In the case of Katte Klitsche de la Grange v. Italy*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A**, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr F. Gölcüklü,
Mr C. Russo,
Mr R. Pekkanen,
Mr A.N. Loizou,
Mr J.M. Morenilla,
Mr F. Bigi,
Sir John Freeland,
Mr J. Makarczyk,

and also of Mr H. Petzold, Acting Registrar,

Having deliberated in private on 21 April and 19 September 1994,

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

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Notes by the Registrar

* The case is numbered 21/1993/416/495. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Italian Republic ("the Government") on 12 July and 27 July 1993 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12539/86) against Italy lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Adolfo Katte Klitsche de la Grange, on 10 November 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention and Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the widow and two sons of Mr Katte Klitsche de la Grange, who had died on 31 December 1989, indicated that they wished to continue the proceedings - they had expressed the same wish before the Commission - and to take part in them and be represented by the lawyer they had designated (Rule 30). For reasons of convenience, Mr Katte Klitsche de la Grange will continue to be referred to as "the applicant" in the present judgment, although it is now Mrs Cocchi and her two sons who have this status (see, inter alia, mutatis mutandis, the Raimondo v. Italy judgment of 22 February 1994, Series A no. 281-A, pp. 1-2, para. 2).

3. The Chamber to be constituted included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 August 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr N. Valticos, Mr A.N. Loizou, Mr J.M. Morenilla, Mr F. Bigi, Sir John Freeland and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr R. Pekkanen, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence the Registrar received the applicant's memorial on 11 January 1994 and the Government's memorial on 20 January. In a letter of 21 March 1994 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. On 19 November 1993 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the decision of the President, who had given the applicant's lawyer leave to use the Italian language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 18 April 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, on secondment to the Diplomatic Legal Service, Minisitry of Foreign Affairs, *Co-Agent*,
Mrs M.A. Lorizio, avvocato, *Counsel*,
Mr L. Annibali, Secretary of the Tolfa District Council, *Adviser*;

(b) for the Commission

Mr B. Marxer, *Delegate*;

(c) for the applicant

Mr R. Scarpa, avvocato, *Counsel*,
Mr M. Valentini, praticante procuratore legale,
Mr N. Katte Klitsche de la Grange, *Advisers*.

The Court heard addresses by Mr Raimondi, Mrs Lorizio, Mr Marxer and Mr Scarpa, and also replies from Mrs Lorizio and Mr Scarpa to its questions.

AS TO THE FACTS

I. The particular circumstances of the case

7. Mr Adolfo Katte Klitsche de la Grange, a lawyer, lived in Rome until his death on 31 December 1989.

He owned a large portion of Cibona Park, situated within the territory of the District Councils of Allumiere and Tolfa (province of Rome). The present case concerns solely the land within the territory of the District Council of Tolfa, 68.87 hectares of woodland, arable land, "unproductive" land and grassland.

8. On 9 July 1966 Tolfa District Council unanimously approved a plan for the development of the park, submitted by the applicant, and the text of an agreement, which was intended, inter alia, to apportion the costs of putting in the infrastructure necessary for the scheme.

9. On 18 November 1967 the Standing Committee on Agriculture, Forestry and the Upland Economy of the Rome Chamber of Commerce authorised the development of an area of 16 hectares and refused to examine a further application unless it concerned all the rest of the property. On 15 March 1968 the Ministry of Public Works informed the District Council that it did not intend to raise any objections to the proposed agreement.

10. The agreement, which was signed on 10 May 1968, was subject to "the approval of the forestry authority for the remaining wooded portion of the [applicant's] land" and to "compliance with the restrictions deriving from any other legislative provision which is automatically deemed to be an integral part of the agreement". The latter proviso referred particularly "to the Town Planning Act [no. 1150 of 17 August 1942] and the subsequent amendments and additions thereto", including Act no. 765 of 6 August 1967 and the decision (decreto) of the Minister for Public Works of 2 April 1968, and to the "legislation for the protection of natural and historic sites".

