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

COURT (CHAMBER)

CASE OF MATOS E SILVA, LDA., AND OTHERS v. PORTUGAL

(Application no. 15777/89)

JUDGMENT

STRASBOURG

16 September 1996

In the case of Matos e Silva, Lda., and Others v. Portugal[1],

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[2] (2), as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr F. GÖLCÜKLÜ,
Mr C. RUSSO,
Mr J. DE MEYER,
Mr S.K. MARTENS,
Mr A.N. LOIZOU,
Mr M.A. LOPES ROCHA,
Mr B. REPIK,
Mr P. KURIS,

and also of Mr H. PETZOLD, Registrar, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 29 March and 27 August 1996,

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 Government of the Portuguese Republic ("the Government") on 20 May and 4 July 1995 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 15777/89) against Portugal lodged with the Commission under Article 25 (art. 25) by Matos e Silva, Limitada, and Teodósio dos Santos Gomes, Limitada, two private limited companies incorporated under Portuguese law, and a Portuguese national, Mrs Maria Sofia Machado Perry Vidal, on 16 November 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Portugal recognised the compulsory

---

[1] The case is numbered 44/1995/550/636. 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.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) 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.

jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (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 of the Convention (art. 6) 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 applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr M.A. Lopes Rocha, the elected judge of Portuguese nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 8 June 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr C. Russo, Mr J. De Meyer, Mr S.K. Martens, Mr A.N. Loizou, Mr B. Repik and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyers 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 Government's memorial on 20 December 1995 and the applicants' memorial on 3 January 1996. On 21 February 1996 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 14 March 1996 the applicants lodged a number of documents.

5. On 23 February 1996 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 March 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr A. HENRIQUES GASPAR, Deputy Attorney-General of the Republic, *Agent*,
Mr J.P. FERREIRA RAMOS DE SOUSA, Legal Adviser, Prime Minister's Office,
Mrs L.M. BRANCO SANTOS MOTA DELGADO, assistant to the Minister of the Environment,
Mr N. CARA D'ANJO LECOQ, Director, Ria Formosa Nature Reserve, *Advisers*;

(b) for the Commission

Mr J.-C. SOYER, *Delegate*;

(c) for the applicants

Mr F. DE QUADROS, Professor of Law, University of Lisbon,
advogado,
Mr R. DOLZER, Professor of Law, University of Bonn, *Counsel*,
Mr P. BARBAS HOMEM, Lecturer in Law, University of Lisbon,
Mr S. COSTA PARDAL, Professor of Town and Country Planning,
Technical University of Lisbon,
Mr N.J. CABRAL, economist, *Advisers*.

The Court heard addresses by Mr Soyer, Mr de Quadros, Mr Dolzer and Mr Henriques Gaspar.

7. The applicants and the Government produced various documents at the hearing. On 23 April 1996 the applicants submitted observations on those lodged by the Government. The Government submitted comments on 15 May 1996.

8. On 15 July 1996 the applicants produced a valuation of the "Herdade do Ludo", prepared by the National Heritage Department.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

9. The first applicant, Matos e Silva, Lda. ("Matos e Silva"), is a private limited company entered in the companies' register at Loulé (Portugal). It, alone among the applicants, was a party to the domestic proceedings (see paragraphs 13 to 45 below). The second and third applicants, Mrs Maria Sofia Machado Perry Vidal and Teodósio dos Santos Gomes, Lda., another company, are the only shareholders in and owners of Matos e Silva. The second applicant manages both companies.

A. The background to the case

10. Matos e Silva works land in the municipality of Loulé. It cultivates the land, extracts salt and breeds fish.

11. It owns part of this land, having bought the parcels in question on different occasions.

The remainder was worked under a concession granted under a royal decree of 21 July 1884 to Basilio de Castelbranco. Article 2 of the decree provided that the parcels of land over which the concession had been granted could be expropriated without any right to compensation for the grantees. In 1886 Basilio de Castelbranco assigned the concession to the Compagnia Exploradora de Terrenos Salgados do Algarve. When that

company was wound up, some of its former shareholders purchased the concession. They formed the Matos e Silva company whose object was in particular to purchase and work part of the salt marshes which were the subject matter of the concession. On 12 August 1899 that company executed a sale and purchase agreement before a notary in respect of those parcels of land. On 16 September 1899 it had the agreement recorded in the Loulé land register in the following terms: "1899 - 16 September ... The transfer of the usable area of the third glebe of the Ludo parcel [prazo] ... together with the parcels of land known as Ludo and Marchil ... is registered in favour of the Matos e Silva company ..., which purchased them ... for a total price of 79,500 $ 000 reis [sic] ..." Since then, Matos e Silva has acted in respect of that land uti dominus, paying the taxes and duties provided for by Portuguese legislation on land ownership.

12. On 2 May 1978, by Decree no. 45/78, the Portuguese Government created a nature reserve for animals (Reserva Natural da Ria Formosa) on the Algarve coast (municipalities of Loulé, Olhão and Faro), including the parcels of Matos e Silva's land known as "Herdade do Muro do Ludo", or "Quinta do Ludo" or again "Herdade do Ludo". The Government took various measures in connection with this scheme, including the five contested by the applicants.

B. The five contested measures and the proceedings relating to them

1. Legislative Decree no. 121/83 of 1 March 1983

13. By Legislative Decree no. 121/83 of 1 March 1983 the Government declared that half of Matos e Silva's land was needed for public purposes. This public-interest declaration was a preliminary to expropriating the land with a view to building an aquacultural research station on it.

