

Ambivalent adverse possession ruling simplifies property protection regime

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By **John Clargo**

The ruling by the European Court of Human Rights that loss of ownership through adverse possession of land by squatters did not breach the protection of property principle may appear a harsh outcome for the plaintiff but it brings welcome harmonisation to the various regimes applicable to adverse possession cases involving human rights claims (*Pye v United Kingdom* 44302/02).

The Pye family owned 23 hectares of agricultural land in Berkshire, occupied under a grazing agreement by their neighbours, Mr and Mrs Graham. In 1983, when the agreement was about to expire, the Grahams did not leave the land despite instructions to this effect. They remained on the land even though the Pyes refused to renew the agreement and continued to farm the land, without permission, until 1999.

In 1997, the Grahams registered cautions at the Land Registry that they had obtained title by adverse possession.

After they failed to secure possession of the disputed land (Lord Bingham, in the House of Lords, ruled in favour of the Grahams “with no enthusiasm”) the Pyes took their case to the European Court of Human Rights, claiming that English law had resulted in a breach of their right to property under Article 1 of the Protocol No 1 to the European Convention on Human Rights.

But earlier this summer, reversing the ruling of the lower Chamber, the Grand Chamber of the European Court of Human found against the Pyes. So what is the state of the law of registered land as it concerns adverse possession and human rights?

In proceedings before the English courts, the Grahams had claimed that the Pyes’ application should be dismissed because they were out of time.

On this point, the Grand Chamber confirmed that, notwithstanding that the issues in the case arose primarily out of a limitation point, the case was capable of being dealt with under Article 1 of Protocol No 1 and was not, as the UK Government had argued, only justiciable under Article 6 ECHR as concerning access to the courts.

But the Grand Chamber differed from the Chamber in concluding that Pye had not been deprived of a possession within the meaning of the second sentence of Article 1 of Protocol 1. Instead, the Grand Chamber found that the Pyes’ peaceful enjoyment of their possession had been interfered with by a law designed to control the use of that possession.

However, the Grand Chamber held that as means of controlling the use of land both the existence of a 12-year limitation period for the recovery of land (s15 of the

Limitation Act 1980) as well the effective transfer of title consequent on falling foul of that limitation (s75 of the Land Registration Act 1925) both pursued a legitimate aim in the general interest.

Most importantly, the Grand Chamber held, contrary to the Chamber judgment, that the consequence to individual interests of the relevant control of use were not disproportionate to the general interest.

Put another way, the loss suffered by individual proprietors was not disproportionate to the general interest served by the limitation period and the consequent compensation-free transfer of title.

The judgment is also of note because its impact goes beyond adverse possession in the context of the Land Registration Act 1925 as it stood prior to the introduction of the Human Rights Act 1988.

First, it makes redundant the decision in *Beaulane Properties v Palmer* [2005] UKHC 817. In that case, the court had to determine what difference was made to the law as it had been explained in *Pye v Graham* in the House of Lords by the coming into effect of the Human Rights Act 1988.

Nicholas Strauss QC concluded that the law was not Convention-compliant unless he construed it as the law was (thought to be) in 1925, albeit thereby reintroducing once more the heresy – as the House of Lords had held it to be – of the relevance of the paper-owner's intention on the question of whether or not the trespasser's possession was 'adverse'.

Of course, *Beaulane* remains an interesting (first instance) case on how one can creatively construe legislation so as to be Convention-compliant.

The Grand Chamber judgment also means that there is no prospect of challenging the 'new' regime for dealing with adverse possession of registered land ushered in by the Land Registration Act 2002 which brought in the element of notification to the paper owner when a squatter seeks to register his own 'ownership'.

Likewise, there is, consequently, no prospect of challenging the law of adverse possession as regards unregistered land. If the means is not disproportionate to the end in registered land, a fortiori when title is based on possession rather than registration.

As a general result, it will no longer be necessary to consider whether one is dealing with one or more of the possible categories of case depending on when the relevant time period expires: whether it is the Limitation Act 1980 and the Land Registration Act 1925, or those acts as construed in the light of the Human Rights Act 1988, or the Land Registration Act 2002.

Consequently, advising in cases involving adverse possession and human rights has just become a whole lot easier.

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