Mr de la Grange was also bound to accept any "modification of the agreement required by law or on reasonable and undisputed public interest grounds".

11. The applicant then commenced work on the infrastructure necessary for the development (roads, location and provision of drinking water, electricity supply, installation of a telephone line, drains, etc.) and replaced the coppiced woodland by a plantation of tall-growing trees.

A number of plots of land in the park were sold - 130 of a total of 202 - and between 1968 and 1976 the competent authorities granted 61 building permits, including 3 to Mr de la Grange.

12. On 28 June 1969 Tolfa District Council adopted its land-use plan, which excluded part of the applicant's land from the area designated RE1, intended for "residential construction".

13. On 23 September 1974 Mr de la Grange asked the Lazio Regional Authority to amend the detailed maps annexed to the land-use plan so as to include all the land covered by the 1968 agreement. On 18 July 1975 the authority refused to do this. In its decision, published on 20 October 1975, it stated that there was nothing to

prevent the Tolfa District Council from considering a similar application if it subsequently adopted an alteration to the plan.

A. The proceedings in the administrative courts

1. The proceedings on the merits

14. On 14 February 1976, relying on the lack of public interest grounds justifying the changes of policy adopted by the local authority in relation to the 1968 agreement, the applicant applied to the Lazio Regional Administrative Court, which on 14 July 1976 annulled the plan in so far as it concerned the applicant's property.

15. On an appeal by Tolfa District Council, the Consiglio di Stato upheld the lower court's decision by a judgment of 14 February 1978. The development agreement was valid under the legislation in force and was therefore binding on the District Council. Admittedly the latter authority retained, in the exercise of its discretionary powers as regards planning, the right to amend all or part of the land-use plan, but it was under a duty to specify the grounds which had led it to change its previous policy, a policy that had "confirmed the legal positions of private individuals". The impugned plan had failed to state adequate reasons.

The detailed maps were not rectified.

16. On 15 May 1979, pursuant to Regional Law no. 43 of 2 September 1974 on "Measures for the protection and management of woodland", Lazio Regional Council classified Cibona Park as a site to be protected, prohibiting, among other things, hunting and fishing, the cutting down of trees, the opening of quarries and all construction.

17. On 12 February 1980 the applicant and some of the owners of the plots concerned by the above-mentioned decision applied to the Regional Administrative Court to have the decision set aside. In a judgment of 19 January 1983, deposited with the registry on 2 February 1983, the court declared the action inadmissible for lack of interest. The impugned decision did not adversely affect the position of the owners of the land deemed to be wooded because it did not define the plots concerned precisely. Damage could arise for the plaintiffs only from supplementary measures refusing to authorise a use for the land on account of the restrictions laid down in the law and following verification of the characteristics of the land in question. The applicant did not file an appeal on points of law against this decision in the Consiglio di Stato.

2. The proceedings for the enforcement of the judgment of 14 July 1976 of the Regional Administrative Court

18. On 14 July 1984 the applicant again applied to the Regional Administrative Court. He sought an order requiring Tolfa District Council "to bring the detailed maps annexed to the land-use plan into conformity with the 1968 agreement ... and to issue the building permits in respect of which it had not yet given a decision". He further requested the appointment of a "commissioner ad acta" in the event of failure to comply with the judgment of 14 July 1976.

19. On 28 November 1984 the court declared the application "inadmissible for lack of interest". Its decision of 1976 had been automatically enforceable and had reinstated "the legal situation ... obtaining prior to the measure annulled". The defendant authority was not therefore under a duty to rectify documents which no longer had any legal force.

The Administrative Court stated that the matter of the building

permits "was not covered by the above-mentioned judgment" and that accordingly Mr de la Grange would have to commence separate proceedings to secure a ruling on the question.

20. The applicant appealed to the Consiglio di Stato, which, on 25 February 1986, upheld the decision of the Regional Administrative Court.

