[TRANSLATION]

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THE FACTS

The applicants, Parc d'activités de Blotzheim ("PAB"), a limited company (*société à responsabilité limitée* – "SARL"), and Haselaecker, a non-commercial partnership (*société civile* – "SCI"), were both incorporated under French law and have their registered office in Blotzheim (France). They were represented before the Court by Mr P. Martin, of the Paris Bar. The French Government ("the Government") were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The Mulhouse-Rhin-Mines outline development scheme, approved in a prefectoral order of 15 September 1977, made provision for the building of an industrial estate in the vicinity of Basle-Mulhouse Airport (whose premises are situated on land in the French municipalities of Blotzheim, Hésingue, Bourgfelden and Saint-Louis).

On 27 April and 3 May 1989 the managing director of PAB (whose memorandum and articles of association were drawn up before a notary on 8 June 1989) submitted a project to the mayor of Blotzheim for the development of industrial, business and service-sector activities on a site within the municipality's boundaries, adjoining Basle-Mulhouse Airport. On 16 May 1989 Blotzheim Town Council gave the mayor its consent for the sale to PAB of municipal land within the area covered by the project. It also gave its approval for, among other things, the municipality to undertake to waive its right of pre-emption over the land which the company intended to use, a special planning area (*zone d'aménagement concerté* – "ZAC") to be created on the site and the procedure for revision of the municipality's land-use plan (*plan d'occupation des sols*) to be initiated.

By notarial deeds of 30 June 1989 PAB purchased various plots of land in Blotzheim from the municipality.

On 11 January 1990 the town council decided to take steps to create a ZAC, to set in motion the appropriate procedure and to revise the land-use plan accordingly. A public consultation meeting was held on 28 February 1990 about the proposal to create the ZAC. On 2 March 1990, in the light of

the findings of the consultation process, the town council formally decided to create the ZAC.

In the meantime, on 4 July 1989, Basle-Mulhouse Airport's board of directors had adopted, confidentially, a general development plan in which it was proposed, in particular, to acquire additional land and build a third runway on the same site which the developers of the Blotzheim industrial estate intended to use.

On 8 September 1991 PAB submitted its building project to the airport's board of directors. In a letter to the board dated 1 December 1989 it had emphasised that the project would not hinder the development of the airport's activities.

On 17 April 1990 the board of directors decided to take the necessary steps to set aside the land it required in order to implement its development plan. On 6 December 1989 it had decided to apply to the prefect of the *département* of Haut-Rhin to set in motion the procedure by which the development plan could be designated as a "project in the public interest".

In an order of 17 May 1990 the prefect of Haut-Rhin designated the development plan as a "project in the public interest" and served formal notice on the municipality of Blotzheim to revise its land-use plan to take the project into account. As the mayor of Blotzheim did not reply within the statutory time-limit, the prefect made an order on 11 July 1990 for the revision of the land-use plan.

After Basle-Mulhouse Airport's board of directors had amended its development plan and the statutory three-year period had expired without the above-mentioned orders having been confirmed, the prefect of Haut-Rhin made further orders on 14 March 1993 (designating the plan as a "project in the public interest" and serving formal notice on the mayor) and 26 October 1993 (requiring the revision of the land-use plan).

The municipality of Blotzheim, PAB and SCI Haselaecker applied to the Strasbourg Administrative Court, which in a judgment of 27 October 1995 set aside the decision taken by Basle-Mulhouse Airport's board of directors on 6 December 1989 and the prefect's orders of 17 May and 11 July 1990 and 14 May and 26 October 1993.

Ruling on a preliminary objection as to admissibility lodged by Basle-Mulhouse Airport, the court held that PAB had an interest in seeking to have set aside the decision taken by Basle-Mulhouse Airport's board of directors on 6 December 1989 and the subsequent orders, on the ground that prior to that date the municipality of Blotzheim had promised to sell it the land in question.

As to the merits, the court pointed out that Basle-Mulhouse Airport was governed by the Franco-Swiss treaty signed in Berne on 4 July 1949, which provided, among other things, for the building of two runways and for the expropriation of 536 ha of land (Articles I and IV of Annex III to the treaty), and that under the treaty, although the airport's board was empowered to

draw up plans to expand the airport, its exercise of that power was subject to the limits laid down in the treaty regarding both the airport's infrastructure and the maximum area of land to be expropriated. Noting that in the instant case the development plan adopted by the airport's board had exceeded those limits, the court set aside the decisions in issue.

