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DE L'EUROPE

(Or. English)

EUROPEAN COMMISSION  
OF HUMAN RIGHTS

Application No. 8793/79

J.N.C. JAMES and Others  
against  
UNITED KINGDOM

Report of the Commission

(Adopted on 11 May 1984)

STRASBOURG

TABLE OF CONTENTS

	<u>Page</u>
I. <u>INTRODUCTION</u> (paras 1 - 12) .....	1
A. <u>The substance of the application</u> (paras 2 - 3) .....	1
B. <u>Proceedings before the Commission</u> (paras 4 - 7) .....	1
C. <u>The present Report</u> (paras 8 - 12) .....	3
II. <u>ESTABLISHMENT OF THE FACTS</u> (paras 13 - 43) .....	4
A. <u>Introductory remarks</u> (paras 13 - 14) .....	4
B. <u>System of long leasehold tenure and background         to the 1967 Act</u> (paras 15 - 28) .....	4
C. <u>The leasehold reform legislation</u> (paras 29 - 38) .....	10
D. <u>Transactions affecting the applicants</u> (paras 39 - 43) .....	13

III.	<u>SUBMISSIONS OF THE PARTIES</u> (paras 44 - 89) .....	15
A.	<u>The applicants</u> (paras 44 - 69) .....	15
1.	<u>Submissions concerning the facts</u> (paras 44 - 45) .....	15
2.	<u>Article 1 of Protocol N° 1</u> (paras 46 - 66) .....	16
3.	<u>Article 14 of the Convention</u> (paras 67 - 68) .....	23
4.	<u>Article 13 of the Convention</u> (para 69) .....	23
B.	<u>The respondent Government</u> (paras 70 - 89) .....	24
1.	<u>General and factual submissions</u> (70 - 71) .....	24
2.	<u>Article 1 of Protocol N° 1</u> (paras 72 - 85) .....	24
3.	<u>Article 14 of the Convention</u> (paras 86 - 89) .....	28
IV.	<u>OPINION OF THE COMMISSION</u> (paras 90 - 168) .....	30
A.	<u>Points at issue</u> (para 90) .....	30
B.	<u>General approach to the issues</u> (paras 91 - 92) .....	30
C.	<u>Article 1 of Protocol N° 1</u> (paras 93 - 160) .....	31
1.	<u>General remarks</u> (paras 93 - 95) .....	31
2.	<u>Applicability of the "deprivation rule"</u> (paras 96 - 104) .....	31

	<u>Page</u>
3. <u>Interpretation of the "deprivation rule"</u> (paras 105 - 144) .....	33
(a) <u>General</u> (paras 105 - 109) .....	33
(b) <u>Applicability of "general principles of international law"</u> (paras 110 - 120) .....	34
(c) <u>"in the public interest and subject to the conditions provided for by law"</u> (paras 121 - 143) .....	39
(d) <u>Summing up on interpretation of the "deprivation rule"</u> (para 144) .....	47
4. <u>Application of the "deprivation rule"</u> (paras 145 - 159) .....	47
5. <u>Conclusion</u> (para 160) .....	51
D. <u>Article 14 of the Convention in conjunction with Article 1 of Protocol N° 1</u> (paras 161 - 165) .....	51
E. <u>Article 13 of the Convention</u> (paras 16.6 - 16.8) .....	53
F. <u>Recapitulation of the conclusions</u> (para 16.9) .....	54
 <u>Appendix I</u> - History of Proceedings .....	 55
<u>Appendix II</u> - Admissibility Decision .....	61
<u>Appendix III</u> - Details of transactions complained of by the applicants .....	96

## I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

### A. The substance of the application

2. The applicants are or were trustees acting under the Will of the Second Duke of Westminster. The first applicant, John Nigel Courtenay James is a chartered surveyor resident in London. The second applicant, Gerald Cavendish the Sixth Duke of Westminster, resides at Chester. The third applicant, Patrick Geoffrey Corbett is a chartered accountant resident in Sussex. The fourth applicant, Sir Richard Baker Wilbraham, is a banker in London. The fourth applicant was appointed as trustee on 31 December 1981 in place of the third applicant, who retired. The applicants are represented by Messrs Boodle Hatfield & Co, solicitors of London. The respondent Government is represented by Mr M Eaton, Foreign and Commonwealth Office, as Agent.

3. The applicants, as trustees, are substantial owners of residential property in London. They have been deprived of their ownership of a number of properties through the exercise by the occupants of rights of purchase conferred by the Leasehold Reform Act 1967. This Act, as amended by subsequent legislation, confers on tenants residing in houses held on long leases (over 21 years) the right to purchase the "freehold" of the house (the landlord's interest), on certain terms and subject to certain conditions. The applicants maintain that by virtue of this legislation they have been deprived of property in breach of Art 1 of Protocol N° 1 to the Convention, and of Art 14 in conjunction therewith. They also complain that no effective remedy is available to them and allege the breach of Art 13 of the Convention in this respect.

### B. Proceedings before the Commission

4. The application was introduced on 23 October 1979 and registered on 25 October 1979. The Commission examined the admissibility of the application on 8 October 1980 and decided, in accordance with Rule 42 (2)(b) of its Rules of procedure to invite the respondent Government to submit written observations on the admissibility and merits of the applicants' complaints under

8793/79

Art 1 of Protocol N° 1 to the Convention and Art 14 of the Convention. The Government's observations were submitted on 2 June 1981 and the observations of the applicants in reply were submitted on 7 October 1981.

5. On 9 March 1982 the Commission decided to adjourn its consideration of the case pending a decision on future procedure in a number of cases concerning nationalisation measures in the United Kingdom which raised similar issues concerning the interpretation of the Convention. On 14 July 1982 the Commission decided in principle to hold a combined hearing on the admissibility and merits of the present case and the cases concerning nationalisation. On 14 October 1982, after consultation with the parties concerned, the Commission confirmed this decision. A combined hearing on the admissibility and merits of the present case and seven cases concerning nationalisation measures (1) was accordingly held on 24 - 27 January 1983. Details of the parties' representation at the hearing are set out in the history of proceedings annexed to this Report (Appendix I).

6. Following the hearing the Commission declared the application admissible (2). Further observations on the merits of the case were submitted by the applicants on 30 September 1983. The respondent Government decided not to avail themselves of the opportunity to submit further observations. The applicants have also submitted a number of supplementary applications and other material on various dates during the proceedings.

7. After declaring the case admissible the Commission, acting in accordance with Art 28 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction the Commission now finds that there is no basis on which such a settlement can be effected.

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(1) Applications N°s 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81 and 9405/81, by Sir William Lithgow and others.

(2) See Decision on Admissibility, Appendix II.

8793/79

C. The present Report

8. The present Report has been drawn up by the Commission in pursuance of Art 31 of the Convention and after deliberations and votes in plenary session, the following members being present:

MM. C.A. Nørgaard, President  
G. Sperduti  
J.A. Frowein  
J.E.S. Fawcett  
G. Jörundsson  
G. Tenekides  
S. Trechsel  
B. Kiernan  
M. Melchior  
J. Sampaio  
A.S. Gözübüyük  
A. Weitzel  
H.G. Schermers

9. The text of the Report was adopted by the Commission on 11 May 1984 and is now transmitted to the Committee of Ministers in accordance with Art 31 (2) of the Convention:

10. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art 31 of the Convention, is accordingly:

- (1) to establish the facts; and
- (2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

11. A schedule setting out the history of proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application forms Appendix II.

12. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

8793/79

## II. ESTABLISHMENT OF THE FACTS

### A. Introductory remarks

13. The facts of the case are not generally in dispute between the parties. The case is concerned with legislation applying to residential properties let on "long leases" (over 21 years) at "low rents". It thus concerns the system of long leaseholds under which a tenant will typically purchase a long lease of property for a capital sum, and pay a more or less nominal rent for it thereafter. It is not concerned with the ordinary system of rented tenure under which the tenant pays a "rack rent" reflecting the value of the property. The landlord/tenant relationship under the ordinary system is regulated, for houses under a certain value, by separate legislation in the form of the "Rent Acts", which provide machinery for fixing "fair rents" and provide certain security of tenure for tenants.

14. The following sections of this Report contain a description of the system of long leasehold tenure and of the background to the Leasehold Reform Act 1967, a description of the leasehold reform legislation itself, and details of the particular transactions which the present applicants complain about.

### B. The system of long leasehold tenure and the background to the 1967 Act

15. Two principal forms of long lease of residential property exist. The first is a building lease, typically for 99 years, under which the tenant pays a "ground rent" - a low rent fixed by reference to the value of the bare site - and undertakes to erect a house on the site and deliver it up in good repair at the end of the lease. The second is a premium lease where the tenant pays the landlord a capital sum or "premium" for a house provided by the landlord, and thereafter a rent. The duration of the lease is variable, as are the relative proportions of premium and rent. The distinction between the two types of lease is not clear-cut. For example a "premium lease" may contain an obligation to undertake substantial repairs or improvements to an existing property, and thus be analogous to a building lease.



8793/79

16. The tenant holding a property under a long lease may sell the lease to a third party, who then acquires the tenant's rights and obligations under the lease for the remainder of its duration. In practice existing leases are commonly bought and sold on the property market without the landlord playing any part in the transaction. An existing tenant may also grant an "under-lease" of the property.

17. The capital value of the landlord's interest in a property let on a long lease arises from two sources: firstly the rent payable under the lease and secondly the prospect of reversion of the property to him at the end of the lease. At the beginning of a very long lease the value of the reversion may be very little and the total market value of the landlord's interest may therefore amount to little more than the capitalised value of the rent. The capital value of the tenant's interest arises from his right to occupy the house under the lease, and the time for which that right will subsist is of critical importance in relation to its value. At the beginning of a very long lease the value of the tenant's interest may be more or less equivalent to a "freehold" interest (ie an outright owner's interest), if the rent payable is a nominal one.

18. The lease, however, is a wasting asset. As the lease progresses the value of the tenant's interest in the property diminishes, whilst the value of the landlord's interest increases. At the end of the lease the tenant's interest ceases to exist.

19. The long leasehold system of tenure has been widely used in England and Wales, and in particular was associated with much urban development in the nineteenth century. Since about 1880 demands have been made that tenants should have a right of "enfranchisement", namely a right to purchase the freehold of the property. From 1884 onwards numerous unsuccessful attempts were made in Parliament to have legislation enforcing such a right enacted.

20. In 1948 a Committee (the Leasehold Committee) was appointed by the Lord Chancellor to consider possible reforms, including the question whether tenants should be given a right of enfranchisement. In their Report, published in June 1950 the majority of the Committee were opposed to giving tenants such a right. They considered that there were certain general objections of principle to such a course. They were opposed to conferring powers of compulsory purchase for private purposes unless it was known to be likely to produce results advantageous to the general public. They were opposed to retrospective legislation changing

8793/79

the terms of existing leases. Furthermore they concluded that if such a right were introduced there would have to be a prohibition on "contracting-out" in new leases and the likely result would be that leases falling within the scope of the legislation would be unlikely to be entered into by property owners. They also considered that there were a number of other objections. However they recommended that occupying tenants of houses under a certain rateable value should have security of tenure under the Rent Acts on expiry of their leases.

21. The minority of the Committee recommended that certain occupying tenants should have a right of compulsory purchase, the price payable to be the fair market value of the reversion with a sitting tenant protected by the Rent Acts.

22. In 1953 the Government published a White Paper in which they proposed not to introduce a scheme of compulsory enfranchisement but to provide certain statutory protection for occupying tenants at the expiry of their leases. The Landlord and Tenant Act 1954 gave effect to this proposal. In broad terms the effect of this Act was that on the expiry of a long residential lease the tenant would have the right to continue occupying the house as a sitting tenant under the Rent Acts. He would pay a fair (rack) rent and would have the security of tenure afforded by the ordinary rent legislation.

23. Public discussion of the matter continued. In 1961 claims were made in Parliament that leaseholders were being subjected to hardship as a result of the onerous terms which landlords were asking for the sale of reversions or the extension or renewal of existing leases. Enquiries were made by the Government who invited the bodies representing professions involved in the field (solicitors, surveyors, auctioneers, estate and property agents) to report on the practice of ground landlords in this field. In July 1962 a White Paper was published presenting a summary of their Reports. In general the professional bodies appeared to find that the existing system worked satisfactorily, although it was widely misunderstood and this led to dissatisfaction with it.

