AS TO THE ADMISSIBILITY OF

Applications Nos. 18592/91 and 18593/91
by Ikechukwu Ifoloma ORAKPO
against the United Kingdom

The European Commission of Human Rights (Second Chamber) sitting in private on 31 March 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. J.-C. GEUS
M. NOWICKI

Mr. K. ROGGE, Secretary to the Second Chamber

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

Having regard to the applications introduced on 1 May 1991 by Ikechukwu Ifoloma ORAKPO against the United Kingdom and registered on 25 July 1991 under file Nos. 18592/91 and 18593/91;

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 British citizen born in 1935. He lives in London. The present case relates to two interrelated matters, one concerning a compulsory purchase order (Application No. 18592/91) and one concerning a control order (Application No. 18593/91). The facts of the two applications, as submitted by the applicant, may be summarised as follows.

On 4 November 1985 the Wandsworth London Borough Council ("the Council") made a control order against a building owned by the applicant. A control order is a measure which vests management of a building in a local authority for a limited period of time. Ownership is not affected, and any income from the building continues to accrue to the owner after various expenses and costs incurred in repair work and the like have been met. The order vested management of the building in the Council for a period of five years.

On 27 November 1985 the Council made a Compulsory Purchase Order on the premises. The Compulsory Purchase Order was made under Section 17 of Part 2 of the Housing Act 1985, which entitles a local housing authority to "acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the house or buildings".

On 28 April 1988, the Compulsory Purchase Order was quashed

because the Secretary of State accepted that the applicant should have been granted an adjournment in the prior proceedings. A second Compulsory Purchase Order was made on 1 July 1988. In its reasons it included the following paragraphs:

> "6. The Council will continue to carry out necessary or minor works to this property under the Control Order which would not require planning permission, but if the [Compulsory Purchase] Order is confirmed the property will be sold to the Threshold Single Persons Housing Association who have obtained a planning permission and intend to convert the property into four self-contained flats while putting the property into a thorough state of repair. Their proposals have been agreed with the tenants, who would be granted tenancies in the converted property.
>
> 7. The Council considers that both a quantitative and a qualitative housing gain would be best achieved [and is most unlikely otherwise to be achieved] by the compulsory acquisition of this property and its immediate transfer to the Threshold Single Persons Housing Association."

The applicant appealed against the Control Order to the County Court. His appeal was dismissed on 7 November 1989. The applicant also appealed against the Compulsory Purchase Order by way of application for the confirmation of the Compulsory Purchase Order to be quashed. Mr. Justice Otten gave his decision in respect of the Compulsory Purchase Order on 4 April 1990.

On 12 October 1990 the Court of Appeal gave its judgment in the applicant's appeal against the decision of Mr Justice Otten to confirm the Compulsory Purchase Order. The Court of Appeal held, inter alia, as follows:

> "It is common ground that between October 1979 and June 1985 Wandsworth London Borough Council served on Mr. Orakpo in total 23 notices relating to the house under a variety of statutory provisions. According to Otten J., after being granted some indulgence to enable him to complete the works in conformity with those notices, by and large Mr. Orakpo succeeded in doing so. However, he had not done so wholly to the satisfaction of the London Borough Council, and indeed some of the works the borough council had itself carried out.
> ...
> It is apparent that at the time when the matter came before Skinner J. [1985] the council had under consideration the making of a compulsory purchase order.
> ...
> A control order comes into force as soon as it is made, and the authority are then both empowered, and indeed obliged, by the statute to enter on the premises and take such immediate steps as appear to be required to protect the safety, welfare or health of people living in the house.
> ...
> Mr. Seaward, for Mr. Orakpo, has advanced with force - and, if I may say so, very considerable skill, considering that, as I understand it, he was only seized of this matter at a relatively late stage - an argument that, on the proper interpretation of the provisions of the Housing Act 1985 there was no power to make or to confirm a compulsory purchase order after the expiration of the 28 day period after the making of the control order. Alternatively, as a result of the making of the control order the housing gain that could have been achieved could have been achieved under the control order and by allowing the house to revert to Mr. Orakpo and thus the compulsory purchase order was unnecessary. That is his principal argument.
> ...
> I have already said that I shall have to come to the fundamental

point whether the compulsory purchase order was dealing with a matter separate from the control order. But, given that it was, then, in my view, the inspector was entirely justified. It was a matter for him to reach conclusions about the past history and the responsibility for the partial lack of repair of this property at the time when the control order was made, and he was entitled to base upon those conclusions the exercise of his discretion not to grant an adjournment. Mr. Seaward, of course, properly concedes that we could only say, and Otton J. could only have said, that that exercise of discretion was wrong if it was, to use a phrase to which we still all cling lovingly, Wednesbury unreasonable, perverse. In my view, it was in no sense perverse or Wednesbury unreasonable. There was material, and ample material upon which that decision could properly be based.
...
I come then to what really is the central issue in this case. Mr. Seaward's argument that, first of all, the wording of the 1985 Act, particularly the wording of section 394 (which I repeat) -

