



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

THIRD SECTION

CASE OF YVON v. FRANCE

(Application no. 44962/98)

FINAL

24/07/2003

JUDGMENT

STRASBOURG

24 April 2003

In the case of Yvon v. France,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr J.-P. COSTA,
Mr L. CAFLISCH,
Mr J. HEDIGAN,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 28 November 2002 and 10 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 44962/98) against the French Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Louis Yvon (“the applicant”), on 7 October 1998.

2. The applicant was represented before the Court by Mr D. Musso, a lawyer practising in Paris. The French Government (“the Government”) were represented by their Agent, Mr R. Abraham, Head of Legal Affairs, Ministry of Foreign Affairs.

3. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11). It was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. The applicant complained that the proceedings before the courts dealing with expropriation cases had not been fair.

5. By a decision of 19 September 2002 the Chamber declared the application admissible.

6. The applicant and the Government each filed observations on the merits of the case (Rule 59 § 1).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 28 November 2002 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr A. BUCHET, Deputy Head of the Human Rights Section,
Legal Affairs Department,
Ministry of Foreign Affairs, *Agent*,
Mr P. BOURREAU, Divisional Director, Revenue Department,
Ministry of the Economy, Finance and Industry,
Ms C. D'URSO, Head of the Institutional,
Legal and Contentious Issues Office,
Department of European and International Affairs,
Ministry of Justice, *Advisers*;

(b) *for the applicant*

Mr D. MUSSO,
Mr J.-M. POUILLE, Lawyers, *Counsel*.

The Court heard addresses by Mr Musso and Mr Buchet and their replies to judges' questions.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1931 and lives in Saintes (Charente-Maritime). He is a winegrower.

9. On 19 May 1993 plans for improving a major road on the edge of the Saintes urban area were declared to be in the public interest. Completion of this operation required the expropriation of various plots of land, including twenty-one hectares belonging to the applicant. The expropriation liability order was issued on 5 September 1994.

10. On 12 September 1994 the expropriations judge for the *département* of Charente-Maritime issued an expropriation order giving rise to a transfer of ownership.

On 28 September 1994, in the absence of an agreement between the applicant and the State as the expropriating authority (represented by Mr H., an inspector from the Charente-Maritime Revenue Department) on the amount of compensation to be paid, the latter applied to the expropriations judge. In an order of the same day the expropriations judge for the *département* of Charente-Maritime set 4 November 1994 as the date for the

site inspection and stated that the public hearing would be held immediately afterwards.

On 3 November 1994 Mr P., Deputy Director of the Charente-Maritime Revenue Department, filed submissions in his capacity as Government Commissioner. The applicant's lawyer then requested an adjournment because of the lateness of these submissions. The hearing was accordingly fixed for 18 November 1994.

In a judgment of 9 December 1994, having heard the applicant, Mr H., the State's representative in the proceedings, and Mr P., the Government Commissioner, the expropriations judge assessed the compensation payable by the State at 1,441,517 French francs (FRF).

11. On 5 January 1995 the applicant appealed against this decision and filed a memorial with the Expropriations Division of the Poitiers Court of Appeal, in which he assessed the amount of compensation due at FRF 3,763,698.

On 13 April 1995 the Charente-Maritime Revenue Department filed a memorial in reply, signed by Mr H., in which it asked that the decision be upheld; a sheet of paper entitled "Study of the local property market", listing thirteen contracts of sale and one judgment, was appended. On 24 April 1995 the applicant's representative wrote to the signee of the memorial, requesting that he send a full copy of the contracts and decisions cited. In a letter of 18 July 1995 the Deputy Director of the Charente-Maritime Revenue Department, Mr P., refused to produce the documents on the ground that tax officials were bound by a duty of professional confidentiality.

On 17 August 1995 the applicant's counsel replied to the Deputy Director of the Revenue Department as follows:

"... it is regrettable that almost three months were required to send a brief reply to a standard request for production of documents, dated 24 April 1995, even though the case is due to be heard on 22 September. This aside, you are mistaken in failing to distinguish between your roles as Director of the Revenue Department and as representative of the expropriating authority in legal proceedings brought in application of the Decree of 11 December 1973 – Article R. 179 of the Code of State Property.

In this latter capacity, you are obliged to respect the fundamental principle of adversarial proceedings and the provisions of the new Code of Civil Procedure which impose a basic obligation on the parties to produce the evidence to which they refer. This principle also applies when you are acting in your capacity as Government Commissioner, which for the moment poses no further difficulties. I might add that had your memorial contained, as a minimum, sufficient indications to enable me to order the contracts from the land registry, I would have refrained from asking you to produce these documents.

I am therefore obliged to ask the court ... to order discovery of the documents which you refer to, unless the court prefers purely and simply to discount this evidence,

which would mean that it would rule only on the basis of my own terms of comparison ...”

On 4 September 1995 Mr P., standing in for the Director of the Vienne Revenue Department in his capacity as Government Commissioner, lodged submissions in support of a cross-appeal with a view to the hearing before the Expropriations Division of the Court of Appeal (initially set for 22 September 1995, the hearing was subsequently postponed at the applicant’s request until 24 May 1996); he assessed the compensation in issue at FRF 1,396,267.

The applicant filed a memorial in reply, referring in particular to an infringement of his right to a fair trial in the following terms:

“...

