



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

GRAND CHAMBER

CASE OF BROSSET-TRIBOULET AND OTHERS v. FRANCE

(Application no. 34078/02)

JUDGMENT

STRASBOURG

29 March 2010

This judgment is final but may be subject to editorial revision.

In the case of Brosset-Triboulet and Others v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,
Jean-Paul Costa,
Peer Lorenzen,
Françoise Tulkens,
Josep Casadevall,
Karel Jungwiert,
Nina Vajić,
Rait Maruste,
Anatoly Kovler,
Ljiljana Mijović,
Renate Jaeger,
David Thór Björgvinsson,
Ineta Ziemele,
Mark Villiger,
Isabelle Berro-Lefèvre,
George Nicolaou,
Zdravka Kalaydjieva, *judges*,

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 11 February 2009 and on 3 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 34078/02) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two French nationals, Mrs Ijjo Brosset-Triboulet and Mrs Eliane Brosset-Pospisil (“the applicants”), on 4 September 2002.

On 26 November 2008 the Registry was informed that the applicant Eliane Brosset-Pospisil had died on 14 May 2008 and that her daughters, Mrs Sophie Epiard and Ms Elisabeth Pospisil, wished to continue the proceedings in her stead.

2. The applicants were represented by Mr P. Blondel, of the *Conseil d'Etat* and Court of Cassation Bar. The French Government (“the Government”) were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that both their right of property guaranteed by Article 1 of Protocol No. 1 and their right to respect for their home within the meaning of Article 8 of the Convention had been infringed as a result of the French authorities' refusal to authorise them to continue occupying a plot of public land on which stands a house that has belonged to their family since 1945 and as a result of an order to demolish the house.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 14 June 2005 it was declared partly inadmissible by a Chamber of that Section, composed of the following judges: Ireneu Cabral Barreto, Jean-Paul Costa, Karel Jungwiert, Volodymyr Butkevych, Mindia Ugrehelidze, Antonella Mularoni, Elisabet Fura-Sandström, and also of Sally Dollé, Section Registrar. On 29 April 2008, following a change of Section, the application was declared admissible under Article 1 of Protocol No. 1 and Article 8 of the Convention by a Chamber of the Fifth Section composed of the following judges: Peer Lorenzen, Snejana Botoucharova, Jean-Paul Costa, Karel Jungwiert, Rait Maruste, Mark Villiger, Isabelle Berro-Lefèvre, and also of Claudia Westerdiek, Section Registrar. On 25 September 2008 the Chamber of that Section, composed of the following judges: Peer Lorenzen, Rait Maruste, Jean-Paul Costa, Karel Jungwiert, Renate Jaeger, Mark Villiger, Isabelle Berro-Lefèvre, and also of Claudia Westerdiek, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

6. The applicants and the Government each filed written observations.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 11 February 2009 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mrs E. BELLIARD, Director of Legal Affairs, Ministry of Foreign Affairs,	<i>Agent,</i>
Mrs A.-F. TISSIER, Head of the Human Rights Section, Department of Legal Affairs, Ministry of Foreign Affairs,	
Mrs M.-G. MERLOZ, Drafting Secretary, Human Rights Section, Department of Legal Affairs, Ministry of Foreign Affairs,	
Mrs C. STOVEN, research officer for the economic and tourist development of beaches, and litigation officer, Natural Maritime Public Property Litigation	

Department, Ministry of Ecology, Energy and
Sustainable Development,

Mrs D. MEDJAED, Trainee judge, Department of Legal
Affairs, Ministry of Foreign Affairs,

Mr P. BOURREAU, Director for the *département*, State
Property Office, Directorate-General of Public
Finances, Ministry of the Budget,

Advisers;

(b) *for the applicants*

Mr P. BLONDEL, Member of the *Conseil d'Etat* and Court
of Cassation Bar,

Counsel.

The Court heard addresses by Mr Blondel and Mrs Belliard.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1935 and 1938 respectively and live in Sainte-Croix-Grand-Tonne and Caen respectively.

A. The house in issue

9. On 26 May 1909 A. purchased the Isle of Irus in the Morbihan Bay from R., by contract signed before a notary.

10. By a decision of 25 September 1909, the Prefect of Morbihan authorised A. to build a dyke on a parcel of maritime public property situated on land belonging to the municipality of Arradon for the purposes of installing a four-metre by four-metre approach ramp on it from which he could reach the Isle of Irus, in particular, by boat.

11. By a decision of 25 August 1911, the Prefect of Morbihan authorised A. to enlarge the dyke. The relevant parts of the decision read as follows:

“... From the point of view of conformity with the requirements of the Highways Authority, the dyke – once enlarged as requested – cannot interfere with navigation in any way, on condition that it is levelled above the high and spring tide water marks, or with maritime coastal traffic on condition that it is accessible to the public at all times.

Regarding the fee to be charged ... the permittee shall pay an annual fee of 30 francs 40 centimes. ...

...

In the event that this authorisation is revoked, the permittee must, if requested, restore the site to its original state. Should he fail to fulfil this obligation, the authorities shall do so of their own motion and at his expense. Any advance payments shall be reimbursed by the permittee on the basis of instruments enforceable at the Prefect's request ...”

12. On 2 May 1921 a deed of sale concluded before Mr Maigre, a notary, was published in the Vannes Mortgage Registry. By that deed, A. transferred ownership of the Isle of Irus to Mr S.

The registration of this deed by the Mortgage Registry, in so far as it relates to the dyke in particular, reads as follows:

“... Entry into possession – The purchaser shall acquire ownership of the Isle of Irus hereby conveyed to him from the date hereof and by virtue of this deed and shall take possession thereof from 1 March nineteen hundred and twenty-one. ...

Mr [A.] declares that by a decision of the Prefect of Morbihan dated twenty-fifth September nineteen hundred and nine and by another decision dated twenty-fifth August nineteen hundred and eleven, he acquired at the place known as Pen-er-men a stretch of land measuring three hundred and thirty-three square metres ninety-eight square decimetres, registered in the land register of the municipality of Arradon under section number 137 for the purpose of building a dyke with a steel ramp measuring four metres by four metres. This concession was granted to him on the express condition that the dyke be accessible to the public and in consideration of an annual fee of thirty francs and forty centimes subject to review every five years. Accordingly, Mr [A.] hereby assigns all his rights relating to this stretch of land to the purchaser together with all structures erected by the vendor thereon and declares that there is no other positive or negative easement ...”

13. By a decision of 3 February 1938 the Prefect granted S.'s widow, the applicants' mother's aunt, authorisation to occupy the dyke for five years, specifying that the “dyke shall have a total surface area of 333.98 sq. m, but that the condition of accessibility to the public shall reduce the taxable surface area to 303.98 sq. m ... a strip of land running the entire length of the dyke shall be reserved ... as a public right of way”.

14. The applicants' mother acquired from her aunt, by inter vivos gift drawn up before a notary and published in the Vannes Mortgage Registry on 12 November 1945, a dwelling house built on the above-mentioned dyke:

“There appeared before me

Mrs Mangin, widow of Mr S, who has ... made an inter vivos gift to ...

Mrs Mangin, widow of General Brosset, her niece

of the property belonging to her in the municipality of Arradon called the Isle of Irus.

Description: the Isle of Irus hereby conveyed comprises the entire island and all the immovable property of which it is composed, registered in the land registry as an area of twelve hectares ...

Conditions: The gift is made on the following conditions ... The donee shall take the property in its current state without any right of action against the donor on any ground whatsoever and shall enjoy the property from the date hereof, which is the date of entry into possession. ... She shall pay taxes and insurance premiums against fire from the date hereof.

Civil status – authorisation ... The said gift was authorised by the Prefect of Morbihan on the twenty-first September 1945. ...”

15. By a series of decisions, issued, *inter alia*, on 6 June 1951, 29 March 1967, 21 December 1977, 27 August 1984 and 10 July 1986, the Prefect of Morbihan authorised occupation of the dyke in question in consideration of payment of a fee. The decision of 1967 refers to renewal of the decision of 1951 authorising occupation of a dyke; those of 1984 and 1986 refer to the dyke and house. The prefect's decision of 10 July 1986 did not authorise occupation of the public property beyond 31 December 1990. The decisions stated that “the dyke cannot interfere with navigation in any way, on condition that it is levelled above the high and spring tide water marks, or with maritime coastal traffic on condition that it is accessible to the public at all times”. The authorisation forms specified that, in accordance with Article 26 and 27 of the State Property Code, “the authorities reserve the right to modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, without the permittee thereby acquiring a right to claim any compensation or damages in that regard. The permittee must, if required, restore the site to its original state by demolishing the constructions built on the public property, including those existing on the date on which the decision was signed. Should he fail to comply with that obligation, the authorities shall do so of their own motion and at his expense”.

16. In the meantime, in 1966, the Department of Revenue from State Lands had written to the director of the State Lands Department in Vannes in the following terms:

“You have submitted to me for observations and opinion a request for renewal of temporary occupation of maritime public property made by [the applicants' mother]. This request concerns a dyke of a surface area of 333.98 sq. m, reduced to a taxable surface area of 304 sq. m, on which a dwelling house has been built. The annual fee proposed by the Highways Authority is 100 francs. The case gives rise to the following observations: Article R 56 of the Code of State Property provides that any fee payable to the Treasury Department must take into account the advantages of any kind procured to the concessionaire. In the aforementioned case, there is no doubt that the concession of the dyke in question procures a not inconsiderable advantage to the applicant: in particular, it allows her to save on the capital that would otherwise be invested in the purchase of a building plot in the area in question... In these circumstances I find it fully acceptable to retain a sum corresponding to the amount of

interest calculated at the very reduced rate of 5% of the value of the land conceded.
..."

