In the case of Pine Valley Developments Ltd and Others v. Ireland*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court***, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mrs D. Bindschedler-Robert,
Mr J. Pinheiro Farinha,
Mr L.-E. Pettiti,
Mr C. Russo,
Mr J. De Meyer,
Mrs E. Palm,
Mr I. Foighel,
Mr J. Blayney, ad hoc judge,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 24 May and 23 October 1991,

Delivers the following judgment, which was adopted on the last-mentioned date:

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Notes by the Registrar

* The case is numbered 43/1990/234/300. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11) which came into force on 1 January 1990.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of Ireland ("the Government") on 11 July and 11 September 1990 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12742/87) against Ireland lodged with the Commission under Article 25 (art. 25) on 6 January 1987 by two companies registered in that State, Pine Valley Developments Ltd ("Pine Valley") and Healy Holdings Ltd ("Healy Holdings"), and an Irish national, Mr Daniel Healy.

The Commission's request and the Government's application referred to Articles 44 and 48 (art. 44, art. 48) and also, in the case of the request, to the declaration whereby Ireland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case

disclosed a breach by the respondent State of its obligations under Articles 13 and 14 (art. 13, art. 14) of the Convention and Article 1 of Protocol No. 1 (P1-1); whilst this was also true of the application, its primary object was to seek a ruling that the case was inadmissible on the basis of the preliminary pleas and objections advanced by the Government.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr B. Walsh, the elected judge of Irish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 27 August 1990 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mrs D. Bindschedler-Robert, Mr J. Pinheiro Farinha, Mr L.-E. Pettiti, Mr C. Russo, Mr J. De Meyer, Mrs E. Palm and Mr I. Foighel (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

On 27 September 1990 Mr Walsh withdrew from the Chamber pursuant to Rule 24 para. 2. By letter of 6 November the Agent of the Government notified the Registrar of the appointment of the Hon. Mr Justice John Blayney, Judge of the High Court of Ireland, as an ad hoc judge (Article 43 of the Convention and Rule 23) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the representatives of the applicants on the organisation of the procedure (Rule 37 para. 1 and Rule 38).

In accordance with the order made in consequence the Registrar received, on 14 January 1991, the Government's memorial and, on 15 and 16 January 1991, the applicants'. By letter of 13 March, the Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

5. By an order made on 13 May 1991 the President granted legal aid to Mr Healy (Rule 4 of the addendum to the Rules of Court).

6. As directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 May 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Ms E. Kilcullen, Assistant Legal Adviser,
Department of Foreign Affairs, Agent,
Mr H. Whelehan, Senior Counsel,
Mr J. O'Reilly, Senior Counsel, Counsel,
Mr J. Gormley, Office of the Attorney General,
Mr J. Ryan, Department of the Environment, Advisers;

(b) for the Commission

Sir Basil Hall, Delegate;

(c) for the applicants

Mr P. O 'Sullivan, Senior Counsel, Counsel,
Mr G. Walsh, Solicitor.

The Court heard addresses by Mr Whelehan and Mr O'Reilly for the Government, by Sir Basil Hall for the Commission and by Mr O'Sullivan for the applicants, as well as replies to questions put by the Court and by two of its members individually.

7. At or shortly before the hearing, the registry received: from the Commission, a written reply to a question put to it by the Court; from the Commission, the Government and the applicants, certain documents which they had been requested by the Court to produce; and, from the applicants, a number of other documents which they supplied on their own initiative.

In accordance with the leave granted by the President at the hearing, the Government filed, on 10 June 1991, comments on the documents furnished by the applicants; they submitted, inter alia, that some of them had been filed too late and therefore should not be accepted. However, the Court subsequently decided that they should be: they consisted of material which either was already in the Commission's file, and hence at the Court's disposal, or related to the application of Article 50 (art. 50) of the Convention, a question which is reserved in the present judgment.

AS TO THE FACTS

I. The particular circumstances of the case

A. Introduction

8. The first and second applicants, Pine Valley and Healy Holdings, used to have as their principal business the purchase and development of land. The first of these companies, which was a wholly-owned subsidiary of the second, was struck off the register of companies on 26 October 1990 and dissolved on 6 November 1990, for failure to file annual returns for more than eight years. Since 1981 Healy Holdings too has filed no annual returns; on 14 October and 29 November 1985 a receiver to this company was appointed by two secured creditors. The third applicant, Mr Daniel Healy, is the managing director of Healy Holdings and its sole beneficial shareholder; on 19 July 1990, by order of an English court, he was adjudged bankrupt.

9. On 15 November 1978 Pine Valley had agreed to purchase for IR £550,000 21½ acres of land at Clondalkin, County Dublin. It did so in reliance on an outline planning permission (see paragraph 29 below) for industrial warehouse and office development on the site. This permission, which was recorded in the official planning register (see paragraph 31 below), had been granted on 10 March 1977 by the Minister for Local Government to the then owner, Mr Patrick Thornton, on his appeal against the refusal, on 26 April 1976, by the planning authority (Dublin County Council) of full planning permission. One of the grounds for that refusal was that the site was in an area zoned for the further development of agriculture so as to preserve a green belt.

10. On 15 September 1980 Dublin County Council refused the detailed planning approval (see paragraph 29 below) for which Pine Valley had applied on 16 July 1980 in reliance on the outline permission. Pine Valley thereupon sought a conditional order of mandamus, directing the council to grant such approval; such an order was granted on 8 December 1980 and was made absolute by the High Court by a decision of 27 May 1981.

11. On 17 July 1981 Pine Valley sold the land to Healy Holdings for IR £550,000.

B. The first Pine Valley case

12. On 5 February 1982, on appeal by Dublin County Council against the High Court's decision, the Supreme Court held that the grant of outline planning permission had been ultra vires and was therefore a nullity. It found that the relevant statutory provision (section 26 of the Local Government (Planning and Development) Act 1963) did not empower the Minister for Local Government to make, on an appeal against a refusal by a planning authority, a decision which - as in the present case - contravened the development plan (see paragraph 9 above).

13. As a result of this decision the land could not be developed and its value was therefore substantially reduced. In June 1988 it was sold in the open market by the receiver of Healy Holdings for IR £50,000.

