APPLICATION/REQUÊTE N° 11949/86

D.P. v/the UNITED KINGDOM

D.P. c/ROYAUME-UNI

DECISION of 1 December 1986 on the admissibility of the application

DÉCISION du 1er décembre 1986 sur la recevabilité de la requête

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Article 6, paragraph 1 of the Convention :

a) A dispute between landlord and tenant over the obligations resulting from the lease concerns civil rights and obligations.

b) This provision does not require States to establish review jurisdictions to deal with disputes in respect of which all questions of fact and law come within the jurisdiction of lower courts.

Article 8, paragraph 2 of the Convention : *Eviction of a tenant from property following annulment of the lease. In the present case, interference in accordance with the law and necessary in a democratic society for the protection of the rights of others.*

Article 13 of the Convention : *When the right claimed is of a civil character, the guarantees of Article 13 are superseded by those of Article 6 para. 1.*

Article 14 of the Convention in conjunction with Article 6 of the Convention and Article 1 of the First Protocol : *It is not discriminatory to exclude appeal from decisions given in summary proceedings by lower courts whose jurisdiction is limited to actions of a particular monetary value.*

Article 1, paragraph 1 of the First Protocol :

a) In view of the premium paid on conclusion of a contract for long lease, the rights of the lessee under English law must be considered as "possessions".

b) The second sentence of this paragraph is only aimed at expropriation in the true sense.

c) The fact that an action between private individuals concerning rescision of a long lease is decided by a court on the basis of the law in force does not in itself engage the responsibility of the State under Article 1 of Protocol No. 1.

***Article 6, paragraphe 1, de la Convention** :*

a) Un litige entre propriétaire et locataire sur les obligations découlant du bail porte sur des droits et obligations de caractère civil.

b) Cette disposition n'oblige pas les Etats à instituer des tribunaux de recours pour connaître de litiges dont toutes les questions de fait et de droit sont de la compétence des tribunaux inférieurs.

***Article 8, paragraphe 2, de la Convention** : Expulsion du locataire du logement à la suite de la résiliation du bail. En l'espèce, ingérence prévue par la loi et nécessaire dans une société démocratique à la protection des droits d'autrui.*

***Article 13 de la Convention** : Lorsque le droit revendiqué est un droit de caractère civil, les garanties de l'article 13 s'effacent devant celles de l'article 6 par. 1.*

***Article 14 de la Convention, combiné avec l'article 6 de la Convention et avec l'article 1 du Protocole additionnel** : Il n'est pas discriminatoire d'exclure l'appel de décisions rendues selon une procédure rapide par les tribunaux inférieurs dont la compétence est limitée à une certaine valeur litigieuse.*

***Article 1, paragraphe 1, du Protocole additionnel** :*

a) Compte tenu du loyer initial versé à la conclusion du contrat, les droits de l'emphytéote en droit anglais doivent être considérés comme un « bien ».

b) La deuxième phrase de ce paragraphe ne vise que l'expropriation proprement dite.

c) Le fait qu'un litige entre particuliers sur la résiliation d'un bail emphythéotique est tranché par un tribunal sur la base du droit en vigueur n'engage pas, en lui-même, la responsabilité de l'Etat sur le terrain de l'article 1 du Protocole additionnel.

THE FACTS

(français : voir p. 214)

The facts as they have been submitted on behalf of the applicant may be summarised as follows.

The applicant is a British citizen born in 1934 and at present residing in London. In the proceedings before the Commission she is represented by Messrs. Bindman & Partners, solicitors, of London NW1.

The applicant lived in a flat known as 25 Churchdale Court ("the flat") from 1959 until the landlord, a company, recovered possession of the property on 29 March 1982. She initially occupied the flat under a monthly tenancy agreement, paying rent monthly. In July 1975 the landlord granted to the applicant a long lease of the flat for a term of 99 years in consideration of a premium (capital payment) of £ 6,000. This grant of a lease brought the lease within the system of long leasehold tenure.

A long leasehold is an interest in property. The following are some of the characteristics of a long lease.

a) The tenant pays the landlord a capital sum or premium which may be a figure as high as the premium on purchasing a freehold interest.

b) The duration of the lease is fixed often for a term of 99 years or more.

c) A rent is usually low or negligible in comparison with a market rent.

d) The obligations to repair or rebuild may be similar or equivalent to those of a freeholder, with direct liability on the tenant to repair or indemnify the landlord for all repairs that he undertakes.

e) The tenant holding a property under a long lease may sell the lease to a third party, who then acquires the tenant's rights and obligations under the lease for the remainder of its duration. In practice existing leases are commonly bought and sold on the property market without the landlord playing any part in the transaction. An existing tenant may also grant an "under-lease" of the property.

