AS TO THE ADMISSIBILITY OF

Application No. 24492/94
by Spira GRECH
against Malta

The European Commission of Human Rights (First Chamber) sitting in private on 28 June 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

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 28 March 1994 by Spira GRECH against Malta and registered on 29 June 1994 under file No. 24492/94;

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 facts as submitted by the applicant may be summarised as follows.

The applicant is a Maltese citizen, born in 1919 and is resident in San Gwann, Malta. She is represented before the Commission by Dr. Joseph Brincat, an advocate practising in Valletta.

A. Particular circumstances of the case.

The applicant was the owner of a vacant plot of land in front of the parish church in the centre of San Gwann ("the property").

In 1961 a declaration was made by the Governor (the representative in Malta of the Queen, the then Head of State) that the property was required for a public purpose.

By contract dated 21 May 1980 the Government acquired the property and paid compensation of Lm 4312

The contract was signed by an "ex officio" representative on the applicant's behalf because she refused to sign the contract.

On 2 February 1990 the Commissioner of Lands published a legal notice in the Government Gazette to the effect that he was ready to receive tenders in relation to the property "excluding use of the property for residential/domestic or for commercial purposes".

The applicant was of the opinion that the terms of the legal notice purposely excluded her from applying to purchase the property back and that the notice, being clearly not issued with any public interest in mind, implied that the property had not been acquired in 1980 for a public purpose. Therefore she took proceedings against the Prime Minister and the Commissioner of Lands in the First Hall Civil Court requesting a declaration that the compulsory acquisition of the property was in violation of Article 1 Protocol No. 1, for the rescission of the 1980 contract and for compensation. The respondent argued that, pursuant to Article 7 of Act XIV of 1987 (namely, the European Convention Act which incorporated the Convention into domestic law), the applicant could not argue a violation of Article 1 Protocol No. 1 to the Convention in relation to an act which took place before 30 April 1987, that the action was premature as the applicant had not utilised all ordinary remedies, that the applicant had no legal interest authorising her to interfere with the utilisation of the property and that the property was, in fact, going to be used for a public purpose.

It was established during the court proceedings that part of the property had already been sold to a private band club.

On 31 May 1993 the court delivered its judgment. As regards the applicant's claim that the 1990 legal notice and the subsequent sale implied a private purpose behind the 1980 transaction, the court found that even if the applicant could show that the 1980 transaction did not have a public purpose she could not rely on Article 1 Protocol No. 1 in relation to the 1980 contract because of Article 7 of Act XIV of 1987. The court also found that the Government became the absolute owner of the property in 1980 and therefore the applicant could not rely on Article 1 Protocol No. 1 to challenge the 1990 legal notice or the subsequent sale of the property as she had no proprietary interest in the land in 1990.

The applicant appealed to the Constitutional Court claiming, inter alia, that the 1961 declaration, the 1980 contract, the 1990 legal notice and the subsequent sale of the property must be considered as a whole, that the violation must not only be considered to have occurred at the time the contract was concluded in 1980 but also in 1990 and that the private nature of the 1990 legal notice and the subsequent sale implied that the 1980 contract was not concluded for a public purpose.

By judgment dated 10 November 1993 the Constitutional Court dismissed the applicant's appeal. The court found, inter alia, that the public purpose requirement of Article 3 of Chapter 88 of the Laws of Malta was satisfied in 1961 when the Governor's declaration issued and that that requirement persisted at least up until 1980 when the contract was concluded and the applicant was effectively dispossessed of the property. While the court accepted the private nature of the 1990 legal notice and the subsequent sale, this did not mean that a valid public purpose did not lie behind the declaration in 1961 nor the acquisition in 1980. In view of Article 7 of Act XIV of 1987 the applicant did not have the protection of Article 1 Protocol No. 1 of the Convention from 1961 to 30 April 1987 and she had no proprietary interest in the property thereafter. The appeal was dismissed.

The Constitutional Court did not award costs to the Government in light of the conduct of the Government which, according to the Constitutional Court, had deviated from the public purpose to the private interest in the use of property forcefully acquired without due consideration of the interests of the original private owner.

B. Relevant domestic law and practice.

Article 4 of Act XIV of 1987 (the European Convention Act) sets down the procedure for the enforcement in domestic courts of the rights guaranteed by the Convention. Article 7 of that Act states that no contravention of the Convention committed before the 30 April 1987 shall give rise to an action in the domestic courts under Article 4 of Act XIV of 1987.

