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

GRAND CHAMBER

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

(Application no. 44302/02)

JUDGMENT

STRASBOURG

30 August 2007

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

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

Jean-Paul Costa, *President*,
Christos Rozakis,
Nicolas Bratza,
Boštjan M. Zupančič,
Peer Lorenzen,
Loukis Loucaides,
Ireneu Cabral Barreto,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
András Baka,
Anatoly Kovler,
Vladimiro Zagrebelsky,
Antonella Mularoni,
Alvina Gyulumyan,
Renate Jaeger,
Ján Šikuta,
Ineta Ziemele, *judges*,
and Michael O'Boyle, *Registrar*,

Having deliberated in private on 8 November 2006 and on 20 June 2007,

Delivers the following judgment, which was adopted on the last-mentioned 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 applicant companies"), on 17 December 2002.

2. The applicant companies 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 K. Jones, of the Foreign and Commonwealth Office.

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

4. The application was allocated to the Fourth Section 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 the Chamber, following a hearing on admissibility and the merits (Rule 54 § 3), declared the application admissible.

On 15 November 2005 a Chamber of that Section composed of Matti Pellonpää, President, Nicolas Bratza, Viera Strážnická, Rait Maruste, Stanislav Pavlovschi, Lech Garlicki and Javier Borrego Borrego, judges, and Michael O'Boyle, Section Registrar, delivered a judgment in which it held by four votes to three that there had been a violation of Article 1 of Protocol No. 1 and, unanimously, that the question of the application of Article 41 was not ready for decision. A joint dissenting opinion of Judges Maruste, Garlicki and Borrego Borrego was appended to the judgment.

6. On 2 February 2006 the Government requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. A panel of the Grand Chamber granted that request on 12 April 2006.

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. On 19 January 2007 Luzius Wildhaber's term as President of the Court came to an end. Jean-Paul Costa succeeded him in that capacity and took over the presidency of the Grand Chamber in the present case (Rule 9 § 2).

8. The Irish Government submitted comments on the case, leave having been granted by the President of the Grand Chamber pursuant to Rule 44 § 2.

9. The applicant companies and the Government each filed observations on the merits (Rule 59 § 1). A hearing took place in public in the Human Rights Building, Strasbourg, on 8 November 2006 (Rule 59 § 3). Erik Fribergh, the Registrar of the Court, took part in the hearing on 8 November 2006. Thereafter Michael O'Boyle, Deputy Registrar, took over as registrar in the case.

There appeared before the Court:

(a) for the Government
Ms K. JONES, *Agent*,
Mr J. CROW QC, *Counsel*,
Mr J. HODGES, Department for Constitutional Affairs,
Mr P. HUGHES, Her Majesty's Courts Services, DCA, *Advisers*;

(b) *for the applicant companies*

Mr D. PANNICK QC,	*Counsel*,
Mr P. LOWE,	*Solicitor*,
Ms V. WRIGHT,	*Trainee Solicitor*,
Mr and Mrs G. PYE,	*Applicants*.

The Court heard addresses by Mr Pannick and Mr Crow and their answers to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The second applicant company is the registered owner of a plot of 23 ha of agricultural land in Berkshire. The first applicant company acquired the land by a series of transactions between 1975 and 1977 and owned it until April 1986, when it transferred the land to the second applicant company subject to an option to repurchase. 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 applicant companies wrote to the Grahams noting that the grazing agreement was about to expire and requiring them to vacate the land. In January 1984 the applicant companies 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.

11. 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.

12. In June 1984 an agreement was reached whereby the applicant companies agreed to sell to the Grahams the standing crop of grass on the land for 1,100 pounds sterling (GBP). The cut was completed by 31 August 1984. In December 1984 an inquiry was made of the applicant companies 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 applicant companies and thereafter the Grahams made no further attempt to contact the applicant companies. From

September 1984 onwards until 1999 the Grahams continued to use the whole of the disputed land for farming without the permission of the applicant companies.

13. 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.

14. 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.

15. 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 twelve 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 twelve-year period, the registered proprietor was deemed to hold the land in trust for the squatter.

16. Judgment was given in favour of the Grahams on 4 February 2000 ([2000] Ch 676). Mr Justice Neuberger held that since the Grahams had 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 thirty-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 twelve years should be deprived of the land was in his view "illogical and disproportionate".

17. 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 applicant companies' 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.

18. Lord Justice Mummery, giving the judgment of the court, held that Article 1 of Protocol No. 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 twelve years or more after being dispossessed by another. The extinction of the applicant companies' 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 LJ 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 twelve years being reasonable and not imposing an excessively difficult burden on the landowner.

19. 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 Protocol No. 1.

20. 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. Concluding, Lord Browne-Wilkinson held as follows:

> "... Despite Pye's notification to quit the land in December 1983, its peremptory refusal of a further grazing licence in 1984 and the totally ignored later requests for a grazing licence, after 31 December 1983 the Grahams stayed in occupation of the disputed land using it for what purposes they thought fit. Some of those purposes (i.e., the grazing) would have fallen within a hypothetical grazing agreement. But the rest are only consistent with an intention, verified by Mr Michael Graham, to use the land as they thought best. That approach was adopted from the outset. In my judgment, when the Grahams remained in factual possession of the fully enclosed land after the expiry of the mowing licence they manifestly intended to assert their possession against Pye.

> ... Before your Lordships' House, it was conceded that the Human Rights Act [incorporating the European Convention on Human Rights] did not have a retrospective effect. But Pye submitted that, even under the common-law principles of construction applicable before the Human Rights Act came into effect, the court should seek to apply the law so as to make it consistent with the [Convention]. Any such old principle of construction only applied where there was an ambiguity in the language of a statute. No such ambiguity in the Act of 1980 was demonstrated to your Lordships."

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

> "The Grahams have acted honourably throughout. They 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 Others v. Graham and Another* [2002] 3 All ER 865, at 867)

22. As noted above, the question whether the result was incompatible with the applicant companies' rights under Article 1 of Protocol No. 1 was not pursued before the House of Lords. 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 might 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 Land Registration Act 2002. Its effect will be to make it much harder for a squatter who is in possession of registered land to obtain a title to it 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."

23. The value of the land in issue is disputed between the parties. The applicant companies put their pecuniary loss at over GBP 10 million. The

Government put the value of the land in 1996 (when the twelve-year limitation period expired) at GBP 785,000, and in July 2002 (when the House of Lords judgment was delivered) at GBP 2.5 million.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. At the relevant time, section 15 of the Limitation Act 1980, a consolidating Act, provided:

> "(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."

25. Paragraph 1 of Schedule 1 provided:

> "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."

26. The same limitation provisions therefore applied to both registered and unregistered land. In the case of unregistered land, section 17 of the 1980 Act provided that, on the expiration of the limitation period regulating the recovery of land, the title of the paper owner was extinguished. In the case of registered land, section 75(1) of the Land Registration Act 1925 provided that on the expiry of the limitation period the title was not extinguished but the registered proprietor was deemed to hold the land thereafter in trust for the squatter.

