



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

FIRST SECTION

**CASE OF ALMEIDA GARRETT, MASCARENHAS FALCÃO
AND OTHERS v. PORTUGAL**

(Applications nos. 29813/96 and 30229/96)

JUDGMENT

STRASBOURG

11 January 2000

**In the case of Almeida Garrett, Mascarenhas Falcão and Others
v. Portugal,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs E. PALM, *President*,
Mr J. CASADEVALL,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMESEN,
Mrs W. THOMASSEN,
Mr R. MARUSTE, *judges*,
Mr A. DE SOUSA INÊS, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 12 October and 7 December 1999,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Portuguese Government ("the Government") on 24 November 1998 and 21 January 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in two applications (nos. 29813/96 and 30229/96) against the Portuguese Republic lodged with the Commission under former Article 25 by six Portuguese nationals, Mr Alexandre de Almeida Garrett, Mr José Mascarenhas Falcão, Mr Francisco Augusto Mascarenhas Falcão, Mrs Maria Teresa Mascarenhas de Oliveira Falcão de Azevedo, Mrs Maria José Mascarenhas Falcão Themudo de Castro and Mrs Leone Marie Irion Falcão ("the applicants"), on 5 January and 14 February 1996.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Portugal recognised the compulsory jurisdiction of the Court (former Article 46) and the Government's application referred to former Article 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 Articles 6, 13 and 17 of the Convention and Article 1 of Protocol No. 1.

2. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 4 thereof read in conjunction with Rules 100 § 1 and 24 § 6 of the Rules of Court, a panel of the Grand Chamber decided on 14 January 1999 that the

case would be examined by a Chamber constituted within one of the Sections of the Court.

3. In accordance with Rule 52 § 1, the President of the Court, Mr L. Wildhaber, then assigned the case to the First Section. The Chamber constituted within that Section included *ex officio* Mr I. Cabral Barreto, the judge elected in respect of Portugal (Article 27 § 2 of the Convention and Rule 26 § 1 (a)) and Mrs E. Palm, President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr J. Casadevall, Mr Gaukur Jörundsson, Mr R. Türmen, Mrs W. Thomassen and Mr R. Maruste (Rule 26 § 1 (b)).

4. Subsequently Mr Cabral Barreto withdrew from the case (Rule 28). The Government accordingly appointed Mr A. de Sousa Inês to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The applicants and the Government filed their memorials on 5 and 23 April 1999 respectively. The applicants also lodged various documents on 30 March, 7 May and 6 September 1999.

6. In accordance with the decision of the Chamber, a hearing took place in public in the Human Rights Building, Strasbourg, on 12 October 1999.

There appeared before the Court:

(a) *for the Government*

Mr A. HENRIQUES GASPAR, Deputy Attorney-General
of the Republic,

Agent,

Mr S. DIAS, Adviser to the Minister of Agriculture,

Adviser;

(b) *for the applicants*

Mr P. SARAGOÇA DA MATTA, Lawyer,

Ms S. GALVÃO TELES, Lawyer,

Counsel.

The Court heard addresses by Mr Saragoça da Matta and Mr Henriques Gaspar and their replies to its questions.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The six applicants, who are Portuguese nationals, were born respectively in 1926, 1932, 1939, 1919, 1935 and 1930. They all live in Lisbon, except for the last two applicants, who live at Constância. All

owned land that had been expropriated and nationalised as part of the agrarian-reform policy in Portugal.

A. Facts in the case of Mr Almeida Garrett

1. Deprivation of ownership

8. In 1975 Mr Almeida Garrett was the owner of three plots of agricultural land with a total surface area of approximately 2,145 hectares.

9. Under the agrarian-reform policy, two of the plots were nationalised by Legislative Decree no. 407-A/75 of 30 July 1975. The third plot had been expropriated by Ministerial Decree no. 52/76 of 29 January 1976 issued by the Minister of Agriculture, which was published under Legislative Decree no. 406-A/75 of 29 July 1975. The aforementioned legislative decrees provided that the owner could, subject to satisfying certain conditions, exercise his right to a “reserved share” (*direito de “reserva”*) over part of the land to carry on agricultural activities. They also provided for the payment of compensation, for which the amount, the time-limit and the terms of payment had yet to be determined.