14. On 18 April 1983 Matos e Silva challenged this administrative decision in the Administrative Proceedings Division of the Supreme Administrative Court. The appeal - lodged with the Prime Minister's office in accordance with Article 2 of Legislative Decree no. 256-A/77, which was applicable at the time (see paragraph 49 below) - was forwarded to the Supreme Administrative Court on 9 May.

15. On 17 April 1985, after an exchange of pleadings, Matos e Silva, relying on Article 9 para. 2 of the Expropriations Code (see paragraph 47 below), made an application to discontinue the proceedings on the ground that they had become devoid of purpose in view of the fact that the public-interest declaration in Legislative Decree no. 121/83 was no longer valid.

It renewed this application on 21 May 1986, 20 July 1987 and 19 April 1988.

16. On 6 May 1988 the Supreme Administrative Court decided not to rule on the validity of the declaration before examining the application

which had in the meantime been lodged by Matos e Silva against Legislative Decree no. 173/84 and was under consideration in the Prime Minister's office (see paragraph 32 below).

Accordingly, the Supreme Administrative Court requested the Prime Minister to send it the application instituting the proceedings (petição do recurso). No reply was forthcoming to its reminders of 11 May 1988, 23 September 1988 and 13 December 1988.

17. On 16 May 1989 State Counsel applied for a stay of the proceedings until the application for an order quashing Legislative Decree no. 173/84 had been determined. Matos e Silva opposed the application for a stay and renewed its application to discontinue the proceedings.

18. In a decision of 28 September 1989 the Supreme Administrative Court decided to stay the proceedings and dismissed the company's application. It held that Article 9 para. 2 of the Expropriations Code was not applicable to the case before it because Legislative Decree no. 173/84 had suspended the effect of the public-interest declaration contained in Legislative Decree no. 121/83. A measure which had no existence in the legal order could not lapse. Moreover, it was necessary to await the outcome of the application against Legislative Decree no. 173/84. In any event, the public-interest declaration contained in Legislative Decree no. 121/83 could be revived if Legislative Decree no. 173/84 were to be quashed.

19. On 8 February 1990 Matos e Silva appealed against that decision to a full court of the Administrative Proceedings Division of the Supreme Administrative Court. That appeal was dismissed in a judgment of 17 October 1992. On 1 April 1993, arguing that there had been conflicting decisions on the same point of law, the company appealed against the Supreme Administrative Court's ruling. However, on 23 April 1993 the reporting judge declared the appeal inadmissible. The company filed an objection to that decision, but to no avail.

20. The proceedings are still pending.

2. The order of 4 August 1983

21. In a joint order of the Prime Minister and the Ministers of Finance and for the Environment (Qualidade de Vida) of 4 August 1983, the Government made a public-interest declaration with a view to the expropriation of the other half of Matos e Silva's land in order to set up a single nature reserve for the protection of migrant birds and other important species. The order authorised "the immediate taking of possession" of the land by the State.

22. On 15 November 1983 Matos e Silva appealed against that order. The Supreme Administrative Court registered the appeal on 20 December, the Prime Minister's office having forwarded it on 15 December 1983 (see paragraph 49 below).

23. On 9 October 1985 Matos e Silva made an application to discontinue the proceedings identical to the one it had lodged in the earlier proceedings (see paragraph 15 above). It renewed its request on 7 July 1986 and 15 June 1989, but without success.

24. The Supreme Administrative Court again held that it could not rule on the appeal before examining the application which had in the meantime been lodged against Legislative Decree no. 173/84 (see paragraph 16 above and paragraph 32 below) and was under consideration in the Prime Minister's office.

With a view to obtaining the application instituting those proceedings, the court issued eight orders to the Prime Minister between 23 April 1987 and 26 January 1989, but they were not complied with.

On 18 May 1989 the Prime Minister responded to a ninth order issued on 24 April 1989. He informed the court that the original of the application instituting the proceedings had disappeared and that he had only a copy. No documents were enclosed with his letter.

25. On 10 July 1989 Matos e Silva itself produced to the Supreme Administrative Court a copy of the application in question.

26. On 3 December 1989 State Counsel asked the court to stay the proceedings on the same grounds as those given in his application in relation to the previous appeal (see paragraph 17 above).

27. On 3 April 1990 the court delivered a judgment staying the proceedings for reasons identical to those set out in its judgment of 28 September 1989 (see paragraph 18 above).

On 24 April 1990 Matos e Silva appealed against that decision to a full court of the Administrative Proceedings Division of the Supreme Administrative Court, which dismissed the appeal by a decision of 17 June 1993.

28. The proceedings are still pending.

3. Legislative Decree no. 173/84 of 24 May 1984

29. By Legislative Decree no. 173/84 of 24 May 1984 and "with a view to carrying out works in the public interest, and more particularly to creating a single reserve...", the Government "withdrew the concession to work all the parcels of land referred to in Article 1 [of the decree of 21 July 1884]". The withdrawal "[was] to be effected in the manner in which expropriation [was permitted] by the [1884 decree]" (see paragraph 11 above). Under Articles 3 and 4 of Legislative Decree no. 173/84, the State was to take immediate possession of the land without any formalities or compensation except that payable for necessary and useful improvements made to the property.

30. Matos e Silva then made an application to the Government on 25 June 1984 requesting them to reconsider their decision; the outcome of that application is not known.

31. At the same time, the company applied to the Administrative Proceedings Division of the Supreme Administrative Court for the effects (eficacia) of Decree no. 173/84 to be suspended. By a decision of 18 July 1985, which was upheld by a full court, the court granted the application and decided to suspend the effects of the decree in question pending a decision on the merits.

32. On 9 July 1984 Matos e Silva applied to the same court for an order quashing the decree. This application was submitted to the Prime Minister's office (see paragraph 49 below).

The company relied on the following grounds, among others:

(a) there had still been no compensation for the two earlier expropriations;

(b) the reasons given by the Government on each occasion to justify the expropriations were different and inconsistent, a bird sanctuary and an aquacultural research station being incompatible with each other; and Legislative Decree no. 173/84 purported to create a single reserve on the land;

(c) the expropriation order was discriminatory in that it concerned almost exclusively Matos e Silva's land and not other land in the same area and with the same conditions and characteristics belonging to other persons or companies.

33. The Prime Minister's office decided to send the file to the Ministry of the Environment. The new Minister issued an order dated 9 August 1984 (see paragraph 53 below) setting up a committee entrusted with the task of making, within thirty-seven days, a proposal for, among other things, repealing Legislative Decree no. 173/84.

34. However, in October 1985, a new Government was formed and the proposed repeal came to nothing.

35. Having seen the Prime Minister's letter of 18 May 1989 (see paragraph 24 above) and forwarded a copy of its application (see paragraph 25 above), Matos e Silva, in accordance with Articles 1074 et seq. of the Civil Code, requested reconstitution (reforma) of the administrative file. In an interlocutory decision of 18 October 1990 the reporting judge stated that the copy of the application instituting the proceedings had been communicated by the Government. When the company sought rectification of this statement, he accepted in a decision of 31 October 1991 that the application had in fact been submitted by the company. However, the administrative file was not reconstituted.

36. On 17 February 1992 Matos e Silva applied to discontinue the proceedings on the same grounds as those it had invoked in the proceedings concerning Legislative Decree no. 121/83 (see paragraph 15 above).

37. On 17 September 1992 the Supreme Administrative Court decided that it would not proceed until it had been sent the file relating to the

administrative application (processo gracioso). To this end, on 26 January and 23 April 1993, it ordered the Government to send it the file in question.

The Government did so on 25 October 1993. However, the application instituting the proceedings was not on the file.

38. At the beginning of 1994 Matos e Silva filed a memorial and an opinion. On 8 March 1995 State Counsel made his final submissions in favour of quashing the contested measure. In an order of 26 April 1995 the reporting judge expressed the view that all the issues raised in the appeal were essentially dependent on whether the company was the owner of the land. In these circumstances the Supreme Administrative Court should stay the proceedings until the relevant civil court had ruled on ownership in separate proceedings. Consequently, pursuant to Article 4 of Legislative Decree no. 129/84 governing the administrative and tax courts (see paragraph 51 below), it was ordered that the proceedings be stayed.

On an appeal by the company, the First Division of the Supreme Administrative Court quashed that order on 19 December 1995 on the ground that the reporting judge did not have jurisdiction to make it. After itself considering the issue, the court stayed the proceedings to enable the company to commence proceedings in the civil courts, given that if the parties took no action for more than three months, the issue would be decided on the evidence in the file (see paragraph 50 below).

The company has appealed against that decision to a full court of the Supreme Administrative Court which has not, at the date of adoption of the present judgment, yet decided the appeal.

4. Legislative Decree no. 373/87 of 9 December 1987

39. By Legislative Decree no. 373/87 of 9 December 1987 the Government created the Ria Formosa Nature Reserve on the Algarve and adopted rules for the protection of the area's ecosystem. Among other things, these rules prohibited, in addition to all building, any change in the use of the land and the starting up of any new agricultural and fish-farming activities without permission.

40. On 8 February 1988 Matos e Silva challenged this decree in the Administrative Proceedings Division of the Supreme Administrative Court. It claimed that the rules governing the exercise of its right of property over its land that were contained in the decree were more restrictive than the restrictions affecting adjoining land. It pointed out in addition that the offending measure amounted to an expropriation in view of the number of restrictions imposed.

41. On 18 April 1994 the court decided to stay the proceedings pending a determination of the merits of the application for an order quashing Legislative Decree no. 173/84. The proceedings are therefore still pending.

5. Regulatory Decree no. 2/91 of 24 January 1991

42. By "regulatory" Decree no. 2/91 of 24 January 1991 the Government approved a "Plan for the organisation and regulation of the Ria Formosa Nature Reserve" (Plano de Ordenamento e Regulamento do Parque natural da Ria Formosa).

43. On 23 March 1991 Matos e Silva challenged this decree in the Administrative Proceedings Division of the Supreme Administrative Court. It alleged a violation of the principles of equality and proportionality and argued that the decree constituted a further expropriation measure.

44. Following an exchange of pleadings the court sought information on 7 April 1992 concerning the course of the proceedings in connection with Legislative Decree no. 173/84.

45. On 9 June 1993 the court stayed the proceedings on the grounds given above.

II. RELEVANT DOMESTIC LAW

A. The Constitution

46. Article 62 of the Constitution provides:

> "1. The right to private property and the right to transfer property inter vivos or by succession shall be guaranteed to everyone, in accordance with the Constitution.
>
> 2. Requisition and expropriation in the public interest may be effected only in accordance with law and subject to payment of fair compensation."

B. The Expropriations Code

47. The 1976 Expropriations Code, as it applied at the material time, contained the following provisions:

Article 1 para. 1

> "Real property and the rights relating to it may be expropriated on public-interest grounds in so far as such grounds fall within the competence of the expropriating authority, subject to payment of fair compensation."

Article 9 para. 2

> "A public-interest declaration shall lapse if the property has not been acquired within a period of two years or if no arbitration board has been set up within that same period."

Article 27 para. 1

"Expropriation of a property or right on public-interest grounds shall confer on the expropriated person the right to receive fair compensation."

48. Articles 1 and 22 para. 1 of the 1991 Expropriations Code, which is currently applicable, provide as follows:

Article 1

"Real property and the rights relating to it may be expropriated on public-interest grounds in so far as such grounds fall within the competence of the expropriating authority, subject to immediate payment of fair compensation."

Article 22 para. 1

"Expropriation of any property or right on public-interest grounds shall entitle the expropriated person to immediate payment of fair compensation."

C. The legislative decrees on procedure in the administrative courts

49. Article 2 of Legislative Decree no. 256-A/77 of 17 June 1977 provided as follows:

"1. Administrative decisions which are final and enforceable may be challenged by means of an application for judicial review, which shall be made to the competent court and lodged with the authority that took the decision in question.

2. The administrative authority may, within a period of thirty days, revoke or confirm the impugned decision in whole or in part.

3. In any event, the administrative authority shall, within the same period, forward the administrative file containing the relevant documents to the appropriate court or tribunal.

4. If there is no production, the applicant may ask the court to take possession of the file and documents concerning the applicant so that the proceedings may continue.

5. ..."

50. This provision was amended by Legislative Decree no. 267/85 of 16 July 1985, which contains the following relevant Articles:

Article 7

"Where either party fails, for more than three months, to make, or diligently pursue an application on a preliminary issue then the main proceedings shall continue and the preliminary issue shall be decided on the basis of such evidence as is admissible in those proceedings. The effects of such a decision shall be confined solely to the proceedings in question."

Article 11

"1. Where, without good cause, evidence relevant to the determination of the case is not produced, the court may order any appropriate measures, including the one provided for in Article 4 of Legislative Decree no. 227/77 of 31 May, and shall issue an injunction to the administrative authority in question, in accordance with Article 84.

2. Where the administrative authority again fails to comply, the court may draw such inferences from that conduct as it thinks fit."

Article 84

"1. In its decision the court shall stipulate the time within which the injunction is to be obeyed.

2. Refusal to comply with the injunction shall give rise to civil, disciplinary and criminal liability in accordance with Article 11 of Legislative Decree no. 256-A/77 of 17 June."

D. The other relevant provisions

1. Legislative Decree no. 129/84 of 27 April 1984

51. Article 4 para. 2 of Legislative Decree no. 129/84 of 27 April 1984 governing administrative and tax courts is worded as follows:

"Where a decision on the merits of the action or appeal turns on the determination of an issue within the jurisdiction of other courts, the tribunal may defer judgment until the relevant court has given its ruling; the consequences of a failure by the interested parties to make or diligently pursue the proceedings concerning the preliminary issue shall be laid down in procedural provisions."

2. Legislative Decree no. 227/77 of 31 May 1977

52. Article 4 of Legislative Decree no. 227/77 of 31 May 1977 provides:

"1. Where, without justification, the case file relating to an administrative application [processo gracioso], or any other evidence requested by a court in order to assist its examination of an appeal, is not produced within a period of thirty days the reporting judge shall forward the appeal to State Counsel's office, in order that the latter may make its submissions within thirty days, failing which the penalties set out in the following paragraph shall apply.

2. Where a period of thirty days has elapsed following submission of the opinion of State Counsel's office, as provided for in paragraph 1, and the documents requested have, without good cause, not been produced, the proceedings shall resume and the court may draw such inferences from the conduct of the authority in question as it sees fit."

3. Order no. 77/84 of 9 August 1984 issued by the Ministry of the Environment

53. Order no. 77/84 of 9 August 1984 issued by the Ministry of the Environment is worded as follows:

"1. Taking note of Legislative Decree no. 173/84 of 24 May, which concerns all the land that is the subject of a royal concession granted by Government Decree no. 165 of 21 July 1884, without any restriction or discrimination in respect of such land;

2. Observing that much of this land, amounting to several thousand hectares, is now private property which has nothing to do with the aims of protecting the environment and natural resources which it is said will be achieved by withdrawing the concession, thereby entailing a flood of potential lawsuits and payment by the State of huge amounts of compensation;

3. Observing that the statutory provision refers expressly to the "Herdade do Ludo" or, in other words, "Herdade do Muro do Ludo", which represents only a small part of the land covered by the royal concession of 1884;

4. Observing likewise that even the "Herdade do Muro do Ludo" is only partly of special interest from the point of view of protecting bird life;

5. Decides to set up a committee ... to make a proposal concerning:

(i) the repeal of Legislative Decree no. 173/84 and any other legislation on this subject;

(ii) the tabling of a draft of a new legislative decree intended to transfer to the State as part of the national heritage all the land which, being part of the estate designated as "Herdade do Ludo" or outside it, is of value for the bird life which it is sought to protect by means of establishing a sanctuary;

(iii) compensation or a fair method for calculating such compensation based on the improvements [benfeitorias] made to the land to be transferred to the State;

(iv) the final regularisation of the land in private hands [dominio particular] which is of no value for the sanctuary and was covered by the royal concession of 1884.