In the present case, the Director of the Revenue Department representing the expropriating authority and the Director of the Revenue Department acting as Government Commissioner are one and the same person, even if, for form’s sake, the Director of the Revenue Department is represented by two separate individuals, which is a fiction, since, as we have seen, the same person replied to the expropriated party’s counsel on behalf of the expropriating authority and also signed the Government’s Commissioner’s submissions.

It follows that the Director of the Revenue Department may take part in the present proceedings only in his capacity as the State’s representative or in his capacity as Government Commissioner, and may not combine the two roles. Otherwise, the parties do not enjoy a fair trial within the meaning of Article 6 of the European Convention on Human Rights ...”

According to the Government, the registry of the Expropriations Division informed the applicant and the Director of the Revenue Department within the Property Department, in letters dated 9 May 1996, of further grounds of appeal lodged on the same day by the Government Commissioner.

12. In a judgment of 21 June 1996 the Expropriations Division of the Poitiers Court of Appeal established the compensation amount at FRF 1,542,867. It held that the applicant’s request that the court dismiss the intervention by the Director of the Revenue Department in his capacity as Government Commissioner was ill-founded. The judgment stated:

“... The [applicant’s] criticisms of the Director of the Revenue Department’s activities and of the dual nature of his functions are unfounded because:

(i) The Director of the Revenue Department’s twofold status as Government Commissioner and ... representative of the expropriating authority does not amount to a defect; despite the strangeness of this situation, there is nothing to prevent the Director of the Revenue Department representing the expropriating authority and simultaneously assuming the functions of Government Commissioner.

(ii) The Director of the Revenue Department’s joint role as Government Commissioner and representative of the expropriating authority does not deny the

expropriated party a fair trial provided that the Government Commissioner does not participate in the decision-making process within the expropriations court.

(iii) In any event, in the specific case of this appeal, two Directors of Revenue Departments intervened, namely the Director of the Charente-Maritime Revenue Department, representing the State, and the Director of the Vienne Revenue Department as the Government Commissioner (see the appointments of substitutes dated 25 August 1995 and 2 May 1996 in the case file).

Consequently, the [applicant's] claims on the basis of Article 6 of the Convention ... must be rejected.

...

As regards the [applicant's] request that the State provide him with a copy of the contracts and judgments referred to as terms of comparison, and in the light of the adversarial principle, it seems initially that this request is admissible since it is not 'a new ground which was not raised at first instance' but new claims intended to secure dismissal of the other party's claims (Article 654 of the New Code of Civil Procedure);

However, this request [by the applicant] ... must be rejected since the information provided is sufficient to allow identification of the property sold and the price agreed upon together with free discussion of their value as evidence;

..."

13. The applicant appealed on points of law, alleging in particular that there had been a violation of his right to a fair trial. He submitted that it was not necessary for a party to participate in the decision-making process for its intervention to be considered a violation of Article 6 of the Convention, and complained that the Government Commissioner had been the last to speak, after the expropriated party, and that the latter had had no opportunity to reply. The applicant also complained that the Court of Appeal had dismissed his request for production of copies of the terms of comparison cited by the Government Commissioner.

On 8 April 1998 the Court of Cassation dismissed this appeal on the following grounds:

"... Firstly, the judgment correctly accepts that, since Article 6 of the Convention ... is not applicable, in that the Government Commissioner does not take part in the Expropriations Division's decision-making process, it is not necessary to find his intervention inadmissible.

Secondly, there is no text prohibiting the parties from replying to the submissions made by the Government Commissioner at the hearing.

...

The Court of Appeal justified its decision in law ... by accepting in the exercise of its unfettered discretion that the information provided had been sufficient to enable

identification of the property sold and the price agreed upon together with free discussion of their value as evidence.

...”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Representation of the State as expropriating authority

14. In a number of *départements*, including Charente-Maritime, the Revenue Department is the sole authority empowered to carry out purchases of real property, real-property rights or businesses, by agreement or through compulsory purchase orders, on behalf of all the State’s public, civil or military bodies (Article R. 176 of the Code of State Property). In the expropriation proceedings for which it is consequently responsible, it carries out, on behalf of the expropriating authority, “all the acts incumbent on the latter” (Article R. 178 of the same Code). Article 179 of the Code of State Property, in the version applicable at the material time, further provides:

“In determining compensation for expropriation, the officials of the Revenue Department appointed by order of the General Director of Revenue shall act before the Expropriations Divisions on behalf of the State’s expropriating bodies.

...

The appointments provided for in this Article shall not apply to the officials mentioned in [Article 13-7 of the Expropriations Code].”

B. Procedure before Expropriations Divisions and the rules governing the Government Commissioner’s participation

1. *The Code of Expropriation in the Public Interest (“the Expropriations Code”)*

15. The relevant provisions of the Expropriations Code are worded as follows:

(a) Legislative Section

Article L. 13-1

“Failing agreement between the parties, compensation shall be determined by an expropriations judge appointed for each *département* from among the judges who are members of a *tribunal de grande instance*.”

Article L. 13-21

“No objection may be filed against judgments given at first instance.

An appeal lies to the court of appeal within a period of fifteen days from service of judgments given in application of Chapter III.”

Article L. 13-25

“An extract of the judgment shall be notified at the request of the most diligent party.

It may be referred to the Court of Cassation. Appeals on points of law shall be brought, investigated and tried in accordance with the procedure provided for in Section II of Title II of Law no. 47-1366 of 23 July 1947.”