C. The Local Government (Planning and Development) Act 1982

14. With a view to validating planning permissions and approvals the validity of which came into question as a result of the Supreme Court's decision, the Local Government (Planning and Development) Act 1982 ("the 1982 Act") was enacted. It entered into force on 28 July 1982.

15. Section 6 of the 1982 Act provided as follows:

"(1) A permission or approval granted on appeal ... prior to the 15th day of March, 1977, shall not be, and shall not be regarded as ever having been, invalid by reason only of the fact that the development concerned contravened, or would contravene, materially the development plan relating to the area of the planning authority to whose decision the appeal related.

(2) If, because of any or all of its provisions, subsection (1) of this section would, but for this subsection, conflict with a constitutional right of any person, the provisions of that subsection shall be subject to such limitation as is necessary to secure that they do not so conflict but shall be otherwise of full force and effect."

The date of 15 March 1977 was that of the establishment of the Planning Board (An Bord Pleanála), to which body the appeal functions formerly entrusted to the Minister for Local Government had been transferred by the Local Government (Planning and Development) Act 1976.

16. The 1982 Act also dealt, in section 2, with the duration of the validity of certain permissions. Its effect was that one granted on 10 March 1977, as was the outline permission in the present case, expired on 10 March 1984.

Under section 4, however, the planning authority could extend the period of validity of a permission provided, inter alia, that substantial works had already been carried out before it expired.

17. In the course of the debate on the 1982 Act before Seanad Éireann (Upper House of Parliament) the Minister of State at the Department of the Environment was asked the following question:

"I understand that certain planning permissions were declared to be null and void by the Supreme Court. I agree the law has to be put right, but who is going to declare under subsection (2) whether a person's constitutional rights are going to be interfered with? Does it mean another trip to the Supreme Court? What is the position? The Minister might tell us exactly what is in his mind."

The Minister replied:

"It would be agreed by the court. Subsection (2) has been included by the parliamentary draftsman, with the agreement of the Attorney General, so as to preserve the rights of parties to any proceedings now before the courts and to assure that no court is deprived of jurisdiction regarding an issue raised in such proceedings. This subsection is also designed to meet the case of any unconstitutional interference with a property right." (Official report of the Parliamentary Debates of Seanad Éireann for 22 July 1982, columns 1411-1435)

18. On 4 August 1982 Pine Valley applied to Dublin County Council for planning approval (see paragraph 29 below) on the basis of the outline permission granted in 1977; its application contained no reference to the 1982 Act. Approval was refused on 10 December on the ground that the Supreme Court had held in the first Pine Valley case that the outline permission was not valid and on four other grounds related to technical planning matters. No appeal was made to the Planning Board against this decision nor was it the subject of any other legal challenge; the applicants claimed that an appeal would have been to no avail since the Board had to confine itself to matters of proper planning and development (see paragraph 30 below) and could not give an authoritative interpretation of section 6 of the 1982 Act.

19. A few months after the Council's decision, the applicants set in motion the second Pine Valley case (see paragraphs 20-27 below). Whilst it was pending, the following steps were taken on their behalf.

First, on 27 April 1983 their architect wrote to the Planning Board asserting that Pine Valley was excluded from the benefit of section 6(1) of the 1982 Act and asking that the applicants' position be reconsidered in the light of "the injustice of the situation". The Board replied on 2 May, regretting that it could not be of assistance.

Secondly, on 7 September 1984 the applicants' solicitors wrote to the Board, requesting it to deal with the outstanding appeal which had originally been dealt with by the Minister for Local Government in March 1977 (see paragraph 9 above) in a manner subsequently found invalid. The Board replied on 23 November that the appeal in question "does not remain to be determined by the Board". The solicitors asked the Board to indicate the reasons for this decision, but its reply

of 8 January 1985 was confined to saying that the legal advice it had received was confidential and that it could not assist any further than by stating its position.

D. The second Pine Valley case

1. Decision of the High Court

20. On 11 March 1983 Pine Valley brought proceedings - in which Healy Holdings and Mr Healy were joined as plaintiffs on 25 January 1985 - against the Minister for the Environment (as the successor to the Minister for Local Government), seeking damages for breach of statutory duty, for negligent misrepresentation and for negligence. The plaintiffs later amended their pleadings to include a claim for damages against the State for breach of their constitutional rights of property.

With the consent of the parties the High Court directed on 28 January 1985 that the question whether the plaintiffs had a cause of action be tried as a preliminary issue and that the following points of law fell to be determined in this connection:

(a) whether an action in damages for

(i) breach of statutory duty;

(ii) negligence; and/or

(iii) negligent misrepresentation

lay at the suit of the plaintiffs against the Minister for the Environment for granting on legal advice the outline planning permission to Mr Thornton;

(b) whether in the circumstances pleaded the State

(i) had failed to vindicate the property rights of the plaintiffs and, if so, whether an action for damages lay against it;

(ii) had in its laws respected and as far as practicable by its laws defended and vindicated the property rights of the plaintiffs and, if it had not, whether an action for damages lay against it.

On 28 June 1985 the High Court held that no cause of action lay, whereupon the plaintiffs appealed to the Supreme Court. On 22 July they entered into an agreement amongst themselves in which Pine Valley and Healy Holdings assigned to Mr Healy, on his undertaking to pay the costs, their entire interest in the proceedings and acknowledged that any benefit resulting therefrom would accrue to him free of any claim by them.

2. Decision of the Supreme Court

21. On 30 July 1986 the Supreme Court unanimously dismissed the appeal ([1987] Irish Law Reports Monthly, pp. 753-768).

22. In rejecting the claim for damages based on breach of statutory duty, Mr Justice Finlay CJ (with whose judgment Mr Justice Griffin agreed and Mr Justice Hederman concurred) found that the Minister's decision to grant outline planning

permission contravening the development plan did not fall into any of the categories of ultra vires decisions that would found an action for damages; in particular, there was no evidence that he had been aware that he did not possess the power he was purporting to exercise.