6. The committee thus appointed is to carry out its task before 15 September 1984; however, the proposal for the repeal of Legislative Decree no. 173/84, duly reasoned, shall be submitted to the Ministry of the Environment by 21 August so as to be put on the agenda of the next meeting of the Cabinet and shall contain any provisions that may be necessary to make clear that the State remains interested in the sanctuary and is determined to transfer as part of the national heritage the land to be incorporated in it."

PROCEEDINGS BEFORE THE COMMISSION

54. In their application of 16 November 1989 to the Commission (no. 15777/89), the Matos e Silva and Teodósio dos Santos Gomes companies and Mrs Perry Vidal complained of a violation of Article 6 para. 1 of the Convention (art. 6-1) on account of the length of the administrative proceedings. They also relied on Article 13 of the Convention (art. 13) in that no effective remedy before a national authority was available to them to challenge the infringements of their rights caused by the Government's measures. In addition, they alleged a violation of their right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1 (P1-1). Lastly, in conjunction with the latter provision (P1-1), they relied on Article 14 of the Convention (art. 14), complaining of discrimination in relation to other owners of land in the same area.

55. On 29 November 1993 the Commission declared the application admissible. In its report of 21 February 1995 (Article 31) (art. 31), it expressed the opinion that:

(a) there had been a violation of Article 6 para. 1 of the Convention (art. 6-1) by reason of the lack of effective access to a court (nineteen votes to three);

(b) no separate issue arose under Article 6 of the Convention (art. 6) on account of the length of the proceedings (twenty votes to two);

(c) there had been a violation of Article 1 of Protocol No. 1 (P1-1) (twenty-one votes to one);

(d) it was not necessary to examine the complaint based on the violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1) (twenty-one votes to one).

The full text of the Commission's opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to this judgment[3].

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

56. In their memorial, the Government "[requested] the Court to hold that in the instant case there [had] been no violation either of Article 6 para. 1 of the Convention (art. 6-1) (right of access to a court) or of Article 1 of Protocol No. 1 (P1-1)".

[3] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-IV), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

57. The Government submitted that the applicants had not exhausted domestic remedies and that the Court had no jurisdiction ratione materiae. On both points they argued that the question of the ownership of the land in question was still pending before the domestic courts.

58. According to the applicants, the question of the exhaustion of domestic remedies did not arise as the proceedings had been at a standstill for thirteen years. Moreover, the ownership of the land in question was not open to doubt (see paragraph 73 below).

59. The Court notes that the objection of a failure to exhaust domestic remedies was raised before the Commission with regard to Article 1 of Protocol No. 1 (P1-1) only. However, like the Delegate of the Commission, it takes the view that the preliminary objections are closely linked to consideration of the merits of the complaints under Article 6 of the Convention (art. 6) and Article 1 of Protocol No. 1 (P1-1). It therefore joins them to the merits.

II. ALLEGED VIOLATIONS OF ARTICLE 13 (art. 13) AND ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

60. The applicants complained firstly of the lack of an effective remedy before a national authority and secondly of the length of the five sets of proceedings brought in respect of the disputed measures. They claimed to be victims of breaches of Article 13 and Article 6 para. 1 of the Convention (art. 13, art. 6-1), which provide:

Article 13 (art. 13)

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 6 para. 1 (art. 6-1)

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

A. The complaint of lack of access to a tribunal

61. In the applicants' submission, the lack of effective access to a tribunal was evidenced by the fact that the disputed proceedings were at a total standstill. Four out of the five sets of proceedings had been stayed pending a decision on the merits in the proceedings relating to Legislative Decree no. 173/84, whose subject matter had been treated as a preliminary issue in the other sets of proceedings. In the proceedings relating to Legislative Decree no. 173/84 the Supreme Administrative Court had waited for more than ten years for the Government to forward the administrative file and to date had still not received the initial application or given judgment. Under Portuguese law, despite the fact that the file had not been forwarded, the Supreme Administrative Court was nonetheless required to come to a decision on the basis of the available evidence.

62. The Commission accepted that argument. In its view, the hindrances in question impaired the very essence of the applicants' right of access to a tribunal.

63. The Government argued that the applicants had had effective access to a tribunal by availing themselves of all the remedies which domestic law afforded them. They had brought proceedings in the appropriate court. In the five sets of proceedings they had asserted their rights using the machinery made available to them by Portuguese law. The proceedings concerning Legislative Decree no. 173/84 were continuing, though admittedly with delays due to interlocutory matters and to circumstances connected with the working of the court itself. However, only the length of the proceedings was in issue, not any lack of effective access.

64. In the Court's view, no question of hindering access to a tribunal arises where a litigant, represented by a lawyer, freely brings proceedings in a court, makes his submissions to it and lodges such appeals against its decisions as he considers appropriate. As the Government rightly pointed out, Matos e Silva have used the remedies available under Portuguese law. The fact that the proceedings are taking a long time does not concern access to a tribunal. The difficulties encountered thus relate to conduct of proceedings, not to access.