On 25 January 1996 Basle-Mulhouse Airport's board of directors decided to ask the governments concerned to revise the specifications appended to the Franco-Swiss treaty of 4 July 1949 in accordance with Article 19 of the treaty, and to increase the maximum area that could be expropriated for use by the airport from 536 ha to 850 ha with a view to building a third runway.

That proposal was agreed to in an exchange of notes (on 12 and 29 February 1996) between the French Government and the Swiss Federal Council; the agreement came into force on 29 February 1996. On 13 May 1996 the French President issued a decree publishing the agreement.

On 12 July 1996 the applicant companies applied to the *Conseil d'Etat* seeking to have the decree annulled. Observing that the ratification of the Franco-Swiss treaty of 4 July 1949 had been authorised by a law of 1 August 1950, they submitted that in accordance with Article 53 of the Constitution (which provides that "... treaties or agreements ... entailing a financial commitment on the part of the State ... may be ratified or approved only by an Act of Parliament") and with the principle that power to enact and amend legislation should be vested in the same authority, such an amendment required the legislature's intervention and could not be carried out by the simplified method of an exchange of notes. They added that the decree in issue and the agreement published in it contravened Article 19 of the treaty (by which "amendments to the articles of association and specifications following a decision by a two-thirds majority of the serving members of the board may be effected by agreement between the two Governments") in that they went beyond the purpose of the simplified amendment procedure. The companies further submitted that the exchange of notes published by the decree in issue incorrectly stated that the requirements of paragraph 9 of the specifications appended to the treaty had been satisfied. Whereas paragraph 9 made the procedure laid down in Article 19 conditional on the production of a detailed description and estimate – entailing the acquisition by the French State of the land needed for the airport – a significant portion of the 536 hectares of land corresponding to the maximum area that could be expropriated had not been acquired by the French State. Lastly, they argued that the agreement in issue contravened the treaty's financial clauses.

The *Conseil d'Etat* dismissed the application in a judgment of 18 December 1998. It pointed out that by the Law of 1 August 1950 Parliament had authorised the ratification of the Franco-Swiss treaty of 4 July 1949, which had from the outset provided for the possibility of

extending the airport's premises, and that Parliament should therefore be regarded as having "by that law authorised the expenditure associated with the development and operation of additional structures or facilities designed to compensate for the inadequacy of existing structures or facilities", so that there had been no breach of Article 53 of the Constitution. As regards the applicant companies' other submissions, the *Conseil d'Etat* held:

> "Although the applicant companies submit that the agreement of 12 and 29 February has a broader purpose than the mere drawing up of an amendment to the specifications appended to the treaty of 4 July 1949 and that, consequently, it could have not been concluded under the simplified procedure provided for in Article 19 of the treaty, the choice of the means by which international treaties and agreements are to be concluded is indissociable from the conduct of diplomatic relations and, accordingly, cannot be challenged in proceedings before the administrative courts.
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> Nor is it the task of the *Conseil d'Etat*, acting in its judicial capacity, to review the assessment by the French Government and the Swiss Federal Council of whether the requirement to produce a detailed description and estimate, as laid down in paragraph 9 of the specifications appended to the treaty, was satisfied and whether the expansion of Basle-Mulhouse Airport was necessary.
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> Lastly, although the applicant companies criticised the content of the exchange of notes published by the impugned decree in relation to the provisions of the treaty of 4 July 1949, it is not for the *Conseil d'Etat*, acting in its judicial capacity, to rule on the validity of an international undertaking in relation to other international undertakings."

B. Relevant domestic law

1. Extracts from the Constitution of 4 October 1958

Article 52

"The President of the Republic shall negotiate and ratify treaties.

He shall be informed of all negotiations leading to the conclusion of an international agreement not subject to ratification."

Article 53

"Peace treaties, commercial treaties and treaties or agreements relating to the organisation of international affairs, or entailing a financial commitment on the part of the State, or amending legislative provisions, or relating to the status of persons, or entailing the cession, exchange or acquisition of territory, may be ratified or approved only by an Act of Parliament.

They shall take effect only after having been ratified or approved.

No cession, exchange or acquisition of territory shall be valid without the consent of the populations concerned."

Article 55

"Treaties or agreements that have been lawfully ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, in respect of each agreement or treaty, to its application by the other party."

2. Extracts from Decree no. 53-192 of 14 March 1953 on the ratification and publication of international undertakings given by France

Article 1

"The Minister for Foreign Affairs shall have sole responsibility for ensuring the ratification and publication of international treaties, agreements, protocols and regulations to which France is a signatory or by which France is bound. The same shall apply to the renewal or denunciation of such agreements. ..."