B. Proceedings in the ordinary civil courts

21. On 9 May 1978 Mr de la Grange instituted proceedings against Tolfa District Council and the Lazio Regional Authority in the Rome District Court (Tribunale). By way of primary claim, he sought compensation for the damage deriving from the fact that an unlawful measure - the 1969 land-use plan - had unfairly deprived him of the right to build on a part of Cibona Park. In the alternative, he maintained that, in so far as the contested measures also deprived him of his right to sell the plots in question, they constituted a de facto expropriation and consequently gave rise to a right to compensation.

22. The defendants contended that the ordinary civil courts lacked jurisdiction inasmuch as the applicant's claim was based not on a "right", but on a mere "legitimate interest", which was a matter for the administrative courts.

23. On 12 September 1979 Mr de la Grange filed an application for a preliminary ruling on the issue of jurisdiction with the Court of Cassation, which gave its decision on 29 January 1981. The text was deposited with the registry on 7 May. It held that "even where there was a development agreement, the regulation of the right to build did not affect a right of the landowner, but only a legitimate interest of the latter". The ordinary civil courts could not therefore examine the applicant's claim unless he could argue that the absolute prohibition on building on his land had rendered his right of property devoid of any substance and constituted a de facto expropriation giving rise to a right to compensation.

24. On 7 July 1981 Mr de la Grange reopened the proceedings in the Rome District Court, which dismissed his action on 1 March 1982. His appeals to the Court of Appeal and to the Court of Cassation, lodged on 15 June 1982 and on 21 December 1984 respectively, were dismissed on 4 July 1984 and 11 November 1985.

In its judgment, deposited with the registry on 13 May 1986, the Court of Cassation reiterated that the decisions of the administrative authorities on planning matters and building permits did not affect "rights" of the owners of the land in question, but only their "legitimate interests". Except where such decisions could destroy "the economic value of the use or exchange of property", the restrictions on the right of property deriving therefrom could not be regarded as an expropriation and give rise to a right to compensation.

In the case under review, the total ban on building under the land-use plan had from the beginning been of limited duration, in accordance with sections 7 and 40 of the Town Planning Act, as amended by Act no. 1187 of 19 November 1968 (see paragraph 30 below). It followed that the applicant's property had not been the subject of a de facto expropriation and he was not entitled to claim compensation for the infringement of a "right".

The prohibition on building deriving from the deliberations of the Lazio Regional Council on 15 May 1979 (see paragraph 16 above) could not give rise to a right to compensation for expropriation. It concerned a category of property - a wooded area of special interest on account of its vegetation - the ownership of which was subject to

intrinsic restrictions and with regard to which it was deemed that no right to build had ever existed.

II. Relevant domestic law

A. The case-law concerning regulation of the right to build

25. The judgment delivered by the Court of Cassation in the present case on 11 November 1985 (Il Foro Italiano - "Foro It." no. 3169/86, 1986, I, col. 3022) provides a summary of the principles deriving from its case-law and that of the Constitutional Court concerning the regulation of the right to build.

It notes in the first place "that according to well-established case-law (Court of Cassation no. 2951/81 [29 January 1981 - see paragraph 23 above]), owners of land are from the outset the holders of a mere legitimate interest vis-à-vis the power of the authorities to use land for development and planning".

A private individual can never be accorded a personal property right which amounts to absolute protection of the right to sell (ius vendendi) and the right to build (ius aedificandi). Accordingly, the "curtailing of either of these rights" as a result of the imposition of restrictions or prohibitions never gives rise to a right to compensation. Clearly, the landowner may suffer prejudice, indeed sometimes considerable prejudice, but such prejudice cannot be compensated because it falls to the State to strike a balance between the right to build of individuals and the general interest in a well-ordered planning policy.

26. The Constitutional Court has established a form of protection for individuals in respect of restrictions which, inter alia in the planning sphere, render the right of property devoid of any substance, at least as regards "the right to build".

The authorities retain the right to impose restrictions which are considered to be useful, but when the right of property is suppressed, the third paragraph of Article 42 of the Constitution may be applied. According to that provision, expropriation gives rise to a right to compensation.

The principal points in this area are as follows:

(a) The law defines the categories of property which may be privately owned and those which may not (Constitutional Court, judgment no. 55/68, Foro It. 1968, I, col. 1361). In the latter case the owners of the land concerned are not entitled to compensation or reparation.