> 'Further provisions as to matters arising on the cessation of a control order are contained in Parts III and IV of Schedule 13 -
> Part III relates to the cessation of control orders generally, and
> Part IV provides for the case where a control order is followed by a compulsory purchase order'

lead to the conclusion that a compulsory purchase order may only be made under Part II of the 1985 Act after a control order if it be made under the provisions of Part IV of Schedule 13.

It is perfectly right that the last few words of section 394 refer to the case where a control order is followed by a compulsory purchase order. But the words do not say in terms or even suggest that there is no other circumstance in which a compulsory purchase order can be made. It is dealing with a particular set of provisions which relate to a situation in which within the boundaries of Part IV of Schedule 13 a compulsory purchase order is made after the making of a control order.
...
I found, if I may say so, Mr. Seaward's argument under this head very attractive. The Act does not say that these are the only provisions under which a compulsory purchase order may be made. But they do appear to envisage that in the ordinary way at least, if a compulsory purchase order is to follow a control order, the council will normally make its order under the Schedule 13, Para IV, provisions within 28 days. But I have concluded that those provisions are not exclusive. One can well see that if a council decides that it should as a matter of urgency make a control order so that it can immediately obtain possession of the premises and carry out necessary works of repair but that it is desirable also to do something more in order to secure housing gain, then virtually simultaneously it can both make a control order and a compulsory purchase order and, if it does, then the schedule 13 provisions apply. But I see no valid reason why a council should not make a control order, follow it through, and then some time later, on material that then seems to it to be valid, seek to achieve a housing gain by making the compulsory purchase order in respect of the same property. Of course, it will have had to have made a management scheme by that time and of course it will face the difficulty that the land owner may very well say, with a good deal of justification 'Well, now you have repaired the property and put it in good condition, I would be very happy to take the house back and do myself exactly what you intend', and it would then be for the council to show, if it

could, that his proposition was either impracticable or unlikely to come about. It may be that in many cases a council that seeks to make a compulsory purchase order after a lapse of time will find it more difficult in proving what it has to prove. But that it does not have the power to make such an order I for my part do not accept.

That brings me to the second general proposition which is that, quite apart from the provisions of Schedule 13, effectively the control order gives and gave this council all the powers it needed to carry out the works necessary to achieve what it wanted to achieve in the second compulsory purchase order. In other words, the making of the second compulsory purchase order was unnecessary, unjustified and thus should never have been made or confirmed.

...

Mr. Ter Haar submits, and I agree with him, that although a control order requires a local authority to carry out the works necessary to put the property in a condition where it does not suffer from the defects which lay behind the making of the order, and authorises it generally in section 381 to do what a person having an estate or interest in the premises would do not but for the making of the order, nevertheless the totality of the statutory provisions do not entitle a local authority under a control order to do works the purpose of which is to provide more accommodation for more people in the property or better accommodation for people in the property. It provides, broadly, that the property can be put into proper condition for those already there or for a lesser number, if that is necessary, in order to make them fit for proper occupation. But it does not empower any works to be carried out which would have the object of permitting it to be occupied by more people than are there at the time when a control order is made.

...

...if a quantitative or qualitative housing gain is to be achieved, that cannot be done solely by the making of a control order. If it is the view of the council, genuinely held and proved to be correct, that it is unlikely to be achieved if the property remains in the ownership of its existing owner, then that is the foundation for the making of a compulsory purchase order. ..."

On 31 October 1990 the Court of Appeal gave its judgment on the applicant's appeal against the decision of the Wandsworth County Court of 7 November 1989. In its judgment, the Court of Appeal held, inter alia, as follows:

"... the applicant's failure to win that appeal [against the control order] would at first sight render the result of this appeal somewhat academic, but we have been assured that if he succeeds in this appeal in showing that the control order was invalid he will have claims for loss and expenses which he will seek to enforce against the council.

...

In the autumn of the year the appellant purchased the property [1974] the council served upon him the first of a long series of notices requiring works to be carried out under their various statutory powers. On 15 October notices were served under section 39 of the Public Health Act 1936 for defective guttering and drainage, and under section 26 of the Public Health Act 1961 requiring the roofs at the front and back of the house to be made water-tight. The appellant did not comply with either notice. In due course the necessary work was carried out by the council exercising their powers in default by the landlord.

There followed in the next five years up to the making of the control order no less than 21 further notices under various

Acts requiring work to be done of which only three were ever complied with by the appellant. On another three work remained outstanding when the control order was made. The remainder all had to be carried out by the respondents under their enforcement powers. There is legally due by the appellant to the council for that work over £5,000 still outstanding. No monies have ever been paid to them. Further, the appellant was convicted twice for offences arising from breaches of the management regulations which applied to the house under the management order.

All this clearly led to a feeling of resentment in the appellant and accusations of mala fides made by him against the officers of the council which were at the trial rejected by the judge and have not been pursued on this appeal.

I now turn to the substance of the matters under appeal. On his appeal to Judge White the appellant (who then was acting in person) took, amongst others, the following points:

> (1) That the state of the premises did not justify the making of the control order;
>
> (2) That the order was not necessary to protect the safety, health and welfare of the persons living in the house;
>
> (3) That in making the control order before the time limits for the completion of the works comprised in his undertakings to the court had expired, the council acted unfairly and in bad faith and in contravention of the court's order; and, further, were in breach of contract;
>
> (4) That the council was in any event estopped in equity from enforcing the control order; and
>
> (5) That he had a legitimate expectation that the council would do nothing to prevent him from complying with the undertakings he had given to the court.

The latter point embraced unfairness and natural justice in the same concept.

The judge rejected these submissions and made important findings which I will summarise.

In dealing with the attitude of fairness the judge had no hesitation in rejecting the appellant's allegation that there was a deliberate vendetta against him or that the officers of the council were acting other than in a perfectly bona fide manner, and I quote from page 42:

> 'I have no hesitation in finding whether in error or not the decision was based on reasoning which was bona fide held by the (council's) officers responsible at the time.'

Mr. Seaward, rightly, has not sought to challenge that finding. The judge made a further finding in relation to Section 73 of the 1964 Act, namely that the living conditions within the house were such that it was necessary to make a control order in order to protect the safety, welfare and health of the persons living in the house. That finding is challenged by Mr. Seaward.

[The judge at first instance said]

> 'There is considerable force at first sight in this submission but it has at the end of the day to be taken in the perspective of the overall situation that had

developed.

> Considerable care was needed and had not been exercised by the appellant's workman in making the roof covering watertight when they had last left the site before the 1st November. It was not simply a question of adjusting a brick used as a weight but of properly fixing the sheeting on to the battening so that it would not be dislodged in the wind and would be watertight where it abutted on to the surrounding walls. Clearly, also the down pipe should not have been left to direct water into the void as seen in photograph 2(1)A. The appellant himself accepts that if the sheeting and down pipe was left as shown in the photograph on the 1st November, which I find that it was, there is plainly evidence of lack of diligence in the carrying out of such work as had been put in hand before him. In simple terms it was careless and/or bad workmanship.
>
> To the [council] the lack of care in ensuing the roof was watertight was the last straw - I use the appellant's phrase in the cross-examination of Mr. Copeland - but it was a straw of substance and it was added to by an already heavy bale namely the long history of delay, incompetence and inadequacy in dealing with the disrepair of this house.
>
> The appellant has said that if he had not been stopped on the 4th November the structural work would have been completed by the 14th November and he could then have moved on to carry out the 9(1A) and Schedule 24 works as had been agreed. His proposed programme for the structural works was set out in his affidavit sworn on the 7th July 1985 (3/117). The [council] accept that they cannot prove that the work could not have been completed on time but their case simply is that they concluded by the 4th November - or were entitled to conclude on the history of this matter - that quite apart from the immediate hazard there was a real risk of further delay or problems developing of the nature so often encountered if they did not there and then take the control of the property the Order would give them. I am satisfied that this assessment of the situation made by the [council's] senior officers concerned was fully justified. Not only was there the immediacy of the risk caused by the careless fitting of the bay roof covering but the substantial prospect of a continuing failure by the appellant to remedy the living conditions which have affected the safety, welfare and health of the occupants with the urgency and competence which was required. I am satisfied that it was necessary for the Order to be made.'

I pause there to make the comment that in his submissions, which he made very ably, Mr. Seaward accepted that unless he could attack that finding made by the judge his appeal really could not succeed, and he attacked it on the basis of concentrating on the extra works that had become necessary over the weekend of 1st and 4th November. He submitted that the fact that Mr. Copeland was quite happy not to do anything immediately on the Friday but was content to leave it till the Monday would give the lie to any suggestion of immediate urgency requiring peremptory exercise of the powers to make a control order and that the rectification was a matter of simplicity and, as the judge rehearsed the points already made by Mr. Orakpo in person, it could so easily have been dealt with either, as it were on the spot, by complaining to Mr. Orakpo or, if he showed the sort of attitude which he did on some occasions in the past, taking him on 48 hours notice back to the court. The judge, in my view, had those matters well in

mind. He weighed them up, and came to the conclusion that it was not merely a matter of putting right the immediate problems which had arisen over that weekend but that those problems had to be taken in the context of the complete history of this matter. The conduct of the appellant over the years and his attitude towards the efforts on the part of the council to discharge their statutory duties in respect of this house of multi-occupancy entitled the council not only to form the view that it was necessary to make the order in order to preserve the safety, health and welfare of the inhabitants but also that, in the judge's view as an objective matter they were entitled so to do.

Mr. Seaward submits that the overall approach of the court and the judge in a case of this kind, the control order being described by him in any event as a Draconian step, is that such step should not be taken unless all other avenues have been explored. I find myself, with regret, unable to follow him in that submission. I think all that is required of the council is to act reasonably and fairly in the exercise of their powers. On the findings made by the judge, which it is impossible to challenge in this court, the council were entitled to act not merely on the immediate necessities arising over the weekend of 1st-4th November but to take those events in the context of the performance by the appellant in the past in relation to work of this kind and the carrying out of undertakings under statutory notice and so forth. I cannot agree that this is such a Draconian step, such as the compulsory acquisition of somebody's property. It is a step that interferes with the enjoyment of his property by the property owner. But the only interference is to insist on proper and efficient management when it is clearly shown that the property owner is not or will not achieve management of that kind, bearing in mind that there are third parties in multi-occupancy premises who are very directly involved. I do not, therefore, feel that this is a case where the council are under a duty otherwise than to act genuinely in conditions which are established where something must be done to protect the health, welfare and safety of the persons living in the building.

The last two grounds on which Mr. Seaward developed I can take together under the general rubric that it was unfair for the council to change horses, as he put it, having decided to give Mr. Orakpo a chance in July and August.

I find that in this case the reasons underlying the judge's assessment of the actions taken by the council that in the whole context of this matter they were entitled to form the conclusion that this work was not going go be done diligently, that it was going to be a repetition of past events, and that in order to secure the safety, health and welfare of the persons living in the house it was necessary to make this order. I am unable to [find] that, in taking that action, the council acting unfairly or in abuse of power."

The applicant was refused leave to appeal to the House of Lords.

On 1 June 1991 the premises vested in the Council.

COMPLAINTS

The applicant complains that the Control Order of 4 November 1985 violated Article 1 of Protocol No. 1 to the Convention in that it did not comply with domestic law. He also alleges a violation of Article 6 para. 1 of the Convention in that an agreement he had entered into with the Council was superseded by the Control Order.

He further considers that the invalidity of the Control Order renders illegal, and therefore in further violation of Article 1 of Protocol No. 1, the subsequent Compulsory Purchase Order, and that the Compulsory Purchase Order was in any event invalid because it, like the Control Order, failed to comply with domestic law.

Finally, the applicant alleges that the fact that the Compulsory Purchase Order appeal was heard before the Control Order appeal violated Article 6 para. 1 of the Convention, and that the United Kingdom courts, in finding against the applicant, discriminated against him in violation of Articles 14 and 6 of the Convention.

THE LAW

1. The Commission finds, given the interrelation between the facts in the present applications, that it is necessary to join the two applications under Rule 35 of its Rules of Procedure.

2. The applicant alleges a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention in that the Control Order made against a building owned by him did not comply with domestic law. Article 1 of Protocol No. 1 (P1-1) provides, so far as relevant, 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 ..."

A control order is a measure which vests management of a building in a local authority for a limited period of time. Ownership is not affected, and any income from the building continues to accrue to the owner after various expenses and costs incurred in repair work and the like have been met. Such an order is therefore a measure "to control the use of property" within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1). The Commission recalls that States enjoy a wide margin of appreciation in striking the balance between the demands of the general interest and the interest of the individual concerned (cf. Eur. Court H.R., AGOSI judgment of 24 October 1986, Series A no.108, p. 18, para. 52). The applicant complains that the control order did not comply with domestic law. However, given the findings of the County Court and the Court of Appeal with regard to the applicant's complaints, the Commission cannot find that the Control Order failed to comply with domestic law and hence with the requirements of the second paragraph of Article 1 of Protocol (P1-1) as to "lawfulness".

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.

3. The applicant also alleges that an agreement he had entered into with the Council was superseded by the Control Order. He alleges a violation of Article 6 (Art. 6) of the Convention in this respect. However, Article 6 (Art. 6) of the Convention relates solely to judicial determinations of civil rights and obligations, and of criminal charges.

The Commission finds that this complaint raises no issues under this provision.

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.

4. The applicant further complains that the Compulsory Purchase Order was invalid, on the one hand because it was tainted by the illegality of the Control Order, and on the other hand because it failed to comply with domestic law. He alleges violation of Article 1 of Protocol No. 1 (P1-1) to the Convention in this respect.

The Commission has already found (at para. 1 above) that the Control Order was not at variance with the requirements of Article 1 of Protocol No. 1 (P1-1) as to "lawfulness". Consequently, the Compulsory Purchase Order cannot be rendered "unlawful" by the "unlawfulness" of the Control Order.

As to the Compulsory Purchase Order itself, the Commission notes that the building, the subject of the Compulsory Purchase Order, vested in the local authority on 1 June 1991. There was therefore a "deprivation of possessions" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1), and the complaint in this respect must be taken to be that the "conditions provided for by law" have not been complied with. The Commission recalls that the phrase "subject to the conditions provided for by law" requires in the first place adequately accessible and sufficiently precise domestic legal provisions. It also refers to more than domestic law (Eur. Court H.R., Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 47, para. 110). The applicant's complaint is directed not to the inadequacy of domestic law but to its not having been properly applied in his case.

The Commission has had regard to the judgments of the High Court and of the Court of Appeal in relation to the Compulsory Purchase Order, but cannot find any indication that domestic law is inadequate or that it was not complied with in a way which could have any impact on Article 1 of Protocol No. 1 (P1-1).

As to the question whether the deprivation in the present case was a measure which was proportionate in all the circumstances of the case - including the interaction with the Control Order - the Commission recalls that in assessing whether a fair balance has been struck between the rights of the individual and the rights of the community in such matters, the availability and amount of compensation will be a significant factor (cf. No. 10825/84, Howard v. the United Kingdom, Dec. 18.10.85, D.R. 52 p.198 at p. 206). To date, the applicant has not instituted proceedings for compensation. Accordingly, the Commission is not able to consider this aspect of the case.

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

5. The applicant complains that the appeal in connection with the Compulsory Purchase Order was decided before that of the Control Order, whereas the order should have been reversed. He alleges a violation of Article 6 para. 1 (Art. 6-1) of the Convention in this respect, and also alleges a violation of Articles 6 and 14 (Art. 6, 14) of the Convention generally in connection with the proceedings in which he was involved.

The Commission notes that the Court of Appeal, in its judgments of 12 October 1990 (on the Compulsory Purchase Order) and 31 October 1990 (on the Control Order) was dealing with legal submissions as to the two cases. The applicant, through his barrister, insisted on the Control Order appeal being dealt with, even though the Compulsory

Purchase Order had been confirmed by the Court of Appeal, on the ground that he could have an action for loss and expense if the Control Order were found to be invalid. The Commission finds no indication, either in the applicant's submissions or in the case-file, that the juxtaposition of the two appeal hearings in any way prejudiced his rights under Article 6 para. 1 (Art. 6-1) of the Convention. In particular, there is no indication that the proceedings in the present case were unfair within the meaning of this provision. The applicant was able to put all matters he wished to raise to the County Court and the Court of Appeal in connection with the Control Order, and to the High Court and the Court of Appeal in connection with the Compulsory Purchase Order.

In respect of the applicant's complaint that the courts discriminated against him contrary to Article 14 (Art. 14) of the Convention, the Commission notes that the accusations of mala fides on the part of the Council were rejected by the trial judge in the Control Order case and not pursued on appeal; no specific examples of discriminatory conduct on the part of the judges have been given by the applicant, and the mere fact that the applicant was unsuccessful in his various attempts to challenge the Control Order and the Compulsory Purchase Order is not sufficient to make out even a prima facie case of discrimination.

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

For these reasons, the Commission unanimously

JOINS APPLICATIONS NOS. 18592/92 and 18593/92 and

DECLARES THEM INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)