Article 3

"After transmission to the Minister for Foreign Affairs and, where necessary, ratification, the treaties, agreements, protocols and regulations referred to in the preceding Articles, where their implementation is liable to affect the rights or obligations of individuals, shall be published in the Official Gazette of the French Republic. ..."

COMPLAINTS

1. Relying on Article 6 § 1 of the Convention, the applicant companies complained of a breach of the adversarial principle in that, in the proceedings before the *Conseil d'Etat*, they had not been sent a copy of the first set of pleadings filed by the Minister for Foreign Affairs and had not received a copy of his second set of pleadings until 4 December 1998, although the case had been set down for hearing on 11 December 1998.

2. Relying on the same provision and principle, they complained that the Government Commissioner's submissions had not been communicated to them before the hearing and that they had been unable to reply to them. They further submitted that the fact that the reporting judge's report and the draft decision had been made available to the Government Commissioner but not to them had infringed the principles of a fair hearing and of equality of arms.

3. Again under Article 6 § 1 of the Convention, the applicant companies complained that the *Conseil d'Etat* had applied the "prerogative act" doctrine in their case and had declined jurisdiction to review the validity of the particular international undertaking given by France in relation to another international undertaking. That meant, they submitted, that in their case the *Conseil d'Etat* had not been a court with full jurisdiction within the meaning of the Court's case-law and had infringed their right to a "tribunal".

4. Relying on Article 1 of Protocol No. 1, the applicant companies complained of unlawful interference with their right to the peaceful enjoyment of their possession. They submitted in that connection that the Franco-Swiss agreement of 12 and 29 February 1996 and the decree of 13 May 1996 breached Article 53 of the French Constitution. They added that the agreement in question was directly incompatible with the Convention (and in particular Article 1 of Protocol No. 1) in that, as the *Conseil d'Etat* had interpreted it, it had the effect of derogating from the Convention. In international law, States that were parties to a multilateral treaty could not derogate from it by means of a bilateral agreement.

5. Lastly, relying on Article 14 of the Convention, taken together with Article 6 of the Convention and Article 1 of Protocol No. 1, the applicant companies complained of discrimination in the enjoyment of the rights secured to them by those two provisions. They argued that by being "subjected" to the agreement in issue, they had lost the benefit of all the safeguards which French law generally afforded to natural and juristic persons in connection with such infrastructure developments.

THE LAW

A. Complaints under Article 6 § 1 of the Convention

6. The applicant companies complained of a breach of the adversarial principle in that, in the proceedings before the *Conseil d'Etat*, they had not been sent a copy of the first set of pleadings filed by the Minister for Foreign Affairs and had not received a copy of his second set of pleadings until 4 December 1998, although the case had been set down for hearing on 11 December 1998. Relying on the same provision, they complained that the Government Commissioner's submissions before the *Conseil d'Etat* had not been communicated to them before the hearing and that they had been unable to reply to them. They further submitted that the fact that the reporting judge's report and the draft decision had been made available to the Government Commissioner but not to them had infringed the principles

of a fair hearing and of equality of arms. They also complained that the *Conseil d'Etat* had applied the "prerogative act" doctrine in their case and had declined jurisdiction to review the validity of the particular international undertaking given by France in relation to another international undertaking. That meant, they submitted, that in their case the *Conseil d'Etat* had not been a court with full jurisdiction within the meaning of the Court's case-law and had infringed their right to a "tribunal". They 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 ..."

7. As their main submission, the Government objected that this part of the application was incompatible *ratione materiae* with the provisions of the Convention. They contended that Article 6 § 1 of the Convention was not applicable to the proceedings in question as, having regard to the scope of the applicant companies' complaints, the *Conseil d'Etat* had not had to "determine" their "civil rights and obligations". They submitted the following two arguments.

Firstly, the proceedings in issue could not have directly affected any of the applicant companies' civil rights. They had been instituted with the sole aim of annulling the decree publishing an agreement in the form of an exchange of notes between two governments. The agreement had not imposed obligations on anyone other than the contracting States and had not contained any clauses capable of affecting the rights of the applicant companies or of any other third parties. It had not created any rights or obligations that were directly applicable in domestic law. Moreover, it had not stated the precise location of the additional premises. Above all, the agreement had not been a preliminary to the transfer of the parcels of land required for the projected extension. If no friendly settlement was reached on the matter, the land could be transferred only by means of expropriation proceedings under the general law.