In accordance with the relevant legislation, the provisional compensation to which the applicant was entitled was assessed in March 1983 at 16,204,266 Portuguese escudos (PTE). On 16 September 1991 that sum was made available to the applicant in the form of government securities.

The applicant exercised his right to a reserved share in the plots of land concerned on several occasions such that by 30 September 1990 at the latest, he was already in possession of part of the land. However, another part of the land, measuring 1,176 hectares, was not returned to him.

2. Proceedings before the ordinary courts and the Constitutional Court

10. On 30 December 1992 the applicant brought an action in damages against the State before the ordinary courts (Seventeenth Civil Division of the Lisbon Court of First Instance) because of its failure to pay the final compensation following the expropriation. He alleged that in view of the length of time he had been kept waiting for payment of the final compensation since the expropriation, the general law on expropriations should have been applied (not the law relating to the agrarian reform). He therefore sought payment of compensation that took into account the period that had elapsed since the expropriation.

11. In a decision of 14 January 1993 the Court of First Instance dismissed the action holding, as a preliminary point, that it had no jurisdiction *ratione materiae*. The applicant appealed, but the Lisbon Court of Appeal (*Tribunal da Relação*) upheld the impugned judgment in a decision of 9 December 1993.

12. The applicant appealed on points of law to the Supreme Court (*Supremo Tribunal de Justiça*), which, in a decision of 31 May 1994, dismissed the appeal holding, *inter alia*, as follows:

“Delays in payment of compensation for nationalisation and expropriation must not be regarded as constituting an unlawful omission by the political and administrative authorities ... It has been established that sections 15 and 16 of Law no. 80/77, which require the authorities to assess the compensation due for the nationalisation and expropriation of agricultural land situated in the area to which the agrarian reform applies, are not substantively unconstitutional as the assessment of such compensation is also within the province of the administrative authorities (see the decision of the Constitutional Court no. 39/88 of 9 February 1988) ... It must be added that Legislative Decree no. 199/88 of 31 May 1988 expressly made the administrative authorities responsible for assessing the amount of [such] compensation ... It therefore follows from the decrees that compensation due to the former owners of rights in property that has been nationalised, expropriated or requisitioned is assessed by the administrative authorities [though an appeal lies to the Supreme Administrative Court against such assessments], such that the ordinary courts have no jurisdiction *ratione materiae*.”

13. On 17 June 1994 the applicant lodged a constitutional appeal with the Constitutional Court (*Tribunal Constitucional*). On 7 June 1995 the Constitutional Court declared the appeal inadmissible. It said that before the lower courts the issue of constitutionality raised by the applicant concerned only the case-law, not the statutory provisions. Therefore, it could not hear the appeal, since it could only examine the conformity of statutory provisions with the Constitution, not the conformity of court decisions. The applicant then applied to the Constitutional Court to have that decision set aside as being null and void, but his application was dismissed on 6 July 1995.

3. Proceedings before the administrative courts

14. On 27 February 1985 the applicant brought a claim for damages against the State in the Lisbon Administrative Court (*Auditoria Administrativa*, which has now become the *Tribunal Administrativo de círculo*). He sought, *inter alia*, reparation for the damage he had sustained as a result of the failure to pay the final compensation following the nationalisation and expropriation of his plots of land.

In a judgment of 29 November 1993, the Administrative Court dismissed the applicant's claims. Having referred to the relevant legislation, the Administrative Court held that no compensation for the alleged damage could be claimed other than by following the administrative procedure.

15. On an appeal by the applicant, the Supreme Administrative Court (*Supremo Tribunal Administrativo*) upheld the impugned judgment in a decision of 12 July 1994. After recognising the applicant's right to “fair compensation”, it pointed out that under the legislation applicable in such cases the amount of compensation had to be assessed by the authorities.

On 7 February 1995 the Supreme Administrative Court dismissed an application for interpretation of that decision. On 28 March 1995 it dismissed an application by the applicant for a declaration that that decision was null and void.

4. The applicant's claims to the administrative authorities

16. The applicant lodged a number of claims with the authorities concerning the delays in the payment of the provisional compensation and in the assessment of the final compensation, the first such claim being lodged in 1978. He also requested that an arbitration tribunal be set up in order to decide his dispute with the State. His requests were, however, turned down. By an ordinance issued by the Prime Minister on 5 January 1989 it was decided among other things not to accept the request for the setting up of an arbitration tribunal “in view of the publication of Legislative Decree no. 199/88” (see paragraph 34 below).