B. Administrative proceedings

17. On 15 March 1993 the applicants' mother applied to the Prefect of Morbihan for renewal of the occupancy agreement.

18. In a letter of 6 September 1993, the Prefect reminded her that the authorisation to occupy the house granted in 1986 had expired on 31 December 1990. He informed her that the entry into force of Law no. 86-2 of 3 January 1986 on the Development, Protection and Enhancement of Coastal Areas (hereafter "the Coastal Areas Act"), and particularly section 25, prevented him from renewing the said authorisation on the former terms because the use of public property had to take account of the designated purpose of the areas concerned, which ruled out any private use, including dwelling houses. However, having regard to the long period of occupation and the applicants' and their mother's sentimental attachment to the house in question, the Prefect said that he was willing to consider, exceptionally, granting limited authorisation restricting use of the property to strictly personal use and prohibiting any sale or transfer of the land and house, any work thereon other than maintenance, and reserving an option to the State, on expiry of the authorisation, to have the property restored to its original state or to reuse the buildings. He concluded by asking her to let him know quickly whether these conditions met with her approval so that "an illegal situation that had lasted two and a half years could be regularised".

19. The applicants' mother refused the offer. By way of counterproposal, she sought a permit to build a dyke that would be valid as a transfer of ownership under Article L. 64 of the Code of State Property (see paragraph 44 below).

20. On 9 March 1994 the Prefect of Morbihan rejected the applicants' mother's request but maintained his initial offer of an occupancy agreement subject to conditions:

"You have asked me to consider the possibility of having the dyke built on maritime public property that you occupy at Pen-Er-Men reclassified as private property, apparently with a view to acquiring the dyke and the property built on it ...

I regret to inform you that the classic method of conceding property whereby the concessionnee of the property acquired full title, under Article L. 64 of the Code of State Property, to land that had been drained was abandoned by ministerial circular some years ago, on grounds of lack of proven general interest. Your request goes against this policy and I repeat the conditions stipulated in my letter of 6 September with a view to regularising your situation.

Regularisation in this way could be done on the terms set out in the draft agreement attached. I should point out that the property fee will be adjusted upwards in order to take account of the particular nature of the occupancy of the property.”

21. On 5 May 1994 the applicants' mother applied to the Rennes Administrative Court for the Prefect's decision of 9 March 1994 rejecting her request for a permit to build a dyke to be set aside.

22. On 4 July 1995 the Prefect of Morbihan informed the applicants' mother that he was considering drawing up an official report recording the administrative offence of unlawful interference with the highway with a view to formally establishing the unlawful occupancy of public property. That official report was drawn up on 6 September 1995 and served on the applicants' mother on 16 November 1995. On 20 December 1995, on the basis of the finding of illegal occupancy of public property and in accordance with Article L. 28 of the Code of State Property (see paragraph 41 below), the Prefect lodged an application with the Rennes Administrative Court for an order against the applicants' mother to pay a fine and restore the property to its original state, that is, prior to construction of the house.

23. In two separate judgments delivered on 20 March 1997, the Rennes Administrative Court ruled on the application lodged by the applicants' mother on 5 May 1994 (case no. 941509) and the application lodged by the Prefect of Morbihan on 20 December 1995 (case no. 953516).

24. The court ruled as follows in respect of the applicants' mother's application for the Prefect's decision rejecting her request for a permit to build a dyke to be set aside:

“In accordance with Article L. 64 of the Code of State Property, “the State may concede, on conditions it shall determine ... the right to build a dyke”. Whilst section 27 of the aforementioned Act of 3 January 1986 has reduced the scope of application of that Article, it does nonetheless specify that “land draining carried out prior to the present Act shall continue to be governed by the previous legislation”. Accordingly, the only provisions applicable to the present case are Article L. 64 of the aforementioned Code and the Maritime Public Property Act of 28 November 1963, which provides that ... “subject to any contrary provisions of deeds of concession, land artificially removed from the action of the tide shall be incorporated into the category of maritime public property”. In rejecting the request on the basis of the principles and guidelines laid down in the inter-ministerial circular of 3 January 1973 setting out the policy to be followed for the use of maritime public property, the Prefect – when examining the applicant's particular situation involving an application for a concession – did not err as to the scope of the circular in question, which neither repeals nor amends the above-mentioned legislative provisions but is limited to applying them.

The aforementioned circular, which instructs the authorities responsible for deciding whether or not to grant concessions to build dykes not to transfer title to the plots of land thus created and to accept only installations designed for collective use, to the exclusion of private dwellings, was issued in respect of an area in which the relevant authorities have discretionary power. In referring to the principles laid down in the circular, the Prefect does not appear to have interpreted the legislative provisions inaccurately; nor did he fail to consider the specificity of the applicant's proposal

before concluding that there was no special factor justifying an exemption from the instructions analysed above.”

25. In case no. 953516 the Rennes Administrative Court granted the Prefect's application of 20 December 1995, on the following grounds:

“... The rules governing public property

“... The purpose of prosecuting someone for the administrative offence of interference with the highway is to preserve the integrity of public property. As can be seen from the judgment delivered by the court today in case no. 941506, the land on which Mrs Brosset's dwelling house was built is indeed public property.

The administrative courts base their determination of the substance of artificial public property on the judicial interpretation of any private deeds that may be produced whose examination raises a serious difficulty. In the present case the dyke and the house are not publicly owned property, given the exclusively private use made of them and the fact that they do not belong to a public authority. Accordingly, as it is not seriously disputed that the property in question has been appropriated for private use, it is not necessary to adjourn the application. ...

Whether there has been unlawful interference with the highway

... Whilst Mrs Brosset has full title to the dwelling house occupied by her and maintains that she is therefore not the unlawful occupant of public property, the fact remains that the erection of a permanent structure on public property could not be legally undertaken without either a concession to build a dyke or another type of concession. The investigation into the facts and, in particular, the absence of any documents evidencing that a concession was granted show that the dwelling house in question was illegally built on maritime public property. Accordingly, the Prefect is justified in requesting an order against Mrs Brosset to pay a fine and restore the seashore to its original state prior to the construction of the house ... This must be done within three months of service of this judgment... . On the expiry of that period, Mrs Brosset shall pay a fine of 100 francs per day's delay in the event of failure to comply with the present judgment and the authorities shall be authorised to enforce it at the cost and risk of the offender.”

26. On 11 July 1997 the two applicants, acting in their capacity as their mother's heirs after her death, lodged an appeal against the judgment delivered in case no. 953516. On 18 July 1997 they appealed against the judgment delivered in case no. 941509.

27. By a judgment of 8 December 1999, the Nantes Administrative Court of Appeal decided to join the two sets of proceedings on the ground that they were connected and to dismiss the applicants' appeals.

With regard to the application relating to the offence of unlawful interference with the highway, the court noted first of all that Mrs Brosset had died during the proceedings and decided that the prosecution was therefore now extinguished. In respect of the State property proceedings, the Administrative Court of Appeal gave the following reasons for its decision:

“ ... Firstly, it is not disputed that the parcel of land on which the dyke on which the house was built ... was entirely covered by water, independently of any exceptional

meteorological circumstances, prior to the draining works undertaken in order to build the dyke. It has not been established, or even alleged by the applicants moreover, that the undrained portion of this land had ever been removed from the action of the tide. The investigation shows, moreover, that the dyke is the result of land draining carried out prior to the entry into force of the aforementioned Act of 28 November 1963 and that, notwithstanding the various authorisations of temporary occupancy granted by the authorities, as this was not done in the manner prescribed for concessions for the construction of a dyke it has not had the effect of bringing this part of the land thus removed from the action of the tide outside the category of maritime public property. In accordance with the principles of inalienability and imprescriptibility of public property, the submissions by Ms Triboulet and Ms Brosset-Pospisil to the effect that the house was built legally and its occupancy accepted by the authorities for a very long time and tolerated even after the expiry of the last authorisation to occupy it do not alter the fact that the land falls within the category of maritime public property.

Secondly, as has been said, the last decision authorising temporary occupancy of the maritime public property ... expired on 31 December 1990. In the absence, since that date, of a lawful title of occupancy, the Prefect of Morbihan is justified in requesting an order against the occupants to restore the site – if they have not already done so – to its original state prior to construction of the house on maritime public property. In disputing that obligation, the applicants cannot properly rely on the number of years of occupancy of the premises or on the fact that the authorities have tolerated the continuation of that occupancy since 31 December 1990 and proposed draft occupancy agreements to Ms Brosset in order to regularise the situation, which, moreover, she has not taken up. ...

Fifthly, [the obligation to restore the site to its original state] does not constitute a measure prohibited by the requirement of Article 1 of Protocol No. 1 that no one shall be deprived of his possessions except in the public interest.”

Regarding the refusal to grant a concession to build a dyke, the Administrative Court of Appeal held as follows:

“... Secondly, as section 27 of the above-mentioned Act of 3 January 1986 provides that draining works carried out prior to enactment of that Act shall continue to be governed by the previous legislation, the provisions codified under Article L. 64 of the Code of State Property according to which “the State may concede, on conditions it shall determine ... the right to build a dyke ...” are applicable.

The Prefect of Morbihan based his decision not to grant Mrs Brosset the requested concession to build a dyke on the guidelines set out in the circular of 3 January 1973 issued by the Minister for Economic Affairs and the Minister for Regional Development on the use of public property other than commercial or fishing ports. He did not discern any general-interest ground in favour of granting the applicant's request.