f) The *capital value of the landlord's interest* in a property let on a long lease arises from two sources: *first* the rent payable under the lease and *secondly* the prospect of reversion of the property to him at the end of the lease. At the beginning of a very long lease the value of the reversion may be very little and the total market value of the landlord's interest may therefore amount to little more than the capitalised value of the rent. The *capital value of the tenant's interest* arises from his right to occupy the house under the lease, and the time for which that right will subsist is of critical importance in relation to its value. At the beginning of a very long lease the value of the tenant's interest may be more or less equivalent to a "freehold" interest (i.e. an outright owner's interest), if the rent payable is a nominal one.

g) The lease, however, is a wasting asset. As the lease progresses the value of the tenant's interest in the property diminishes, whilst the value of the landlord's interest increases. At the end of the lease the tenant's interest ceases to exist.

The long lease ("the lease") granted to the applicant contained the following terms, *inter alia*:

a) The lease was for the duration of 99 years.

b) There was a covenant by the applicant to pay a ground rent of £ 10 per annum by two equal half-yearly payments.

c) There was a further covenant by the applicant to pay "by way of further and additional rent" a service charge representing her proportional share of the expenses and outgoings incurred by the landlord in the insurance, repair, maintenance, renewal, etc. of the building.

d) A clause 4 (ii) which provided that if the rent was not paid within 21 days of becoming payable the lessor had the right to re-enter the premises and forfeit the lease. A clause such as clause 4 (ii) is found in virtually all leases.

e) Recital C recorded that the landlord proposed to grant leases on substantially identical terms to those contained in the lease to tenants of other flats in the building.

Relations between the applicant and the landlord were characterised by continual disagreements regarding the amounts of the service charge and the quality of certain external painting for which the tenants of Churchdale Court were charged. On account of her complaints about these matters, the applicant at one point withheld payment of the service charge due under the terms of the lease. The landlord brought an action in the County Court against the applicant in August 1978 for payment of the service charge. In view of the terms of clause 4 (ii) of the lease, the landlord also argued that because the applicant had not paid the service charge, which was defined in the lease as rent, the lease should be forfeited. Non-payment of rent is in practice the only ground upon which a lease can be forfeited.

On 9 February 1981, after a hearing at which the applicant appeared in person the judge made an order that the landlord was entitled to recover from the applicant the arrears of rent amounting to £ 299.36 together with costs which were to be assessed at a later date. The order went on to provide that unless the applicant paid the sum outstanding on or before 7 April 1981 she would have to give up possession of the flat and the lease would be forfeited.

In March 1981 the applicant, acting in person, lodged her appeal. In January 1982, after taking legal advice, the applicant withdrew her appeal.

In November 1981 the applicant went to the County Court to enquire whether she could in fact be evicted. The official to whom she spoke told her that the original order no longer existed and after consulting his records he wrote out what purported to be a copy of the order. He omitted any reference to the order for possession which had been made on the condition that the applicant did not pay the money she owed the landlord.

The form the court official used to write out the order was the incorrect form to use and inappropriate, since it was for use only for simple money judgments and not for where there was an order for possession.

On 1 February 1982, nearly 10 months after the landlord could have taken steps to enforce the judgment, the landlord's solicitors wrote to the applicant asking her to pay the judgment sum together with additional outstanding charges immediately, failing which the landlord would be forced to proceed with forfeiture of the lease.

The applicant took no effective action on this request and 3 weeks later, on 24 February, the landlord's solicitors again wrote to the applicant warning her that unless the matter was dealt with immediately, the bailiffs would be instructed to take possession of the flat and forfeit the lease. The applicant failed once more to take any action and after a further month, the applicant was informed on 26 March 1982 that the bailiffs would be taking possession on 29 March 1982.

On 29 March 1982 the County Court bailiff attended at the flat. The applicant thereupon offered to pay the sum due and said that she would obtain the money within the hour. The landlord's agent refused this offer and the applicant was evicted.

On the same day the applicant took the sum of £ 314.36 to the County Court to pay the judgment debt and warrant of execution fee. She was unable to do so as she did not have the bailiff's reference number. On 1 April 1982 the applicant paid into court the judgment debt which was subsequently taken out of court by the landlord in satisfaction of its monetary claim.

The applicant, without the authority of the landlord or the court, regained access to the flat, and lived there for a period of months and was later evicted once more following further possession proceedings by the landlord.

The applicant's leasehold title which had been registered at HM Land Registry was closed on 15 March 1983 following an application for its closure by the landlord. The effect of this closure was to completely eradicate the applicant's leasehold title; once closed it cannot be re-opened since it ceases to exist.