17. On 12 July 1991 the applicant requested the Ministry of Agriculture to assess the final compensation in accordance with Legislative Decrees nos. 199/88 and 199/91.

18. On 21 June 1996 the Ministry of Agriculture sent the applicant a proposal for final compensation assessed at PTE 143,659,000 and requested his observations.

19. On 17 July 1996 the applicant submitted his observations, drawing the relevant department's attention to various inaccuracies in the proposal.

20. On 21 July 1999 the Ministry of Agriculture sent a revised proposal for final compensation replacing the previous one. The revised amount came to PTE 207,302,000.

21. On an unspecified date the applicant sent his observations on the new proposal to the Ministry, drawing its attention to various factual and legal points. The proceedings concerning the assessment of the final compensation are thus still pending.

B. Facts in the case of the Mascarenhas Falcão family

1. Deprivation of property

22. In 1975 the Mascarenhas Falcão family was the owner of a plot of agricultural land with a total surface area of approximately 1,197 hectares.

23. Under the agrarian-reform policy, the plot was expropriated by a ministerial decree (no. 560/75 of 17 September 1975) issued by the Minister of Agriculture and published pursuant to Legislative Decree no. 406-A/75 of 29 July 1975 (see paragraph 9 above).

In accordance with the relevant legislation, the applicants received the sum of PTE 8,652,420 in government securities in November and December 1983, as provisional compensation.

The applicants exercised their right to a reserved share in the land on several occasions, such that by March 1991 they were already in possession of the whole of the land.

2. *Proceedings before the ordinary courts*

24. On 9 May 1990 the applicants brought an action in damages against the State before the ordinary courts (Twelfth Civil Division of the Lisbon Court of First Instance) because of the State's failure to pay the final compensation after the expropriation. They alleged that in view of the length of time they had been kept waiting for payment of the final compensation since the expropriation, the general law on expropriations should have been applied (not the law concerning the agrarian reform). They thus sought payment of compensation that took account of the period that had elapsed since the expropriation.

25. In a judgment of 21 December 1993, the Court of First Instance declared that it had no jurisdiction *ratione materiae*, holding, in particular, as follows:

“It is the ... government which is empowered to assess ... final compensation In view of the administrative nature of the act concerned, an administrative appeal lies against such assessments to the Supreme Administrative Court It therefore follows that, since the statute does not provide for the intervention of the ordinary courts in the procedure for assessing such compensation, the conclusion that this Court has no jurisdiction *ratione materiae* to hear the [applicants'] claims is inescapable.”

26. The applicants appealed to the Lisbon Court of Appeal, which on 23 June 1994 dismissed the appeal, holding, *inter alia*:

“It is not until after [the request for assessment of the final compensation] has been presented and after the corresponding administrative procedure ... that the remedy before the administrative authorities is exhausted. It is therefore for the claimants to appeal to the courts if they disagree with the decision. In view of the administrative nature of the acts in issue, any appeal should be to the administrative courts Nor do the ordinary courts have any jurisdiction to hear requests for compensation for delay or for damage sustained because of delay, since the wording of Article 1 § 1 of Legislative Decree no. 199/88 – when referring to final compensation due on the nationalisation or expropriation of land under the legislation concerning the agrarian reform – suggests that the decree also covers compensation for such damage to the extent that it results, albeit indirectly, from the expropriation itself.”

27. The applicants appealed on points of law to the Supreme Court but withdrew their appeal purportedly on account of the Supreme Court's settled case-law in such cases.

3. The applicants' claims to the administrative authorities

28. On 26 September 1991 the applicants had lodged a request for compensation with the Minister of Agriculture for the delay in their recovering the land over which they had exercised their right to a reserved share. On the instructions of the Minister, legal counsel from the Ministry then issued a legal opinion concerning the request. The relevant part of the opinion reads as follows:

“[The State] can have no liability in the instant case other than that which arises under Law no. 80/77 and the related statutory provisions Otherwise, additional compensation would have to be added to that payable under Law no. 80/77, which would be contrary to the entire body of legislation on compensation payable under the agrarian reform.”

