

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application Nos. 14696/89 and 14697/89

Alois and Amalia STALLINGER
Johann and Elisabeth KUSO

against

Austria

REPORT OF THE COMMISSION

(adopted on 7 December 1995)

TABLE OF CONTENTS

	Page
I. INTRODUCTION (paras. 1-15) . . . . .	.1
A. The applications (paras. 2-4) . . . . .	.1
B. The proceedings (paras. 5-10) . . . . .	.1
C. The present Report (paras. 11-15) . . . . .	.2
II. ESTABLISHMENT OF THE FACTS (paras. 16-42) . . . . .	.3
A. The particular circumstances of the case (paras. 16-39) . . . . .	.3
a. Stallinger case (Application No. 14696/89) (paras. 17-25) . . . . .	.3
b. Kuso case (Application No. 14697/89) (paras. 26-39) . . . . .	.4
B. Relevant domestic law (paras. 40-42) . . . . .	.6
III. OPINION OF THE COMMISSION (paras. 43-74) . . . . .	.8
A. Complaints declared admissible (para. 43) . . . . .	.8
B. Points at issue (para. 44) . . . . .	.8
C. Article 6 of the Convention (paras. 45-71) . . . . .	.8
a. Applicability of Article 6 (para. 45) . . . . .	.8
b. Hearing before an independent and impartial tribunal established by law	

(paras. 46-51) 8

CONCLUSION

(para. 52). 10

c. The absence of a public hearing before the Regional Board and the Administrative Court

(paras. 53-67) 10

TABLE OF CONTENTS

Page

aa. The Austrian reservation to Article 6
(paras. 53-62) 10

bb. The absence of a public hearing
(paras. 63-67) 12

CONCLUSION

(para. 68). 13

d. Fair hearing before a tribunal
(paras. 69-70) 13

CONCLUSION

(para. 71). 13

D. Recapitulation
(paras. 72-74). 13

APPENDIX I : HISTORY OF THE PROCEEDINGS 14

APPENDIX II : DECISION OF THE COMMISSION AS TO THE
ADMISSIBILITY OF THE APPLICATION 16

I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The applications

2. The four applicants are Austrian citizens and residents in Rohrbach (Stallinger) and Au am Leithagebirge (Kuso). They were represented before the Commission by Mr. E. Proksch, a lawyer practising in Vienna.

3. The applications are directed against Austria. The respondent Government were represented by Mr. F. Cede, Deputy Secretary General and Legal Counsel of the Austrian Federal Ministry of Foreign Affairs.

4. The cases concern agricultural land consolidation proceedings. The applicants invoke Article 6 of the Convention.

B. The proceedings

5. The applications were introduced on 16 November 1988 and registered on 27 February 1989.

6. On 17 October 1991 the Commission decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to join the applications, to give notice to the respondent Government and to invite the parties to

submit written observations on the admissibility and merits of the applicants' complaints under Article 6 of the Convention and Article 1 of Protocol No. 1.

7. The Government's observations were submitted on 13 March 1992. The applicants replied on 13 May 1992.

8. On 29 March 1993 the Commission declared admissible the applicants' complaint under Article 6 of the Convention. It declared inadmissible the remainder of the application.

9. The text of the Commission's decision on admissibility was sent to the parties on 13 April 1993 and they were invited to submit such further information or observations on the merits as they wished. The applicants submitted further observations on 11 May 1993 to which the respondent Government replied on 19 July 1993.

10. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. Substantial negotiations took place with the parties between 29 March 1993 and 26 May 1994. The Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

11. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present :

MM. S. TRECHSEL, President
 H. DANELIUS
 C.L. ROZAKIS
 E. BUSUTTIL
 C.A. NØRGAARD
 G. JÖRUNDSSON
 A.S. GÖZÜBÜYÜK
 A. WEITZEL
 J.-C. SOYER
 H.G. SCHERMERS
 Mrs. G.H. THUNE
 Mr. F. MARTINEZ
 Mrs. J. LIDDY
 MM. L. LOUCAIDES
 J.-C. GEUS
 M.P. PELLONPÄÄ
 B. MARXER
 M.A. NOWICKI
 I. CABRAL BARRETO
 B. CONFORTI
 N. BRATZA
 I. BÉKÉS
 J. MUCHA
 E. KONSTANTINOV
 D. SVÁBY
 G. RESS
 A. PERENIC
 C. BÎRSAN
 K. HERNDL

12. The text of this Report was adopted on 7 December 1995 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the

Convention.