In short, there has been no violation of Article 13 (art. 13) or, in this regard, of Article 6 para. 1 (art. 6-1), the requirements of the former (art. 13) being moreover less strict than, and here absorbed by, those of the latter (art. 6-1).

B. The complaint as to the length of the proceedings

65. The applicants submitted that there had been a breach of Article 6 para. 1 (art. 6-1) on account of the excessive length of the proceedings, which had had the same effects as a lack of effective access to a tribunal.

66. Before the Court the Government acknowledged that the proceedings relating to the application for judicial review of Legislative Decree no. 173/84 had to date been delayed and that their length, and consequently that of the other four sets of proceedings, had exceeded what could legitimately be expected.

67. As the Commission had expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) for lack of effective access to a tribunal, it considered that no separate issue arose with respect to the length of the proceedings.

68. The Court notes that the proceedings in question commenced on 18 April 1983, 15 November 1983, 9 July 1984, 8 February 1988 and 23 March 1991 and are still pending. Their length to the date of adoption of this judgment has therefore been approximately thirteen years and four months, twelve years and nine months, twelve years and one and a half months, eight and a half years and five years and five months.

69. As the Government have conceded that there has been a breach, the Court does not consider it necessary to examine the reasonableness of the length of each set of proceedings with reference to the criteria laid down in its case-law. There is no doubt that the length of the proceedings taken as a whole cannot be considered "reasonable" in this case.

70. Having regard to all these considerations, the Court dismisses the Government's preliminary objections with respect to this part of the case and considers that there has been a violation of Article 6 para. 1 (art. 6-1) in this respect.

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

71. The applicants also complained of three expropriation measures and of two measures similar to expropriation. They considered that they amounted to a breach of Article 1 of Protocol No. 1 (P1-1), which provides:

> "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 (P1-1) 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. Whether there was a "possession

72. The Government devoted most of their submissions to arguing that the applicants did not have any "possessions" within the meaning of Article 1 of Protocol No. 1 (P1-1). Matos e Silva's legal position as owner of the land in question was debatable under domestic law. Consequently, the applicants could not allege an infringement of a property right that had not been established.

73. The applicants denied that there was an issue in Portuguese law. They pointed out that part of the land had never been included in the royal concession. Ownership of the land previously covered by the 1884 concession derived from the presumption in law created by the fact that their purchase in 1899 had been entered in the land register; the validity of that entry had never been contested. In any event, the 1884 concession had itself already transferred ownership to the grantee at the time. Besides, the State had always regarded Matos e Silva as owner of the land since it had, for example, acquired for value a very large tract of it as the site for Faro airport in 1969 and had at all times collected property taxes on all the land. In any case, Matos e Silva had become the owner by adverse possession. Lastly, State Counsel himself, in his pleadings of 8 March 1995 in the proceedings concerning Legislative Decree no. 173/84, had recognised the company's ownership of the "Quinta do Ludo".

74. The Commission considered that for the purposes of the instant case Matos e Silva was to be regarded as owner of the land in question.

75. Like the Commission, the Court notes that the ownership of part of the land is not contested.

As to the other part (see paragraph 11 above), the Court agrees with the Government that it is not for the Court to decide whether or not a right of property exists under domestic law. However, it recalls that the notion "possessions" (in French: "biens") in Article 1 of Protocol No. 1 (P1-1) has an autonomous meaning (see the Gasus Dosier- und Fördertechnik GmbH v. the Netherlands judgment of 23 February 1995, Series A no. 306-B, p. 46, para. 53). In the present case the applicants' unchallenged rights over the disputed land for almost a century and the revenue they derive from working it may qualify as "possessions" for the purposes of Article 1 (P1-1).

B. Whether there was an interference

76. In the applicants' submission, it was not in doubt that there had been an interference with their right to the peaceful enjoyment of their possessions. The land in question was subject to several restrictions. Apart from a ban on building and easements and restrictions affecting development of the land, the profitability of the land was currently about 40% less than it had been in 1983. Furthermore, it was impossible to sell the

land because potential purchasers would be deterred by the legal position. The suspension of the effects of Legislative Decree no. 173/84 would have no influence on the restrictions on ownership brought about by successive Government measures since 1 March 1983. Lastly, the State had never paid or offered any compensation.

77. The Government maintained that there had not been a deprivation of property. The expropriation procedure had never been set in motion and no action had ever been taken with respect to the land, whose status was the same as before. Under Articles 9 et seq. of the 1976 Expropriations Code, a public-interest declaration was a preliminary to expropriation proceedings. By itself it did not affect the content of ownership and did not make it impossible to dispose of the land concerned, especially as it lapsed after two years. For that reason, during that period, the declarations had not caused any interference or a transfer of or change to the title on the basis of which the applicants worked the land. In addition, Legislative Decree no. 173/84 had rendered the earlier measures nugatory and prevented them from being of any effect in the future. It had merely brought about a withdrawal of the concession, not an expropriation. Its effects had been suspended by a judgment of the Supreme Administrative Court on 18 July 1985 and it had not caused any interference. In conclusion neither the legal title by virtue of which the applicants cultivated the land in question nor the conditions in which the land was worked in practice had really changed.

78. The Commission expressed the view that the measures in issue amounted to an interference with the peaceful enjoyment of possessions. In particular, the applicants' control of the land in issue had, in practical terms, been substantially restricted as farming, fish farming and salt production could not be developed and building on the land was prohibited.