29. On 25 October 1991 the Minister indicated his agreement with the opinion and ordered that the applicants be notified of it.

30. The applicants then asked the Minister of Agriculture on 16 August 1991, 26 September 1991 and 18 April 1995 to award final compensation under Legislative Decrees nos. 199/88, 199/91 and 38/95.

On 18 September 1998 the Ministry sent the applicants a proposal for final compensation of PTE 1,930,315 and requested their observations. It was nonetheless stipulated that from that amount had to be deducted the sum which the applicants had already received as provisional compensation, which meant that they were not entitled to any further sum.

On 9 October 1998 the applicants submitted their observations. They drew the relevant department's attention to the fact that the proposal contained a number of inaccuracies. To date, no decision has been taken.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation concerning the agrarian reform

31. The rules governing expropriations and nationalisations carried out as part of the policy of agrarian reform were set out in Legislative Decrees nos. 406-A/75 of 29 July 1975 and 407-A/75 of 30 July 1975. The right to a reserved share entitled owners to remain in possession of part of their land. Framework legislation (Law no. 77/77 of 29 September 1977) concerning the general basis of the agrarian reform amended the rules governing the right to a reserved share and established that the nature of the landowners' interest in the reserved share was proprietary. The rules governing the right to a reserved share were further amended by subsequent framework legislation (Law no. 109/88 of 26 September 1988).

B. Law no. 80/77

32. On 26 October 1977 Parliament adopted Law no. 80/77 laying down the procedures for compensating former owners of nationalised or expropriated property. Under section 19 of that Law, compensation, which was initially assessed provisionally before being assessed finally, was to be paid in government securities maturing over a period of several years and bearing interest at the rates prescribed in the schedule to the Law. For amounts exceeding PTE 6,050,000, payment was scheduled over twenty-three years (after a standstill period of five years) with an annual rate of interest of 2.5%. Section 24 specified that interest started to run from the date of the expropriation or nationalisation since it was due from the date scheduled for the issue of the government securities (which, in the applicants' case, by virtue of Legislative Decree no. 213/79 of 14 July 1979, was 1 September 1980). Lastly, section 13(3) provided that provisional compensation had to be regarded as a payment on account of final compensation such that the person concerned could be required to pay back provisional compensation to the State if either no final compensation was payable or the final compensation came to less than the provisional compensation.

33. As to the procedure for challenging the decisions of the authorities on this issue, section 16 of the Law provided:

“1. Without prejudice to any remedies available before other competent bodies, disputes relating to the right to final compensation and to the assessment, payment and effectiveness of such compensation shall be resolved by way of review of the relevant administrative act by an arbitration tribunal ...”

As to compensation due specifically in connection with the agrarian reform, section 37 of the Law provided that the government would determine the criteria for valuing the expropriated or nationalised property within sixty days. The government did not, however, comply with that time-limit.

C. Legislation concerning compensation for expropriations and nationalisations under the agrarian-reform policy

34. On 31 May 1988 the government adopted Legislative Decree no. 199/88 determining how the general principles on compensation for expropriations and nationalisations set out in Law no. 80/77 would apply to the agrarian reform. The explanatory memorandum to the legislative decree included the following statement:

“Although more than thirteen years have elapsed since those nationalisations and expropriations, there has yet to be paid, or even assessed, the amount of final compensation due to the private owners who were affected by the measures, since the legislative decree that should have determined the criteria necessary for assessment

purposes has never been adopted. It is this serious gap in our legal system which the government now proposes to fill in the light of the general rules adopted by Parliament in 1977.”

35. New criteria for the calculation of compensation were introduced by Legislative Decrees nos. 199/91 of 29 May 1991 and 38/95 of 14 February 1995. Compensation due to people who had recovered all or part of the land concerned by exercising their right to a reserved share was to be calculated on the basis that it was intended to cover only the damage caused by the occupation of that land during the period of deprivation of ownership.

36. The rules of procedure for determining the final compensation were set out in Articles 8 and 9 of Legislative Decree no. 199/88. The onus was on the landowners to claim compensation, thereby commencing the procedure. Claims were decided by an arbitration tribunal which included one representative of each of the Minister of Agriculture, the Minister of Finance and the landowner. The tribunal then made a proposal to the government, which determined the amount of compensation in a decree issued jointly by the Ministers of Agriculture and Finance.