13. The purpose of the Report, pursuant to Article 31 of the Convention, is :

- (i) to establish the facts, and
- (ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

14. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

15. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

16. The facts are agreed between the parties and may be summarised as follows.

The applicants are farmers. Their land was involved in agricultural land consolidation proceedings (Zusammenlegungsverfahren) under the Agricultural Land Planning Acts (Flurverfassungsgesetze) for respectively Upper and Lower Austria.

The proceedings developed as follows:

a. Stallinger case (Application No. 14696/89)

17. In December 1980 the Upper Austrian Agricultural District Authority (Agrarbezirksbehörde - hereinafter referred to as "the District Authority") in Linz issued a consolidation plan.

18. On 14 January 1982, on the applicants' appeal, the Regional Land Reform Board at the Upper Austrian Regional Government's Office (Landesagrarsenat beim Amt der Oberösterreichischen Landesregierung - hereinafter referred to as "the Regional Board") set the consolidation plan aside and referred the case back to the District Authority. Certain objections raised by the applicants were, however, rejected.

19. In September 1983 the District Authority issued a new consolidation plan after having carried out additional investigations.

20. On 25 October 1984 the Regional Board set the consolidation plan partly aside.

21. To this extent the District Authority issued a third consolidation plan on 28 February 1986.

22. On 16 October 1986 the Regional Board dismissed the applicants' appeal. The decision was given after an oral hearing held in private in which the applicants and their counsel as well as other parties and the mayor of Rohrbach participated.

23. Having regard to an official expert opinion and a private expert opinion submitted by the applicants as well as to further evidence including the result of investigations carried out on the spot by the expert members of the Regional Board (result which had been

communicated to and discussed with the parties) the Board found that the compensation parcels allotted to the applicants constituted adequate compensation in exchange for their former properties.

The applicants' allegation that some of their former plots had a higher value because of future construction possibilities was considered to be unproven in view of the fact that the land in question was classified agricultural and was used as such. Furthermore it followed from statements made by community officials that no change was foreseen for the future. The fact that one K., named as a witness by the applicants, was willing to pay an important price for the plots in question was therefore considered to be irrelevant.

24. On 24 September 1987 the Constitutional Court (Verfassungsgerichtshof) refused to deal with the applicants' complaint and referred it to the Administrative Court (Verwaltungsgerichtshof).

25. On 3 May 1988 the Administrative Court dismissed the complaint rejecting at the same time, in accordance with Section 39 (2) No. 6 of the Administrative Court Act, the applicants' request for an oral hearing. The decision was served on the applicants on 1 June 1988 and was mainly based on the following grounds:

The applicants had argued that the expert members of the Regional Board were in fact prejudiced by their own expert opinion when, as in the case at issue, the Regional Board set aside a consolidation plan and subsequently dealt with a complaint against the new plan. The Administrative Court referred to its own jurisprudence and that of the Constitutional Court as well as that of the European Court of Human Rights (Ettli and others judgment of 23 April 1987, Series A no. 117) according to which the participation of expert members in the decisions of the Regional Boards was legally unobjectionable.

Insofar as the applicants had complained that expert members of the Regional Board had effected an investigation on the spot in the applicants' absence, the Administrative Court stated that the procedure followed was in line with procedural law. It also pointed out that the result of the investigation had been communicated to the applicants for their observations.

The Administrative Court further found that no objections could be raised against the Regional Board's assessment as to the question of whether or not certain of the applicant's former properties were likely to become constructible.

b. Kuso case (Application No. 14697/89)

26. The Lower Austrian Agricultural District Authority (Agrarbezirksbehörde) in Vienna issued a consolidation plan in May 1974.

27. On 24 March 1975, on the applicants' appeal, the Regional Board at the Lower Austrian Government's Office (Landesagrarsenat beim Amt der Niederösterreichischen Landesregierung) set the consolidation plan aside and referred the case back to the District Authority.

28. On 9 September 1975 the District Authority issued a new consolidation plan. The applicants again appealed.

29. On 31 January 1979 the Regional Board partly granted the appeal but dismissed the applicants' complaint that the parcels of land allotted to them were insufficient and that they had therefore received inadequate compensation.

30. On 5 November 1980, on the applicants' further appeal, the Supreme Land Reform Board (Oberster Agrarsenat) quashed the decision of the Regional Board and referred the case back to the District Authority on the ground that some of the compensation parcels allotted to the applicants appeared to be insufficient.

