AS TO THE ADMISSIBILITY OF

Application No. 16756/90
by Connie ZAMMIT and others
against Malta

The European Commission of Human Rights sitting in private on 12 January 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 24 April 1990 by Connie ZAMMIT and others against Malta and registered on 20 June 1990 under file No. 16756/90;

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 application is brought by the following applicants who are United States citizens living in Michigan in the United States of America:

1. Connie Zammit, born in 1944;
2. Ronald Zammit, born in 1936;
3. Victor Zammit, born in 1941;
4. Marie Antoinette Ryska, born in 1948 and
5. Helen Perez, born in 1937.

The facts as they appear from the documents submitted by the applicants are as follows.

The applicants are co-leaseholders (holders of title of perpetual emphyteusis) of a property in Malta.

In 1969 the applicants sub-let (assigned title of temporary subemphyteusis) the property for a term of 17 years to third parties.

On 25 April 1979 Joseph and Rita Conti acquired the remainder of the term, due to expire on 30 August 1986.

On 30 August 1986, upon the expiry of the sub-lease Joseph and Rita Conti remained in possession. As a matter of domestic law the applicants were entitled to take possession, but they did not do so.

On 27 October 1986 Parliament enacted Act 37 of 1986 with retroactive effect. It provided that the termination of a sub-lease (subemphyteusis) was assimilated with the termination of the head-lease (emphyteusis). Essentially, the applicants' right to take possession on the expiry of the sub-lease was abolished and the occupiers obtained the right to remain in possession, even though by the time of the enactment of Act 37 of 1986 the occupiers' sub-lease (subemphyteusis) had expired. The occupiers continue to pay rent of £M 2.69 per week to the applicants.

The applicants instituted proceedings before the Civil Court alleging that Act 37 of 1986 was in violation of the right of ownership protected by Article 37 of the Maltese Constitution. The applicants' application was dismissed on 21 January 1988.

The applicants appealed to the Constitutional Court invoking also Article 1 of Protocol No. 1 to the Convention which had meanwhile been made directly applicable in domestic law. The Constitutional Court rejected the appeal on 16 November 1989 on the apparent ground that Act 37 of 1986 had not deprived the applicants of their possessions, but only purported "to remove certain doubts" as to whether the principal law (i.e. the Housing (Decontrol) Ordinance 1959) entitled the owner to retake possession on the termination of a temporary sub-emphyteutical grant (sub-lease).

COMPLAINTS

The applicants complain that Act 37 of 1986 violates Article 1 of Protocol No. 1 of the Convention in that they are deprived of the right to take possession of their property on the expiry of the sub-lease (subemphyteusis). They complain that the rent represents only a 0.5 per cent return on the value of their property and that they would only be able to sell their leasehold for a derisory sum.

THE LAW

The applicants complain that the effect of the Act 37 of 1986, which prevents them from taking possession of their property, is in violation of their rights under Article 1 of Protocol No. 1 (P1-1) to the Convention, 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."

The Commission notes that the legislation does not remove the applicants' interest or title in the property but that it restricts the applicants' use of the property since the occupiers have acquired the right to remain in possession. The Commission finds that this restriction amounts to a control of use of property within the meaning of the second paragraph of the above provision. The Commission has

therefore examined whether the control is lawful, in accordance with the general interest and pursues a legitimate aim in a proportionate manner (Eur. Court H.R., Tre Traktörer AB judgment of 7 July 1989, Series A No. 159, pp. 22-24, paras. 56-63).

The Commission notes that the restriction is imposed by Act 37 adopted by the Maltese Parliament. The applicants have not complained of unlawfulness and the Commission finds no reason to doubt that the measure is lawful.

The Commission recalls the case-law of the Commission and Court which recognises that State intervention in socio-economic matters such as housing is often necessary in securing social justice and public benefit. In this area, the margin of appreciation available to a legislature in implementing social and economic policies is necessarily a wide one both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the rules for the implementation of such measures. The Convention organs will respect the legislature's judgment as to what is in the general interest unless it be manifestly without reasonable foundation. The Commission notes that the Court has found no violation of the Convention in cases where the State has adopted measures in the field of housing regulation where a more far-reaching interference with property rights was involved. Thus in James and Others (Eur. Court. H.R., James and Others judgment of 21 February 1986, Series A No. 98) the leaseholders were accorded a statutory right to acquire the property from the owners, while in Mellacher and Others (Eur. Court. H.R., Mellacher and Others judgment of 19 December 1989, Series A No. 169) the legislation constituted an inducement to the leaseholder not to comply with the terms of a previously validly contracted tencancy agreement.

In this case the Commission finds that the measure complained of pursues a legitimate aim in the general interest i.e. of protecting the interests of tenants. As to the proportionality of the interference, the Commission notes that the applicants remain owners of their property interest, which they are free to dispose of and that they continue to receive rent from the occupiers. In these circumstances, the Commission finds that, bearing in mind the wide margin of appreciation afforded to States in regulating housing problems, the control of use was justified within the meaning of the second paragraph 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.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)