24. For some years compulsory enfranchisement had been part of Labour Party policy. After the election of a Labour Government in 1964, a further White Paper was published in 1966 setting out the Government's proposals for reform including a scheme of compulsory enfranchisement. The grounds on which the Government considered reform to be necessary were set out as follows:

8793/79

"The Purpose

(1) This White Paper is concerned with residential long leases particularly those granted originally in the latter half of the last century. In the case of long leases, experience has shown that the system has worked very unfairly against the occupying leaseholder. The freeholder has provided the land; but in the great majority of cases it is the leaseholder or his predecessor in title who at their own expense have built the house on the land. Whether this is so or not in all cases, it is almost universally true that over the years it is the lessee and his predecessors who have borne the cost of improvements and maintenance, and these will probably have cost far more than the original building itself. At their expense the leaseholders have preserved it as a habitable dwelling and have used it as such, and not unnaturally, an occupying leaseholder who at the end of the term has lived in it for a period of years regards it as his family home. It is in such cases quite indefensible, if justice is to be done as between freeholder and occupying leaseholder, that at the end of the term, the law should allow the ownership of the house to revert to the freeholder without his paying anything for it so that he gets not only the land but also the house, the improvements and everything the leaseholder and his predecessors have added to it.

(2) The Government has decided that a solution must be found to right this injustice. In the Government's view the basic principle of a reform which will do justice between the parties should be that the freeholder owns the land and the occupying leaseholder is morally entitled to the ownership of the building which has been put on and maintained on the land.

(3) Two circumstances make reform a matter of urgency. First, most people buy their house on mortgage and for them the leasehold system works particularly harshly. A purchaser on mortgage may pay virtually the freehold price for a lease with a good many years to run but as he reaches the end of his mortgage term he will feel a sharpening sense of injustice. He will realise that after he has discharged the mortgage he will have an interest far less valuable than it was when he bought it, and difficult to sell because a subsequent purchaser may not be able to get a mortgage. This is the reality now confronting many owner occupiers who purchased their houses on setting up home immediately after the war. Second, a great many leasehold estates were built in the

8793/79

second half of the nineteenth century when landowners used their monopoly power to prevent development taking place on other than leasehold terms. This occurred particularly in South Wales and in some English areas. These leases are beginning to fall in and the leaseholders are now experiencing the full harshness of the leasehold system.

#### The Plan

(4) The Government will, therefore, introduce a Bill to give leaseholders with an original long lease greater security and to enable them to acquire the freehold on fair terms. The Bill will be based on the principle that the land belongs in equity to the landowner and the house belongs in equity to the occupying leaseholder. It follows that the leaseholder will have the right to retain his house after the lease expires and the right to enfranchise his lease."

25. The White Paper contained details of the Government's proposals to allow certain qualified leaseholders to acquire the freehold or, as an alternative, obtain a fifty year extension of their existing lease. The Government's proposals as to the terms of enfranchisement were explained as follows in paras 11 and 12 of the White Paper:

"(11) Subject to provision for special cases, a qualified leaseholder will have the right at any time during the original term of the lease to acquire the freehold by buying out the landlord compulsorily. It is important to ensure that the price paid for enfranchisement is a fair price. But present market prices reflect the position under the present law which is inequitable to the leaseholder, and the price for enfranchisement must accordingly be based not on present market values but on the value of the land itself, including any development value attaching to it. The price of enfranchisement must be calculated in accordance with the principle that in equity the bricks and mortar belong to the qualified leaseholder and the land to the landlord.

(12) It follows, and the Bill will so provide, that where there is no development value (and often there will not be) the fair price for enfranchisement will be the value of the freehold interest of the site, subject to the lease and its extension of 50 years. This will completely disregard the value of the building on reversion."

8793/79

26. Thereafter the Government introduced a Bill into Parliament to give effect to their proposals. During the Parliamentary proceedings the Government justified their proposals by argument broadly on the lines set out in the White Paper. The Opposition accepted the principle that the leaseholder should be able to buy the freehold on fair terms but opposed the terms in the Bill as being confiscatory. They argued that the case for basing the price of enfranchisement solely on the site value, rested on a wholly false argument that the house belonged to the leaseholder. In fact he had only purchased a right to live in it for a specified period. Market prices should be paid for what belonged to the landlords.

27. One point raised in debate on the Bill arose from the fact that, under the Bill, the right of enfranchisement would be restricted to the tenants of houses under a certain value. It was argued that if the leasehold system worked unjustly for the reasons suggested by the Government, then logically it must work unjustly in respect of all tenants, regardless of the value of the house. The reasons put forward by Government spokesmen for confining the applicability of the legislation to houses below a certain value were essentially as follows:

- (a) that it was appropriate for legislation for improving the security of tenure of leaseholders to apply to the same class of property as the Rent Acts;
- (b) that the Government had tried to define the cases of greatest hardship which justified them in rectifying existing contracts; the precedent had therefore been followed of the limits set by the Rent Acts; whilst it might be argued on grounds of logic and consistency that no limit should be set, that would carry rectification to unnecessary limits;
- (c) to a degree the Government were influenced by the large capital gains which could be made by some tenants if the limits were removed entirely.

28. The Bill introduced by the Government was duly enacted as the Leasehold Reform Act 1967. Over one million houses in England and Wales fell within the scope of the enfranchisement scheme which it introduced.

8793/79

C. The Leasehold Reform Legislation

29. The legislation governing the question of leasehold enfranchisement now consists of the Leasehold Reform Act 1967, as amended by the Housing Act 1969, the Housing Act 1974 and the Housing Act 1980. This legislation provides tenants of houses let on long leases with the right to acquire the freehold of the house, or an extended lease, on certain terms and conditions. The principal relevant features of the legislation are outlined hereafter.

30. The following, in broad terms, are the principal conditions which must be satisfied before the tenant of a house becomes entitled to the rights of acquisition conferred by the Act:

- (a) the tenancy must be a "long" tenancy, ie for a period of over 21 years (Sections 1 and 3 of the 1967 Act);
- (b) the "rateable value" of the house (ie the notional rental value fixed for local taxation purposes) must not exceed £750 or £1,500 if the house is in Greater London (Section 1 of the 1967 Act as amended by Section 118 of the 1974 Act);
- (c) the annual rent must be a "low" rent, ie less than two-thirds of the rateable value (Sections 1 and 4 of the 1967 Act);
- (d) the tenant must occupy the house as his only or main residence and must have done so for at least three years prior to the time when he gives notice of his desire to exercise his rights under the Act (Section 1 of the 1967 Act as amended by Section 141 and Schedule 21 of the 1980 Act; the 1967 Act originally provided for a five year minimum period).

31. Where the above conditions are satisfied the tenant has two alternative rights:

- (a) he can obtain a fifty year extension of the lease at a rent representing the letting value of the ground (without buildings), the rent being subject to revision after 25 years (Sections 14 and 15 of the 1967 Act); or
- (b) he can purchase the freehold on the terms outlined below (Section 8 of the 1967 Act).

8793/79

The right to purchase the freehold is alternative to the right to obtain an extended lease in so far as it cannot be exercised after expiry of the original lease during the currency of an extended lease (Section 16 of the 1967 Act). The right to purchase the freehold can however be exercised at any time up to the end of the original lease, before the fifty year extension has started to run.

32. No price or premium is payable for an extended lease other than the rent. On the purchase of a freehold a price is payable to the landlord based on one or other of two bases of valuation. These are referred to as the "1967 basis of valuation", which was introduced by the 1967 Act (amended by the 1969 Act) and the 1974 basis of valuation" which was introduced by the 1974 Act. The 1967 basis of valuation applies to less valuable ("lower range") properties and the 1974 basis to more valuable ("higher range") properties. Certain still more valuable properties, being outside the global rateable value limits (para 30 (b) above), are outside the scope of the legislation altogether.

33. The essential features of the two bases of valuation are as follows:

- (a) the 1967 basis of valuation applies to lower range properties, ie those with a rateable value of up to £500, or £1,000 if the house is in Greater London; the price payable is the amount which the house, if sold in the open market by a willing seller, might be expected to realise on the assumptions (inter alia) that: (i) the tenant has exercised his statutory right to obtain an extension of the lease for fifty years, and (ii) that the purchaser is someone other than the tenant (Section 9 of the 1967 Act, Section 82 of the 1969 Act and Section 118 of the 1974 Act);
- (b) the 1974 basis of valuation applies to higher range properties, ie those with rateable values of over £500 and up to £750, or over £1,000 and up to £1,500 if the house is in Greater London; the price payable is the amount which the house, if sold in the open market by a willing seller, might be expected to realise on the assumption (inter alia) that at the end of the tenancy the tenant had the right to remain in possession of the house under the Landlord and Tenant Act 1954, ie as a rack renting tenant - see para 22 above (Section 9 of the 1967 Act as amended by Section 118 of the 1974 Act)

8793/79

34. The effect of the 1967 basis of valuation is that because of the assumption as to the extension of the lease, the tenant pays approximately the site value, and pays nothing for the buildings on the site. The assumption that the purchaser is someone other than the tenant, introduced by the 1969 Act, also excludes any element of "merger value" from the price. Because neither the landlord alone nor the tenant alone can offer a third party the freehold of the property with vacant possession, the sum of the values of the landlord's and tenant's respective interests is less than the freehold vacant possession value of the land. The difference, which is restored when the two interests are merged, is known as the "merger value". In free market transactions it is common for the vendor and purchaser to share the merger value in agreed proportions. This basis of valuation reflects the policy outlined in the 1966 White Paper (see paras 24 and 25 above).

35. The 1974 basis of valuation is more favourable to the landlord and provides a price approximately equivalent to the market value of the site and house (assuming it to be tenanted under the 1954 Act). It allows the landlord a share of the "merger value". This basis of valuation was introduced for the first time by the 1974 Act which raised the rateable value limits within which the legislation applied, and applied the new basis of valuation to more valuable houses newly brought into the scope of the legislation.

36. The legislation provides for procedures for carrying the relevant transactions into effect, and for determining disputes. Where the tenant wishes to acquire the freehold he must first give the landlord written notice of his desire to do so (Section 8 of the 1967 Act). Disputes over such matters as the tenant's entitlement to acquire the freehold under the Act are within the jurisdiction of the County Court (Section 20 of the 1967 Act). The price payable is now subject to determination, in default of agreement, by a Leasehold Valuation Tribunal, with a right of appeal to the Lands Tribunal (Section 142 and Schedule 22 of the 1980 Act). Before the 1980 Act came into force disputes as to price were within the jurisdiction of the Lands Tribunal (Section 21 of the 1967 Act). Regulations provide a timetable for completion of the purchase after the price has been determined (1).

37. Section 118 and Schedule 8 of the 1974 Act provide for procedures whereby the tenant may have the rateable value of the house adjusted so as to leave out of account the value of

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(1) Leasehold Reform (Enfranchisement and Extension)  
Regulations 1967, S.I. 1967 N° 1879.



8793/79

structural improvements carried out by himself or his predecessors. Provision is made for the County Court to determine disputes as to whether improvements are within the scope of the Schedule and, since the 1980 Act came into force, there has been a right of appeal to the High Court in respect of such decisions. The tenant may institute the procedure for adjustment of the rateable value at any time before the price of the property has been determined.

38. For the purpose of determining the price payable, the house is valued as at the date of the tenant's notice to the landlord of his desire to acquire the freehold (Sections 9 (1) and 37 (1)(d) of the 1967 Act), and not as at the date when the valuation is being carried out.

D. Transactions affecting the applicants

39. The applicants' complaints relate to a total of 80 transactions whereby tenants of leasehold property, forming part of a large estate of high quality residential property owned by the applicants in London, exercised their powers compulsorily to acquire the applicants' interest in the properties. Details of these transactions have been given by the applicants in their original application and in a series of supplementary applications subsequently submitted to the Commission. Appendix III to this Report is a chart giving details of the transactions. Column A specifies the properties in question. Column B sets out the date on which the tenants in each case gave notice of their desire to acquire the freehold, this being the valuation date. The date of completion of each transaction, when the applicants' property rights passed to the tenant, is given in Column C. Column D specifies whether the property was valued on the 1967 or 1974 basis of valuation. Column F gives the price paid in each case, and Columns G to J give details of the loss which the applicants claim to have suffered.