(b) Regulatory Section**Article R. 13-7**

“The Director of the Revenue Department (Property) of the *département* in which the Expropriations Division is based shall exercise the function of Government Commissioner before this Division.

The Director of the Revenue Department (Property) may appoint officials from his Department as his substitute in the role of Government Commissioner before the court mentioned in Article R.13-1.

Before the Chamber dealing with the appeal, he may be substituted either by Directors of Revenue Departments (Property) from other *départements* within the court of appeal’s territorial jurisdiction, or by officials from the Revenue Department (Property) whom he shall appoint specifically for this purpose.”

Article R. 13-8

“Cases brought before the courts cited in Articles L. 13-1 and L. 13-22 shall not be transmitted to State Counsel’s Office if the latter’s presence is not required at the hearing.”

Article R. 13-9

“Before the Chamber dealing with the appeal, State Counsel may nevertheless ask to see the file in all cases where he believes that his Office should be represented. In such an event, he may attend the hearing in order to lodge those submissions which he considers necessary, without prejudice to those of the Government Commissioner.”

Article R. 13-21

“Failing agreement between the parties within one month of receiving notification of the expropriating authority’s offers ... the case may be referred to the expropriations judge by the more diligent party under the conditions set out in Article L. 13-4.

...”

Article R. 13-27

“A copy of the order fixing the date and time for inspection of the site shall be sent to the expropriating authority by the registrar of the court, with a view to its communication to the interested parties and to the Government Commissioner.

If the case is referred to the judge by the expropriated party, the parties shall be notified directly by the registrar of the date of the site inspection.

The registrar shall append a copy of the memorials and other documents in his possession to the notification sent to the Government Commissioner.

The parties and the Government Commissioner must be informed at least fifteen days in advance of the date of the site inspection.

The visit to the site shall be conducted in their presence. A report shall be produced on the inspection.”

Article R. 13-28

“The judge may not appoint experts.

In order to assess the value of non-transferable real property and immovable property which present particular valuation difficulties, he may exceptionally be assisted during the inspection of the site by a notary or retired notary appointed from a list drawn up for the whole area within the court of appeal’s territorial jurisdiction by its president, on the basis of proposals from the regional Chamber of Notaries.

Exceptionally, he may also appoint a person whom he considers suitably qualified to provide advice in the event of technical problems concerning the assessment of compensation sums other than those referred to in the preceding paragraph.”

Article R. 13-30

“The public hearing shall be held on completion of the inspection of the site.

At the latest during this inspection, the judge shall inform the parties or their representative, as well as the Government Commissioner, of the place and time of the hearing, which may take place outside the premises in which the court sits.”

Article R. 13-31

“The judge shall hear the representative of the expropriating authority and the expropriated parties ... The parties may discuss only points covered in the memorials which they have submitted.

...”

Article R. 13-32

“The Government Commissioner shall present oral observations and file submissions.

The Government Commissioner’s submissions shall contain the elements needed for the court to be informed of the situation.

In particular, they shall include a reasoned valuation of the main compensation and, as appropriate, of the subsidiary compensation due to each owner of rights and, where necessary, information that would allow for automatic application of the provisions of Articles L. 13-14 to L. 13-19.”

Article R. 13-33

“Where one of the parties is unable to produce certain documents in support of its memorials, the judge may, where he considers this necessary for the resolution of the case, authorise the party, at its request, to produce these documents at the hearing.”

Article R. 13-35

“The judge shall rule within the limits of the parties’ submissions as they appear in their memorials and of the Government Commissioner’s submissions where the latter proposes a valuation that is lower than that of the expropriating party. In such a case, the Government Commissioner’s written submissions must be appended to the case file.

If the respondent has not lodged a memorial in reply to the applicant within the period of one month provided for in Article R. 13-23, he shall be deemed to abide by his offers if the respondent is the expropriating authority, and by his reply to the offers if the respondent is the expropriated party.

Where the expropriated party has failed to reply to the authority’s offers and to produce a memorial in reply, the judge shall determine the compensation on the basis of the evidence available to him.”

Article R. 13-36

“The judgment shall set out, *inter alia*, the reasons in point of law or of fact for which all awards of main or subsidiary compensation are granted. Where the judgment rejects the Government Commissioner’s submissions proposing a valuation that is

lower than that of the expropriating authority, it must specifically state the reasons for such a rejection.

The judgment may be delivered by the judge without the Government Commissioner being present.

The judgment shall be notified by the most diligent party to the other party and to the Government Commissioner.”

Article R. 13-47

“Appeals may be lodged by the parties or by the Government Commissioner within fifteen days from notification of the judgment ...

...”

Article R. 13-49

“On pain of having his appeal dismissed, an appellant must lodge with or send to the registry of the Chamber, within two months of the date of the appeal, his memorial and the documents which he intends to produce.

The respondent must lodge with or send to the registry of the Chamber, within a month following notification of the appellant’s memorial, his memorial in reply and the documents which he intends to produce.

The memorials and documents must be produced in as many copies as there are parties, plus one additional copy.

The registrar shall serve each party and the Government Commissioner with a copy of the documents filed with the registry as soon as these are received.

A cross-appeal may be brought by the parties in their memorial in reply or by a declaration made at the registry of the Chamber. If brought by the Government Commissioner, it must take the second form.”

Article R. 13-52

“The Division [of Appeal] shall rule on the basis of memorials. However, the parties may present argument briefly on aspects of the memorials they have submitted.