23. Mr Justice Finlay CJ based his dismissal of the claims for alleged negligence and negligent misrepresentation essentially on the ground that, when granting the permission, the Minister had acted bona fide and in accordance with the advice he had obtained from his department's legal advisers.

24. As regards the claim for damages for breach of the plaintiffs' constitutional rights of property, Mr Justice Finlay CJ stated:

"With regard to this submission the first enquiry must, it seems to me, be as to whether there has been an unjust attack on the plaintiffs' property rights or whether an injustice has been done to them.

What the Minister was doing in making his decision in 1977 to grant outline planning permission to the then owner of these lands was not intended as any form of delimitation or invasion of the rights of the owner of those lands but was rather intended as an enlargement and enhancement of those rights.

The purchase of land for development purposes is manifestly a major example of a speculative or risky commercial enterprise. Changes in market values or economic forces, changes in decisions of planning authorities and the rescission of them, and many other factors, indeed, may make the land more or less valuable in the hands of its purchasers.

I am prepared to accept that prima facie in this instance the fact that the Minister's decision was ultimately found by this Court to have been a nullity, probably contributed towards a diminution in the value of the land in the plaintiffs' hands. That fact, itself, however, does not, in my view, necessarily mean that an injustice was done to the plaintiffs and I am certain that that does not constitute an unjust attack on the plaintiffs' property rights.

The obligation of the State in Article 40.3.1° and Article 40.3.2° [of the Constitution of Ireland] is in the first instance, as far as practicable by its laws to defend and vindicate the personal rights of the citizen and, in the second instance, to protect as best it may from unjust attack, and in the case of injustice done, vindicate the property rights of every citizen. In its decision in the case of Moynihan v. Greensmyth [1977] Irish Reports 55, this Court in its judgment delivered by O'Higgins CJ, stated as follows:

'It is noted that the guarantee of protection given by Article 40.3.2° of the Constitution is qualified by the words "as best may be". This implies circumstances in which the State may have to balance its protection of the right as against other obligations arising from regard for the common good.'

I am satisfied that it would be reasonable to regard as a requirement of the common good an immunity to persons in whom are vested statutory powers of decision from claims for compensation where they act without negligence and bona fide. Such an immunity would contribute to the efficient and

decisive exercise of such statutory powers and would, it seems to me, tend to avoid indecisiveness and delay, which might otherwise be involved.

I am, therefore, satisfied that there cannot be, on the facts of this case, any question of there being a clearcut obligation imposed on the State to provide compensation for the plaintiffs in the circumstances which have arisen. I am, therefore, satisfied that the submissions made with regard to a claim for damages for breach of constitutional rights must also fail. It is not necessary for me to decide, and I express no opinion, on the question as to whether an action does lie for failure on the part of the Oireachtas to legislate in protection of personal rights, as distinct from the action to set aside or invalidate legislation which fails adequately to protect or vindicate them."

25. In their judgments some members of the Supreme Court addressed the question whether the retrospective validation of planning permissions effected by section 6 of the 1982 Act (see paragraphs 14-15 above) covered the outline permission granted to Mr Thornton in 1977. This question was not expressly mentioned in the agreed points of law to be determined (see paragraph 20 above), nor did the pleadings in the case make it a contentious issue: the plaintiffs' plea in their statement of claim that they could not "by operation of law avail of the retrospective validity afforded by the provisions" of that section was not denied by the State in its defence.

Mr Justice Finlay CJ stated that the 1982 Act contained a "saver for cases involving constitutional rights of other persons, which would appear to exclude the plaintiffs from the benefit of such retrospective validation".

Mr Justice Henchy (with whom Mr Justice Griffin agreed) said that section 6 of the 1982 Act effected a retrospective validation, save where it "would conflict with a constitutional right of any person. This meant that Pine Valley were excluded from the benefit of the section, for they had exercised their constitutional right to litigate the validity of the planning permission in the Courts".

Mr Justice Lardner stated:

"No doubt it was apprehended that s. 6(1) of the [1982 Act] might operate to reverse retrospectively this Court's decision [in the first Pine Valley case] and that this might constitute an unwarrantable interference by the legislature in a decision of the courts. It seems probable that it was in these cicumstances that s. 6(2) was enacted with a view to avoiding such interference. And this subsection has been accepted by counsel for both sides in the present case as excluding the appellants from the benefit of s. 6(1)."

26. Certain views were also expressed as to the effects of the plaintiffs' being excluded from the benefit of the retrospective validation.

Mr Justice Henchy said:

"[The] exclusion has been attacked by counsel for Pine Valley as being unfairly discriminatory as far as they are concerned, but in my view, while a discrimination has resulted, the primary and overriding purpose of the section was to avoid an

unconstitutional invasion of the judicial domain by attempting to give validity to any planning permission which the Courts may have held to be lacking in validity. It would follow that no injustice has been done to Pine Valley by s. 6 of the 1982 Act."

Mr Justice Lardner stated:

"... the appellants contend that to exclude them from the benefit of s. 6(1) constitutes (a) an unjust attack on their property rights or an injustice done which affects their property rights and (b) discriminates unfairly as between them and other persons who had received permissions or approvals of the Minister on appeal under Part IV of the 1963 Act and who were given the benefit of s. 6(1). In regard to the first contention it seems to me that s. 6(2) was included by the Oireachtas for the purpose of respecting and not interfering with the determination by the courts of the justiciable controversy which constituted the proceedings in [the first Pine Valley case] and of respecting the constitutional rights of the parties, both plaintiffs and defendants in that action, to have their controversy determined by the courts rather than by the Oireachtas. It may be that there is to some extent a conflict here between the right of the parties to have their controversy judicially determined by the courts and the present appellants' property interest. That fact in itself, however, does not in my view, necessarily mean that an injustice was done to the appellants and I am satisfied that it does not constitute an unjust attack on the appellants' property rights or an unlawful discrimination against them.

Those persons (such as the appellants) who were excluded from the benefits of s. 6(1) by s. 6(2) and the other recipients of planning approval or permission on appeal from the Minister who benefited from s. 6(1) and fall outside the ambit of s. 6(2) constitute two groups who were and are differently situated and a valid and substantial reason for the discrimination which has been made by these sections has always existed."

