



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

**CASE OF THE NATIONAL & PROVINCIAL BUILDING SOCIETY,
THE LEEDS PERMANENT BUILDING SOCIETY AND
THE YORKSHIRE BUILDING SOCIETY v.
THE UNITED KINGDOM**

(117/1996/736/933-935)

JUDGMENT

STRASBOURG

23 October 1997

The present judgment is subject to editorial revision before its reproduction in final form in *Reports of Judgments and Decisions* 1997. These reports are obtainable from the publisher Carl Heymanns Verlag KG (Luxemburger Straße 449, D-50939 Köln), who will also arrange for their distribution in association with the agents for certain countries as listed overleaf.

List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67,
B – 1000 Bruxelles)

Luxembourg: Librairie Promoculture (14, rue Duchscher
(place de Paris), B.P. 1142, L – 1011 Luxembourg-Gare)

The Netherlands: B.V. Juridische Boekhandel & Antiquariaat
A. Jongbloed & Zoon (Noordeinde 39, NL – 2514 GC ‘s-Gravenhage)

SUMMARY¹

Judgment delivered by a Chamber

United Kingdom – applicants’ legal claims to restitution of monies paid under invalidated tax provisions extinguished under the effects of retrospective legislation (section 53 of Finance Act 1991 and section 64 of Finance (No. 2) Act 1992)

I. ARTICLE 1 OF PROTOCOL No. 1

A. Whether there was an unlawful expropriation of applicants’ assets

Interest paid in gap period would inevitably have been taxed had voluntary arrangements between building societies and Inland Revenue continued to apply – it was held in applicants’ reserves waiting to be brought into account – in absence of transitional regulations applicants would have obtained a windfall in changeover to new tax regime – no support in domestic litigation for argument that interest subjected to double imposition – interest never in fact taxed – Parliament clearly intended interest to be taxed – cannot be maintained that it was misled in this respect – no unlawful expropriation of assets or double imposition of interest through operation of 1986 Regulations.

B. Whether there were “possessions” within meaning of Article 1

Court expresses no concluded view on whether any of applicants’ claims could properly be considered “possessions” – Leeds and National & Provincial had not secured a final and enforceable judgment in their favour when they initiated first set of restitution proceedings notwithstanding favourable outcome of Woolwich 1 litigation – judicial review proceedings and second set of restitution proceedings launched by all three applicants cannot be said to be sufficiently established – in particular, applicants cannot maintain that they had a legitimate expectation that Government would not seek Parliament’s consent to adopt retrospective legislation to validate impugned Treasury Orders.

Nevertheless, Court prepared to proceed on assumption that applicants’ claims amounted to “possessions” and treat Article 1 as applicable given links between applicants’ arguments on this issue and substance of their claims to have been unjustifiably deprived of their “possessions”.

C. Whether there was an interference

Not disputed – Court will examine whether interference justified on working assumption that applicants’ claims amounted to “possessions”.

D. Whether the interference was justified

Reiteration of Court’s case-law on approach to interpretation of Article 1 – Court will apply rule in second paragraph of Article 1 to facts to determine whether impugned measures were a control of use of property in general interest to secure payment of taxes – most natural approach in circumstances.

1. This summary by the registry does not bind the Court.

Obvious public-interest considerations at stake justifying Parliament's adoption of section 53 of 1991 Act and section 64 of 1992 Act – section 53 sought to reassert Parliament's original intention to tax interest paid in gap period – that intention thwarted by ruling in *Woolwich 1* that 1986 Regulations void on technical grounds – Leeds and National & Provincial must be reasonably considered to have appreciated Parliament would adopt retrospective legislation to remedy technical defects in 1986 Regulations – section 64 designed to safeguard substantial sums of revenue placed at risk by applicants' challenge to validity of Treasury Orders – cannot be maintained in circumstances that sections 53 and 64 upset balance between protection of applicants' rights to restitution and public interest in securing payment of taxes due.

Conclusion: no violation (unanimously).

II. ARTICLE 1 OF PROTOCOL No. 1 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

Applicants not in relevantly similar situation to that of *Woolwich* – latter alone bore costs and risks of litigation and had secured victories in House of Lords and Court of Appeal before Leeds and National & Provincial had issued writs to launch their restitution proceedings – even if applicants could be so considered there was reasonable and objective justification for excluding *Woolwich* from scope of section 53 – understandable that Parliament did not wish to interfere with House of Lords ruling in *Woolwich 1* – cannot be maintained that section 64 discriminated between applicants and *Woolwich* – measure was of general application.

Conclusion: no violation (eight votes to one).

III. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Applicable – both sets of restitution proceedings were private-law actions irrespective of fiscal dimension – judicial review proceedings clearly related to outcome of second set of restitution proceedings and therefore decisive of private rights.

B. Compliance

Effects of sections 53 and 64 were to render applicants' legal actions unwinable – whether this result constituted an interference with applicants' right of access to a court must be determined in light of all circumstances of case – Court must in particular subject to careful scrutiny justifications adduced by authorities in view of retrospective nature of impugned measures.

Applicants clearly understood that Parliament intended to tax interest paid in gap period and can reasonably be considered to have anticipated that Treasury would react as it did to remedy technical defects in 1986 Regulations following *Woolwich 1* ruling – Leeds and National & Provincial in effect tried to pre-empt adoption of remedial legislation by issuing writs in restitution immediately before official announcement that Parliament would be

asked to approve retrospective measures – section 53 not in fact specifically targeted at Leeds’ and National & Provincial’s restitution actions even if its effect was to stifle these actions – obvious public-interest considerations justifying adoption of section 53 with retrospective effect, having regard to Parliament’s need and resolve to reassert its original intention.

Furthermore, compelling public-interest reasons for rendering Treasury Orders immune from legal challenge mounted by all applicants in taking judicial review proceedings and contingent restitution proceedings – these proceedings were in effect an indirect assault on Parliament’s original intention to tax interest paid in gap period – even if section 64 adopted by Parliament in knowledge of initiation by applicants of judicial review proceedings, applicants themselves must be considered to have appreciated that Parliament would intervene as it did.

Conclusion: no violation (unanimously).

IV. ARTICLE 6 § 1 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14

Court’s reasons supporting its earlier conclusion of no violation of Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention equally valid for a finding of no violation under this head.

Conclusion: no violation (eight votes to one).

COURT’S CASE LAW REFERRED TO

26.3.1992, Editions Périscope v. France; 9.12.1994, Stran Greek Refineries and Stratis Andreadis v. Greece; 23.2.1995, Gasus Dossier- und Fördertechnik GmbH v. the Netherlands; 20.11.1995, Pressos Compania Naviera S.A. and Others v. Belgium; 22.10.1996, Stubbings and Others v. the United Kingdom

In the case of the National & Provincial Building Society, the Leeds Permanent Building Society and the Yorkshire Building Society v. the United Kingdom¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr R. MACDONALD,

Mr N. VALTICOS,

Mrs E. PALM,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr P. JAMBREK,

Mr K. JUNGWIERT,

Mr E. LEVITS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 31 May and 27 September 1997,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) and by the Government of the United Kingdom of Great Britain and Northern Ireland (“the Government”) on 16 September 1996 and 25 October 1996 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in three applications (nos. 21319/93, 21449/93 and 21675/93) against the United Kingdom lodged with the Commission under Article 25 on 15 January 1993, 21 December 1992 and 11 January 1993 respectively by the National & Provincial Building Society (hereafter “the National &

Notes by the Registrar

1. The case is numbered 117/1996/736/933-935. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case’s position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

Provincial”), the Leeds Permanent Building Society (hereafter “the Leeds”) and the Yorkshire Building Society (hereafter “the Yorkshire”).

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46); the Government’s application referred to Article 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 1 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention and Article 6 § 1 of the Convention taken alone or in conjunction with Article 14.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, 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* Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 17 September 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Macdonald, Mr C. Russo, Mr N. Valticos, Mr R. Pekkanen, Mr P. Jambrek and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5). Mr Gölcüklü and Mr Russo were later prevented from taking part in the consideration of the case and were replaced by Mrs E. Palm and Mr K. Jungwiert respectively.

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicants’ lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government’s and the applicants’ memorials on 31 January 1997.

On 10 March 1997 the Commission produced a number of documents from the file on the proceedings before it, as requested by the Registrar on the President’s instructions.

5. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 28 May 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr M.R. EATON, Deputy Legal Adviser, Foreign and Commonwealth Office,	<i>Agent,</i>
Mr S. RICHARDS,	
Mr D. ANDERSON,	<i>Counsel,</i>
Mr W.J. DURRANS, Inland Revenue,	
Mr P.H. LINFORD, Inland Revenue,	<i>Advisers;</i>

(b) *for the Commission*

Mrs J. LIDDY,	<i>Delegate;</i>
---------------	------------------

(c) *for the applicants*

Lord LESTER OF HERNE HILL QC,	
Mr J. GARDINER QC,	
Mr P. DUFFY QC,	
Mr J. PEACOCK,	
Ms M. CARSS-FRISK,	<i>Counsel,</i>
Mr H. ROSS, Solicitor, Clifford Chance (for the Leeds),	
Mr N. JORDAN, Solicitor, Clifford Chance (for the Leeds),	
Ms S. GARRETT, Solicitor, Addleshaw Booth & Co (for the Yorkshire),	
Ms F. FERGUSON, Solicitor, Slaughter and May (for the National & Provincial),	<i>Solicitors.</i>

The Court heard addresses by Mrs Liddy, Mr Gardiner, Lord Lester of Herne Hill and Mr Richards.

AS TO THE FACTS

I. GENERAL BACKGROUND

6. The applicants were at all relevant times building societies within the meaning of the Building Societies Act 1986. Building societies operate under the status of “mutual societies” under English law as opposed to the status enjoyed by companies under company law. A building society’s members are made up of its investors who deposit savings with it and receive a rate of interest or a dividend in return, and its borrowers who are

charged interest on their loans. By and large, loans are taken out by borrowers to buy private residential property.

A. The income-tax liability of investors

7. Investors with a building society are liable to pay income tax in respect of the interest earned on their deposits. The income tax owed to the Inland Revenue for the purposes of the fiscal year running from 6 April of one year to 5 April of the following year was in practice calculated or measured with reference to a period of equal length preceding the actual fiscal year. The so-called “measurement principle” required that the period measured be always equal in length to the period taxed. The taxpayer was not in fact taxed on the income of the preceding year but assessed to tax on the income received in the current year, the amount of the current year’s income being artificially computed by reference to the income of the previous year. Accordingly, in normal circumstances, individual investors with building societies would be obliged to declare in their tax returns for the fiscal year in question the amount of interest or dividends earned on their deposits in a preceding reference period of equal length to the fiscal year, and the Inland Revenue would have to make individual assessments to tax on the strength of the information supplied by the investor.