27. *Halsbury's Laws of England* (Fourth Edition, Reissue 1998) sets out the law in the following terms:

> "258. When the owner of land has been out of possession, and a stranger has been in possession, for a period sufficient to bar the owner's right to re-enter or to recover possession by action, the owner's title is extinguished, and the stranger acquires a title which is good against all the world, including the former owner.
>
> The Limitation Act 1980 operates negatively to bar the right and extinguish the title of the true owner, and does not effect a transfer of his estate to the stranger; the new title depends on the principle that possession gives title, coupled with the extinction of the rights of the former owner, and is subject to any easements [etc.] which remain unextinguished."

28. 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.

29. A Law Commission Consultation Paper on Limitation of Actions of 1998 (Consultation Paper No. 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.

30. A separate Law Commission Consultative Document on land registration in 1998 (prepared with the Land Registry; Law Com No. 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, in part at least, in terms of the policy of limitation statutes generally, namely to protect defendants from stale claims and to encourage plaintiffs 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 a 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. In this context it should be noted that a landowner may be barred even where he or she is quite blameless. As we have explained above, adverse possession can take place without it being readily detectable. In any event, this particular justification has much greater force in relation to unregistered land than it does for land with registered title. Unregistered title ultimately depends upon possession. It therefore behoves a landowner to be vigilant to protect that possession and not to sleep on his or her rights. ... [w]here 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.

31. 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.

32. A Report on Limitation of Actions (Law Com No. 270) and one on registered land (Law Com No. 271) followed the Consultation Papers, and were published in July 2001.

33. 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 No. 254 were accepted, the proposal would relate only to interests in unregistered land (and unregistrable interests in registered land[1]).

34. As a result of the various criticisms, including those made by a number of the judges in the present case and the Report on registered land (Law Com No. 271), the Land Registration Act 2002 made a number of changes to the law as it related to registered land. It provided that adverse possession, for however long, would not of itself bar the owner's title to a registered estate. A squatter was entitled to apply to be registered as proprietor after ten years, and would be so registered if application was not opposed. If the application was opposed, it would be refused. If the application was refused but no steps were taken to evict the squatter or otherwise regulate the position, he was entitled to apply again to be registered as proprietor, and would be so registered whether or not the application was opposed. The 2002 Act came into force on 13 October 2002.

35. 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 twelve years after the

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.

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 reinterpreting 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

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

36. The applicant companies submitted that the taking away of ownership of their land because of twelve years' adverse possession upset the fair balance required by Article 1 of Protocol No. 1 and was a disproportionate interference with their property rights in violation of that Article. Article 1 of Protocol No. 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The Chamber judgment

37. The Chamber considered that, as the applicant companies had lost beneficial title to the land by the operation of the Land Registration Act 1925 ("the 1925 Act") and the Limitation Act 1980 ("the 1980 Act"), Article 1 of Protocol No. 1 was applicable. In particular, the pre-existing rules on adverse possession could not be said to be an incident of the applicant companies' 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 twelve years' adverse possession. Further, the mere fact that limitation periods were generally considered under Article 6 of the Convention did not prevent the Court from considering a

case from the angle of Article 1 of Protocol No. 1. The Chamber found that Article 1 of Protocol No. 1 was engaged and that the operation of the relevant provisions of the 1925 and 1980 Acts gave rise to an interference by the State with the applicant companies' rights under the Article.

38. Noting the Court's judgment in *James and Others v. the United Kingdom* (21 February 1986, Series A no. 98), the Chamber was of the view that the applicant companies had been deprived of their possessions by the contested legislation, and that the case fell to be examined under the second sentence of Article 1. Whilst accepting that in the case of unregistered land the law of adverse possession served two important public interests – namely the prevention of uncertainty and injustice arising from stale claims, and ensuring that the reality of unopposed occupation of land and its legal ownership coincided – the Chamber considered that the importance of these aims was more questionable in the case of registered land where the ownership of the land was readily identifiable by inspecting the proprietorship register of the relevant title at the Land Registry. However, the Chamber noted that, despite the major changes to the law of adverse possession made by the Land Registration Act 2002 ("the 2002 Act"), in the case of registered land the law itself had not been abolished, and it rejected the applicant companies' argument that it served no continuing public interest so far as registered land was concerned. The Government had also referred to the law and practice in other jurisdictions.

39. As to the proportionality of the provisions in issue, the Chamber accepted that the limitation period of twelve years was relatively long, that the law of adverse possession was well established and had not changed during the applicant companies' period of ownership, and that limited steps taken by the applicant companies would have avoided the loss of title. The Chamber noted criticism of the state of the law by the domestic courts and the Law Commission, and further noted that the result for the applicant companies was one of exceptional severity in that not only were they deprived of their property but they received no compensation for their loss. The lack of compensation had to be viewed in the light of the lack of procedural protection for the right of property within the legal system in force at the relevant time. In this respect the Chamber attached weight to the fact that since the present case the law had been amended to provide for notice to be given to a paper owner before title is transferred, thereby giving the paper owner an opportunity to stop the running of the limitation period. The Chamber saw the changes in the law as an indication that Parliament had recognised the deficiencies in the procedural position of registered landowners before the 2002 Act. The Chamber concluded that the fair balance between the public interest and the applicant companies' right to the peaceful enjoyment of their possessions had been upset, such that there had been a violation of Article 1 of Protocol No. 1.

B. The parties' submissions

1. The applicant companies

40. The applicant companies agreed with the Chamber's judgment. They saw three related reasons why the taking of their land, which was then held on trust by them for the squatters, breached the fair-balance principle and thus violated Article 1 of Protocol No. 1. Firstly, they saw no justification for the applicant companies, as owners of the land, to lose their right to ownership of the registered land. Secondly, they saw no justification for depriving them of the land without having to pay any compensation. The result was disproportionate to any legitimate aim as it imposed an excessive burden on the applicant companies and constituted a substantial windfall for the squatters. There were no exceptional circumstances which justified the taking of property without compensation. Thirdly, there was no justification for depriving them of their land when there was no procedural protection providing that the person in adverse possession only acquired title if he or she first stated a claim to which the formal title owner had an opportunity to respond.

41. The applicant companies noted the extensive criticism of the law as it then stood from the first-instance judge in the case, two members of the House of Lords in the case, the recommendations of the Law Commission and the Land Registry and Parliament's amendment of the law, and the criticism of the High Court judge in the case of *Beaulane Properties Ltd v. Palmer* (see paragraph 35 above). They saw no justification for a transfer of registered land at the end of the limitation period without compensation and without proper procedural protection.

42. The applicant companies submitted a summary of the law on adverse possession or equivalent doctrines in various jurisdictions. The summary showed that in most of the countries covered, title was acquired by adverse possession only after substantially more than twelve years, and that in most countries where title could be acquired by adverse possession this could only occur where the occupier was acting in good faith, that is, where he or she honestly believed that a good title to the land had been acquired, for example after the transfer of the defective title.

2. The Government

43. The Government took issue with the Chamber's judgment. They considered, in the first place, that the matter should be determined by reference to Article 6 of the Convention and not Article 1 of Protocol No. 1. Unlike in previous cases, the Government in this case had not appropriated property to its own use, and had not introduced legislation for the involuntary transfer of private property from one person to another in pursuit of a social-policy objective. The only interference with the applicant

companies' land came about through the actions of private individuals, the squatters, who obtained adverse possession in 1983-84. The outcome of the proceedings was dictated by the applicant companies' own inaction. They contended that the application to the present facts of the conventional case-law as to the necessity, in principle, for compensation to be paid in respect of deprivations of property confirmed the logic of analysing the case by reference to Article 6: the purpose of a limitation period is to deprive a claimant, at the end of the relevant time period, of any opportunity of enforcing his rights through the courts. That objective would be frustrated if a limitation provision could only be compatible with the Convention if the claimant was provided with compensation against the very person against whom his claim was barred.

44. For the Government, the Chamber's reference to the need for procedural safeguards was also in error. When a limitation provision was applied in private-interest litigation between private parties, there were no "responsible authorities" to whom a claimant could sensibly make representations "challenging the measures interfering with [his] rights" (see *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV) because there were no public authorities seeking to acquire his property.

45. Under Article 1 of Protocol No. 1, the Government considered that the provision was not engaged, because the applicant companies had acquired the disputed land subject to the risk of losing it pursuant to the provisions of the 1925 and 1980 Acts. That risk had to be viewed as an incident of their property. They pointed out that the second applicant company had acquired the land from the first applicant company in April 1986, at which time the Grahams had been in adverse possession for some one and a half years. The second applicant company therefore took the land subject to an existing risk of losing it to the Grahams.

46. The Government suggested that the Chamber had failed to deal with their argument that the State's obligations under Article 1 of Protocol No. 1 were not engaged. There was no reason to impose a positive obligation on the Government to protect the applicant companies against the consequences of their own inattention.

47. To the objectives of the legislation accepted by the Chamber as legitimate, the Government added a third objective. Land was a limited resource, and it was in the public interest that it should be used, maintained and improved. A finite time-limit for recovery of possession encouraged landowners to make use of their land.

48. In connection with proportionality, the Government were of the view that the Chamber had wrongly taken into account the absence of compensation and questions of procedural protection, and that it had taken insufficient account of many factors which demonstrated that any interference was proportionate: the length of the limitation period, the fact that the applicant companies were entirely free to bring an action for

repossession at any time within the twelve-year period, the availability of a court remedy to determine whether the action was statute-barred, and the degree of fault on the part of the applicant companies.

49. As to the position in other countries, the Government referred to the research in the Law Commission's 1998 Consultation Paper No. 151, and also to further research which they had commissioned. The results of the study indicated substantial differences between the structure of the various legal regimes, particularly between common-law and civil-law jurisdictions, and also between the lengths of the different limitation periods. They concluded that there was no European "norm": limitation periods varied considerably, good faith was irrelevant in some jurisdictions, and other factors, such as place of residence, were sometimes taken into account.

3. The third party

50. The Irish Government gave a description of the law on adverse possession as it applied in Ireland, and saw five areas of public interest which are served by the institution: in quieting titles, that is, the desirability of clarifying title where land, whether registered or unregistered, had remained abandoned and was occupied by another person; in cases of failure to administer estates on intestacy; in pursuance of a policy of using land to advance economic development; in perfecting title in cases of unregistered title; and in dealing with boundary disputes.

51. The Irish Government submitted that ownership of land brings duties as well as rights, and the duty to take some action to maintain possession was not unreasonable. The Court should not be influenced by *post hoc* legislative changes which provided a higher standard of human rights protection. They also referred to the wide margin of appreciation allowed to States in regulating land use and ownership in accordance with social policy, to the antiquity of the doctrine and the familiarity of purchasers and owners of land with it, and concluded that the doctrine did not upset the fair balance between the public interest and the right to the peaceful enjoyment of possessions.

C. The Court's assessment

1. General considerations

52. Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains 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 first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated 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 three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, as a recent authority with further references, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, ECHR 2007-I).

53. In order to be compatible with the general rule set forth in the first sentence of the first paragraph of Article 1, an interference with the right to the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I).

54. The taking of property under the second sentence of the first paragraph of Article 1 without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1. The 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 *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II, again with further references).

55. In respect of interferences which fall under the second paragraph of Article 1 of Protocol No. 1, with its specific reference to "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 ...", there must also exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In this respect, States enjoy 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 *AGOSI v. the United Kingdom*, 24 October 1986, § 52, Series A no. 108).

56. The applicant companies' complaint is directed in essence against the terms of the relevant legislation on limitation of actions and land registration. Whilst the court decisions in the case exemplify the way in which that legislation is applied, the complaint does not relate to the manner of execution of the law by the courts. The Court will therefore direct its attention primarily to the contested legislation itself, although the consequences of the application of the legislation must also be taken into account (see *James and Others*, cited above, § 36).

57. The responsibility of the Government in the present case is therefore not direct responsibility for an executive or legislative act aimed at the

applicant companies, but rather their responsibility for legislation which is activated as a result of the interactions of private individuals: in the same way as the law in *James and Others* was applied (and the Government were responsible for it) because private individuals had requested enfranchisement, in the present case the law was applied to the applicant companies only when the pre-existing conditions for the acquisition of title by adverse possession had been met.

2. Applicability of Article 1 of Protocol No. 1

58. The Court will first turn to the question whether the case should be dealt with under Article 1 of Protocol No. 1, or whether, as the Government contended, it should be considered only under Article 6 of the Convention.

59. In *Stubbings and Others v. the United Kingdom*, the Court dealt with limitation periods under Articles 6, 8 and 14 of the Convention. Under Article 6, the Court found that a non-extendable time-limit of six years from the applicants' eighteenth birthdays did not impair the very essence of the applicants' right of access to a court (22 October 1996, § 52, *Reports of Judgments and Decisions* 1996-IV). The Court also considered the case under Article 8 in the context of the positive obligations inherent in an effective respect for private or family life, finding that overall such protection was afforded (ibid., §§ 60-67).

60. The Court finds nothing in its case-law to suggest that the present case should be dealt with only under Article 6 of the Convention, and indeed, given the different content of the two rights, it would be unusual if the Court were to decline to deal with a complaint under one head solely because it were capable of raising different issues under a separate Article. The Court agrees with the Chamber that there is nothing in principle to preclude the examination of a claim under Article 1 of Protocol No. 1 where the complaint is directed against legislation concerning property rights.

61. Article 1 of Protocol No. 1 protects "possessions", which can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. It does not, however, guarantee the right to acquire property (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). Where there is a dispute as to whether an applicant has a property interest which is eligible for protection under Article 1 of Protocol No. 1, the Court is required to determine the legal position of the applicant (see *Beyeler*, cited above).

62. In the present case, the applicant companies were the beneficial owners of the land in Berkshire, as they were successive registered proprietors. The land was not subject to a right of pre-emption, as in *Beyeler*, but it was subject to the ordinary law of the land, including, by way of example, town and country planning legislation, compulsory-purchase legislation, and the various rules on adverse possession. The applicant

companies' possessions were necessarily limited by the various rules of statute and common law applicable to real estate.

63. It remains the case, however, that the applicant companies lost the beneficial ownership of 23 ha of agricultural land as a result of the operation of the 1925 and 1980 Acts. The Court finds inescapable the Chamber's conclusion that Article 1 of Protocol No. 1 is applicable.

3. The nature of the interference

64. The Court has, on a number of occasions, considered cases in which a loss of ownership of possessions was not categorised as a "deprivation" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. In *AGOSI* and *Air Canada*, the forfeiture of the applicant companies' possessions was considered to amount to a control of use of gold coins and a control of the use of aircraft which had been employed for the import of prohibited drugs respectively (see *AGOSI*, cited above, § 51; *Air Canada v. the United Kingdom*, 5 May 1995, § 34, Series A no. 316-A; see also *C.M. v. France* (dec.), no. 28078/95, ECHR 2001-VII). The applicant company in *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* had sold a concrete-mixer to a third party subject to a retention of title clause. The tax authorities' seizure of the concrete-mixer was considered an exercise of the State's right to "secure the payment of taxes", although the tax debts were not those of the applicant company (23 February 1995, § 59, Series A no. 306-B). The Court declined, in *Beyeler*, to determine whether the interference with the applicant's property rights constituted a "deprivation of possessions", as it sufficed to examine the situation complained of in the light of the general rule in the first sentence of the first paragraph of Article 1 (see *Beyeler*, cited above, § 106).

65. The applicant companies did not lose their land because of a legislative provision which permitted the State to transfer ownership in particular circumstances (as in *AGOSI*, *Air Canada* and *Gasus Dosier- und Fördertechnik GmbH*, cited above), or because of a social policy of transfer of ownership (as in *James and Others*), but rather as the result of the operation of the generally applicable rules on limitation periods for actions for recovery of land. Those rules provided that at the end of the limitation period, the paper owner's title to unregistered land was extinguished (section 17 of the 1980 Act). In the case of registered land, the position was amended to take into account the fact that until the register was rectified, the former owner continued to appear as registered proprietor. Thus in the present case section 75(1) of the 1925 Act provided that on expiry of the limitation period the title was not extinguished, but the registered proprietor was deemed to hold the land in trust for the adverse possessor.

66. The statutory provisions which resulted in the applicant companies' loss of beneficial ownership were thus not intended to deprive paper owners of their ownership, but rather to regulate questions of title in a system in

which, historically, twelve years' adverse possession was sufficient to extinguish the former owner's right to re-enter or to recover possession, and the new title depended on the principle that unchallenged lengthy possession gave a title. The provisions of the 1925 and 1980 Acts which were applied to the applicant companies were part of the general land law, and were concerned to regulate, amongst other things, limitation periods in the context of the use and ownership of land as between individuals. The applicant companies were therefore affected, not by a "deprivation of possessions" within the meaning of the second sentence of the first paragraph of Article 1, but rather by a "control of use" of land within the meaning of the second paragraph of the provision.

4. The aim of the interference

67. The applicable provisions of the l925 and 1980 Acts were concerned to apply the limitation period for actions for recovery of land which had been fixed at twenty years since the Limitation Act 1623 and at twelve years since the Real Property Limitation Act 1874, and they were concerned then to regulate the subsequent position that the paper owner was no longer able to recover possession, and the adverse possessor had been in possession for sufficiently long to establish title.

68. The Court has considered limitation periods as such in the context of Article 6 of the Convention in *Stubbings and Others*, cited above. It held as follows:

> "51. It is noteworthy that 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."

69. Although that statement referred to limitation periods in personal-injury cases in the context of Article 6, the Court considers that it can also be applied to the situation where limitation periods in actions for recovery of land are being assessed in the light of Article 1 of Protocol No. 1. Indeed, the parties do not suggest that limitation periods for actions for recovery of land do not pursue a legitimate aim in the general interest.

70. The Court finds that the existence of a twelve-year limitation period for actions for recovery of land as such pursues a legitimate aim in the general interest.

71. As to the existence, over and above the general interest in the limitation period, of a specific general interest in the extinguishment of title and the attribution of new title at the end of the limitation period, the Court notes that in discussing the public interest present in *Jahn and Others v. Germany*, in the context of a deprivation of property, it stated that, "finding

it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one [the Court] will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation" ([GC], nos. 46720/99, 72203/01 and 72552/01, § 91, ECHR 2005-VI, with reference back to *James and Others*, cited above, and *The former King of Greece and Others v. Greece* [GC], no. 25701/94, ECHR 2000-XII, and to *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 67, ECHR 2002-IX). This is particularly true in cases such as the present one where what is at stake is a long-standing and complex area of law which regulates private-law matters between individuals.

72. It is plain from the comparative material submitted by the parties that a large number of member States possess some form of mechanism for transferring title in accordance with principles similar to adverse possession in the common-law systems, and that such transfer is effected without the payment of compensation to the original owner.

73. The Court further notes, as did the Chamber, that the amendments to the system of adverse possession contained in the 2002 Act did not abolish the relevant provisions of the 1925 and 1980 Acts. Parliament thus confirmed the domestic view that the traditional general interest remained valid.

74. It is a characteristic of property that different countries regulate its use and transfer in a variety of ways. The relevant rules reflect social policies against the background of the local conception of the importance and role of property. Even where title to real property is registered, it must be open to the legislature to attach more weight to lengthy, unchallenged possession than to the formal fact of registration. The Court accepts that to extinguish title where the former owner is prevented, as a consequence of the application of the law, from recovering possession of land cannot be said to be manifestly without reasonable foundation. There existed therefore a general interest in both the limitation period itself and the extinguishment of title at the end of the period.

5. Whether there was a fair balance

75. The second paragraph of Article 1 is to be construed in the light of the general principle enunciated in the opening sentence. There must, in respect of a "control of use", also exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In other words, the Court must determine whether a fair balance has been struck between the demands of the general interest and the interest of the individuals concerned. In determining whether a fair balance exists, 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 *AGOSI*, cited above, § 52, and, for a more recent authority concerning a deprivation of possessions, *Jahn and Others*, cited above, § 93). In spheres such as housing, the Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V). In other contexts, the Court has underlined that it is not in theory required to settle disputes of a private nature. It can nevertheless not remain passive, in exercising the European supervision incumbent on it, where a domestic court's interpretation of a legal act appeared "unreasonable, arbitrary or ... inconsistent ... with the principles underlying the Convention" (see *Pla and Puncernau v. Andorra*, no. 69498/01, § 59, ECHR 2004-VIII). When discussing the proportionality of a refusal of a private television company to broadcast a television commercial, the Court considered that a margin of appreciation was particularly essential in commercial matters (see *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, § 69, ECHR 2001-VI). In a case concerning a dispute over the interpretation of patent law, and at the same time as noting that even in cases involving litigation between individuals and companies the State has obligations under Article 1 of Protocol No. 1 to take measures necessary to protect the right of property, the Court reiterated that its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, and not to deal with errors of fact or law allegedly committed by a national court unless Convention rights and freedoms may have been infringed (see *Anheuser-Busch Inc.*, cited above, § 83).

76. The Chamber (at paragraph 55 of its judgment) found that the relevant provisions – section 75 of the 1925 Act in particular – went further than merely precluding the applicant companies from invoking the assistance of the courts to recover possession of their property. The Court observes that the Court of Appeal in the present case was of the view that the Grahams had not established the requisite intention to possess the land, so that time had not started to run against the applicant companies (see paragraph 17 above). It nevertheless considered that the extinguishment of title at the end of the limitation period of an action for recovery of land was a logical and pragmatic consequence of the barring of the right to bring an action after the expiration of the limitation period. The House of Lords disavowed the Court of Appeal's interpretation of the law on intention to possess, but did not comment on the suggestion that to terminate title at the end of the limitation period was "logical and pragmatic". Even though the general position in English law is that the expiry of a limitation period bars the remedy but not the right, the Court accepts that where an action for recovery of land is statute-barred, termination of the title of the paper owner does little more than regularise the respective positions, namely to confirm that the person who has acquired title by twelve years' adverse possession is

the owner. Moreover, the law reflected the aim of the land registration legislation, which was to replicate the preregistration law so far as practicable. As already noted above (see paragraph 74), such a regime cannot be considered as "manifestly without reasonable foundation".

77. The Court has rejected the Government's contention that the pre-existing nature of the regime of adverse possession excluded the facts of the case from consideration under Article 1 of Protocol No. 1 (see paragraphs 62 and 63 above). The fact that the rules contained in both the 1925 and 1980 Acts had been in force for many years before the first applicant even acquired the land is nevertheless relevant to an assessment of the overall proportionality of the legislation. In particular, it is not open to the applicant companies to say that they were not aware of the legislation, or that its application to the facts of the present case came as a surprise to them. Indeed, although the case proceeded domestically as far as the House of Lords, the applicant companies do not suggest that the conclusions of the domestic courts were unreasonable or unforeseeable, in the light of the legislation.

78. In connection with the limitation period in the present case, the Court notes that the Chamber took the view that the period was relatively long (see paragraph 73 above). It has been unable, however, to derive any assistance from the comparative material submitted by the parties in this connection, beyond noting that there is no clear pattern as regards the length of limitation periods. It is in any event the case that very little action on the part of the applicant companies would have stopped time running. The evidence was that if the applicant companies had asked for rent, or some other form of payment, in respect of the Grahams' occupation of the land, it would have been forthcoming, and the possession would no longer have been "adverse". Even in the unlikely event that the Grahams had refused to leave and refused to agree to conditions for their occupation, the applicant companies need only have commenced an action for recovery, and time would have stopped running against them.

79. The Chamber and the applicant companies emphasised the absence of compensation for what they both perceived as a deprivation of the applicant companies' possessions. The Court has found that the interference with the applicant companies' possessions was a control of use, rather than a deprivation of possessions, such that the case-law on compensation for deprivations is not directly applicable. Further, in the cases in which a situation was analysed as a control of use, even though the applicant had lost possessions (see *AGOSI* and *Air Canada*, both cited above), no mention was made of a right to compensation. The Court would note, in agreement with the Government, that a requirement of compensation for the situation brought about by a party failing to observe a limitation period would sit uneasily alongside the very concept of limitation periods, whose aim is to further legal certainty by preventing a party from pursuing an action after a

certain date. The Court would also add that, even under the provisions of the 2002 Act, which the applicant companies use as confirmation that the provisions of the earlier legislation were not compatible with the Convention, no compensation is payable by a person who is ultimately registered as the new owner of registered land on expiry of the limitation period.

80. The Chamber and the applicant companies were also exercised by the absence of procedural protection for a paper owner whose property rights are about to be extinguished by the running of the limitation period under section 15 of the 1980 Act, at least in so far as it applied to registered land. The Court would note here that the applicant companies were not without procedural protection. While the limitation period was running, and if they failed to agree terms with the Grahams which put an end to the "adverse possession", it was open to them to remedy the position by bringing a court action for repossession of the land. Such an action would have stopped time running. After expiry of the period, it remained open to the applicant companies to argue before the domestic courts, as they did, that the occupiers of their land had not been in "adverse possession" as defined by domestic law.

81. It is true that since the entry into force of the Land Registration Act 2002, the paper owner of registered land against whom time has been running is in a better position than were the applicant companies at the relevant time. The 2002 Act requires, in effect, the giving of notice to a paper owner before the expiry of the limitation period, to give him time, if he wishes, to take action to deal with the adverse possessor. It improves the position of the paper owner and, correspondingly, makes it more difficult for an adverse possessor to acquire a full twelve years' adverse possession. The provisions of the 2002 Act do not, however, apply to the present case, and the Court must consider the facts of the case as they are. In any event, legislative changes in complex areas such as land law take time to bring about, and judicial criticism of legislation cannot of itself affect the conformity of the earlier provisions with the Convention.

82. The Government contended that it could not be the role of Article 1 of Protocol No. 1 to protect commercial operators against their own failings. The Court regards this suggestion as related to those aspects of the Court's case-law which underline that the Court is not in theory required to settle disputes of a private nature, in respect of which States enjoy a wide margin of appreciation (see paragraph 75 above). In a case such as the present, where the Court is considering, principally, the statutory regime by which title is extinguished at the end of the limitation period, rather than the specific facts of the case, the relevance of the individual applicant's conduct is correspondingly restricted.

83. The applicant companies contended that their loss was so great, and the windfall to the Grahams so significant, that the fair balance required by

Article 1 of Protocol No. 1 was upset. The Court would first note that, in *James and Others*, it found that the view taken by Parliament as to the tenants' "moral entitlement" to ownership of the houses in issue fell within the State's margin of appreciation. In the present case, too, whilst it would be strained to talk of the "acquired rights" of an adverse possessor during the currency of the limitation period, it must be recalled that the registered land regime in the United Kingdom is a reflection of a long-established system in which a term of years' possession gave sufficient title to sell. Such arrangements fall within the State's margin of appreciation, unless they give rise to results which are so anomalous as to render the legislation unacceptable. The acquisition of unassailable rights by the adverse possessor must go hand in hand with a corresponding loss of property rights for the former owner. In *James and Others*, the possibility of "undeserving" tenants being able to make "windfall profits" did not affect the overall assessment of the proportionality of the legislation (see *James and Others*, cited above, § 69), and any windfall for the Grahams must be regarded in the same light in the present case.

84. As to the loss for the applicant companies, it is not disputed that the land lost by them, especially those parts with development potential, will have been worth a substantial sum of money. However, limitation periods, if they are to fulfil their purpose (see paragraphs 67-74 above), must apply regardless of the size of the claim. The value of the land cannot therefore be of any consequence to the outcome of the present case.

85. In sum, the Court concludes that the fair balance required by Article 1 of Protocol No. 1 was not upset in the present case.

FOR THESE REASONS, THE COURT

Holds, by ten votes to seven, that there has been no violation of Article 1 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 August 2007.

Michael O'Boyle Registrar	Jean-Paul Costa 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:

(a) joint dissenting opinion of Judges Rozakis, Bratza, Tsatsa-Nikolovska, Gyulumyan and Šikuta;

(b) dissenting opinion of Judge Loucaides joined by Judge Kovler.

J.-P.C.
M.O'B.

JOINT DISSENTING OPINION OF JUDGES ROZAKIS, BRATZA, TSATSA-NIKOLOVSKA, GYULUMYAN AND ŠIKUTA

1. We are unable to agree with the majority of the Court that Article 1 of Protocol No. 1 was not violated in the present case. In our view, the extinction of the applicant companies' beneficial interest in the land of which they were the registered owners, as a result of the effect of the relevant provisions of the 1925 and 1980 Acts, was in violation of their right to the peaceful enjoyment of their possessions under that Article.

2. In common with the majority of the Court, we consider that Article 1 of the Protocol was not only applicable in the present case, but that the impugned legislation gave rise to a clear interference with the applicant companies' rights under that Article which was such as to engage the responsibility of the respondent State.

3. The judgment, correctly in our view, rejects the Government's argument that, since it is principally concerned with the law of limitation of actions, the case falls to be examined under Article 6 of the Convention alone and not under Article 1 of the Protocol. As pointed out in the judgment, not only is there nothing in principle to exclude the examination of a claim under Article 1 where the complaint is directed against legislation concerning property rights, but the Government's argument gives insufficient weight to the fact that the Court is concerned in the present case not only with the limitation of actions but with the law of adverse possession as it affects registered land. That law is embodied not merely in the provisions of section 17 of the 1980 Act, which bars a course of action to recover the land, but in the provisions of section 75 of the 1925 Act, the effect of which is to extinguish beneficial title to the property after twelve years' adverse possession. The Court of Appeal in the present case held that the extinction of the applicant's 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). This view appears to be endorsed by the majority of the Court in asserting that, where an action for recovery of land is statute-barred, "termination of the title of the paper owner does little more than regularise the respective positions, namely to confirm that the person who has acquired [the] title by twelve years' adverse possession is the owner" (paragraph 76 of the judgment). Even if the provisions of section 75 are properly to be so regarded as a matter of domestic law, the fact remains, as noted in the judgment of the Chamber (§ 55), that the combined effect of the legislative 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.

4. It is also implicit in the judgment that the Court – again, correctly in our view – has upheld the rejection by the Chamber of two further

arguments of the Government, namely (i) that Article 1 was not engaged, since the applicant companies had only a defeasible property interest in their land which ceased to exist after the expiry of twelve years of adverse possession, and (ii) that there was, in any event, no interference with the applicants' property rights for which the State could be held responsible, the case giving rise at most to the positive obligations of the State to secure rights to property.

5. According to the view of the majority of the Grand Chamber, the interference with the applicant companies' property rights which resulted in a loss of beneficial ownership is to be seen as a "control of use of property" which falls to be examined under the second paragraph of Article 1, rather than as a "deprivation" of possessions within the meaning of the second sentence of that Article, as found by the Chamber.

6. It is well established that a legislative measure which brings about a transfer of property from one individual to another in furtherance of a particular social policy may give rise to a "deprivation" of possessions within the second sentence (see, for example, *James and Others v. the United Kingdom*, 21 February 1986, Series A no. 98). It is, however, also clear that not every loss of ownership of property resulting from a legislative measure or from an order of a court will be equated with a "deprivation" of possessions: as noted in the judgment, in *AGOSI v. the United Kingdom* (24 October 1986, Series A no. 108), *Air Canada v. the United Kingdom* (5 May 1995, Series A no. 316-A), and *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* (23 February 1995, Series A no. 306-B), the forfeiture or other loss of ownership was treated as a "control of use" of property within the second paragraph of Article 1, while in *Beyeler v. Italy* ([GC], no. 33202/96, ECHR 2000-I), the interference with the applicant's property rights was examined under the first sentence of that Article.

Like the majority of the Court, we consider that the legislative provisions in issue in the present case are significantly different from those examined in the earlier cases referred to. In particular, we accept that the relevant provisions of the 1925 and 1980 Acts were not intended to deprive property owners of their beneficial title in furtherance of a social policy of redistribution of land or transfer of ownership. Rather, they represented generally applicable rules designed to regulate questions of title in a system in which twelve years' adverse possession was sufficient to extinguish the former owner's right to re-enter or to recover possession of land. We can agree that the loss of beneficial title in such circumstances is to be seen as a "control of use" of land rather than a "deprivation" of possessions. However, like the Chamber, we would emphasise that the three "rules" in Article 1 are not distinct or watertight in the sense of being unconnected and that the principles governing the question of justification are substantially the same, requiring both a legitimate aim and the preservation of a fair

balance between the aim served and the individual property rights in question.

7. As to the legitimacy of the aim of the measures, it is not in dispute that limitation periods for the recovery of land may be said to pursue a legitimate aim in the public interest. However, as was pointed out in the Consultative Document of the Law Commission, the law of adverse possession, which does not merely bar claims but has the effect of extinguishing title, can only be justified by "factors over and above those which explain the law of limitations".

The present case concerns the law of adverse possession as it applies to registered land in which, as noted in paragraph 10 below, the reasons traditionally advanced to justify the transfer of beneficial title to the adverse possessor at the end of the limitation period have much less cogency than in the case of unregistered land. We find much force in the view of Lord Bingham in the present case, endorsed by Judge Loucaides in his dissenting opinion, that where land is registered it is difficult to see any justification for a legal rule which compels such an apparently unjust result as to deprive the owner of his beneficial title in favour of an adverse possessor. However, not only is the taking of property as a result of adverse possession a feature common to many legal systems, including other common-law systems, but, despite the important changes to the system of adverse possession made by the 2002 Act in the case of registered land, the system itself has not been abolished. In these circumstances, we share the view of the majority that the extinction of the beneficial ownership of the registered title-holder following the expiry of twelve years of adverse possession cannot be said to be manifestly without reasonable foundation and that the system, as applied in the case of the present applicants, may therefore be said to have served a legitimate aim in the general interest.

8. The central question remains whether the rules of adverse possession applicable to registered land and applied in the present case struck a fair balance between the rights of the registered owners and the general interest served by that system or whether, as the applicant companies argue, they were required to bear "an individual and excessive burden" (see, for example, *James and Others*, § 50). It is primarily on this point that we part company with the majority of the Court.

9. The striking feature of the manner in which the rules on adverse possession applied in the present case is the contrast between the gravity of the interference with the owners' property rights and the justification provided for that interference.

10. In the case of unregistered land, title was made out by establishing a number of years' possession. Title deeds served only as evidence in support of possession, and could be defeated by a person who could prove actual (adverse) possession for the requisite number of years. In such a system, the extinguishment of title at the end of the limitation period could be seen as a

coherent element in the rules on acquisition of title. In the Consultative Document of the Law Commission (paragraph 30), four particularly cogent reasons were identified for maintaining a law of adverse possession – the prevention of uncertainty and injustice arising from stale claims; the avoidance of the risk that land becomes unmarketable when possession and ownership are out of kilter; the avoidance of hardship to an innocent but mistaken squatter, who may have incurred expenditure on the land; and the facilitation of the investigation of title to the land (and see, in this regard, *The Holy Monasteries v. Greece* (9 December 1994, §§ 57-61, Series A no. 301-A), in which acquisition by adverse possession was found to be of particular importance because there was no land survey in Greece, and because it had been impossible to have title deeds registered before 1856, and legacies and inheritances registered before 1946 (see § 60)).

11. In the case of registered land, however, title depends not on possession, but on registration as the proprietor. A potential purchaser of land can ascertain the owner of the land by searching the register, and there is no need for a potential vendor to establish title by proving possession. As pointed out by the Law Commission, the traditional reasons advanced to justify a law of adverse possession which resulted in the extinguishment of title on expiry of the limitation period had lost much of their cogency. This view was shared in the circumstances of the present case both by Lord Bingham and by Mr Justice Neuberger, who found that the uncertainties which sometimes arose in relation to the ownership of land were very unlikely to arise in the context of a system of land ownership where the owner of the land was readily identifiable by inspecting the proprietorship register.

12. In the proceedings before the Grand Chamber, the Government placed reliance on a further public interest, namely, the fact that land is a limited resource which should be used, maintained and improved and that, by imposing a finite limit on the time within which land occupied by an adverse possessor may be recovered, a legal owner is encouraged to make use of the land.

While we can accept that, where land is abandoned, it may be in the general interest that it should be acquired by someone who would put it to effective use, we are unable to accept that the general interest would extend to depriving a registered landowner of his beneficial title to the land except by a proper process of compulsory acquisition for fair compensation.

13. It was further contended by the Government that, quite apart from any public interest served by the law, regard should be had, in determining the proportionality of the measures, to the interests of the adverse possessor, in the present case, the Grahams. This view is reflected in paragraph 83 of the judgment, where reference is made to the case of *James and Others*, in which the Court found that the view taken by Parliament as to the tenants' "moral entitlement" to ownership of the houses in issue fell within the

State's margin of appreciation, despite the "windfall profits" made by certain "undeserving" tenants.

We are unable to attach weight to this consideration. While, in a case such as the present where there is no mistake on the part of the adverse possessor as to the owner of the land, a justification might arguably be found for a law which prevented the adverse possessor from being summarily evicted from the land after twelve years of occupation or which prevented a landowner from recovering rent or mesne profits for that period, we are quite unable to accept that the adverse possessor has any legitimate interest in obtaining the windfall of acquiring title to the land itself without payment of compensation. In this regard, the position of the adverse possessor is entirely different from that of the long-leasehold tenants in *James and Others*, whose moral entitlement to acquire the freehold of houses they occupied at below market value under the Leasehold Reform Act 1967 was found to derive from the fact that they and their predecessors had not only paid a capital sum to acquire the leasehold interest but had over the years invested a considerable amount of money in the upkeep of houses which had been their homes.

14. While the general interest served by the law of adverse possession in the case of registered land was thus in our view of limited weight, the impact of the law on the registered landowner was exceptionally serious, as is graphically illustrated by the facts of the present case. Although the case falls to be examined under Article 1 of the Protocol as one concerning the control of use of land, in judging the proportionality of the measures it is in our view a highly material factor that the relevant legislative provisions went further than merely precluding the registered landowners from invoking the assistance of the courts to recover possession of their land, by depriving them of their beneficial ownership of it.

15. The Chamber, referring to the statements of Neuberger J and Lord Bingham, took into consideration the lack of compensation for the deprivation of property (§§ 71-72). This is criticised by the majority of the Grand Chamber. It is pointed out not only that the Court's case-law as to the need for compensation applies to "deprivations" of possessions and has no direct application to a case of "control of use", but that a requirement of compensation in a case such as the present "would sit uneasily alongside the very concept of limitation periods whose aim is to further legal certainty by preventing a party from pursuing an action after a certain date".

16. While it is true that the availability of compensation has principally been examined by the Court in the context of deprivations of possessions under the second sentence of Article 1, it is clear that the absence of compensation may also be of relevance to the overall proportionality of a control of use (see, for example, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 57, ECHR 1999-V). However, we share the view of the majority that limitation provisions cannot easily be coupled with a

requirement for compensation and that the payment of compensation does not, on the basis of the comparative material before the Court, appear to be a feature of any system of adverse possession or prescription. It is, moreover, significant that the Land Registration Act 2002, which substantially improved the position of the owner of registered land whose land was occupied by adverse possessors, did not provide for a mechanism by which compensation could be claimed or obtained.

While the absence of compensation cannot thus of itself be regarded as rendering the control of use disproportionate, the fact that the landowner received no compensation made the loss of beneficial ownership the more serious and required, in our view, particularly strong measures of protection of the registered owner's property rights if a fair balance was to be preserved.

17. The majority of the Court argue that such procedural protection was provided. Reliance is placed on the fact that the law of adverse possession in general and the provisions which extinguished title at the end of the period of twelve years in particular were accessible to the applicant companies, as the registered landowners, and that the provisions had been in place for many years. Emphasis is also placed on the fact that the applicant companies, as any landowners, could have safeguarded their position and stopped time running by requesting rent or other payment from the occupiers for the use of the land or by commencing proceedings for its recovery (paragraphs 77 and 78 of the judgment).

18. Although clearly correct, we do not find that either factor ensured that a fair balance was preserved or provided sufficient protection for the property rights of registered landowners. While it was open to the registered owner to argue, after the expiry of the twelve-year period, that there had not been sufficient "possession" of the land on the part of the occupier to prevent recovery of the land, no form of notification was required to be given to the owner during the currency of that period to alert him to the risk of losing his title to the land. What was lacking were effective safeguards to protect a registered landlord from losing beneficial ownership of land through oversight or inadvertence. Such safeguards were provided by the Land Registration Act 2002 which not only puts the burden on a "squatter" to give notice of his wish to apply to be registered as the proprietor after ten years of adverse possession, but requires special reasons to be adduced to entitle him to acquire the property where the legal owner opposes the application. The legal owner is then granted two years within which to regularise the position as, for example, by evicting the adverse possessor. The effect of the 2002 Act was, as pointed out by Judge Strauss in the case of *Beaulane Properties Ltd v. Palmer*, to place the burden where it should lie, namely on the party seeking to override a registered title.

19. The majority of the Court, while noting that the position of the registered owner was improved by the new legislation, attach little weight to

the change in the law, holding that the provisions of the 2002 Act were not applicable in the present case which had to be judged according to the law in effect at the material time. It is further said that, in any event, legislative changes in complex areas such as land law take time to bring about and that judicial criticism could not of itself affect the conformity of the earlier provisions with the Convention.

In our view this is to underestimate the significance of the change in the law. As was noted by the Chamber, it does not necessarily follow from the fact that new rules have been introduced to provide enhanced protection for Convention rights that the previous rules were incompatible with the Convention (see, for example, *Hoffmann v. Germany*, no. 34045/96, § 59, 11 October 2001). However, we attach considerable importance to the fact that the amendments made by the 2002 Act represented more than a natural evolution in the law of adverse possession as it affected registered land: they marked a major change in the existing system which had been recognised, both by the Law Commission and judicially, as leading to unfairness and as having a disproportionate effect on the rights of the registered owner.

20. The Government emphasise, as a further element relevant to the assessment of proportionality, the degree of fault on the part of the applicant companies in the present case, arguing that they failed to take the most minimal steps to look after their own interests.

While it is true that in other contexts the Court has held that the question whether a fair balance has been struck under the second paragraph of Article 1 of the Protocol will depend on a number of factors, including the degree of fault or care which an applicant has displayed (see, for example, *AGOSI*, cited above, § 54), we cannot consider it to be a significant factor in the present case, in which the very complaint is that the system of adverse possession, as it existed before the passing of the 2002 Act, failed adequately to protect the proprietary rights of registered landowners against the loss of beneficial ownership as a result of their inadvertence or oversight.

21. In sum, we are unable to agree with the majority of the Court that the provisions of the 1925 and 1980 Acts, as they applied to registered owners of land and whose application in the present case was variously described by the national judges as “draconian”, “unjust”, “illogical” and “disproportionate”, struck a fair balance between the rights of the owners and any general interest served. In being deprived of their beneficial ownership of the land of which they were the registered owners, the applicant companies were in our view required to bear an individual and excessive burden such that their rights under Article 1 of Protocol No. 1 were violated.

DISSENTING OPINION OF JUDGE LOUCAIDES JOINED BY JUDGE KOVLER

I am unable to agree with the majority in this case that there has been no violation of Article 1 of Protocol No. 1. The question is whether the existence of a twelve-year statutory limitation period for actions for recovery of land is compatible with the Convention, bearing in mind that this limitation has as a consequence the deprivation of ownership of the registered owner of the land in cases where he has been out of possession for that entire period and a stranger has been in possession. In such cases the owner's title is extinguished and the stranger acquires a title which is good against all the world, including the former owner (see paragraph 27).

There are two factors that have to be examined in order to answer this question.

The first is whether the twelve-year limitation period as such pursues a legitimate aim in the general interest. And the second is whether, assuming there is a legitimate aim, the interference with the right of property is proportionate to the aim pursued.

Where there is no land survey and title of ownership is not registered in a land registry – as may be the case at certain times and in certain countries – this institution of adverse possession leading to acquisition of title could undoubtedly be justified on the ground of avoiding uncertainty of land ownership. However, when and where a land registry has been established and ownership of land can easily be ascertained through inspection of the registration of title deeds, I personally have great difficulty in accepting that adverse possession could serve any general interest. In this respect I fully endorse the following opinion of Lord Bingham:

> "... 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. ..." (see paragraph 21)

The argument was put forward that another possible legitimate aim of such an institution would be to encourage landowners to exploit, improve, or make use of their land. I cannot find this acceptable, first of all because such encouragement may be achieved by other less onerous means such as taxation, or the creation of incentives, and secondly I cannot accept that the general interest connected with that aim can reasonably extend to depriving a registered landowner of his beneficial title to the land except by a proper process of compulsory acquisition for fair compensation.

In determining whether or not adverse possession now serves a legitimate aim, I am not bound by what the parties suggest.

The majority, firstly, referred to comparative material to the effect that a large number of member States possess some formal mechanism for transferring title in accordance with principles similar to adverse possession in the common-law systems, and that such transfer is effected without the payment of compensation to the original owner. These mechanisms in other member States may be explained by the absence of land registration or may be remnants of an archaic system. In any event, an unsatisfactory system in certain countries does not justify retaining such a system elsewhere. Secondly, the majority invoked the fact that the amendments to the system of adverse possession contained in the Land Registration Act 2002 did not abolish the relevant provisions. However no clear grounds were given for such a decision, and more particularly for the necessity of maintaining the present system of adverse possession. Thirdly, the majority argued that it must be open to the legislature to attach more weight to lengthy, unchallenged possession than to the formal fact of registration. Again I do not understand the logic of this approach and I certainly do not find it convincing. I do not see how illegal possession can prevail over legitimate ownership (*de facto* versus *de jure*).

Taking everything into consideration, I find that the aim of the interference with the applicant companies' property lacks reasonable foundation. I may add in this respect that such a system (a) shows disrespect for the legitimate rights and expectations of the registered property owners which include the possibility of keeping their property unused for development at a more appropriate time, when financially and otherwise they are ready to proceed with such development, or to maintain their property as security for their children or grandchildren; and (b) encourages illegal possession of property and the growth of squatting.

I could stop there, being confident that there is no legitimate objective of public interest behind the provisions in question. I might add that personally I am inclined to take the view that the application of the principle of adverse possession in this case does not, for the purposes of Article 1 of Protocol No. 1, fall within the concept of control of use of land, but is a case of deprivation of possessions subject to certain conditions.

In any event, even assuming that there was a public interest to be served by the deprivation of ownership through adverse possession, the conditions for the implementation of such deprivation (limitation period of only twelve years, loss of title, lack of any compensation) render the measure completely disproportionate.

In simple terms this system of adverse possession looks as if it is intended to punish a registered lawful owner of land for not showing sufficient interest in his property and for not sufficiently pursuing a squatter, who as a result is rewarded by gaining title to the property. And in this respect I fully endorse the statement of Mr Justice Neuberger when he said that the fact that an owner who had sat on his rights for twelve years should

be deprived of the land was "illogical and disproportionate" (see paragraph 16).

In interpreting and applying Article 1 of Protocol No. 1 in this case, I was guided by the rule that the principle of the rule of law is inherent in all the Articles of the Convention (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III).

In the circumstances I find that there has been a violation of Article 1 of Protocol No. 1 in this case.