The applicant then sought to obtain relief from forfeiture of her lease through the courts. The two forums for hearing applications of this nature are the High Court and the County Court. Which jurisdiction is used will depend upon the rateable value of the land in question and is the choice of the plaintiff. The County Court may only hear an action for the recovery of land where the rateable value of the land does not exceed £ 1,000. The High Court can hear claims concerning any amount. Thus less valuable premises fall within the concurrent jurisdiction of the High Court and County Court, whereas more valuable properties will be within the exclusive jurisdiction of the High Court.

As a general rule possession actions tend to be quicker and cheaper in the County Court and the High Court is the more appropriate venue when difficult points of law are involved.

The relevant law relating to applications for relief from forfeiture available to the applicant at the date in question can be summarised as follows:

a) *Section 146 of the Law of Property Act 1925*

— This provision regulates the enforcement of a right of re-entry or forfeiture under a lease by action or otherwise. A tenant facing possession proceedings based on forfeiture for breach of any covenant, other than payment of rent, may apply for relief against forfeiture of his leasehold interest. Jurisdiction to grant such relief may be exercised by either the High Court or the County Court.

b) *Section 210 of the Common Law Procedure Act 1852*

— This entitles a tenant to apply for relief against forfeiture at any time within six months after execution of a possession order. This remedy is only available where proceedings for possession for non-payment of rent were originally instituted in the High Court.

c) *Section 191 of the County Courts Act 1959*

— The provisions provide exhaustively for the circumstances in which forfeiture may be avoided where proceedings are brought in the County Court in the following terms:

191. Provisions as to forfeiture for non-payment of rent.

"(1) Where a lessor is proceeding by action in a County Court (being an action in which a County Court has jurisdiction) to enforce against a lessee a right of re-entry or forfeiture in respect of any land for non-payment of rent, the following provisions shall have effect:-

(a) If the lessee pays into court not less than five clear days before the return date all the rent in arrear and the costs of the action, the action shall cease, and the lessee shall hold the land according to the lease without any new lease;

(b) if the action does not cease as aforesaid and the court at the trial is satisfied that the lessor is entitled to enforce the right of re-entry or forfeiture, the court shall order possession of the land to be given to the lessor at the expiration of such period, not being less than four weeks from the date of the order, as the court thinks fit, unless within that period the lessee pays into court all the rent in arrear and the costs of the action;

(c) if within the period specified in the order, the lessee pays into court all the rent in arrear and the costs of the action, he shall hold the land

according to the lease without any new lease, but if the lessee does not, within the said period, pay into court all the rent in arrear and the costs of the action, the order shall be enforced in the prescribed manner, and so long as the order remains unreversed the lessee shall be barred from all relief;

Provided that, where the lessor is proceeding in the same action to enforce a right of re-entry or forfeiture on any other ground as well as for non-payment of rent, or to enforce any other claim as well as the right of re-entry or forfeiture and the claim for arrears of rent, paragraph (a) of this subsection shall not apply, and nothing in this subsection shall be taken to affect the power of the court to make any order which it would otherwise have power to make as respects the right of re-entry or forfeiture on that other ground.

(2) Where any such action as aforesaid is brought in a County Court and, at the time of the commencement of the action, one-half year's rent is in arrear and the lessor has a right to re-enter for non-payment thereof and no sufficient distress is to be found on the premises countervailing the arrears then due, the service of the summons in the action in the prescribed manner shall stand in lieu of a demand and re-entry.

(3) Where a lessor has enforced against a lessee, by re-entry without action, a right of re-entry or forfeiture as respects any land for non-payment of rent, the lessee may, if the net annual value for rating of the land is not above the County Court limit, at any time within six months from the date on which the lessor re-entered apply to the County Court for relief, and on any such application the court may, if it thinks fit, grant to the lessee such relief as the High Court could have granted.

(4) Nothing in this section shall be taken to affect the provisions of subsection (4) of section one hundred and forty-six of the Law of Property Act 1925.

(5) For the purposes of this section -

(a) the expression "lease" includes an original or derivative under-lease, also an agreement for a lease where the lessee has become entitled to have his lease granted, also a grant at a fee farm rent or securing a rent by condition;

(b) the expression "lessee" includes an original derivative under-lessee and the persons deriving title under a lessee, also a grantee under any such grant as aforesaid and the persons deriving title under him;

(c) the expression "lessor" includes an original or derivative under-lessor and the persons deriving title under a lessor, also a person making such grant as aforesaid and the persons deriving title under him;

(d) the expression "under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

(e) the expression "under-lessee" includes any person deriving title under an under-lessee."

d) *Section 23 of the Administration of Justice Act 1965*

— This provision allows the court to extend the period during which the landlord's possession is postponed to permit the tenant to pay the arrears due, provided that possession has not already been obtained under the possession order.

Hence, in the County Court, the statutory provisions permit a tenant to seek to delay a possession order, and ensure a minimum period of notice before a possession order can be implemented. If payment of arrears is made during this period, the possession proceedings are terminated. By contrast, the High Court has a discretion to set aside a possession order and give relief againt forfeiture in a six month period after a lease has been forfeited. Since the date that possession was obtained, and forfeiture took place in the present case, English law has been amended so that a lessee may apply to the County Court to grant relief against forfeiture within six months of the date on which the landlord recovered possession. The County Court jurisdiction has therefore been brought into line with that exercised by the High Court under Section 210 of the Common Law Procedure Act 1852. The amendment does not, however, apply retroactively.

The steps taken by the applicant having lost possession of the flat were as follows:

On 1 April 1982, the applicant, acting in person, made an application to the County Court for "re-entry into my house". This application was dismissed on 5 April 1982.

In May 1982, solicitors on behalf of the applicant applied to the County Court for relief against forfeiture. The application was dismissed on 14 June 1982 on the ground that, under Section 191 (1) of the County Courts Act 1959, the judge had no jurisdiction to grant the relief sought and the applicant was "barred from all relief" (Section 191 (1) (c) of the County Court Act 1959). Costs were awarded against the applicant. The judge expressed the view that, had he had jurisdiction, he would have been inclined to grant relief.

In July 1982, the applicant applied to the High Court for relief against forfeiture pursuant to Section 210 of the Common Law Procedure Act 1852 and for her leasehold title in the Land Registry to be re-opened. The judge dismissed the application on 21 December 1983 on the ground that he had no jurisdiction to grant relief

by virtue of Section 191 (1) of the County Courts Act 1959 and ordered that the applicant pay the landlord's costs. The judge stated that, had he had power to grant relief, he would have done so.

The applicant served Notice of Appeal against this order and on April 1985 the Court of Appeal heard the applicant's appeals against:

(a) the order dated 5 April 1982 dismissing the applicant's application for re-entry into the flat;

(b) the order dated 14 June 1982 dismissing the applicant's application for relief against forfeiture under Section 191 of the County Courts Act 1959;

(c) the order of 21 December 1983 dismissing the applicant's application for relief against forfeiture under Section 210 of the Common Law Procedure Act 1852.

Dismissing all three appeals on 1 May 1985, the Court of Appeal held unanimously that the effect of Section 191 (1) (c) of the 1959 Act was to bar an evicted tenant against whom proceedings had been brought in the County Court from any remedy once possession had been taken by the landlord. Leave to appeal to the House of Lords was refused.

In July 1985 the applicant commenced proceedings by originating summons in the County Court for a declaration that her tenancy subsisted. The application was based on the landlord's acceptance of rent after they had purported to forfeit the applicant's lease. Counsel for the applicant however advised that no ground existed for continuing to prosecute the action and in October 1985 her application for a declaration that her tenancy subsisted was dismissed.

COMPLAINTS

The applicant claims to be the victim of a violation of Article 1 of the Protocol No. 1 and Articles 6, 8, 13 and 14 of the Convention.

The applicant maintains that by reason of the laws of England and Wales she has been deprived of property unjustifiably and on unjust terms. She submits that the legislation operates unjustly in the following ways in particular:

a) it permitted, or did not prevent, the landlord's re-possession of the applicant's premises and forfeiture of the lease;

b) it failed to provide any, or any sufficient, remedy in respect of the interference with the applicant's right to property.

The applicant maintains that the rights under the Convention on which she relies imply not only a negative obligation to abstain from acting but also in certain circumstances a positive duty, and the applicant contends that the Government failed to legislate adequately to protect the rights claimed by the applicant.

Article 1 of Protocol No. 1

(a) *General*

The applicant maintains that she has been "deprived of ... possessions" in breach of the conditions laid down in the second sentence of Article 1 of Protocol No. 1. Even if that sentence is not applicable, she has in any event been a victim of unjustified interference with the right to peaceful enjoyment of her possessions in breach of the first sentence.

(b) *Deprivation of possessions*

The applicant's principal submission is that she has been deprived of her possession of the flat, that provision being given its natural and ordinary meaning. The legislation existing in England and Wales at the relevant time allowed the landlord to deprive the applicant of all her possessions. The applicant refers *mutatis mutandis* to the Commission's Report in the James case (No. 8793/79, James and Others v. the United Kingdom, Comm. Report, para. 103).