31. On 30 January 1984 the District Authority issued a new plan which was confirmed by the Regional Board on 18 December 1984. The Board considered that the applicants had received adequate compensation parcels.

32. On 26 November 1985 the Administrative Court set the decision of 18 December 1984 partly aside on account of a violation of procedural law.

33. On 17 February 1987 the Regional Board after an oral hearing but without having carried out supplementary investigations (ergänzende Ermittlungen) again dismissed the applicants' appeal against the consolidation plan of 30 January 1984.

34. On 24 September 1987 the Constitutional Court refused to deal with the applicants' complaint and referred it to the Administrative Court.

35. On 19 April 1988 the Administrative Court dismissed the complaint rejecting at the same time, in accordance with Section 39 (2) No. 6 of the Administrative Court Act, the applicants' request for an oral hearing. The decision was served on the applicants on 18 May 1988.

36. Referring to the Ettl and others judgment of the European Court of Human Rights (see above para. 25), the Administrative Court rejected as unfounded the applicants' complaints that the hearing before the Board had not been public and that the Board was not an independent tribunal within the meaning of Article 6 of the Convention, inter alia because it was prejudiced by its own decision in case there were two consecutive appeals in the same matter.

37. The Administrative Court further considered that the Board had remedied the procedural shortcomings on account of which its earlier decision had to be set aside.

38. In fact it had now given a detailed and unobjectionable assessment of the respective value of the applicants' former properties as compared with the compensation parcels. The Court also considered that further evidence offered by the applicants in this respect had correctly been rejected by the Board as being irrelevant.

39. Insofar as the applicants had submitted that their case had not been sufficiently discussed at the oral hearing and that substitute members (Ersatzmitglieder) of the Board had therefore not sufficiently been informed of all issues, the Court first pointed out that according to the observations of the opponent party only one of the members of the Board participating in the hearing of the applicants' appeal had been a supplementary member and in any case all members as well as the parties had had the opportunity to put questions in order to see to it that the facts were exhaustively and correctly established.

B. Relevant domestic law

a. Composition of the Regional Boards

40. The Regional Board has eight members, all appointed by the Government of the Land of the Austrian Federation in which it exercises jurisdiction (see Section 5 (2) and (4) of the Federal Agricultural

Authorities Act (Agrarbehördengesetz) of 1950, as amended in 1974; cf. Eur. Court H.R., Ettl and others judgment of 23 April 1987, loc. cit.). These eight members are:

- one Land civil servant, who is legally qualified (rechtskundig), and acts as chairman;
- three judges;
- a legally qualified Land civil servant with experience in land reform, who acts as rapporteur;
- a senior Land civil servant (Landesbeamter des höheren Dienstes) with experience in agronomic matters;
- a senior Land civil servant with experience in forestry matters; and
- an agricultural expert within the meaning of section 52 of the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz).

For each of the above members a substitute member has to be appointed (Section 5 (3) of the Federal Agricultural Authorities Act).

b. Procedure of the Regional Board

41. Section 9 (1) of the Federal Agricultural Proceedings Act (Agrarverfahrensgesetz) provides as follows:

[Translation]

"The Regional Boards take their decisions after an oral hearing in the presence of the parties."

[German]

"Die Agrarsenate entscheiden nach mündlicher Verhandlung unter Zuziehung der Parteien."

It is the constant practice of administrative authorities to hold oral hearings in camera unless the law provides otherwise.

c. Oral hearings before the Administrative Court

42. Section 39 (1) of the Administrative Court Act (Verwaltungsgerichtshofgesetz) provides that the Administrative Court is to hold a hearing after its preliminary investigation of the case where a complainant has requested a hearing within the time-limit. Section 39 (2) No. 6, which was added to the Act in 1982, provides however:

[Translation]

"Notwithstanding a party's application, the Administrative Court may decide not to hold a hearing when

...

6. It is apparent to the Court from the written pleadings of the parties to the proceedings before the Administrative Court and from the files relating to the prior proceedings that an oral hearing is not likely to contribute to clarifying the case."

[German]

"Der Verwaltungsgerichtshof kann ungeachtet eines Parteiantrages nach Abs. 1 Z. 1 von einer Verhandlung absehen, wenn

...

6. die Schriftsätze der Parteien des verwaltungsgerichtlichen Verfahrens und die dem Verwaltungsgerichtshof vorgelegten Akten des Verwaltungsverfahrens erkennen lassen, daß die mündliche Erörterung eine weitere Klärung der Rechtssache nicht erwarten läßt."

