CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FORMER SECTION IV

CASE OF J.A. PYE (OXFORD) LTD v. THE UNITED KINGDOM

(Application no. 44302/02)

JUDGMENT
(merits)

STRASBOURG

15 November 2005

THIS CASE WAS REFERRED TO THE GRAND CHAMBER, WHICH DELIVERED JUDGMENT IN THE CASE ON 30 August 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of J.A. Pye (Oxford) Ltd v. the United Kingdom,

The European Court of Human Rights (Former Section IV), sitting as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 18 October 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44302/02) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd, companies incorporated in the United Kingdom ("the applicants"), on 17 December 2002.

2. The applicants were represented by Mr P. Lowe, a lawyer practising in Oxford with Darbys, Solicitors. The United Kingdom Government ("the Government") were represented by their Agent, Ms E. Willmot, of the Foreign and Commonwealth Office, London.

3. The applicants alleged that the United Kingdom law on adverse possession, by which they lost land with development potential to a neighbour, operated in violation of Article 1 of Protocol No. 1 to the Convention in their case.

4. The application was allocated to the Former Section IV of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 8 June 2004, following a hearing on admissibility and the merits (Rule 54 § 3), the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section IV.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 8 June 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms E. WILLMOT, Foreign and Commonwealth Office, *Agent*,
Mr J. CROW, *Counsel*,
Mr K. HARMES,
Mr P. HUGHES,
Ms R. ELLIS, *Advisers*;
(b) *for the applicants*
Mr D. PANNICK, Q.C., *Counsel*,
Mr P. LOWE,
Ms S. INGRAM, *Advisers*,
Mr G. PYE,
Mrs Y. PYE, *on behalf of the applicants.*

The Court heard addresses by Mr Crow and Mr Pannick.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The second applicant company is the registered owner of a plot of 23 hectares of agricultural land in Berkshire. The first applicant company was its predecessor in title. The owners of a property adjacent to the land, Mr. and Mrs. Graham ("the Grahams") occupied the land under a grazing agreement until 31 December 1983. On 30 December 1983 a chartered surveyor acting for the applicants wrote to the Grahams noting that the grazing agreement was about to expire and requiring them to vacate the land. In January 1984 the applicants refused a request for a further grazing agreement for 1984 because they anticipated seeking planning permission for the development of all or part of the land and considered that continued grazing might damage the prospects of obtaining such permission.

10. Notwithstanding the requirement to vacate the land at the expiry of the 1983 agreement, the Grahams remained in occupation at all times, continuing to use it for grazing. No request to vacate the land or to pay for the grazing which was taking place was made. If it had been, the evidence was that the Grahams would happily have paid.

11. In June 1984 an agreement was reached whereby the applicants agreed to sell to the Grahams the standing crop of grass on the land for £1,100. The cut was completed by 31 August 1984. In December 1984 an inquiry was made of the applicants as to whether the Grahams could take another cut of hay or be granted a further grazing agreement. No reply to this letter or to subsequent letters sent in May 1985 was received from the applicants and thereafter the Grahams made no further attempt to contact the applicants. From September 1984 onwards until 1999 the Grahams continued to use the whole of the disputed land for farming without the permission of the applicants.

12. In 1997, Mr Graham registered cautions at the Land Registry against the applicant companies' title on the ground that he had obtained title by adverse possession.

13. On 30 April 1998 the applicant companies issued an originating summons in the High Court seeking cancellation of the cautions. On 20 January 1999 the applicant companies issued further proceedings seeking possession of the disputed land.

14. The Grahams challenged the applicant companies' claims under the Limitation Act 1980 ("the 1980 Act") which provides that a person cannot bring an action to recover any land after the expiration of 12 years of adverse possession by another. They also relied on the Land Registration Act 1925, which applied at the relevant time and which provided that, after the expiry of the 12-year period, the registered proprietor was deemed to hold the land in trust for the squatter.

15. Judgment was given in favour of the Grahams on 4 February 2000 ([2000]Ch 676). Mr Justice Neuberger held that since the Grahams enjoyed factual possession of the land from January 1984, and adverse possession took effect from September 1984, the applicant companies' title was extinguished pursuant to the 1980 Act, and the Grahams were entitled to be registered as proprietors of the land. At the conclusion of his 30-page judgment, Neuberger J. remarked that the result he had reached did not accord with justice and could not be justified by practical considerations: the justification advanced for the right to acquire title to land by adverse possession – namely the avoidance of uncertainty – had in his view little relevance to the use of registered land where the owner was readily identifiable by inspecting the register of the relevant title at the Land Registry. The fact that an owner who had sat on his rights for 12 years should be deprived of the land was in his view "illogical and disproportionate": as he expressed the point, "it does seem draconian to the owner and a windfall for the squatter that, just because the owner has taken no step to evict a squatter for 12 years, the owner should lose 25 hectares of land to the squatter with no compensation whatsoever".

16. The applicant companies appealed and on 6 February 2001, the Court of Appeal reversed the High Court decision on the ground that the

Grahams did not have the necessary intention to possess the land, and the applicant companies were therefore not "dispossessed" of it within the meaning of the 1980 Act ([2001]EWCA Civ 117, [2001]Ch 804). Although this conclusion was sufficient to dispose of the appeal, two members of the Court of Appeal went on to address the question whether the applicants' loss of title to the land could also have given rise to a violation of Article 1 of Protocol No. 1 as applied in domestic law by the Human Rights Act 1998.

17. Lord Justice Mummery held that Article 1 did not impinge on the relevant provisions of the Limitation Act 1980, which did not deprive a person of his possessions or interfere with his peaceful enjoyment of them but only deprived a person of his right of access to the courts for the purpose of recovering property if he had delayed the institution of his legal proceedings for 12 years or more after being dispossessed by another. The extinction of the applicants' title was not, in his view, a deprivation of possessions nor a confiscatory measure for which payment of compensation would be appropriate, but simply a logical and pragmatic consequence of the barring of the right to bring an action after the expiration of the limitation period. In the alternative, Mummery L.J found that any deprivation was justified in the public interest, the conditions laid down in the 1980 Act being reasonably required to avoid the risk of injustice in the adjudication of stale claims and as ensuring certainty of title: those conditions were not disproportionate, the period of 12 years being reasonable and not imposing an excessively difficult burden on the landowner.

18. Lord Justice Keene took as his starting point that limitation periods were in principle not incompatible with the Convention and that the process whereby a person would be barred from enforcing rights by the passage of time was clearly acknowledged by the Convention. This position obtained, in his view, even though limitation periods both limited the right of access to the courts and in some circumstances had the effect of depriving persons of property rights, whether real or personal, or of damages: there was thus nothing inherently incompatible as between the 1980 Act and Article 1 of the Protocol.

19. The Grahams appealed to the House of Lords, which, on 4 July 2002, allowed their appeal and restored the order of the High Court ([2002] UKHL 30, [2002] 3 All ER 865). Lord Browne-Wilkinson, with whom Lord Mackay of Clashfern and Lord Hutton agreed, held that the Grahams did have "possession" of the land in the ordinary sense of the word, and therefore the applicant companies had been "dispossessed" of it within the meaning of the 1980 Act. There was no inconsistency between a squatter being willing to pay the paper owner if asked and his being in possession in the meantime. Lord Browne-Wilkinson referred to the

European Convention on Human Rights only to note that there was no ambiguity in the 1980 Act which called for resolution.

20. Lord Bingham of Cornhill, agreeing with Lord Browne-Wilkinson, made the following statement in the course of his judgment:

> "[The Grahams] sought rights to graze or cut grass on the land after the summer of 1984, and were quite prepared to pay. When Pye failed to respond they did what any other farmer in their position would have done: they continued to farm the land. They were not at fault. But the result of Pye's inaction was that they enjoyed the full use of the land without payment for 12 years. As if that were not gain enough, they are then rewarded by obtaining title to this considerable area of valuable land without any obligation to compensate the former owner in any way at all. In the case of unregistered land, and in the days before registration became the norm, such a result could no doubt be justified as avoiding protracted uncertainty where the title to land lay. But where land is registered it is difficult to see any justification for a legal rule which compels such an apparently unjust result, and even harder to see why the party gaining title should not be required to pay some compensation at least to the party losing it. It is reassuring to learn that the Land Registration Act 2002 has addressed the risk that a registered owner may lose his title through inadvertence. But the main provisions of that Act have not yet been brought into effect, and even if they had it would not assist Pye, whose title had been lost before the passing of the Act. While I am satisfied that the appeal must be allowed for the reasons given by my noble and learned friend, this is a conclusion which I (like the judge [Neuberger J]...) 'arrive at with no enthusiasm'." [*JA Pye (Oxford) Ltd and another v. Graham and another* [2000] 3 All ER 865, at 867]

21. The question whether the result was incompatible with the applicants' rights under Article 1 of Protocol No. 1 to the Convention was not pursued before the House of Lords, it being conceded that the Human Rights Act 1998 had no retrospective effect. However, in his judgment Lord Hope of Craighead, who also agreed with Lord Browne-Wilkinson on the reasons for dismissing the appeal, observed that the question under the Convention:

> "....is not an easy one, as one would have expected the law - in the context of a statutory regime where compensation is not available - to lean in favour of the protection of a registered proprietor against the actions of persons who cannot show a competing title on the register. Fortunately.....a much more rigorous regime has now been enacted in Schedule 6 to the 2002 Act. Its effect will be to make it much harder for a squatter who is in possession of registered land to obtain title against the wishes of the proprietor. The unfairness in the old regime which this case has demonstrated lies not in the absence of compensation, although that is an important factor, but in the lack of safeguards against oversight or inadvertence on the part of the registered proprietor."

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Section 15 of the Limitation Act 1980, a consolidating Act, provides:

> "(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person...
>
> (6) Part I of Schedule 1 to this Act contains provisions for determining the date of accrual of rights of action to recover land in the cases there mentioned."

23. Paragraph 1 of Schedule 1 provides:

> "Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action shall be treated as having accrued on the date of the dispossession or discontinuance."

24. In the case of unregistered land, section 17 of the 1980 Act provides that, on the expiration of the limitation period regulating the recovery of land, the title of the paper owner is extinguished. In the case of registered land, section 75(1) of the Land Registration Act 1925 provides that, on the expiry of the limitation period the title is not extinguished but the registered proprietor is deemed to hold the land thereafter in trust for the squatter.

25. The Law Reform Committee considered the law on limitation periods in its report of 1977 (Cmnd 6923). It commented negatively on the courts' practice of granting an implied licence to the would-be adverse possessor, which had the effect of stopping time running against the owner, and proposed no change to the existing limitation periods, and agreed that the expiration of the limitation period should serve to extinguish the claimant's title.

