AS TO THE ADMISSIBILITY OF

Application No. 24428/94
by Thordur THORS
against Iceland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, 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 23 March 1994 by Thordur THORS against Iceland and registered on 17 June 1994 under file No. 24428/94;

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 of the case, as submitted by the applicant, may be summarised as follows.

The applicant is an Icelandic citizen, born in 1928. He is residing in Reykjavík. Before the Commission he is represented by Mr. Jón Steinar Gunnlaugsson, a lawyer practising in Reykjavík.

The applicant and some of his siblings were the owners of a property complex, consisting of a river, a lake and the surrounding individual farmlands. The farmlands were individually owned by the siblings whereas the river and the lake were common property.

On 12 November 1987 the applicant and his siblings as vendors and MM. A and B as purchasers concluded a purchase agreement on the basis of an offer dated 9 November 1987 with respect to the farmlands Stóra-Hraun, Landbrot, Skjálg, Syori-Rauoamelur and Ölviskross, in the district of Kolbeinsstaoahreppur and the farmlands of Kolvioarnes, Akurholt, Gerouberg, Ytri-Rauoamelur and Höfoi, in the district of Eyjarhreppur. Furthermore, the deal comprised the Haffjaroará river in the county of Hnappadalssysla, with lake Oddastaoavatn and the islets therein, and the fishing lodges at Geiteyri and Kvörn. The total price fixed for the entire property was 118,200,000 ISK. The agreement furthermore contained a provision whereby the vendors should refund the purchasers if existing rights of pre-emption were exercised in

accordance with the provisions of the Farmlands Act, no. 65/1976 which according to its section 1 aims at securing a proper utilisation of farm land to the benefit of all concerned.

Section 30 of the Farmlands Act no. 65/1976, gives a right of pre-emption to a tenant in case the land is offered for sale. The section reads as follows:

(translation)

"In case real property rights to which this Act applies are to be sold, cf. section 3, the local government of the municipality in which the property is situated shall have a right of pre-emption, except in cases where the disposition concerns a family estate.

A tenant who has had possession of the land for ten years or more shall have a right of pre-emption before the local government, provided the tenant takes the land into his full enjoyment and use."

Furthermore, section 34 of the Act reads as follows:

(translation)

"If the holder of the right of pre-emption is offered the opportunity of exercising his right but the fixed price offered is excessive or the purchase terms unreasonable by comparison to general practice in such a manner that the offer may be expected to have been made in order to prevent the holder of the right of pre-emption from exercising this right, the holder of the right of pre-emption may, having obtained the approval of the Farmlands Committee, request that the value of the property be determined by court-appointed appraisers, and their appraisal shall then apply as sales price.

In case a holder of the right of pre-emption decides to request an appraisal this shall be done within 15 days from the date an offer was received, and the appraisal shall have been completed within three weeks.

The holder of the right of pre-emption shall then, within one week, decide whether or not to exercise his right in accordance with the appraisal.

The appraisers shall decide how the cost of appraisal shall be defrayed."

On 16 November 1987 the applicant invited the tenant of the farmland Kolvioarnes, C, to exercise his right of pre-emption in accordance with the provisions of the Farmlands Act. C was furthermore informed that the part of Kolvioarnes which he occupied as tenant, in the total sum of the purchase agreement amounted to 6,000,000 ISK. As C found this price excessive he made use of his right pursuant to section 34 of the Farmlands Act to an appraisal of the land in question by court-appointed appraisers.

In the opinion of 18 December 1987 the two court-appointed appraisers concluded as follows:

(translation)

"The Considerations Providing a Basis for the Appraisal

The appraisers have inspected all the farmlands and the structures belonging thereto, and the fishing lodges with

their appurtenances. The objective was to determine a reasonable sales price for each individual farmland, taking into account area, benefits, cultivation, structures in the ownership of the appraisal respondent and their condition, and the possibilities for utilisation of the lands.

In performing the appraisal the appraisers have also taken into account recent sales prices of farmlands in western Iceland, and the fact that the residences at Skjálg and at Akurholt are subject to lease agreements for some years. As regards the fishing lodges their condition is taken into account and a reasonable sales price is assessed by reference to their sizes, ages and condition.
...

Conclusions of the Appraisers

The appraisers do not consider that the sales prices of the farmlands are unreasonable, or that the payment terms are unreasonable in view of the prices. It can admittedly be acknowledged that the terms are not those common to the purchase and sale of real property, but such transactions often diverge from common practice, and in such cases this is taken into account when the price of the property in question is determined.

In so far as the ten-year lease agreement attached to the invitation to exercise the right of pre-emption, relating to fishing in Haffjaroará and Oddastaoavatn, is concerned, the appraisers consider that it does not accord with general practice nowadays, neither as regards the amount of rent nor the period of the lease. The rent for the fishing rights is very low and the period is different from common practice, and despite its duration there is no provision in the agreement on its revision. When appraising the fishing rights the agreement is taken fully into account.

By reference to the considerations outlined above the conclusion of the appraisers are as follows:

APPRAISAL CONCLUSIONS

The sales prices of the properties now to be appraised are determined as follows:

Ölviskross. . . . . ISK 2,000,000.-
Skjálg. . . . . ISK 2,200,000.-
Landbrot. . . . . ISK 1,500,000.-
Stóra-Hraun . . . . . ISK 5,000,000.-
Kolvioarnes . . . . . ISK 2,200,000.-
Akurholt. . . . . ISK 3,200,000.-
Gerouberg . . . . . ISK 4,700,000.-
Ytri-Rauoamelur . . . . . ISK 5,200,000.-
Höfoi . . . . . ISK 4,800,000.-
Fishing lodge at Geiteyri . . . . . ISK 11,600,000.-
Fishing lodge at Kvörn. . . . . ISK 1,400,000.-
The property Haffjaroará. . . . . ISK 66,000,000.-
Lake Oddastaoavatn with islets. . . . . ISK 1,700,000.-

Total ISK 111,500,000.-"

The last piece of farmland included in the deal between the applicant and his siblings and MM. A and B, Syori-Rauoamelur, was bought by the tenant under the existing pre-emption right at a price of 6,500,000 ISK. This farmland was therefore not included in the appraisal.

On 22 December 1987 the applicant received a letter from C stating that he would exercise his right of pre-emption on the basis of the conclusions of the said appraisal. An escrow account deposit receipt of 21 December 1987 in the original was attached to the letter signifying a deposit by C of those payments that were due upon signature calculated on the basis of the appraisal, with interest.

On 23 December 1987 the applicant objected to the view that an appraisal of the land under section 34 of the Farmlands Act could lawfully take place. He stated in particular that in his view C could not claim a right to make a purchase in accordance with the assessed price, and that he was not lawfully entitled to appropriate the applicant's property in this manner. The applicant also maintained that the appraisal showed that the appraisers had not possessed complete information on the rights and benefits attached to the land. In this context the appraisers had failed to keep various provisions of the Land Tenancy Act in mind. Accordingly, no purchase agreement was in effect between C and the applicant.

Thus, as the applicant and the original purchasers A and B disputed C's right of pre-emption on the terms envisaged by him, C instituted proceedings on 26 February 1988 against the parties to the purchase agreement in the District Court of Snæfellsnes- and Hnappadalssysla requesting that the purchase agreement be declared invalid and that the applicant be ordered to issue a deed of the land to him in accordance with his right of pre-emption. He maintained that the sales price of 6,000,000 ISK for Kolvioarnes was determined solely for the purpose of preventing him from exercising his right of pre-emption.

The applicant submitted that the property Kolvioarnes was sold as a part of a whole and that the buyers, A and B, were merely interested in the right to fish in Haffjaroará. Among their interests in purchasing the land had been their wish to eliminate the risk that its owner availed himself of the provision of section 3 of the Salmon and Trout Fishing Act, no. 76/1970, to purchase the right to fish in the waters adjacent to the property. They had only been able to protect themselves therefrom by owning the land themselves. As they were purchasing the fishing rights at the same time they had been free to offer a high price for the property by reason of this interest.

The District Court pronounced judgment on 6 February 1991 in which it concluded as follows:

(translation)

"The dispute in this case concerns the question whether the purchase price determined by the parties to the purchase agreement of 12 November 1987 was fixed `excessively high' and `in such a manner that the offer may be expected to have been made in order to prevent the holder of the right of pre-emption from exercising this right', cf. section 34 of the Farmlands Act, no. 65/1976, i.e. whether or not the conditions for an appraisal under the said provision were fulfilled.

The Court finds that the said provision of the Farmlands Act is to be interpreted restrictively, as it would otherwise involve an exception from the general principle that a right of pre-emption involves a right to enter into a purchase agreement on the same terms as the originally intended purchaser. When construing the provision, section 67 of the Constitution concerning the inviolability of the right of private ownership must also be kept in mind, as that provision protects, inter alia, the right of a person to sell his property at the price obtainable on the free market.

It follows from the above that section 34 is to be construed so as to apply in cases when the purchase price is fixed at too high a level or the terms are unreasonable in a situation when the price is in fact different and lower or the actual terms different and more favourable than indicated in the offer to exercise the right of pre-emption, and when this is done in order to prevent the holder of the right of pre-emption from exercising his right, Thus, the provision provides for measures which can be taken against deception, but it is not intended to affect agreements which are in fact concluded.

No indication has been brought forth in this case to the effect that the stated purchase price of ISK 6,000,000 was not paid. Therefore, the conditions for an appraisal under section 34 of the Farmlands Act were not fulfilled. C's requests must be dismissed already for that reason."

C appealed against the judgment to the Supreme Court on 4 April 1991 and reiterated that he had a right of pre-emption at the price estimated by the appraisers. The applicant maintained, as before, that the price of 6,000,000 ISK was to be seen in particular in the light of the interest A and B had in eliminating the risk that others purchased the right to fish in the waters in question.

In reversing the lower court's judgment the majority of the Supreme Court stated, by judgment of 21 October 1993, in reply to the above as follows:

(translation)

"In such circumstances (C) was, if he decided to exercise his right of pre-emption at the fixed price, in the situation of having to pay for these interests without becoming their owner himself. If he had paid that price he would nevertheless have had to invoke the conditional provisions of section 3 of the Salmon and Trout Fishing Act in order to purchase the right to fish in the river adjacent to the land. The appraisal of the appraisers appointed has not been set aside, and (the applicant) has not established that he could have obtained a price higher than the appraised value if he had sold the land separately and without the buildings and cultivation owned by (C).

It has thus been established that the price at which (C) was invited to purchase the land was excessively high, and this should have been clear to (the applicant) when the invitation to exercise the right of pre-emption at that price was made.

The Court holds that in these circumstances (C) was in his right to avail himself of the provisions of section 34 of the Farmlands Act, and that by reference to the above he has a right of pre-emption with respect to the purchase of the land Kolvioarnes at the price of ISK 2,200,000 determined by the court appointed appraisers.

The provision of section 67 of the Constitution cannot be deemed to stand in the way of this conclusion. ... .

The purchase agreement of 12 November 1987, between (the applicant) and (A and B), relating to the farmland of Kolvioarnes, in Eyjahreppur, Hnappadalssysla, is invalidated. (The applicant) shall issue a conveyance of title to the farmland of Kolvioarnes, in Eyjahreppur, Hnappadalssysla, to (C) with the buildings and other

benefits belonging thereto and owned by (the applicant), against the payment of the assessed price of the land ISK 2,200,000 on the same terms as provided for in the above-mentioned purchase agreement dated 12 November 1987."

COMPLAINTS

The applicant complains that the judgment of the Supreme Court of 21 October 1993 whereby he has been ordered to issue a conveyance of title to the farmland of Kolvioarnes to C against the payment of 2,200,000 ISK plus interest interfered with his right to peaceful enjoyment of his possessions secured to him under Article 1 of Protocol No. 1 to the Convention in a way which was not covered by the second sentence of the first paragraph or by the second paragraph of this provision.

THE LAW

The applicant complains that the compulsory sale to C for the price fixed by the court-appointed appraisers constitutes a violation of his right under Article 1 of Protocol No. 1 (P1-1) to the Convention which reads:

"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."

Section 30 of the Icelandic Farmlands Act no. 65/1976 gives a right of pre-emption to a tenant if the land is offered for sale, provided that the tenant has held the tenancy of the land for at least ten years and takes the land into his full enjoyment and use. The tenant of the farmland Kolvioarnes made use of this right and by the judgment of the Supreme Court of 21 October 1993 the applicant was ordered to issue a conveyance of title to this farmland to the tenant. The Commission considers that this measure constitutes an interference with the applicant's right to the peaceful enjoyment of his possessions and is to be considered under the second paragraph of Article 1 of Protocol No. 1 (P1-1).

The stated aim of the interference in this case was that described in section 1 of the Farmlands Act, i.e. to secure a proper utilisation of farmland to the benefit of all concerned. This is in the Commission's view a legitimate "general interest" for the purposes of Article 1 of Protocol No. 1 (P1-1), even to the extent that it may imply the compulsory transfer of property from one individual to another (cf. mutatis mutandis Eur. Court H.R., the James and Others judgment of 21 February 1986, Series A no. 98, pp. 30-32, paras. 39-45).

Regarding the lawfulness of the interference the Commission recalls that its powers to review compliance with domestic law are limited (cf. for example Eur. Court H.R., the Allan Jacobsson judgment of 25 October 1989, Series A no. 163, p. 17, para. 57 and the Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171, p. 16, para. 47). The Commission notes that the Supreme Court found the interference to be in accordance with Icelandic law, namely the provisions of the Farmlands Act of 1976, and it has not been shown that this finding was in any way arbitrary. The impugned measure thus had a legitimate aim and was lawful for the purposes of Article 1 of

Protocol No. 1 (P1-1).

Article 1 of Protocol No. 1 (P1-1) also requires that there be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite proportionality will not be found if the person concerned has had to bear an individual and excessive burden (cf. for example Eur. Court H.R., Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 50, para. 120). In this connection the applicant complains that he has been forced to sell his land at a price which was far below what the original purchasers A and B were willing to pay, and which was far below the price at which he would have been willing to sell at all.

On this point the Commission recalls that when the applicant decided to sell Kolvioarnes he was aware of the fact that his tenant, C, had been living there for many years and thus had a right of pre-emption pursuant to section 30 of the Farmlands Act. He should also have been aware of the fact that the price of the land could on certain conditions be subject to approval by the courts on the basis of the expert opinions of court-appointed appraisers.

In exchange for his property the applicant eventually received 2,200,000 ISK plus interest, a sum considerably lower than the purchase price he would otherwise have obtained according to the calculations of the parties to the purchase agreement of 12 November 1987. The sum the applicant received represented the land's estimated market value as assessed by two specially appointed appraisers. There is no substantiated allegation that the valuation was not made in accordance with the applicable rules. Having regard to the margin of appreciation enjoyed by the national authorities under Article 1 of Protocol No. 1 (P1-1), the Commission therefore finds that the price received by the applicant can be considered to have been reasonably related to the value of the land in question.

Accordingly, and in particular in view of the risks taken by him, when he sold the property at the price fixed by him and the original purchasers, the applicant has not, in the Commission's opinion, been made to carry an excessive individual burden in this case. Consequently, the application does not disclose any appearance of an interference with the applicant's right to peaceful enjoyment of his possessions which was not justified under the terms of the second paragraph of Article 1 of Protocol No. 1 (P1-1) (cf. also mutatis mutandis the above-mentioned Håkansson and Sturesson judgment, pp. 17-18, paras. 51-55).

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

For these reasons the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)