27. Mr Justice Henchy added that when the outline planning permission in respect of the land was declared invalid, there would have been a breach of the vendor's covenant for title, which would have given Pine Valley a cause of action for damages against him. Alternatively, it could have recovered from him, in an action for unjust enrichment, so much of the purchase price as was attributable to the permission. Since Pine Valley had not shown that its loss could not be recovered in that way, it had failed to prove that an injustice had been done to it for the purposes of Article 40.3.2° of the Constitution.

II. Relevant domestic law and practice

A. The Constitution of Ireland

28. The Constitution of Ireland contains the following provisions:

Article 40

"1. All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its

enactments have due regard to differences of capacity, physical and moral, and of social function.

...

3. 1° The State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

Article 43

"1. 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath and inherit property.

2. 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.

2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good."

B. Planning law

1. Permissions, outline permissions and approvals

29. In addition to the 1982 Act (see paragraphs 14-16 above), the principal legislation pertinent to this case was the Local Government (Planning and Development) Act 1963, as amended by the 1976 Act of the same title ("the 1963 Act").

The 1963 Act and regulations made thereunder provided for the grant by planning authorities of "permissions" and "outline permissions" for the development of land. Permissions were complete in themselves. Outline permissions amounted to a favourable decision as to the principle of the proposed development but were granted subject to the subsequent approval, by the authority or on appeal, of detailed plans, without which approval work could not be commenced. The authority had to examine an application for such approval within the parameters set by the outline permission and could not reopen the question of principle. Outline planning permissions could be revoked but only in the event of a change in circumstances relating to the proper planning and development of the area.

30. In dealing with any application for permission or approval a planning authority was restricted, by section 26(1) of the 1963 Act, to considering "the proper planning and development of [its] area".

An appeal against a decision of a planning authority lay to the Minister for Local Government or, after 15 March 1977

(see paragraph 15 above), to the Planning Board. Under section 26(5)(b) of the 1963 Act, the provisions of section 26(1) applied, subject to any necessary modifications, to the determination of any such appeal. If a question of law arose on an appeal, the Minister or the Board could refer it to the High Court for decision (section 82(3)).

31. Under the 1963 Act, planning permissions, which had to be recorded in a register kept by the planning authority, enured for the benefit of the land in question and of "all persons for the time being interested therein" (sections 8 and 28(5)).

2. Compensation

32. Subject to a number of exceptions set out in section 56, section 55(1) of the 1963 Act gave a right to compensation in the following terms:

"If, on a claim made to the planning authority, it is shown that, as a result of a decision under Part IV of this Act involving a refusal of permission to develop land ... the value of an interest of any person existing in the land to which the decision relates at the time of the decision is reduced, such person shall, subject to the provisions of this Part of this Act, be entitled to be paid by the planning authority by way of compensation the amount of such reduction in value and, in the case of the occupier of the land, the damage (if any) to his trade, business or profession carried on on the land."

Claims for compensation under this section had to be made within six months of notification of the decision, unless the Circuit Court accepted an application for an extension of this period (section 55(6)).

3. Purchase notice

33. Under section 29(1) of the 1963 Act:

"Where, in a case determined on an appeal under this Part of this Act, permission to develop any land has been refused or has been granted subject to conditions, then, if the owner of the land claims

(a) that the land has become incapable of reasonably beneficial use in its existing state, and

(b) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which permission has been granted under this Part of this Act, or for which the planning authority have undertaken to grant such permission, and

(c) in a case where permission to develop the land was granted as aforesaid subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions, he may, at any time within the period of six months after the decision (or such longer period as the Minister may allow), serve on the planning authority a [purchase notice] requiring the planning authority to purchase his interest in the land in accordance with the provisions of this section."

The value of land which was the subject of such a purchase notice was to be taken to be "the amount which the land if sold in the open market by a willing seller might be expected to realise".

C. Independence of the judicial function

34. It was established by the Supreme Court in Buckley and others (Sinn Fein) v. Attorney General [1950] Irish Reports 67 that the legislature cannot intervene in respect of cases pending before the courts. On the other hand, it appears that the legislature may validly reverse the decision of the courts with retrospective effect once the proceedings are terminated, without thereby infringing the principle of judicial independence (see, for example, the Garda Siochána Act 1979, reversing the Supreme Court decision in Garvey and others v. Ireland [1981] Irish Reports 75).

PROCEEDINGS BEFORE THE COMMISSION

35. In their application (no. 12742/87) lodged with the Commission on 6 January 1987, the applicants submitted that the respondent State's alleged failure to validate retrospectively the outline planning permission or to provide compensation or other remedy for the reduction in value of their property constituted a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention. They also complained of discrimination in the enjoyment of their property rights, contrary to Article 14 of the Convention taken in conjunction with the said Article 1 (art. 14+P1-1). Finally, they claimed that they did not have an effective remedy under Irish law in respect of the foregoing complaints as required by Article 13 (art. 13) of the Convention.

36. The Commission declared the application admissible on 3 May 1989. In its report of 6 June 1990 (Article 31) (art. 31), it expressed the opinion that:

(a) there had been no violation of the rights under Article 1 of Protocol No. 1 (P1-1) of Pine Valley (unanimously), of Healy Holdings (nine votes to four), or of Mr Healy (ten votes to three);

(b) there had been a violation of the rights under Article 14 of the Convention in conjunction with the said Article 1 (art. 14+P1-1) of Healy Holdings and of Mr Healy (twelve votes to one), but not of those of Pine Valley (unanimously);

(c) there had been no violation of Article 13 (art. 13) of the Convention (unanimously).

The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment*.

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* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 222 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

37. In their memorial the Government requested the Court:

"(1) With regard to the preliminary submissions, to decide and declare that:

(a) the applicants cannot claim to be victims within the meaning of Article 25 (art. 25) of the Convention;

(b) the applicants have not exhausted their domestic remedies as required by Article 26 (art. 26) of the Convention.

(2) With regard to Article 1 of Protocol No. 1 (P1-1): to decide and declare that there has been no breach of Article 1 of Protocol No. 1 (P1-1) in the case of the applicants.