B. The voluntary arrangements for discharging investors’ tax liability

8. However, in view of the very large number of building society investors, many of whom had only modest savings and were thus only liable to small amounts of income tax, or to no tax at all, it had for many years up to and including the fiscal year 1985/86 been the practice for the Inland Revenue to make voluntary arrangements with building societies for the payment by each society of a single annual composite amount. The effect of this payment by a building society was to discharge its investors’ liability to income tax at the basic rate on the interest which they earned. These arrangements, which were for very many years operated on a non-statutory basis, were at the relevant time given statutory recognition under section 343 (1) of the Income and Corporation Taxes Act 1970 – “the 1970 Act”.

9. The composite-rate payment under the voluntary arrangements was calculated for each fiscal year by reference to the global amount of interest paid by the society to its investors. However, in order to reflect the fact that some of the investors would not have been liable to tax at all given the modest amounts of their savings (see paragraph 8 above) a reduced rate of tax was applied. For this reason the annual

payments made under this scheme were known as “reduced-rate tax” or “composite-rate tax”, or “CRT”.

10. The amount paid to investors by way of interest on their investments took account of the fact that their liability to income tax was discharged by the building society via the payment of CRT to the Inland Revenue. Investors thus received their interest net of tax.

C. Setting the rate of CRT and the revenue-neutrality principle

11. In accordance with the “revenue-neutrality” principle, set out in section 26 of the Finance Act 1984, the CRT payment reflected only the amount which would have been paid by the investors themselves had they been obliged to declare and pay tax on the interest they earned through their deposits.

12. To achieve this, the Treasury, following negotiations with the Building Societies Associations, set each year, by statutory instrument, the CRT rate. In doing so, it was required to aim at a result whereby the same amount of tax was collected at source from building societies for the fiscal year in question as would have been collected from the individual depositors had they been taxed directly on the interest they received over a preceding reference period (see paragraphs 7 above and 13 below).

D. The prior-period system and the accounting-year period

13. Until 1985/86, a “prior-period” system applied in respect of CRT. The amount of CRT to be paid by each building society for each fiscal year (see paragraph 12 above) was calculated by reference to the interest which it paid to its investors not during the actual year being taxed, but during the society’s own twelve months’ accounting period ending within that fiscal year. The tax was in every case paid on or around 1 January of the year of assessment. As noted above (see paragraph 8 above), the legal effect of this payment representing income tax was to discharge investors’ basic-rate liability on the interest earned in the year being taxed.

14. There was no legal requirement to have a harmonised accounting period. Different time frames were used by different building societies, but in all cases the time frames represented a period equal in length to the fiscal year, having regard to the requirements of the measurement principle (see paragraph 7 above). The following accounting periods were operated by each of the applicant societies:

- the Leeds: 1 October to 30 September;
- the National & Provincial: 1 January to 31 December;
- the Yorkshire: 1 January to 31 December.

Thus, on or around 1 January 1986, the three applicant societies paid to the Inland Revenue, to discharge their investors' liability to income tax at the basic rate for the fiscal year 6 April 1985–5 April 1986, sums measured by reference to the interest paid to their investors in their accounting periods ended 30 September 1985 (the Leeds) and 31 December 1985 (the National & Provincial and the Yorkshire). Under the effect of the voluntary arrangements (see paragraph 8 above), these payments completely discharged the income-tax liability of their investors in respect of the interest paid to them by the respective societies for the fiscal year 6 April 1985–5 April 1986.

On that basis each of the applicant companies paid the following amounts by way of CRT to the Inland Revenue:

- the Leeds: 144,500,000 pounds sterling (GBP), a sum measured by reference to the interest paid to its investors in its accounting period ended 30 September 1985;

- the National & Provincial: GBP 125,926,662, a sum measured by reference to the interest paid to its investors in its accounting period ended 31 December 1985;

- the Yorkshire: GBP 34,001,214, a sum measured by reference to the interest paid to its investors in its accounting period ended 31 December 1985.

E. The aim and effect of the new legislation: section 40 of the Finance Act 1985

15. With a view to putting the taxation of the interest paid by building societies to investors on a similar footing to the scheme which had been introduced for banks by the Finance Act 1984, the Government proposed the introduction of a mandatory regime for the collection of tax on investors' interest and the payment of the tax quarterly on the last days of February, May, August and November instead of annually in January. In his budget statement on 19 March 1985 announcing the introduction of the new scheme, the Chancellor of the Exchequer declared that it would not produce any additional revenue. The proposal was adopted by Parliament in the form of section 40 of the Finance Act 1985.

16. Section 40 amended section 343 of the 1970 Act (see paragraph 8 above) by inserting a new sub-section (1A) which had the effect of bringing to an end the long-standing voluntary arrangements as from 6 April 1986. It also empowered the Inland Revenue Commissioners to make regulations introducing a new system of accounting for the fiscal year 1986/87 and for subsequent years. Under the Income Tax (Building Society) Regulations 1986 ("the 1986 Regulations"), which came into force on 6 April 1986, tax

was to be calculated on a quarterly basis on the actual interest paid during the actual year of assessment, as opposed to a prior period.

F. The problem of the “gap period”

17. However the ending of the voluntary arrangements exposed a gap (“the gap period”) between the end of the applicant societies’ accounting periods in 1985/86 (see paragraph 14 above) and the start of the first quarter under the new regime. In the case of the Leeds the gap period was from 1 October 1985 to 5 April 1986, and in the case of the National & Provincial and the Yorkshire it was from 1 January 1986 to 5 April 1986. In order to ensure that each payment of interest formed the basis of an assessment to tax, transitional regulations were introduced which deemed payments falling into the “gap period” to have been made in a later accounting period, with the result that they formed the basis for an assessment to tax under the new “actual-year” arrangements. In the view of the Government the legislative intention was to ensure that the same amount of tax was collected as would have been collected if the previous arrangements had continued and that the building societies did not receive an undeserved windfall in respect of the gap period.

18. Against this background, Regulation 11 (read in conjunction with Regulation 3) of the 1986 Regulations purported to require building societies to account for tax relating to payments of interest to their investors in their respective gap periods. Regulation 11 (4) provided for tax to be charged on interest paid in the gap period at 1985/86 rates, i.e. 25.25%, the basic rate of income tax being 30% for that year.

II. PARTICULAR CIRCUMSTANCES OF THE CASE

19. Each of the applicant societies took the view that the transitional regulations ran counter to the Government’s declared intention that the new regime introduced by the Finance Act 1985 should not produce any additional revenue (see paragraph 15 above), which view was reaffirmed during the parliamentary debates on section 40 of that Act. They considered that the effect of Regulations 3 and 11 was to impose tax again on interest they had paid in 1985/86, a fiscal year for which liability on their investors’ interest had already been discharged (see paragraph 14 above). For the applicants this had the result that, for twenty-four months’ interest paid to its investors in the two fiscal years 1986/87 and 1987/88, a society like the Leeds, with a 30 September year-end, was required to pay tax on thirty months’ interest. For the National & Provincial and the Yorkshire, each

would have to pay tax on twenty-seven months' interest for the twenty-four month period covered by the fiscal years 1986/87 and 1987/88. In the view of the applicant societies these consequences ran counter to the measurement principle according to which the measurement period forming the basis of assessment to tax can never exceed the length of the fiscal year (see paragraph 7 above).

Each of the three applicant societies did in fact pay the tax claimed to be due under the transitional provisions of the Regulations as follows:

- the National & Provincial: GBP 15,873,945;
- the Leeds: GBP 56,973,690;
- the Yorkshire: GBP 8,902,620.

20. The Government point out that the payments were made “without formal protest”. However, the applicants assert that they made clear from the outset that they disputed the lawfulness of the tax and that they associated themselves with the proceedings initiated by the Woolwich Equitable Building Society (“the Woolwich”) to challenge the lawfulness of the transitional provisions in Regulation 11. For its part the Leeds issued a press release when the Regulations were still at the draft stage, drawing attention to, *inter alia*, their complaint that the Regulations would have the objectionable effect of subjecting building societies to double taxation. The affidavit sworn by the Executive Vice-Chairman of the Woolwich referred to the Leeds' support for its decision to initiate legal proceedings against the transitional arrangements. Both the National & Provincial and the Yorkshire made requests for the repayment of the amounts they had paid to the Inland Revenue.

A. The Woolwich 1 proceedings for judicial review

21. On 18 June 1986 the Woolwich commenced judicial review proceedings seeking a declaration that Regulation 11 was unlawful as being outside the scope of the enabling legislation. It was further alleged that the transitional arrangements transgressed the fundamental principles of constitutional and taxation law and that the machinery adopted by the 1986 Regulations in order to implement the change in the system resulted in a double charge to tax over the gap period.

B. The legislative response to the launch of the Woolwich 1 proceedings: section 47 of the Finance Act 1986

22. On 4 July 1986 the Government introduced in Parliament a measure intended to validate retrospectively the impugned Regulations and to give effect to what they claimed to be the original intention of Parliament when adopting them (see paragraphs 15 and 17 above). The responsible Government minister informed Parliament that the Regulations did not affect the amount of tax collected, only the timing of payment and reiterated

that they would not bring extra tax to the Inland Revenue. On 25 July 1986 the Finance Act 1986 (“the 1986 Act”) received the Royal Assent. Section 47 of the Act retrospectively amended section 343 (1A) of the 1970 Act (see paragraph 16 above) with the purpose of authorising the Inland Revenue Commissioners to make regulations requiring the taxation in the year 1986/87 and subsequent years of assessments of sums paid to investors in the gap period and not previously brought into account.

C. The Woolwich 2 proceedings for restitution

23. On 15 July 1987 the Woolwich issued a writ against the Inland Revenue claiming repayment of the sums paid by way of tax under the transitional provisions of the Regulations, as well as interest from the date of payment.

