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. The latter will, if it rules that there has been no infringement of the right relied on in the application to it and if the applicant so requests, refer the case to the Administrative Court (Article 144 para. 3 of the Federal Constitution).

Under Article 130 of the Federal Constitution, the Administrative Court determines applications alleging the unlawfulness of an administrative act or a breach by a competent authority of its duty to make a decision. It also hears appeals against decisions of boards whose members include judges - such as the land-reform boards (see paragraph 29 above) - where such jurisdiction is conferred on it by statute.

PROCEEDINGS BEFORE THE COMMISSION

34. Mr and Mrs Prötsch applied to the Commission on 12 June 1989. They relied on Article 1 of Protocol No. 1 (P1-1), complaining of the impossibility of obtaining compensation in respect of temporary disadvantages which they allegedly suffered in connection with agricultural land-consolidation proceedings. They further complained, under Article 6 of the Convention (art. 6), that the Land Reform Board lacked impartiality.

35. On 31 August 1994 the Commission declared the application (no. 15508/89) admissible as far as the complaint under Article 1 of Protocol No. 1 (P1-1) was concerned. In its report of 5 April 1995 (Article 31) (art. 31) it expressed the opinion, by nine votes to two, that there had been a violation of that provision (P1-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment³

FINAL SUBMISSIONS TO THE COURT

36. At the hearing, the applicants requested the Court to hold that in the present case Austria had acted in violation of Article 1 of Protocol No. 1 (P1-1).

The Government, for their part, asked the Court to conclude that the interferences with the applicants' property rights could not be regarded as unreasonable in the light of the requirements of the general interest on which consolidation proceedings are based and that, therefore, there were no grounds to assume that a breach of Article 1 of Protocol No. 1 (P1-1) had taken place.

AS TO THE LAW

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

37. Mr and Mrs Prötsch complained that their inability to obtain financial compensation for the loss of yield from the compensatory parcels provisionally allocated to them was in violation of Article 1 of Protocol No. 1 (P1-1), which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions (P1-1) 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."

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-V), but a copy of the Commission's report is obtainable from the registry

The Commission agreed with the applicants' claim whereas the Government, whilst accepting that there had been an interference with the applicants' right of property, contested the claim.

38. The applicants alleged that, as a result of the provisional transfer arrangements (see paragraph 7 above), they had been allotted land of less value than that which they had previously held and that, in consequence, they had suffered a yearly loss in the region of ATS 30,000 for a period of seven years, their total loss therefore amounting to ATS 210,000. They emphasised that this damage was only imputable to the lesser yield of the parcels provisionally allocated to them.

The applicants further submitted that, at the material time, the legislation did not provide for financial compensation in respect of damage suffered (see paragraph 27 above). Although legislative changes have now been introduced (see paragraph 28 above), these only came into force in January 1994. Accordingly, as far as the applicants' rights for financial compensation were concerned, the situation was identical to that obtaining in the cases of *Erkner and Hofauer v. Austria* and *Poiss v. Austria* (judgments of 23 April 1987, Series A no. 117), where the Court had found a violation of Article 1 of Protocol No. 1 (P1-1).

39. In the Commission's view, the applicants' case differed very little from the other land-consolidation cases mentioned in the preceding paragraph. Although in the present case the time that elapsed between the provisional transfer of land and the coming into force of the consolidation scheme was considerably shorter, the Commission considered that a period of six years, in a situation where no action for compensation was open to the applicants, still imposed on them an individual and excessive burden which was contrary to the Convention.

At the hearing, the Delegate of the Commission submitted that the present case was distinguishable from that of *Wiesinger v. Austria* (judgment of 30 October 1991, Series A no. 213), in that, unlike Mr and Mrs Prötsch, the applicants in the *Wiesinger* case had voluntarily joined the consolidation proceedings and had not opposed the provisional transfer (p. 25, para. 70).

40. The Government denied that the applicants ever suffered any material damage as a result of the provisional transfer. Therefore, the question whether the applicants were able to bring an action for compensation was wholly irrelevant in this case. They further contended that, in the light of the requirements of the general interest on which consolidation proceedings are based, a period of six years cannot be considered unreasonable, particularly when regard is had to the highly complex questions that the Austrian authorities had to examine.

41. In interpreting Article 1 of Protocol No. 1 (P1-1), the Court refers to its long-established case-law (see, among many other authorities, the *Pressos Compania Naviera S.A. and Others v. Belgium* judgment of 20 November 1995, Series A no. 332, pp. 21-22, para. 33).