(3) With regard to Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 ((art. 14+P1-1): to decide and declare that there has been no breach of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1) in respect of all three applicants or any of them.

(4) With regard to Article 13 (art. 13) of the Convention: to decide and declare that there has been no breach of Article 13 (art. 13) of the Convention.

(5) With regard to Article 50 (art. 50) of the Convention:

(a) to decide and declare that an award of compensation is not justified or appropriate;

(b) alternatively, if and in so far as a breach of any Article of the Convention is found, to decide and declare that a finding of violation in itself constitutes sufficient just satisfaction in the circumstances pleaded."

At the hearing on 21 May 1991 the Government confirmed these submissions in substance but added that, in their view, any ruling on the question of the application of Article 50 (art. 50) should be reserved.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Introduction

38. The primary object of the Government's application referring the case to the Court was to seek a ruling that the case was inadmissible on the basis of the preliminary pleas and objections they advanced.

At the hearing on 21 May 1991 the Delegate of the Commission submitted that the Court should depart from the precedent set in its De Wilde, Ooms and Versyp judgment of 18 June 1971 (Series A no. 12) and should not review the Commission's decisions on admissibility.

39. The Court is unable to accept this submission. Since 1971, and most recently in the Cardot judgment of 19 March 1991 and the Oberschlick judgment of 23 May 1991 (Series A nos. 200 and 204), it has - when the occasion arose - exercised its jurisdiction to examine objections of the kind put forward by the Government and it does not

consider that it should now depart from this case-law and practice. It notes that the objections in question were filed in due time for the purposes of Rule 48 para. 1 of the Rules of Court.

B. Whether the applicants can claim to be "victims" of a violation of the Convention

40. The Government submitted that the applicants could not claim to be "victims" of a violation of the Convention on the following grounds:

(a) as regards Pine Valley:

(i) it had sold the land in question before the Supreme Court, in its decision of 5 February 1982, held that the grant of outline planning permission was a nullity (see paragraphs 11-12 above);

(ii) it had been struck off the register of companies on 26 October 1990 and dissolved on 6 November (see paragraph 8 above);

(b) as regards Healy Holdings, the receiver appointed to this company on 14 October and 29 November 1985 (see paragraph 8 above) was not a party to the proceedings before the Convention institutions;

(c) as regards Mr Healy:

(i) he traced his claim through Healy Holdings as its sole beneficial shareholder;

(ii) he ranked in priority after that company's secured creditors;

(iii) he had been adjudged bankrupt in England on 19 July 1990 (see paragraph 8 above).

41. The Court notes that the Government raised before the Commission, prior to its admissibility decision of 3 May 1989, the substance of most of the foregoing pleas (see page 51 of the Commission's report). The only exceptions are the events mentioned at (a) (ii) and (c) (iii) but these, by reason of their dates, could not have been relied on before that decision. The Government therefore did not fail to advance the relevant submissions in due time, with the result that no question of estoppel arises (see, inter alia, the Barberà, Messegué and Jabardo judgment of 6 December 1988, Series A no. 146, p. 28, para. 58).

42. As to the merits of the pleas, the Court would make at the outset the general observation that Pine Valley and Healy Holdings were no more than vehicles through which Mr Healy proposed to implement the development for which outline planning permission had been granted. On this ground alone it would be artificial to draw distinctions between the three applicants as regards their entitlement to claim to be "victims" of a violation.

More specifically, with respect to Pine Valley, neither its sale of the land nor its later dissolution alters the fact that it was for a certain period of time, as one of those vehicles, the owner of the property to which the planning permission attached. Indeed, it was this company that applied

for planning approval in August 1982 and initiated the proceedings in the second Pine Valley case (see paragraphs 18 and 20 above). In the Court's view, this suffices to permit a claim of violation to be made on its behalf.

The Government's remaining pleas all turn, directly or indirectly, on the financial status of Healy Holdings and Mr Healy. Whilst that status may, of course, be of importance or have effects on the domestic level, it is, in the Court's opinion, of no relevance as far as entitlement to claim to be a victim of a violation is concerned. Insolvency cannot remove the right which Article 25 (art. 25) of the Convention confers on "any person".

43. The Court thus concludes that the Government's pleas under this head must be dismissed.

C. Whether the applicants had failed to exhaust domestic remedies

44. The Government submitted that the applicants had not exhausted domestic remedies because they had failed:

(a) as regards Dublin County Council's decision of 10 December 1982 refusing planning approval (see paragraph 18 above):

(i) to seek judicial review thereof;

(ii) to appeal to the Planning Board (see paragraph 30 above);

(iii) to seek compensation under section 55 of the 1963 Act (see paragraph 32 above);

(iv) to have recourse to the machinery whereby a planning authority may be required to purchase land in respect of which permission to develop has been refused on appeal (section 29 of the same Act; see paragraph 33 above), such recourse having been precluded by the applicants' own failure to appeal to the Planning Board;

(b) as regards the 1982 Act (see paragraphs 14-15 above):

(i) to seek a court declaration that they were entitled to the benefit of section 6(1) thereof and, if necessary, that section 6(2) thereof did not apply to their circumstances;

(ii) if necessary, to seek a court declaration challenging the constitutional validity of section 6(2) thereof if it had the consequence of excluding them from the benefit of section 6(1);

(c) to bring an action against Mr Thornton, the previous owner of the land (see paragraph 9 above), for breach of covenant of title or for unjust enrichment.

45. The pleas listed at (b) and (c) above were raised by the Government when the Commission was examining the admissibility of the application (see pages 52-53 of its report), so that no question of estoppel arises in their regard.

The same cannot, however, be said concerning the pleas listed at (a). At the Commission's hearing of 3 May 1989 on admissibility and merits, the Government did refer briefly to sections 55 and 29 of the 1963 Act, but these references were made in the context of Article 25 (art. 25) of the Convention

and the question whether the applicants could claim to be "victims" of a violation; the Government are therefore estopped from relying on these provisions in support of a plea of non-exhaustion of domestic remedies (see the Isgrò judgment of 19 February 1991, Series A no. 194-A, p. 11, para. 29). At the same hearing the Government did make a passing reference, in the context of a plea of non-exhaustion of domestic remedies, to the applicants' failure to challenge or appeal against the 1982 decision of Dublin County Council. However, these points were not then dealt with in argument, with the result that the Government must be regarded as estopped from relying on them now.

