CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36075/97
by Josef SIEGL
against Austria

The European Court of Human Rights (Third Section) sitting on 8 February 2000 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, *judges*,
and Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 December 1996 by Josef Siegl against Austria and registered on 14 May 1997 under file no. 36075/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian national, living in Zaussenberg. In the proceedings before the Court he is represented by Mr E. Proksch, a lawyer practising in Vienna.

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

In 1983 agricultural land-consolidation proceedings (*Zusammenlegungsverfahren*) involving the property of the applicant's mother, were instituted by the Lower Austria District Agricultural Authority (*Agrarbezirksbehörde*). After a hearing on 9 September 1993 the authority ordered the provisional transfer of the compensatory parcels (*Grundabfindungen*) on the basis of a draft consolidation scheme (*Neueinteilungsplan*).

As the applicant's mother refused to pay the prescribed fees for these proceedings, the District Agricultural Authority issued a decree ordering her to pay fees which corresponded to the value of her land. The applicant's mother appealed against this decision, but her appeal was dismissed by the Lower Austria Land Reform Board (*Landesagrarsenat*) on 8 October 1985. Her further appeal was dismissed by the Administrative Court (*Verwaltungsgerichtshof*) on 27 June 1989.

On 25 May 1985 the applicant's mother appealed against the District Agricultural Authority's failure to decide (*Devolutionsantrag*). On 1 September 1987 the Regional Land Reform Board dismissed the appeal. The District Agricultural Authority issued the consolidation scheme on 7 October 1987.

The applicant's mother appealed against the consolidation scheme on 1 December 1987 and on 13 December 1990 appealed against the Regional Land Reform Board's failure to decide. The latter appeal was allowed on 27 February 1991 and the Supreme Land Reform Board (*Oberster Agrarsenat*), now competent, took evidence on 16 April 1991, and held a hearing on 5 June 1991. That same day the Supreme Board granted compensation for the difference in value of a compensatory parcel, but dismissed the remainder of the appeal.

The applicant's mother then lodged an appeal with the Constitutional Court (*Verfassungsgerichtshof*), which referred the case to the Administrative Court on 7 October 1991. The Administrative Court quashed the Supreme Land Reform Board's decision for procedural errors on 19 September 1994. It noted, in particular, that the Supreme Board had not taken into consideration the expert opinion that the applicant's mother had submitted to the agricultural authorities. When the applicant's mother died, he filed a declaration stating that he wanted to pursue the proceedings as his mother's legal successor on 20 February 1995.

On 1 March 1995 the Supreme Land Reform Board, differently composed, took into consideration the expert opinion at issue and granted compensation for a difference in value, but again dismissed the remainder of the applicant's appeal. No hearing was held before the decision was taken. The applicant appealed from this decision.

On 12 June 1995 the Constitutional Court referred the applicant's appeal to the Administrative Court, which quashed the Supreme Land Reform Board's decision for procedural errors on 29 June 1996. It noted that the Supreme Board had taken into

consideration the expert opinion, but had not given the applicant the opportunity to comment. Therefore the Supreme Board had violated the applicant's right to be heard.

On 7 May 1997 the Supreme Land Reform Board, having held a hearing at which it heard the rapporteur (*Berichterstatter*) and the applicant, partly granted the appeal and granted a higher amount of compensation for the difference in value of a compensatory parcel. The applicant appealed from this decision complaining that the other land-owners concerned had not been summoned and there had, thus, not been a multiparty-procedure. Besides, the Supreme Board had wrongly assessed the expert opinion.

On 30 September 1997 the Constitutional Court refused to deal with the case and transferred it to the Administrative Court.

On 18 February 1999 the Administrative Court dismissed the applicant's appeal. It did not hold a hearing, finding that a hearing had already been held by a tribunal and that the factual basis was clear. The decision was served on 10 March 1999.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the land consolidation proceedings concerning his plots of land have not been determined within a reasonable time.

2. The applicant further complains that no hearing within the meaning of Article 6 of the Convention was held before the agricultural authorities as the other land-owners concerned were not summoned and there had, thus, been no multiparty-procedure. Moreover, no hearing was held before the Constitutional Court or the Administrative Court. Besides, the Supreme Land Reform Board was not a tribunal within the meaning of Article 6 § 1.

3. The applicant finally complains under Article 6 that the proceedings were unfair as the authorities had not taken into account the expert opinion obtained by his mother.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention and Article 1 of Protocol No.1 about the length of the land consolidation proceedings.

Article 6 § 1 of the Convention, so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Article 1 of Protocol No 1 guarantees the right to property.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is, therefore, necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

2. The applicant further complains that no hearing within the meaning of Article 6 of the Convention was held before the agricultural authorities as the other land owners concerned were not summoned and there had, thus, been no multiparty-procedure. Moreover, there was no hearing before the Constitutional Court or the Administrative Court. Besides, the Supreme Land Reform Board was not a tribunal within the meaning of Article 6 § 1.

The Court notes at the outset that the Supreme Land Reform Board held a hearing on 7 May 1997, at which the applicant was heard in person and given the opportunity to comment on the authority's point of view. The applicant claims that no hearing within the meaning of Article 6 was held as the other land owners were not summoned. The Court, assuming exhaustion of domestic remedies as required by Article 35 § 1 of the Convention, finds no appearance of a violation of Article 6 § 1. It notes in particular that land consolidation proceedings are not conducted between the various land owners as opposing parties, but between the land owners and the agricultural authorities. As to the applicant's allegation that the Supreme Land Reform Board lacked the quality of a tribunal, the Court recalls its established case-law, according to which the Austrian agricultural authorities qualify as tribunals (see the Stallinger and Kuso v. Austria judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-II, p. 677, § 37, and the previous case-law mentioned therein).

As to the applicant's further complaint about the lack of a hearing in the proceedings before the Constitutional Court and the Administrative Court, the Court recalls that, provided a hearing has been held at first instance, the absence of such a hearing before the second or third instance may be justified by the special features of the proceedings at issue. Thus, the absence of a hearing in "leave to appeal" proceedings or in appeal proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 of the Convention (see the Helmers v. Sweden judgment of 23 November 1990, Series A No. 212-A, p. 16, § 36). The present case concerned rather technical questions of assessing compensation. A hearing where the applicant had the opportunity to comment on the evidence had been held before the Supreme Land Reform Board. The Administrative Court refused to hold a further hearing on the ground that the case had already been heard by a tribunal and that the factual basis was clear. The Court cannot find that the lack of a hearing before the Constitutional Court and the Administrative Court, in the special circumstances of the case, discloses any appearance of a violation of Article 6 of the Convention.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicant also complains under Article 6 that the proceedings were unfair as the authorities did not take into account the expert opinion obtained and submitted by his mother.

The Court notes that the said expert opinion was not taken into consideration in the first set of proceedings. However, in the proceedings following the Administrative Court's decision of 19 September 1994, it was. Therefore, the Court cannot find that there is any appearance of unfairness in this respect.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint about the length of the land consolidation proceedings.

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

N. Bratza
President