Secondly, even supposing that the outcome of the proceedings in the *Conseil d'Etat* could be said to have had a direct impact on the applicant companies' right of property, the predominantly public-law aspects of the case ruled out the possibility of applying Article 6 § 1. By virtue of its origins and nature, the decree complained of had come within the realm of public law. Its purpose had been the publication, further to a decision by the French President, of an international agreement; such a decision was closely linked to the conduct of international relations, which manifestly fell within the province of the State's sovereign powers. The weight to be attached to the civil-law aspects was, on the other hand, insignificant, as neither the agreement in issue nor the applicant companies' submissions in the *Conseil d'Etat* had concerned their civil rights and the dispute had not had direct pecuniary implications for them.

8. The applicant companies submitted in reply that the Government's reasoning was based on an abstract assessment of their situation. They argued that the dispute before the *Conseil d'Etat* had, in practical terms, had a direct impact on their pecuniary position. They pointed out that Blotzheim Town Council had assigned them the task of developing a special planning area (ZAC) in the vicinity of Basle-Mulhouse Airport, and emphasised that several administrative decisions designed to hinder that project had been set aside in a judgment delivered by the Strasbourg Administrative Court on 27 October 1995, precisely because they had infringed the Berne treaty of 4 July 1949. The French and Swiss governments had amended the treaty by means of the impugned agreement purely in order to allow the expansion of Basle-Mulhouse Airport and thereby to thwart the ZAC project. The applicant companies' pecuniary rights – in particular, their right of property – had therefore been directly affected by this amendment to the Berne treaty, and the subject matter of the dispute – namely, whether the Franco-Swiss agreement was lawful – had consequently been directly decisive for the applicant companies' civil rights. That was borne out, moreover, by the fact that the *Conseil d'Etat* had recognised that they had an interest entitling them to take part in the proceedings.

As to whether the dispute had predominantly concerned public-law issues, the applicant companies emphasised that the classification used in domestic law was of little relevance. They added that the international agreement in issue in the present case had been technical in nature (amending the specifications appended to the Berne treaty in order to allow the airport's board of directors to extend the airport's premises beyond the boundaries initially laid down in the 1949 treaty). It had been akin to a contract and its purpose had by its very nature not concerned the exercise of powers conferred by public law.

9. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute (*contestation*) over a "civil right" that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among other authorities, the following judgments: *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, Series A no. 43, pp. 21-22, § 47; *Fayed v. the United Kingdom*, 21 September 1994, Series A no. 294-B, pp. 45-46, § 56; *Masson and Van Zon v. the Netherlands*, 28 September 1995, Series A no. 327-A, p. 17, § 44; *Balmer-Schafroth v. Switzerland*, 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1357, § 32; and *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, ECHR 2000-

IV, § 43; see also *Syndicat des médecins exerçant en établissement privé d'Alsace and Others v. France* (dec.), no. 44051/98, 31 August 2000).

The proceedings in issue in the instant case were instituted with a view to annulling the French President's decree of 13 May 1996 publishing the agreement concluded by means of an exchange of notes between the French Government and the Swiss Federal Council, which amended the specifications appended to the Franco-Swiss treaty of 4 July 1949 and authorised an increase in the maximum surface area of Basle-Mulhouse Airport so that a third runway could be built. The exchange of notes between France and Switzerland, moreover, specified that the projects in question were to be carried out only on condition that the necessary funds were provided by the airport, which, pursuant to the treaty by which the two States founded it in 1949, is a public institution with legal personality and enjoys legal autonomy *vis-à-vis* the French and Swiss governments.

The Court considers that the dispute raised by the applicant companies in the *Conseil d'Etat* was "genuine and serious": firstly, the *Conseil d'Etat* examined the merits of one of the complaints raised by the applicant companies (see, among other authorities, *mutatis mutandis*, *Balmer-Schafroth*, cited above, p. 1359, § 38), and secondly, their other submissions (as to whether the agreement in issue was compatible with the Franco-Swiss treaty of 4 July 1949) do not appear to have been manifestly ill-founded, although the *Conseil d'Etat* considered that for legal reasons it was not required to rule on their merits.

It is also true that, in practical terms, the agreement and decree in issue formed an obstacle to the development planned in the vicinity of Basle-Mulhouse Airport, a project in which the applicant companies had invested labour and funds. The outcome of the dispute could therefore have had an impact on their pecuniary position and economic activities, albeit on condition that the airport made the necessary funds available and took such legal measures as were capable of producing such an impact.