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

43. The Commission has declared admissible the applicants' complaints that the land reform proceedings did not conform to the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

B. Points at issue

44. The issues to be determined are:

- whether there has been a violation of the applicants' right to the determination of their civil rights and obligations by "an independent and impartial tribunal established by law" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention;
- whether there has been a violation of the applicant's right under Article 6 para. 1 (Art. 6-1) of the Convention to a public hearing.
- whether there has been a violation of Mr. and Mrs. Stallingers' right to a fair hearing by a tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention;

C. Article 6 (Art. 6) of the Convention

a. Applicability of Article 6 (Art. 6)

45. Article 6 para. 1 (Art. 6-1) of the Convention provides:

"1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Article 6 para. 1 (Art. 6-1) is applicable to land consolidation proceedings (Eur. Court H.R., Wiesinger judgment of 30 October 1991, Series A No. 213) and this is undisputed between the parties.

b. Hearing before an independent and impartial tribunal established by law

46. The applicants complain of the organisation of the agricultural authorities which dealt with their case, claiming that it fell short of the requirements of Article 6 (Art. 6) of the Convention. In view

of the participation of civil servants, the disproportionate influence of the specialised civil servants who also assume the functions of experts, and the lack of a true adversarial character of the proceedings, the applicants consider that the competent Land Reform Boards cannot be regarded as independent and impartial tribunals within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. They also complain that the Land Reform Boards were not established by law because there was no proper assignment of duties between its members, in particular between ordinary and substitute members.

47. Referring to the Ettl and others judgment the Government consider that the Regional Boards meet the requirements of Article 6 (Art. 6) of the Convention.

48. The Commission recalls that in the case of Ettl and others the Court has held that the Regional and Supreme Boards are tribunals established by law within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Furthermore, the fact that a majority of the members of the boards were civil servants was as such compatible with Article 6 para. 1 (Art. 6-1) of the Convention. As regards civil servants who sit on the board on account of their experience of agronomy, forestry and agriculture, the Court found that their membership could not give rise to doubts about the independence and impartiality of the boards. Such experts on the boards were needed in cases concerning land consolidation, which was an operation that raised issues of great complexity and affected not only the owners directly concerned but the community as a whole. The board's composition enabled them to reach balanced decisions, having regard to the various interests at stake (Ettl judgment of 23 April 1987, loc. cit., pp. 17-18, paras. 34-40).

49. The Commission notes that the applicants' allegations are essentially the same as those submitted by the applicants in the case of Ettl and others. The present applicants give particular weight to the status and functions of the expert civil servant members of the Land Reform Boards, but they have failed to indicate any important element which could be held to justify distinguishing the present case from the Ettl case. The present applicants complain that in their case the Regional Board or rather its expert member strongly influenced the preparation and issuance of the consolidation plan having set aside the original plan in an earlier round of the proceedings. Consequently the Regional Board was prejudiced by its own prior decision when it examined a second appeal in the same matter. However, it is common in the Convention countries that higher courts deal with similar or related cases in turn (Eur. Court H.R., Gillow judgment of 24 November 1986, Series A no. 109, p. 28, para. 73) or have to decide another appeal in the same matter after having sent it back to a lower court for reconsideration. The Commission does not find that this aspect of the case or any other circumstances justify diverging from the existing case law.

50. Consequently, in view of the Court's finding in the case of Ettl and others concerning the general organisation and procedure of the Land Reform Boards, these boards must, also in the present case, be considered to fulfil the requirements of independent and impartial tribunals within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

51. As regards the applicants' complaint that the Land Reform Boards were not established by law, the Commission observes that Section 5 (2) and (3) of the Federal Agricultural Authorities Act sets out the composition of the Regional Boards and the function of its members. In such circumstances the Commission finds that these bodies must be considered as established by law. In this respect the Commission

recalls that Article 6 para. 1 (Art. 6-1) of the Convention does not require the legislature to regulate each and every detail in this field by formal Act of Parliament, if the legislature establishes at least the organisational framework for the judicial organisation (Zand v. Austria, Comm. Report 12.10.78, para. 69, D.R. 15 p. 70).