That procedure was amended by Legislative Decree no. 38/95 of 14 February 1995. The amendments included a right for the authorities to initiate the procedure for assessing the final compensation *ex officio*. The arbitration tribunals were abolished, the task of assessing the final compensation becoming the sole responsibility of the Ministers of Agriculture and Finance, whose decision was based on a proposal by the relevant departments of the administrative authorities (the regional directorates of the Ministry of Agriculture). The landowner had the right to comment on the proposal made by the authorities before a final decision was taken by the Ministers of Agriculture and Finance.

Those two statutory provisions, Legislative Decrees nos. 199/88 and 38/95, were silent as to the remedies available to the landowner, although under administrative law it is possible to lodge an application with the administrative courts for judicial review of a ministerial act that gives cause for complaint.

D. The case-law of the Constitutional Court

37. The Constitutional Court examined the issue of the compatibility with the Portuguese Constitution of the system of payment of compensation following a nationalisation or expropriation in its decisions nos. 39/88 of 9 February 1988 and 452/95 of 6 July 1995. With regard to the authorities' delay in the payment of compensation, it held in the first of these decisions:

“... certainly all that [namely, the payment of the compensation] was done a considerable time after the nationalisations were carried out. It might be said that such delay constitutes a violation of the principle set out in Article 82 of the Constitution requiring the payment of compensation. However, that would be wrong. If, as a result

of such a situation, there was a breach of the right to compensation on the ground that that right might become uncertain and therefore devoid of substance, the breach would not have been caused by any defect in the provisions under consideration but by the authorities' inaction or lack of diligence; and if it was the case that the authorities failed to act owing to the absence of statutory provisions capable of ensuring the effective application of the provisions in force and, consequently, the effective exercise of the right embodied in Article 82 of the Constitution, then any failure to abide by the Constitution would be by way of omission This Court is not, however, called upon to examine that issue."

PROCEEDINGS BEFORE THE COMMISSION

38. The applicants applied to the Commission on 5 January and 14 February 1996. They alleged that the fact that they had not yet been paid final compensation for the nationalisation and expropriation of their land had infringed Articles 6, 13 and 17 of the Convention, and Article 1 of Protocol No. 1.

39. The Commission declared the applications (nos. 29813/96 and 30229/96) admissible on 8 September 1997. It subsequently decided to join them. In its report of 23 April 1998 (former Article 31 of the Convention)¹, it concluded, by twenty-three votes to three, that there had been a violation of Article 1 of Protocol No. 1 and, unanimously, that it was unnecessary to examine the case under Articles 6, 13 and 17 of the Convention.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

40. In their memorial, the Government asked the Court to hold that it had no jurisdiction *ratione temporis* to hear the complaints concerning the nationalisation and expropriation measures in issue, or the effects of those measures, as they had been taken in 1975 and 1976, before Portugal had ratified Protocol No. 1. The Government also contended that in any event there had been no violation of Article 1 of Protocol No. 1.

1. *Note by the Registry.* The report is obtainable from the Registry.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

41. As they had done before the Commission, the Government maintained that the Court had no jurisdiction *ratione temporis* to examine the applicants' complaints. They said that the expropriations and nationalisations in question had taken place in 1975, in other words before the ratification of the Convention and Protocol No. 1 by Portugal on 9 November 1978. Referring to the case-law of the Convention institutions, the Government submitted that the deprivation of property was an instantaneous act and did not produce a continuing "lack of a right". As the minority of the Commission had noted, it would be artificial to separate the issue of deprivation of property from the issue of compensation.

42. The applicants contested that argument and contended that there was a continuing deprivation of property until the compensation that was due had been paid. The compensation had yet to be determined or paid, however, despite the government having statutorily recognised the applicants' entitlement to it.

43. The Court notes that from the moment the expropriation measures were imposed, the government recognised the applicants' right to compensation. The applicants' complaints do not concern the deprivation of property – which was indisputably an instantaneous act – but the failure to pay them final compensation, a failure that has yet to be rectified.

While it is true that the Court is not empowered to examine questions linked to the deprivation of the property, such questions clearly being beyond its jurisdiction *ratione temporis*, the same does not apply to the delays in the assessment and payment of final compensation.

The Court observes that the government continued to legislate on the subject after ratifying the Convention. As the parties acknowledged at the hearing, it was not until 1988, with the adoption of Legislative Decree no. 199/88, that criteria were established for assessing the value of nationalised or expropriated property and, consequently, for identifying the information needed to assess the final compensation in issue (see paragraph 34 above). It was also Legislative Decree no. 199/88 which laid down the procedural rules governing such assessments (see paragraph 36 above). States are responsible for their acts and omissions relating to rights guaranteed by the Convention after the date of its ratification (see the *Yagci and Sargin v. Turkey* judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40).

Since the situation with which the applicants are confronted is a continuing one, the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

44. The applicants maintained that the situation in issue had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1, which reads 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. Applicability of Article 1 of Protocol No. 1

45. The applicants maintained that they owned a debt that was certain, current and enforceable and therefore a “possession” within the meaning of Article 1 of Protocol No. 1.

46. The Government accepted that, as established by the Court's case-law, Article 1 of Protocol No. 1 covered certain pecuniary assets, such as a debt. They argued, however, that in order to benefit from the protection of that provision the debt had to be certain, current and enforceable and that those requirements were not satisfied in the instant case, since the amount of compensation to which the applicants were entitled had not yet been determined.

47. The Court observes that Article 1 of Protocol No. 1 protects pecuniary assets, such as debts (see the *Pressos Compania Naviera S.A. and Others v. Belgium* judgment of 20 November 1995, Series A no. 332, p. 21, § 31).

It notes that the relevant domestic legislation, in particular Legislative Decrees nos. 406-A/75 and 407-A/75 and Law no. 80/77, afforded the applicants a right to compensation for the loss of their property. In Mr Almeida Garrett's case the Supreme Administrative Court also recognised, in an *obiter dictum* in its judgment of 12 July 1994, his right to “fair compensation” (see paragraph 15 above).

The Court finds that the applicants could therefore claim to be entitled to recover their debt against the State; accordingly, it concludes that Article 1 of Protocol No. 1 is applicable.

48. As regards which part of that provision is applicable in the instant case, the Court observes that the interference with the applicants' right to enjoyment of their possessions is constituted by the continuing failure to pay the final compensation. The Court has no power to examine, among other matters, the issues linked to the deprivation of possessions or, a

fortiori, to the amount of the compensation (see paragraph 43 above). The interference cannot, therefore, be equated to a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. The situation therefore comes within the first sentence of that paragraph, which lays down the principle of peaceful enjoyment of property in general terms (see the *Matos e Silva, Lda., and Others v. Portugal* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1113, § 81).

B. Compliance with Article 1 of Protocol No. 1

49. For the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, the *Matos e Silva, Lda., and Others* judgment cited above, p. 1114, § 86).

50. The applicants contended that that balance had not been struck. They argued at the outset that the payment arrangements were not reasonable. The provisional compensation had not been paid until fifteen years after the expropriation in Mr Almeida Garrett's case and eight years after the expropriation in the case of the Mascarenhas Falcão family. The applicants said that the Government could not claim insufficient financial and budgetary resources as enormous profits had been made through the progressive privatisation of most of the property nationalised in 1975.

51. Referring to the judgments of *James and Others v. the United Kingdom* (judgment of 21 February 1986, Series A no. 98) and *Lithgow and Others v. the United Kingdom* (judgment of 8 July 1986, Series A no. 102), and to the opinion of the minority of the Commission, the Government contended that Article 1 of Protocol No. 1 did not, however, guarantee a right to compensation in full in all circumstances, as legitimate objectives of public interest, such as those pursued by economic reforms or by measures improving social justice, could necessitate reimbursement being less than the real value of the property concerned. In such cases, the criteria applied by the national authorities, who have a wide margin of appreciation in that sphere, had to be respected, unless there was clearly no reasonable basis for them. The Government maintained that that was not the position in the instant case. The special circumstances of the Portuguese intervention in landed interests in 1975, which concerned a substantial part of the national territory and required complex action by the authorities, had to be borne in mind. In those circumstances, and regard being had also to the State's financial and budgetary resources, the arrangements decided on for payment did not infringe the proportionality principle as the landowners had already

received provisional compensation in the form of interest-bearing government securities.

The Government added that the passage of time had ultimately worked to the applicants' advantage, since statutory changes to the criteria employed for assessing the compensation had enabled a marked improvement to be made to the terms of reparation.