Article 3 of Chapter 88 of the Laws of Malta (Land Acquisition (Public Purpose) Ordinance) states that property can only be compulsorily acquired from individuals for a "public purpose". In addition, the state must pay compensation. It is provided by Article 7 of Chapter 88 that the public authority may deal with and dispose of land acquired by it in such a manner and subject to such conditions as it considers expedient having regard to the public interest or utility.

COMPLAINTS

The applicant complains under Article 1 Protocol No. 1 of the Convention in relation to the compulsory acquisition of the property, submitting, inter alia, that the acquisition was not in accordance with domestic law or in the public interest as required by Article 1 Protocol No. 1.

THE LAW

The applicant complains about the compulsory acquisition of property she owned in violation of Article 1 of Protocol No. 1 (P1-1).

Articles 25 (Art. 25) and 26 (Art. 26) of the Convention

The Commission notes that, pursuant to Article 7 of Act XIV of 1987, the applicant could not invoke any Convention rights before the domestic courts in relation to facts which occurred prior to 30 April 1987. As to the Commission's competence in relation to such facts, the Commission recalls that the instrument of ratification of Protocol No. 1 (P1) to the Convention was deposited on 23 January 1967 and the right of individual petition in relation to that Protocol (P1) was recognised as and from 1 May 1987. The Government, when recognising the right of individual petition in relation to Protocol No. 1 (P1), did not include an express limitation defining the past temporal scope of the right of individual petition in respect of petitions under this Protocol (P1).

In the absence of such an express statement, the Commission considers that it has the jurisdiction ratione temporis to consider the applicant's complaints insofar as they relate to facts occurring after 23 January 1967 (cf. No. 13057/87, Dec. 15.3.89, D.R. 60 p. 243).

However, insofar as the applicant complains about the effect of the 1961 declaration on her possession of the property between 1967 and 1980, such a complaint has not been made within the time allowed under Article 26 (Art. 26) of the Convention, the six-month period running from 1980 being the end of the effect of the declaration in question (No. 9587/81, Dec. 13.12.82, D.R. 29 p. 228). Therefore, any such complaint must be declared inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

Furthermore, insofar as the applicant complains under Article 1 Protocol No. 1 (P1-1) in relation to the 1990 legal notice and the subsequent sale of the property, the Commission has examined whether the applicant had any subsisting proprietary rights in the property at that time.

The Commission notes that the 1980 contract transferred the

applicant's legal title in the property to the Government in exchange for compensation. The Constitutional Court found that the applicant was conclusively dispossessed of her property by contract dated 21 May 1980. However, the applicant refers in her application to the fact that in February 1990 she was not requested to declare that she was willing to buy back the property and that she was never offered the "right of first refusal" in relation to the sale of the property after February 1990, both of which procedures, according to the applicant, are applicable to the re-transfer of property compulsorily acquired by the Government.

However, even assuming that these alleged rights of the applicant could amount to residual proprietary rights of which she was deprived in 1990, the Commission notes that the applicant did not raise the question of the deprivation of any such rights in the domestic courts.

The Commission therefore considers that any complaint of the applicant, under Article 1 Protocol No. 1 (P1-1) about a deprivation of any residual property rights in and subsequent to 1990, must be declared inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention on grounds of a failure to exhaust domestic remedies as required by Article 26 (Art. 26) of the Convention.

For the above reasons the Commission has considered below the applicant's complaints under Article 1 Protocol No. 1 (P1-1) only insofar as they relate to the 1980 contract. As the Constitutional Court dealt with these complaints in a substantive manner, despite the lapse in time, the proceedings before the Constitutional Court constituted an effective remedy and the applicant must be deemed to have introduced her application within the prescribed period of six months from the date of the delivery of the final judgment of that court.

Article 1 Protocol No. 1 (P1-1)

The relevant provisions of this Article (P1-1) read as follows:

> "Every ... 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 ...".

The Commission recalls that, in the circumstances of the present case, it must inquire into whether the applicant was deprived of the property and whether that deprivation was in the public interest and in accordance with the conditions provided for by law.

1. Deprivation of the property

As noted above, the 1980 contract transferred the applicant's legal title in the property to the Government in exchange for compensation and the Constitutional Court found that the applicant was conclusively dispossessed of her property by contract dated 21 May 1980. The Commission considers that the 1980 contract constituted a deprivation of the property within the meaning of Article 1 Protocol No. 1 (P1-1).

2. Public interest

In this respect, the applicant argues that the Commission must consider the events of 1961, 1980, February 1990 and the subsequent sale of the property as a whole, that the "public interest" element must subsist throughout this period and submits that, in any case, the events of February 1990 and after demonstrate that the 1980 contract was not in accordance with the public interest.

The Commission notes that the property was a vacant plot in front

of the parish Church, which area, according to the applicant, is situated in the central point of the town of San Gwann. The Commission finds nothing in the evidence submitted by the applicant to indicate that, the Governor's declaration made in 1961 and the 1980 contract, were not directed in the public interest and does not accept the applicant's argument that the recognised private nature of the 1990 legal notice and subsequent sale of the property implies that the purpose of the 1961 declaration and the 1980 contract was private.

The Commission therefore concludes that the deprivation of the applicant's property in 1980 was in accordance with the public interest within the meaning of Article 1 Protocol No. 1 (P1-1).

3. Proportionality of the deprivation

The Commission recalls that not only must the aim of the deprivation of property be the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (cf., for example, Eur. Court H.R. Holy Monasteries judgment of 9 December 1994, to be published in Series A no. 301-A, para. 70). This implies that a fair balance must be struck between the demands of the general interests of the community and the requirement to protect the individual's fundamental rights, which balance would not be found if the individual was found to have borne an excessive burden (cf. Eur. Court H.R., Sporrong and Lönnroth judgement of 23 September 1982, Series A no. 52, pp. 26-28, paras. 69-73).

In this respect, the Commission notes that the applicant submits that the compensation she received was approximately one quarter of the current market value of the property. Insofar as the applicant makes this claim in the context of the proportionality of the deprivation, the Commission notes that the applicant has not substantiated her assertion in this regard with any expert or independent evidence as to the prevailing market values. The Commission, having considered the arguments and documents submitted by the applicant, does not find any evidence to demonstrate that the deprivation of the applicant's property in 1980 was disproportionate to the aim set out to be achieved.

4. Subject to the conditions provided for by law

In this respect the applicant submits that the compulsory acquisition of the property was not in accordance with the provisions of Chapter 88 of the Laws of Malta (Land Acquisition (Public Purpose) Ordinance) which requires that the compulsory acquisition of property must be for a "public purpose" and that the subsequent dealing with and disposal of the property by the Government must be carried out "having regard to the public interest or utility". She also argues that the legal notice of February 1990 and the subsequent sale of the property were not completed in the public interest, that this implies the 1980 contract was not completed for a public purpose and that therefore the 1980 contract was not completed in accordance with the domestic law.

The Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention and with its constant case-law, its only task is to ensure the observance of the obligations undertaken by the parties to the Convention and, in particular, it is not competent to deal with any application which may allege that errors of law or fact have been committed by the domestic courts, except where it considers that such errors might have involved a possible violation of the Convention (cf., for example, No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

The Commission notes that the Constitutional Court, despite the submissions of the applicant similar to those made before the Commission, found that the declaration made in 1961 by the Governor and

the contract concluded in 1980 were both completed for a public purpose. That court also found that the publication of the advertisement in the Government Gazette in February 1990 did not qualify as an act done in the public interest but that this fact could not detract from the public purpose of the actions taken in 1961 and 1980.

The Commission has considered the arguments advanced and documents submitted by the applicant. The Commission finds no evidence that would warrant a review by the Commission of the conclusion of the Constitutional Court as to the public purpose of, and thus the compliance with domestic law by, the 1980 contract.

However, the Commission also recalls that the term "law" in the Convention refers not only to compliance with the domestic law but also to the quality of that law requiring it to be compatible with the rule of law so that, inter alia, the law in question must not be arbitrary (cf. Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 41, para. 67). The Commission, having examined the applicant's submissions, finds no evidence that the acquisition by the Government of the applicant's property in 1980 pursuant to Chapter 88 of the Laws of Malta was arbitrary in its effect.

For the above reasons the Commission concludes that the requirements of the phrase in Article 1 Protocol No. 1 (P1-1) "subject to the conditions provided for by law" were satisfied in the circumstances of the present case.

The Commission, for the above reasons, finds the complaint of the applicant manifestly ill-founded and must declare the application inadmissible pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the First Chamber — President of the First Chamber

(M. F. BUQUICCHIO) — (C. L. ROZAKIS)