By instructing the authorities responsible for granting concessions to build a dyke not to allow any plot of land whatsoever falling into the category of public property to be reclassified as private property with a view to transferring full title thereto, the ministers signatory to the circular of 3 January 1973 did not adopt any legal rules amending or supplementing the above-mentioned provisions of Article L. 64 of the Code of State Property but confined themselves to applying them. Accordingly, as stated above, the plot of land in question is State-owned public property. There is no

evidence in the case that the Prefect, before reaching his decision, either failed to examine the particular circumstances of Mrs Brosset's request or made a manifest error of assessment in concluding that there was no special feature or general-interest consideration in the case justifying an exemption from the above-mentioned rules".

28. On 21 February 2000 the applicants lodged an appeal on points of law against the judgment of 8 December 1999. They submitted that in the absence of proof, which logically they could not have as they had acquired by gift a house already built on a previously constructed embankment, they had shown that the only legal means of building a dwelling house on a parcel of land supposedly falling within the category of public property was to obtain authorisation of temporary occupancy for private use of that land that did not expressly exclude the possibility of such an edifice being built on it. They concluded from this that the construction of a house, of which the authorities were aware and which they had accepted, had resulted in full title to the house passing to the occupants of the land. If this were not the case, it was for the Prefect to provide proof that the draining works undertaken at the beginning of the century had been illegal. The applicants also submitted that the penalty was disproportionate and that, in the absence of justification on grounds of the general interest, compensation should be paid for the damage wrongly caused.

29. The Government Commissioner pointed out, in the same submissions as those made in a similar case, that the value in today's terms of the purchase price of the house was 655,530 euros (EUR). He continued as follows:

"... The appellants have not acquired any property right over their houses; nor have they acquired rights *in rem* over public property as a result of the successive transfers. Given the precarious situation of the buildings, the market value could not be established without taking account of that essential fact and it is to be hoped that the applicants were duly informed of the position when the purchase deeds were drawn up... . Lastly, and despite the fact that we are not especially enthusiastic about the outcome of this case, we have no alternative but to dismiss the appellants' pleadings. ... They probably committed a tactical error in refusing the Prefect's reiterated offer. Even if they were not exactly delighted by the prospect, it was at least preferable to a straightforward demolition order which will have to be judicially enforced at their expense. All hope is perhaps not lost of renewing contact with the authorities with a view to finding what might be a less drastic solution.

There may be a case for suing the State in tort for allowing occupants of public property to nurture for almost a century the hope that they would not be ruthlessly compelled to demolish their property. It should be pointed out that the prospects of success of such an action are fairly slim, however, given the legitimate protection enjoyed by public property. In any event, it is clear that if the public authority were to be found liable, the offenders would bear a considerable portion of liability too."

30. By a judgment delivered on 6 March 2002 the *Conseil d'Etat* dismissed an appeal lodged by the applicants. It held that they could not rely on any right *in rem* over the land in question or over the buildings that had been erected on it and that the obligation to restore the land to its original

state without any prior compensation was therefore not a measure prohibited by Article 1 of Protocol No. 1.

31. On 6 August 2002 the director of the Department of Culture and Legal and Political Affairs for the Morbihan *département* wrote to the applicants in the following terms:

“I have received some information from the Brittany Regional Cultural Affairs Department. It appears first of all that your house was not specifically listed by the Regional Inventory Service when they drew up an inventory for the Vannes-Ouest district in the early 1990s. However, Pen er Men Bay is well documented, as can be seen from a photograph available at the Inventory Service, in which your house appears very clearly. Furthermore, the Inventory Service has told me orally that if an inventory of the Vannes-Ouest district were to be carried out today, your house, and others in the same situation, would definitely be listed.

In any event, the Inventory Service could usefully make submissions on your behalf to the Public Works Department for the *département*, among others, with a view to protecting the region's cultural heritage if a further threat of demolition were to be made.

As regards, lastly, the possible classification or registration of your house in the supplementary list of historical monuments, you should not count on this, firstly because the State does not consider you as owner and secondly because it is inundated with requests, especially in the Morbihan. For the time being, given that the Public Works Department appears kindly disposed to your problem, I am not particularly worried.”

32. In 2008 the housing tax on the house came to EUR 584 and the land tax to EUR 708. The applicants produced a valuation of their house prepared by an estate agent in November 2008: “a dwelling house made of stone built in 1905 ... Having regard to the geographical situation of the property, the condition of the building, the surface area, its location on maritime public property and the local property market, and subject to the owners' ability to produce a concession agreement in respect of maritime public property, this property is worth between 800,000 and 1,000,000 euros”.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Maritime Public Property and management thereof

1. *The protection of maritime public property*

33. The idea that the foreshore is “common property”, that is, cannot be appropriated for private use and is managed by the public authorities, dates

back to Roman times¹, when even then a permit was necessary in order to build on the seashore. Colbert's Ordinance of the Marine of August 1681 codified the principle and up until recently was still the legal basis for the State's management of maritime public property. In addition to defining what constituted the “seashore and foreshore”, it laid down the applicable rules: “No one shall build on the foreshore, set stakes in the ground or erect any construction that may interfere with navigation, on pain of demolition of the constructions, confiscation of the materials and discretionary fines”. At the time of the Revolution, the idea developed that maritime public property was governed by the Government in the interest of the nation, and not merely as part of the heritage that used to belong to the Crown and now belongs to the State. The management of maritime public property is still largely guided by this principle today. Over and above the idea of State ownership of such property, the conservation and management of it are more a matter of implementation of a policy regarding its use than the exercise of the owner's “civil” rights. The prefect has a major role in the protection of maritime public property. He is the authority who, generally, governs the use of the property at local level, decides whether or not to allow private occupancy and protects the integrity of the property by prosecuting offenders (source: www.mer.gouv.fr, consulted on 3 February 2010).

Colbert's Ordinance of the Marine was definitively repealed in 2006. Since 1 July 2006 the General Code of Property owned by Public Bodies (*Code general de la propriété des personnes publiques* – “the CGPPP”) has replaced the Code of State Property (dating from 1957). It restructures the law governing State-owned land and public bodies and combines the rules governing maritime public property into a whole, including provisions relating to the environment in particular.

2. Substance of natural maritime public property

34. Maritime public property, determined on the basis of natural phenomena, lies between the highest point of the shore, that is, up to the high tide mark under normal meteorological conditions (CE Ass, *Kreitmann*, 12 October 1973) and the boundary of the territorial waters, seaward. Under Article L. 2111-4 of the CGPPP, “State natural maritime public property shall comprise:

1. The seabed and marine substrata between the external boundary of the territorial waters and, on land, the foreshore.

1. “*Et quidem naturali jure communia sunt omnium haec: aer et aqua profluens et mare et per hoc litora maris*”: And, in accordance with natural law, air, flowing water, the sea and, accordingly, the seashore are common property belonging to everyone (Institutes of Justinien, Book II, Title I *De rerum divisione*).

The foreshore comprises the whole area covered (and uncovered) by the sea, up to the high tide mark under normal meteorological conditions;

2. The beds and sub-strata of salt pans communicating directly, naturally and permanently with the sea;

3. Land naturally reclaimed from the sea:

a) which was part of the State's private property at 1 December 1963, subject to third-party rights;

b) which has been constituted since 1 December 1963.

...

5. Land reserved for public-interest maritime, seaside or tourist needs which has been purchased by the State.

'Land artificially removed from the action of the tide shall remain in the category of natural maritime public property unless otherwise stipulated in legally concluded and lawfully executed deeds of concession transferring ownership'."

3. *Protection of maritime public property*

a) **Principle of inalienability**

35. The principle of inalienability of public land, which was established in the case-law and then incorporated into the Code of State Property (Article L. 52) and the CGPPP (Article L. 3111-1), is inextricably linked to the notion of public land. The basis of this principle is the designation of land for public use. As long as it remains thus designated, and no express decision has been taken reclassifying particular public land as private property, no transfer of land can be authorised. It is a means of preventing public land from being acquired by prescription or adverse possession under private law, hence the principle of imprescriptibility that is very often associated with the principle of inalienability. Accordingly, in its *Cazeaux* judgment, on the subject of plots of land situated close to the seashore in the Arcachon Basin the *Conseil d'Etat* found that "whilst the public authorities have authorised various building works on this land and on several occasions waived their right to apply the rules governing public land ..., neither the founders of the *société du domaine des prés salés* nor the company itself have been able to acquire any property right over the land, which, being part of public land, was inalienable and imprescriptible".

36. The Constitutional Council has stated that inalienability is limited to precluding the transfer of public property that has not first been reclassified as private property (CC, no. 86-217 DC of 18 September 1986, Freedom of communication). It has not, however, recognised that the principle of

inalienability has any constitutional status (CC, dec. no. 94-346 of 21 July 1994, Rights *in rem* over public property). The *Conseil d'Etat* has recently reiterated that “where property belonging to a public authority has been incorporated into the category of public land by virtue of a decision classifying it thus, it shall remain public land unless a decision is given expressly reclassifying it as private property”. Accordingly, it has held that the question whether or not short-stay factories fell into the category of public property was not affected by the fact “that these short-stay factories were intended to be rented or assigned to the occupants or that the occupancy leases granted were private-law contracts” (CE 26 March 2008, *Société Lucofer*).

37. The effect of the principle of inalienability is that any transfer of public land that has not been “reclassified” is null and void, so third-party purchasers have a duty to return the land even if they have purchased it in good faith. Moreover, the fact that public land is inalienable means – in theory – that no rights *in rem* can be established over it. However, the legislature has departed from this principle by passing two Acts, one of 5 January 1988 which creates long administrative leases, and the other of 25 July 1994 on the constitution of rights *in rem* over public land, thus making it possible to grant private rights *in rem* to occupants of maritime public property. The Act of 5 January 1988 concerns only public land belonging to local and regional authorities or groups thereof. The Act of 25 July 1994 relates to artificial maritime property and immovable constructions and installations built for the purposes of an authorised activity (Article L. 34-1 of the Code of State Property and Article L. 2122-6 of the CGPPP). In its above-mentioned decision of 21 July 1994, the Constitutional Council held that granting rights *in rem* in this way was compatible with the Constitution as public services were maintained and public property protected under the 1994 Act. However, it declared the provision allowing the renewal of authorisation beyond seventy years unconstitutional on the ground that it could potentially render ineffective the public authority's right to the automatic return, free of charge, of any constructions and therefore undermine the “protection due to public property”.