The applicant also contends that Applications No. 8588/79 and No. 8589/79, Bramelid and Malmström v. Sweden (Dec. 12.10.82, D.R. 29 p. 82), were wrongly decided and should not be followed. The plain words "No one should be deprived of his possessions except in the public interest ..." are not cut down by reference to the public interest.

The applicant maintains that the "public interest" should only be invoked as a limitation where it serves a legitimate social interest, for example, the division of inherited property, the division of matrimonial estates following the breakdown of marriage and the seizure and sale of property in the course of execution. This social interest finds its expression in other Articles of the Convention under the rubric of the "rights and freedoms of others". It is not permissible to seek to limit the ambit of the deprivation rule in the manner in which the Commission has sought in its decision on the admissibility of those applications.

In support of the applicant's contention that the deprivation of her property was not justified in the public interest, the applicant argues *inter alia*:

(1) The applicant contends that the reasoning of the Commission at paras. 122-125 and 134-140 of its Report in the case of James and Others (*supra*) requires that:

(a) the deprivation must be effected in pursuance of a legitimate aim "in the public interest" (para. 135);

(b) the interference with the individual's rights must be proportionate to the legitimate aim pursued (*ibid.*);

(c) in assessing whether there is no reasonable relationship of proportionality between the interference with the individual's rights and the public interest

objectives being pursued it must be considered whether in all the circumstances a disproportionate or "excessive" burden has been imposed on the individual (para. 136);

(d) having regard to the wide margin of appreciation left to States in this area, a violation of Article 1 of Protocol No. 1 could only be held to arise from the absence or inadequacy of compensation "if it were clearly established that there was a real and substantial disproportion between the burden imposed on the individual and what could reasonably be considered justifiable in the light of the public interest objectives being pursued by the national authorities" (para. 139).

(2) The facts on which the applicant relies to indicate that the burden borne by her by the making of the possession order and the forfeiture of her lease was disproportionate to what could reasonably be considered suitable for the protection of the landlord's rights are:

(a) The debt due to the landlord was £ 299.36, together with a £ 15 bailiffs fee. The costs of the action which she was ordered to pay have not been assessed.

(b) The applicant paid the sum of £ 314.36 into Court on 1 April 1982 and the landlord accepted the payment in satisfaction of the money judgment.

(c) The applicant valued her flat at the relevant time at about £ 30,000. She had paid £ 6,000 for it in 1975 and on any view it was clearly worth very substantially more than the debt which she owed.

(d) Adequate protection of the landlord's legitimate interest could have been ensured by significantly less drastic means. Execution could have been levied against the applicant's personal belongings which were worth considerably more than the judgment sums. Even if such drastic means were justified, the law should provide for the landlord to account to the applicant for the net proceeds of disposal of the flat after deduction of their debt, their costs and their costs of sale.

(e) The judges in the judgment on 21 December 1983 (D.P. v. Victoria Square Property Co. Ltd. and Others [1984] 2 All ER 92) concluded that the applicant ought to be granted relief against forfeiture in all the circumstances of the case. The applicant relies, in particular on the following passages in the judgment:

i. "I start, therefore, with this: the lessors' right of re-entry was intended to provide security for payment by the lessee, the [applicant], of rent and service charge due under the lease. She has, albeit very belatedly, paid the outstanding rent and service charge. She paid into court the requisite sum on 1 April 1982

and it has been paid out to the lessor entitled thereto. Why, in these circumstances, should it be right that the lessee, the [applicant], should lose her lease worth many thousands of pounds?" (At page 99, paras. F-G)

ii. "The landlords have received all the rent and service charge due to them. They can be compensated for any additional expense to which they have been put by her behaviour. What factor in the history of the case can justify a result by which, in addition, they recover and she loses an asset worth, on her view £ 30,000 and on any view many thousands of pounds?" (At page 99, para. J)

iii. "I regard such loss as a wholly disproportionate penalty for her to suffer for her delayed payment of the judgment debt ..." (At page 100, para. E)

iv. "The fact that the value of the land brought the case within the County Court jurisdiction and that the lessor elected to bring the proceedings in the County Count means that she cannot be granted relief and has lost her case. This difference in result seems to me to lack rational justification and to be unjust to the [applicant] however much she may be the author of her own misfortune." (At page 105, paras. C-D)

(f) The landlord conceded that the applicant would have been entitled to relief against forfeiture if they had obtained their possession order in the High Court. (At page 100, paras. A-B)

(g) The Government and the legislature have recognised the injustice of cases such as the applicant's by introducing and passing Section 55 of the Administation of Justice Act 1985, which has provided for relief from forfeiture in the County Court on a similar basis to that available in High Court proceedings.

c) *Peaceful enjoyment of possessions*

The applicant's alternative submission is that she was denied the peaceful enjoyment of her possessions. The taking of the applicant's property, the applicant's eviction therefrom and the extinction of her leasehold interest have manifestly interfered with her peaceful enjoyment of the flat and the moveable property therein.