D. The decision of the High Court in the Woolwich 1 proceedings

24. On 31 July 1987 Nolan J granted the application in Woolwich 1 (see paragraph 21 above) and made a declaration that Regulation 11 was void in its entirety and that the remaining Regulations were void in so far as they purported to apply to payments made to investors prior to 6 April 1986. He held that:

(a) there was nothing in the enabling legislation to indicate that Parliament intended to authorise a departure from the principle that income tax should only be levied on the income of one year;

(b) the power to make regulations conferred by section 343 (1A) was to be exercised solely with respect to 1986/87 and later years and nothing in the section authorised the Revenue to go back on the arrangements with the building societies and impose further tax on interest paid to their members during the gap period;

(c) the fact that Regulation 11 (4) provided for tax to be charged at 1985/86 rates (which were higher than the 1986/87 rates) was itself a clear indication that the Regulations went beyond the powers conferred by section 343 (1A);

(d) the position was not affected by the amendment in section 47 (1) of the 1986 Act which, whatever its intention, still left the power conferred by section 343 (1A) as a power exercisable only with respect to 1986/87 and subsequent years.

25. The Inland Revenue appealed against the decision. They conceded that Regulation 11 (4) was invalid but contended that this partial invalidity did not invalidate the rest of the Regulation.

26. Towards the end of 1987, the Inland Revenue repaid to the Woolwich the sum of GBP 57,000,000 with interest from 31 July 1987 (the date of the order of Nolan J) but refused to pay interest from any earlier date. Thus, the remaining issue in the Woolwich 2 proceedings (see paragraph 23 above) came to be whether or not Woolwich had grounds for claiming interest on the payments made by them up to 31 July 1987.

E. The decision of the High Court in the Woolwich 2 proceedings

27. On 12 July 1988 Nolan J dismissed the Woolwich 2 action, holding that the Woolwich was not entitled to recover the sums in issue under any general principle of restitution or as having been paid under duress. He took the view that the sums had been paid under an implied agreement that they would be repaid if and when the dispute about the validity of the 1986 Regulations was resolved in favour of the Woolwich. Thus, the Woolwich had no cause of action to recover the money until the date of his order of 31 July 1987. The Woolwich appealed against the decision and order.

F. The decision of the Court of Appeal in the Woolwich 1 proceedings

28. On 12 April 1989 the Court of Appeal allowed the appeal of the Inland Revenue in the Woolwich 1 proceedings (see paragraph 25 above). The court held that:

(a) as a matter of ordinary construction, the words of section 47 of the 1986 Act were clear and enabled the Revenue to take account of, and to charge to tax, interest paid by the societies in the gap period; and

(b) subject to the invalidity of Regulation 11 (4), which was conceded by the Revenue, Regulation 11 was valid.

G. The decision of the House of Lords in the Woolwich 1 proceedings

29. On 25 October 1990 the House of Lords allowed the appeal of the Woolwich in the Woolwich 1 proceedings. The House of Lords, Lord Lowry dissenting, declared the transitional provisions in the 1986 Regulations to be *ultra vires* on the grounds that Regulation 11 (4), as the Inland Revenue had previously conceded, and Regulation 3, so far as it related to the period after February and before 6 April 1986, were *ultra vires* the empowering statute. The House of Lords considered that Regulation 11 (4) could not be severed from the rest of Regulation 11 and that the transitional provisions in the 1986 Regulations were therefore void in their entirety.

30. Lord Oliver, delivering the judgment of the majority, concluded:

“... I confess that I find the conclusion irresistible that Parliament intended by these words [section 47 of the 1986 Act] to enable the Revenue to take account of and to charge to tax sums which, rightly or wrongly, it regarded as otherwise representing windfalls in the hands of building societies. One has only to look at the circumstances. The Regulations of 1986 had been made and had been objected to. They were made the subject of a direct challenge in legal proceedings, the evidence in support of which clearly adumbrated the arguments advanced before the judge and the Court of Appeal. The notion that Parliament should go to the trouble of enacting an expressly retrospective amendment in order to provide, unnecessarily, for the use of these sums as a measurement of tax liability – a matter never remotely in issue – is simply fanciful ...

... I am bound to say that I think it unfortunate that the Revenue, through Parliament, should have chosen by secondary rather than primary legislation to take what was, on ordinary principles, the very unusual course of seeking to tax more than one year's income in a single year of assessment, but section 47 of the Finance Act 1986 is, on any analysis, a very unusual provision and I have, in the end, found myself irresistibly driven to the conclusion that this was what Parliament intended should occur. It may be – I do not know – that the legislature did not appreciate fully that the effect of the arrangements made in 1985 was to discharge all liability for tax on interest paid in the year of assessment 1985/86, including tax on interest paid after the end of a society's accounting year, and that, accordingly, to tax those sums again in a subsequent year was, in a sense, to tax them twice. But even making that assumption it amounts to no more than saying that the legislature should not have intended to do that which it plainly set out to do. I would, for my part, therefore, reject the Woolwich's principal argument.”

This ruling declaring Regulation 11 (4) void on technical grounds meant that no mechanism existed to achieve what the Government claimed to be Parliament's initial intention that interest payments made during the gap period should be assessed for tax. This led the Government to introduce new legislative provisions. A draft press release was circulated as early as 7 March 1991 for the approval of the Chancellor of the Exchequer. The draft indicated that the Chancellor in his budget-day speech on 19 March 1991 would introduce legislation to validate retrospectively the Regulations which had been struck down in the Woolwich 1 case (see paragraph 33 below).

H. The Leeds 1 and National & Provincial 1 proceedings for restitution

31. Following the House of Lords' decision in the Woolwich 1 proceedings, and after having made several requests for repayment, the Leeds commenced proceedings on 15 March 1991 against the Inland Revenue for the restitution of the sum of GBP 56,973,690 paid pursuant to the 1986 Regulations which had been declared void in the Woolwich 1 proceedings.

32. On 17 March 1991 the National & Provincial, which had also sought but was refused repayment, commenced proceedings against the Inland Revenue for the restitution of the sum of GBP 15,873,945 paid pursuant to the void Regulations.

I. The legislative response to the Woolwich 1 decision: the enactment of section 53 of the Finance Act 1991

33. On 19 March 1991, in his budget statement, the Chancellor of the Exchequer announced the introduction of legislation to remedy “the technical defects in the Regulations”. This legislation became section 53 of the Finance Act 1991 (“the 1991 Act”), which entered into force on 25 July 1991. Section 53 provided, *inter alia*:

“Section 343 (1A) of the [1970 Act] ... shall be deemed to have conferred powers to make all the provisions in fact contained in [the 1986 Regulations].”

34. The provision had retrospective effect, save that by subsection (4) it had no effect “in relation to a building society which commenced proceedings to challenge the validity of the Regulations before 18 July 1986”. The Woolwich was the only building society which satisfied this condition.

35. In a letter dated 21 March 1991 the Director-General of the Building Societies Associations informed the Financial Secretary to the Treasury that the decision of the Government “[did] not come as any great surprise, although it will still be very disappointing to the societies concerned”. In fact, the concrete effect of the measure was to stifle the Leeds 1 and National & Provincial 1 proceedings (see paragraphs 31 and 32 above). Although they had shown support for the Woolwich’s judicial proceedings (see paragraph 20 above) neither had formally commenced legal proceedings before 18 July 1986. At the costs hearing the Government conceded that they had no defence to the action brought by the Leeds and the National & Provincial had it not been for section 53 of the 1991 Act. Costs were awarded against the Government.

J. The Woolwich 2 proceedings in the Court of Appeal

36. On 22 May 1991 the Court of Appeal, by a majority, allowed the appeal by the Woolwich in Woolwich 2 and awarded the interest claimed.

37. The majority of the Court of Appeal accepted the Woolwich's primary submission that, where money was paid under an illegal demand for taxation by a government body, the payer had an immediate prima facie right to recover the payment.

K. The Leeds 2, National & Provincial 2 and Yorkshire 1 proceedings to challenge the validity of the Treasury Orders by way of judicial review

38. On 10 July 1991 the Leeds applied for leave to commence judicial review proceedings for a declaration that the Treasury Orders establishing the composite-rate tax for 1986/87 and for the following years were unlawful ("Leeds 2"). The Leeds claimed that:

(a) it was clear that in making the estimates for the years following 1986/87, and setting the rates of composite-rate tax on the basis of it, the Treasury had assumed the correctness of the Government's position that the Regulations collected no "extra" tax;

(b) this position had been shown by the judgments in Woolwich 1 to be wrong, with the result that the Treasury had underestimated the amount of tax collection under the composite-rate tax system and so set the rate of tax for those years substantially too high;

(c) this was of no significance so long as the Regulations were held to be invalid, because the "extra" tax was in law repayable to the building societies; however, by retrospectively validating them the Government had automatically invalidated the bases of the statutory instruments setting the rates;

(d) this, in principle, meant that all composite-rate tax paid in those years had to be repaid, but in its proceedings the Leeds made a binding commitment not to seek to recover more than the sums initially overpaid, namely GBP 57,000,000.

39. On 6 November 1991 the National & Provincial was granted leave to commence judicial review proceedings similar to those in Leeds 2 for a declaration that the Treasury Orders establishing the composite-rate tax for 1986/87 and subsequent years were unlawful because of the retrospective validation of the Regulations ("National & Provincial 2"). The application was joined with the Leeds 2 proceedings and with a similar application made by the Bradford and Bingley Building Society.

40. On 3 March 1992 the Yorkshire applied for leave to commence similar judicial review proceedings for a declaration that the Treasury Orders establishing the composite-rate tax for 1986/87 and subsequent years were unlawful (“Yorkshire 1”).

L. The Leeds 3, National & Provincial 3 and Yorkshire 2 proceedings for restitution

41. Further proceedings were commenced by the Yorkshire on 11 May 1992 (“Yorkshire 2”), by the Leeds on 1 June 1992 (“Leeds 3”) and by the National & Provincial on 12 June 1992 (“National & Provincial 3”). In those proceedings the applicant societies claimed restitution of the money due to them if the judicial review proceedings (Leeds 2 and National & Provincial 2, and Yorkshire 1) were successful (see paragraphs 38–40 above).