38. The last consequence of the principle of inalienability is that property belonging to public authorities cannot be seized (Article L. 2311-1 of the CGPPP). This consequence has been attenuated by a decision of the *Conseil d'Etat* in a case which subsequently came before the Court (*Société de Gestion Du Port de Campoloro et Société fermière de Campoloro v. France*, no. 57516/00, 26 September 2006).

b) Conservation policy

39. Apart from public easements intended to protect public property from the encroachment of private properties, such as a three-metre wide

right of way along the coast over properties adjoining maritime public property, created by an Act of 31 December 1976 reforming town and country planning, the land conservation policy guarantees the protection of the physical integrity of maritime public property and compliance with its designated use. Offenders are prosecuted for unlawful interference with the highway on grounds of infringement of the land conservation policy. An interference of this kind is liable to a criminal fine imposed by the administrative courts and the offender is required to restore the site to its original state. The relevant provisions on unlawful interference with maritime public property no longer refer essentially to navigation but take account of the protection of coastal areas for their own sake (Articles L. 2132-2 and L. 2132-3 of the CGPPP).

40. According to the *Conseil d'Etat*, conservation agencies have a duty to prosecute offenders (CE *Ministre de l'équipement v. Association "des amis des chemins de ronde"*, 23 February 1979). Regarding a plot of land incorporated into maritime public property at Verghia beach (southern Corsica), the *Conseil d'Etat* decided that "the fact that M.A. produced title deeds to the property in question and had been authorised to build on the land under the regional planning legislation, as distinct from the legislation governing maritime public property, does not mean that the offence of unlawful interference with the highway has not been made out and, in any event, cannot preclude prosecution by the Prefect ..." (CE, no. 292956, 4 February 2008). With regard to repairing damage caused to public property, the actual attitude adopted by the authorities prior to bringing proceedings for unlawful interference with the highway has been deemed to give rise to rights in favour of the offender, including the right not to assume personal responsibility for restoring the site to its original state (CE, *Koeberlin*, 21 November 1969).

4. Use of maritime public property

41. The use of maritime public property may be collective or private. Collective use which allows all citizens to benefit from public property (navigation on watercourses, beaches) is freely exercisable, equally available to all and free of charge. However, the principle that use is free of charge has not been expressly incorporated into the CGPPP because it is subject to numerous exceptions.

Private occupancy must be compatible or in conformity with the designated use of the public property. Unlike collective use, it is subject to *authorisation*, issued personally, and a *charge* and is of a *precarious* nature.

Article L. 28 of the Code of State Property (Article L. 2122-1 of the CGPPP) provided that

"Subject to authorisation being issued by the competent authority, no one may occupy any national public property or make use thereof over and above the right of use vested in everyone.

The Property Department shall record any infringement of the provisions of the preceding paragraph with a view to instituting proceedings against illegal occupants, recovering compensation for charges in respect of which the Treasury Department has been defrauded, without prejudice to the institution of proceedings for unlawful interference with the highway.” [Article A 26 specified that authorisation was revocable without compensation].

42. According to the *Conseil d'Etat*, “whilst the authorities may, as part of their management powers, authorise – provisionally and on the conditions provided for by the rules in force – private occupancy of the said land, that authorisation cannot legally be granted unless, having regard to the requirements of the general interest, it is compatible with the designated use of the land that the public are normally entitled to exercise, and with the obligation incumbent on the authorities to conserve public land” (CE, *Commune de Saint-Brévin-les-Pins*, 3 May 1963).

43. The precariousness of these authorisations derives from the principle of inalienability, according to which the protection – and accordingly the disposal – of public land is vested in the authorities. According to the case-law, “any authorisation to occupy public land is precarious and revocable. Consequently, the fact – assuming it is made out – that, prior to adoption of the decision being challenged, I. had been granted authorisation to occupy the part of common public property ... does not affect the lawfulness of the mayor's decision requesting him to demolish the buildings he had erected and restore the public land to its original state ...” (CE, *Isas*, 29 March 2000). It also states very clearly that those to whom authorisation has been granted have not thereby “acquired rights” to renewal of the authorisation (CE, *Helie*, 14 October 1991).

44. The conditions of occupation of public property are determined either in unilateral concessions granted by the authorities (of the type referred to above in Article L. 28 of the Code of State Property) or in contracts signed with the occupant. The latter are called concessions to occupy public land, which – on maritime public property – may be a beach concession or a concession to build a dyke. By means of this concession, the State authorises the concessionaire to carry out works on the foreshore by which land is removed from the action of the tide. In respect of natural maritime public property an arrangement was established in 1807, traditionally called a concession to build a dyke and by which ownership was transferred (former Article L. 64 of the Code of State Property): the concessionaire was authorised to drain land, which, once removed from the action of the tide, no longer fell within the definition of natural maritime public property and could therefore be reclassified as private property and transferred by the State. That arrangement, which was originally used to build agricultural polders, has more recently been used for property developments in the form of marinas, reclaimed from the sea. Following a reaction to what was perceived as a privatisation of the shore, a circular was issued in 1973 prohibiting such arrangements – a prohibition later

confirmed by the Coastal Areas Act, which imposes a broader prohibition on any interference with the natural state of the shore. It is now no longer possible to build marinas or polders by means of concessions to build dykes by which ownership is transferred. This arrangement can now apply only to past draining works and is the sole means of legalising these (source: www.mer.gouv.fr).

B. Law no. 86-2 of 3 January 1986, known as the “Coastal Areas Act”, on the Development, Protection and Enhancement of Coastal Areas

45. Up until 1986 maritime public property was protected by the rules governing the highways. The Coastal Areas Act introduced new rules for the protection of natural public land (source: www.mer.gouv.fr).

46. As early as the 1960s enthusiasm for seaside holidays brought about an increase in the number of tourists and thus in the number of buildings on the seashore Awareness of the economic importance of the seashore and of the degree to which it is coveted made it necessary to introduce a rule of overriding legal force that would arbitrate between the many uses of coastal areas. It is in this spirit that the Coastal Areas Act of 3 January 1986 (consolidated on 7 August 2007) was unanimously passed by Parliament. Section 1 of the Act provides that coastal areas are “geographical entities which call for a specific policy of development, protection and enhancement”. The general principles of that Act consist in preserving rare and fragile areas, managing spatial planning and tourist development economically and, lastly, making the shore – like the beach – more widely accessible to the public and giving priority in coastal areas to marine-related activities.

47. It is in the planning sphere that the principles established are the best known and have given rise to the most litigation. Planning permission for further development must be granted with regard to continuation of existing constructions or new hamlets. It is forbidden to build roads on the shore and through roads cannot be built closer than 2,000 metres from the shore. In order to preserve natural sites the Act imposes a “no building” rule within a 100-metre band – outside urban centres – from the shore, and restricts development in areas near the shore. Lastly, sites of outstanding interest or characteristic of the shore must be preserved and only small-scale development can be allowed.

48. The Act has laid down rules for managing maritime public property which include a mandatory public inquiry prior to any substantive change of use, clarifying the procedures for delimiting the foreshore, prohibiting – other than in exceptional circumstances – interference with the natural state of the seashore and establishing specific rules for collective mooring. Lastly, it has established the principles of unobstructed and free public use

of the beaches and facilitated public access to the sea (see Article 321-9 of the Environment Code and Article L. 2124-4 of the CGPPP: “Pedestrians shall have free access to beaches Beaches are fundamentally reserved for the unobstructed and free use of the public.”

49. Section 25 of the Act, now Article L. 2124-1 of the CGPPP, has given rise to a reform of the rules governing the occupation of maritime public property. It provides:

“Decisions regarding the use of maritime public property shall take account of the vocation of the zones in question and those of the neighbouring terrestrial areas, as well as of the requirements of conservation of coastal sites and landscapes and biological resources. Accordingly, they shall be coordinated with, *inter alia*, decisions concerning neighbouring public land.

Subject to specific provisions regarding national defence and the requirements of maritime safety, any substantive change of use of zones of maritime public property shall first be the subject of a public inquiry ...”

50. Section 27 of the Act, now Article L. 2124-2 of the CGPPP, lays down the principle that there shall be no interference with the natural state of the seashore:

“Subject to sea defence operations being carried out and the construction of structures and installations required for maritime safety, national defence, sea fishing, salt works and marine cultures, the natural state of the seashore, outside port and industrial port areas, may not be damaged, especially by dyke construction, drainage, rock filling or embankment forming, except for structures or installations related to providing a public service or carrying out construction work for which the seaside location is essential for topographical or technical reasons that have been declared of public interest.

However, land draining carried out prior to the present Act shall continue to be governed by the previous legislation.”

51. The following is an extract from the section entitled “Matching facts with the theory” of a report on the conditions of application of the Coastal Areas Act, drawn up by the Highways Authority and sent to the Minister for Infrastructure, Housing and Transport in July 2000:

“... there is an acute sense of unfairness when an application for planning permission is turned down in respect of a site where the presence of buildings would appear to suggest that at other times the authorities have been less particular. ...

The right to enjoy “for life” but not to transfer a dwelling house built on maritime public property, as recognised in an agreement signed with the Prefect, the right granted to a married couple until their death to camp or park their caravan in a zone in which camping was now illegal, together with an agreement expressly stipulating that the right could not be inherited, illustrate the creativity shown by the authorities in this regard in Charente-Maritime and the Morbihan. ...

All sorts of liberties are increasingly being taken in various degrees of good faith. ... Should we simply ignore the development of a black market in permits to occupy

public property ... Should we not be attempting to establish liability on the part of public officials who in the course of their administrative duties have knowingly contributed to creating or exacerbating an illegal situation? ...”

52. A report entitled “Assessment of the Coastal Areas Act and measures in favour of coastal areas”, prepared by the Government for Parliament (September 2007), contains a part devoted to opening coastal areas to pedestrians which is worded as follows:

“The purpose of the Coastal Areas Act is to maintain or develop tourism in coastal areas. Sections 3 to 8 of the Act, in particular, lay down the conditions in which the public may visit natural sites, the seashore and the corresponding facilities. The provision of coastal paths goes some way towards giving effect to these legislative provisions. ... The public can continue to walk along the coast by virtue of an easement over private properties and a right of way over public land that may belong to the State (maritime public property), the Coastal Protection Agency or local and regional authorities

Making a pathway often requires an on-site study of the terrain in order to determine whether the coastal area in question can be opened to pedestrians without harming the fauna, the flora or the stability of the soil. If the land is considered to be accessible without any risk to the environment, regard will have to be had to where the path is routed, particularly across private property, it being observed that the statutory route (three metres in width running along the boundary of maritime public property) is not always the most appropriate solution. If the statutory route across private properties has been modified, a public inquiry must be carried out. ...”

C. Comparative law

53. The Court examined the situation in sixteen coastal member States. Only four States (Albania, Bosnia-Herzegovina, the United Kingdom and Sweden) do not recognise the existence of maritime public property exclusive of any private ownership rights. In the other twelve States (Germany, Croatia, Spain, Greece, Ireland, Italy, Malta, Monaco, Montenegro, the Netherlands, Slovenia and Turkey), maritime public property belongs either to the State or to other public bodies and is inalienable on that basis. In all these States maritime public property can nevertheless be designated for private use on the basis of fixed-term concessions. And in all these States illegal use exposes the offender to administrative or even criminal penalties. In particular, the illegal construction of immovable property can result in the offender being ordered to demolish the building concerned at his or her own expense and without compensation. This type of measure also exists in Sweden, where the private right of ownership of land on the seashore is recognised by law but the land is subject to relatively strict easements which prohibit the construction of new buildings and guarantee public access to the sea.

54. In Croatia, as in Spain, the owners of buildings legally built and acquired before the entry into force of the “Maritime Property Act” (2006)

in the case of the former and the Coastal Areas Act in the case of the latter (1988), and designed for use as a dwelling, could obtain a concession of these buildings, without any obligation to pay a charge on the sole condition that they apply for the concession within one year of the entry into force of the Act. In Spain properties built before the Act came into force without a permit or concession as required by the previous legislation will be demolished if they cannot be legalised on public-interest grounds. Any building that was authorised before the Act came into force but is now illegal will be demolished on the expiry of the concession if it is located on land falling within the category of maritime public property. In Turkey, according to the case-law of the Court of Cassation (judgment of 10 October 2007), which refers to the judgment in *Doğrusöz and Aslan v Turkey* (no. 1262/02, 30 May 2006), if the annulment of a property deed in respect of property located inside the delineation of the seashore is compatible with the domestic legislation, the interested party can apply to the courts for compensation for his or her pecuniary loss.

D. Council of Europe texts

55. The following relevant texts can be cited: Recommendation No. R (97) 9 of the Committee of Ministers on a policy for the development of sustainable environment-friendly tourism in coastal areas adopted on 2 June 1997, and the appendix thereto; and the decision of the Committee of Ministers taken at its 678th meeting (8-9 September 1999) at which the Ministers' Deputies take note of the Model Law on sustainable management of coastal zones (see Article 40 on Public maritime domain and Article 45 on Pedestrian access to beaches and coasts); and the European Code of Conduct for Coastal Zones and agree to transmit them to their respective Governments.

THE LAW

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

56. The applicants alleged that their right of property guaranteed by Article 1 of Protocol No. 1 was infringed as a result of the French authorities' refusal to authorise them to continue occupying the maritime public land on which stands a house that has belonged to their family since 1945 and as a result of the order to demolish the house. Article 1 of Protocol No. 1 provides:

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

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...”

57. First of all, the Court takes note of the death of Eliane Brosset-Pospisil on 14 May 2008 and of the wish expressed by her heirs, namely, her two daughters, to continue the application before the Court in their own right and as their mother's heirs. In accordance with its case-law, the Court finds that they have standing to continue the application in the applicant's stead (see *Loyen and Others v. France*, no. 55926/00, § 25, 29 April 2003).

58. However, for practical reasons the present judgment will continue to refer to Eliane Brosset-Pospisil as “the applicant” despite the fact that this status should now be conferred on her daughters.

A. Applicability: existence of a “possession”

1. The parties' submissions

a) The applicants

59. The applicants reiterated the autonomous nature of the concept of “possessions” (*Öneryıldız v. Turkey* [GC], no. 48939/99, § 95-96, ECHR 2004-XII). In their submission, the rule that maritime public property was inalienable did not mean that in the present case the house was *res nullius* and did not fit into any legal category. The house had been built a hundred years ago and they had not been told that it had been built illegally when it had been received as a gift, with the deed of 1945 referring to the authorisation given by the Prefect. Having been kept in the dark for a long time about the possible demolition of their house thus acquired, the applicants referred to the decades spent peacefully in a strong social and family environment. They also pointed out that the house was liable to taxes and duties. The State had therefore *de facto* recognised a proprietary interest attaching directly to the house in question and to the movable property in it.

60. The applicants submitted, further, that the State had been aware of the house's existence, as evidenced, for example, by the increase in annual fee on the basis of the value of the land plus its letting value. Similarly, when the Prefect had written to the applicants in 1993 proposing to extend authorisation just for their lifetime, he had referred to the possibility of “reusing the buildings”, thus acknowledging the existence of a construction and therefore of a “possession”. A house could not change status according

to whether the State refused to renew authorisation and ordered demolition or refused to renew authorisation with a view to benefiting from ownership of the property, which, in such a case, would be full ownership. By obliging persons who had been authorised to occupy land to demolish, at their own expense, a house in which the same family had been living for more than fifty years, regardless of the fact that it had been acquired as a gift from a donor who had herself acquired the property following a sale, the State failed to comply with the duty incumbent on it to respect “possessions”.

b) The Government

61. As at the admissibility stage, the Government disputed the existence of a “possession” within the meaning of Article 1 of Protocol No. 1 on account of the impossibility of establishing rights *in rem* over maritime public property. The various – temporary, precarious and revocable – decisions authorising occupancy issued to the applicants and their predecessors had not had the effect of acknowledging that any property right had vested in the successive occupants. They pointed out that the legislative exceptions to the principle of inalienability excluded natural maritime public property, which was in issue here (paragraph 37 above).

62. Any property rights that might have been transferred between private parties could not be asserted against the State and had no effect on the nature of those rights. The State was also entitled to the protection and peaceful enjoyment of its property. It was perfectly entitled to authorise occupation of a particular plot of land, which was inherently inalienable and imprescriptible, without this giving rise to rights other than mere enjoyment. To dissociate the rules applicable to the dyke from those applicable to the house standing on it – the existence of which had not become known to the authorities until 1967 – would be tantamount to denying the principles governing the State's right of property.

63. The Government added that the applicants had been fully aware of the precarious nature of the rights they held over the foreshore (tacit acceptance of the conditions attached to the decisions authorising occupancy, payment of a charge in acknowledgment of the debt owed to the State as owner of the land) and of the risks incurred as a result of the applicable legal rules.

64. The impossibility of acquiring property by adverse possession invalidated the argument relating to the effect of the length of occupation of the site. No legitimate expectation of being able to continue enjoying the “possession” had arisen in favour of the applicants, unlike in the case of *Hamer v. Belgium* (no. 21861/03, § 78, ECHR 2007-... (extracts)), which, in the Government's view, concerned *negligence* on the part of the public authorities and not *tolerance*, authorising the existence of a “proprietary interest in peaceful enjoyment of one's house”.

2. *The Court's assessment*

65. The Court reiterates that the concept of “possessions” referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; *Öneryıldız*, cited above, § 124; and *Hamer*, cited above, § 75).

66. The concept of “possessions” is not limited to “existing possessions” but may also cover assets, including claims, in respect of which the applicant can argue that he has at least a reasonable and legitimate expectation of obtaining effective enjoyment of a property right (see *Hamer*, cited above, § 75). A legitimate expectation of being able to continue having peaceful enjoyment of a possession must have a “sufficient basis in national law” (see *Kopecky v. Slovakia*, no. 44912/98, § 52, ECHR 2004-IX).

67. Generally speaking, the imprescriptibility and inalienability of public land have not prevented the Court from concluding that “possessions” within the meaning of this provision were at stake (see *Öneryıldız*, cited above; *N.A. and Others v. Turkey*, no. 37451/97, ECHR 2005-X; *Tuncay v. Turkey*, no. 1250/02, 12 December 2006; *Köktepe v. Turkey*, no. 785/03, 2 July 2008; *Turgut and Others v. Turkey*, no. 1411/03, 8 July 2008; and *Şatır v. Turkey*, no. 36192/03, 10 March 2009). However, in those cases, except for the case of *Öneryıldız*, the applicants' property titles were not disputable under the domestic law because the applicants could legitimately consider themselves to be “legally secure” in respect of the validity of those titles before they were annulled in favour of the Treasury (see *Turgut and Others*, cited above, § 89, and *Şatır*, cited above, § 32).

68. In the instant case it was not disputed before the Court that the plot of land on which the house was built belonged to the category of maritime public property. What is in dispute is the legal consequences of the deed of gift of 1945 and of the successive decisions authorising occupancy of the house.

69. The Court observes that the Administrative Court found that “[the applicants] ha[d] full title to the dwelling house occupied by [them] (see paragraph 25 above). However, in strictly applying the principles governing public property – which authorise only precarious and revocable private occupancy – the other domestic courts ruled out any recognition of a right *in rem* over the house in favour of the applicants. The fact that they had occupied the house for a very long time did not, in their opinion, have any

effect on the classification of the property as inalienable and imprescriptible maritime public property (see paragraph 27 above).

70. In the circumstances, and notwithstanding the fact that the house was acquired in good faith, as the decisions authorising occupancy did not constitute rights *in rem* over public property – a fact of which the applicants could not have been unaware, just as they could not have been unaware of the consequences of that for their rights over the house – (see, by contrast, *Z.A.N.T.E. - Marathonisi A.E. v. Greece*, no. 14216/03, § 53, 6 December 2007), the Court doubts that they could reasonably have expected to continue having peaceful enjoyment of the property solely on the basis of the decisions authorising occupancy (see, *mutatis mutandis*, *Özden v. Turkey* (no. 1), no. 11841/02, 3 May 2007, §§ 28-30, and *Gündüz v. Turkey* (dec.), no. 50253/07, 18 October 2007). It observes in this connection that all the prefectoral decisions referred to the obligation, in the event of revocation of the decision authorising occupancy, to restore the site to its original state if required to do so by the authorities (see paragraph 15 above).

71. However, the Court would reiterate that the fact that the domestic laws of a State do not recognise a particular interest as a “right” or even a “property right” does not necessarily prevent the interest in question, in some circumstances, from being regarded as a “possession” within the meaning of Article 1 of Protocol No. 1. In the present case the time that elapsed had the effect of vesting in the applicants a proprietary interest in peaceful enjoyment of the house that was sufficiently established and weighty to amount to a “possession” within the meaning of the rule expressed in the first sentence of Article 1 of Protocol No. 1, which is therefore applicable to the complaint under consideration (see, *mutatis mutandis*, *Hamer*, cited above, § 76, and *Öneryildiz*, cited above, § 129).

B. Merits

1. The parties' submissions

a) The applicants

72. The applicants challenged the ruthless application of the Coastal Areas Act to their case, forbidding their private use of the land. The authorisation to occupy the property that had been systematically renewed since the 1900s should have had a bearing on the implementation of section 25 of the Coastal Areas Act. That provision specified, moreover, that account had to be taken of neighbouring land designated for public use; however, the house was surrounded by privately owned land and buildings and not undeveloped coastland. Furthermore, the Act did not contain any

clear, binding measure. Authorisation had been renewed after the Act had been passed in 1986. Accordingly, however worthy a cause environmental conservation was, the legislation relied on did not, the applicants argued, have the scope attributed to it by the Government.

73. The applicants put forward a whole series of circumstances – construction of the house in question by other people; acquisition in good faith; authorisation to build the dyke granted by the authorities; house valued and insured, and liable to taxes and duties; the small area of land involved and therefore only a few dozen metres of shore at issue; other houses in the same area; lack of compensation – to counter the public interest in demolishing their house.

They considered it contradictory to propose, on the one hand, authorisation to occupy subject to conditions and, on the other hand, should that proposal be refused, to brandish the threat of demolition in the public interest. Demolition would be difficult, moreover, in a landscape that was part of a listed site. They submitted that they were not the only ones in this position; other houses in the neighbourhood were also to be demolished, but never had been because such a measure had not been deemed to be dictated by the legitimate aims of environmental conservation and ensuring access to the shore.

74. The applicants submitted that there was no reasonable relationship of proportionality between the means used and the aim pursued and considered that they had to bear an excessive and disproportionate burden.

b) The Government

75. The Government submitted that the impugned measure amounted to a control of the use of property, as had been stated in the case of *Hamer*. They pointed out that the applicants had not, in any event, been deprived of their house to date (contrast *N.A. and Others*, cited above).

76. The Government explained that pursuit of the legitimate aim, in accordance with the public interest in ensuring that public property was directly and permanently designated for use by all citizens, required the authorities to protect land from illegal occupation. Such protection, which evolved over time according to society's expectations and concerns, included, in the event of private use that was not compatible with the designated use of the land, the right to call into question a right of occupation granted in the past. In the present case authorisation had been repeatedly renewed because this had been compatible with the designated use of the public land. In 1909 authorisation had been granted in order to allow access to a neighbouring island belonging to the occupant on condition that the dyke was accessible to the public at all times. The reason for allowing the house to remain standing after the authorities had

discovered its existence in 1967 was that at that time it was still compatible with the designated use of the property.

77. The position had changed today with the enactment of the Coastal Areas Act, which established the principle that there should be no interference with the natural state of the seashore and provided for enhanced public access to that public property. The Government pointed out that the authorities thus assumed a responsibility which should in practice result in their intervention at the appropriate time in order to ensure that the statutory provisions enacted with the purpose of protecting the environment were not entirely ineffective (*Hamer*, cited above, § 79). The “tolerance” shown by the authorities towards the applicants could not be maintained unchanged since allowing dwelling houses to remain standing, for purely private use, was no longer compatible with the designated use of the property henceforth subject to environmental requirements. The refusal to renew the authorisation was therefore entirely justified. It was consistent with the careful and progressive implementation of the Coastal Areas Act in so far as it called into question a situation, as in this case, that had gone on for a very long time.

78. The Government submitted that the interference by the State with the applicants' occupancy rights over public property struck a fair balance between the right to peaceful enjoyment of the “possession” and the general interest in protecting public property and complying with environmental requirements.

79. Firstly, the applicants had been aware that the buildings were illegal and the authorisations precarious. The Government were at pains to point out that the penalty for unlawful interference with the highway concerned a holiday house and that the applicants were therefore not homeless as a result of the non-renewal of the authorisation hitherto granted them. Moreover, they had rejected the Prefect's proposal to renew authorisation subject to a number of conditions. This would have enabled them to enjoy possession of the property throughout their lifetime and was a genuine compromise between private occupancy and respect for public property. As they had rejected that proposal, demolition was now the only feasible alternative measure (*Hamer*, cited above, § 86).

The continued presence of the house impeded access to the shore at high tide, thus contravening the right of free pedestrian access to the beach. According to the Government, the house was an insuperable obstacle to the public right of way. Restoring the land to its original state would reinstate public access to maritime property and to a site listed in the local land-user plan under a zoning system for the protection of specific natural areas.

2. The Court's assessment

80. The Court reiterates that, according to its case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property,

comprises three distinct rules (see, *inter alia*, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98): the first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004, and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

81. Regarding whether or not there has been an interference, the Court reiterates that, in determining whether there has been a deprivation of possessions within the second “rule”, it is necessary not only to consider whether there has been a formal taking or expropriation of property but to look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are “practical and effective”, it has to be ascertained whether the situation amounted to a *de facto* expropriation (see *Brumărescu v. Romania* [GC], no. 28342/95, § 76, ECHR 1999-VII, and *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 63 and 69-74, Series A no. 52).

82. The Court observes that it is not disputed that the land on which the house was built is classified as public property. Having regard to the principles governing this category of property, and to the fact that the demolition measure has not been implemented to date, the Court is of the view that there has not been a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Saliba v. Malta*, no. 4251/02, §§ 34-35, 8 November 2005; by contrast, *Allard v. Sweden*, no. 35179/97, § 50, 24 June 2003; and *N.A. and Others*, cited above, §§ 31 and 38).

83. The Court considers that the non-renewal of the decisions authorising private occupancy of the public property, which the applicants must have anticipated would one day affect them, and the resulting order to demolish the house can be analysed as control of the use of property in accordance with the general interest. Indeed, the rules governing public property, in so far as they designate it as being for public use, fall into this category. Furthermore, the reasons given by the Prefect for refusing to renew authorisation were based on the provisions of the Coastal Areas Act relating to the protection of the natural state of the seashore (see, *mutatis mutandis*, *Hamer*, cited above, § 77).

84. The Court cannot agree with the applicants' submission that the aim of the interference was not in the general interest, namely, the protection of the property's designation as public property and of the environment. It accepts that the domestic courts analysed the interference with the property in question only from the standpoint of its classification as public property. It observes, further, that by issuing successive decisions authorising occupancy, the State *de facto* weakened the protection of the property's designation as land for the benefit of the public. However, it is since the enactment of the Coastal Areas Act – section 1 of which provides that “the coast is a geographical entity that requires a specific development, conservation and enhancement policy” – that authorisations have no longer been renewed, with the aim of protecting the seashore and more generally the environment. The Court reiterates that environmental conservation, which in today's society is an increasingly important consideration (see *Fredin v. Sweden (no. 1)*, 18 February 1991, § 48, Series A no. 192), has become a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities. The Court has stressed this point a number of times with regard to the protection of the countryside and forests (see *Turgut and Others*, cited above, § 90; *Köktepe*, cited above, § 87; and *Şatir*, cited above, § 33). The protection of coastal areas, and in particular beaches, which are “a public area open to all”, is another example (see *N.A. and Others*, cited above, § 40) of an area where an appropriate planning policy is required. The Court therefore considers that the interference pursued a legitimate aim that was in the general interest: to promote unrestricted access to the shore, the importance of which has been clearly established (see paragraphs 46 to 50 and 52 and 55 above).

85. It therefore remains to be determined whether, having regard to the applicants' interest in keeping the house, the order to restore the site to its original state is a means proportionate to the aim pursued.

86. According to well-established case-law, the second paragraph of Article 1 of Protocol No.1 is to be read in the light of the principle enunciated in the first sentence. Consequently, an interference must achieve 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 search for this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, and therefore also in the second paragraph thereof: there must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC],

nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999–III). The requisite balance will not be achieved if the person concerned has had to bear an individual and excessive burden.

87. The Court has, moreover, often reiterated that regional planning and environmental conservation policies, where the community's general interest is pre-eminent, confer on the State a margin of appreciation that is greater than when exclusively civil rights are at stake (see, *mutatis mutandis*, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 70, ECHR 2004–III; *Alatulkkila and Others v. Finland*, no. 33538/96, § 67, 28 July 2005; *Valico S.r.l. v. Italy* (dec.), no. 70074/01, ECHR 2006–III; and *Lars and Astrid Fägerskiöld v. Sweden* (dec.), no. 37664/04, 26 February 2008).

88. The Court observes that the applicants did not build the house themselves but inherited it in 1945, with the approval of the Prefect of Morbihan. Since then they have occupied and maintained the house, and paid the taxes and charges on it. The Court also observes that the house was apparently built over a century ago on public land drained for that purpose without any concession authorising the construction. In the Court's view, the question of whether the house was legally built should not be a matter for consideration in the present case. In any event the alleged illegality of the building should not be held against the applicants, particularly as it is not disputed that they acquired their “possession” in good faith. Their situation is therefore clearly different from that of an individual who has knowingly erected a building without a permit (see, by contrast, *Öneryıldız*; *Saliba*; and *Hamer*, cited above). The house in question is not therefore comparable with those that have recently been illegally built along the coast.

89. At all events, since the applicants acquired the “possession”, or possibly even since it was built, the authorities have been aware of the existence of the house because it has been occupied on the basis of a decision authorising occupancy which specified that “the dyke cannot interfere in any way with navigation rights ... or maritime coastal traffic on condition that it is accessible to the public at all times”. Each prefectural decision authorising occupancy specified the length of the authorisation and, in accordance with former Article A 26 of the Code of State Property, that the authorities could modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, without the permittee thereby acquiring a right to claim any compensation. Furthermore, it was specified that the permittee must, if required, restore the site to its original state by demolishing the constructions built on the public property, including those existing on the date on which the decision was signed. The Court concludes from this that the applicants had always known that the decisions authorising occupancy were precarious and revocable and considers that the authorities cannot therefore be deemed to have contributed to maintaining

uncertainty regarding the legal status of the “possession” (see, by contrast, *Beyeler v. Italy* [GC], no. 33202/96, § 119, ECHR 2000-I).

Admittedly, the applicants have had peaceful enjoyment of the “possession” for a long time. The Court does not, however, see any negligence on the part of the authorities, but rather tolerance of the ongoing occupancy, which has, moreover, been subject to certain rules. Accordingly, there is no evidence to support the applicants' suggestion that the authorities' responsibility for the uncertainty regarding the status of the house increased with the passage of time (see paragraph 63 above). The exceptional length of the occupancy and certain hesitations on the part of the authorities (see paragraphs 18 and 31 above) should be viewed in the context at the relevant time, when development and environmental concerns had not yet reached the degree witnessed today. It was not until 1986 that the applicants' situation changed, following the enactment of the Coastal Areas Act which put an end to a policy of protecting coastal areas merely by applying the rules governing public property. In any event, the aforementioned tolerance could not result in a legalisation *ex post facto* of the status quo.

90. The Court notes the applicants' submission that the measure was not appropriate to the general-interest aim of protecting coastal areas and that the house was perfectly integrated into the landscape, was even part of the national heritage and did not impede access to the shore. The Court reiterates in this connection, however, that it is first and foremost for the national authorities to decide which type of measures should be imposed to protect coastal areas. These will depend on urban and regional planning policies, which are, by definition, evolutive, and are, *par excellence*, spheres in which the State intervenes, particularly through control of property in the general or public interest (see *Gorraiz Lizarraga and Others*, cited above, § 70, and *Galtieri v. Italy* (dec.), no. 72864/01, 24 January 2006).

91. It goes without saying that after such a long period of time demolition would amount to a radical interference with the applicants' “possession”. It is true that in the past the authorities were perhaps less strict about private occupancy of public land. Furthermore, prior to the Coastal Areas Act, the applicants did not request a concession to build a dyke at a time when they could perhaps still have done so. However, the State started reacting as early as 1973 to the risk of public property being used for private ends (see paragraph 44 above).

92. The refusal to renew authorisation of occupancy and the measure ordering the applicants to restore the site to its condition prior to the construction of the house correspond to a concern to apply the law consistently and more strictly, having regard to the increasing need to protect coastal areas and their use by the public, but also to ensure compliance with planning regulations. Having regard to the appeal of the coast and the degree to which it is coveted, the need for planning control and unrestricted public access to the coast makes it necessary to adopt a

firmer policy of management of this part of the country. The same is true of all European coastal areas.

Allowing an exemption from the law in the case of the applicants, who cannot rely on acquired rights, would go against the aims of the Coastal Areas Act (see paragraphs 46 to 50 above) and undermine efforts to achieve a better organisation of the relations between private use and public use (see paragraph 51 above). Moreover, the applicants have not provided proof of any inconsistency on the part of the authorities in applying such a policy, either by showing that neighbours in a similar situation have been exempted from the obligation to demolish their house or by referring to any overriding higher interest, be it architectural and/or dictated by a concern to protect the national heritage, as the house has clearly not been listed.

93. The Court notes, further, that the applicants refused the compromise solution and the Prefect's proposal to continue enjoyment of the house subject to conditions. The Court shares the opinion of the Government Commissioner of the *Conseil d'Etat* that the proposal in question could have provided a solution reconciling the competing interests (see paragraph 29 above). It did not seem an unreasonable offer, having regard to the length of the occupancy and the applicants' "sentimental attachment" to the house and the time sometimes required to implement an Act. The same solution has, moreover, been adopted when implementing recent coastal laws in other coastal countries (see, for example, Spain, paragraph 54 above).

94. Lastly, the Court reiterates that where a measure controlling the use of property is in issue, the lack of compensation is a factor to be taken into consideration in determining whether a fair balance has been achieved but is not of itself sufficient to constitute a violation of Article 1 of Protocol No. 1 (see *Tomaso Galtieri*, cited above, and *Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, no. 35332/05, § 45, 21 February 2008). In the instant case, having regard to the rules governing public property, and considering that the applicants could not have been unaware of the principle that no compensation was payable, which was clearly stated in every decision issued since 1951 authorising their temporary occupancy of the public property (see paragraph 15 above), the lack of compensation cannot, in the Court's view, be regarded as a measure disproportionate to control of the use of the applicants' property, carried out in pursuit of the general interest.

95. Having regard to all the foregoing considerations, the Court considers that the applicants would not bear an individual and excessive burden in the event of demolition of their house with no compensation. Accordingly, the balance between the interests of the community and those of the applicants would not be upset.

96. Consequently, there has not been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

97. The applicants submitted that the measure in question also violated their right to respect for their home, guaranteed under Article 8 of the Convention, on account of the interference, of a non-pecuniary nature, that severely affected all the strong roots their family had laid down over the years. Article 8 of the Convention provides:

“1. Everyone has the right to respect for his private and family life [and] his home
....

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

98. The Government raised two objections on grounds of inadmissibility. They submitted, firstly, that the applicants had not raised the allegation of a violation of Article 8 before the national courts or before the Court, which had raised this complaint of its own motion, and, secondly, that the Convention provision was inapplicable to second homes. They added that, where heirs were concerned, holiday memories did not suffice to attract the protection of Article 8.

99. The Court does not consider it necessary to examine the preliminary objections on grounds of inadmissibility raised by the Government. It observes that the complaint under Article 8 of the Convention arises out of the same facts as those examined under Article 1 of Protocol No. 1 and considers that it does not raise any separate issue under this provision. Consequently, it is not necessary to examine it separately on the merits.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that Mrs Eliane Brosset-Pospisil's heirs have standing to continue the present proceedings in her stead;
2. *Holds* by thirteen votes to four that there has been no violation of Article 1 of Protocol No. 1;
3. *Holds* by sixteen votes to one that it is not necessary to examine separately the complaint under Article 8 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 March 2010.

Michael O'Boyle
Deputy Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- concurring opinion of Judge Casadevall;
- joint partly dissenting opinion of Judges Bratza, Vajić, David Thór Björgvinsson and Kalaydjieva;
- partly dissenting opinion of Judge Kovler.

N.B.
M.O.B.

CONCURRING OPINION OF JUDGE CASADEVALL

(Translation)

1. I voted with the majority in favour of finding that there had not been a violation of Article 1 of Protocol No. 1. However, for similar reasons, *mutatis mutandis*, to those expressed in my dissenting opinion annexed to the *Öneryildiz v. Turkey* judgment (referred to in the present judgment), I would have preferred the Court to determine the matter in issue at an earlier stage of its reasoning and to conclude that Article 1 of Protocol No. 1 was inapplicable in this case.

2. The applicants had the benefit of temporary authorisations to occupy maritime public property in the Morbihan Bay. Between 1951 and 1986 authorisation was renewed on several occasions. I can accept that, up until 31 December 1990, when the last agreement for temporary occupation expired (see paragraph 15 of the judgment), the applicants could legitimately claim that they had a “possession” within the meaning of Article 1 of Protocol No. 1 and the Court's case-law, but I consider that they could no longer do so after that date.

3. Admittedly, the concept of “possessions” under Article 1 of Protocol No. 1 has an autonomous meaning and certain interests constituting assets can be regarded as “possessions” for the purposes of this provision. However, a legitimate expectation of being able to continue having peaceful enjoyment of a “possession” must have a “sufficient basis in national law” (see paragraph 66 of the judgment). Once the last agreement authorising temporary occupation of the site had expired, however, the applicants did not have any sufficient basis in French law.

4. Indeed, the prefect's decisions, which were never disputed, indicated the length of the temporary authorisation in clear and unambiguous terms, and stipulated – in accordance with the legislation in force – that the authorities reserved the right to modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, without the permittee thereby acquiring a right to claim any compensation or damages in that regard, and referred to the obligation to restore the site to its original state in the event of revocation of the decision authorising occupation if required to do so by the authorities (see paragraph 70 of the judgment). The Court concluded from this that the applicants had always known that the decisions authorising occupation were precarious and revocable and considered that the authorities could not therefore be deemed to have contributed to maintaining uncertainty regarding the legal status of the “possession” (see paragraph 89).

5. I find it difficult to agree with the conclusion reached by the majority in paragraph 71 of the judgment – which, to my mind, partly conflicts with the considerations set out in paragraphs 65 to 70 – according to which “*in*

the present case the time that elapsed had the effect of vesting in the applicants a proprietary interest in peaceful enjoyment of the house ...". Alas, as stated several times in the judgment, public property is not only inalienable but also imprescriptible (protection against adverse possession under private law), from which it follows that the passage of time, however long, can have no legal consequences. I agree with the Government's submission that the impossibility of acquiring property by adverse possession invalidates the argument relating to the effect of the length of occupation of the site; accordingly, no legitimate expectation of being able to continue enjoying the "possession" arose in favour of the applicants (see paragraph 64 of the judgment).

6. Lastly, I consider that it emerges from most of the arguments set forth in the judgment in favour of finding no violation that Article 1 of Protocol No. 1 is not applicable in situations similar to that of the applicants.

JOINT DISSENTING OPINION OF JUDGES BRATZA,
VAJIĆ, DAVID THÒR BJÖRGVINSSON AND
KALAYDJIEVA

1. We are unable to agree with the majority of the Court that there has been no violation of Article 1 of Protocol No. 1 to the Convention in the present case. In our view the requirement that the applicants should restore the land on which their house is built to its original state by abandoning and demolishing their house which has stood on the land for over a century and which has been owned and maintained by members of their family since 1921 and by immediate family members since 1945 amounted to a disproportionate and unjustified interference with the applicants' "possessions" for the purposes of that Article.

2. We share the view of the majority of the Court that, despite the fact that the order to demolish the house will result in the applicants' loss of their possessions, the case is to be viewed as one involving not a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 but rather, a control of use of property within the second paragraph of the Article, the order being designed to give effect to planning restrictions contained in the Coastal Areas Act 1986 relating to the use of maritime public property and the restoration of the natural state of the seashore. Nevertheless, as the Court has consistently emphasised, the three "rules" in Article 1 are not to be seen as watertight or unconnected rules, all three rules importing a requirement of proportionality and the necessity of striking a fair balance between the demands of the community as a whole and the protection of the rights and interests of the individual. Moreover, the fact that the measures of control applied in the present case would have particularly serious consequences for the applicants, in resulting in the loss of a valuable asset, is a factor which must be weighed in the balance even if the case is to be examined under the second paragraph of the Article.

3. We also agree with the majority that the aim of the interference with the applicants' rights must be regarded as in the general interest. As appears from the decision of the Prefect and the judgments of the domestic courts, the primary aim of the measures was to remove a permanent structure on maritime public property so as to restore the natural state of the seashore and promote unrestricted access to the shore. In this respect the order may, in a broad sense, be said also to serve the interests of the environment.

4. The central question is whether the measures adopted in the present case were proportionate to the legitimate aim and preserved a fair balance between the competing interests or whether the applicants were required to bear an individual and excessive burden. It is on this point that we part company with the majority.

5. The impact on the applicants of the measures if implemented is exceptionally serious – a requirement to leave and demolish, without compensation, a house in which they have lawfully resided as a family for very many years and in which they have invested over the years time and money as well as being responsible for paying the relevant taxes and duties. It is true that the applicants, or their predecessors in title, have always been aware that their continued possession and occupation of the house was precarious, the decisions authorising the occupation of the dyke or house, from at least 1951 onwards, expressly reserving to the authorities the right to modify or withdraw the authorisation should they deem it necessary on any ground, without the occupants acquiring a right to claim any compensation or damages in that regard. The decisions also made clear that, if required, the occupants would be obliged to restore the site to its original state by demolishing any buildings on the public property and that should they fail to comply with that obligation, the authorities would do so of their own motion and at the occupants' expense. However, it is also true that the authorisation had been consistently renewed by the authorities, after the applicants' mother had acquired the house by inheritance, in the years 1951, 1967, 1977, 1984 and 1986 without the applicants being given any reason to believe that the authorisation would not continue to be granted for a house which had been in existence since the beginning of the century. It is particularly significant that the authorisation of 1986 appears to have been issued after the coming into force of the Coastal Areas Act, the provisions of which were relied on by the authorities as preventing the further renewal of the authorisation in 1993.

6. The interests of the community on the other side of the scale also carry weight. We accept that States must in principle be entitled to change policies which have hitherto been followed in accordance with new priorities, and environmental conservation is undeniably one such priority. The enactment of the 1986 Act was intended to give effect to growing concern about damage to the environment resulting from developments of the coastline. We can also agree with the majority that it is first and foremost for the national authorities to decide which type of measures should be imposed to protect coastal areas.

7. There are, nevertheless, specific features of the present case which lead us to find that the measures taken by the national authorities did not strike a fair balance.

In the first place, the dyke on which the applicants' house was built, and the house itself, were constructed very many years before the 1986 Act, which itself drew a distinction between works which had been carried out before and after the coming into effect of the Act, the former continuing to be governed by previous legislation. Both the dyke and the house were likewise constructed long before the Code of State Property 1957 and the Ministerial circular of 1973 which prohibited the grant of concessions to

carry out works on the seashore and to occupy maritime public property, a prohibition which was later confirmed by the 1986 Act.

8. Secondly, as noted above, decisions authorising occupation of the property had been issued successively for at least half a century. The Government argue that the reason for allowing the house to remain standing after the authorities had discovered its existence in 1967 was that, at that time, it was still compatible with the designated use of the property. We find it difficult to accept that the authorities were unaware of the existence of the house until 1967. More importantly, even if it is correct, as stated in the judgment (§ 89), that certain of the authorisations were issued at a time when “development and environmental concerns had not reached the degree witnessed today” and that “it was not until 1986 that the applicants' situation changed”, it is notable that three authorisations were granted after the Ministerial circular of 1973 had been issued and the last of these was granted after the coming into effect of the 1986 Act itself. The majority of the Court have found that this was not an example of negligence on the part of the authorities but rather of tolerance of the ongoing occupancy of the house. It is said that this offers no support to the applicants' suggestion that the authority's responsibility for the uncertainty regarding the status of the house increased with the passage of time. While we do not find it necessary to characterise the actions of the authorities as negligence, we attach weight to the lack of coherence of those actions which, to use the words of the Government Commissioner, allowed occupants of public property to nurture for almost a century the hope that they would not be brutally compelled to demolish their property. In this respect, we recall the Court's finding that, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, judgment of 5 January 2000, § 120, ECHR 2000-I).

9. Thirdly, we note that the principal ground for the refusal to renew the authorisations and to require demolition of the house was not related to any environmental damage caused by the house or to the fact that the house was incompatible with the coastal landscape. On the contrary, the applicants' submission that the house had become perfectly integrated into the local landscape and was part of the national heritage is confirmed by the letter of 6 August 2002 from the Director of the Department of Culture and Legal and Political Affairs, in which it was noted that had an inventory been carried out in the Vannes-Ouest district at that time, the applicants' house and others in the same situation would have been listed as historical monuments and considered as part of the region's cultural heritage.

The grounds for the decision were, instead, that the house which was privately occupied had been constructed on public land and that it restricted public access to the foreshore. We have difficulty in finding that either of these two grounds, which had persisted since the house was first erected at

the beginning of the century, were sufficient to justify what the judgment correctly describes as “a radical interference” with the applicants' possessions.

10. Fourthly, we are struck by the fact that measures less radical than demolition of the house do not appear to have been considered by the authorities in order to achieve the aim of facilitating public access to the foreshore. Reliance is placed by the majority on the fact that the applicants' mother refused the compromise solution in the Prefect's proposal that she should continue in occupation of the house subject to certain conditions. We acknowledge that the Prefect's offer went some way towards redressing the balance and that, to use the words of the Government Commissioner, the offer was at least preferable to the “drastic solution” of a straightforward demolition order. However, in the end we have concluded that the proposal was not such as to restore a fair balance, since it imposed substantially greater restrictions on the applicants' continued enjoyment of their property by not only confining the use of the house to strictly personal use and prohibiting any sale or transfer of it or any work other than maintenance work but by reserving to the State an option on the expiry of the authorisation to have the land restored to its original state or to reuse the building. In short, it appears that under the proposal the ownership and occupancy of the house would continue only during the lifetime of the applicants' mother herself and that family members would be deprived of their valuable possession which would pass to the authorities without any compensation being paid. We note, in this regard, that the very fact that under the proposal the State reserved the right to preserve and reuse the house on the expiry of any authorisation is itself difficult to reconcile with any compelling need to restore the natural state of the shoreline.

11. For these reasons, it is our view that the applicants were required to bear an individual and excessive burden and that their rights under Article 1 of Protocol No. 1 were accordingly violated.

PARTLY DISSENTING OPINION OF JUDGE KOVLER

(Translation)

For the same reasons as those expressed in my dissenting opinion in the case of *Depalle*, I deplore the fact that the Court discarded the question of the applicability of Article 8 in the present case too quickly.