42. The transfer of land - whose lawfulness the applicants contest - could not amount, by the very essence of its provisional nature, to a "deprivation of possessions", within the meaning of the second sentence of the first paragraph of Article 1 (P1-1-1). Again, this provisional transfer was essentially designed not to restrict or control the "use" of the land (second paragraph of Article 1) (P1-1-2), but to achieve an early restructuring of the consolidation area with a view to improved, rational farming by the "provisional owners" (see paragraph 25 above). The transfer must therefore be considered under the first sentence of the first paragraph of Article 1 (P1-1-1) (see, on this point, the above-mentioned *Wiesinger* judgment, p. 26, para. 72).

43. For the purposes of this provision (P1-1-1), the Court must inquire whether a proper balance has been struck between the demands of the community's general interest and the requirements of protecting the fundamental rights of the individual.

In this respect a temporary disadvantage sustained by an individual by reason of a measure taken in accordance with domestic law may in principle be justified in the general interest, if it is not disproportionate to the aim sought to be achieved by that measure (*ibid.*, p. 26, para. 73).

44. According to the relevant legislation (see paragraph 21 above), the purpose of consolidation is to improve the infrastructure and the pattern of agricultural holdings, by redistributing the land and providing communal facilities. It serves the interests of both the landowners concerned and the community as a whole by increasing the profitability of holdings and rationalising cultivation (see the above-mentioned *Wiesinger* judgment, p. 26, para. 74). This has not been challenged by the applicants, who have concentrated their claim on the inadequate way in which the provisional transfer process was carried out and on its allegedly unreasonable length.

45. As to the alleged inadequacy of those procedures which - in the applicants' submission - resulted in a decreased productivity of the compensatory parcels allocated to them and ensuing financial damage, the Court observes that it was open to Mr and Mrs Prötsch to contest the lawfulness of that allocation once the consolidation scheme was published. Indeed, they used this possibility and filed an appeal in October 1983 against the original consolidation scheme. The thrust of their complaints was rejected by the Upper Austria Board on the ground, *inter alia*, that the parcels allotted to the applicants were of approximately the same value as their former holdings and that, on the whole, the agricultural performances under the new situation were at least as good as under the old one. It is to be noted that the Board only accepted that the configuration of a relatively

small plot (2.2ha) should be re-examined by the District Authority with a view to making it more functional (see paragraph 9 above).

In January 1986, the applicants filed a fresh appeal against the amended consolidation scheme. The Upper Austria Board dismissed it by holding, *inter alia*, that the number of plots in the applicants' possession had been reduced from seventeen to nine, while the difference in value between the new and the old land did not even attain 1%. It further held that, all in all, the consolidation measures had led to an increase in productivity which compensated for certain small disadvantages (see paragraph 14 above).

46. Concerning the length of the consolidation proceedings, the Court notes that the facts in issue are clearly distinguishable from those in the cases of *Erkner and Hofauer* and *Poiss* (cited above at paragraph 38). Whereas in those cases the consolidation scheme had not yet been finally adopted at the time of the Court's ruling - the provisional transfer of parcels having lasted for an extensive period of time -, in the present case a first consolidation scheme was published only three years after the provisional transfer was effected (see paragraph 8 above). Following an appeal by Mr and Mrs *Prötsch*, a final scheme - including some improvement in respect of the applicants - came into force three years later (see paragraph 13 above). The status of provisional transfer was therefore maintained for a total of six years, well below the periods endured by the applicants in the above-mentioned cases (between sixteen and twenty-four years). In these circumstances, having regard to the statutory aim of the provisional transfer, a period of six years cannot be considered, in itself, to be unreasonably long.

47. Furthermore, the Court notes that the domestic authorities were able to examine the applicants' allegations of damage resulting from the provisional allocation of land which essentially corresponded to the situation arising from the consolidation scheme (see paragraph 8 above). Their conclusion was invariably that the applicants had suffered no damage as a result of the consolidation measures (see paragraphs 9 and 11 above). On the contrary, they singled out some clear advantages, such as the substantial reduction in the number of plots exploited by the applicants.

48. Having regard to all the circumstances mentioned above, the Court considers that the interference with the applicants' right of property cannot be held to be disproportionate to the demands of the general interest involved in the consolidation proceedings.

Accordingly, no violation of Article 1 of Protocol No. 1 (P1-1) has been established.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 1 of Protocol No. 1 (P1-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 November 1996.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar