AS TO THE ADMISSIBILITY OF

Application No. 14265/88
by John Barry PINCOCK
against the United Kingdom

The European Commission of Human Rights sitting in private on 19 January 1989, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
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. 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 23 June 1988 by John Barr PINCOCK against the United Kingdom and registered on 3 October 1988 under file No. 14265/88;

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 1944 and resident in St. Helens, Merseyside. The facts as submitted by the applicant may be summarised as follows.

On 2 January 1983, the applicant's father died, leaving to the applicant his terraced house at 3 Edgar Street, St. Helens. The applicant sought to sell the house, which was in good condition but discovered that 3 private purchasers lost interest since the house was in an area in respect of which the local authority (St. Helens Borough Local Council) had had plans to build new roads since the 1960's. Plans in the Planning Department of the local authority indicated various possible road schemes, one of which ran across the property and three of which were in close proximity. No decision was taken for many years in relation to the road scheme apparently as no money was available to fund the re-development.

The applicant alleges that as a result of this situation properties in the area were left unsold and unoccupied, subject to vandalism and dilapidation.

The local authority eventually decided to implement its road development plans and on 11 July 1988 issued a Compulsory Purchase Order for the area including 3 Edgar Street for the purpose of building a link road to the motorway to bypass the hospital and residential housing in the area. It also classified the houses in the area as unfit for human habitation and in its report on 3 Edgar Street stated that the property had not been externally well-maintained and suffered from perished brick work and rotten woodwork.

The applicant disagreed with this description and applied to the Secretary of State on 26 August 1988 for a payment for good maintenance, submitting inter alia that any repairs needed were minor. No reply has yet been received to this application.

Since the applicant did not occupy the premises, he will be entitled under the compulsory purchase legislation only to receive the site value of the property which he estimates at £100-150. If not subject to the order, the applicant considers the property would be worth £15-20,000. If he had occupied the premises, he would have been eligible to claim supplementary compensation plus an amount for disturbance.

COMPLAINTS

The applicant complains that policy of the local authority has interfered with his right to peaceful enjoyment of his possessions contrary to Article 1 of Protocol No. 1. As a result of their delay and indecision he was unable to sell the property for its market value and will now receive little by way of compensation for the compulsory purchase. He also alleges that there is no legal remedy available to him in respect of his complaints.

THE LAW

1. The applicant complains that he was unable to sell his father's house prior to the compulsory purchase order and that subsequent to the order, he will receive an inadequate amount of compensation. He invokes Article 1 of Protocol No. 1 (P1-1) which provides:

> "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."

Insofar as the applicant complains of being unable to sell his father's property, the Commission recalls that no prohibition on sale was in force and that there were no formal plans or decisions in existence with reference to development in the area in which the property was situated. The Commission notes that the local authority had been considering the possibility of a road scheme since the 1960's and that various possibilities in different locations had been drawn up in the Planning Department.

The Commission finds that in the circumstances of the case these informal and internal planning discussions cannot be held to constitute an interference with the applicant's peaceful enjoyment of his property within the meaning of the first sentence of Article 1 of

Protocol No. 1 (P1-1) or a control of the use of property within the meaning of the second paragraph of that article.

The applicant has also complained that following the compulsory purchase order, he will receive an inadequate amount of compensation, since as an owner not in occupation he will only be entitled to site value.

The Commission finds that the compulsory purchase order constitutes a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1).

The Commission however finds no evidence to suggest that the purchase is not being carried out subject to the conditions provided for by law and, as regards the general principles of international law, the Commission recalls that this condition does not apply to a taking by a State of the property of its own nationals (Eur. Court H.R., Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 50, para. 119). The Commission must therefore determine whether on the facts of this particular case the applicant is being deprived of his property in the public interest. The Commission recalls that because of their direct knowledge of their society and needs, the national authorities are in principle better placed to appreciate what is in "the public interest". In their assessment in this respect, the national authorities enjoy a margin of appreciation. The Commission notes that the compulsory purchase orders were implemented in order to build a link road to a motorway to by-pass the hospital and residential housing in that area. The Commission is satisfied in these circumstances that the compulsory purchase measure pursues a legitimate aim in the public interest of improving the public highway system and relieving residential areas of heavy traffic.

The case-law of the Commission and the Court establishes that not only must a measure depriving a person of his property pursue a legitimate aim, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Court has also stated that this requires that a fair balance be struck between the demands of public interest of the community and the requirements of the protection of the individual's fundamental rights. This balance will not be found where the person concerned has to bear an individual and excessive burden (see e.g. Lithgow and Others judgment, loc. cit., p. 50, para. 120).

Compensation terms are material to the assessment whether such a fair balance has been struck and whether or not a disproportionate burden has been imposed on the person deprived of his property. The taking of property without payment of an amount reasonably related to its value would normally constitute disproportionate interference which could not be considered justifiable under Article 1 of Protocol No. 1 (P1-1) (Lithgow and Others judgment, loc. cit., p. 50, para. 120).

The applicant complains that he will only receive site value for his property instead of the £15-20,000 which he estimates is its real value.

The Commission recalls in this respect however that the applicant's property has been declared as unfit for human habitation and finds that the applicant has not substantiated his claim as to the estimate value of the property or established that the site value will not reflect the value of the property. The Commission also notes that if the applicant had occupied the premises, he would have been eligible for supplementary compensation including disturbance. The Commission finds that the policy of compensating occupiers of property more generously than non-occupying owners is not in principle contrary to Article 1 of Protocol No. 1 (P1-1) and falls within the Contracting States' margin of appreciation. The Commission also notes that the applicant has the possibility of applying to the Secretary of State

for additional compensation for previous maintenance of the property.

In light of these circumstances, the Commission finds that the terms of the compulsory purchase do not infringe the principle of proportionality. Consequently, the compulsory purchase is justified under the second sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 1 of Protocol No. 1 (P1-1).

2. The applicant also complains that he does not have an effective remedy in respect of his complaints.

Article 13 (Art. 13) of the Convention provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 13 (Art. 13) does not guarantee a remedy whereby a law as such can be challenged before a domestic organ (see Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 47, para. 85). Moreover, Article 13 (Art. 13) does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, para. 52).

Insofar as the applicant complains of the effect of the compulsory purchase legislation, it follows that Article 13 (Art. 13) does not guarantee a remedy for such complaints. Insofar as the applicant complains of being unable to sell his property as a result of the local authority's policy, the Commission recalls that it has found above that the facts of the case failed to disclose any interference with the applicant's right to peaceful enjoyment of his possessions or any control of the use of these possessions. The Commission also finds on an examination of the complaint as it has been submitted that the applicant cannot be said to have an "arguable claim" of a violation of Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application must be dismissed as 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)