40. As can be seen from Appendix III the transactions to which the applicants refer related to properties held on both "premium" and "building" leases, and subject to both the 1967 and 1974 bases of valuation (Columns A and D).

41. In each case the price paid to the applicants was fixed by negotiation. The applicants state that they were advised that they had no grounds for disputing the right of any of the tenants to acquire the freehold, and that they could not reasonably have hoped to obtain a higher price for any of the relevant properties in proceedings before the Lands Tribunal or, in respect of the more recent transactions, a Leasehold Valuation Tribunal.

8793/79

42. According to the applicants a number of the properties acquired from them have since been sold on to other persons for substantial profits.

43. In addition to giving details of the specific transactions mentioned above, the applicants point out that they will continue to suffer loss through similar transactions for as long as the legislation remains in force.

8793/79

### III. SUBMISSIONS OF THE PARTIES

#### A. The applicants

##### 1. Submissions concerning the facts

44. The applicants maintain that by reason of enfranchisements under the Leasehold Reform legislation they have been deprived of property unjustifiably and on unjust terms. They submit that the legislation operates unjustly towards property owners in the following ways in particular:

- (a) it retroactively interferes with agreements freely made between landlord and tenant before it came into effect;
- (b) it frustrates the expectations with which the landlord entered into the agreement or purchased the freehold;
- (c) it compels the landlord to sell property against his will;
- (d) it compels him to sell property for the benefit of private individuals;
- (e) it deprives him of property at a price often far below market value, enabling tenants to sell in the open market for large profits;
- (f) it provides no machinery whereby the landlord can challenge the validity of the expropriation or principles on which compensation is to be calculated where the tenancy is within the ambit of the statute;
- (g) it makes arbitrary distinctions between tenancies which can be enfranchised and those which cannot in a way inconsistent with its purported principle, or any discernible principle.

45. As to the particular transactions affecting them, the applicants complain that they were deprived of the relevant properties against their will and have suffered loss by reason of the following matters:

- (a) in those transactions to which the 1967 basis of valuation applied, they suffered a capital loss represented by the difference between the price received by them under that basis of valuation and the open market value of the property, (see Columns E, F and G of Appendix III for details of the losses allegedly suffered);

8793/79

- (b) in all transactions they suffered loss by reason of delay between the date of valuation of the properties (the date of the tenant's notice) and the date of completion of the relevant transaction, in respect of which period no interest was payable; such loss was comprised of loss of interest on the price actually paid under the legislation, and loss of interest on the capital loss allegedly suffered (see Columns B, C, H and I of Appendix III for details of the relevant dates and the alleged loss of interest).

2. Article 1 of Protocol N° 1

(a) General

46. The applicants maintain that they have been "deprived of .... possessions" in breach of the conditions laid down in the second sentence of Art 1. Even if that sentence is not applicable, they have in any event been victims of unjustified interference with the right to peaceful enjoyment of their possessions in breach of the first sentence.

(b) Deprivation of possessions

47. The applicants have been "deprived of .... possessions" in the ordinary and natural meaning of the words. There has been a "transfer of ownership", identified by the Court as the essence of "deprivation" (1). That transfer resulted, moreover, from compulsory purchase.

48. If the Commission's decision in the Bramelid and Malmstrom case (2) supports the contention that the second sentence of Art 1 is inapplicable, the decision is wrong and should not be followed. The Commission had previously assumed that "deprivation" can be constituted by transfer of property from landlord to tenant (3).

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- (1) Sporrang and Lonnroth Case, Series A, Vol 52, para 63.
- (2) Applications N°s 8588/79 and 8589/79, Bramelid and Malmstrom v Sweden, Decision of 12 October 1982.
- (3) Application N° 8003/77, X v Austria, 17 Decisions and Reports p 80.

8793/79

Municipal case-law on comparable constitutional provisions does not justify giving the word "deprivation" other than its natural meaning. The Commission accepted in the Bramelid case that deprivation could occur when the State gave a third party the right to take property. In so far as its reasoning in that case was that the deprivation rule only applied when property was taken to serve a public interest, it was unsustainable. It inverted the proper approach to the deprivation rule, which was to consider first whether on the facts deprivation had occurred, and deprived the public utility condition of any force.

(c) The purpose of the taking of the applicants' property - "in the public interest"

49. The words "in the public interest" in their ordinary, natural meaning in their context, denote the use of property for a governmental or other activity for a public purpose of benefit to the community as a whole. They do not cover the taking of property for the benefit of individuals or, as the Government submit, for the benefit of a particular section of the public in circumstances thought proper by the Government of the day. The test is an objective not subjective one. It is not disputed that the applicants' property was not taken to be used for a public purpose. No question of "margin of appreciation" therefore arises and the taking was in breach of Art 1.

50. In support of their interpretation of "the public interest" the applicants argue inter alia that:

- (a) their interpretation is the only permissible meaning of the phrase "pour cause d'utilité publique" used in the French text of Art 1, this being a term of art with a specific meaning (1); only this interpretation reconciles the English and French texts; it is also the most appropriate to realise the object of the Convention;
- (b) the words "public interest" must be intended to have a different meaning to the words "general interest" in the second paragraph of Art 1, and impose a more severe test on expropriation than is placed on control of use;

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(1) The applicants refer inter alia to Art 33 of the Spanish Constitution and observe that it distinguishes between social interest and public utility (".... sino por causa justificada de utilidad publica o interes social") as circumstances justifying interference with property.

8793/79

- (c) the words reflect the clear distinction between expropriation for a public purpose and for a private purpose, which is widely recognised in national law, as also in the international law rule that expropriation is permissible only for purposes of public utility;
- (d) exception clauses to Convention rights should be given a narrow construction;
- (e) the travaux préparatoires resolve any ambiguity in favour of the applicants' interpretation.

51. The applicants have also submitted a survey of the laws of the Contracting States. From this, they submit, it appears inter alia that in only four States (1) apart from the United Kingdom do tenants in any circumstances have the right to compel their landlords to sell them the freeholds of the properties. In those States the question whether leasehold enfranchisement is "pour cause d'utilité publique" has not been litigated. Whilst States have generally had special laws for the protection of tenants of agricultural holdings, this derives from concern for efficient use of agricultural land and compulsory enfranchisement of such land could be justified under the second paragraph of Art 1.

52. The applicants also refer to the laws of a number of other countries and draw attention in particular to a decision of the United States Court of Appeals for the Ninth Circuit (2) holding that a system of leasehold enfranchisement in Hawaii infringed the Fifth Amendment to the United States Constitution, since it involved the transfer of property from one citizen to another and such takings were not for a public use.

53. Measures such as leasehold enfranchisement, where property is taken from one citizen to enrich another, can be distinguished from other transfers of property between individuals (as in matrimonial, succession and other proceedings). Such transfers might either not be considered as deprivations of possessions at all, or might be justified under the second paragraph of Art 1, to which the deprivation rule is subordinate.

54. In any event the taking of the applicants' property was not "in the public interest" even on the broad interpretation contended for by the Government. In this respect the applicants make inter alia the following submissions concerning the legislation:

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- (1) Iceland, Ireland, Malta and Norway.
  - (2) *Midkiff v Tom*, N° 80-436B.

8793/79

- (a) the legislation was not enacted for purposes of public benefit but was motivated by purely political considerations; the Government acted contrary to the recommendations of the Leasehold Committee and professional bodies, without reviewing the evidence, for purposes of electoral advantage;
- (b) the leasehold system of tenure did not suffer from any general or systematic unfairness, either as between the original landlord and tenant or their successors in title; in building leases the terms of tenancy would be adjusted so as to reflect the cost to the tenant of building the house; in premium leases the "moral entitlement" of the tenant to the house could arise only from his performance of obligations to maintain and repair; however all tenants perform such obligations; furthermore if that were the basis of the entitlement why should more valuable houses be excluded from the scope of the legislation? This shows that the legislation is inconsistent with the principle on which it is allegedly based;
- (c) against the background of (i) the security of tenure afforded to tenants under the Rent Acts (see para 22 above) and (ii) the right to obtain a fifty year extension of the lease under the leasehold reform legislation, expropriation is neither required nor justified;
- (d) the legislation was against the public interest in that the leasehold system had important advantages in town planning and in making property available at prices which purchasers could afford; furthermore many of the houses affected had been owned by charities and public corporations or authorities and leaseholders were thus benefitted at the expense of funds whose purpose was to serve the public good;
- (e) the operation of the legislation is indiscriminate; there is no provision whereby the courts can consider whether enfranchisement is reasonable in the circumstances of an individual case.

55. Even if the Government could show that enfranchisement were sometimes, or in principle, capable of being "in the public interest", they could not discharge the onus on them to justify the acts complained of. The applicants are entitled to have each individual act of deprivation considered on its merits. In respect of the individual transactions the applicants make inter alia the following observations:

8793/79

- (a) the overwhelming majority related to premium not building leases; the premiums paid were substantially less than the cost of constructing the buildings, as can be shown by a comparison of premiums with the insured value of the premises (representing the full cost of reconstruction);
- (b) in the overwhelming majority of the transactions the tenant who benefitted from the legislation was neither the original tenant nor anyone with a close familial relationship to him, the original leases having long since come to an end;
- (c) in the majority of cases the enfranchising tenant had no connection even with the first tenant of the lease which was enfranchised, having merely purchased the unexpired portion of the lease and occupied the house for as little as three years before enfranchisement;
- (d) the tenants were entitled to security of tenure;
- (e) in a number of cases the enfranchising tenants did not remain in occupation but sold the freehold for a substantial profit within a year (some at profits over £100,000).

56. These transactions were not therefore justified by the considerations mentioned in the White Paper, or at all. They were not cases of the needy seeking to retain a house they had morally earned, but of the relatively prosperous whose security of tenure was always ensured, making windfall profits at the applicants' expense.

57. Neither the legislation nor the actual taking of the applicants' property was therefore "in the public interest". Furthermore not having been for a public purpose, the taking was also incompatible with the "general principles of international law" (see below).

(d) Compensation

58. Art 1 requires the payment of fair compensation in case of expropriation. Its general object and purpose is to protect the right to property in a way which fairly balances the interests of property owners with those of the State (1). The right to compensation arises from the first sentence of Art 1, and from each of the three safeguards in the second sentence, these being overlapping provisions.

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(1) Marckx Case, Judgment of 13 June 1978, Series A, N° 31, para 63; Sporrang & Lönnroth Case, Judgment of 23 September 1982, Series A, N° 52, para 69.



8793/79

59. In applying the first sentence of Art 1 the Court held that it had to:

"determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the individual's fundamental rights" (Sporrong & Lonnroth Judgment, para 69).

The absence of any possibility of claiming compensation was one factor which led the Court to conclude that a "fair balance" had not been struck and the judgment demonstrates that in appropriate circumstances a right to compensation, for nationals and foreigners, arises under the first sentence of Art 1.

60. The same concept of "fair balance" and the same right to compensation apply under the "deprivation rule" and a right to compensation arises from each of the three specific safeguards in that rule. Expropriation on unjust compensation terms cannot be considered to be "in the public interest" and where the compensation paid is arbitrary in the sense that it is not reasonably related to the value of the property taken, the taking cannot be considered as "subject to the conditions provided for by law".

61. Furthermore the "general principles of international law" referred to in Art 1 are applicable to the taking of the property of nationals as well as foreigners and provide a right to prompt, adequate and effective compensation in case of expropriation. The Commission's decision to the contrary in the Gundmundsson Case (1) was wrong and should not be followed. On this point the applicants make inter alia the following submissions:

- (a) Art 1 on the ordinary meaning of the words used in their context guarantees the same rights to everyone within the jurisdiction of a State without discrimination;
- (b) the reference to international law incorporates principles and standards relating inter alia to compensation into the rights guaranteed to everyone;

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(1) Application N° 511/59, Yearbook III p 394 at pp 422 - 424.

8793/79

(c) the contrary interpretation would be absurd and unreasonable, introducing discrimination as between nationals and non-nationals; it would also logically be applicable to Art 26 of the Convention;

(d) since the meaning of the words used is clear it is not permissible to have resort to the travaux préparatoires as a supplementary means of interpretation; in any event the travaux préparatoires do not confirm the interpretation reached in the Gudmundsson case.

62. The only proper criterion for compensation is the market value of the property taken. The use of this standard is supported by the principles of international law, by English law (in the field of compulsory purchase in particular) and by the constitutions and laws of many member States. The assumptions upon which, under the legislation, compensation must be calculated deny the landlord such compensation. In addition delay causes him further loss due to the fact that compensation is fixed as at the date of the tenant's notice.

63. The denial of just compensation is not justified by any alleged "moral entitlement" of the tenants to the houses, there being no such "moral entitlement".

64. Nor can the compensation terms be justified on the basis that (without violating the Convention) the legislation permits fifty year extensions of tenancies and that compensation can therefore properly be assessed on the basis that such an extension has been obtained. The applicants do not accept that the fifty year extensions would be compatible with the Convention as a valid control of use. Such extension goes beyond security of tenure and gives the tenant a substantial capital asset, not just a roof over his head. He will also enjoy statutory security of tenure at the end of the fifty year lease, and could enjoy it as an alternative to an extended lease.

65. In any event merely because a lease could be extended without violation of the Convention, it does not follow that it is permissible to calculate compensation on the basis that an extension has occurred. A series of events theoretically separately justifiable may still be cumulatively unjust. If a fifty year extension is justifiable as a control of use, it is only justifiable as such and not when it serves as a device for striking down the value of the property.

8793/79

(e) "Peaceful enjoyment of possessions"

66. Even if the rule concerning deprivation of possessions is not applicable the applicants have been victims of unjustified interference with the "peaceful enjoyment" of their possessions in breach of the first sentence, since the legislation failed to draw a "fair balance" between their property rights and the general interest. In particular:

- (a) the dispossession was not for public utility purposes;
- (b) the general interest of the community did not require transfer of ownership;
- (c) in any event it did not require it at less than market value;
- (d) there was no court which could rule upon the justice of the transfer in the particular case.

3. Article 14 of the Convention in conjunction with Article 1 of Protocol N° 1

67. The 1967 Act discriminates against the applicants on grounds of property (although not of wealth per se). It discriminates against the landlord because the lower the value of his property the more harshly he is treated. Furthermore it is a measure of redistribution applying only to owners of a restricted class of property. It is discriminatory as between leaseholders in that it treats in the same way leaseholders whose circumstances are different. It is discriminatory as between leaseholders and freeholders in that it confers a benefit on the leaseholder at the expense of the freeholder, whose need may be different. Further it operates within arbitrary limits which are appropriate to rent control, where a defined area is necessary, but whose application to a confiscatory measure has no similar justification.

68. There is no objective and reasonable justification or due proportionality between aims and means in respect of the distinctions drawn as to (i) the applicability of the principle of enfranchisement and (ii) the levels of compensation.

4. Article 13 of the Convention

69. The applicants submit that they have been denied a remedy before a national authority in respect of their claim to be the victims of violations of the Convention, in breach of Art 13 as interpreted by the Court in the Klass Case (1).

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(1) Series A, Vol 28, para 64.

8793/79

B. The respondent Government

1. General and factual submissions

70. The task of the Commission in the present case is not to scrutinise the applicants' claims case by case but is one of overall scrutiny of the legislation under the Convention. The question of leasehold enfranchisement has been the subject of interest and concern in the United Kingdom for a century. Long and deep consideration was given to the matter from the publication of the 1966 White Paper onwards. In particular the applicants' complaints concerning the "bricks and mortar value" of the houses and "merger value" were raised and considered in the Parliamentary proceedings in 1967 and 1969. Furthermore there has been an important measure of unanimity among politicians on opposing sides on the principle of enfranchisement. These considerations underline the Government's case as to the measure of discretion to be accorded to the Government, especially in considering the balance struck by the legislation.

71. The applicants fundamentally misconceive the role of the Convention organs by asking them to substitute their view of the merits of the legislation for that of the domestic legislature. States have a margin of appreciation. Municipal law cannot be held to be in breach of the Convention merely because grounds can be asserted for disagreement or dislike of it. It is of the essence of a vigorous and effective political democracy that political parties will have differing views on particular issues and political considerations may properly influence both the timing and content of legislation. Different solutions from different political standpoints may all be consistent with the Convention.

2. Article 1 of Protocol N° 1

72. In the Sporrong and Lönnroth Case (1) the Court stated that Art 1 of Protocol N° 1 comprises three distinct rules. The first enunciates the principle of peaceful enjoyment of property. The second covers deprivation of possessions and defines when deprivation may occur without breach of the first rule. The third rule concerns the control of use. Before considering the matter under the first rule, it is necessary to consider whether either the second or third rule is applicable. Only if they are inapplicable is it necessary to

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(1) Sporrong & Lönnroth Case, Series A Vol 52, para 69.

8793/79

examine the matter under the first rule. Under that rule alone it is necessary to determine "whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights". If the "deprivation rule" in the second sentence was applicable, its conditions were satisfied. Alternatively the legislation struck a "fair balance" and was compatible with the general rule.

73. The expression "in the public interest" refers to action for the advantage, benefit or service of the public or a part of the public. Nothing in the English or French text justifies confining it to activities "for a public purpose of benefit to the community as a whole", as contended by the applicants. The fact that the public benefit may be secured by satisfying private need or advantage does not mean that it is not "in the public interest".

74. The expression "public interest" is a wide one used in many contexts and scarcely distinguishable from the "public good". The applicants' construction of the words is not merely a narrow interpretation, but offends against their ordinary usage. Furthermore there are a number of situations in which property is compulsorily taken from one person and put into the hands of another, as in matrimonial, company, succession and bankruptcy law. Such takings would not, on the applicants' interpretation, be "in the public interest" and it is impossible reasonably to suppose that this was the intention of Art 1.

75. The acquisition of property for social or economic purposes may well fall within "the public interest". Such purposes may encompass a distribution of property by leasehold enfranchisement or otherwise. This interpretation is in line with the Commission's previous case-law (1). The case-law also contradicts the applicants' argument that the "margin of appreciation" doctrine has no place in this context (2).

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(1) Application N° 1870/63, X v Federal Republic of Germany, 18 Collection of Decisions p 54 at p 58; Application N° 8003/77, X v Austria, 17 Decisions & Reports at p 86.

(2) Application N° 3039/67, A, B, C and D v the United Kingdom, 23 Collection of Decisions p 66.

8793/79

76. The expression "public interest" must therefore be given the wide meaning encompassed by the expression "pro bono publico". The legislation was "in the public interest" in that sense. When the legislation was introduced many resident long leaseholders faced the prospect of extinction of their proprietary interest in their houses with disquiet and in many cases a sense of injustice. There had moreover been a steady rise in the percentage of owner-occupation in England and Wales since 1914. The aspiration of leaseholders to enlarge their interest to freehold ownership should be seen in this context. Successive Governments have responded to this aspiration by measures such as tax relief on mortgage payments, improvement grants etc, and the 1967 Act can be seen as another such measure.

77. As to the applicants' argument that the 1967 Act is harmful to the public interest, there is a comprehensive statutory system of development control and under Section 19 of the 1967 Act landlords of well-managed estates may seek the establishment of a management scheme to which enfranchised houses would still be subject. The leasehold system did not produce consistently high standards of architecture and an early concern was that it led to bad building. As to the suggestion that it was a source of cheap housing, the general opinion would be that the provision of freehold houses is more beneficial to the supply, standards and maintenance of such housing. As to the alleged damage to public and charitable bodies, it is legitimate for the Government to form and act on their own view about which aspect of public interest should be given priority.

78. The position of leaseholders thus was, and is, a matter of public interest and concern. The legislature, in responding to what it perceived as a sense of injustice on the part of at least some leaseholders, dealt with their position in the public interest. Whatever views might be taken of the arguments for and against particular aspects of the measures taken, the Parliamentary debates demonstrate the working of a political democracy in addressing such an issue. Although the Commission can consider whether legislation infringes the Convention, it is not its function to substitute its own views for those of the national Parliament on the question where the public interest lies. It should only consider whether the Government's margin of appreciation has been exceeded. The present case does not concern acts of the State administration but legislation, on a matter in respect of which wide differences of view could reasonably be held, enacted by a democratic Parliament following the proper constitutional processes. In such a case the margin of appreciation is very wide. The applicants are in reality asking the Commission to substitute its own view for that of the parliamentary majority carrying legislation on a general and national issue in a sovereign Parliament.

8793/79

79. The legislation at issue here is clearly within the margin of appreciation and is "in the public interest".

80. As to the question of compensation, the Government submit that a right to compensation cannot properly be read into the first two limbs of Art 1 ("public interest" and "conditions provided for by law") and that the "general principles of international law" do not apply to the taking of the property of a State's own nationals. The Commission's decision in the Gudmundsson case (sup cit) was correct and should be followed. In this respect the Government make inter alia the following observations:

- (a) on a fair and natural reading of Art 1, the first two conditions apply to nationals and non-nationals, but the third is inherently inapplicable to nationals;
- (b) the phrase thus interpreted is not without effect as it enables a non-national to assert a claim against a State;
- (c) the reference to international law in Art 26 does not assist the applicants since it merely applies to the Commission the ordinary jurisdictional rules for international tribunals;
- (d) the travaux préparatoires clearly confirm that the reference to international law was not intended to apply to nationals.

81. In any event the compensation provisions in the legislation are compatible with international law requirements for the payment of prompt, adequate and effective compensation, and are also within the margin of appreciation accorded to States in relation to the "public interest" requirement.

82. The 1967 basis of valuation is grounded in the principle that the land belongs in equity to the freeholder and the house to the leaseholder. This notion cannot be said to be manifestly unreasonable or ill-founded or be categorised as a breach of international law requirements as to adequacy. As to the exclusion of "merger value" from compensation in the 1967 basis, the intention of the 1967 Act, confirmed in 1969, was that the landlord should be paid for what he was losing, namely the value of the freehold as an investment. The applicants concede that the 1974 basis of valuation produces effectively market value.

83. As to promptness, it is open to a landlord who believes that the tenant is deliberately delaying the process of enfranchisement to apply to have the price fixed under the statutory procedures (see para 36 above). The delay between agreement on the price and completion of the transaction is not significantly different from that which occurs in ordinary conveyancing transactions.

8793/79

84. Finally the Government submit that in the light of the Bramelid decision (sup cit) it may in any event be felt that the deprivation rule was inapplicable here on the ground that the legislation in question was different in type from an expropriation measure, being a measure regulating private law rights and obligations between individuals. It would then be necessary to consider, under the "peaceful enjoyment" rule whether the legislation struck a fair balance between the general interest and the individual's rights. States should be afforded a wider margin of appreciation under this rule. For the same reasons that the legislation was to be considered as being "in the public interest" it should a fortiori be considered as striking a fair balance between the relevant interests, in particular between landlords' property rights and the equitable claims and aspirations of tenants.

85. Accordingly the legislation is compatible with Art 1 of Protocol N° 1.

3. Article 14 of the Convention in conjunction with Article 1 of Protocol N° 1

86. Art 14 of the Convention is directed to differences of treatment between persons or groups in comparable situations, based expressly or covertly on the personal characteristics or status of the persons or groups concerned. The legislation here contains no element which could be described as discriminatory. Any measure of redistribution will necessarily apply only to the owners of a restricted class of property. The prohibition of discrimination on grounds of "property" is intended to prohibit discrimination on grounds of wealth or social class and the legislation draws no distinctions on such grounds.

87. The inclusion of some but not all freeholds in the scope of the legislation is in any event objectively and reasonably justified (1). The legislation was introduced to benefit only occupying long leaseholders. It was enacted in the public interest and serves a similar purpose to rent control and other measures for the stability of residential occupation. The Commission has found that the inclusion of only certain houses in rent legislation, and the exemption of new houses, could be justified for economic reasons (2). The same reasoning applies here.

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(1) Belgian Linguistic Case, Series A, Vol 6, p 34.

(2) Application N° 8003/77, X v Austria, 17 Decisions & Reports, p 80.



8793/79

88. Any issue relating to different levels of compensation does not fall within the scope of Art 14 since the requirement of compensation is not an element in Art 1 of the Protocol so far as concerns nationals. In any event the distinctions made are objectively and reasonably justified. It is justifiable, in view of the plight of tenants towards the end of their leases and the economic factors by which they were affected, to require a proportionately lower price from those occupying less valuable property than from those occupying more valuable property, whose resources are likely to be greater.

89. There has accordingly been no breach of Art 14.

8793/79

#### IV. OPINION OF THE COMMISSION

##### A. Points at issue

90. The following are the principal points at issue under the Convention:

- (a) whether the compulsory taking of the applicants' property under the leasehold reform legislation involved a breach of their rights under Art 1 of Protocol N° 1 to the Convention;
- (b) whether the taking of the property involved discrimination against the applicants in breach of Art 14 of the Convention in conjunction with Art 1 of Protocol N° 1;
- (c) whether there has been any infringement of the applicants' right to an "effective remedy before a national authority" as guaranteed by Art 13 of the Convention.

##### B. General approach to the issues

91. To some extent the parties differ as to the correct general approach to the issues. The applicants maintain that the Commission should determine whether each individual act of deprivation was compatible with the Convention, whereas the Government maintain that the correct approach is to consider the legislation itself.

92. The applicants' complaints do not relate to the application of legislation by a public authority or tribunal but, as the Government have pointed out, relate essentially to the legislation itself. The particular acts of deprivation which the applicants complain of resulted from transactions between private individuals for which the Government is responsible qua legislator but not otherwise. Although the Commission must take into account the practical effects of the legislation, the essential question before it in its view is whether the Government breached the applicants' rights under the Convention by empowering tenants to acquire their property on the terms and conditions laid down in the legislation. This question must be approached by considering whether the legislation is compatible with the Convention rather than by separate examination of the individual transactions.

8793/79

C. Article 1 of Protocol N° 1

1. General remarks

93. Article 1 of Protocol N° 1 to the Convention is in the following terms:

"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."

94. In the Sporrong and Lönnroth case the Court observed that Art 1 comprises "three distinct rules". The first rule was "of a general nature" and enounced the principle of "peaceful enjoyment of possessions". The second rule "covers deprivation of possessions and subjects it to certain conditions". The third rule was concerned with control of use of property. The Court observed that before considering whether the first rule had been complied with it must determine whether the last two were applicable (Sporrong and Lönnroth Judgment, Series A, Vol 52, para 61).

95. The Commission must consider which rule is applicable in the present case. Before doing so it observes, however, that the three rules are not entirely separate or watertight. The first "general" rule contains a general guarantee of the right of property. This general guarantee is then qualified or limited by the second and third rules. The second and third rules must be interpreted in their context and in the light of the general guarantee contained in the first sentence.

2. Applicability of the "deprivation rule"

96. In the present case the applicants maintain that, as a result of the leasehold enfranchisement transactions, they have been "deprived of .... possessions" and that the second sentence of Art 1 is thus applicable. The respondent Government suggest that the rule in this sentence may be inapplicable in light of the Commission's decision on admissibility in the case of Bramelid and Malmstrom (1).

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(1) Applications N°s 8588/79 and 8589/79, Bramelid & Malmstrom v Sweden, Decision of 12 October 1982.

8793/79

97. In that case the Commission stated that the wording of this part of Art 1:

".... shows clearly that it is intended to refer to formal (or even de facto) expropriation, that is to say the act whereby the State lays hands - or authorises a third party to lay hands - on a particular piece of property for a purpose which is to serve the public interest."

It found that a purchase of shares under powers conferred by company legislation was not a "deprivation" of possessions for the purposes of this provision, the legislation in question being concerned principally with relations between shareholders and having "nothing to do with the notion of 'public interest' as it arises in the context of expropriation."

98. The applicants maintain that the Commission's reasoning in the Bramelid case cannot be sustained inter alia because it inverts the proper approach to the deprivation rule and deprives the "public interest" condition in it of any force.

99. The question whether a given act falls within the scope of the "deprivation rule" must clearly be determined by considering whether the person concerned has been "deprived of his possessions". If this is found to be the case it is then necessary to consider whether the conditions laid down in the rule have been satisfied. However the nature of these conditions is such, in the Commission's view, as to throw some light on the concept of "deprivation" of possessions. In particular the fact that deprivation is subjected to the "public interest" requirement suggests that the concept was not intended to be so wide as to cover every case in which property passes from one person (against his will) to another by virtue of the operation of rules of private law.

100. Thus the Commission recalls that in the Bramelid case it pointed out that in all the States Parties to the Convention "legislation governing private law relations between individuals .... includes rules which determine the effects of these legal relations with respect to property and, in some cases, compel a person to surrender a possession to another". Examples to which the Commission referred were the division of inherited property and matrimonial estates, and the seizure and sale of property in execution proceedings. In the Commission's view there may be cases such as these where the passing of property, resulting from legal limitations inherent in particular property rights, should not be considered as constituting a deprivation of possessions for the purposes of the second sentence of Art 1.

8793/79

101. However the present case does not, in the Commission's opinion, come within this category. In so far as it affected pre-existing leases, the leasehold reform legislation went beyond the regulation of the existing landlord/tenant relationship. It was designed to enable the ownership of property to be transferred from one person to another essentially as a measure of social reform. It authorised tenants to acquire compulsorily property rights to which they had never previously had any entitlement and which they would never have had any expectation of acquiring by virtue of their legal relationship with the landlord.

102. In the Commission's view this legislation was essentially different to that at issue in the Bramelid case which, as the Commission pointed out, was principally concerned with "relations between shareholders", and which regulated their mutual rights and obligations as joint owners of a company. In principle the same rights and obligations attached to all shares and it had long been a feature of the legal relations between shareholders that in certain circumstances a majority could buy out a minority.

103. In the present case, however, landlord and tenant each had separate and distinct rights in the property subject to the lease. The leasehold reform legislation, in authorising tenants under existing leases to acquire the landlord's rights in the property, authorised them to "deprive" landlords of their "possessions".

104. The Commission accordingly finds that the applicants in the present case were "deprived of .... possessions" and that the second sentence of Art 1 was applicable. It is therefore necessary to consider whether the taking of their property was in conformity with the conditions laid down in that provision.

### 3. Interpretation of the "deprivation rule"

#### (a) General

105. Essentially two questions arise in relation to the interpretation of the second sentence of Art 1. The first is whether it permits the taking of property otherwise than for a public use and the second is whether it guarantees to nationals a right to compensation when property is taken.

106. The Commission has already pointed out that the "deprivation rule" qualifies the general guarantee of the right of property in the first sentence of Art 1, and must be interpreted in light of that general guarantee. Before considering these specific questions of interpretation it is therefore appropriate to consider in more general terms the content of the rights guaranteed by Art 1.

8793/79

107. In the first place the Commission recalls that the Court held that by recognising the right to peaceful enjoyment of possessions "Article 1 is in substance guaranteeing the right of property" (Marckx Judgment, Series A, Vol 31, para 63). The Court has also observed, more generally, that "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that it is "designed to safeguard the individual in a real and practical way as regards those areas with which it deals" (Airey Case, Series A, Vol 32, paras 24 and 26). The Commission therefore approaches Art 1 on the basis that it is intended to provide a real, practical and effective guarantee of the right of property.

108. Secondly the Commission recalls that in considering, under the first sentence of Art 1, an interference with property rights short of a deprivation, the Court has held that it "must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the individual's fundamental rights" (Sporrong and Lönnroth Judgment, para 69). One factor which the Court took into account in deciding whether such a balance had been struck was the absence of any provision for compensation for the interference in question (ibid paras 71 and 73). The Court thus treated a right to compensation for interference with property rights as being an inherent feature of the right of property set forth in Art 1 in so far as it might form a necessary ingredient in a fair balance between public and private rights. It is indeed difficult in the Commission's view to conceive of a real, practical and effective guarantee of the right of property without some such right. The laws or constitutions of most if not all the Contracting States appear to regard some right to compensation as being an inherent and necessary feature of an effective legal protection of property rights.

109. The Commission will therefore consider the specific questions of interpretation in light of these general considerations regarding the scope of the right of property guaranteed.

(b) Applicability of the "general principles of international law"

110. The applicants maintain that the "general principles of international law" referred to in Art 1 apply to the taking of the property of nationals and foreigners alike, and (a) prohibit the taking of property except for purposes of public use and (b) require the payment of prompt, adequate and effective compensation. The Government maintain that such principles are by definition inapplicable to a State's own nationals (such as the present applicants) and do not therefore apply here.

111. In the Gudmundsson case (1) the Commission found that the principles in question were not applicable to the taking of the property of nationals. It stated as follows:

"Whereas, the general principles of international law, referred to in Article 1, are the principles which have been established in general international law concerning the confiscation of the property of foreigners; whereas it follows that measures taken by a State with respect to the property of its own nationals are not subject to these general principles of international law in the absence of a particular treaty clause specifically so providing; whereas, moreover, in the present instance, the records of the preparatory work concerning the drafting and adoption of Article 1 of the Protocol confirm that the High Contracting Parties had no intention of extending the application of these principles to the case of the taking of the property of nationals".

The Commission has taken the same point of view in a number of subsequent cases and has never held otherwise. The applicants submit that it should now depart from this case-law.

112. In the light of the parties' submissions the Commission has again considered the matter, guided in its approach to the issue of interpretation by the provisions of Arts 31 and 32 of the Vienna Convention on the Law of Treaties.

113. The Commission accepts that, at first sight at least, the interpretation put forward by the present applicants is one possible meaning open on the basis of the text of Art 1. The reference to "general principles" of international law, in a provision of general applicability ("No one shall be deprived ...."), could be read as incorporating substantive principles for the benefit of everyone entitled to the protection of the provision. On the other hand it is also possible to read it as incorporating into the Convention context only such obligations (or

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(1) Application N° 511/59, Gudmundsson v Iceland,  
4 Collection of Decisions p 1 at p 19.

"conditions") as are actually imposed on a State under the general principles of international law applicable to the taking of property, and not as extending the scope of such obligations to cover the property of nationals. In support of this interpretation it can be argued that everyone is indeed entitled to the protection of international law by virtue of Art 1, but only in respect of acts in relation to which such law applies, namely the acts of States other than his own. This latter interpretation is, in substance, the one which the Commission has favoured in its previous case-law, on the basis of its reading of the text.

114. It is true that the general scheme of the Convention is to secure certain fundamental rights and freedoms for the enjoyment of "everyone within (the) jurisdiction" of the Contracting States (Art 1 of the Convention) "without discrimination on any ground such as .... national .... origin" (Art 14). Although Arts 1 and 14 do not themselves define the rights which are to be secured, the Commission accepts that in the light of the indications they give as to the object and purpose of the Convention it must be slow to interpret other Articles of the Convention as differentiating between different classes of people in relation to the rights secured. On the other hand they do not render such differentiation impossible, as Art 16 shows, and indeed Art 14 itself does not prohibit all differences of treatment in relation to the enjoyment of protected rights, but only those lacking an objective and reasonable justification (Belgian Linguistic Case, Series A, Vol 6 p 34).

115. In the Commission's view it would not be unreasonable to hold that Art 1 subjected deprivations of the property of foreigners to different rules than those applicable in the case of nationals since different considerations may well arise in relation to the taking "in the public interest" of the property of foreigners and nationals. In particular it may be reasonable, in some circumstances at least, for a State to require national property owners to bear greater burdens "in the public interest" than foreigners.

116. Furthermore in a Convention largely inspired, as the preamble shows, by the "rule of law" the Commission would not find it surprising or unreasonable that a provision should be included whereby the lawfulness, in Convention terms, of a taking of property should be made conditional not only on compliance with such requirements as the Convention itself lays down, but also on respect for such other laws,



8793/79

national or international, as are applicable to the particular case. A reference to domestic law or the principles of international law in such a context need not in the Commission's view imply any extension of their field of applicability.

117. The applicants have also relied on the reference to the "generally recognised rules of international law" in Art 26 of the Convention and suggest that since that reference plainly applies to nationals, the reference in Art 1 should be interpreted as doing so likewise. However Art 26 is concerned essentially with the jurisdiction of the international organs established under the Convention. The rule of exhaustion of domestic remedies is itself derived from international law concerning the jurisdiction of international tribunals and Art 26 is expressed so as to apply that rule to the Commission. Art 1 on the other hand confers and defines individual rights which are to be secured within the domestic jurisdiction. Within that context it would not be unreasonable to find that the reference to international law served a different and more limited purpose.

118. The Commission does not therefore consider that an interpretation of Art 1 based on the ordinary meaning of its terms in their context and in the light of the object and purpose of the Convention leads to the conclusion contended for by the applicants. On the contrary the applicants' interpretation involves giving an extended meaning to the reference to international law, whereas the contrary interpretation would confine the applicability of the relevant principles to the class of case in which they are applicable. Nor does the Commission find evidence of any subsequent practice in relation to the application of the Convention which establishes that the parties intended it to be interpreted as the applicants contend.

119. In any event any ambiguity can, in the Commission's opinion, be conclusively resolved by reference to the travaux préparatoires which confirm that the intention of the Contracting States was not to extend the applicability of the principles of international law to cover the taking of the property of nationals. The Commission refers in particular to the following elements in the travaux:

Firstly certain earlier drafts of Art 1 expressly incorporated a general right to compensation for the compulsory taking of property. Reference to such a right was not acceptable to certain States. In particular the Report of the Committee of Experts on Human Rights dated 19 April 1951 records that the French, Saar and United Kingdom delegations stated that they were unable to agree to a text which included a right to "such compensation as shall be determined in

8793/79

accordance with the conditions provided for by law" mainly because they "could not accept a definition of the right to property comprising in all cases the principle of compensation in the event of private property being acquired by the State". No reference to such right was included in future texts.

Secondly the present reference to the "general principles of international law" then appeared in a text proposed by the Committee of Experts in June 1951. The German Government notified the Secretary General of the Council of Europe on 15 July 1951 that it was prepared to accept the text provided there was explicit agreement "that the general principles of international law entail the obligation to pay compensation in cases of expropriation". At a subsequent meeting of the Ministers' Advisers in July 1951 it was pointed out by the Swedish Delegation that "the general principles of international law referred to under Art 1 of the Protocol only applied to relations between a State and non-nationals" and at the request of the Belgian and German Delegations "it was agreed that the general principles of international law, in their present connotation, entailed the obligation to pay compensation to non-nationals (emphasis added) in cases of expropriation". The general statement of the German Government in the letter of 15 July 1951 was thus qualified very shortly after it was made.

Thirdly in their Resolution (52) 1 of 19 March 1952 approving the text of the Protocol and opening it for signature, the Committee of Ministers expressly recognised that "as regards Article 1, the general principles of international law in their present connotation entail the obligation to pay compensation to non-nationals in cases of expropriation."

The Commission finds no ambiguity in the terms of this Resolution, looked at in the context of the drafting history as a whole, and considers that it clearly confirms that the reference to ~~international law was not intended to apply to nationals.~~ Indeed it finds it inconceivable that a Resolution in these terms would have been adopted if the intention had been that they should apply to nationals.

120. Accordingly the Commission confirms the conclusion which it reached in the Gudmundsson case and finds that the "general principles of international law" referred to in Art 1 do not apply to the taking of the property of a State's own nationals. Such principles were not therefore applicable to the taking of the property of the present applicants.

8793/79

(c) "in the public interest and subject to the conditions provided for by law"

1. General

121. The remainder of the "deprivation rule" prohibiting deprivations of property save "in the public interest" and "subject to the conditions provided for by law" is applicable in the present case. It is therefore necessary to consider the requirements of these conditions in relation to the purposes for which property may be taken and compensation.

122. It is appropriate first to recall certain general principles which have been established in relation to provisions which, like the "deprivation rule" qualify or limit the substantive rights guaranteed under the Convention. In the first place the Court has held that exceptions to the protected rights must be "narrowly interpreted", (see eg Klass Case, Series A, Vol 28, para 42; Winterwerp Case, Series A, N° 33, para 37). In the second place it is a consistent feature of the case-law of both the Commission and the Court that where interference with protected rights is permitted under the Convention in pursuit of some legitimate aim, not only must the measure interfering with the right pursue such legitimate aim, but there must also generally be a relationship of proportionality between the measure interfering with the Convention right and the aim pursued. The nature of the test to be satisfied varies depending upon the nature of the relevant provisions. Certain provisions of the Convention (such as Arts 8 - 11) require a test of "necessity" to be satisfied. In relation to other provisions containing no such test the Commission and Court have considered whether or not there was a reasonable relationship of proportionality between the measure forming an interference with or exception from a protected right, and the aim pursued by it.

123. In this context the Commission recalls particularly the criteria adopted by the Court for determining the legitimacy of measures departing from the general principle of equality of treatment in Art 14. The Court has stated that Art 14 is violated if a distinction has no "objective and reasonable justification" and that the existence of such justification "must be assessed in relation to the aim and effects of the measure .... regard being had to the principles which normally prevail in democratic societies." In particular, a distinction, albeit pursuing a legitimate aim, will violate Art 14 "when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised" (Belgian

8793/79

Linguistic Case, Series A, Vol 6, p 34). In the same case the Court stated more generally that the Convention "implies a just balance between the protection of the community and the respect due to fundamental rights while attaching particular importance to the latter" (ibid p 32).

124. The Court's judgment in the Sporrong and Lönnroth case indicates that a similar rule of proportionality should be applied when examining measures pursuing a legitimate aim in the context of Art 1. As noted above (para 108) the test applied by the Court in considering the legitimacy of an interference with property rights (in pursuit of a legitimate general interest) was whether a "fair balance" between public and private rights had been struck. The court found that the measures at issue in that case were contrary to Art 1 because they :

".... created a situation which upset the fair balance which should be struck between the protection of the right of property and the requirements of the general interest: the (applicants) bore an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of seeking a reduction of the time-limits or of claiming compensation" (Judgment para 73).

Although the Government suggest that the concept of "fair balance" is relevant only in the context of the first general rule in Art 1, the Commission notes that the Court described "the search for this balance" as being "inherent in the whole of the Convention" and "reflected in the structure of Art 1" (ibid para 71).

125. The Commission further recalls that it has itself applied a test of proportionality in the context of the second paragraph of Art 1 (see eg Application N° 7287/75, X v Austria, 13 Decisions & Reports p 27; Sporrong and Lönnroth Case, Report of the Commission para 105). It notes furthermore that the European Court of Justice has adopted a similar approach (Hauer v Rheinland Pfalz, Case N° 44/79, 1979 ECR, p 3727 at p 3747).

126. The Commission will therefore consider the specific requirements of the "deprivation rule" bearing in mind the foregoing case-law, which firmly establishes that both the aims and effects of a measure interfering with a Convention right must be examined in considering its compatibility with the Convention.

8793/79

ii. "in the public interest" - the purpose for which  
property may be taken

127. In providing that any deprivation of property must be "in the public interest" Art 1 specifies in broad terms the purpose or aim in pursuit of which property may legitimately be taken. The applicants, relying in particular on the French text ("pour cause d'utilité publique") submit that these words cover only the taking of property for use for a public purpose of benefit to the community as a whole and cannot in principle cover the taking of property from one citizen for the benefit of another. The Government submit that the phrase refers to action taken for the advantage, benefit or service of the public or part of the public, and that the acquisition of property for social or economic purposes may be "in the public interest".

128. In the Commission's opinion the applicants' interpretation of this phrase involves giving a strained and artificially narrow meaning to the English text. A requirement that no one should be deprived of property except "in the public interest" is not the same as a requirement that no one should be deprived of property except where the property is to be put to a public use. The concept of "public interest" is, as the Government have pointed out, frequently invoked in relation to many different kinds of public policy and in the Commission's view a taking of property under a public social policy involving the transfer of property from one person to another can properly be described as being "in the public interest". Indeed the discussions of the Leasehold Committee on whether the leasehold system should be reformed were directed to the question whether reform was "in the public interest".

129. Although the phrase used in the French text ("pour cause d'utilité publique") may bear the narrower meaning contended for by the applicants in certain contexts in domestic law, it appears to the Commission that it is also capable of bearing a wider meaning, not related solely to the use to which property is to be put but covering measures taken in the implementation of public policies considered useful or desirable in the interests of the community. Such an interpretation would reconcile the English and French texts, whereas the applicants' interpretation in the Commission's view would not.

130. An interpretation along the lines indicated would not in the Commission's view be out of line with the object and purpose of Art 1 of Protocol N° 1, which is primarily to guard against the arbitrary confiscation of property (see eg Applications N°s 1420/62 etc, X and Y v Belgium, Yearbook VI, p 590 at p 624). The Commission has moreover accepted in its previous case-law that a taking of property

8793/79

may be "in the public interest" even if the property is not to be put to a purely public use. Thus, for example, it has held that a scheme of agricultural land redistribution was "in the public interest" (Application N° 6837/74, X and others v Belgium, 3 Decisions & Reports, p 135). Similarly in a case involving the extinction of claims of disabled children against a particular trust fund the Commission equated the best interests of the children with the "public interest" (Application N° 8387/78, X, Y and Z v Federal Republic of Germany, 19 Decisions & Reports, p 233 at p 237). It has also held that legislation designed to ensure the equitable distribution of economic burdens was "in the public interest" (eg Application N° 673/59, X v Federal Republic of Germany, 7 Collection of Decisions p 98). These cases illustrate that measures of redistribution based on public social or economic policy may be considered to be "in the public interest".

131. The applicants also suggest that the "public interest" requirement in Art 1 derives from a rule of general international law to the effect that alien property may only be taken for a public purpose. However even if that is so, the applicants have not shown that there exists any rule of international law which would restrict lawful takings solely to takings for purposes of public use, as they contend the "public interest" requirement should be restricted. Indeed the Commission notes that redistributive measures such as agrarian reforms have been widely accepted as lawful in international law. The concept of a public purpose in this area of international law thus appears broader than the applicants suggest. This is conveniently illustrated by the Explanatory Note to Art 10 of the 1961 Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens (1), which includes the following passage:

"... Within municipal legal systems the significance of a public purpose varies greatly, and in many countries the term has never been defined with any precision. Even in the economically and politically most conservative countries of the world, recognition is given to the public purpose served by compulsory acquisition of property by the State for transfer to another private person who is regarded as being able to make a socially more productive use of the property than its former owner ...."

The Commission therefore finds nothing in general international law which could lead it to give the "public interest" requirement the restricted interpretation contended for by the applicants.

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(1) Art 10 states inter alia that the taking of alien property is wrongful "if it is not for a public purpose clearly recognised as such by a law of general application".

8793/79

132. The applicants also rely on the travaux préparatoires in support of their interpretation. However in the Commission's view they provide little guidance on the matter and cannot be said to confirm the applicants' interpretation. They tend rather to confirm that the object of the drafters of the Convention in defining the purpose for which property could be taken was to protect property owners against arbitrary confiscation and that it was not their intention to outlaw the enactment of social legislation leading to the transfer of property rights.

133. The Commission is therefore of the opinion that the phrase "in the public interest" in Art 1 does not refer solely to the taking of property for a public use. A taking of property may in principle be considered to be "in the public interest" where the property is taken in pursuance of legitimate public social or other policies, notwithstanding that the property is not to be put to public use.

iii. Proportionality and compensation

134. It is for the national authorities to decide in the first instance what measures are "in the public interest" and they have a "margin of appreciation" in making that assessment (see eg Handyside Case, Series A, Vol 24, para 48). In the Commission's opinion the margin enjoyed by the national authorities in taking that decision is a wide one. There is no requirement of "necessity" in Art 1. Furthermore decisions in this area will commonly involve the appreciation of political, economic and social questions on which opinions within a democratic society may genuinely and reasonably differ widely. In these circumstances the Commission accepts that considerable weight must be attached to the decision of a democratic legislature as to what legislation is or is not "in the public interest". However the power of appreciation of the national legislature and other authorities is not unlimited and its exercise is subject to the supervision of the Convention organs (Handyside Judgment, para 49).

135. Having regard to the case-law mentioned above (paras 122 - 125), the Commission considers that in exercising their supervisory jurisdiction the Convention organs are required to consider two matters. First is the question whether the deprivation of property was effected in pursuance of a legitimate aim "in the public interest" in the sense described above and second is the question whether the interference with the individual's rights was proportionate to the legitimate aim pursued. In the Commission's opinion, following the principles developed by the Court in the

8793/79

Belgian Linguistic and Sporrong and Lönnroth cases a taking of property, albeit for a legitimate purpose "in the public interest" will violate Art 1 "when it is clearly established that there is no reasonable relationship of proportionality" between the interference with the individual's rights and the public interest objectives being pursued.

136. In assessing this matter the question to be considered is whether in all the circumstances a disproportionate or "excessive" burden has been imposed on the individual. It is relevant to consider whether the deprivation of possessions was in itself disproportionate. The terms and conditions on which the property has been taken, including compensation terms and other measures to mitigate the burden on the individual, must also be taken into account (cf Sporrong & Lönnroth Judgment, paras 69 and 73). Regard must also be had "to the principles which normally prevail in democratic societies" (Belgian Linguistic Case, sup cit, p 34).

136. The laws and constitutions of the Contracting States show that in democratic societies the taking of property for public purposes without payment of compensation is considered justifiable only in the most exceptional circumstances and that the payment of compensation reasonably related to the value of the property taken is a normal requirement (1). Having regard to those principles the Commission considers that a taking of property for the purpose of effecting a social or other public policy, without payment of compensation reasonably related to its value, would normally constitute a disproportionate interference with the right of property which could not be considered justifiable under Art 1. Only if there were specific grounds based on legitimate considerations of "public interest" for not paying such compensation, could such a taking be considered justified.

138. Nonetheless the decision as to the terms and conditions on which property is to be taken is in the first instance one for the national authorities to take, and is one in respect of which they enjoy a "margin of appreciation" (see para 134 above). Many different considerations may legitimately enter into their appreciation of what terms are appropriate in a particular case. Matters which may be relevant include the nature of the public policy objectives being pursued, whether for instance property is taken as part of a major economic or social reform or for the purpose of a particular public project, and the nature of the property being taken. The precise balance which should be drawn between the

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(1) See eg Opinion of Advocate General Capotorti, *Hauer v Rheinland Pfalz* 1979 ECR at pp 3760-3761.



8793/79

different factors may be a matter on which opinions differ widely. The margin of appreciation of the national authorities in deciding what terms are appropriate is therefore a wide one in the Commission's view.

139. Accordingly in the Commission's opinion a right to compensation for the taking of property is inherent in Art 1 in so far as the payment of compensation may be necessary to preserve the appropriate relationship of proportionality between the interference with the individual's rights and the "public interest". However, having regard to the wide margin of appreciation left to States in this area, a violation of Art 1 could only be held to arise from absence or inadequacy of compensation if it were clearly established that there was a real and substantial disproportion between the burden imposed on the individual and what could reasonably be considered justifiable in the light of the public interest objectives being pursued by the national authorities.

140. The Commission does not consider that this interpretation of the "deprivation rule" is unduly extensive or that it is contradicted by the reference therein to the "general principles of international law" or by the drafting history as recorded in the travaux préparatoires to which it has already referred. In the Commission's view it merely involves giving appropriate substance and effect to the right of property conferred by Art 1 and the "public interest" requirement concerning deprivations. It involves no more than saying that the burden imposed on the individual by an interference with the peaceful enjoyment of his possessions must not, in cases to which the deprivation rule applies, exceed what can properly be considered justifiable (within a broad margin of appreciation) in the public interest. The fact that an additional concrete guarantee of compensation is conferred on certain persons by the general principles of international law does not exclude this interpretation, since there is clearly a degree of overlap between the general principles of international law (where they apply) and the other rules concerning the taking of property contained in Art 1. Further, although the travaux préparatoires show that the Contracting States did not intend to confer an express or automatic right of compensation on nationals, the Commission's interpretation of Art 1 does not involve doing so. To hold that property could be taken without compensation in the absence of any considerations justifying such a course in the public interest would, in the Commission's opinion, render the protection afforded by Art 1 largely ineffective and would ignore the principles commonly accepted in democratic States as inherent in any effective protection of the right of property.

8793/79

iv. "subject to the conditions provided for by law"

141. A taking of property must also be "subject to the conditions provided for by law" if it is to be compatible with Art 1. In interpreting this phrase the Commission takes into account the principles developed by the Court in relation to the interpretation of other references to the "law" in the Convention, but must also take account of differences in the wording of the different provisions. In its opinion this condition in Art 1 requires inter alia that the law should define the power to expropriate with a degree of precision that is reasonable in the circumstances, (see eg Sunday Times Case, Series A, Vol 30, para 49; Silver Case, Series A, Vol 61, paras 86 - 88). Furthermore the "conditions" on which expropriation takes place include, in the Commission's opinion, such matters as the compensation terms and these, like the power to expropriate itself, must also be defined by the law with reasonable precision.

142. However the question also arises whether the conditions which domestic law lays down must meet any particular standard. In the Winterwerp Case the Court, in the context of Art 5 stated that the requirement of "lawfulness" in Art 5 (1)(e) "presupposes conformity with the domestic law in the first place and also, as confirmed by Art 18, conformity with the purpose of the restrictions permitted by Art 5 (1)(e)" (Series A, Vol 33, para 39). It also observed that "no detention that is arbitrary can ever be regarded as 'lawful'". The Court further stated that the requirement that detention be "in accordance with a procedure prescribed by law" essentially referred back to domestic law, and stated the "need for compliance with the relevant procedure under that law". However, the Court also stated that:

"the domestic law must itself be in conformity with the Convention, including the general principles expressed or implied therein. The notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary" (ibid para 45).

143. The Commission accepts that the considerations referred to by the Court are also relevant in the context of Art 1, and in particular that the terms and conditions laid down by domestic law must not be arbitrary. However this test will be satisfied, in the Commission's opinion, if the law lays down with reasonable precision terms and conditions which are in line with the Convention as a whole and with the particular purpose of the restriction on the right of property permitted by the second sentence of Art 1 in particular.

8793/79

(d) Summing up on the interpretation of the  
"deprivation rule"

144. To sum up the Commission finds that a taking of property may be "in the public interest" where the property is taken in pursuance of a legitimate public policy, notwithstanding that the property is not taken by a public authority or for a public use. The burden imposed on the individual must not however be disproportionate to the public policy objectives being pursued. Whilst the rules of international law do not apply to nationals there is inherent in Art 1 a right to compensation for the taking of the property of anyone within the jurisdiction of a Contracting State, where and in so far as the payment of compensation is necessary to preserve the appropriate relationship of proportionality between the interference with the individual's rights and the "public interest". National law must lay down conditions for the taking of property which are in line with these requirements and reasonably precise. In the case of a national a violation of Art 1 could however only be held to arise from absence or inadequacy of compensation if it were clearly established that there was a real and substantial disproportion between the burden imposed on him by the expropriation measure and what could reasonably be considered justifiable in the light of the public interest objectives being pursued by the national authorities.

4. Application of the "deprivation rule" in the present  
case

145. In the light of the foregoing consideration of the terms of the "deprivation rule" the Commission must consider whether the leasehold reform legislation pursued a legitimate aim "in the public interest" and, if so, whether the burden imposed by it on the applicants was nonetheless excessive.

146. The Commission first notes, as a general matter, that forms of limited tenure of land, broadly comparable to the long leasehold system in that a person other than the owner is given the right to occupy land for a long period, exist in many States and that laws also exist to regulate and balance the respective rights and interests of those involved in such a relationship. The laws of other member States show that the way in which the balance is drawn differs widely. Under some systems a landowner may be required to compensate the occupier at the end of his tenure for buildings he has placed on the property or other improvements he has made. Under others he is not but the terms of the initial bargain are expected to reflect the benefits he will receive at the end of the relationship. Some systems give the occupier a right of pre-emption. A right of enfranchisement appears unusual but not unique. It is clear that many different factors may properly be taken into account in deciding on the balance to be drawn, including economic and social developments,

8793/79

the availability of land and housing and the respective bargaining power of those concerned. Legislation may also change from time to time to take account of the operation of the system in practice, particularly if the existing system is considered to operate unjustly.

147. The essential aim of the leasehold reform legislation was to remedy injustices which were considered to be caused to tenants by the operation of the long leasehold system of tenure, in particular in its widespread use in the field of relatively modest housing. In the Commission's opinion the rectification of an unjust system of housing tenure can in principle be considered a legitimate aim of social or housing policy which the State is entitled to pursue "in the public interest".

148. The applicants maintain that the system of long leasehold tenure was not in fact unfair and that there was therefore no necessity to rectify it. However in the Commission's opinion it is not its task itself to decide whether the system was just or unjust, but to consider whether the view which the national authorities took both of the system itself and of the steps which should be taken to rectify it, was one which they were entitled to take within the broad margin of appreciation afforded to them under Art 1.

149. The 1967 Act was based essentially on the view that tenants, rather than landlords, had a "moral entitlement" to houses held on long leases since it was through the expenditure of tenants that the houses had been built, maintained or paid for. It was considered unjust that such houses should pass to landlords at the end of the relevant leases without any payment (see White Paper, quoted in para 24 above). This view of the system was by no means universally shared, and is not shared by the present applicants. However in the Commission's view the justice or injustice of the long leasehold system, and the respective "moral entitlements" of landlords and tenants under it are matters of judgment on which there is clearly room for legitimate differences of opinion. The Commission considers that the views on which the legislation was based were tenable and not such as could be characterised as unreasonable or unacceptable in a democratic society and that they were therefore views which the national authorities were entitled to adopt and act upon within their margin of appreciation in considering what legislation was "in the public interest".

150. The Commission is of the opinion that this case is to be distinguished from a situation where a private right is taken away without any provision for fair compensation. The long lease system in England had developed in an unusual way. The distribution of rights between freeholder and tenant was considered to be unjust by many of those familiar with the system. Under those circumstances it is within the power of the legislature to alter the rights of the two parties to correct injustice. Clearly, no compensation can be asked for what was considered an unjust advantage of the freeholder. Otherwise one would deny the legislature the power to correct an injustice. Since the Commission cannot find that in economic terms the view taken by Parliament about the unjust enrichment of the

8793/79

freeholder on the termination of the lease was unreasonable, it follows that this view could also be taken into account for the valuation method. Art. 1 of the Protocol does not require compensation for advantages lost by new legislation which had been the consequence of unforeseen or unjust developments under earlier law.

151. Furthermore the national authorities did not, in the Commission's opinion, exceed their margin of appreciation in deciding that the appropriate remedy for the situation was to give tenants the right to purchase the freehold of the property. The question, in their view, was not merely one of providing security of tenure, but of giving effect to the moral entitlement to property arising from tenants' expenditure on the houses. They were entitled in the Commission's view to decide that the most appropriate way of doing this was to give resident tenants a right of acquisition.

152. The applicants suggest that the restriction of the scope of the legislation to houses below a certain value was inconsistent with the principles on which the legislation was allegedly based, since the same "moral entitlement" would arise regardless of the value of the house. However in the Commission's opinion it was open to the Government to restrict the scope of the legislation to less valuable houses, the tenants of which were considered more likely to suffer hardship through the operation of the leasehold system.

153. The applicants also criticise the legislation on the ground that it does not provide for any form of independent consideration as to whether it is reasonable that the tenant should be entitled to acquire the house in any particular case. In this respect the Commission emphasises that it is not its function to consider whether the solution adopted by the national legislature to the problem which it perceived was the best or most desirable one possible, but to consider whether the legislature exceeded its margin of appreciation. The solution which the legislature chose was to lay down broad and general categories within which the right of enfranchisement arose. It might, as the applicants suggest, have been possible to provide for a system where a tribunal could have considered whether enfranchisement was justified in each individual case. However although such a system might have provided a closer consideration of the equities of individual cases, it might also have led to considerable uncertainty and, bearing in mind the number of leasehold houses, litigation. The Commission cannot find that the legislature exceeded the allowable margin of appreciation by specifying in the legislation the categories of houses in respect of which a right of enfranchisement would arise. Nor does the Commission consider that the conditions actually laid down (see para 30 above) went beyond what could reasonably be considered appropriate for achieving the aims of the legislation.

8793/79

154. As to the question of compensation the applicants complain principally of two matters. In the first place they complain that the 1967 basis of valuation provides less than the market value of the landlord's interest. Secondly they complain that under both the 1967 and 1974 bases of valuation the property is valued as at the date when the tenant gives notice of his desire to acquire and that the landlord suffers loss by reason of delay between the date of valuation and payment.

155. As a general matter the Commission first observes that the value of real property is very largely dependent on legislation in force controlling its use, including rent and planning legislation. The 1967 basis of valuation was designed to give full effect to the view that the tenant had a moral entitlement to the house, a view which, as the Commission has already found, the national authorities were entitled to adopt and act on "in the public interest". It followed logically from this point of view that the reform proposed and enacted in the 1967 Act involved not only a right for the tenant to purchase the landlord's interest but also that the compensation terms were not designed to include any payment in respect of the house which the tenant was considered morally entitled to. The compensation terms on the 1967 basis of valuation, in so far as they exclude the value of the house, are thus in line with the "public interest" objectives which the legislation pursues and do not result in the imposition on landlords of any greater burden than could reasonably be considered justifiable in light of those objectives. Furthermore, although no element of "merger value" was included, the 1967 basis of valuation provided for the landlord the existing investment value of his interest in the ground.

156. The Commission is of the opinion that this case is to be distinguished from a situation where a private right is taken away without any provision for fair compensation. Many of those familiar with the long leasehold system considered that in view of the way it had developed, the distribution of rights between landlord and tenant was unjust. Under those circumstances it was, as the Commission has found, open to the legislature within its margin of appreciation to alter the rights of the two parties to correct the injustice perceived. To require compensation to be payable by the tenant in respect of what was considered to be an unjust advantage or enrichment enjoyed by the landlord would effectively deny the legislature the power to rectify the situation. Since the Commission cannot find that, in economic terms, the view taken by the legislature concerning the unjust enrichment of the landlord on the termination of the lease was unreasonable, it follows that this view could be taken into account in deciding the compensation terms.

8793/79

157. As to the question of delay, the Commission notes that it is possible for long delays to occur between the tenant's notice and the payment of the price. However, as the Government point out, it is open to the landlord to refer the matter to the Leasehold Valuation Tribunal (or formerly the Lands Tribunal) if the tenant unreasonably delays matters. It is not the responsibility of the Government if the landlord prefers not to do so. Nor can the Government be held responsible for delays in the conduct of negotiations between landlord and tenant. In all the circumstances the Commission does not find it established that the compensation procedures laid down in the Act necessarily lead to delay between the date of valuation and payment of a degree which could be considered to involve an infringement of Art 1.

158. Finally the Commission notes that the applicants have advanced a number of other arguments against the leasehold reform legislation, suggesting for example that it is contrary to the public interest in terms of town planning considerations and the provision of cheap housing. The Commission considers, however, that such matters were for the domestic legislature to consider along with other factors in deciding on the requirements of the public interest. The applicants' arguments on such matters do not show that the margin of appreciation was exceeded.

159. Accordingly having regard both to the purpose of the system of leasehold enfranchisement, and the terms and conditions for enfranchisement laid down in the legislation, the Commission considers that the taking of the applicants' property under the legislation satisfied the requirements of being "in the public interest" and "subject to the conditions provided for by law" for the purposes of Art 1.

## 5. Conclusion

160. The Commission concludes by a unanimous vote that there has been no breach of the applicants' rights under Art 1 of Protocol N° 1.

### D. Article 14 of the Convention in conjunction with Article 1 of Protocol N° 1 to the Convention

161. The applicants maintain that they have been victims of discrimination in relation to their enjoyment of the property rights protected by Art 1 of Protocol N° 1, in breach of Art 14 of the Convention. Art 14 is in the following terms:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

8793/79

162. The applicants maintain that the legislation discriminates against them on grounds of "property". They complain in particular that it discriminates against them as freeholders and also that it draws discriminatory distinctions in relation to the applicability of enfranchisement and the levels of compensation, so that the lower the value of his property the more harshly the landlord is treated. The respondent Government argue that the distinctions drawn by the legislation are not based on the "property" or "other status" of the landlord within the meaning of Art 14 and that they are in any event objectively and reasonably justified.

163. The Commission has already held that the legislation, in reforming the long leasehold system, pursued a legitimate aim in the public interest. It was inevitable that such legislation should affect freeholders rather than other property owners and in so far as the legislation distinguished between freeholders and others the Commission considers that the distinction drawn was objectively and reasonably justified and not therefore discriminatory (Belgian Linguistic Case, sup cit - see para 123 above).

164. The distinctions drawn as between different leasehold properties in relation to the applicability of the legislation and the compensation terms are based on the value of the properties and thus have an objective basis. The Commission notes that these distinctions arose largely because the national legislature considered that tenants of less valuable houses were more likely to suffer hardship through the operation of the long leasehold system, and that the interests of justice did not require modification of the system in respect of more valuable properties where tenants were likely to be better off (see para 27 above). It thus appears that the reason underlying the distinctions is a desire to limit the interference with existing property rights to the field where the leasehold system was considered most likely to cause hardship, and to provide more favourable terms for those tenants most likely to suffer hardship under the system. Although, as the applicants' case shows, some houses of substantial value fall within the scope of the legislation, the Commission cannot find that the general rateable value limits set by the legislation were unreasonable in light of the objectives it pursues. It notes in this respect that the legislation originally covered the same area as the ordinary rent legislation. That legislation itself distinguishes between houses in London and those elsewhere on the basis of the generally higher level of property values in London. In so far as the 1974 basis of valuation now extends to more valuable property than was originally covered, the compensation terms reflect the view that tenants of more valuable houses were less likely to suffer hardship. In the Commission's view the considerations underlying the distinctions complained of provide reasonable justification for those distinctions, which are not therefore discriminatory.

#### Conclusion

165. The Commission concludes by a unanimous vote that there has been no breach of the applicants' rights under Art 14 of the Convention in conjunction with Art 1 of Protocol N° 1.



8793/79

E. Article 13 of the Convention

166. The applicants have also complained that they have been denied an effective remedy before a national authority in respect of their complaints under the Convention. They allege the breach of Art 13 of the Convention, which is in the following terms:

"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."

167. The Commission has previously held that Art 13 of the Convention does not go so far as to guarantee a remedy by which the conformity of legislation with the Convention can be controlled (Applications N° 7601/76 and 7806/77, Young, James and Webster v the United Kingdom, Report of the Commission adopted on 14 December 1979). In the present case the applicants' complaints are directed essentially against the leasehold reform legislation itself and the fact that no remedy was available to the applicants whereby they could have that legislation reviewed does not, in the light of the case-law referred to, give rise to any breach of their rights under Art 13.

Conclusion

168. The Commission concludes by a unanimous vote that there has been no breach of the applicants' rights under Art 13 of the Convention.


8793/79

F. Recapitulation of the conclusions

169. The conclusions reached by the Commission are accordingly as follows:

1. by a unanimous vote that there has been no breach of the applicants' rights under Art 1 of Protocol N° 1;
2. by a unanimous vote that there has been no breach of the applicants' rights under Art 14 of the Convention in conjunction with Art 1 of Protocol N° 1;
3. by a unanimous vote that there has been no breach of the applicants' rights under Art 13 of the Convention.

Secretary to the Commission



(H.C. KRUGER)

President of the Commission



(C.A. NØRGAARD)

A P P E N D I X I

HISTORY OF PROCEEDINGS

Item	Date	Note
Introduction of application	23 October 1979	
Registration of application	25 October 1979	
Submission of supplementary application N° A2 (Property N° 11)	17 April 1980	
Submission of supplementary application N° A3 (Properties N°s 12 and 13)	13 May 1980	
Submission of supplementary application N° A4 (Properties N°s 14 - 21)	6 June 1980	
Commission's deliberations and decision to invite respondent Government to submit written observations on admissibility and merits	8 October 1980	MM. G. Sperduti, Acting President J.E.S. Fawcett C.A. Nørgaard E. Busuttil L. Kellberg B. Daver T. Opsahl C.H.F. Polak J.A. Frowein G. Jörundsson G. Tenekides S. Trechsel B. Kiernan N. Klecker M. Melchior J. Sampaio
Submission of supplementary application N° A5 (Properties N°s 22 - 23)	13 November 1980	
Submission of supplementary submissions and applications N°s A6 and A7 (Properties N°s 24 - 31)	19 December 1980	

Item	Date	Note
Submission of supplementary application N° A8 (Properties N°s 32 - 34)	19 March 1981	
Submission of Government's observations on admissibility and merits	2 June 1981	
Submission of supplementary application N° A9 (Property N° 35)	25 June 1981	
Submission of supplementary application N° A10 (Properties N°s 36 - 38)	8 July 1981	
Submission of applicants' observations on admissibility and merits	7 October 1981	
Submission of supplementary application N° A11 (Properties N°s 39 - 42)	19 November 1981	
Commission's deliberations and decision to adjourn consideration of the case pending decision on future procedure in nationalisation cases (N°s 9006/80 etc)	9 March 1982	MM. C.A. Nørgaard, President J.A. Frowein J.E.S. Fawcett E. Busuttil L. Kellberg T. Opsahl G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A.S. Gözübüyük A. Weitzel J.C. Soyer H.G. Schermers
Submission of supplementary application N° A12 (Property N° 43)	12 March 1982	
Submission of supplementary application N° A13 (Property N° 44)	22 April 1982	

Item	Date	Note
Submission of supplementary application N° A14 (Properties N°s 45 - 48)	13 May 1982	
Submission of supplementary application N° A15 (Properties N°s 49 - 50)	29 June 1982	
Commission's deliberations on procedure and decision in principle to hold a combined hearing in the present case and cases concerning nationalisation	14 July 1982	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein J.E.S. Fawcett E. Busuttil G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A.S. Gözübüyük A. Weitzel J.C. Soyer H.G. Schermers
Commission's deliberations on procedure and decision to hold combined hearing on admissibility and merits of the present case and six nationalisation cases	14 October 1982	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein L. Kellberg G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio A.S. Gözübüyük A. Weitzel J.C. Soyer H.G. Schermers
Submission of supplementary application N° A16 (Properties N°s 51 - 58)	16 November 1982	

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Item	Date	Note
Hearing on admissibility and merits	24 to 27 January 1983	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein F. Ermacora J.E.S. Fawcett E. Busuttil T. Opsahl G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A.S. Gözübüyük A. Weitzel H.G. Schermers  (Parties' representatives listed at end of this Appendix)
Commission's deliberations and decision on admissibility	28 January 1983	(Members present as at hearing)
Commission's deliberations	8 and 9 March 1983	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein F. Ermacora J.E.S. Fawcett E. Busuttil G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A. Weitzel H.G. Schermers
Submission of supplementary application N° A17 (Properties N°s 59 - 62)	13 April 1983	

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Item	Date	Note
Commission's deliberations	7 May 1983	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein F. Ermacora J.E.S. Fawcett E. Busuttil G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio J.A. Carrillo A.S. Gözübüyük A. Weitzel H.G. Schermers
Friendly settlement discussions	July-September 1983	
Submission of applicants' further observations on merits;	30 September 1983	
Submission of supplementary application N° A18 (Properties N°s 63 - 69)	17 October 1983	
Government's letter on procedure	19 December 1983	
Submission of supplementary application N° A19 (Properties N°s 70 - 80)	3 January 1984	
Commission's deliberations and final votes on merits	8 May 1984	MM. C.A. Nørgaard, President G. Sperduti J.A. Frowein J.E.S. Fawcett G. Jörundsson G. Tenekides S. Trechsel B. Kiernan M. Melchior J. Sampaio A.S. Gözübüyük A. Weitzel H.G. Schermers
Adoption of the Report	11 May 1984	

Representatives of the parties at the  
hearing on 24 - 27 January 1983 (1)

I. The Respondent Government

Mr M.R. <u>Eaton</u>	Foreign and Commonwealth Office, Agent
Mr D.J. <u>Nicholls</u> QC	Counsel
Professor R. <u>Higgins</u>	Counsel
Mr N.D. <u>Bratza</u>	Counsel
Mr J.G.M. <u>Laws</u>	Counsel
Mr R.K. <u>Gardiner</u>	Law Officers' Department
Mr V.F. <u>Lane</u>	Department of Trade
Mr J. <u>Cumming</u>	Department of Industry
Mr G. <u>Thomas</u>	Department of Industry
Mr J.R. <u>Mallinson</u>	Department of Industry Solicitors
Mr F.O. <u>Coulson</u>	Department of Industry Solicitors
Mr J.N. <u>Thompson</u>	Department of Environment

II. The Applicants

The Right Hon M. <u>Beloff</u> QC	Counsel
Professor F. <u>Jacobs</u>	Counsel
Mr D. <u>Neuberger</u>	Counsel
Mr Harry <u>Kidd</u>	Consultant
Mr J.N.C. <u>James</u>	Trustee of the Second Duke of Westminster's Will Trust (applicant)
Mr M.D.T. <u>Loup</u>	Solicitor, Trustee of the Second Duke of Westminster's Will Trust
Mr T.H. <u>Seager-Berry</u>	Solicitor (of MM. Boodle Hatfield & Co)
Miss J. <u>Lewis</u>	Solicitor

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(1) Also present at the hearing were representatives of the applicants in the six cases concerning nationalisation, who are not included in this list.