The applicant refers to the judgment of the Court dated 23 September 1982 in the case of Sporrong and Lönnroth (Series A no. 52 p. 26, para. 69) in which the Court held that:

"[Where there has been an interference with the peaceful enjoyment of possessions] 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. ... The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1."

The applicant also refers to the Commission's own decision on admissibility in Bramelid and Malmström v. Sweden (*supra*) in which the Commission decided that:

> "The Commission must nevertheless make sure that in determining the effects on property of legal relations between individuals, the law does not create such inequality that one person could be arbitrarily and unjustly deprived of the property in favour of another."

The applicant submits that the legal position in the United Kingdom at the time of the matters complained of did not strike a fair balance between the protection of her right to property on the one hand and the landlord's rights and the requirements of general interest that judgments of the courts should be respected on the other. In the applicant's submission the circumstances of her case created an inequality in her disfavour which was so arbitrary and unreasonable as to constitute a violation of the right to the peaceful enjoyment of her possessions.

Article 8 of the Convention — Right to respect for the applicant's home

The applicant further relies in the alternative upon Article 8 of the Convention. The interference was not "necessary in a democratic society" because it was wholly disproportionate to the legitimate aim which it was sought to achieve.

Article 6 para. 1 of the Convention — Access to a court

The applicant contends that she has been denied access to a court with jurisdiction to hear her civil claim on the merits. Section 210 of the Common Law Procedure Act 1852 entitles tenants to apply for relief against forfeiture after having lost possession where the action for possession was brought in the High Court. Because the action in the present case was brought in the County Court this remedy was not open to the applicant by virtue of Section 191 of the County Courts Act 1959. Both the County Court and the High Court to which the applicant applied would have given relief to her, had they had jurisdiction to do so. The provision thereby placed a hindrance on the applicant's access to court.

The applicant contends that the applications were never dealt with on the merits (see, *mutatis mutandis*, paragraph 86 of the judgment of the Court in the Sporrong and Lönnroth case).

Alternatively, such limitations as were placed on the applicant's right to a court were not justified in that:

(a) they did not pursue any or any legitimate aim;

alternatively

(b) there was no reasonable relationship of proportionality between the aim pursued and the total bar placed upon the applicant's right of access to court.

The applicant refers, in particular, to the fact that she was not legally represented when the possession order was made.

Article 13 of the Convention — Effective remedy

The applicant submits that she has been denied a remedy before a national authority in respect of her claims of violations of her rights under Article 1 of Protocol No. 1 and Articles 6, 8 and 14 of the Convention.

Article 14 of the Convention — Discrimination

The applicant submits that she has been a victim of arbitrary and unjustifiable discrimination in the enjoyment of her rights under Article 1 of Protocol No. 1 and Articles 6, 8 and 13 of the Convention.

The discrimination which she alleges is due to the fact that possession proceedings having been instituted in the County Court, neither that court, nor the High Court, had jurisdiction to hear her claim to relief from forfeiture by virtue of Section 191 (1) of the County Courts Act 1959. In comparison, a tenant against whom possession had been ordered in the High Court could have been entitled to apply to the High Court for relief under Section 210 of the Common Law Procedure Act 1852. There was thus, the applicant claims, an unjustifiable difference of treatment in respect of persons in a similar position.

a) The distinction between High Court and County Court jurisdiction, based upon the rateable value of the properties concerned, is an arbitrary distinction benefiting richer tenants who are able to afford properties with rateable values in excess of £ 1,000, to the detriment of poorer tenants who were possibly in need of greater protection.

b) The judge in the High Court considered that the difference "seems [...] to lack rational justification and to be unjust to [the applicant] ..."

c) The Government and the legislature moved swiftly to remove the anomaly once it had been pointed out.

THE LAW

1. The applicant complains first that the forfeiture of her lease in favour of the landlord constituted an interference with her rights protected by Article 1 of Protocol No. 1, which provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicant contends that she was deprived of her possessions contrary to the second sentence of this provision. She also alleges that the loss she suffered by virtue of the forfeiture, and her inability to obtain relief against it, was wholly disproportionate to the debt which she owed to the landlord, which, furthermore, she paid to the landlord after the lease was forfeited.

The Commission considers that it must first examine the way in which State responsibility arises in the present case for the matters about which the applicant complains.

It is clear that the State has not directly deprived the applicant of her possessions by taking them into its possession, or otherwise expropriating from her. The forfeiture order was made by the County Court, and implemented the terms of the lease regulating the private law contractual arrangements between the applicant as tenant and the landlord in relation to the applicant's occupation of the flat.

In this respect, therefore, the present application is essentially different from Application No. 8793/79, James and Others v. the United Kingdom (Comm. Report 11.5.84) which concerned legislation which gave tenants with leases predating the legislation in question the right to purchase the freehold interest in the houses of which they were the tenants on prescribed terms.

The Commission recalls in this respect its decision on the admissibility of Applications Nos. 8588/79 and 8589/79, Bramelid and Malmström v. Sweden (D.R. 29 p. 64), which analysed the scope of application of the second sentence of Article 1 of Protocol No. 1, and in particular the deprivation rule. The Commission there identified that the drafting of this provision shows clearly that the deprivation rule is generally intended to refer to acts whereby the State lays hands on, or authorises a third party to lay hands on, a particular piece of property for a purpose which is to serve the public interest. This analysis was confirmed in Application No. 8793/79 (*supra*) which concerned the authorisation of the "expropriation" from a landlord by tenants in the circumstances provided for in the Leasehold Reform Act 1967. As the Commission found in the cases of Bramelid and Malmström (*supra*), transfers of property may be authorised by legislation in circumstances which have nothing to do with the notion of public interest as it arises in the context of expropriation. In those cases the Commission examined Swedish legislation which was the practical expression of a policy concerning private companies, and directly concerning relations between shareholders. The Commission there found that the second sentence of Article 1 of Protocol No. 1 had no application.

In the present case, the relations between the applicant and the landlord were regulated by a private contract (the lease) which set out the mutual obligations of the parties. The terms of the lease were neither directly prescribed nor amended by legislation, although substantial quantities of legislation regulate the operation of leases in a general way, mainly with a view to protecting the position of tenants. Thus, for example, in order to gain possession of the flat, the landlord had to take proceedings before the courts to obtain a possession order, without which eviction of the applicant would have been unlawful.

In view of the exclusively private law relationship between the parties to the lease the Commission considers that the responsiblity of the respondent Government cannot be engaged by the mere fact that the landlord by its agents, who were private individuals, brought the applicant's lease to an end in accordance with the terms of that lease, which set out the agreement between the applicant and the company.

The question arises as to whether any other aspect of the applicant's complaint under Article 1 of Protocol No. 1 would give rise to a breach of the State's responsibility under the Convention.

It is true that the landlord issued proceedings in the domestic courts in order to forfeit the applicant's lease. This fact alone is not however sufficient to engage State responsiblity in respect of the applicant's rights to property, since the public authority in the shape of the County Court merely provided a forum for the determination of the civil right in dispute between the parties.

In contending that State responsibility for an interference with rights protected by the Convention arises in respect of this complaint, the applicant seeks to require that a State is subject to a positive obligation to protect the property rights of an individual in the context of their dispute with another private individual. It is not necessary for the purposes of the present decision to attempt an exhaustive description of the circumstances in which such an obligation may arise. In the present case the applicant and the landlord had entered into contractual arrangements set out in the lease, which expressly provided for the applicant's tenancy to terminate if rent remained unpaid once demanded. Furthermore, such a provision is a common feature of tenancy agreements under the legal systems of all the Member States of the Council of Europe.

Under English law, in view of the premium paid on their grant or assignment, leases are clearly 'property' which may be dealt with and is registered as an interest in land. Furthermore, in view of the value which may attach to such a lease, and the civil nature of any dispute arising about its interpretation, the courts of the domestic legal system are available to protect the different interests of the parties by providing an independent and impartial tribunal which may determine any dispute fairly.

Such a possibility is provided under English law, *inter alia* by virtue of Section 191 (1)(c) of the 1959 Act. It is also relevant to recall that the applicant does not allege any supervening act of the domestic authorities, by way of legislation or administrative action, which affected her private law rights as contained in the lease from its inception. The fact that judgment was given against the applicant and her lease was forfeited cannot be compared with such direct State action, since it is the function of the courts to determine disputes between parties, with the inevitable consequence that one party may ultimately be unsuccessful in the litigation in question. It would not appear that the mere fact that an individual was the unsuccessful party to private litigation concerning his tenancy arrangements with a private landlord could be sufficient to engage State responsibility for an alleged violation of Article 1 of Protocol No. 1. Hence, the respondent Government were not required under this provision to take further measures to secure the applicant's peaceful enjoyment of her possessions.

It follows that in this case the Commission finds that the outcome of the proceedings in which the applicant was involved, which resulted in the forfeiture of her lease did not give rise to a violation of the rights protected by Article 1 of Protocol No. 1. Her complaint is to this extent manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 of the Convention.

2. The applicant also invokes Article 8 of the Convention in respect of the forfeiture of her lease. She contends that her eviction from her home constitutes an unjustified interference with the right to respect for her home protected by Article 8. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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 national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

However, the Commission notes that it has already found that Article 1 of Protocol No. 1 does not require the State to take further measures to prevent an interference with the applicant's rights. The substance of the applicant's complaint under Article 8 of the Convention is the same, but the Commission finds that any interference with the applicant's right to respect for her home which the forfeiture of her lease engendered was in conformity with Article 8 para. 2 as a measure which was in accordance with the law and necessary in a democratic society "for the protection of the rights of others". This aspect of her complaint is therefore manifestly ill-founded within the meaning of Article 27 para. 2 thereof.

3. The applicant further invokes Article 6 of the Convention and complains that she was denied access to court since, following the service of the possession order and the forfeiture of her lease, there was no jurisdiction in the County Court for her to claim relief from forfeiture, whereas such jurisdiction would have existed in the High Court under Section 210 of the Common Law Procedure Act 1852.

The dispute between the applicant and her landlord as to her obligations under the lease, and the question as to whether or not it should be ordered forfeit, involved the determination of her civil rights and obligations. Accordingly, Article 6 para. 1 of the Convention guarantees to the applicant the right to a fair hearing before an independent and impartial tribunal in accordance with the law.

It appears that the applicant had an opportunity for such a hearing before the County Court and she does not contest the fairness of those proceedings. The applicant complains at the absence of a superior review jurisdiction, but Article 6 para. 1 of the Convention cannot be interpreted to require the existence of a further jurisdiction to review or expand upon the jurisdiction provided by an inferior court, where that first court is capable of determining all questions of fact and law.

It appears that the County Court was capable of determining all questions of fact and law relating to the applicant's dispute with her landlord and in these circumstances this aspect of her complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. The applicant further invokes Article 14 of the Convention and alleges that she has been the victim of arbitrary and unjustified discrimination in the enjoyment of her rights under the Convention, and in particular those under Article 1 of Protocol No. 1 and Articles 6, 8 and 13 of the Convention.

The applicant complains that this discrimination lies in the difference in treatment between litigants in the County Court and litigants in the High Court, in view of the restriction on the availability of a remedy against forfeiture in the County Court once a possession order has been made and a lease forfeited.

The difference in circumstances about which the applicant complains arises from the different procedures which are followed by the High Court and the County Court in proceedings concerning forfeiture of leases. Hence Section 191(1)(c) of the 1959 Act bars a tenant, against whom a possession order has been implemented, from all relief, whereas Section 210 of the Common Law Procedure Act 1852 entitles tenants who have lost possession as a result of an order made by the High Court to apply for relief against forfeiture for a limited period. However, Section 23 of the Administration of Justice Act 1965 enlarged the rights already contained in Section 191 of the 1959 Act for a tenant against whom proceedings are taken in the County Court for forfeiture of a lease to apply for further time for payment of the due rent prior to the implementation of a possession order.

The Commission finds in these circumstances, that the difference arising between proceedings in the High Court and proceedings in the County Court reflects the limited jurisdiction of the County Court, and the unlimited jurisdiction of the High Court. Furthermore, proceedings in the County Court are designed with an eye to greater simplicity than those in the High Court, with a resultant reduction in costs and complexity. It appears that the provisions of Section 191(1)(c) of the 1959 Act reflect this goal by ensuring the finality of the decision of the County Court, subject only to appeal to the Court of Appeal.

In these circumstances, the Commission finds that the difference in treatment about which the applicant complains pursues a legitimate aim and is not so disproportionate in its results as to give rise to a violation of Article 14 of the Convention. It follows that this aspect of the applicant's complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

5. The applicant further invokes Article 13 of the Convention and complains that she has not been afforded an effective remedy before a national authority in respect of her claims of violations of her rights under the Articles of the Convention and Protocol No. 1 referred to above. However, the Commission has already found that the applicant had available to her a court remedy as required by Article 6 para. 1 of the Convention in respect of her dispute with her landlord, and the question whether she should be granted relief from forfeiture, notwithstanding that the proceedings against her for non-payment of rent were conducted in the County Court.

However, in accordance with the Commission's established case-law, Article 6 para. 1 of the Convention provides a more rigorous procedural guarantee than Article 13 of the Convention and therefore operates as a *lex specialis* with regard to a civil right, to the exclusion of the more general provisions of Article 13 of the Convention.

It follows that this aspect of her complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.