AS TO THE ADMISSIBILITY OF

Application No. 15434/89
by Agis ANTONIADES
against the United Kingdom

The European Commission of Human Rights sitting in private on 15 February 1990, the following members being present:

MM. C.A. NØRGAARD, President
E. BUSUTTIL
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 1 June 1989 by Agis ANTONIADES against the United Kingdom and registered on 5 September 1989 under file No. 15434/89;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1927. Until his retirement he was involved in property business. The facts as submitted by the applicant may be summarised as follows.

On 9 February 1985 the applicant let to a young man and a young woman the top flat of a house owned by him. The letting was expressed to be by way of two licences, that is, agreements giving neither one occupant nor the other exclusive possession of the flat. The aim of granting the licences was to avoid the impact of the Rent Acts, which give a measure of rent control and security of tenure to tenants. The practice of granting such licences had been accepted by the Court of Appeal in Somma v. Hazlehurst [1978] I WLR 1014, and the licences were based on the licences in that case.

Some months after the landlord and the occupants signed their agreements, the House of Lords, expressly disapproving Somma v. Hazlehurst, held that the true legal nature of a transaction is not to be altered by the description the parties choose to give it and that the Court should be astute to detect and frustrate "sham devices and artificial transactions whose only object is to disguise the grant of a tenancy and to evade the Rent Acts" (Street v. Mountford [1985] AC 809).

In the County Court, the judge found, following Street v.

Mountford, that the occupants were in fact tenants, and not licensees, such that the Rent Acts applied. The Court of Appeal, in its judgment of 17 March 1988, disagreed with the judge and found for the applicant, holding that the intention of the parties was, in fact, not to create a tenancy and that the agreements were not a "sham" but were valid.

The House of Lords, in its judgment of 10 November 1988 on consolidated appeals, found that the licence agreements signed by the occupants stood or fell together. It was the intention that the occupants should have joint and exclusive possession of the flat, and they thus became tenants, not licensees. The House found various technical devices in the agreements (such as the reservation of power for the applicant to share the flat with the occupants, and a provision that the occupants should forfeit their right to occupy the flat if "their double-bedded romance blossomed into wedding bells") not to have been seriously intended.

At the end of his speech, Lord Templeman concluded:

"My Lords, in each of the cases which were disapproved by this House in Street v. Mountford, and in the [present appeal], there was, in my opinion, the grant of a joint tenancy for the following reasons:

(1) The applicants for the flat applied to rent the flat jointly and to enjoy exclusive occupation.

(2) The landlord allowed the applicants jointly to enjoy exclusive occupation and accepted rent. A tenancy was created.

(3) The power reserved to the landlord to deprive the applicants of exclusive occupation was inconsistent with the provisions of the Rent Acts.

(4) Moreover in all the circumstances the power which the landlord insisted upon to deprive the applicants of exclusive occupation was a pretence only intended to deprive the applicants of the protection of the Rent Acts."

The judgment of the judge of first instance was restored.

As a result of the judgment of the House of Lords, the occupants of the flat, now Rent Act protected tenants, applied to the Rent Office for a "fair rent".

The rent registered was £90.00 per month plus rates of some £45 per month for the flat compared with the contractual licence fee of £87 per month for each of the occupants (rates included).

COMPLAINTS

The applicant alleges a violation of Article 1 of Protocol No. 1 to the Convention. He contends that the rent which he can now receive bears no relation either to the market letting value of the flat or to the capital investment involved. Further, he contends that the uncertainty of the law, which resulted in his entering into an agreement of a type which had been considered valid by the Court of Appeal on many occasions, itself caused him enormous expense in that now, apart from the loss of income on the flat and his inability to recover possession of it, he is required to pay the costs of the domestic proceedings.

THE LAW

1. The applicant alleges a violation of Article 1 of Protocol

No. 1 (P1-1) to the Convention by virtue of the House of Lords' judgment of 10 November 1988, which provided that the agreements by which the applicant let his flat constituted a Rent Act protected tenancy and not mere licences.

"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 Commission recalls that Article 1 (Art. 1) comprises three distinct rules. The first rule, which is of a general nature, announces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the High Contracting Parties 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; it is contained in the second paragraph (cf. Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p. 24, para. 61; James and Others judgment of 21 February 1986, Series A no. 98, p. 29, para. 37).

The three rules are not, however, "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 and should therefore be construed in the light of the general principle enunciated in the first rule (James and Others judgment, ibidem, p. 30, para. 37).

The Commission finds that the clarification of legal status of the occupation of the applicant's flat did not constitute a deprivation of possessions. It cannot be said that the rights of the applicant as stipulated in the agreements (principally to repossess the flat, but also to the licence fee) constituted individual rights enjoying, in their own right, the protection awarded to possessions.

The effect of the House of Lords' finding in the applicant's case was that devices such as those employed by him were, and should always have been seen as, invalid attempts to avoid the Rent Acts. Such a finding could be seen as a factual finding that the legislation at issue applied to the present circumstances. In such a case, there would be no question of an interference with the applicant's property rights, as the courts merely declared the true meaning of the agreements entered into. However, the Commission is not required to decide this question as, even if it is accepted that the applicant's use of his property was "controlled" by the fact that the case-law changed during the currency of the "licences", the application is in any event manifestly ill-founded for the following reasons.

The rent legislation at issue pursues a legitimate aim of social policy in that it seeks to protect the interests of tenants in a situation of a shortage of expensive housing (Kilbourn v. the United Kingdom (No. 10991/84, Dec. 16.5.85, unpublished)).

As to the proportionality of the interference, the Commission notes that the reduction in rent was not particularly striking (from £174 per month for the flat, including rates of some £45 per month, to £90 per month plus the rates, i.e. £135). As to the

capital depreciation of the flat, the applicant's principal complaint, the Commission accepts that as a result of the decision of the House of Lords, the applicant was unable to sell his flat with vacant possession on the open market as he was effectively prevented from repossessing it. However, the agreement entered into by the applicant must be regarded in the light of a long history of attempts on the part of landlords to avoid the operation of the Rent Acts. If the applicant had taken appropriate advice, he may well have been told, even before the House of Lords decision in Street v. Mountford, that there was no certainty that Somma v. Hazlehurst would remain good law indefinitely. The applicant must therefore be regarded as having accepted a certain risk when entering into his agreements. In the circumstances of the present case, the Commission finds that, even if there was a control of use, bearing in mind the wide margin of appreciation afforded to States in determining the existence of social problems and ways for remedying them, the control of use was proportionate to the legitimate aim, and may therefore be deemed necessary.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant claims that his having to pay all the costs of the domestic proceedings following uncertainty in the law is itself a violation of Article 1 of Protocol No. 1 (P1-1).

The principle that costs follow the event is, as such, reasonable. In particular, it may act as a disincentive to unnecessary litigation and provides that at least some of a successful litigant's costs may be recovered. The Commission has previously found that costs imposed were "contributions" within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1) (No. 7909/74, Dec. 12.10.78, D.R. 15 p. 160) and it notes that the imposition of costs in the present case will have been based on the Rules of the Supreme Court (RSC Ord 62 relates to the court's discretionary power to award costs). The imposition of costs may here reasonably be regarded as "necessary", notwithstanding the unfortunate fact that the applicant in the end had to pay costs for three levels of jurisdiction.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)