26. A Law Commission Consultation Paper on Limitation of Actions in 1988 (Law Com 151) gave a number of general policy aims of the law on limitations. The Consultation Paper noted that defendants have a legitimate interest in having cases brought to court reasonably promptly as evidence may not be available indefinitely, and because defendants should be able to rely on their assumed entitlement to enjoy an unchallenged right. The State, too, has an interest in ensuring that claims are made and determined within a reasonable time in order to deliver a fair trial, and as guarantor of legal certainty. Finally, limitation periods were seen to have a salutary effect on plaintiffs in encouraging them to bring claims reasonably promptly.

27. A separate Law Commission Consultative Document on land registration in 1998 (prepared with the Land Registry; Law Com 254) noted that although the original intention of the system of land registration was to apply the principles of unregistered land to a registered format, there were certain areas where this was not wholly true. One example given was the position of the rights of adverse possessors (section 75(1) of the Land Registration Act 1925 was referred to). The Consultative Document set out

and commented on four particularly cogent reasons often given for the law on adverse possession: (i) Because it is part of the law on limitation of actions. It noted:

> "... because adverse possession is an aspect of the law of limitation, it is of course customary to account for it, at least in part, in terms of the policy of limitation statutes generally, namely to prevent defendants from stale claims and to encourage defendants not to sleep on their rights. However, adverse possession does not merely bar claims. Its effect is positive: 'a squatter does in the end get title by his possession and the indirect operation of the Limitation Act ..'. This can only be justified by factors over and above those which explain the law on limitation ... this particular justification has much greater force in relation to unregistered land than it does for land with registered title. Unregistered title ultimately depends on possession. It therefore behoves a landowner to be vigilant to protect that possession and not to sleep on his or her rights. ... where title is registered (...) the basis of title is primarily the fact of registration rather than possession. Registration confers title because the registration of a person as proprietor of land of itself vests in him or her the relevant legal estate ..."

(ii) Because if land and its ownership are out of kilter, the land may become unmarketable. Where the registered owner has disappeared, and cannot be traced, and a squatter takes possession, the doctrine of adverse possession "does at least ensure that in such cases land remains in commerce and is not rendered sterile". Where there have been dealings "off the register", such as where a farmer agrees to a land swap with a neighbour under a "gentleman's agreement" but does not register the change, "adverse possession fulfils a useful function". (iii) Because in case of mistake the innocent but mistaken squatter of land may have incurred expenditure. In such circumstances adverse possession can be justified on grounds of hardship, and there are parallels with the principles of proprietary estoppel. (iv) Because it facilitates and cheapens investigation of title to land. The Law Commission accepted this last reason as being very strong for unregistered land, but considered that for registered land, where title depends on the contents of the register rather than possession, it was not applicable.

28. The Law Commission proposed, provisionally, that the system of adverse possession as it applied to registered land should be recast to reflect the principles of title registration, and that it should be limited to very few, exceptional cases.

29. Two Reports, on Limitation of Actions (Law Com 270) and on registered land (Law Com 271), followed the Consultation Papers, and were published in July 2001.

30. The Law Commission Report on Limitation of Actions recommended that the general limitation period for actions in respect of land should be ten years. It added that if the proposals made on registered land in Law Com 254 were accepted, the proposal would relate only to

interests in unregistered land (and unregistrable interests in registered land[1]).

31. The Report on registered land (Law Com 271) proposed that a squatter should be able to apply to be registered as proprietor after 10 years' adverse possession, and that the registered proprietor should be notified of that application. If the proprietor objected to the registration, the application by the adverse possessor for registration would be rejected. The registered proprietor would then be required to regularise the position (for example by evicting the squatter) within two years, failing which the squatter would be entitled to be registered as proprietor.

32. The Land Registration Act 2002, which does not have retroactive effect, implemented the proposals in Law Com 271.

33. On 23 March 2005, Deputy Judge Strauss in the Chancery Division gave judgment in the case of *Beaulane Properties Ltd v. Palmer* (*Times Law Reports*, 13 April 2005). The case concerned a licensee who had remained in possession of registered land for over 12 years after the expiry of his licence. Applying the judgment of the House of Lords in the present case, the judge found that under English law as it stood up to the entry into force of the Human Rights Act 1998, the registered owner of the land lost all claim to it. However, on analysing the facts on a Convention basis, he found that there was no real public or general interest in the law on adverse possession in the case of registered land, and that the adverse consequences for the landowner were disproportionate. By re-interpreting the relevant legislation in accordance with Section 3 of the Human Rights Act, the judge found that the claim by the former licensee to have acquired the disputed land failed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

34. The applicants submitted that they had been deprived of their land by the operation of the domestic rules on adverse possession in a manner incompatible with Article 1 of Protocol No. 1. That provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

[1] Future interests, such as the reversion of a lease, in respect of which the limitation period began to run only when the interest fell into possession.

and subject to the conditions provided for by law and by the general principles of international law.

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

A. Submissions of the parties

35. The Government noted that the applicant companies bought the land in question between 1975 and 1977, when there was no doubt as to the content of the law of adverse possession. The applicant companies thus acquired their interest in the land subject to the pre-existing legal regime, which included the risk of losing it after 12 years' adverse possession by another. The application of that law in the present case was no more than the due operation of the pre-existing national legal regime, and not such as to engage Article 1 of Protocol No. 1. It was contended that the applicant companies' interest in the land was equivalent to a defeasible interest: from the moment they acquired the property, their property right was subject to restrictions, qualifications or limitations imposed by the pre-existing legal requirements of the Limitation Act and their rights ceased to exist once those restrictions, qualifications or limitations took effect, after 12 years of adverse possession by another. The case represented nothing more than the due operation of a pre-existing legal regime under which the applicant companies' interest in the land was ultimately defeated pursuant to its own inherent defeasibility and was not such as to engage Article 1 of the Protocol. It would be an unwarranted extension of the scope of Article 1 to permit a person in the applicants' position to argue that their rights were engaged since this would involve an attempt to convert a defeasible property right into an indefeasible one: this would offend against the clear principle that Article 1 protected existing rights and did not entitle a person to acquire new property rights.