(b) The law permits private ownership of certain property, but may restrict its use "in order to safeguard its social function". It may therefore impose a total prohibition on building. It may also severely restrict the enjoyment and even the sale of certain possessions, for example works of art. No provision is made for compensation for the individuals whose possessions are affected in this way (Constitutional Court judgments nos. 56/68, Foro It. 1968, I, col. 1361, 202/74, Foro It. 1974, I, col. 2245, and 245/76, Foro It. 1977, I, col. 581).

(c) The law allows expropriation subject to two conditions, namely that it is justified on general interest grounds and that the owner of the property in question receives adequate compensation.

(d) Where, following an administrative decision concerning specific property, the owner retains the ownership subject to restrictions which reduce to virtually nothing the economic value of the use or exchange of the property, this is known as a "value expropriation"

(espropriazione di valore) and it gives rise to an entitlement to compensation.

This situation arises where the restriction is very severe - absolute prohibition - and where it is imposed for an indefinite period of time or remains in force for longer than is reasonable.

On the other hand, there is no entitlement to compensation for damage resulting from a restriction which although imposed for an indefinite period does not have such a profound effect on the right, or a restriction which is due to cease within a reasonable time, even where it is a very severe one.

27. In its judgment of 29 January 1981 concerning the issue of jurisdiction raised by Mr de la Grange (see paragraph 23 above), the Court of Cassation stated as follows: in the first place the appellant could not rely on any right to compensation in respect of damage allegedly sustained on account of the infringement of his right of property in terms of the "ius aedificandi" and the "ius vendendi" as a result of the unlawfulness of the contested land-use plan. Secondly, in so far as Mr de la Grange argued that the plan had had the effect of rendering his right of property devoid of any substance and constituted a "value expropriation", it was for the ordinary courts to rule on the matter and to fix, if appropriate, the amount of compensation.

28. Giving judgment on the merits on 11 November 1985 (see paragraph 24 above), the Court of Cassation took the view that the case did indeed involve an absolute prohibition on building. However, it observed that the validity of the land-use plan was of limited duration, in accordance with Act no. 1187 of 19 November 1968 (see paragraph 30 below), with the result that the restrictions deriving therefrom were inevitably temporary and their duration appeared reasonable. Consequently, the two conditions necessary for the measure to qualify as a "value expropriation" were not satisfied and the applicant was not entitled to claim compensation under this head.

B. The Town Planning Act

29. Act no. 1150 of 17 August 1942 lays down rules governing town planning. It has been the subject of numerous amendments, the most relevant of which concern the length of validity of land-use plans.

30. In this context, in judgment no. 56 of 29 May 1968 the Constitutional Court held various provisions of the Act to be unconstitutional inasmuch as they did not provide for any compensation in respect of restrictions imposed on possessions which took immediate effect, were of indefinite duration and were tantamount to an expropriation.

As amended by Act no. 1187 of 19 November 1968, sections 7 and 40 of the Town Planning Act read as follows:

Section 7

> "The provisions of a land-use plan which concern specific plots of land or which impose on such land restrictions including a prohibition on building shall cease to take effect if the detailed plans or the development agreements have not been approved within five years of the plan's adoption."

Section 40

> "No compensation shall be available in respect of the restrictions and prohibitions deriving from land-use plans

..."

31. As regards the rules applying to authorisations from the forestry authorities, Article 14 of the Royal Decree of 16 May 1926 may be cited. It provides as follows:

> "Applications for the lifting of hydrogeological restrictions must be made to the Chambers of Commerce through the mayors of the localities concerned.
>
> After ensuring that such applications are published for a period of thirty days in the registers of the district authority, the mayors shall communicate them to the relevant Chambers of Commerce ..."

PROCEEDINGS BEFORE THE COMMISSION

32. Mr de la Grange applied to the Commission on 10 November 1986. He complained: (a) of an interference with his possessions on account of the prohibition on building imposed in respect of his land and the lack of compensation for the damage which he had sustained (Article 1 of Protocol No. 1) (P1-1); (b) of discrimination in relation to owners of land of a different nature or situated elsewhere (Article 14 of the Convention and Article 1 of Protocol No. 1, taken together) (art. 14+P1-1); (c) of a violation of his right to a fair trial by reason of the failure to execute the decision of the Consiglio di Stato and the length of the proceedings instituted in the administrative and ordinary civil courts (Article 6 para. 1 of the Convention) (art. 6-1); and (d) of the fact that the restrictions imposed on his right of property were not adopted in the general interest and penalised him for no reason (Article 18 of the Convention) (art. 18).

33. On 20 October 1992 the Commission declared the application (no. 12539/86) admissible as regards the first complaint and the second part of the third complaint; it found the remainder of the application inadmissible. In its report of 6 April 1993 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 1 of Protocol No. 1 (P1-1) (eight votes to three) on account of the lack of compensation for the damage deriving from the prohibition on building imposed in respect of the applicant's land until 14 February 1978, which continued to produce its effects until 15 May 1979, and of Article 6 para. 1 (art. 6-1) of the Convention as regards the length of the civil proceedings brought in the Rome District Court on 9 May 1978 (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

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* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 293-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

34. In their memorial of 20 January 1994, the Government requested the Court:

> "to hold and adjudicate that the complaint based on Article 1 of Protocol No. 1 (P1-1) is inadmissible and that there has been no violation of Article 6 para. 1 (art. 6-1) of the Convention or, in the alternative, that there has been no breach of either of the two provisions".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

35. The applicant complained in the first place of the prohibition on building imposed on his property, in respect of which he had received no compensation. He maintained that he had been the victim of a violation of Article 1 of Protocol No. 1 (P1-1), which provides as follows:

> "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.
>
> 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."

A. The Government's preliminary objection

36. The Government contended, as they had done before the Commission, that the complaint was inadmissible for failure to exhaust domestic remedies. They invoked section 31, paragraphs 5 and 6, of the Town Planning Act, according to which "the decisions of the mayor on applications for building permits must be notified to the persons concerned within sixty days of their receipt. If the mayor has not given a decision within this period, the citizen shall have the right to [institute proceedings in the administrative courts] against this constructive rejection". Mr de la Grange had therefore neglected to avail himself of this remedy which, if it had been successful in respect of a single plot, would have compelled the Tolfa District Council to comply with the judicial decision with regard to all the plots in question.

37. The Court reiterates in the first place that the only remedies that Article 26 (art. 26) of the Convention requires to be exhausted are those that are available and sufficient and relate to the breaches alleged (see, inter alia, the Brozicek v. Italy judgment of 19 December 1989, Series A no. 167, p. 16, para. 32).

Although the first two conditions would appear to be satisfied in this instance, the last one is not. Like the Commission and the applicant, the Court observes that the latter's complaint does not relate to the Tolfa District Council's refusal to grant him permission to build, but to the restrictions imposed on the exercise of his right of property by the 1969 land-use plan. The remedy relied on by the Government cannot therefore be taken into account. The objection is accordingly unfounded.

B. The merits of the complaint

1. Whether there was an interference

38. The Government denied that there had been an interference with Mr de la Grange's right of ownership. Although the contested land-use plan had been annulled for failure to provide a statement of reasons, the judgments of the Lazio Regional Administrative Court and of the Consiglio di Stato (in 1976 and 1978 respectively) had not recognised any right to build vested in the applicant. Moreover, as early as 1976 he could have asserted his rights under the 1968 agreement and applied to the Tolfa District Council for the building permits (see

paragraph 36 above).

39. The applicant disagreed.

40. Like the Commission, the Court accepts that the conclusion of an agreement of the kind in issue here between a private individual and the authorities has no effect on the powers of those authorities in the planning sphere. It considers, in addition, that the mere approval of the land-use plan was sufficient to restrict the applicant's exercise of his right to the peaceful enjoyment of his possessions.