M. The legislative response to the applicants’ proceedings for judicial review and restitution: section 64 of the Finance (No. 2) Act 1992

42. On 16 July 1992 section 64 of the Finance (No. 2) Act 1992 (“the 1992 Act”) entered into force. This legislation had been anticipated as from 7 May 1992 when the Financial Secretary in a reply to a parliamentary question noted that his Government intended to introduce legislation to validate retrospectively the impugned Treasury Orders. Section 64 provided, with retrospective effect, that the Treasury Orders “shall be taken to be and always to have been effective”. The Government acknowledged during the parliamentary debates on section 64 that the measure was intended to preempt the legal proceedings launched by the applicants to challenge the validity of the Treasury Orders and that it would result in the Woolwich being treated more favourably. However, they pointed out that the challenge to the composite rate for CRT in the fiscal years 1986/87 to 1989/90 threw into doubt the lawfulness of the collection of all sums from building societies, banks and other deposit institutions in the periods in question. While there was no doubt as to the lawfulness of the collection in respect of the vast majority of those sums, the effect of impugning the rates set would have been to render the collection of all sums unlawful. The amount at stake was in the region of GBP 15 billion.

43. The effect of section 64 was to extinguish the remaining proceedings lodged by the applicants for judicial review of the validity of the Treasury Orders and for restitution (see paragraphs 39–41 above).

N. The final outcome of the Woolwich 2 proceedings

44. On 20 July 1992 the House of Lords, by a majority, dismissed the Inland Revenue's appeal in the Woolwich 2 proceedings.

The House of Lords did not accept that, on the facts of the Woolwich case, there was any implied agreement for the repayment of the money paid under the invalid Regulations if and when the dispute was resolved in the taxpayer's favour. Nevertheless, by a majority, the House of Lords held:

(a) that money paid by a citizen to a public authority in the form of taxes or other levies pursuant to an *ultra vires* demand by the authority is prima facie recoverable by the citizen as of right;

(b) that, accordingly, since the building society's claims fell outside the statutory framework governing repayment of overpaid tax, it was entitled at common law to repayment of the sums and to interest in respect thereof from the date of payment.

III. RELEVANT DOMESTIC LAW

45. Section 343 (1A) of the 1970 Act (introduced by section 40 of the Finance Act 1985, and as amended by section 47 of the Finance Act 1986) provides as follows:

"The Board may by regulations made by statutory instrument make provision with respect to the year 1986/87 and any subsequent year of assessment requiring building societies, on such sums as may be determined in accordance with the regulations **(including sums paid or credited before the beginning of the year but not previously brought into account under subsection (1) above or this subsection)**, to account for and pay an amount representing income tax ... and any such regulations may contain such incidental and consequential provisions as appear to the Board to be appropriate, including provisions requiring the making of returns." [The words in bold print were added by the 1986 Act.]

46. Section 53 of the Finance Act 1991 provides, so far as relevant, as follows:

"(1) Section 343 (1A) of the Income and Corporation Taxes Act 1970 ... shall be deemed to have conferred power to make all the provisions in fact contained in the Income Tax (Building Societies) Regulations 1986 ...

(4) In relation to a building society which commenced proceedings to challenge the validity of the Regulations before 18 July 1986, this section shall not have effect to the extent that the Regulations apply (or purport to apply) to payments or credits made before 6 April 1986."

47. Section 64 of the Finance (No. 2) Act 1992 provides as follows:

“(1) For the purposes of this section each of the following is a relevant order –

- (a) the Income Tax (Reduced and Composite Rate) Order 1985 ...
- (b) the Income Tax (Reduced and Composite Rate) Order 1986 ...
- (c) the Income Tax (Reduced and Composite Rate) Order 1987 ...
- (d) the Income Tax (Reduced and Composite Rate) Order 1988 ...

(2) If apart from this section a relevant order would not be so taken, it shall be taken to be and always to have been effective to determine the rate set out in the order as the reduced rate and the composite rate for the year of assessment for which the order was made.”

PROCEEDINGS BEFORE THE COMMISSION

48. In their applications (nos. 21319/93, 21449/93 and 21675/93), lodged with the Commission on 15 January 1993, 21 December 1992 and 11 January 1993, the applicants alleged violations of Article 6 of the Convention and Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention.

On 30 August 1994 the Commission joined the National & Provincial's application and the Yorkshire's application, and on 10 January 1995 joined the Leeds' application with the other two applications. On 13 January 1995 the Commission declared the applications admissible. In its report of 25 June 1996 (Article 31) the Commission expressed the opinion that there had been no violation of Article 1 of Protocol No. 1 (thirteen votes to three); that there had been no violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention (fourteen votes to two); that there had been a violation of Article 6 § 1 of the Convention (nine votes to seven); and that it was not necessary to examine the complaint under Article 6 § 1 of the Convention taken in conjunction with Article 14 of the Convention (fourteen votes to two). The full text of the Commission's opinion and of the four separate opinions contained in the report is reproduced as an annex to this judgment¹.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (*Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

49. The applicant societies requested the Court to find that the facts disclosed breaches of Article 1 of Protocol No. 1 and of Article 6 of the Convention, taken alone or in conjunction with Article 14 of the Convention, and to award them just satisfaction.

The Government for their part requested the Court to decide and declare that the facts gave rise to no breach of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

50. The applicants claimed to be victims of a breach of Article 1 of Protocol No. 1, which provides as follows:

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

The preceding 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.”

A. As to the alleged expropriation of the applicant societies’ assets

51. The applicant societies maintained that it had never been suggested during the passage of section 40 of the Finance Act 1985 (see paragraphs 15 and 16 above) or at the time when the 1986 Regulations had been laid before Parliament (see paragraphs 17 and 18 above) that the gap period would be brought into account on a second occasion for tax purposes. The Government had given repeated assurances, including during the parliamentary discussions on section 47 of the Finance Act 1986, that the new arrangements would not produce any additional revenue (see paragraph 22 above). However, this indeed was the effect of the Regulations since they taxed twice interest which had already been assessed to tax for the fiscal year 6 April 1985 to 5 April 1986. The tax had been paid on or around 1 January 1986 in order to discharge their investor’s liability for that fiscal year (see paragraph 14 above). The House of Lords in the Woolwich 1

litigation had acknowledged when striking down those Regulations that the transitional provisions subjected the interest paid in the gap period to double taxation, and this consideration was a fundamental part of the *ratio decidendi* of their decision (see paragraphs 29 and 30 above).

52. According to the applicant societies, it could only be concluded that the Government had misled Parliament as to the aim of the legislative scheme and had in effect procured the enactment of legislation which had the result of expropriating substantial amounts of money lawfully held in their reserves. They subsequently sought to legalise that expropriation by means of retrospective legislation which deprived the societies of their legal rights to recover those amounts.

53. The Government stressed that the sole intention behind section 40 of the Finance Act 1985 and the adoption of the 1986 Regulations was to ensure that in the transition from the prior to the actual year basis of assessment (see paragraphs 13 and 15 above) the interest paid by building societies to investors would be brought into account for tax purposes. Had the 1986 Regulations, as validated ultimately by section 53 of the 1991 Act (see paragraphs 33 and 34 above), not addressed the tax liability of the interest paid during the gap period in the way they did certain building societies like the applicant societies would have been left with considerable amounts of untaxed interest in their reserves. The interest paid in the gap period was taxed once and once only. The Government minister had correctly informed Parliament that the new arrangements would not produce additional revenue. The untaxed interest in the gap period would have been brought into account had the voluntary arrangements continued in force. The Regulations simply altered the timing of payment of tax on that interest by spreading the liability to pay it over successive fiscal years.

54. In the view of the Government, the applicant societies could not rely on the judgments given in the Woolwich 1 litigation to support their contention that the 1986 Regulations imposed double taxation. The Regulations had been declared void on purely technical grounds. Parliament had never been misled as to the effect which the 1986 Regulations would have on the gap period. Parliament had in fact legislated after extensive debates on the new arrangements in full knowledge of the concerns expressed by building societies at the relevant time about the effect of the Regulations.

55. Before the Court the Delegate of the Commission stated that it had been the clear intention of Parliament in enacting section 40 of the Finance Act 1985 and adopting the 1986 Regulations to ensure that building societies did not benefit from a windfall, but should remain liable to tax on interest paid to their investors in the gap period. Furthermore, there was no

support in the House of Lords ruling in the Woolwich 1 litigation for the argument that the applicant societies had been subjected to a double imposition other than in a technical sense.

56. The Court notes that the assertions of the applicant societies in regard to the intention of Parliament in 1985 and 1986 are central to their complaints concerning the retroactive removal of their rights to recover the monies which they paid to the Inland Revenue. It is fundamental to their arguments on those complaints that those monies were in reality unlawfully expropriated from their reserves under the guise of taxation.

57. Without prejudice to its subsequent consideration of the applicant societies' allegations that they had been unlawfully deprived of their legal claims to restitution of their monies in breach of Article 1 of Protocol No. 1, the Court is of the opinion that it should clarify at the outset whether or not the applicant societies are correct in their submissions that the legislative measures taken in 1985 and 1986 subjected the interest which they paid to their investors in the gap period to a double imposition contrary to the intention of Parliament.

58. It is to be noted in this respect that, had the voluntary arrangements (see paragraph 8 above) continued to apply as between the building societies and the Inland Revenue, the interest would inevitably have been brought into account for tax purposes. Accordingly, and by way of example, the Leeds would have had to pay to the Inland Revenue on or around 1 January 1987 tax on the interest earned by its investors between 1 October 1985 and 30 September 1986 in order to discharge the latter's liability to tax on that interest for the fiscal year 6 April 1986 to 5 April 1987. The interest paid in the gap period in issue would thus have been taxed, and subsequent gap periods would have been brought into account in future fiscal years in accordance with the same logic. The voluntary arrangements made no provision for interest to be omitted for tax-assessment purposes.

59. Since the interest earned by their investors in the gap period had been paid to them net of tax (see paragraph 10 above), the applicant societies had already deducted amounts representing tax on that interest. Those amounts were lodged in their reserves waiting to be brought into account. It is an inescapable conclusion that, had steps not been taken to bring those amounts into account in the move from the prior-period system (see paragraphs 13 and 14 above) to the actual-year system (see paragraphs 15 and 16 above), the applicant societies would have been left with considerable sums of money representing unpaid tax.

It cannot be maintained that the effect of the transitional arrangements in the 1986 Regulations was to subject those amounts of money to double taxation other than in a technical sense, since no tax had ever been paid on the interest paid in the gap period before the changeover to the new actual-year scheme of assessment. Admittedly, by deeming the interest to have been paid in a later accounting period (see paragraph 17 above) the effect of

the transitional regulations was to accelerate the payment of tax owed to the Inland Revenue in a way which may seem to be at variance with the measurement principle (see paragraph 7 above). However, this cannot serve to refute the conclusions that the volume of payments remained the same as between the old and the new system and that there was no increase in the revenue collected from the applicant societies.

60. Nor is the Court persuaded by the arguments of the applicant societies that the judgment of the House of Lords in the *Woolwich 1* case (see paragraphs 29 and 30 above) provides support for their view that the effect of the transitional mechanism in the 1986 Regulations was to subject the interest paid to investors in the gap period to double taxation other than in a theoretical sense, having regard to the way in which the measurement principle was adjusted. As noted above (see paragraph 59), had the measurement principle not been modified the applicant societies would undoubtedly have each received a windfall, substantial in all cases but especially so in the case of the Leeds, which had the longest gap period. Neither is it convinced by their claim that Parliament was misled as to the effect of the transitional arrangements. It would appear that both section 40 of the Finance Act 1985 (see paragraph 15 above) and section 47 of the Finance Act 1986 (see paragraph 22 above) were fully discussed at the various legislative stages against the background of strong lobbying on the part of building societies to have the interest paid to investors in the gap period omitted from assessment. It cannot be said therefore that Parliament did not appreciate the impact of the 1986 Regulations, having regard to the opportunities which the opponents of the proposals had to question Government ministers and to clarify the precise implications of the scheme for building societies.

61. Having regard to the above conclusions, the Court will therefore consider the claims of the applicant societies that they were deprived of their legal rights to restitution of the monies paid to the Inland Revenue under the invalidated Regulations on the clear understanding that those monies were intended by Parliament to be charged to tax, had not been subjected to a double imposition and were not therefore wrongfully expropriated.

B. As to the deprivation of the applicant societies' legal claims

1. Whether there were possessions within the meaning of Article 1

62. The applicant societies contended that their legal claims to restitution of the assets which had been "unlawfully expropriated" by virtue

of the 1986 Regulations constituted, like those assets, “possessions” within the meaning of Article 1 of Protocol No. 1. As a result of the House of Lords ruling in the Woolwich 2 litigation (see paragraph 44 above) the applicant societies must be considered to have had enforceable common-law rights to recover their assets, which rights accrued as soon as the money had been paid over to the Inland Revenue pursuant to the invalidated Regulations. The Government had no defence to their claim for recovery, a point which they had conceded at the costs hearing in the wake of the stifled restitution proceedings brought by the Leeds and the National & Provincial (see paragraph 35 above). Having regard to the principles established by the Court in its *Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994 (Series A no. 301-B) and in its *Pressos Compania Naviera S.A. and Others v. Belgium* judgment of 20 November 1995 (Series A no. 332), they maintained that that right was sufficiently established and certain to constitute possessions and gave each of them a clear legitimate expectation that they would be treated similarly to the Woolwich on the basis of the law as it stood prior to the enactment of section 53 of the 1991 Act. The judicial review proceedings directed at the validity of the Treasury Orders (see paragraphs 38–40 above) and the second set of restitution proceedings (see paragraph 41 above) brought by all the applicant societies were an alternative route to the assertion of their enforceable rights to restitution of their monies. These rights were once again stifled under the impact of section 64 of the 1992 Act.

63. The Government disputed this conclusion and especially the reliance by the applicant societies on the case-law cited. None of the applicant societies’ legal claims had ever given rise to a binding enforceable judgment. In fact the two sets of restitution proceedings had never proceeded beyond the issuing of writs (see paragraphs 31, 32 and 41 above) and the judicial review proceedings challenging the validity of the Treasury Orders (see paragraphs 38–40 above) were at an equally embryonic stage with the applicants having, at best, only an arguable chance of success. Furthermore, the first set of restitution proceedings brought by the Leeds and the National & Provincial (see paragraphs 31 and 32 above) and the second set of restitution proceedings brought by all three applicant societies (see paragraph 41 above) were in reality opportunistic legal moves having regard to the dates when the writs were issued and the Government’s clear intentions at those times. In fact the second set of restitution proceedings, which were contingent on securing victory in the judicial review proceedings, were bound to fail since they were launched after the Government had officially announced their intention to validate retrospectively the Treasury Orders (see paragraph 42 above).

64. For the above reasons the Government requested the Court to find that Article 1 of Protocol No. 1 was not applicable since the applicant societies could not validly claim to have “possessions”.

65. The Commission considered that the restitution proceedings initiated by the Leeds and the National & Provincial (see paragraphs 31 and 32 above) were “possessions” having regard to the scope of the decision of the House of Lords in the Woolwich 2 litigation. Had the Government not acted as they did and secured the passage of section 53 of the 1991 Act through Parliament (see paragraphs 33 and 34 above), there was nothing to suggest that the authorities would have had any sustainable defence to the restitution claim.

66. In the view of the Commission, it was less certain, however, whether the judicial review proceedings and the second set of restitution proceedings (see paragraphs 38–40 and paragraph 41 above) amounted to “possessions”. Nevertheless, the Commission was prepared to assume that those claims were possessions, having regard to the background to the proceedings and to the fact that they were in effect alternative routes to the assertion of the restitution claims which had been extinguished by section 53 of the 1991 Act. Before the Court the Delegate of the Commission stated that the Commission had in fact assumed that the legal claims asserted by each of the applicant societies were possessions in order to bring into play the third sentence of Article 1 of Protocol No. 1 which preserves the right of a Contracting State to pass laws which it deems necessary to secure the payment of taxes.

67. The Court notes that the decision of the House of Lords in the Woolwich 2 litigation lies at the heart of the applicant societies’ contention that the claims which they sought to assert in each of the three sets of legal proceedings amounted to “possessions” within the meaning of Article 1 of Protocol No. 1. In that landmark decision the House of Lords established that a plaintiff had a *prima facie* common-law right to repayment of sums paid to a public authority in the form of taxes pursuant to a demand which is found to be *ultra vires* (see paragraph 44 above). The Woolwich recovered the interest owing on sums paid to the Inland Revenue on the strength of the law on restitution as so clarified, having already been repaid towards the end of 1987 the monies which had been collected from it by the Inland Revenue under the Regulations which, by that stage, had been declared invalid by the High Court (see paragraph 26 above).

However, the Leeds and the National & Provincial had not themselves secured an enforceable final judgment in their favour at the time of instituting the first set of restitution proceedings and it may be questioned whether they could be considered in the circumstances to have had an acquired right to the recovery of their monies at that time (see, *mutatis mutandis*, the Stran Greek Refineries and Stratis Andreadis judgment cited above, p. 85, §§ 61–62). The strength of their contention on this aspect lies

essentially in the fact, firstly, that the Inland Revenue had repaid the Woolwich the principal sum (see paragraph 26 above) when it was discovered that Regulation 11 (4) of the 1986 Regulations was defective, entailing a risk that the transitional arrangements could not be saved despite the enactment of section 47 of the Finance Act 1986 (see paragraph 22 above), and, secondly, that the House of Lords in the Woolwich 1 case (see paragraph 29 above) ultimately found the 1986 Regulations including the transitional arrangements to be void in their entirety. It is significant in this regard that the Government conceded the merits of the cases brought by the Leeds and the National & Provincial (see paragraph 35 above), thereby indicating that in the absence of section 53 of the 1991 Act they would have lost the cases.

68. At the same time it must also be observed that the Leeds and the National & Provincial brought their restitution proceedings at a time when the law on restitution was not in fact favourable to the outcome of their cases. The House of Lords judgment in the Woolwich 2 case, which is central to their claim to have an established right amounting to possessions, was in fact delivered one year after the writs had been issued. Furthermore, while it may be the case that the authorities did not intimate to the applicant societies in the course of the Woolwich 1 litigation that they would seek to restore with retroactive effect the original intention of Parliament should that case go against the Inland Revenue, it is reasonable to question whether these two building societies could have had a “legitimate expectation” (see paragraph 62 above) that the Government would not have reacted as they did to the outcome of the litigation. As the Government have pointed out (see paragraph 63 above), the writs were issued after the decision had been taken to rectify with retrospective effect the inadvertent defects in the 1986 Regulations and in the days immediately preceding the official announcement by the Government of this course of action (see paragraphs 30–32 above).

69. While noting that the Leeds and the National & Provincial may be considered to have at best a precarious basis on which to assert a right amounting to “possessions”, the Court is of the view that the claims asserted in the judicial review proceedings (see paragraphs 38–40 above) and the second set of restitution proceedings brought by all three applicant societies in May and June 1992 respectively (see paragraphs 39 and 40 above) could not be said to be sufficiently established or based on any “legitimate expectation” (see paragraph 62 above) that those claims would be determined on the basis of the law as it stood. By that stage Parliament had shown its continuing resolve to reassert its original intention to tax the

interest paid in the gap period by enacting section 53 of the 1991 Act; nor could they have any cast-iron guarantee of obtaining the declaration sought in the judicial review proceedings to enable them to recover their monies in the follow-up restitution proceedings.

70. While expressing no concluded view as to whether any of the claims asserted by the applicant societies could properly be considered to constitute possessions, the Court, like the Commission (see paragraph 66 above), is prepared to proceed on the working assumption that in the light of the Woolwich 2 ruling the applicant societies did have possessions in the form of vested rights to restitution which they sought to exercise in direct and indirect ways in the various legal proceedings instituted in 1991 and 1992. In so doing, it notes that the arguments which have been advanced in support of their contention that they had possessions are indissociably bound up with their complaints that they were unjustifiably deprived of those possessions. It will therefore treat Article 1 of Protocol No. 1 as applicable for the purposes of examining whether there was an interference with their legal claims and, if so, whether that interference was justified in the circumstances.

2. Whether there was an interference

71. The applicant societies asserted that the concrete effect of section 53 of the 1991 Act was to stifle the restitution proceedings instituted by the Leeds and the National & Provincial (see paragraph 35 above). The subsequent enactment of section 64 of the 1992 Act (see paragraphs 42 and 43 above) effectively removed any prospect of securing redress in the domestic courts against the “unlawful expropriation” of their assets. There was accordingly an interference with their possessions.

72. The Government did not deny that the retrospective effects of the impugned measures brought an end to the applicant societies’ claims to recover the amounts which they had paid to the Inland Revenue.

73. The Commission concluded that the retrospective measures had the effect of interfering with the applicant societies’ possessions on the hypothesis that the various claims did amount to such.

74. The Court notes that it is common ground that the retroactive measures operated in a way which constituted an interference with the enjoyment of the applicant societies’ possessions. On the working assumption that the legal claims in issue amounted to possessions within the meaning of Article 1 of Protocol No. 1 (see paragraph 70 above), the Court sees no reason to reach a contrary conclusion. It will therefore assess whether or not that interference was justified.

3. Whether the interference was justified

75. The applicant societies reiterated that they were fairly and reasonably entitled to consider themselves in exactly the same position as the Woolwich with vested rights to recover the monies which had been expropriated from them under the 1986 Regulations (see paragraph 62 above). However, the Government intentionally procured the enactment of retrospective primary legislation in order to stifle the opportunity to assert those rights in a way which was repugnant to principles of legal certainty and legitimate expectation. The retrospective measures constituted a disproportionate and discriminatory interference with their rights which left them without any compensation. The measures were solely motivated by the intent of the authorities to retain the applicant societies' assets and could not be considered justified as being necessary to secure the payment of taxes within the meaning of the second paragraph of Article 1 of Protocol No. 1. The monies expropriated were not tax since all liability to pay tax on the interest earned by their investors in the gap period had been discharged (see paragraphs 51 and 52 above). In any event that provision only concerned procedural measures taken to enforce tax legislation and could not be invoked to justify substantive tax legislation such as the Finance Acts in issue in the instant case.

76. The Government argued that the ultimate aim of the impugned measures was, in line with the original intention of Parliament, to secure the payment of tax on the interest paid by building societies during the gap period and, in the case of section 64 of the 1992 Act, also to secure GBP 15 billion of revenue which had been collected from 1986 onwards from building societies, banks and other deposit institutions (see paragraph 42 above).

Having regard to a Contracting State's margin of appreciation in the tax field and to the public-interest considerations at stake, it could not be said that the decisions taken by Parliament to enact these measures with retrospective effect were manifestly without reasonable foundation or failed to strike a fair balance between the demands of the general interest of the community and the protection of the rights of the applicant societies. The latter were in fact seeking by means of opportunistic legal proceedings to exploit technical defects in the 1986 Regulations and to frustrate the original intention of Parliament. They clearly understood what that intention was and they could not have had any legitimate expectations following the Woolwich 1 litigation that Parliament would be content to leave the law as it then stood and allow them to retain a windfall.

77. The Commission found that the interference with the applicant societies' legal claims was justified and that there was no violation of Article 1 of Protocol No. 1. Parliament intended by section 47 of the 1986 Act to authorise the Inland Revenue to charge to tax the interest paid to investors in the gap period. The aim of section 53 of the 1991 Act (see paragraph 33 above) and section 64 of the 1992 Act (see paragraph 42 above) was to prevent building societies from frustrating that intention by exploiting technical defects in the drafting of the Regulations and benefiting from a windfall. In adopting retrospective measures to reaffirm that intention and to secure the payment of tax, the legislature did not upset the fair balance between the demands of the general interest of the community and the protection of the fundamental rights of the applicant societies.

(a) The applicable rule

78. The Court recalls that Article 1 of Protocol No. 1 guarantees in substance the right to property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of the peaceful enjoyment of possessions. The second, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

However, the three rules are not "distinct" in the sense of being unconnected: the second and the third rules are concerned with particular interferences with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, the *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* judgment of 23 February 1995, Series A no. 306-B, pp. 46–47 § 55).

79. Having regard to the fact that the background to the alleged deprivation of the applicant societies' rights is constituted by the first unsuccessful steps taken by Parliament to ensure that interest paid in the gap period was charged to tax, it would appear to the Court to be the most natural approach to examine their complaints from the angle of a control of the use of property in the general interest "to secure the payment of tax", which falls within the rule in the second paragraph of Article 1. In so proceeding, it recalls that it has already found that the transitional arrangements contained in the 1986 Regulations did not, contrary to the assertions of the applicant societies, impose double taxation on the interest paid to their investors in the gap period or amount to a wrongful expropriation of their assets (see paragraph 61 above).

On that factual understanding, the efforts to secure a firm legal basis firstly, and unsuccessfully, in section 47 of the Finance Act 1986 (see paragraphs 22 and 30 above), and secondly in section 53 of the 1991 Act (see paragraphs 33–35 above) to give effect to Parliament’s legitimate aim when adopting the defective Regulations (see paragraphs 15–18 above) could be considered equally to be measures to secure the payment of tax. It is to be recalled in this regard that irrespective of the move to the actual-year system the interest in issue would always have been liable to be brought into account for tax purposes (see paragraphs 58 and 59 above).

(b) Compliance with the conditions laid down in the second paragraph

80. According to the Court’s well-established case-law (see, among many other authorities, the *Gasus Dossier- und Fördertechnik GmbH* judgment cited above, p. 49, § 62), an interference, including one resulting from a measure to secure the payment of taxes, must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and the aims pursued.

Furthermore, in determining whether this requirement has been met, it is recognised that a Contracting State, not least when framing and implementing policies in the area of taxation, enjoys a wide margin of appreciation and the Court will respect the legislature’s assessment in such matters unless it is devoid of reasonable foundation (see the *Gasus Dossier- und Fördertechnik GmbH* judgment cited above, pp. 48–49, § 60).

81. Against that background, the Court notes that in enacting section 53 of the 1991 Act with retroactive effect Parliament was concerned to restore and reassert its original intention which had been stymied by the finding of the House of Lords in the *Woolwich 1* litigation that the 1986 Regulations were *ultra vires* on technical grounds (see paragraphs 29 and 30 above). The decision to remedy the technical deficiencies of the Regulations with retroactive effect was taken before 7 March 1991, namely before the date when the Leeds and the National & Provincial issued their writs (see paragraphs 30 and 33 above) and without regard to the imminent launch of the first set of restitution proceedings. Although section 53 had the effect of extinguishing the restitution claims of those two applicant societies, it does not appear to the Court that the ultimate aim of the measure was without reasonable foundation having regard to the public-interest considerations which underpinned the proposal to legislate with retroactive effect and Parliament’s endorsement of that proposal.

There is in fact an obvious and compelling public interest to ensure that private entities do not enjoy the benefit of a windfall in a changeover to a new tax-payment regime and do not deny the Exchequer revenue simply on account of inadvertent defects in the enabling tax legislation, the more so when such entities have followed the debates on the original proposal in Parliament and, while disagreeing with that proposal, have clearly understood that it was Parliament's firm intention to incorporate it in legislation.

Nor can the applicant societies maintain that the effect of the measure imposed an excessive and individual burden on them given that the interest they had paid to investors in the gap period would have been brought into account for tax purposes had the voluntary arrangements continued in force (see paragraph 58 above). They cannot assert that they had suffered prejudice other than in the sense that they were treated differently from the Woolwich. However, the substance of the latter allegation falls to be considered under their complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (see paragraph 84 below).

82. Furthermore, it is to be noted that the history of the enactment of section 64 of the 1992 Act must also be seen in terms of the same struggle between the legislature's efforts to safeguard the tax paid by the applicant societies and the latter's attempts to frustrate by all legal means possible those efforts and recover that tax. The challenge to the validity of the Treasury Orders was in reality an initiative on the part of all three applicant societies to recover indirectly what two of them had been denied under the effect of section 53 of the 1991 Act (see paragraph 35 above).

If the enactment of the latter provision can be considered to be justified on public-interest grounds (see paragraph 81 above), it must also be the case that the same public-interest justification can be lawfully asserted by the respondent State to thwart the challenge to the Treasury Orders. Indeed, on that occasion much more was at stake than the assertion of Parliament's right to secure tax on the interest paid by building societies over the course of the gap period since the vulnerability of the Treasury Orders to legal challenge placed at risk very substantial amounts of revenue collected from 1986 onwards from institutions other than building societies. The public-interest considerations in removing any uncertainty as to the lawfulness of the revenue collected must be seen as compelling and such as to outweigh the interests defended by the applicant societies in contesting the legality of the rate set by the Treasury Orders in order to try once again to circumvent Parliament's original intention.

83. The Court considers therefore that the actions taken by the respondent State did not upset the balance which must be struck between the protection of the applicant societies' rights to restitution and the public interest in securing the payment of taxes.

There has accordingly been no violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

84. The applicant societies maintained that the impugned measures gave rise to a breach of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention, having regard to their discriminatory effect. Article 14 of the Convention is worded 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.”

85. The applicant societies contended that they were in a materially identical situation to that of the Woolwich as regards the application of the 1986 Regulations. Like the Woolwich they enjoyed the same rights to restitution of the monies which they had paid to the Inland Revenue pursuant to an unlawful demand. The Leeds in particular had closely associated itself with the Woolwich's decision to seek judicial review of the 1986 Regulations and all the applicant societies had at various stages made formal demands for repayment. They were not required to join the Woolwich's judicial review proceedings given that the outcome of the action would have been declaratory of the law applicable to all taxpayers. They were thus entitled to await the result of that litigation. On the strength of the House of Lords ruling in the Woolwich 1 case the Leeds and the National & Provincial issued writs to institute their own restitution proceedings against the authorities.

86. Furthermore, section 64 of the 1992 Act could not be said to be non-discriminatory as between the Woolwich and the applicant societies merely because it was of general application. This provision in fact favoured the Woolwich since the Woolwich had recovered all the monies owing to it.

87. The Commission, with whom the Government agreed, concluded that there had been no breach under this head. In contrast with the Woolwich, none of the applicants had instituted proceedings to challenge the validity of the 1986 Regulations. The Woolwich alone had borne the costs and incurred the risks of litigation. The applicant societies could not therefore be considered to have been in a relevantly similar situation to that

of the Woolwich. In any event there was a reasonable and objective justification for the difference in treatment, having regard to the public-interest considerations motivating the enactment of section 53 of the 1991 Act and the appropriateness of excluding the Woolwich from the retroactive effects of that measure given that that building society had secured a final court judgment in its favour.

As to section 64 of the 1992 Act, the Commission found that this provision applied across the board and could not be considered to be discriminatory in its effect. The Government supported this conclusion.

88. The Court reiterates that Article 14 of the Convention affords protection against discrimination in the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention. However, not every difference in treatment will amount to a violation of this Article. Instead, it must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment, and that there is no reasonable or objective justification for this distinction. Furthermore, Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (for a recent authority, see the *Stubbings and Others v. the United Kingdom* judgment of 22 October 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1507, § 72).

89. It is clear that the applicant societies were in an analogous if not identical situation with respect to the impact of the transitional mechanism in the 1986 Regulations on the monies held in their reserves. However, the Woolwich alone took an independent and bold stance by mounting a legal challenge to the validity of the Regulations (see paragraph 21 above). That building society was undeterred by the attempt of Parliament to stifle the litigation by enacting section 47 of the Finance Act 1986 (see paragraph 22 above).

Admittedly, the Woolwich's action was backed by the applicant societies and the Leeds in particular may be considered to have conspicuously manifested its solidarity with the Woolwich (see paragraph 20 above). However, the Court shares the view of the Commission that the Woolwich alone showed its readiness to bear the costs and risks of the litigation, taking complex and expensive proceedings against the Inland Revenue on two occasions as far as the House of Lords. By the time section 53 of the 1991 Act was enacted, the Leeds and the National & Provincial had not proceeded beyond the stage of issuing writs, whereas the Woolwich had secured a victory in the House of Lords (see paragraphs 29 and 30 above) and there were reasonable prospects that the House of Lords would uphold the decision of the Court of Appeal in its restitution proceedings allowing it interest on the sums paid (see paragraphs 36 and 37 above). It is also to be noted that the authorities had already repaid to the Woolwich the tax which

had been collected from it with interest from 31 July 1987 (see paragraph 26 above). In these circumstances, the Court does not accept that the applicant societies were in fact in a relevantly similar situation to that of the Woolwich.

90. The Court also considers that, even if it were possible to regard the applicant societies as having been in a relevantly similar situation to the Woolwich in view of their arguments on the *erga omnes* effect of the remedy sought by the Woolwich (see paragraph 85 above), there was nevertheless a reasonable and objective justification for the distinction made in section 53 of the 1991 Act (see paragraph 34 above). It was the aim of Parliament in enacting that provision to restore its original intention to secure the liability to tax of the interest paid to investors in the gap period and to make the Regulations immune from any further exploitation on technical grounds. The decision to do so retrospectively has been found by the Court to be justified in the public interest (see paragraph 81 above). To exclude the Woolwich from the retroactive effect of section 53 could be considered on reasonable and objective grounds to be justified given that by the time of enactment of that section the Woolwich had secured a final judgment in its favour from the House of Lords and it was understandable that Parliament did not wish to interfere with a judicial decision which brought to an end litigation which had lasted over three years.

91. As to the effect of section 64 of the 1992 Act (see paragraphs 33–35 above), the Court notes that the measure applied generally to building societies, banks and other deposit institutions. Admittedly the Woolwich was not concerned about the validity of the Treasury Orders since it had no interest in challenging them. However, it cannot be maintained that section 64 perpetuated any difference in treatment between the Woolwich and the applicant societies which resulted from section 53 of the 1991 Act given the Court's earlier conclusions on that complaint (see paragraphs 89 and 90 above).

92. Having regard to the above considerations, the Court concludes therefore that there has been no breach of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

93. The applicant societies further maintained that the measures taken by the respondent State deprived them of their right of access to a court for a determination of their civil rights to restitution of monies to which they were lawfully entitled. They alleged that there had been a breach of Article 6 § 1 of the Convention, which provides to the extent relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”

A. Applicability of Article 6 § 1

94. The applicant societies maintained that the subject matter of the three sets of legal proceedings which they had initiated (see paragraphs 31, 32 and 38–41 above) was pecuniary in nature and the outcome of the litigation in each instance was decisive for their private-law rights to restitution of the monies of which they had been unlawfully deprived by the respondent State. Should any doubts exist about the classification of the judicial review proceedings which each society set in motion between 10 July 1991 and 3 March 1992 (see paragraphs 38–40 above), the Court should find, like the Commission, that these proceedings were in fact an alternative route to the recovery of their monies. As such, the proceedings could not therefore be considered to be purely of a public-law nature.

95. The Government disputed the applicability of Article 6 § 1 of the Convention to the various proceedings instituted by the applicant societies. While the first set of restitution proceedings instituted by the Leeds and the National & Provincial (see paragraphs 31 and 32 above) may ostensibly have borne the hallmark of private-law proceedings, they nonetheless concerned a determination of rights and obligations which derived from tax legislation and which were therefore fiscal in nature. The judicial review proceedings instituted by the applicant societies (see paragraphs 38–40 above) were directed at obtaining a discretionary public-law remedy and were not concerned with securing restitution of the monies which they had paid pursuant to the 1986 Regulations. Furthermore, the second set of restitution proceedings brought by the applicant societies (see paragraph 41 above) depended on the outcome of the judicial review proceedings and for this reason could not be considered to be of a private-law nature.

For the above reasons, the Government maintained that the applicant societies could not rely on Article 6 § 1.

96. The Commission concluded that Article 6 § 1 was applicable. The two sets of restitution proceedings (see paragraphs 30, 31 and 41 above) were pecuniary in nature. The judicial review proceedings (see paragraphs 38–40 above) were closely linked to the second set of restitution proceedings (see paragraph 41 above) and formed part of a sequence of litigation which had its roots in the defective draftsmanship of section 40 of the Finance Act 1985 and the transitional provisions of the 1986 Regulations.

97. The Court considers that both sets of restitution proceedings (see paragraphs 30, 31 and 41 above) were private-law actions and were decisive for the determination of private-law rights to quantifiable sums of money. This conclusion is not affected by the fact that the rights asserted in those proceedings had their background in tax legislation and the obligation of the applicant societies to account for tax under that legislation (see, *mutatis mutandis*, the Editions Périscope v. France judgment of 26 March 1992, Series A no. 234-B, p. 66, § 40).

98. As to the judicial review proceedings (see paragraphs 38–40 above), it is to be noted that these were closely interrelated with the second set of restitution proceedings and were part of a calculated strategy to reassert the private-law claims which had been extinguished by section 53 of the 1991 Act. In these circumstances and irrespective of the public-law nature of that litigation, the judicial review proceedings must also be considered to have been decisive of private-law rights.

99. The Court concludes therefore that Article 6 § 1 of the Convention is applicable.

B. Compliance with Article 6 § 1

100. The applicant societies contended that the Government of the respondent State intentionally procured the enactment of retrospective legislation to thwart their access to a court to assert their vested rights to restitution of their assets. They argued that the legal victories secured by the Woolwich (see paragraphs 29 and 44 above) left the authorities with no defence to their claims. Indeed, the authorities had in fact conceded this by paying the costs incurred by the Leeds and the National & Provincial in bringing the first set of restitution proceedings (see paragraph 35 above). It was equally significant that the Government minister at the time of the passage through Parliament of the bill which eventually became the 1992 Act declared that section 64 thereof was designed to interfere with ongoing legal proceedings, namely the legal challenge to the validity of the Treasury Orders (see paragraph 42 above).

101. While accepting that limitations on the right of access to a court guaranteed by Article 6 § 1 may in certain well-defined circumstances be justified having regard to a Contracting State's margin of appreciation, the applicant societies stressed that any such margin cannot for the purposes of that provision be as broad as the one which may be invoked by a Contracting State under Article 1 of Protocol No. 1. With reference to the Court's own case-law governing the scope of limitations to the right of access to a court, they insisted that the retrospective measures did not pursue a legitimate aim given that the Government's overriding concern was to legalise the unlawful expropriation of their assets. The resulting

interference was also disproportionate. More importantly, the very essence of their right of access to a court had been impaired since the concrete result of section 53 of the 1991 Act and section 64 of the 1992 Act was to remove with retrospective effect the causes of action and render fruitless any attempt to secure redress before the courts.

102. The Government reasoned that the “possessions” of which the applicant societies claimed they had been deprived in breach of Article 1 of Protocol No. 1 were in reality their claims to restitution of the monies which they had been required to pay to the Inland Revenue. It must follow therefore that the lawful deprivation of the substance of their claims justified the removal of the procedural protection of those claims. For this reason, a finding by the Court that there had been no violation of Article 1 of Protocol No. 1 compelled a similar finding in respect of the applicant societies’ complaints under Article 6.

103. The Government further maintained that there was no absolute rule which prohibited the intervention of the legislature in pending legal proceedings to which the State was a party. Whether or not retrospective legislation having this effect was lawful or not from the angle of Article 6 needed to be assessed in the light of factors such as the background to the litigation, the stage reached in the legal proceedings and the reasons which motivated legislative intervention.

Referring therefore to the arguments which they advanced both to dispute that the applicant societies’ legal claims amounted to possessions and to justify the deprivation of the applicant societies’ legal claims under Article 1 of Protocol No. 1 (see paragraphs 63 and 76 above), the Government requested the Court to find that the same justifications operated in defence of the alleged violation of Article 6.

104. The Commission concluded that there had been a violation of Article 6 § 1. While there may have been legitimate reasons for the introduction of section 53 of the 1991 Act and section 64 of the 1992 Act, by retrospectively validating the 1986 Regulations and the Treasury Orders which were the subject of pending litigation, the respondent State had intervened through the legislature in a manner which was decisive to ensure a favourable outcome of proceedings to which it itself was party. The effect of the measures was thus to deprive the applicant societies of their right to a determination of their civil rights and obligations following a fair hearing before a court.

105. The Court recalls that Article 6 § 1 of the Convention embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect.

However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as

to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the *Stubbings and Others* judgment cited above, p. 1502, § 50).

106. It is to be noted at the outset that the effect of section 53 of the 1991 Act was to deprive the Leeds and the National & Provincial of their chances of winning their restitution proceedings against the Inland Revenue (see paragraph 35 above). Section 64 of the 1992 Act effectively removed any hope which all three applicant societies may have had of restoring their chances of securing a favourable outcome against the Inland Revenue and recovering the tax they had paid. At no stage did the legislature intervene directly to bar the applicant societies' access to a court to seek a determination of the rights which they wished to assert. Admittedly, the end result of sections 53 and 64 was to condemn to failure any attempt by the applicant societies to proceed with their claims since Parliament, by means of primary legislation, had rendered both the 1986 Regulations and the Treasury Orders immune from judicial scrutiny. The applicant societies accordingly took the decision to discontinue the various proceedings which they had launched in the knowledge that they had no prospects of success.

107. Having regard to the above considerations, the Court must examine whether the action taken by the legislature on both occasions to deprive the applicant societies of their chances of winning litigation against the respondent State constituted an interference with their right of access to a court. In so doing, it will have regard to all the circumstances of the case and will subject to close scrutiny the reasons adduced by the respondent State for justifying any intervention which may have occurred in pending litigation as a result of the retrospective effects of section 53 of the 1991 Act and section 64 of the 1992 Act.

108. It is to be noted firstly that the applicant societies disputed from the very beginning their liability to pay tax on the interest they had paid to their investors in the gap period. The concerns of building societies were made known to Parliament during the passage of section 40 of the Finance Act 1985 (see paragraphs 15 and 16 above) and section 47 of the Finance Act 1986 (see paragraph 22 above). However, by enacting those measures Parliament clearly affirmed its intention to bring the interest paid in the gap period into account for tax purposes in the manner indicated in the 1986 Regulations.

109. The applicant societies subsequently became involved in a struggle with the Treasury through the courts in order to circumvent that intention, relying firstly on technical defects in the 1986 Regulations and secondly on alleged defects in the Treasury Orders. They followed closely the outcome of the Woolwich 1 litigation, and when the latter building society succeeded in having the 1986 Regulations invalidated on technical grounds the Leeds and the National & Provincial launched their own proceedings in the form of restitution actions (see paragraphs 31 and 32 above) in order to take advantage of the loophole exposed by the House of Lords in the Woolwich 1 case (see paragraphs 29 and 30 above). However, having regard to the clear aim of Parliament in adopting the impugned measures (see paragraph 108 above), these two applicant societies must reasonably be considered to have anticipated at the close of the Woolwich 1 litigation that the Treasury would seek Parliament's approval to cure the technical defects in the 1986 Regulations and would not be content on public-interest grounds to allow a substantial amount of already collected revenue to be lost on account of a technicality.

It is to be noted in this respect that the Director-General of the Building Societies Associations was not surprised by the Treasury's announcement that retrospective legislation would be introduced in the form of section 53 of the 1991 Act (see paragraph 35 above). It is also to be noted that the Leeds and the National & Provincial instituted their restitution proceedings after the authorities had formally decided to seek Parliament's approval for the retrospective validation of the 1986 Regulations and in the days immediately before the official announcement of that decision (see paragraphs 30–33 above). In these circumstances, those proceedings must be considered to have been an attempt to benefit from the vulnerability of the authorities' situation following the outcome of the Woolwich 1 litigation and to pre-empt the enactment of remedial legislation.

110. Furthermore, the decision of the authorities to legislate with retrospective effect to remedy the defect in the 1986 Regulations was taken without regard to pending legal proceedings and with the ultimate aim of restoring Parliament's original intention with respect to all building societies whose accounting periods ended in advance of the start of the fiscal year. That the extinction of the restitution proceedings was a significant consequence of the implementation of that aim cannot be denied. Nevertheless, it cannot be maintained that the Leeds and the National & Provincial were the particular targets of the authorities' decision.

111. While it is true that it was openly acknowledged by the authorities that the enactment of section 64 of the 1992 Act was intended to bring an end to the judicial review proceedings brought by all three applicant societies (see paragraph 42 above), those proceedings were in reality a next stage in the struggle with the Treasury and a deliberate strategy to frustrate the original intention of Parliament. This is borne out by the aim of the

applicant societies in bringing the contingent restitution proceedings to recover no more than they had paid to the Inland Revenue under the 1986 Regulations (see paragraph 41 above). Given the reaction of the authorities to the outcome of the Woolwich 1 litigation, the applicant societies could not safely rely on the Treasury remaining inactive in the face of a further challenge to Parliament's original intention, the more so since that challenge was directed at the validity of the Treasury Orders which formed the legal basis for the very substantial amounts of revenue collected from 1986 onwards, not just from building societies but also from banks and other deposit institutions (see paragraph 42 above).

112. As noted above (see paragraph 107) the Court is especially mindful of the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable. Respect for the rule of law and the notion of a fair trial require that any reasons adduced to justify such measures be treated with the greatest possible degree of circumspection (see the Stran Greek Refineries and Stratis Andreadis judgment cited above, p. 82, § 49).

However, Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are a party. It is to be noted that in the present case the interference caused by section 64 of the 1992 Act was of a much less drastic nature than the interference which led the Court to find a breach of Article 6 § 1 in the Stran Greek Refineries and Stratis Andreadis case (cited above). In that case the applicants and the respondent State had been engaged in litigation for a period of nine years and the applicants had an enforceable judgment against that State in their favour. The judicial review proceedings launched by the applicant societies had not even reached the stage of an *inter partes* hearing. Furthermore, in adopting section 64 of the 1992 Act with retrospective effect the authorities in the instant case had even more compelling public-interest motives to make the applicant societies' judicial review proceedings and the contingent restitution proceedings unwinnable than was the case with the enactment of section 53 of the 1991 Act. The challenge to the Treasury Orders created uncertainty over the substantial amounts of revenue collected from 1986 onwards (see paragraph 42 above).

It must also be observed that the applicant societies in their efforts to frustrate the intention of Parliament were at all times aware of the probability that Parliament would equally attempt to frustrate those efforts having regard to the decisive stance taken when enacting section 47 of the Finance Act 1986 and section 53 of the 1991 Act. They had

engaged the will of the authorities in the tax sector, an area where recourse to retrospective legislation is not confined to the United Kingdom, and must have appreciated that the public-interest considerations in placing the 1986 Regulations on a secure legal footing would not be abandoned easily.

113. For the above reasons, the Court concludes that the applicant societies cannot in the circumstances justifiably complain that they were denied the right of access to a court for a judicial determination of their rights. There has accordingly been no breach of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14

114. The applicant societies complained in addition that the impugned measures violated Article 6 § 1 of the Convention taken in conjunction with Article 14.

115. They reiterated that they were in a virtually identical situation to that of the Woolwich. Like the latter building society they possessed common-law rights to restitution of monies expropriated by the respondent State. The Woolwich had been allowed to recover in full following independent judicial determinations of its claims. Unlike the applicant societies, the Woolwich was excluded from the retrospective effects of section 53 of the 1991 Act. The Government minister responsible for the passage through Parliament of the 1992 Act had expressly acknowledged that there had been a disparity of treatment between the Woolwich and other building societies (see paragraph 42 above). That disparity was maintained in section 64 of the 1992 Act on account of the fact that the Woolwich had recovered everything owing to it and was not therefore concerned about the validity of the Treasury Orders.

116. The Government contended that the applicant societies were not in a relevantly similar position to the Woolwich and, further, that there existed a reasonable and objective justification for the difference in treatment. They relied on the reasoning used by the Commission to reach its finding that there had been no breach of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention (see paragraph 87 above).

117. The Commission did not find it necessary to examine the applicant societies' complaints under this head, having regard to its conclusion under Article 6 § 1 of the Convention (see paragraph 104 above).

118. The Court observes that the complaints raised by the applicant societies under this head reflect the substance of their earlier complaints under Article 1 of Protocol No. 1 taken in conjunction with Article 14 (see paragraphs 84–86 above). It concluded in connection with those complaints that the Woolwich and the applicant societies were not in a relevantly similar situation and that in any event there was a reasonable and objective

justification for excluding the Woolwich from the retrospective effects of section 53 of the 1991 Act. Furthermore, it could not be validly contended that section 64 of the 1992 Act was discriminatory in its effect (see paragraphs 89–92 above).

119. The Court considers that the reasons which it has adduced in respect of the above finding equally support the conclusion that there has been no violation of Article 6 § 1 taken in conjunction with Article 14 of the Convention.

The Court finds therefore that the applicant societies were not victims of a violation under this head.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 1 of Protocol No. 1;
2. *Holds* by eight votes to one that there has been no violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention;
3. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention;
4. *Holds* by eight votes to one that there has been no violation of Article 6 § 1 of the Convention taken in conjunction with Article 14 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 October 1997.

Signed: ROLV RYSSDAL
President

Signed: HERBERT PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the partly concurring, partly dissenting opinion of Mr Jambrek is annexed to this judgment.

Initialled: R. R.
Initialled: H. P.

PARTLY CONCURRING, PARTLY DISSENTING OPINION
OF JUDGE JAMBREK

1. I voted for non-violation of Article 1 of Protocol No. 1 and for non-violation of Article 6 § 1 of the Convention. I disagree, however, with the majority as to whether there has been a violation of both provisions taken in conjunction with Article 14 of the Convention.

2. In respect of Article 1 of Protocol No. 1 taken in conjunction with Article 14, the applicants were in my opinion in a relevantly similar situation to that of the Woolwich. In this respect I do not find it decisive that they did not formally protest by instituting proceedings to challenge the validity of the Regulations. In my view the effect of the Woolwich 1 litigation was to declare the impugned Regulations invalid *erga omnes*. Other building societies were justified in believing that the ruling of the House of Lords would also apply to them. It is quite common to use a class action when many potential litigants are involved. The Woolwich may be considered to have taken a test case on behalf of other building societies. The other building societies identified themselves with the Woolwich and awaited the outcome of the litigation. This sort of procedure is therefore in line with the proper administration of justice. It is legitimate for one litigant to pave the way for others. The applicants made it clear, especially the Leeds, that they contested any obligation to pay the amounts required by the Regulations.

3. I therefore consider that there was no sufficient objective and reasonable justification for distinguishing between the Woolwich and the applicants in section 53 of the Finance Act 1991.

4. In respect of Article 6 of the Convention taken in conjunction with Article 14, I have serious reservations as to whether it is permissible for the State to intervene by legislating in order to determine the outcome of pending litigation which may thwart their policy objectives. The legislative power to intervene in such a manner to prevent the individual from obtaining justice should only be justified in exceptional cases. Like the Woolwich, the applicants would have won their cases if the law had not been amended. The applicant societies had good reasons to take proceedings in view of the outcome of the Woolwich litigation.

5. I consider therefore that the principle of the rule of law and the notion of a fair trial enshrined in Article 6 precluded in this case the interference by the legislator with the administration of justice in a way designed to influence the judicial determination of the dispute, given that this interference also gave rise to inequality of treatment of parties in a

relevantly similar situation, in breach of Article 14 of the Convention. The Woolwich was able to litigate (twice) the whole way to the House of Lords and to recover all the monies it had paid to the Inland Revenue. Even the Government minister during the parliamentary debates on section 64 of the Finance (No. 2) Act 1992 acknowledged that there had been undoubted disparity of treatment between the Woolwich and the other building societies.

6. In conclusion, I find that there was insufficient objective and reasonable justification for the discrimination suffered by the applicants in the enjoyment of their rights set forth in Article 6 of the Convention, given that the legal proceedings for restitution initiated by the applicants following the Woolwich 1 and 2 decisions were effectively stifled by the legislative action.