It is true that, after the Commission's admissibility decision and in support of a request made under Article 29 (art. 29), the Government did expand on all the matters listed at (a). However, there was, in fact, nothing to prevent them from doing this earlier (see the Artico judgment of 13 May 1980, Series A no. 37, pp. 13-14, para. 27).

46. In the result, there fall to be considered on their merits the Government's submissions that the applicants should have sought a declaration or declarations concerning the 1982 Act and should have sued Mr Thornton.

47. As regards the first of these alleged remedies, the Government contended that section 6(1) of the 1982 Act applied to the applicants' outline permission and rendered it valid, and accordingly that, when Dublin County Council refused their application for approval on 10 December 1982, they ought to have applied to the High Court for a declaration that they were entitled to the benefit of the section or, if they were not, that section 6(2) was invalid having regard to the Constitution. This contention of the Government is inconsistent with the attitude they adopted to the interpretation of section 6 in the second Pine Valley case. In their statement of claim in that case the applicants pleaded that they could not "by operation of law avail of the retrospective validity afforded by" section 6(1) of the 1982 Act (see paragraph 25 above). In their defence the Government did not deny this plea (ibid.). Accordingly, the attitude of the Government, in their pleadings, was that they accepted that the applicants' outline permission was not validated by section 6(1). And it is clear that the Government did not argue to the contrary during the hearing of the case but maintained the same attitude. Mr Justice Lardner stated in his judgment that section 6(2) of the 1982 Act "has been accepted by counsel for both sides ... as excluding the appellants from the benefit of section 6(1)" (ibid.).

The Government are now adopting a totally different attitude. Yet they cannot validly put forward before the Court arguments which they never made in the domestic court and which are inconsistent with the stance they adopted there.

Furthermore, the Court finds persuasive the applicants' contention that even if they could have succeeded in obtaining the appropriate declaration, it would not have been possible to obtain it in time to enable them to develop the lands pursuant to the outline permission, since this was due to expire on 10 March 1984 (see paragraph 16 above). The earliest an action for a declaration could have been commenced was December 1982, which left only fifteen months approximately in which not merely to complete the proceedings (which could have included an appeal to the Supreme Court) but

also to obtain detailed planning approval and commence building. No extension of the period of validity of the outline permission could have been obtained unless substantial works had been carried out before it expired, and such works could not have been commenced until detailed planning approval had been obtained (see paragraphs 16 and 29 above). In these circumstances, the actions for a declaration suggested by the Government cannot be regarded as "effective" remedies which Article 26 (art. 26) obliged the applicants to exhaust: a remedy which will not bear fruit in sufficient time does not fall within this category (see, mutatis mutandis, the Ciulla judgment of 22 February 1989, Series A no. 148, p. 15, para. 32).

For these reasons, this limb of the Government's objection must be dismissed.

48. The same applies to the action or actions which the Government submitted should have been instituted against Mr Thornton (item (c) of paragraph 44 above). Even assuming that these actions were available to the applicants, the Government have not challenged their contention that the measure of damages obtainable would not have been such as to permit them to recoup the entirety of their losses. Above all, Article 26 (art. 26) requires the exhaustion only of remedies that relate to the breaches alleged (see, inter alia, the de Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, p. 19, para. 39): to sue a private individual cannot be regarded as such a remedy in respect of a positive act on the part of the State.

D. Conclusion

49. To sum up, the Court is able to take cognisance of the merits of the case, in its entirety and as regards all three applicants.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

50. The applicants submitted that, as a result of the Supreme Court's decision holding the outline planning permission to be invalid, coupled with the respondent State's alleged failure to validate that permission retrospectively or its failure to provide compensation for the reduction in value of their property, they had been victims of a breach of Article 1 of Protocol No. 1 (P1-1) to the Convention, which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This submission, which was contested by the Government, was not accepted by the Commission.

A. Whether there was an interference with a right of the applicants

51. Bearing in mind that in the first Pine Valley case (see paragraph 12 above) the Supreme Court held that the outline planning permission granted to Mr Thornton was a nullity ab initio, a first question that arises in this case is whether the applicants ever enjoyed a right to develop the land in question which could have been the subject of an interference.

Like the Commission, the Court considers that this question must be answered in the affirmative. When Pine Valley purchased the site, it did so in reliance on the permission which had been duly recorded in a public register kept for the purpose and which it was perfectly entitled to assume was valid (see paragraphs 9 and 31 above). That permission amounted to a favourable decision as to the principle of the proposed development, which could not be reopened by the planning authority (see paragraph 29 above). In these circumstances it would be unduly formalistic to hold that the Supreme Court's decision did not constitute an interference. Until it was rendered, the applicants had at least a legitimate expectation of being able to carry out their proposed development and this has to be regarded, for the purposes of Article 1 of Protocol No. 1 (P1-1), as a component part of the property in question (see, mutatis mutandis, the Fredin judgment of 18 February 1991, Series A no. 192, p. 14, para. 40).

52. The Government contended that there had been no interference with any right of the applicants under Article 1 of Protocol No. 1 (P1-1) since the outline planning permission had been retrospectively validated by section 6(1) of the 1982 Act (see paragraph 15 above).

The Court recalls that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, amongst various authorities, the Eriksson judgment of 22 June 1989, Series A no. 156, p. 25, para. 62). In the present case, a number of the members of the Supreme Court expressed the opinion, in the second Pine Valley case, that the applicants were excluded from the benefit of section 6(1) (see paragraph 25 above); furthermore, a different view was not taken by the other national authorities involved, namely Dublin County Council and the Planning Board (see paragraphs 18-19 above).

The Government maintained, however, that the question of the interpretation of section 6 of the 1982 Act was not before the Supreme Court for decision and that the observations made by its members on this subject were no more than obiter dicta.

The Court must, whatever the weight of those observations in domestic law, be guided by such pronouncements of the national authorities as exist on the subject, especially those emanating from members of the highest court of the land. Bearing also in mind that in the second Pine Valley case the defendants (one of whom was the State) accepted, at least tacitly, that the applicants did not have the benefit of section 6(1) of the 1982 Act (see paragraph 47 above), it cannot now be claimed that their outline planning permission was retrospectively validated by that provision. The Court must therefore proceed on the basis that it was not.

53. The applicants accepted the Commission's view that there had been no interference with the rights of Pine Valley since it had sold the land in question before the Supreme Court's

decision in the first Pine Valley case (see paragraphs 11-12 above), with the result that the losses were borne by the other applicants.

Whilst the existence of a violation is conceivable even in the absence of detriment (see, inter alia, the Groppera Radio AG and Others judgment of 28 March 1990, Series A no. 173, p. 20, para. 47), the Court concurs in the result. Pine Valley had parted with ownership of the land, without retaining any right thereover that was protected by Article 1 of Protocol No. 1 (P1-1). That provision, whether taken alone (P1-1) or in conjunction with Article 14 (art. 14+P1-1) of the Convention, therefore did not apply to this applicant.

54. The Court thus concludes that there was an interference with the right of Healy Holdings and Mr Healy to the peaceful enjoyment of their possessions.

This conclusion is not affected by three other points on which the Government relied.

(a) Firstly, the possibility open to the applicants of seeking some other planning permission does not alter the fact that they lost the benefit of the one they already had.

(b) Secondly, the fact that the Minister for Local Government acted bona fide in granting permission to Mr Thornton has no bearing whatsoever on the effects of the Supreme Court's decision in the first Pine Valley case.

(c) Thirdly, the applicants' failure to seek compensation under section 55 of the 1963 Act (see paragraph 32 above) cannot be regarded as excluding the existence of an interference, since this remedy might, at most, have provided redress for the consequences after the event. Besides, the Government did not cite any case-law contradicting the applicants' view that this section was not applicable to a refusal of planning approval, neither have they clearly established that the quantum of compensation payable would have covered the entirety of the applicants' losses.

B. The Article 1 (P1-1) rule applicable to the case

55. The applicants contended that the interference in question, by annulling the outline planning permission, constituted a "deprivation" of possessions, within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1). The Commission, on the other hand, saw it as a "control of the use of property", within the meaning of the second paragraph of that provision.

56. There was no formal expropriation of the property in question, neither, in the Court's view, can it be said that there was a de facto deprivation. The impugned measure was basically designed to ensure that the land was used in conformity with the relevant planning laws and title remained vested in Healy Holdings, whose powers to take decisions concerning the property were unaffected. Again, the land was not left without any meaningful alternative use, for it could have been farmed or leased. Finally, although the value of the site was substantially reduced, it was not rendered worthless, as is evidenced by the fact that it was subsequently sold in the open market (see paragraph 13 above).

Accordingly, as for example in the Fredin case (see the

above-mentioned judgment, Series A no. 192, pp. 14-15, paras. 42-47), the interference must be considered as a control of the use of property falling within the scope of the second paragraph of Article 1 (P1-1).

C. Compliance with the conditions laid down in the second paragraph of Article 1 (P1-1)

1. Lawfulness and purpose of the interference

57. The applicants did not dispute that the interference was in conformity with planning legislation and, like that legislation, was designed to protect the environment (see paragraph 9 above). This, in the Court's view, is clearly a legitimate aim "in accordance with the general interest" for the purposes of the second paragraph of Article 1 (P1-1) (see the same judgment, p. 16, para. 48).

2. Proportionality of the interference

58. The applicants maintained that, in the absence of compensation or retrospective validation of their outline planning permission, the interference complained of could not be described as proportionate to the aim pursued.

59. Although the annulment by the Supreme Court of the planning permission was pronounced in proceedings to which the applicants were party, its consequences were not confined to them, as is evidenced by the fact that legislation - the 1982 Act - was subsequently passed with the intention of validating retrospectively the permissions affected. Indeed, the applicants would have found themselves in the same position if a similar decision had been handed down in a case in which they had not been involved.

The interference was designed and served to ensure that the relevant planning legislation was correctly applied by the Minister for Local Government not simply in the applicants' case but across the board. The decision of the Supreme Court, the result of which was to prevent building in an area zoned for the further development of agriculture so as to preserve a green belt (see paragraph 9 above), must be regarded as a proper way - if not the only way - of achieving that aim.

The applicants were engaged on a commercial venture which, by its very nature, involved an element of risk (see, mutatis mutandis, the Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171-A, pp. 17-18, paras. 53 and 55, and the above-mentioned Fredin judgment, Series A no. 192, pp. 17-18, para. 54) and they were aware not only of the zoning plan but also of the opposition of the local authority, Dublin County Council, to any departure from it (see paragraphs 10 and 12 above). This being so, the Court does not consider that the annulment of the permission without any remedial action being taken in their favour can be regarded as a disproportionate measure.

D. Conclusion

60. The Court thus concludes that there has been no violation of Article 1 of Protocol No. 1 (P1-1) as regards any of the applicants.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL NO. 1 (art. 14+P1-1)

61. The applicants alleged that since the remedial action taken by the legislature in the shape of section 6 of the 1982 Act benefited all the holders of permissions in the relevant category other than themselves, they had been victims of discrimination contrary to Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1). The former provision reads as follows:

"The enjoyment of the rights and freedoms set forth in [the] 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."

This allegation was contested by the Government, but accepted by the Commission as regards Healy Holdings and Mr Healy.

62. The Court recalls that, for the reasons set out in paragraph 53 above, Article 14 (art. 14) is not applicable as far as Pine Valley is concerned.

63. The Government contended, in this context also, that the applicants' outline planning permission had been validated by the 1982 Act and that, accordingly, no question of discrimination arose. The Court has already dealt with this contention in paragraph 52 above and rejects it on the grounds there stated.

64. The Government did not rely on the observations made by certain members of the Supreme Court in this connection (see paragraph 26 above) nor did they advance any other justification for the difference of treatment between the applicants and the other holders of permissions in the same category as theirs.

