AS TO THE ADMISSIBILITY OF

Application No. 30323/96
by Bent Scheving THORSTEINSSON
and Emanuel MORTHENS
against Iceland

The European Commission of Human Rights (Second Chamber) sitting in private on 16 April 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

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 15 November 1995 by Bent Scheving THORSTEINSSON and Emanuel MORTHENS against Iceland and registered on 28 February 1996 under file No. 30323/96;

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 applicants are citizens of Iceland, born in 1922 and 1921 respectively. They are resident in Reykjavik. The second applicant is represented by the first applicant before the Commission.

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants are inhabitants and owners of flats in a block of flats in Reykjavik. The building consisted of 34 flats of equal size plus undivided joint property (a janitor's flat). The flat considered to be for a janitor was subsequently divided into two flats constituting joint property. One was taken into use as a janitor's flat and the other one was intended for a nurse.

After the construction of a new janitor's flat a new agreement was reached respecting the division of the joint property. It was stated in the agreement that each separate flat represented 1/35th of the joint property.

On 22 September 1993 the owners, at a house-meeting, decided to sell the original janitor's flat. 29 of the owners voted for the sale, but three of the owners (including the applicants) voted against.

On 27 October 1993 the applicants, together with a third person, lodged civil proceedings against the housing association before the Reykjavik District Court (Héradsdòmur Reykjavikur). The applicants requested that the decision to sell the flat be annulled. They submitted that since the flat was joint property of all flat owners it should not to be sold without the approval of all of them. They referred to their right of ownership, stating that they were not to be obliged against their will to hand over their property.

The housing association submitted that the decision concerning the sale had been made at a lawfully called house-meeting and in the manner stipulated in the legislation regarding apartment houses.

It appears that according to section 19 of Act No. 26/1994 a housing association is not authorised to decide upon a sale of a considerable part of a joint property unless all the owners agree to it. A qualified majority of two thirds is required if the sale concerns an insignificant part of the property.

In its judgment of 28 March 1994 the Reykjavik District Court found the decision of the house-meeting to be invalid as not all the owners had agreed to sell.

The housing association appealed to the Supreme Court (Hæstirèttur Islands). On 1 June 1995 the Supreme Court annulled the District Court's judgment and rejected the applicants' claims, approving the housing association's decision to sell the flat as the sale had been approved by more than two thirds of the flat owners. The Supreme Court found that the alterations to the proportions of ownership in the building applied equally to all the flat owners and were insignificant. The Supreme Court invoked section 19 of Act No. 26/1994. It also stated that the decision had been taken by a lawfully called meeting and according to the law. One out of three Supreme Court judges dissented.

COMPLAINT

The applicants complain that, due to the Supreme Court's judgment approving the sale of the two flats, they were not entitled to the peaceful enjoyment of their possessions as they had not approved the sale. They were allegedly subjected to a deprivation of their possessions, as their ownership of the block of flats was reduced. They invoke Article 1 of Protocol No. 1 to the Convention.

THE LAW

The applicants complain that they were not entitled to the peaceful enjoyment of their possessions as they had not all approved the sale. They were allegedly subjected to a deprivation of their possessions, as their ownership of the block of flats was reduced. They invoke Article 1 of Protocol No. 1 (P1-1) to the Convention which reads 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 provision 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."

Article 1 of Protocol No. 1 (P1-1) comprises three different rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of the property in accordance with the general interest. The three rules are not "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 (see Eur. Court HR, James and others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, p. 29, para. 37).

Moreover, although Article 1 (Art. 1) contains no explicit procedural requirements, the proceedings at issue must afford the individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging the measures interfering with his or her rights under Article 1 of Protocol No. 1 (P1-1) to the Convention. In ascertaining whether this condition has been satisfied a comprehensive view must be taken of the applicable procedures (see, e.g., Eur. Court HR, Agosi v. the United Kingdom judgment of 24 October 1986, Series A no. 108, p. 19. para. 55). The Commission considers that the Supreme Court's judgment approving the sale of part of the joint property without the approval of all the joint owners might have constituted an interference with the applicants' right to the peaceful enjoyment of their possessions and is to be considered under the second paragraph of Article 1 of Protocol No. 1 (P1-1) to the Convention as to its lawfulness, purpose and proportionality.

As regards the lawfulness of the assumed interference, the Commission notes that Act No. 26/1994 regarding blocks of flats requires that a sale of joint property be approved by all the owners of a multi-ownership building. However, if the sold property is an insignificant part of the joint property, the approval by a qualified majority of two thirds of the ownership is sufficient. In the present case, the relevant part of the joint property in question was only 1/34th (at the most) which in the Supreme Court's view could not be considered a significant part of the joint property. In approving the decision of the house-meeting, the Supreme Court explicitly invoked section 19 of Act No. 26/1994.

It has to be noted that the Contracting States enjoy a wide margin of appreciation in enforcing such laws as they deem necessary to control the use of property in accordance with general interests (see the above-mentioned James and others v. the United Kingdom judgment, p. 32, para. 46). The aim of the interference in this case was to secure the decision-making concerning joint property. The interests of the other co-owners of the joint property, willing to sell, have to be taken into account as well as the interests of those objecting to the sale. In particular, the fairness of a system of law governing the contractual or property rights of private parties is a matter of public concern and therefore legislative measures intended to bring about such fairness are capable of being "in the public interest", even if they involve the compulsory transfer of property from one individual to another (see the above-mentioned James and others v. the United Kingdom, p. 31, para. 41). The interference in question therefore served a legitimate purpose as being in the general interest.

The change of the proportions of the ownership in this case was minimal and, as the applicants obviously will benefit from the sales price in the same proportion as other owners, the Commission is of the opinion that the sale of part of the joint property can, having regard to the State's margin of appreciation, be considered proportionate to the aim pursued.

Finally, the Commission notes that the applicants had at their disposal sufficient procedural safeguards for the purposes of challenging the house-meeting's decision.

Summing up, the Commission finds that the applicants have not been made to carry an individual and excessive burden and that a fair balance has been struck between the conflicting interests at stake, regard also being had to the procedural safeguards afforded to them. Accordingly, there is no violation of Article 1 of Protocol No. 1 (P1-1) to the Convention. 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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber