

AS TO THE ADMISSIBILITY OF

Application No. 28027/95  
by James URE  
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President  
MM. M.P. PELLONPÄÄ  
E. BUSUTTIL  
A. WEITZEL  
B. CONFORTI  
N. BRATZA  
I. BÉKÉS  
G. RESS  
C. BÎRSAN  
K. HERNDL  
M. VILA AMIGÓ  
Mrs. M. HION

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 27 April 1995 by James URE against the United Kingdom and registered on 25 July 1995 under file No. 28027/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a United Kingdom national born in 1932 and residing in Crawley, West Sussex. Before the Commission he is represented by J. B. O. Hinchliffe, a solicitor practising in East Grinstead, West Sussex, and by M. Berkin, a barrister practising in London.

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

In 1986 the applicant and his wife became secure joint tenants of a flat belonging to the Crawley Council. In August 1991 the applicant and his wife started divorce proceedings. The applicant's wife with their child left the flat. She applied to the Crawley Council for assistance or accommodation as a homeless person. Since her interest in the flat disqualified her from being homeless, the Council advised her that she could terminate the tenancy by serving on them a notice of her intention to quit. On 6 April 1992 she did so, on a form provided by the Council, without informing the applicant.

Following the serving of the notice to quit, the Council applied to the Horsham County Court and sought the possession of the flat as under the relevant law the notice had effectively terminated the joint tenancy. The applicant refused to leave. He resisted the application asserting inter alia that because the Crawley Council had been aware that his wife had left and because they had accepted payments in

respect of rent from the applicant only, he had become the sole tenant. He also submitted that the Council had acted in bad faith as they had assisted and even encouraged his wife to terminate the joint tenancy.

On 8 February 1993 Judge Hammerton, sitting at the Brighton County Court, granted Crawley Council's application for possession. He found, *inter alia*, that

"there is ... nothing in itself that is either improper, unlawful or unfair, in a Local Authority assisting a tenant (one of joint tenants) in terminating a tenancy so that that person who might be entitled to other accommodation is able to obtain it".

The Judge further noted that replacement housing accommodation had been obtained for the applicant and that the Council had acted responsibly and properly.

On 8 February 1995 the Court of Appeal dismissed the applicant's ensuing appeal and refused his application for leave to appeal to the House of Lords. The Court dismissed the applicant's argument that Crawley Council, having allegedly instigated and assisted his wife to serve a notice to quit, was not entitled to rely on their own wrong and seek possession of the flat. In this respect the judgment referred to a quotation from a judgment in a similar case, where it had been said:

"Some argument was advanced to us on the consequences for couples living together in local authority housing ... We were told that when one partner, frequently the wife and often with young children, chooses or is compelled to leave a house or flat provided by the local authority, it is the practice of at least some local authorities to require the partner who has left the accommodation to give notice terminating the jointly held tenancy as a prelude to rehousing her. Thus, it was said, the man sometimes finds himself, without any fault on his part, losing his home as well as his wife and his children. He may well not have a priority need for rehousing. Against this it was argued that, with limited housing facilities available to local authorities, it is undesirable that the man should continue indefinitely to occupy accommodation in excess of his reasonable requirements. Arguments such as these can have no place in the present case. The point at issue applies to all periodic tenancies, to joint lessors as well as joint lessees, and to all types of property: agricultural and business property as much as residential property. Considerations peculiar to tenants of local authority housing really cannot carry weight in the circumstances."

The applicant was subsequently refused legal aid to apply to the House of Lords for leave to appeal.

On 21 February 1996 the applicant was informed by the bailiff that he would be evicted from his flat on 14 March 1996. The applicant has not substantiated any further development.

## COMPLAINTS

The applicant submits that the legislation in the United Kingdom which provides for the termination of a joint tenancy by a unilateral notice on the part of one of the joint tenants operates in a manner incompatible with the rights of the other co-tenant. Thus, it has become the practice of the local housing authorities to require a co-tenant who seeks rehousing upon breakdown of a marriage or of a relationship to serve a notice to quit thus terminating the joint tenancy. The applicant claims that this policy aimed at evading the guarantees of a secure tenancy, which could be terminated by the landlord on limited grounds only. In his case the local authority was

responsible for the loss of his home, his eviction being imminent.