Exceptionally, an expert opinion may be prepared on the basis of a reasoned order from the court. In such a case, if the expropriating authority and the expropriated parties cannot agree on the choice of a single expert, he shall be appointed by the President of the Chamber.”

Article R. 13-53

“The provisions of Articles R. 13-33, R. 13-35, R. 13-36 (first paragraph) and R. 13-38 shall be applicable to the appeal procedure.”

2. Case-law

16. The Government Commissioner has the “role of party to the proceedings” (*Conseil d’Etat*, Assembly, 13 December 1968, *Association syndicale des propriétaires de Champigny-sur-Marne et Musso*).

17. Intervention by the State official responsible for property as representative of the expropriating authority, under the Decree of 12 July 1967, and simultaneously as Government Commissioner, in application of Article R. 13-7, paragraphs 1 and 3, of the Expropriations Code, does not constitute a ground for alleging procedural impropriety (Paris Court of Appeal, Expropriations Chamber, judgment of 30 January 1981). In addition, the Court of Cassation has ruled that the fact that the Government Commissioner’s role was assumed by the inspector of property who drew up the preliminary opinion assessing the compensation offers on behalf of the expropriating authority does not contravene Article 6 of the Convention, in that the Government Commissioner does not take part in the Expropriations Division’s decision-making process (Third Civil Division, judgment of 21 October 1992, *Sté Rivom c. Département de la Côte-d’Or*, *Bulletin civil* (Bull. civ.) III, no. 279).

18. Emphasising that no document may be lawfully submitted to the court without the parties having an opportunity to discuss it in adversarial proceedings and that “this rule applies to all the courts, even in the absence of a specific text to this effect”, the Court of Cassation has ruled that, where the Government Commissioner’s submissions propose a valuation lower than that of the expropriating authority or contains new elements, the expropriations judge is obliged to ensure that these have been brought to the attention of the parties and that the latter have an opportunity to discuss them freely before the end of the hearing (Third Civil Division, two judgments of 10 July 1969: *Prudhomme c. ville de Rennes* and *Consorts Josso c. ville de Saint-Nazaire*, Bull. civ. III, judgments nos. 1 and 3, no. 566, pp. 423-24).

3. Report of the Court of Cassation for 2000

19. The report in question contained the following suggestion:

“FOURTH SUGGESTION:

Proposal to amend Articles R. 13-32, R. 13-35, R. 13-47 et seq. of the Expropriations Code as regards the role of the Government Commissioner before the Expropriations Divisions.

Under Article R. 13-7 of the Expropriations Code, the Director of Revenue (Property) of the *département* in which the Expropriations Division is based exercises the functions of Government Commissioner before this Division during proceedings to establish the compensation due to expropriated parties.

Although no text sets out the exact nature of his role, it is clear from the provisions of the Expropriations Code that the Government Commissioner's main task is to provide the court, which cannot, in principle, appoint an expert, with the information it requires and in particular with a reasoned assessment of the main and subsidiary compensation due to each owner whose property is subject to expropriation.

For this purpose, the Government Commissioner has access to information on tax statements and assessments held by the tax authorities and, in particular, to the land charges register constituted by all property transfers which must be formally registered.

However, doubts have been cast on the compatibility of certain aspects of the Government Commissioner's role with the principles derived from the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, it has been noted that the Government Commissioner may propose a valuation of the expropriated assets that is lower than the valuation suggested by the expropriating authority (Article R. 13-35 of the Expropriations Code); he may lodge an appeal or cross-appeal against the judgment determining the level of compensation (Article R. 13-47 et seq. of the Code), although he may not appeal on points of law, except as regards costs imposed on him for the proceedings; and, where he is not the appellant, the Government Commissioner's submissions are not served on the parties but simply included in the case file (Article R. 13-32).

Expropriated parties have also indicated that they have experienced difficulties in obtaining information contained in the land charges register, to which the Government Commissioner has unimpeded access by virtue of his official functions.

Finally, it has been observed that, whilst the Government Commissioner is not the State's representative before the Expropriations Division, there may be, at least in appearance, a certain ambiguity where the State itself is the expropriating authority, particularly when, under Article R. 176 of the Code of State Property, the State is represented before the Expropriations Divisions in a number of *départements* by the Revenue Department.

As long ago as 1992, the Ombudsman included in his annual report a letter, dated 28 January 1992, in which he drew the Minister of Justice's attention to the Government Commissioner's role.

Whilst it is unnecessary to state that the Commissioner does not participate in the decision-making process within the Expropriations Division, which is by no means obliged to follow his submissions, and although the Court of Cassation ensures that expropriated parties' rights are respected and the adversarial principle as defined in the new Code of Civil Procedure is effectively complied with, it would nonetheless appear desirable, in order to put an end to possible doubts regarding the conformity of certain aspects of the Government Commissioner's current role with the requirements of the European Convention and particularly Article 6 § 1, to redefine his functions, limiting them to those of a specialist entrusted with providing the judge and the parties to the compensation proceedings with the information held by the Revenue Department on the state of the property market, so that this situation is improved."

C. The land charges register

20. Decree no. 55-22 of 4 January 1955 reforming land registration provides, *inter alia*:

Article 1

(version as amended by Decree no. 98-516 of 23 June 1998)

“For each municipality, a land charges register shall be maintained by the land registrars, in which, as information is submitted, extracts from published documents shall be registered under the name of each owner and by building, with a reference to their classification in the archives.