The Court shares the view of the Government and the Commission that the dispute falls to be dealt with under the first sentence of the first paragraph of Article 1 (P1-1), since it did not involve a deprivation of property within the meaning of the second sentence of the first paragraph or control of the use of property as envisaged in the second paragraph.

In short there was an interference with the applicant's right of ownership.

2. Whether the interference was justified

41. It remains to ascertain whether the interference infringed Article 1 of Protocol No. 1 (P1-1).

42. It is necessary to determine whether a fair balance was struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights (see, inter alia, the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 26, para. 69).

43. Mr de la Grange did not dispute that the restrictions imposed lawfully and for a limited duration under the land-use plan did not give rise to any right to compensation. On the other hand, he maintained that even though the administrative courts had annulled the plan in question, the local authorities had still failed to rectify the detailed maps concerning Cibona Park. The total prohibition on building had consequently continued to produce its adverse effects, thereby causing him very considerable prejudice because it had been impossible to sell plots on which building was not permitted. As could be seen from a number of letters, companies and individuals interested in the applicant's land had decided not to pursue the matter because of the prohibition affecting his property. This situation was comparable to a de facto expropriation, or even a confiscation "for the good of the community", for which he was entitled to compensation.

As regards the completion of the work for the development, it had been for the Mayor of Tolfa to seek the necessary authorisations from the Standing Committee on Agriculture, Forestry and the Upland Economy.

It followed that any failure to fulfil the obligations deriving from the 1968 agreement, if failure there had been, was wholly attributable to the respondent State.

44. The Commission suggested that, by adopting within the space of thirteen months (10 May 1968 - 28 June 1969) the development agreement and the land-use plan, the Tolfa District Council might have overstepped the limits of its discretionary power. In view of the fact that the prohibition on building had continued to take effect even after the land-use plan had been annulled and that there had been no provision in national law for compensation, the interference with Mr de la Grange's right of ownership had violated Article 1 of Protocol No. 1 (P1-1).

45. The Court does not share this opinion.

In the first place it notes that, in the proceedings for the enforcement of the judgment of 14 July 1976 annulling the plan in question (see paragraph 19 above), the Regional Administrative Court declared Mr de la Grange's application inadmissible for lack of interest. The decision in issue had been automatically enforceable and had had the effect of reinstating the legal situation which had obtained prior to the adoption of the land-use plan. Tolfa District Council was therefore not bound to rectify the detailed maps annexed to the plan because they no longer had any legal effect (ibid.).

46. The development agreement was therefore valid again and the applicant could have applied to the Standing Committee on Agriculture, Forestry and the Upland Economy for the authorisations necessary to continue with the housing scheme as the District Council had not sought a stay of execution in its notice of appeal to the Consiglio di Stato.

It should also be noted that, according to Article 14 of the Royal Decree of 1926, it is for private individuals to set in motion the procedure for issuing the authorisations in question (see paragraph 31 above). The applicant would have had ample time to take the appropriate steps once the plan had been annulled by the Regional Administrative Court, on 14 July 1976, but he did not do so.

The Court is not aware of the reasons for the applicant's conduct. It cannot, however, accept the Government's explanation that Mr de la Grange continued to clear the land of trees beyond the limits of the 16 hectares in respect of which the forestry authority had given its authorisation in 1967 (see paragraph 9 above). It confines itself to noting that the applicant affirmed that he had sold 130 of the 202 plots in Cibona Park (see paragraph 11 above).

Furthermore the evidence shows that there was never an absolute prohibition on building on all the applicant's land. Only part of the land was excluded from the 1969 plan; for the remainder the permitted ratio of buildings to land was reduced from 0.50 to 0.40 m3/m2.

47. On the matter of compensation, the Court observes that according to the Italian case-law compensation is subject to two conditions: the restrictions imposed on the property by a decision of the authorities must be severe and they must be of unlimited duration, so that they amount to a de facto expropriation.