The applicant also submits that under the Matrimonial Homes Act 1983 he had a right not to be evicted from the matrimonial home without leave of the court. Also, he was entitled, on divorce, to apply for a transfer of property order. Against this background the applicant complains that the Crawley Council in fact intermeddled in the matrimonial rights between him and his wife.

The applicant invokes Article 8, Article 1 of Protocol No. 1 and Article 5 of Protocol No. 7 to the Convention.

## THE LAW

1. The applicant complains that the legislation and the practice concerning the termination of joint tenancies, the manner in which Crawley Council acted in his case, as well as the judicial decisions which followed, breached his rights to respect for his home and to peaceful enjoyment of his possessions.

The Commission has examined the applicant's complaints under Article 8 (Art. 8) of the Convention which, insofar as relevant, provides as follows.

"1. Everyone has the right to respect for his ... home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... the economic well-being of the country, ... for the protection of health or morals, or for the protection of the rights and freedoms of others." The Commission recalls the Convention organs' case-law according to which an interference by a public authority with the rights under Article 8 (Art. 8) of the Convention entails a violation of this provision unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 para. 2 (Art. 8-2) of the Convention and was "necessary in a democratic society" for the aforesaid aim or aims. Necessity in a democratic society implies that the interference shall correspond to a pressing social need and that it shall be proportionate to the aim pursued. Further, in determining whether an interference is necessary the Commission will take into account that a margin of appreciation is left to the Contracting States, which are in principle in a better position to make an initial assessment of the necessity of a given interference. It is not the Commission's task to take the place of the competent national courts and make a fresh examination of all the facts and evidence in the case. The Commission's task is to examine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (Eur. Court HR, *Olsson v. Sweden* judgment of 24 March 1988, Series A no. 130, p. 32, paras. 59, 67, 68; cf. also no. 11949/86, Dec. 1.12.86, D.R. 51 p. 195).

In the present case the Commission notes that the applicant and his wife were joint tenants and that, therefore, the right to use the apartment was to be exercised by them jointly. The applicant apparently was not entitled, under the tenancy agreement, to use the flat as a sole tenant. It was therefore clear at the outset that in case one of the joint tenants decided to leave, the other could not claim a right to become the sole tenant. This was the legal situation as regards joint tenancies on all types of property, and not only on residential property.

Furthermore, it does not appear that the manner in which the authorities balanced the various interests involved, such as the interest of the leaving co-tenant, of those in need of accommodation,

and of the applicant, was arbitrary or unreasonable. Thus, the applicant's housing need apparently changed as he was not living with his wife and child any more. Moreover, replacement housing accommodation had been obtained for the applicant.

Therefore, the Commission finds that the alleged interference with the applicant's rights under Article 8 (Art. 8) of the Convention was justified under the second paragraph of this provision.

It follows that this part of the application is manifestly ill-founded and has to be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as the applicant invokes Article 1 of Protocol No. 1 (P1-1) to the Convention, even assuming that his contractual right of a co-tenant may be considered as a "possession" within the meaning of this provision and that there has been a State interference with the applicant's right to peaceful enjoyment of his possessions, the Commission does not find that the facts complained of disclose any appearance of a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention. In this respect the Commission refers to its analysis of the applicant's complaints under Article 8 (Art. 8) of the Convention.

It follows that this complaint is also manifestly ill-founded and has to be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also raises a complaint under Article 5 of Protocol No. 7 (P7-5) to the Convention.

The Commission finds that this complaint falls outside its competence *ratione personae*, Protocol No. 7 not having been ratified by the United Kingdom.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M. F. BUQUICCHIO  
Secretary  
to the First Chamber

J. LIDDY  
President  
of the First Chamber