36. The Government continued that, even if Article 1 of Protocol No. 1 was engaged, it had not been violated. They first underlined that the interference with the applicant companies' peaceful enjoyment of the land was not encouraged or discouraged by the State – it resulted from the Grahams' action and the applicant companies' inaction. The applicant companies' attempt to end the interference was met with a defence based on the 1980 Act, and the operation of the Act was a limitation of the applicant companies' rights of access to court, not an interference with their property rights. The present case should therefore be considered in the context of Article 6 of the Convention, rather than Article 1 of Protocol No. 1.

37. In any event, the Government further submitted that as the interference with the applicant companies' peaceful enjoyment of their

possessions was the result of the Grahams' actions, and not the State's, there could be no question of a breach of primary, negative obligations by the State. At most, the State's positive obligations were at issue. However, the State was not required to protect a professional property developer from the entirely avoidable consequences of his failing to enter into contractual arrangements (in this case, for example, a discontinuous series of grazing agreements with the Grahams).

38. Assuming Article 1 of Protocol No. 1 to be engaged, the Government submitted that broadly the same test should be applied for the compatibility with the Convention of limitation periods under that provision as under Article 6. In the application of such a test, the Government contended that the limitations pursued a legitimate objective, namely, the public interest in preventing stale claims being brought before the courts, and in ensuring that the reality of unopposed occupation of land and its legal ownership coincided. The Government further claimed that a wide margin of appreciation was allowed to the State in determining the proportionality of a measure, and in that context they noted that: at twelve years, the limitation period was long; the applicant companies could have brought an action against the Grahams at any time during that period; the limitation period would have been stopped if the applicant companies had obtained a written acknowledgement of their ownership from the Grahams; the applicant companies had failed to respond to correspondence from the Grahams and had failed to take any steps whatever to assert their ownership for well over 12 years, and the applicant companies must have been aware of the general effect of section 15 of the 1980 Act. The Government also noted that a substantial amount of time and study had been devoted to achieving the right balance in matters of limitation periods, and the mere fact that the 2002 Act modified the position did not render the previous legislation incompatible with Article 1 of Protocol No. 1. As to the relevance of compensation, the Government repeated that they had not benefited from the operation of the law on limitation periods in the present case, adding that even where an interference involved the complete loss of a person's economic interest in an asset for the benefit of the State, an absence of compensation might still be compatible with Article 1 (*Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, Series A no. 306-B, §§ 66-74).

39. Finally, the Government noted that title could be obtained by adverse possession in a number of other jurisdictions, and that in no case was compensation paid to the displaced former owner. They referred specifically to the Northern Irish, Scottish, Irish, Hungarian, Polish, Swedish, Dutch, Spanish, German and French jurisdictions.

40. The applicant companies contended that Article 1 of Protocol No. 1 clearly applied to the present case. They underlined that the cumulative effect of the Limitation Act 1980 and the Land Registration Act 1925 was to

extinguish the title of the owner of the land in favour of the person who had established adverse possession: the legislation did not merely limit the right of access to court. As to the Government's contention that the applicant companies held the land subject to the operation of the Limitation Acts, the applicant companies did not accept that a State should be able to apply a law which provided for the taking of property and handing it over to another, free from the fair balance test of Article 1 of Protocol No. 1, simply because the law was in existence when the property was acquired.

41. The applicant companies did not accept that their inaction was responsible for the taking of the land: the land was taken by operation of the 1980 Act and the 1925 Act. The courts' decisions applying those Acts constituted the State's interference with the applicant companies' enjoyment of their possessions, and that interference was in breach of the negative obligation under Article 1 of Protocol No. 1. They referred to comments made by judges in the case and comments of the Law Commission and the Land Registry to the effect that the law should be changed. In addition, the applicant companies considered that the objectives regularly given for the limitation legislation were not satisfactory. They argued that where land was registered, there was no uncertainty of ownership and no justification for depriving somebody of his title simply because he had not objected to a third person using his land. They saw no public benefit in transferring land to persons in adverse possession in circumstances such as the present.

B. The Court's assessment

1. General principles

42. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, *Bruncrona v. Finland*, no. 41673/98, § 65, 16 November 2004) and must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, *Beyeler v. Italy* [GC], no. 33202/96, §§ 108-14, ECHR 2000-I).

43. The notion of "public interest" in the second sentence of the first paragraph is necessarily extensive. In particular the decision to enact property laws will commonly involve consideration of political, economic and social issues. The taking of property in pursuance of legitimate social, economic or other policies may be in the public interest even if the community at large has no direct use or enjoyment of the property.

44. The national authorities are in principle better placed than the international judge to appreciate what is in "the public interest". The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is in the public interest unless that judgment is manifestly without foundation.

45. The possible existence of alternative solutions does not in itself render the contested legislation unjustified. Provided that the legislature remains within the bounds of its margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislature's discretion should have been exercised in another way (*James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 51).

46. An interference with the peaceful enjoyment of possessions must nevertheless strike a "fair balance" between the demands of the public or general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions or controlling their use. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance, and notably, whether it does not impose a disproportionate burden on the applicant (see *Former King of Greece and Others*, [GC], no. 25701/94, § 89, ECHR 2000-XII).

47. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. This provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II). A deprivation of property without compensation can, in certain circumstances, be compatible with Article 1 (*Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-..., § 117). Where agricultural property is bought subject to the conditions of

the general law, and the purchaser is subsequently obliged to re-sell the property at a substantially lower price, the Court will consider the lawfulness and purpose of the deprivation, bearing in mind the State's margin of appreciation (*Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, §§ 44-55).

48. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the proceedings at issue must also afford the individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see, among other authorities, *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

2. The applicability of Article 1 of Protocol No. 1 in the present case

49. The Court notes that the applicant companies were owners of the freehold of the land in question and were registered in the Land Register with absolute title until, by operation of the 1925 and 1980 Acts, they lost that title in consequence of the adverse possession of the land by the Grahams. In contending that the loss of title did not engage the provisions of Article 1 of the Protocol, the Government argue that when the applicants acquired the land they did so subject to the then existing law, according to which their rights were defeasible in the event of 12 years' adverse possession by a trespasser. While accepting that where, as in the case of *James and Others*, a Contracting State introduces legislation which compulsorily transfers property from one individual to another, such legislation is capable of giving rise to an interference with the former owner's property rights under Article 1, the Government argue that the position is different where, as in the present case, the relevant law exists at the time the property is acquired and where the operation of the law is to be seen as an incident of the property right at the time of its acquisition.

50. The Court cannot accept the Government's argument. As registered freeholders, the applicants' title to the land was absolute and not subject to any restriction, qualification or limitation. Their property rights were in this respect quite different from those of the holders of a lease, licence or other defeasible or limited property interest which was liable to expire by the effluxion of time and to cease to exist as such. It was the operation of the provisions of the 1925 and 1980 Acts which brought to an end of the applicants' title and not any inherent defect or limitation in that title.

51. The Court does not share the Government's view that the operation of the legislation is to be regarded as an incident of, or limitation on, the applicants' property right at the time of its acquisition, such that Article 1 ceased to be engaged when the relevant provisions took effect and the property right was lost after 12 years of adverse possession. It is true that

the relevant provisions of the legislation existed at the time the property was acquired by the applicants and that the consequences for the applicants' title to the land of 12 years adverse possession were known. However, Article 1 does not cease to be engaged merely because a person acquires property subject to the provisions of the general law, the effect of which is in certain specified events to bring the property right to an end, and because those events have in fact occurred. Whether it does so will depend on whether the law in question is properly to be seen as qualifying or limiting the property right at the moment of acquisition or, whether it is rather to be seen as depriving the owner of an existing right at the point when the events occur and the law takes effect. It is only in the former case that Article 1 may be held to have no application.

52. The Court finds that, in the present case, the provisions of the 1925 and 1980 Acts cannot be regarded as limiting or qualifying the freehold property right of the applicants at the moment of their acquisition. In this respect, the provisions were significantly different from those with which the Commission was concerned in the decisions relied on by the Government (*J.S. and Others v. the Netherlands*, no. 14561/89, Commission decision of 7 September 1995; *Gudmundsson v. Iceland*, no. 23285/94, Commission decision of 17 January 1996, *Zacher v. Germany*, nos. 27026/95 and 30032/96, Commission decisions of 4 September 1996), each of which related to the grant of licences which were from the outset subject to conditions imposed by law which were either never fulfilled or which ceased to be complied with. The provisions are also different from those examined by the House of Lords in Wilson v. The First County Trust Ltd. [2003] UKHL 40 – also invoked by the Government - in which the majority held that the relevant legislation regulating the enforceability of loan agreements "bit" at the moment the transaction was concluded and that the lender accordingly had no right to enforce repayment of the loan of which he could be deprived under Article 1. By contrast, the 1925 and 1980 Acts are in the view of the Court to be seen as "biting" on the applicants' property rights only at the point at which the Grahams had completed 12 years' adverse possession of the applicants' land and not as delimiting the right at the moment of its acquisition. Accordingly, the Court rejects the Government's argument that, on this ground, Article 1 was not engaged in the present case. Since the applicants' rights cannot therefore be regarded as defeasible rights at the moment of acquisition, the Court cannot accept the Government's further submission that, to hold Article 1 to be applicable would offend against the clear principle that the Article protects existing rights only and does not entitle a person to acquire new property rights.

3. The alleged interference with the applicants' Article 1 rights

53. The Government further contend that, even if Article 1 was in principle applicable, there was no interference with the applicants' property

rights or none for which the State can be held responsible. It is argued that the operation of the 1980 Act is to be seen as imposing a limitation on the applicants' rights of access to court, rather than an interference with their property rights and that the present case should be considered in the context of Article 6 of the Convention rather than Article 1 of the Protocol. It is further argued that, as any interference with the applicant companies' peaceful enjoyment of their possessions was the result of the Grahams' actions and not the State's, there could be no question of a breach of the State's negative obligations under the Protocol. At most the State's positive obligations were engaged and these obligations could not extend to protecting the applicants against the avoidable consequences of their failure to take steps within the 12 years to bring the Grahams' adverse possession to an end.

54. While it is true that the application of limitation periods to bar causes of action has traditionally been examined under Article 6 of the Convention and in the context of the parties' right to effective access to court (see, for example, *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, Reports of Judgments and Decisions 1996-IV), there is no reason why the application of limitation periods should not in an appropriate case give rise to issues under other Convention Articles and nothing in principle to preclude the examination of a claim under Article 1 of the Protocol where the legislation in question has an impact on the property rights of an applicant. In the present case, the Court finds that application of section 15 of the 1980 Act, when read with section 75 of the 1925 Act, clearly had such an impact on the applicants' property rights, the effect of the provisions being to deprive the applicants of their beneficial interest in the land, which was thenceforth to be held on trust for the Grahams.

55. The Government rely on the judgment of Mummery L.J in the Court of Appeal in the present case to the effect that the extinction of the applicants' title (under section 75) was simply a logical and pragmatic consequence of the barring of an owner's right to bring an action (under section 15). However, even if the provisions of section 75 are properly to be so regarded as a matter of domestic law - a point which the Court notes was disputed in the judgment of Deputy Judge Strauss in Beaulane Properties Ltd. v. Palmer -, it is clear that the relevant provisions did more than merely preclude the applicants from invoking the assistance of the courts to recover possession of the property concerned: the combined effect of the provisions was both to deprive the applicants of their substantive property rights and to preclude them from lawfully repossessing the land, the beneficial title to which they had lost.

56. As to the Government's argument that the interference with the applicants' peaceful enjoyment of the disputed land was brought about by the action of one party and the inaction of the other and that the State had no direct responsibility for such interference, the Court accepts that it was the

Grahams' adverse possession of the land for 12 years which directly led to the applicants' loss of their title. However, the Court also observes that, but for the provisions of the 1925 and 1980 Acts, the adverse possession of the land by the Grahams would have had no effect on the applicants' title or on their ability to repossess the land at any stage. It was the legislative provisions alone which deprived the applicants of their title and transferred the beneficial ownership to the Grahams and which thereby engaged the responsibility of the State under Article 1 of the Protocol.

57. The Court accordingly finds that Article 1 of Protocol No. 1 was engaged and that the operation of the relevant provisions of the Limitation Act 1980 and the Land Transfer Act 1925 in the present case constituted an interference by the State with the applicant companies' rights under that Article.

4. The nature of the interference

58. The Government contended that the interference was in the nature of a control of use, rather than a deprivation. They considered that the State has done no more than control the circumstances in which landowners might have recourse to the courts in recovering possession and that the transfer of paper title under section 75 was merely a measure of enforcing that control.

59. In this regard reliance was placed on the *AGOSI* case (*AGOSI v. the United Kingdom*, judgment of 24 October 1986, Series A no. 108) in which the forfeiture of the *Krugerrands* was treated by the Court as a means of enforcing the prohibition on the importation of the coins and was examined under the second paragraph of Article 1 rather than the second sentence. It was argued that the present case was a fortiori since it did not even involve any form of expropriation by the State. Reference was further made to the Court's *Stran Greek* judgment (*Stran Greek Refineries and Stratis Andreadis* v. Greece, judgment of 9 December 1994, Series A no. 301-B) as one in which the court treated the case as involving an interference with the peaceful enjoyment of possessions under the first sentence of Article 1 rather than as a deprivation of possessions under the second sentence of the Article.

60. The Court observes that the relevant provisions of the 1925 and 1980 Acts do not involve the control of the use to which land is put and are in this respect different in aim and effect from the provisions of, for instance, planning legislation. They are instead concerned with the entitlement to land where there has been a period of adverse possession and their cumulative effect, where the statutory requirements are met, is to transfer beneficial ownership of the land from one individual to another. In this respect the contested measures bear a closer similarity to those in the *James and Others* case (cited above), in which property was transferred from one individual to another in furtherance of general social policy, than to those in the case of

AGOSI, where the forfeiture of the coins was found by the Court to be a constituent element of the procedure for control of the illegal import of coins, or those in the *Stran Greek* case which were designed to prevent the enforcement of a final arbitration award.

61. While, as the Government emphasise, the measures in question did not involve any form of expropriation by the State, the Court notes that the same was true in the case of *James and Others* in which the Court expressly rejected the applicants' argument that the transfer of property from one person to another for the latter's private benefit alone could never be "in the public interest" within the meaning of the second sentence. Indeed, the very fact that the contested measures involved such a transfer of property rather than a taking of the property by the State in furtherance of a system of control would appear to undermine, rather than reinforce, an argument that the case is an example of control of use falling within the second paragraph of Article 1.

62. The Court accordingly considers that the applicants were "deprived of [their] possessions" by the contested legislation and that the case falls to be examined under the second sentence of Article 1. It recalls, however, that the three rules within that Article are not distinct or watertight in the sense of being unconnected and that the principles governing the question of justification are substantially the same, involving as they do the legitimacy of the aim of any interference, as well as its proportionality and the preservation of a fair balance.

5. Legitimate aim

63. There is no suggestion in the present case that limitation periods are incompatible with the Convention, in general or with specific reference to actions to recover land. As the Court noted in Stubbings (*Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, Reports of Judgments and Decisions 1996-IV, §51):

> "Limitation periods in personal injury cases are a common feature of the domestic legal systems of the Contracting States. They serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time."

64. However, the Court reiterates that the present case is concerned not merely with the effect of the provisions of the Limitation Act 1980 but also with those of the Land Registration Act 1925, which brought about the deprivation of the applicants' title to the land. As the Law Commission's Consultative Document observed, where adverse possession not only bars claims to recover possession of property but transfers title to the property,

such measures can only be justified by factors over and above those which explain the law on limitation.

65. The Government argue that the contested provisions governing the adverse possession of land serve two public interests – firstly, as in the *Stubbings* case, they prevent uncertainty and injustice arising from stale claims; secondly, they ensure that the reality of unopposed occupation of land and its legal ownership coincide. These aims echo two of the public interests identified by the Law Commission in its Consultative Document. While the Court accepts the undoubted relevance and importance of these aims in the case of unregistered land, their importance in the case of registered land is more questionable. As Neuberger J. explained in his judgment in the present case, with one or two limited exceptions, the uncertainties which sometimes arise in relation to the ownership of land are very unlikely to arise in the context of a system of land ownership involving compulsory registration, where the owner of the land is readily identifiable by inspecting the proprietorship register of the relevant title at the Land Register. Similar statements appear in the Report of the Law Commission on registered land and in the judgment of Lord Bingham in the House of Lords, who observed that, while in the days before registration became the norm a result whereby an adverse possessor of land was rewarded by obtaining title could be justified as avoiding protracted uncertainty as to where the title to land lay, where land was registered it was difficult to see any justification for a legal rule which impelled such an unjust result.

66. The Government pray in aid the law and practice in other jurisdictions as confirming that the taking of property by adverse possession is a feature common to many legal systems. However, the Court considers that the comparative material must be viewed with some caution, it being unclear whether in all jurisdictions referred to the same system of compulsory registration of land is in place. In this regard, it is of relevance to note that in the Consultative Document of the Law Commission and Land Registry it is recorded that many common law jurisdictions which had systems of title registration had either abolished the doctrine of adverse possession completely or had substantially restricted its effects.

67. The Court, however, notes that despite the major changes to the law of adverse possession made by the Act of 2002 in the case of registered land, the law itself was not abolished. In these circumstances and having regard to the margin of appreciation afforded to the national authorities, the Court cannot accept the applicants' argument that the law of adverse possession in England and Wales served no continuing public interest so far as registered land was concerned.

Whether in the case of registered land this public interest was of sufficient weight for the Court to be able to find the interference proportionate remains to be determined.

6. Proportionality

68. The Government, like Mummery L.J in the Court of Appeal, place reliance on two factors in particular for contending that the system as it operated in the applicants' case was proportionate and struck a fair balance – the reasonableness of the period of 12 years for bringing proceedings and the fact that it was neither impossible nor difficult for a landowner to prevent a squatter acquiring title by adverse possession: a mere grant to the Grahams of authority to use the land subject to an acknowledgement of the applicants' ownership would have been sufficient to stop time running.

69. The Court accepts that the limitation period of 12 years was relatively long and that the law of adverse possession was well-established and had not altered during the period of the applicants' ownership of the land. It is further accepted that it is a relevant consideration that, in order to avoid losing their title, the applicants had to do no more than regularise the Grahams' occupation of the land or issue proceedings for to recover its possession within the twelve year period.

70. The question nevertheless remains whether, even having regard to the lack of care and inadvertence on the part of the applicants and their advisers, the deprivation of their title to the registered land and the transfer of beneficial ownership to those in unauthorised possession struck a fair balance with any legitimate public interest served.

71. The Court notes in the first place that, not only were the applicants deprived of their property but they received no compensation for the loss. The result for the applicants was thus one of exceptional severity: as Neuberger J. expressed the point, the result was

> "...draconian for the owner and a windfall for the squatter that just because the owner has taken no steps to evict the squatter for 12 years the owner should lose 25 hectares of land to the squatter with no compensation whatsoever."

In the House of Lords Lord Bingham similarly observed that

> "....where land is registered it is difficult to see any justification for a legal rule which compels such an apparently unjust result, and even harder to see why the party gaining title should not be required to pay some compensation at least to the party losing it....."

72. The Court reiterates that the taking of property in the public interest without payment of compensation reasonably related to its value is justified only in exceptional circumstances. As established by the *James and Others* case, this principle is not confined to the taking of property for public purposes but is equally applicable to the compulsory transfer of property from one individual to another. The Government argue that this was one of the exceptional cases where compensation was not called for, citing in support the case of *Gasus* (*Gasus Dosier-und Fördertechnik GmbH v. the Netherlands*, judgment of 23 February 1995, Series A no. 306-B). However, not only was the *Gasus* case analysed by the Court as a case of control of

use rather than deprivation of possessions, but the Court finds no sufficient similarity between the circumstances of the two cases as would justify treating the present case as an exception to the general principle.

73. The lack of compensation in the present case must also be viewed in the light of the lack of adequate procedural protection for the right of property within the legal system in force at the relevant time. In particular, although it was - as shown by facts of the present case - open to the dispossessed owner of the land to argue after the expiry of the twelve year that the land had not been adversely possessed, during the currency of that period no form of notification whatever was required to be given to the owner, which might have alerted him to the risk of losing his title. As Lord Hope observed in the House of Lords:

> "....the unfairness in the old regime which this case has demonstrated lies in the lack of procedural safeguards against oversight or inadvertence on the part of the registered proprietor".

74. The Government argue that the State has no duty to protect a person against his own negligence or inadvertence. The Court would, however, observe that such inadvertence would have had no adverse consequences for the applicants but for the contested statutory provisions. More importantly, it is clear that Parliament itself recognised the deficiencies in the procedural protection of landowners under the then current system by enacting the Act of 2002. The new Act not only puts the burden on a squatter to give formal notice of his wish to apply to be registered as the proprietor after 10 years adverse possession but requires special reasons to be adduced to entitle him to acquire the property where the legal owner opposes the application. The mere fact that a legal system is changed to improve the protection provided under the Convention to an individual does not necessarily mean that the previous system was inconsistent with the Convention. However, in judging the proportionality of the system as applied in the present case, the Court attaches particular weight to the changes made in that system, and to the view of the Law Commission and the Land Registry as to the lack of cogent reasons to justify the system of adverse possession as it applied in the case of registered land.

75. In these circumstances, the Court concludes that the application of the provisions of the 1925 and 1980 Acts to deprive the applicant companies of their title to the registered land imposed on them an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants' right to the peaceful enjoyment of their possessions on the other.

76. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

78. The applicants claimed compensation for the loss caused of their land. By reference to a series of valuation reports, they assessed the pecuniary loss as being at least £10 million.

79. The Government contested the claim. They submitted that, even if Article 1 of Protocol no. 1 had been violated, it was neither necessary nor equitable to require the Government to use public funds to indemnify a corporate property developer against the consequences of its own incompetence. Using a separate set of valuations and discounting the figures to reflect the applicant companies' conduct, they consider that an appropriate figure for the applicant companies' loss would be – depending on the correct valuation date - £380,725 (1996), £1,225,000 (2002) or £1,151,500 (2004).

80. The applicant companies sought reimbursement of their costs in bringing the proceedings before the Court (£191,408.84), their costs in the domestic courts (£383,479.03) and the costs which they were ordered to pay to the Grahams in the domestic proceedings (£424,000).

81. The Government again contested the claim, considering that it would not be equitable to make any award for costs in the present case. The Government considered that if any award should be made, then the amounts claimed by the applicant companies were excessive and in part exorbitant. They suggest that any amount awarded should be significantly lower than the amounts put forward by the applicant companies.

82. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision and reserves it, due regard being had to the possibility that an agreement will be reached between the respondent State and the applicant companies (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT

1. *Holds* by four votes to three that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

2. *Holds* unanimously that the question of the application of Article 41 is not ready for decision and;

accordingly,

(a) *reserves* the said question;

(b) *invites* the Government and the applicants to submit, within six months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

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

Done in English, and notified in writing on 15 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Messrs Maruste, Garlicki and Borrego Borrego is annexed to this judgment.

M.P.
M.O'B.

JOINT DISSENTING OPINION OF JUDGES MARUSTE, GARLICKI AND BORREGO BORREGO

1. We consider that the applicant companies have not had to bear an excessive or individual burden. They lost their land as a result of the foreseeable operation of legislation on limitation of actions which had recently been consolidated by the legislator, and the applicant companies could have stopped time running against them by taking minimal steps to look after their interests. We therefore take the view that the deprivation of possessions was compatible with Article 1 of Protocol No. 1, even in the absence of compensation.

2. The real "fault" in this case, if there has been any, lies with the applicant companies, rather than the Government. It has to be born in mind that the applicant company was not a private individual or an ordinary company with, one could assume, limited knowledge on relevant real estate legislation. They were specialised professional real estate developers and such a company had or should have had full knowledge about relevant legislation and the duties involved. They should have had full access to the legal advice if need be and can not claim to be ignorant as to the adverse effects of the limitation legislation. It should have been known to the applicants from the very beginning that their property right was subject to restrictions, qualifications or limitations imposed by the pre-existing legal requirements of the Limitation Act. The Government have done no more than continue to operate a mechanism which, at the end of a relatively long limitation period, adjusts land ownership to reflect the fact that an action for adverse possession is time-barred.

Possession (ownership) carries not only rights but also and always some duties. The purpose of the relevant legislation was to behove a landowner to be vigilant to protect the possession and not to "sleep on his or her rights", (as, for example, in *Bahia Nova S.A. v. Spain*, (no. 50924/99, Decision of 12 December 2000), in which the applicant company's failure to act over a substantial period substantially reduced its entitlement to compensation). The duty in this particular case - to do no more than begin an action for repossession within 12 years - cannot be regarded as excessive or unreasonable.

3. The Convention is intended to guarantee a minimum standard of human rights protection. It is open to the domestic authorities to provide a higher standard. The Court should not be unduly influenced by developments after the facts of the case. At the same time it leaves to the member states a margin of appreciation in determining the ways of implementation of those standards. This margin is wider in respect of the right protected under the Article 1 of Protocol No. 1. We accept that the Land Registration Act 2002 provided additional procedural protection for negligent landowners, but that does not mean that the previous position was

in violation of the Convention. We note that the United Kingdom provisions on adverse possession appear never to have been challenged before the former Commission or the Court until the present case, and we fear that the majority have been swayed by the legislative changes and judicial comments, rather than trying to assess what would have been the position if, for example, the 2002 had not been passed.

4. In accordance with the general practice, we voted with the majority on the question of Article 41. The Article 41 issues, which have been reserved, underline the problems inherent in a finding of a violation of Article 1 of Protocol No. 1 in this case: If the Government are responsible for the deprivation, what is the measure of their responsibility? In any event the loss of the land was not a deprivation of possessions or a confiscatory measure for which the payment of compensation would be appropriate. A finding that the companies were not responsible at all for the loss of their land - and that they should be compensated to the full value of the land at the taxpayer’s expense - would run contrary to most people’s notions of basic justice.