The land charges register shall present an up-to-date profile of the legal status of buildings as indicated by the published documents.”

Article 2

“No changes to the legal status of a building may be the subject of a cadastral transfer if the deed or judicial decision recording this change has not previously been published in the land charges register.”

21. Article 39 of Decree no. 55-1350 of 14 October 1955 is worded as follows (version as amended by Decree no. 98-553 of 3 July 1998):

“Any request for information shall be drawn up in two typed or printed copies on a form supplied by the authorities or on one copied in accordance with the conditions established by an instruction published in the Official Journal of the Revenue Department, the second copy being obtained by duplication.

Subject to the application of paragraph 1 of Article 40, such requests must include:

(1) All items of information provided for in Article 9 of the Decree of 4 January 1955 which are necessary to identify the natural persons or legal entities on whose behalf the information is requested;

The individual designation of the buildings referred to in the request, i.e. indications regarding the municipality in question, the section and identification number on the cadastral map and, for parts of buildings, an indication of the lot number.

Surnames and non-personal names indicated in the applications must appear in capital letters. First names shall be written in small letters.

The applications shall be signed and dated by those submitting them.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant alleged that there had been a violation of his right to a fair trial in the context of the proceedings to determine compensation before the expropriations judge and the Expropriations Division; he complained that the principle of equality of arms had been breached as a result of the privileged position enjoyed by the Government Commissioner, and that there had been a breach of the adversarial principle. He relied on Article 6 § 1 of the Convention, which provides:

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

A. The parties' submissions

1. *The applicant*

23. The applicant submitted that the Government Commissioner was a full party to the case before the expropriations judge and Expropriations Division and that he enjoyed excessive rights in comparison with the other parties which placed him, in fact and in law, in a “dominant position”.

Thus, the Government Commissioner was the only party not to be obliged to serve notice of its pleadings, the filing of submissions with the court registry being sufficient. Furthermore, although the provision forbidding the expropriated party from speaking after the Commissioner had now been removed, the order for the presentation of argument had not been amended; experience showed that the expropriated party's hypothetical right of reply was rarely exercised, since the hearing ended after the Commissioner's oral submissions. In addition, it followed from Article R. 13-52 of the Expropriations Code that the parties could expand on the arguments in their memorials only briefly before the court of appeal.

24. The applicant added that the role of Government Commissioner was assumed by the Director of Revenue (Property) for the *département*. But during the non-judicial phase of the procedure this civil servant prepared estimates of the expropriated assets, which then became the expropriating authority's offer of compensation to the expropriated party (in principle, the expropriating authority could not deviate from this estimate). During the judicial phase of the procedure he enjoyed a considerable advantage over expropriated parties with regard to knowledge of the property market, since he had access to the Land Register, which could not be freely consulted by individuals.

As to the Government Commissioner's "dominant position" before the expropriations judge and Expropriations Division, this arose from the following circumstances: under Article R. 13-36 of the Expropriations Code, the judge was obliged to provide specific explanations for rejecting submissions proposing a lower valuation than that of the expropriating authority; the Government Commissioner was a sort of expert who was not impartial, and against whom, under Article R. 13-28 of the Expropriations Code, no second expert opinion could be submitted; in addition, he was the last to speak at hearings, and expropriated parties had only a limited opportunity to reply.

25. The applicant claimed that this imbalance was exacerbated in those *départements* where the expropriating party was represented before the courts by an official from the same government department as that to which the Government Commissioner belonged, since the expropriated party then faced a single party – the State – which was represented twice.

In the present case, the situation was alleged to have been almost farcical, since the same official had intervened as representative of the expropriating authority and as the Government Commissioner. The applicant submitted that the State had been represented by an inspector from the Charente-Maritime Revenue Department, and that the role of Government Commissioner had been filled by the Deputy Director of the Revenue Department in the same *département*, who was the inspector's hierarchical superior, so that there was in this case an actual overlapping of roles. Thus, when the applicant applied for production of the documents cited in the memorial submitted to the Court of Appeal by the representative of the expropriating authority (in order to justify the price offered, this memorial contained a sheet of paper entitled "Study of the local property market", listing thirteen contracts of sale and one judgment), he received a reply, not from the inspector handling the case, but from the Deputy Director of the Revenue Department, the Government Commissioner, to the effect that professional confidentiality meant that the documents could not be sent to him. Subsequently, before the Court of Appeal, the Deputy Director of the Charente-Maritime Revenue Department had used subterfuge to give himself the appearance of neutrality: reassuming his role as Government Commissioner, he had arranged to be replaced by the Director of the Vienne Revenue Department, then had himself appointed by this person. Thus, before the Court of Appeal, the expropriating authority was represented by an inspector from the Charente-Maritime Revenue Department and the role of Government Commissioner was assumed by the Director of the Vienne Revenue Department, although these two officials were in reality members of the same administrative entity at *département* level, and the second was furthermore the first official's hierarchical superior.

Finally, the refusal of the applicant's request for production of the documents cited in the expropriating authority's memorial to the Court of Appeal was in itself a violation of Article 6 § 1 of the Convention.

2. *The Government*

26. The Government emphasised that the Government Commissioner was primarily entrusted with the task of "expert analysis", consisting in providing information to the judge on the value of the expropriated assets. For this reason, the Commissioner's functions were assigned to the Director of Revenue of the *département* in which the court concerned was based: his responsibilities in the administrative, tax and property fields meant that the Director was familiar with property valuation and assessment techniques. From this perspective, the Commissioner was neither a claimant nor a respondent before the court which determined compensation.