Proceedings do not, however, become "civil" merely because they have economic implications (see, for example, *mutatis mutandis*, *Schouten and Meldrum v. the Netherlands*, judgment of 9 December 1994, Series A no. 304, pp. 20-21, § 50, and *Pierre-Bloch v. France*, judgment of 21 October 1997, *Reports* 1997-VI, p. 2223, § 51). The action itself must at least be "pecuniary" in nature and be founded on an alleged infringement of rights which are likewise pecuniary rights (see *Procola v. Luxembourg*, judgment of 28 September 1995, Series A no. 326, pp. 14-15, § 38).

Firstly, the agreement and decree in issue did not concern the applicant companies' economic activities or regulate their rights and had no "direct legal effect" on their position; in other words, the outcome of their application challenging the decree by which the agreement between the French Government and the Swiss Federal Council had been published was not "directly decisive" for the rights in question (see *Syndicat des médecins*

exerçant en établissement privé d'Alsace and Others (dec.), cited above, and contrast *Garcia v. France* (dec.), no. 41001/98, 1 February 2000). Secondly, the proceedings instituted by the applicant companies in the *Conseil d'Etat* pursued the sole aim of having the decree annulled, and argument in that court was confined to the decree's lawfulness in the abstract. The action was therefore not pecuniary in nature and was not founded on an alleged infringement of pecuniary rights.

The Court accordingly concludes that the dispute in the instant case did not concern the determination of the applicant companies' "civil rights" and that Article 6 § 1 of the Convention is consequently not applicable.

The Government's objection should therefore be allowed and this part of the application should be rejected pursuant to Article 35 §§ 3 and 4 as being incompatible *ratione materiae* with the provisions of the Convention.

B. The complaint under Article 1 of Protocol No. 1

10. The applicant companies complained of unlawful interference with their right to the peaceful enjoyment of their possession. They submitted in that connection that the Franco-Swiss agreement of 12 and 29 February 1996 and the decree of 13 May 1996 contravened Article 53 of the French Constitution. They added that the agreement in question was directly incompatible with the Convention (and in particular Article 1 of Protocol No. 1) in that, as the *Conseil d'Etat* had interpreted it, it had the effect of derogating from the Convention. In international law, States that were parties to a multilateral treaty could not derogate from it by means of a bilateral agreement. They relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
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> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

11. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. There is a violation of that provision where the interference complained of is "manifestly in breach of domestic law" (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

In the instant case, although it is clear that the Franco-Swiss agreement in question may form an obstacle to the development of the proposed

industrial estate and to the applicant companies' economic activities, it cannot be regarded as constituting "interference" with their right to the peaceful enjoyment of their possessions that was "manifestly in breach" of domestic law or – since it is an agreement between two States in the form of an exchange of notes, supplementing an international treaty in force since 1949 – of international law. It has therefore not been established in any way that this bilateral agreement "derogates" from the Convention. Nor has it been established, or even alleged, that the potential interference was arbitrary.

The Court accordingly concludes that this part of the application is manifestly ill-founded and rejects it pursuant to Article 35 §§ 3 and 4 of the Convention.

C. The complaint under Article 14 of the Convention, taken together with Article 6 of the Convention and Article 1 of Protocol No. 1

12. Lastly, the applicant companies complained of discrimination in the enjoyment of the rights secured to them by Article 6 of the Convention and Article 1 of Protocol No. 1. They argued that by being "subjected" to the agreement in issue, they had lost the benefit of all the safeguards which French law generally afforded to natural and juristic persons in connection with such infrastructure developments. They relied on Article 14 of the Convention, taken together with those two provisions. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see, among other authorities, *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994, Series A no. 291-B, p. 32, § 22). In the instant case, as the Court has held that Article 6 of the Convention is not applicable and that there was no interference with the right guaranteed by Article 1 of Protocol No. 1, Article 14 cannot be relied on in conjunction with those provisions.

The Court further reiterates that Article 14 of the Convention safeguards individuals placed in analogous situations from any discrimination in the enjoyment of the rights guaranteed by the Convention (see, among other authorities, *Van der Mussele v. Belgium*, judgment of 23 November 1983,

Series A no. 70, pp. 22-23, § 46). In this connection, it is true that where provisions of domestic law form the sole legal basis for plans to expand an airport, the administrative courts have jurisdiction to review the administrative decisions on which the proposed expansion is based. The applicant companies cannot validly maintain, however, that the *Conseil d'Etat* would have reached a different conclusion if the same complaints had been raised before it by applicants in an analogous situation to theirs regarding the expansion of Basle-Mulhouse Airport.

The Court accordingly concludes that this part of the application is manifestly ill-founded and rejects it pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.