

[\[TRANSLATION\]](#)

...

THE FACTS

The applicant is the Municipal Section of Antilly in the municipality of Argilly (Côte-d'Or). It is represented before the Court by Mrs Defosse, of the Dijon Bar.

A. The circumstances of the case

The facts of the case, as submitted by the applicant municipal section, may be summarised as follows.

The community of Antilly has existed since time immemorial and owns property (forests, pastures, a town hall), its title to which is undisputed.

At the time of the French Revolution the municipality of Argilly was created, incorporating the community of Antilly. In accordance with the law, the latter was established as a section of the municipality and remained the owner of the property it had owned previously.

On 12 February 1994 the Board of Management of the Municipal Section of Antilly, which managed the section's property and rights, resolved to bid for a plot of farm land in the municipality of Argilly and within the municipal section of Antilly.

On 13 October 1994 the prefect of the Côte d'Or *département* applied to the Dijon Administrative Court to have the municipal section's resolution of 12 February 1994 set aside.

In a judgment of 21 January 1995 the Dijon Administrative Court set aside the resolution of 12 February 1994 on the ground that the municipal section had no power to take a decision on the acquisition of land.

On 20 March 1995 the Board of Management of the Municipal Section of Antilly applied to the *Conseil d'Etat* to have that judgment varied or quashed. It firstly contested that it lacked jurisdiction to acquire real property. It further argued that the impugned judgment was confiscatory *vis-à-vis* the municipal section and consequently infringed Article 1 of Protocol No. 1 to the Convention. It lastly alleged that it had not had a fair hearing, contrary to Article 6 of the Convention.

On 12 December 1997 the *Conseil d'Etat* dismissed the Municipal Section of Antilly's application holding as follows:

"The fact, asserted by [the applicant municipal section], that it had not been possible, for want of sufficient financial resources to instruct a lawyer, for it to properly prepare its defence ... has no bearing on the lawfulness of the judgment being challenged.

The proceedings in the Administrative Court were adversarial, in accordance with the provisions of the Administrative Courts and Administrative Courts of Appeal Code, and it cannot avail the applicant municipal section to pray in aid the provisions of Article 6 of the ... Convention ..., which do not apply in the instant case.

... it follows [from the provisions of Article L. 151-6 of the Municipalities Code] that the acquisition of property is not within the powers of the board of management of a municipal section.

The impugned judgment, which denied the [applicant municipal section] the right to acquire a parcel of land, did not infringe the rights it had over the property it owned; the ground of appeal based on the judgment's violation of the Constitution and of the provisions of the ... Convention ... which protect the right of property accordingly fails."

B. Relevant domestic law

French Constitution – Part XII – Local and regional authorities – Article 72

"The local and regional authorities of the Republic are the municipalities, the départements and the overseas territories. Any other local or regional authority shall be created by law.

Those territories shall be freely administered by elected councils and under the conditions provided for by the law."

Municipalities Code – Book V – Interests specific to certain categories of inhabitant

Chapter 1 – Municipal section¹

Article L. 151-1

"Any part of a municipality permanently and exclusively vested with property or rights distinct from those of the municipality shall constitute a municipal section.

A municipal section shall have legal personality."

Article L. 151-2

"The property and rights of the section shall be managed by the municipal council, the mayor and, in the cases provided for by Articles L. 151-6, L. 151-7, L. 151-8, L.151-9, L 151-11, L. 151-15 and L. 151-18 of this Code, by a board of management and its chairman."

1. Articles L. 2411-1 et seq. of the General Code of Local and Regional Authorities.

Article L. 151-3

“...

The members of the board of management, who are to be chosen from among the persons eligible to stand for election to the municipal council of the municipality to which the municipal section belongs, shall be elected according to the same rules as the municipal councillors of municipalities with under 3,500 inhabitants...

The mayor of the municipality to which the municipal section belongs shall be a member of the board of management *ex officio*.”

Article L. 151-6

“Subject to the provisions of Article L. 151-15, the board of management shall decide on the following matters:

1. Contracts entered into with the municipality to which it belongs or another municipal section;
2. Sale, exchange or lease for nine years or more of the section’s property;
3. Change in the use of that property;
4. Settlements and legal proceedings;
5. Acceptance of gifts;
6. Membership of a landowners’ association or any other financial pooling organisation;
7. Setting up of a union of sections; and
8. Appointment of representatives to represent the municipal section;

The chairman of the board of management shall take the necessary steps to ensure the execution of those decisions.

...”.

COMPLAINTS

1. Relying on Article 6 § 1 of the Convention, the applicant municipal section complained of not having had a fair hearing because it had not been possible for it to prepare its defence properly for want of sufficient financial resources, unlike the public authorities which had been its opponents in the proceedings. In its submission, that inequality of means amounted to a breach of the principle of the equality of arms.

2. The applicant municipal section further considered itself the victim of a violation of its right to the peaceful enjoyment of its possessions as secured by Article 1 of Protocol No. 1 to the Convention.

THE LAW

The applicant municipal section complained of the unfairness of the proceedings that had ended with the *Conseil d'Etat's* judgment of 12 December 1997 and considered itself the victim of a violation of its right of property. It relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

The Court, however, considers that it is necessary to examine first whether the applicant municipal section is entitled to make an application under Article 34 of the Convention.

The Court points out that under the terms of the Article 34, it may receive individual applications only from “any person, non-governmental organisation or group of individuals”.

In the instant case the Court notes that a municipal section is “any part of a municipality permanently and exclusively vested with property or rights distinct from those of the municipality” (Article L. 151-1 of the Municipalities Code¹).

The Court likewise notes that by Article L. 151-2² of the same code, such a section is managed by the municipal council, the mayor and, in certain situations exhaustively listed in the Code, by a board of management. The members of such a board are elected from among the persons eligible to stand for election to the municipal council of the municipality to which the municipal section belongs, according to the same rules as municipal councillors of municipalities with under 3,500 inhabitants. The mayor of the municipality to which it is attached is a member of the board *ex officio*.

The Court further emphasises that the task of a municipal section is to take part in the management of the collective property and rights attaching to a given area in the general interest, not in the individual interest of its residents.

The Court consequently considers a municipal section to be a public-law entity which shares in the exercise of public authority, and must, for the purposes of Article 34 of the Convention, be classified as a governmental organisation.

As to the board of management, which in the instant case represented the Municipal Section before the Court, even supposing that it could be taken to be acting in its own name, it likewise cannot be described as a non-governmental organisation or group of individuals with a common interest for the purposes of Article 34 of the Convention. The Court considers that, unlike an association of residents formed to defend common individual interests, the board of management, which is a manager of collective

1. Article L. 2411-1 of the General Code of Local and Regional Authorities.

2. Article L. 2411-2 of the General Code of Local and Regional Authorities.

interests, is connected with a particular area, whose population must be regarded as an entity existing independently of the individuals composing it.

It follows that the application falls outside the jurisdiction of the Court *ratione personae*. It is therefore incompatible with the provisions of the Convention within the meaning of Article 35 § 3 and must be dismissed pursuant to Article 35 § 4 of the Convention.

For these reasons, the court unanimously

Declares the application inadmissible.