In addition, the Government Commissioner was responsible for guaranteeing the correct use of public funds and, on that basis, for ensuring in particular that compensation awards did not exceed the real value of expropriated assets. Although he did not have the status of a main party, he was thus a "party" to the proceedings and could, in this capacity, appeal against the expropriations judge's decision where the sums granted by the latter were not, in his opinion, in the interest of the public purse.

The Government added that the Government Commissioner did not represent the expropriating authority and had no decision-making power in establishing compensation, this decision being one that came under the courts' sovereign authority. His intervention was limited to the public hearings before these courts. He was external not only to preparation of the judgment – the fact that he did not participate in the deliberations was evidence of this – but also to the court itself, as his role was not that of State Counsel.

27. In the Government's view, the fact that, as in the instant case, the Government Commissioner occasionally belonged to the same administrative entity as the representative of the expropriating authority was not a decisive factor. In this respect, the Government noted that the expropriating authority was represented by a member of the Revenue Department in only forty-five *départements* (including Charente-Maritime); however, Article R. 179 of the Code of State Property provided that officials appointed in this capacity could not simultaneously exercise the function of Government Commissioner. Thus, in the instant case, the Commissioner's functions had been exercised before the Court of Appeal by the Deputy Director of Revenue for Charente-Maritime, who was standing in for the Vienne Director of Revenue; the State had been represented in the contentious proceedings by another official from the Charente-Maritime Revenue Department. Accordingly, the roles of Government Commissioner and representative of the expropriating authority had not been held

simultaneously by one and the same person. In itself, the fact that these two officials belonged to the same administrative entity was not evidence of any imbalance, for two reasons: the Commissioner was not representing the expropriating local authority in the proceedings and, consequently, was not defending the same interests as those with which the State's representative was entrusted; and Article 6 § 1 did not prevent a main party and an associated party from defending a common cause once adversarial proceedings had begun.

28. The Government added that the Government Commissioner's submissions, both written and oral, were subject to adversarial argument. For example, precedent obliged the Commissioner to table his submissions with the Expropriations Division's registry at a sufficiently early stage to enable the parties to take cognisance of them prior to the hearing, failing which they would be declared inadmissible. Thus, the parties had an opportunity to discover the Government Commissioner's opinion and, if necessary, to request an adjournment if a new ground was put forward. In addition, Articles R. 13-31 and R. 13-52 of the Expropriations Code provided that the parties and the Commissioner could develop at the hearing only those arguments set out in their memorials; consequently, the substance of the Government Commissioner's submissions at the hearing could not differ from the written arguments filed with the registry. Furthermore, contrary to the applicant's submission, the parties always had an opportunity to discuss the Government Commissioner's oral submissions by addressing the court after he had spoken. Article 37 of Decree no. 66-776 of 11 October 1966, adopted in application of Law no. 62-848 of 26 July 1962 (re-establishing the institution of Government Commissioner) which excluded this possibility, had been annulled by the *Conseil d'Etat*. The parties also had the option of replying to these submissions through a memorandum for the deliberations.

In the instant case, the applicant had been informed of the Government Commissioner's submissions to the Court of Appeal, which were filed with the registry on 4 September 1995 and 9 May 1996; indeed, he had replied to them in his last memorial, dated 22 May 1996; he could not therefore claim that on the day of the hearing he had been unaware of the substance of the Government Commissioner's oral submissions, and had not disputed the fact that they were identical in substance to the written submissions filed with the registry of the court. Equally, the applicant had had an opportunity to reply orally to the Government Commissioner's submissions at the hearing, and had not made use of it.

B. The Court's assessment

1. *Compliance with the principle of equality of arms*

29. The applicant complained firstly that the principle of equality of arms between the parties had been breached in the proceedings to establish compensation for expropriation as a result of the privileged position enjoyed by the Government Commissioner.

30. The Court notes that the Government Commissioner takes part in all proceedings to establish compensation before those courts dealing with expropriation cases. He is not a member of these courts and does not participate in the courts' deliberations. Furthermore, he is distinct from State Counsel (Articles R. 13-8 and R. 13-9 of the Expropriations Code) and from the expropriating authority (he does not represent the latter and files separate submissions).

However, the Government Commissioner does participate fully in proceedings before these courts to determine compensation: like the expropriated party and the expropriating authority, he takes part in the on-site visit (Article R. 13-27 of the Expropriations Code), he "present[s] oral observations and file[s] submissions", and he expresses a view on the assessment of the compensation for expropriation (Article R. 13-32 of the Expropriations Code); he is notified of the judgment at first instance (Article R. 13-36 of the Expropriations Code) and may appeal against it (Articles R. 13-47 and R. 13-49 of the Expropriations Code).

The Court concludes from this that the Government Commissioner is a "party" to the proceedings for determining compensation, a status which the *Conseil d'Etat* acknowledges (see paragraph 16 above) and which, moreover, the Government do not deny. Consequently, the arrangements governing his participation in the proceedings are capable of raising an issue in terms of the principle of equality of arms.

31. The Court points out that this principle is one element of the broader concept of fair trial, within the meaning of Article 6 § 1 of the Convention. It requires "a fair balance between the parties": each party must be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among other authorities, the following judgments: *Ankerl v. Switzerland*, 23 October 1996, *Reports of Judgments and Decisions* 1996-V, pp. 1567-68, § 38; *Nideröst-Huber v. Switzerland*, 18 February 1997, *Reports* 1997-I, pp. 107-08, § 23; and *Kress v. France* [GC], no. 39594/98, § 72, ECHR 2001-VI).

32. The Court observes that the Government Commissioner's role is essentially to guarantee the appropriate use of public money and, on that basis, to ensure in particular that the compensation awarded for dispossession does not exceed the real value of the expropriated assets. Accordingly, he defends interests similar to those defended by the

expropriating authority, tending towards moderation of compensation assessments. In addition, as in the instant case, he sometimes belongs to the same administrative entity, and even the same entity at *département* level, as the expropriating authority's representative. The Government Commissioner's role is entrusted to the Director of Revenue (Property) of the *département* in which the Expropriations Division is based or delegated to another official from this administrative authority (Article 13-7 of the Expropriations Code). For its part, the State as expropriating authority is represented in certain *départements* – including Charente-Maritime – by officials from the same territorial Revenue Department (Property) (Articles R. 178 and R. 179 of the Code of State Property). Accordingly, a situation may arise, as it would appear to have done in the instant case, where the Government Commissioner is the hierarchical superior of the representative of the State as expropriating authority and a certain overlapping between these parties emerges.

Whether regarded as a sharing out of representation of the community's interests in the compensation proceedings or as a strengthening of one party's position through the intervention of another, these circumstances undoubtedly weaken the expropriated party's position. However, they are not in themselves sufficient to constitute a breach of the principle of equality of arms. This type of situation occurs frequently before the courts in the Council of Europe's member States: either one party faces several main parties which are defending similar or concomitant interests, or the main opposing party and an associated party defend the same argument.

In other words, the fact that a similar point of view is defended before a court by several parties does not necessarily place the opposing party in a position of "substantial disadvantage" when presenting his case.

33. It remains to be ascertained whether, in the instant case, in view of the arrangements for the Government Commissioner's participation in the proceedings, the "fair balance" that ought to prevail between the parties was respected.

34. In the course of the proceedings each of the parties presented their valuations of the expropriated asset; this was the core of the trial, and the valuation depended on the state of the property market. For this purpose, they were obliged to submit to the court terms of comparison drawn from genuine property transfers; from the evidence submitted by the parties the court selected those examples which it considered to be most representative of the property market.

As noted above, the Government Commissioner's tasks are entrusted to the Director of Revenue (Property) of the *département* in which the Expropriations Division is based or delegated to another official from this administrative authority. In that basis, he, like the expropriating authority, has access to the land charges register, which lists all property transfers. Expropriated parties have only limited access to this register, which is not

open for free consultation by individuals: they may receive information and extracts subject to the condition of strictly limiting the references searched for (Article 39 of Decree no. 55-1350 of 14 October 1955). Thus, even at this stage, the expropriated party is at a disadvantage *vis-à-vis* his opponents.

35. Furthermore, at first instance, no text requires the Government Commissioner, unlike the other parties (Articles R. 13-22 and R. 13-23 of the Expropriations Code), to give notice of his pleadings; it is enough if he files them with the registry, and he is not even obliged to inform the other parties that this has been done. In addition, he is the last to speak, both at first instance and on appeal (Articles R. 13-31 and R. 13-32 of the Expropriations Code).

36. Finally and above all, both at first instance and on appeal (Article R. 15-53 of the Expropriations Code), the Government Commissioner's submissions assume particular significance where they tend towards a lower valuation than that proposed by the expropriating authority.

It follows from Article R. 13-35 of the Expropriations Code that "the judge rules within the limits of the parties' submissions ... and of the Government Commissioner's submissions where the latter proposes a valuation that is lower than that of the expropriating authority"; Article R. 13-36 of the same Code adds that, in such a situation, "where the judgment rejects the Government Commissioner's submissions ..., it must specifically state the reasons for such a rejection".

The Court understands the spirit of this rule and the logic on which it is based: the duties of Government Commissioner are entrusted to the Director of Revenue (Property), who, by virtue of his powers in the administrative, tax and property fields, is well versed in the techniques of property valuation and expert analysis, and has access to the most relevant information in this field; thus, he appears to be the party best placed to advise the court on the value of the expropriated assets, and addresses it in what might be described as a task of "expert analysis".

Nevertheless, this rule has the effect of binding the judge to a considerable extent; the judge does not necessarily have the same experience in property valuation as the Director of the Revenue Department, may not appoint another expert at first instance (Article R. 13-28 of the Expropriations Code) and may ask for another expert opinion on appeal only "[e]xceptionally ... on the basis of a reasoned order" (Article R. 13-52 of the Expropriations Code). Admittedly, the expropriated party has the option of producing his own expert opinion at his own expense, but the court is not obliged to take it into account in the same way as the Government Commissioner's submissions.

It should be added that this rule necessarily works against the expropriated party, since the court is not obliged to provide any particular

explanation when rejecting the Government Commissioner's submissions where these contain a valuation that is higher than that proposed by the expropriating authority.