In 1985 the Court of Cassation held that these conditions were not both satisfied in this instance because "the land-use plan was of limited duration" - five years (see paragraph 30 above) - "and the restrictions relating thereto were inevitably temporary" (see paragraph 28 above). In addition, the Town Planning Act made no provision for compensation for restrictions and prohibitions deriving from land-use plans (see paragraph 30 above). As the applicant's property had not been the subject of a de facto expropriation, he could not claim compensation for violation of a right.

48. In the light of these considerations, the Court considers that the balance between the interests of the community and those of Mr de la Grange was not upset.

In conclusion, there has been no breach of Article 1 of Protocol No. 1 (P1-1).

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

49. The applicant also complained of the length of the compensation proceedings. He relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal established by law ..."

The Government disputed the applicant's claim, whereas the Commission accepted it.

A. The period to be taken into consideration

50. The period to be taken into consideration began on 9 May 1978 when the applicant instituted proceedings against the Tolfa District Council and the Lazio Regional Authority in the Rome District Court. It ended on 13 May 1986, the date on which the Court of Cassation's judgment was deposited with the registry. It therefore lasted a little over eight years.

B. Reasonableness of the length of the proceedings

51. The reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the competent authorities (see, among other authorities, the Monnet v. France judgment of 27 October 1993, Series A no. 273-A, p. 12, para. 27).

1. Complexity of the case

52. According to the Government, the principal reason for the length of the proceedings lay in the complexity of the case as regards both the facts and the legal issues. They pointed out that "the sensitive nature of the issues confronting the competent courts - on account firstly of the need to apply provisions of different rank concerning technical questions and secondly of the implications for the case-law of the decisions in question - called for detailed and circumspect scrutiny of the facts".

53. The Commission took the view that, while the legal issues were complex, the facts were not.

54. The applicant submitted that, irrespective of the degree of difficulty involved, the competent courts were under a duty to carry out their task within a "reasonable time".

55. Like the Government, the Court finds that the case was complex as regards both the facts and the law.

2. Applicant's conduct

56. In the Government's contention, the applicant added to the delays of which he now complains in so far as at first instance he had applied to the Court of Cassation for a preliminary ruling on jurisdiction, whereas he could have included this submission in a subsequent appeal to the Court of Appeal or the Court of Cassation.

57. Like the applicant, the Court notes that, by requesting the Court of Cassation to rule on the issue of jurisdiction, a question which had moreover been raised by the Tolfa District Council and the Lazio Regional Authority (see paragraph 22 above), the applicant was seeking to eliminate at the outset any doubt as to the jurisdiction of the first-instance court. His conduct in this respect is therefore not

open to criticism.

3. Conduct of the judicial authorities

58. The Government maintained that the authorities conducting the case could not be held responsible for any delay. A period of eight years for four levels of jurisdiction was by no means excessive.

59. The Commission noted that the parties had provided little information and this had prevented it from identifying "significant delays". Nevertheless, and even taking into account the time necessary for each court to give judgment, it considered that the period in question had exceeded a reasonable time.

60. The applicant agreed with the Commission.

61. The Court reiterates that in requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility.

In this instance, at least three periods may appear abnormal: the first ran from 12 September 1979 (submission of the preliminary question to the Court of Cassation) to 7 May 1981 (when the judgment was deposited with the registry); the second from 15 June 1982 (lodging of the appeal) to 4 July 1984 (dismissal of appeal); and the third and final from 11 November 1985 (judgment of the Court of Cassation on the merits) to 13 May 1986 (when that judgment was deposited with the registry).

62. Nevertheless, regard being had to all the circumstances of the case and the complexity of the facts and the legal issues involved, these periods do not warrant the conclusion that the length of the proceedings was excessive, in particular since the decisions, which concerned such a sensitive area as town planning and the protection of the environment, could have and in fact did have important repercussions on the Italian case-law concerning the distinction between a right and a legitimate interest (see paragraphs 25-28 above).

63. In conclusion, there has been no violation of Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;

2. Holds that there has been no violation of Article 1 of Protocol No. 1 (P1-1);

3. Holds that there has been no violation of Article 6 para. 1 (art. 6-1) of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 October 1994.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Acting Registrar