79. Like the Commission, the Court notes that although the disputed measures have, as a matter of law, left intact the applicants' right to deal with and use their possessions, they have nevertheless greatly reduced their ability to do so in practice. They also affect the very substance of ownership in that three of them recognise in advance the lawfulness of an expropriation. The other two measures, the one creating and the other regulating the Ria Formosa Nature Reserve, also incontestably restrict the right to use the possessions. For approximately thirteen years the applicants have thus remained uncertain what would become of their properties. The result of all the disputed decisions has been that since 1983 their right over the possessions has become precarious. Although a remedy in respect of the contested measures was available, the position was in practice the same as if none existed.

In conclusion, the applicants have suffered an interference with their right to the peaceful enjoyment of their possessions. The consequences of that interference were, without any doubt, aggravated by the combined use of the public-interest declarations and the creation of a nature reserve over a

long period (see the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, pp. 23-24, para. 60).

C. Whether the interference was justified

80. It remains to be determined whether or not this interference contravenes Article 1 (P1-1).

1. The applicable rule

81. Article 1 (P1-1) guarantees in substance the right of property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph (P1-1-1) and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph (P1-1-1), covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph (P1-1-2), recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property. They must therefore be construed in the light of the general principle laid down in the first rule (see, among other authorities, the Phocas v. France judgment of 23 April 1996, Reports of Judgments and Decisions 1996-II, pp. 541-42, para. 51).

82. The applicants submitted that the combined effects of the five measures had resulted in a de facto expropriation of their possessions. The first two measures were indeed expropriation measures since, under Portuguese law, a public-interest declaration set in motion the expropriation procedure and was followed merely by an enforcement measure. The third measure was actually entitled expropriation. Yet no compensation was paid to the applicants. The owner lost all right to sell his property in its previous condition; he could only transfer precarious rights. In any event, it was no longer possible to work normally land that was subject to three public-interest declarations, several prohibitions including one on building, several easements and an authorisation enabling the State to take immediate possession of the land.

83. According to the Government, there had been no deprivation of property either de jure or de facto and no interference with the way in which the land in question was exploited.

84. The Commission expressed the view that the interference did not amount to a de facto expropriation. With the exception of Legislative Decree no. 173/84, the disputed measures imposed restrictions directed at controlling the use of property. The different measures had to be looked at

in the light of the combined provisions of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1-1) and the second paragraph of that Article (P1-1-2).

85. In the Court's opinion, there was no formal or de facto expropriation in the present case. The effects of the measures are not such that they can be equated with deprivation of possessions. As the Delegate of the Commission stated, the position was not irreversible as it had been in the case of Papamichalopoulos and Others v. Greece (judgment of 24 June 1993, Series A no. 260-B, p. 70, paras. 44-45). The restrictions on the right to property stemmed from the reduced ability to dispose of the property and from the damage sustained by reason of the fact that expropriation was contemplated. Although the right in question had lost some of its substance, it had not disappeared. The Court notes, for example, that all reasonable manner of exploiting the property had not disappeared seeing that the applicants continued to work the land. The second sentence of the first paragraph (P1-1-1) is therefore not applicable in the instant case.

Although the measures did not all have the same legal effect and had different aims, they must be looked at together in the light of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1-1).

2. Compliance with the rule set forth in the first sentence of the first paragraph (P1-1-1)

86. For the purposes of the first sentence of the first paragraph (P1-1-1), 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 the Sporrong and Lönnroth judgment previously cited, p. 26, para. 69).

(a) The general interest

87. According to the applicants, a scrutiny of the five measures does not indicate any coherent strategy with regard to their possessions.

88. Even though the purpose for which the applicants' possessions were intended was changed several times, the Court, like the Commission, accepts that the measures pursued the public interest relied on by the Government, that is to say town and country planning for the purposes of protecting the environment.

(b) Whether a fair balance was struck between the opposing interests

89. In the applicants' submission, the measures taken were never necessary in the public interest as they had never been followed up. The Portuguese State did not implement the programmes which the three expropriation measures should have enabled it to launch. It did not at any

stage build an aquaculture station or establish a single reserve for migrant birds or a general nature reserve.

90. The Government maintained that the decisions concerned struck an adequate and reasonable balance between the public interest pursued and the various private interests as regards individual use of and profit from the land. In this instance, the State had a duty to prevent improper and speculative uses of the land. The length of the proceedings could not be taken into account.

91. As to proportionality, the Commission considered that the length of the proceedings, coupled with the fact that it had so far been impossible for the applicants to obtain even partial compensation for the damage sustained, upset the balance which should be struck between protection of the right of property and the requirements of the general interest.

92. The Court recognises that the various measures taken with respect to the possessions concerned did not lack a reasonable basis.

However, it observes that in the circumstances of the case the measures had serious and harmful effects that have hindered the applicants' ordinary enjoyment of their right for more than thirteen years during which time virtually no progress has been made in the proceedings. The long period of uncertainty both as to what would become of the possessions and as to the question of compensation further aggravated the detrimental effects of the disputed measures.

As a result, the applicants have had to bear an individual and excessive burden which has upset the fair balance which should be struck between the requirements of the general interest and the protection of the right to the peaceful enjoyment of one's possessions.

93. Having regard to all these considerations, the Court dismisses the Government's preliminary objections with respect to this part of the case and holds that there has been a violation of Article 1 of Protocol No. 1 (P1-1).