52. The Court reiterates that the States have a wide margin of appreciation to determine what is in the public interest, especially where compensation for a nationalisation is concerned, as the national legislature has a wide discretion in implementing social and economic policies. However, that margin of appreciation is not unlimited and its exercise is subject to review by the Convention institutions (see the *Lithgow and Others* judgment cited above, pp. 50-51, §§ 121-22).

53. The Court observes that the interference in issue manifestly pursued a legitimate aim, as it cannot be unreasonable for a State to have regard to its financial and budgetary resources when implementing a major land reform with economic and social objectives that cannot be said to be unreasonable.

54. However, the Court notes that twenty-four years have now elapsed without the applicants being paid the final compensation to which the domestic legislation nonetheless states that they are entitled. It reiterates that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay (see the *Akkus v. Turkey* judgment of 9 July 1997, *Reports* 1997-IV, pp. 1309-10, § 29).

The delay is indisputably attributable to the State and neither the complexity of the authorities' activities in that sphere nor the number of people entitled to compensation can justify a delay as long as that which has occurred here.

Furthermore, the fact that the applicants received provisional compensation does not appear to be decisive, as it was paid several years after they were deprived of the land concerned. In any event, even though provisional compensation has been paid, the fact remains that the applicants continue to be faced with uncertainty. It is that uncertainty, coupled with the lack of any effective domestic remedy for rectifying the situation, that leads the Court to find that the applicants have already had to bear a special and excessive burden which has upset the fair balance which has to be struck between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions.

55. In conclusion, there has been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLES 6, 13 AND 17 OF THE CONVENTION

56. The applicants also alleged a violation of Articles 6, 13 and 17 of the Convention. They complained of the lack of any machinery in Portuguese law capable of remedying the situation in issue.

57. Having regard to the conclusion set out in paragraph 55 above, the Court, like the Commission, finds that it is unnecessary to examine the issue separately under those provisions.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

59. The applicants claimed compensation for the loss of their property and the delays in the assessment of the final compensation. They also sought reparation for the non-pecuniary damage they had sustained.

60. The Government denied that the applicants had sustained pecuniary damage. They pointed out that compensation for pecuniary damage would be awarded in the domestic proceedings. The Government left the issue of the alleged non-pecuniary damage to the Court's discretion.

61. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision as regards pecuniary and non-pecuniary damage and reserves it, due regard being had to the possibility that an agreement between the respondent State and the applicants will be reached (Rule 75 § 1 of Rules of Court).

B. Costs and expenses

62. The applicants sought reimbursement of their lawyers' fees and various expenses related to the domestic proceedings and the proceedings before the Commission and the Court.

Mr Almeida Garrett claimed 11,711,796 Portuguese escudos (PTE) on that account, and the Mascarenhas Falcão family PTE 9,970,370.

63. The Government left the issue to the Court's discretion.

64. The Court notes that the applicants have incurred costs in the various sets of domestic proceedings. Thus Mr Almeida Garrett referred, for

example, to the fact that debt-recovery proceedings had been brought against companies owned by him, while the Mascarenhas Falcão family said that criminal proceedings had been lodged against the occupier of the plots of land concerned. However, those sets of proceedings are unrelated to the complaints raised before the Court so that it is not appropriate to order reimbursement of the costs related thereto. As to the remaining costs, ruling on an equitable basis as required by Article 41 of the Convention, the Court awards Mr Almeida Garrett PTE 3,500,000 and the Mascarenhas Falcão family PTE 2,000,000.

C. Default interest

65. According to the information available to the Court, the statutory rate of interest applicable in Portugal at the date of adoption of the present judgment is 7% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that it is unnecessary to examine the complaints under Articles 6, 13 and 17 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months, for costs and expenses,
 - (i) PTE 3,500,000 (three million five hundred thousand Portuguese escudos) to Mr Almeida Garrett;
 - (ii) PTE 2,000,000 (two million Portuguese escudos) to the Mascarenhas Falcão family;
 - (b) that simple interest at an annual rate of 7% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision in so far as pecuniary and non-pecuniary damage are concerned; accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicants to submit, within the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 11 January 2000.

Michael O'BOYLE
Registrar

Elisabeth PALM
President