37. In sum, the expropriated party in compensation proceedings is faced not only by the expropriating authority but also by the Government Commissioner; the Government Commissioner and the expropriating authority (which, in certain cases, is represented by an official from the same administrative entity as the Government Commissioner) enjoy significant advantages as regards access to relevant information; in addition, the Government Commissioner, who is simultaneously both an expert and a party to the proceedings, occupies a dominant position in the proceedings and wields considerable influence with regard to the court's assessment (see, *mutatis mutandis*, *Bönisch v. Austria*, judgment of 6 May 1985, Series A no. 92). In the Court's opinion, all this creates an imbalance detrimental to the expropriated party that is incompatible with the principle of equality of arms. Consequently, it concludes that in this case there has been a breach of this principle and a violation of Article 6 § 1 of the Convention.

2. *Compliance with the adversarial principle*

38. The applicant complained firstly that, in the context of the proceedings before the Court of Appeal, the Revenue Department of Charente-Maritime refused to produce the documents listed in the "study of the local property market" appended to its memorial of 13 April 1995. The Court points out that the concept of fair trial implies in principle the right for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed (see *Lobo Machado v. Portugal* and *Vermeulen v. Belgium*, judgments of 20 February 1996, *Reports* 1996-I, pp. 206-07, § 31, and p. 234, § 33, respectively, and *Nideröst-Huber* and *Kress*, both cited above, p. 108, § 24, and § 74 respectively). In its opinion, the adversarial principle, thus defined, does not require that each party in "civil" cases must transmit to its opponent documents which, as in the instant case, have not been presented to the court either.

39. The applicant further submitted that no text obliged the Government Commissioner, at first instance, to provide copies of his written submissions to the parties or file them with the registry at an early enough date to enable the parties to inspect them and to prepare a reply; there was not even an obligation to inform the parties that submissions had been filed.

The Court considers this shortcoming incompatible with the adversarial principle, even if the case-law (see paragraph 18 above) and practice have remedied it somewhat. However, in the present case, it must be recognised that although no legal provision imposed such a procedure the applicant was sent the submissions on the day before the scheduled hearing and subsequently applied successfully for an adjournment, thus enabling him to

prepare a reply in satisfactory conditions. Accordingly, he cannot complain of a breach of the adversarial principle in this respect.

40. Finally, the applicant complains that, at hearings before the Expropriations Divisions, the Government Commissioner is the last to speak.

As just noted, the applicant had been sent the Government Commissioner's written submissions before the hearing, both at first instance and on appeal, in circumstances which enabled him to prepare a written reply. In addition, he was able to submit a memorandum for the deliberations, as indeed he did before the Court of Appeal. The Court concludes from this that the applicant had an opportunity to reply to the Government Commissioner in satisfactory conditions (see, for example, *mutatis mutandis*, *Kress*, cited above, § 76), so that the adversarial principle was not breached in this respect either.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

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

A. Damage

42. The applicant sought 490,395.40 euros (EUR) in respect of pecuniary damage, which corresponded to the difference between the compensation for expropriation that, in his opinion, he should have received (EUR 714,932.52) and the sum which he had been awarded by the Expropriations Divisions (EUR 224,537.12). He also requested the payment of EUR 30,489.80 for non-pecuniary damage.

43. According to the Government, in the absence of a causal link between any violation of the Convention which the Court might find and the alleged pecuniary damage, the applicant's claims should be rejected. As to non-pecuniary damage, they considered that it would be sufficiently compensated by the finding of a violation.

44. The Court cannot speculate as to what the outcome of the proceedings complained of would have been had the violation of Article 6 § 1 of the Convention not occurred (see, for example, *Mantovanelli v. France*, judgment of 18 March 1997, *Reports* 1997-II, p. 438, § 40); accordingly, the applicant's claims regarding alleged pecuniary damage must be dismissed. As to the non-pecuniary damage, the Court considers it sufficiently compensated by the finding of a breach.

B. Costs and expenses

45. The applicant sought reimbursement of the costs of representation before the Expropriations Division of the Poitiers Court of Appeal, namely 29,650 French francs (EUR 4,520.11), which included value-added tax (VAT); he produced a bill of costs dated 1 March 1995.

The applicant also sought reimbursement of costs and expenses incurred in the proceedings before the Court, namely EUR 13,973.86, including VAT; he produced two statements of fees and costs, dated 25 November and 5 December 2002.

46. According to the Government, there was no need to reimburse the costs incurred by the applicant before the national courts, as these had not been incurred in seeking to prevent or redress the violation. Only those costs and expenses incurred before the Court would be eligible for reimbursement, provided that the relevant vouchers were produced.

47. The Court points out that, where it finds that there has been a violation of the Convention, it may award the applicant not only the costs and expenses incurred before it but also those incurred before the national courts for prevention or redress of the violation (see *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63).

The Court points out, firstly, that the applicant provided relevant documents in support of his claims.

It considers, furthermore, particularly in view of the complexity of the issues raised and the diligence of the applicant's counsel, that the sums sought in respect of the costs and expenses incurred in the proceedings before it are not excessive; it therefore allows this part of the applicant's claims in full.

Finally, it notes that the applicant specifically raised an argument before the Expropriations Division of the Poitiers Court of Appeal based on an infringement of his right to a fair trial stemming from the procedures governing the Government Commissioner's intervention; it is therefore appropriate to consider that a part of the costs incurred before that court were intended to "prevent or redress" the violation found. The Court considers it reasonable to award the applicant EUR 2,000 in this respect, VAT included.

In conclusion, the Court awards the applicant EUR 15,973.86, VAT included, for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
3. *Holds*
 - (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 15,973.86 (fifteen thousand nine hundred and seventy-three euros eighty-six cents) in respect of costs and expenses, inclusive of value-added tax;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 24 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President