CONCLUSION

52. The Commission concludes, unanimously, that there has been no violation of the applicants' right under Article 6 para. 1 (Art. 6-1) of the Convention to the determination of their civil rights and obligations by "an independent and impartial tribunal established by law".

c. The absence of a public hearing before the Regional Board and the Administrative Court

aa. The Austrian reservation to Article 6 (Art. 6)

53. The applicants further complain under Article 6 para. 1 (Art. 6-1) of the Convention about the lack of a public hearing in the land consolidation proceedings.

54. The Government refer again to the Ettl and others judgment and the reservation made by Austria in respect of Article 6 (Art. 6) and submit that this reservation is valid and applies so as to prevent the Commission from considering this question.

55. The Austrian reservation to Article 6 (Art. 6) provides as follows:

"The provisions of Article 6 (Art. 6) of the Convention shall be so applied that there shall be no prejudice to the principles governing public court hearings laid down in Article 90 of the 1929 version of the Federal Constitutional Law."

56. Article 90 of the 1929 version of the Federal Constitution reads as follows:

"Hearings in civil and criminal cases before the trial court shall be oral and public. Exceptions may be prescribed by law."

57. Article 64 (Art. 64) of the Convention reads as follows:

"1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned."

58. The Commission recalls that the European Court of Human Rights has considered the question of the compatibility of declarations and reservations with Article 64 (Art. 64) of the Convention on several occasions (see for example, Eur. Court H.R., Belilos judgment of 29 April 1988, Series A no. 132; Weber judgment of 22 May 1990, Series A no. 177; Chorherr judgment of 25 August 1993, Series A no. 266-B; Gradinger judgment of 23 October 1995, para. 51, to be published in Series A no. 328-C). The Court has held that Article 64 para. 1 (Art. 64-1) of the Convention requires "precision and clarity" and that the requirement set forth in Article 64 para. 2 (Art. 64-2) that a

reservation shall contain a brief statement of the law concerned is not a "purely formal requirement but a condition of substance "which" constitutes an evidential factor and contributes to legal certainty" (Belilos judgment, paras. 55 and 59).

59. In the Fischer case the Court did not find it necessary to examine the validity of the Austrian reservation to Article 6 (Art. 6), but held that the reservation did not prevent it from examining the applicant's complaint that the refusal to hold a hearing before the Administrative Court violated Article 6 (Art. 6) of the Convention, because the provision on which the refusal was based was not "in force" at the time the reservation was made (Eur. Court H.R., Fischer judgment of 26 April 1995, para. 41, to be published in Series A no. 312).

60. As regards the present case, the Commission observes that Section 9 (1) of the Federal Agricultural Proceedings Act of 1950, which provide that hearings before land consolidation boards are held in camera, was in force in 1958, at the time Austria ratified the Convention and made the reservation in question. The Commission therefore has to examine whether the Austrian reservation satisfies the requirements of Article 64 (Art. 64) of the Convention.

61. In this respect the Commission notes that the reservation at issue does not contain a "brief statement" of the law which is said not to conform to Article 6 (Art. 6) of the Convention. From the wording of the reservation it might be inferred that Austria intended to exclude from the scope of Article 6 (Art. 6) all proceedings in civil and criminal matters before ordinary courts insofar as particular laws allowed for non-public hearings. However, a reservation which merely refers to a permissive, non exhaustive, provision of the Constitution and which does not refer to, or mention, those specific provisions of the Austrian legal order which exclude public hearings, does not "afford to a sufficient degree 'a guarantee ... that [it] does not go beyond the provision expressly excluded' by Austria" (see Gradinger judgment, para. 51, Chorherr judgment, para. 20). Accordingly, the reservation does not satisfy the requirements of Article 64 para. 2 (Art. 64-2) of the Convention. In such circumstances the Commission finds that there is no need also to examine whether the other requirements of Article 64 (Art. 64) were complied with.

62. It follows that the Austrian reservation cannot prevent the Commission from examining the complaint concerning the lack of a public hearing.

bb. The absence of a public hearing

63. The Regional Boards held hearings in the cases of both applicant couples. In accordance with the relevant domestic provisions of procedural law, these hearings were in private. However, in order to comply with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention it would be sufficient if the applicants could have had the benefit of a public hearing before a higher body, namely the Administrative Court, provided this body was a tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention with a sufficiently wide scope of jurisdiction.