The Court therefore finds that there has been a violation of Article 14 of the Convention, taken together with Article 1 of Protocol No. 1 (art. 14+P1-1), as regards Healy Holdings and Mr Healy.

IV. ALLEGED VIOLATION OF ARTICLE 13 (art. 13) OF THE CONVENTION

65. The applicants further submitted that they had had no effective remedy whereby they could raise before a national authority the substance of their Convention complaints. They recalled that their claim for damages had been dismissed in the second Pine Valley case and maintained that there was no remedy for the discrimination inherent in section 6 of the 1982 Act. In their view, there had accordingly been a violation of Article 13 (art. 13) of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] 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."

66. The Court agrees with the Government and the Commission that this submission has to be rejected. The applicants not only could but also did raise the substance of their Convention complaints (including that relating to the discriminatory effect of the 1982 Act) before the Irish courts

in the second Pine Valley case (see paragraphs 20-27 above). And it has to be recalled that the effectiveness of a remedy, for the purposes of Article 13 (art. 13), does not depend on the certainty of a favourable outcome (see, inter alia, the Soering judgment of 7 July 1989, Series A no. 161, p. 48, para. 122).

V. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

67. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The question of applying Article 50 (art. 50) does not arise as regards Pine Valley, no violation having been found in respect of this company. In fact, this provision was relied on only by Healy Holdings and Mr Healy, who claimed compensation for pecuniary and non-pecuniary damage, together with reimbursement of certain costs and expenses they had incurred in Ireland.

At the hearing on 21 May 1991, the Delegate of the Commission reserved his position on these claims. Counsel for the Government did likewise, although he also submitted that certain of the claims had been presented to the Court out of time.

68. In these circumstances the Court considers that the question of the application of Article 50 (art. 50) is not ready for decision and must be reserved.

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the Government's plea that the applicants cannot claim to be victims of a violation of the Convention;

2. Holds unanimously that the Government are estopped from relying on the rule of exhaustion of domestic remedies as regards the possibilities of:

(a) seeking judicial review of, or appealing to the Planning Board against, Dublin County Council's decision of 10 December 1982;

(b) seeking compensation under section 55 of the Local Government (Planning and Development) Act 1963;

(c) having recourse to the "purchase notice" machinery provided for by section 29 of the same Act;

3. Dismisses unanimously the remainder of the objection that domestic remedies had not been exhausted;

4. Holds unanimously that, as regards Pine Valley, there has been no violation of Article 1 of Protocol No. 1, taken alone (P1-1) or in conjunction with Article 14 (art. 14+P1-1) of the Convention;

5. Holds by six votes to three that, as regards Healy Holdings and Mr Healy, there has been no violation of the said Article 1 (P1-1);

6. Holds unanimously that, as regards Healy Holdings and Mr Healy, there has been a violation of the said Article 14, taken in conjunction with the said Article 1 (art. 14+P1-1);

7. Holds unanimously that there has been no violation of Article 13 (art. 13) of the Convention;

8. Holds unanimously that the question of the application of Article 50 (art. 50) as regards Healy Holdings and Mr Healy is not ready for decision; accordingly,

(a) reserves the whole of the said question;

(b) invites the Government and the applicants to submit, within the coming three months, their written comments thereon and, in particular, to notify the Court of any agreement reached between them;

(c) reserves the further procedure and delegates to the President of the Court power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 November 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the partly dissenting opinion of Mrs Bindschedler-Robert, Mr Russo and Mr Foighel is annexed to this judgment.

Initialled: R. R.

Initialled: M.-A. E.

PARTLY DISSENTING OPINION OF JUDGES BINDSCHEDLER-ROBERT, RUSSO AND FOIGHEL

(Translation)

We agree that there was no violation of Article 1 of Protocol No. 1 (P1-1) as regards Pine Valley and that there was no breach of Article 13 (art. 13). We also share the majority view that there was a violation of Article 14 taken together with the second paragraph of Article 1 of Protocol No. 1 (art. 14+P1-1), but we are unable to follow the majority when it considers that there was no violation of the second paragraph of Article 1, taken alone (P1-1), in respect of Healy Holdings and Mr Healy.

Although, as the judgment states, "the interference was designed and served to ensure that the relevant planning legislation was correctly applied by the Minister for Local Government not simply in the applicants' case but across the board" and although in this sense it was "provided for by law" and had a legitimate aim, it is nevertheless the case that the

applicants were the only ones to whom the measure - the annulment ab initio of the planning permission - was actually applied, and it may therefore be asked whether, in those circumstances, it was necessary "in the general interest" as is required under the second paragraph of Article 1 (P1-1).

Be that as it may, the annulment without compensation of the planning permission (of the "outline permission") granted to the previous owner is in our view evidence of a lack of proportionality between the interest of the State in the correct application of the law and the loss inflicted on the applicants. If the applicants were not in a position to benefit from the 1982 Act, there was no reason why they should not have been compensated for the drop in value, as was moreover provided for in the 1963 Act in the event of the revocation of permission on account of a change in circumstances. Such compensation was all the more called for because at the time of the transaction the authority of the Minister to take, on appeal, a decision contrary to the development plan was not disputed; the Government's argument that the Minister was acting in good faith can only add further weight to this point. The applicants were therefore entitled, in good faith for their part too, to rely on the validity of the permission which had moreover been entered into the appropriate register. The State would therefore appear to be objectively responsible for the mistake committed by its organs and the applicants ought not to have had to bear the resulting loss.

It may be noted further that the purchase of the land by the applicants was not a risk transaction, as the majority considers, or a speculation; in any event, if there was an "element of risk", it was related not to the legal basis of the transaction but to the commercial aspects of the exploitation of the work undertaken. The outline permission, which generated a right to subsequent approval of the detailed plans provided that such plans took account of the parameters laid down, could be revoked only in the event of a change of circumstances, in which case the person concerned was entitled to compensation. In any event we do not see why the protection of the Convention should be reduced for persons taking financial risks, so long as their transactions are lawful.

For the foregoing reasons, we are therefore of the opinion that Healy Holdings and Mr Healy were victims also of a violation of the second paragraph of Article 1 of Protocol No. 1 (P1-1), taken alone.