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 (art. 14+P1-1)

94. Lastly, the applicants alleged a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1) in that the infringement of the right guaranteed by this latter provision (P1-1) had only affected their land and not their neighbours', although these tracts of land were no different in nature. Consequently, the applicants had been unable to make from the land's tourist development potential a profit similar to that made by the owners of the adjoining land.

95. The Government submitted that the nature reserve incorporated other land besides that of the applicants and that if there had been any discrimination, it had been caused not by the State but by nature itself.

96. Having regard to the conclusion in paragraph 93 above, the Court, like the Commission, does not consider it necessary to examine the question separately under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1).

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

97. Article 50 of the Convention (art. 50) provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

98. The applicants submitted that reparation for the alleged pecuniary damage should put them in a situation equivalent to the one which they would have been in had the unlawful measures not been implemented. The sum awarded should correspond to compensation in kind. It should take into account the current value of the compensation due by reason of the disputed measures, the loss of enjoyment suffered and the loss of profit resulting from the fact that they were unable to benefit from the development of tourism on the Algarve and had lost opportunities to expand their activities.

In order to assess the damage thus identified, they continued, it was necessary to determine what would have been their financial position had the State not intervened. To this end, the applicants produced a detailed estimate of the pecuniary loss showing that the amount of the compensation due in 1983, capitalised at the rates set out in the 1976 Expropriations Code, came to 20,458,463,000 escudos (PTE).

An identical sum would be due were the Court to consider that the expropriation in 1983 was lawful. The current value of the property was PTE 12,687,240,000, to which should be added PTE 7,771,223,000 for the loss of real sale opportunities.

The applicants also claimed non-pecuniary damage. The dispute had caused them feelings of frustration, powerlessness, suffering and revolt given the brutal manner in which their rights had been "trampled on" and the discriminatory treatment they had received. They claimed PTE 60,000,000 under this head.

They further submitted that these amounts should be increased by interest at the statutory annual rate of 15% to run from the date on which their memorial was lodged until the date of payment.

99. In the Government's submission, reparation in kind remained an adequate means of redress. Furthermore, the applicants' claim was unfounded. The land in question had never had and never would have the potential on which the applicants' evaluation was based. It was not suitable for building or development for tourism purposes. Moreover, for thirty years the land had been subject to an obligation not to hinder air traffic. The national public works authority had recently valued the land in question at PTE 300,000,000 to be increased if appropriate by 10% to 15%. Furthermore, so long as the proceedings remained pending, the applicants were unable to claim a loss of profit, such loss being hypothetical. With regard to the possible damage sustained on account of the length of the proceedings, the applicants could bring an action for damages against the State in the domestic courts.

As regards the alleged non-pecuniary damage, the Government considered that only individuals could suffer anxiety and distress because of the uncertainty into which the length of proceedings plunged them. In any event, the amount claimed was unreasonable. The Government left it to the Court to make an assessment ex aequo et bono.

100. The Delegate of the Commission considered the applicants' claims excessive.

101. The Court points out that there has been no expropriation or situation tantamount to a deprivation of property, but a reduced ability to dispose of the possessions in question. The methods of assessment proposed by the applicants are therefore not appropriate. The breaches found of Article 1 of Protocol No. 1 (P1-1) and Article 6 para. 1 of the Convention (art. 6-1) make it incumbent on the Court to assess the damage as a whole having regard to the uncertainty created by the length of the proceedings and to the interferences with the free use of the property. Assessing the various items of damage on an equitable basis, the Court considers that the applicants should be awarded satisfaction of PTE 10,000,000.

B. Costs and expenses

102. The applicants also sought payment of PTE 320,000,000 in respect of costs and expenses incurred in the domestic proceedings and before the Convention institutions. This sum, which they said should also bear interest at the rate of 15% (see paragraph 98 above), would cover the following expenses:

(a) legal costs in the eight sets of proceedings before the Supreme Administrative Court;

(b) administrative and official expenses, including fees for drawing up documents and estimating damage;

(c) fees due to two university professors consulted during the proceedings and during negotiations with the Government;

(d) fees and expenses of counsel and of the legal adviser;

(e) costs of postage, telephone and travel and subsistence in Portugal and abroad.

103. The Government maintained that only costs and expenses arising out of the fact that the proceedings had not been concluded within a reasonable time should be taken into account. They considered the amount of the other claims to be clearly unreasonable.

104. The Delegate of the Commission found the claims in question to be excessive.

105. Making its assessment on an equitable basis and with reference to its relevant criteria, the Court awards PTE 6,000,000 to the applicants for costs and expenses.

C. Default interest

106. 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 10% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides to join the Government's preliminary objections to the merits, and dismisses them after examining the merits;

2. Holds that there has not been a violation of Article 13 (art. 13) or of Article 6 para. 1 of the Convention (art. 6-1) on account of the lack of access to a tribunal;

3. Holds that there has been a violation of Article 6 para. 1 of the Convention (art. 6-1) on account of the length of the proceedings;

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

5. Holds that it is not necessary to examine the allegation of a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1);

6. Holds that the respondent State is to pay the applicants taken together, within three months, 10,000,000 (ten million) escudos for damage and 6,000,000 (six million) escudos for costs and expenses, on which sums simple interest at an annual rate of 10% shall be payable from the expiry of the above-mentioned three months until settlement;

7. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 September 1996.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar