

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT

J.A. PYE (OXFORD) LTD & J.A. PYE (OXFORD) LAND LTD v. UNITED KINGDOM

The European Court of Human Rights has today delivered at a public hearing in the Human Rights Building, Strasbourg, its Grand Chamber judgment¹ in the case of *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* (application no. 44302/02).

The Court held, by ten votes to seven, that there had been **no violation of Article 1 of Protocol No. 1** (protection of property) to the European Convention on Human Rights concerning the applicant companies' loss of ownership of 23 hectares of agricultural land through "adverse possession" to a neighbour who had used the land for more than 12 years without permission. (The judgment is available in English and French.)

1. Principal facts

The applicants are two United Kingdom companies, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd. J.A. Pye (Oxford) Land Ltd was the registered owner of a plot of 23 hectares of agricultural land in Berkshire (United Kingdom). J.A. Pye (Oxford) Ltd was the former owner of the land.

The value of the land was disputed. The applicant companies claimed, in losing the land, they had lost over 10 million pounds sterling (GBP). The United Kingdom Government put the value of the land in 1996 at GBP 785,000, and in July 2002 at GBP 2.5 million.

The owners of 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 the Grahams were instructed to vacate the land as the grazing agreement was about to expire. They did not do so.

In January 1984 the applicants refused a request for a further grazing agreement for 1984 because they anticipated seeking planning permission for the development of all or part of the land and considered that continued grazing might damage the prospects of obtaining such permission. From September 1984 onwards until 1999 the Grahams continued to use the land for farming without the applicants' permission.

In 1997, Mr Graham registered cautions (official warnings) at the Land Registry against the applicant companies' title on the ground that he had obtained title by adverse possession (occupation of property contrary to the rights of the real owner).

¹ Grand Chamber judgments are final (Article 44 of the Convention).

The applicant companies sought the cancellation of the cautions before the High Court and issued further proceedings seeking possession of the disputed land.

The Grahams contested the applicant companies' claims under the Limitation Act 1980, which provides that a person cannot bring an action to recover any land after the expiration of 12 years of adverse possession by another. They also relied on the Land Registration Act 1925, which provided that, after the expiry of the 12-year period, the registered owner held the land in trust for the squatter.

On 4 February 2000 the High Court held that, since the Grahams enjoyed factual possession of the land from January 1984 and adverse possession took effect from September 1984, the applicant companies had lost their title to the land under the 1980 Act, and the Grahams were entitled to be registered as the new owners.

The applicant companies appealed successfully, but the Grahams appealed to the House of Lords. On 4 July 2002 the House of Lords restored the order of the High Court. However, Lord Bingham of Cornhill stated that the decision was one he had reached "with no enthusiasm". He said: "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".

The Land Registration Act 2002 – which does not have retroactive effect – now enables a squatter to apply to be registered as owner after ten years' adverse possession but requires that the registered owner be notified of the application. The registered proprietor then has two years to regularise the situation (for example, by evicting the squatter), failing which the squatter is entitled to be registered as the owner.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 17 December 2002 and declared admissible on 8 June 2004.

In its Chamber judgment of 15 November 2005 (press release no. 616, 2005), the Court held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1. The case was referred to the Grand Chamber (under Article 43¹ of the Convention and Rule 73 of the Rules of Court) on 12 April 2006 at the Government's request.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
Christos **Rozakis** (Greek),
Nicolas **Bratza** (British),
Boštjan M. **Zupančič** (Slovenian),
Peer **Lorenzen** (Danish),
Loukis **Loucaides** (Cypriot),
Ireneu **Cabral Barreto** (Portuguese),
Volodymyr **Butkevych** (Ukrainian),
Margarita **Tsatsa-Nikolovska** (citizen of “the former Yugoslav Republic of Macedonia”),
András **Baka** (Hungarian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese),
Alvina **Gyulumyan** (Armenian),
Renate **Jaeger** (German),
Ján **Šikuta** (Slovak),
Ineta **Ziemele** (Latvian), *judges*,

and also Michael **O’Boyle**, *Deputy Registrar*.

3. Summary of the judgment¹

Complaint

The applicants alleged that the United Kingdom law on adverse possession, by which they lost land with development potential to a neighbouring landowner, was in violation of Article 1 of Protocol No. 1 to the Convention.

Decision of the Court

Article 1 of Protocol No. 1

The Grand Chamber considered that Article 1 of Protocol No. 1 was applicable as the applicant companies had lost ownership of 23 hectares of agricultural land as a result of the operation of the 1925 and 1980 Acts.

The Grand Chamber also noted that the applicant companies lost their land as the result of the operation of rules on limitation periods for actions for recovery of land. The relevant provisions of the 1925 and 1980 Acts were part of general land law, and were concerned to regulate, among 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 Article 1 of Protocol No. 1, but rather by a “control of use” of land.

The Grand Chamber further considered that the existence of a 12-year limitation period for actions for recovery of land as such pursued a legitimate aim in the general interest. And, it

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

was to be noted that the relevant provisions of the 1925 and the 1980 Acts were not abolished by the Land Registration Act 2002.

In addition, a large number of European countries possessed some form of mechanism for transferring title based on similar principles and without payment of compensation to the original owner.

The Grand Chamber accepted that to extinguish title where the former owner was prevented, as a consequence of the application of the law, from recovering possession of land could not be said to be manifestly without reasonable foundation. There was therefore a general interest in both the limitation period itself and the extinguishment of title at the end of the period.

In terms of whether a fair balance had been struck between the demands of the general interest and the interest of the individuals concerned, the Grand Chamber observed that the rules contained in both the 1925 and the 1980 Acts had been in force for many years before the first applicant even acquired the land. In particular, it was not open to the applicant companies to say that they were not aware of the legislation, or that its application to their case came as a surprise to them.

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.

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 was to further legal certainty by preventing a party from pursuing an action after a certain date. The Grand Chamber reiterated that, even under the provisions of the Land Registration Act 2002, no compensation was payable by a person who was ultimately registered as a new owner of registered land on expiry of the limitation period.

The Grand Chamber also recalled 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 re-possession 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.

It was true that, since the entry into force of the Land Registration Act 2002, the registered owner (who had to be given notice of an application for adverse possession by a squatter) was in a better position than the applicant companies at the relevant time. However, the 2002 Act was not in force at the relevant time. In any event, legislative changes in complex areas such as land law took time to bring about, and judicial criticism of legislation could not of itself affect the conformity of the earlier provisions with the Convention.

It was not disputed that the land lost by the applicant companies, especially those parts with development potential, would have been worth a substantial sum of money. However, limitation periods, if they were to fulfil their purpose, had to apply regardless of the size of the claim. The value of the land could not therefore be of any consequence to the outcome of the applicant companies' case.

The Court concluded that the fair balance required by Article 1 of Protocol No. 1 was not upset in the applicant companies' case.

Judges Rozakis, Bratza, Tsatsa-Nikolovska, Gyulumyan and Šikuta expressed a joint dissenting opinion and Judge Loucaides, joined by Judge Kovler expressed a separate dissenting opinion. Both opinions are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

Paramy Chanthalangsy (telephone: 00 33 (0)3 90 21 54 91)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.