64. In this respect the Commission recalls that the Court has repeatedly found that the Administrative Court, in civil cases, may qualify as such a tribunal as, in the circumstances of the concrete cases, it had full jurisdiction (Eur. Court H.R., Zumtobel judgment of 21 September 1993, Series A no. 268, pp. 13-14, paras. 31-32; Fischer judgment of 26 April 1995, para. 34, to be published in Series A no. 312). In assessing whether the Administrative Court had in the present case a sufficiently wide scope of jurisdiction, it is

necessary to take into account matters such as the subject-matter of the decision appealed against, the manner in which that decision was arrived at, and the contents of the dispute, including the desired and actual grounds of appeal (Eur. Court H.R., Bryan judgment of 22 November 1995, para. 45, to be published in Series A no. 335-A). Having regard to the fact that the Administrative Court took its decisions after quasi-judicial proceedings had been conducted before the Regional Boards and that the Administrative Court examined the lawfulness of the decision including the manner in which evidence was gathered, the Commission is satisfied that the Administrative Court must be considered as a tribunal for the purpose of the present proceedings.

65. The Commission must therefore examine whether the lack of a public hearing before the Administrative Court was compatible with Article 6 para. 1 (Art. 6-1) of the Convention in the present case.

66. The applicants were in principle entitled to a public hearing before the Administrative Court, as none of the exceptions laid down in the second sentence of Article 6 para. 1 (Art. 6-1) applied (cf. Eur. Court H.R., Håkansson and Stureson judgment of 21 February 1990, Series A no. 171, p. 20 para. 64). The applicants requested and were refused a hearing by the Administrative Court.

67. Furthermore, it does not appear that there were exceptional circumstances which could otherwise justify the absence of a public hearing. Although, unlike in the Fischer case, the Administrative Court was not the only judicial body competent to determine the cases of the applicants, it was the only one which could have held a public and oral hearing in these cases (Eur. Court H.R., Fischer judgment, loc. cit., paras. 43-44). The refusal of the Administrative Court to hold such hearings in the applicants' cases amounted therefore to a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

CONCLUSION

68. The Commission concludes, unanimously, that there has been a violation of the applicants' right under Article 6 para. 1 (Art. 6-1) of the Convention to a public hearing.

d. Fair hearing before a tribunal

69. The applicants Stallinger also complain that an examination on the spot was carried out in their absence.

70. The Commission observes in this respect that the applicants were subsequently informed about the result and given the opportunity to comment. They have also failed to establish that they were in any way prevented from arguing their case effectively. It cannot, in these circumstances, be found that the principle of a fair hearing was violated.

CONCLUSION

71. The Commission concludes, unanimously, that there has been no violation of Mr. and Mrs. Stallingers' right under Article 6 para. 1 (Art. 6-1) of the Convention to a fair hearing.

Recapitulation

72. The Commission concludes, unanimously, that there has been no violation of the applicants' right under Article 6 para. 1 (Art. 6-1) of the Convention to the determination of their civil rights and obligations by "an independent and impartial tribunal established by

law" (cf. para. 52).

73. The Commission concludes, unanimously, that there has been a violation of the applicants' right under Article 6 para. 1 (Art. 6-1) of the Convention to a public hearing (cf. para. 68).

74. The Commission concludes, unanimously, that there has been no violation of Mr. and Mrs. Stallingers' right under Article 6 para. 1 (Art. 6-1) of the Convention to a fair hearing (cf. para. 71).

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(S. TRECHSEL)

APPENDIX I

HISTORY OF THE PROCEEDINGS

Date	Item
16 November 1988	Introduction of application
16 November 1988	
27 February 1989	Registration of application
27 February 1989	
Examination of admissibility	
4 September 1991	Application transferred from Committee to Plenary
17 October 1991	Commission's decision to communicate the case to the respondent Government and to invite the parties to submit observations on admissibility and merits
13 March 1992	Government's observations
13 May 1992	Applicants' observations in reply
29 March 1993	Commission's decision to declare application in part admissible and in part inadmissible
20 January 1994	Commission decided to convene meeting in Vienna to discuss friendly settlement
Examination of the merits	
13 April 1993	Decision on admissibility transmitted to parties. Invitation to parties to submit further observations on the merits
23 August 1993	Government's observations
11 May 1993	Applicants' observations
17 January 1994	Commission's consideration of state of proceedings
29 November 1994	Commission's decision to adjourn the examination of the case pending the judgment of the European Court of Human

Rights in the Fischer v. Austria case
(Application No. 16922/90)

- 7 December 1995 Commission's deliberations on the merits,
final vote and consideration of text of
the Report
- 7 December 1995 Adoption of Report