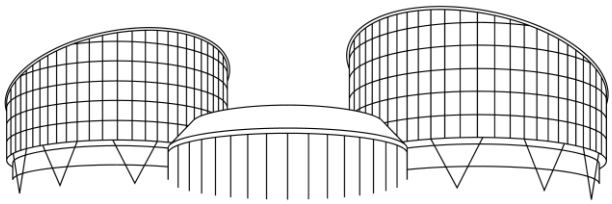

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF DEPALLE v. FRANCE

(Application no. 34044/02)

JUDGMENT

STRASBOURG

29 March 2010

In the case of Depalle v. France,

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

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

and Michael O'Boyle, *Deputy Registrar*,

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

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

PROCEDURE

1. The case originated in an application (no. 34044/02) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Louis Depalle ("the applicant"), on 4 September 2002.

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

3. The applicant alleged, in particular, that both his right of property guaranteed by Article 1 of Protocol No. 1 and his right to respect for his home within the meaning of Article 8 of the Convention had been infringed as a result of the French authorities' refusal to authorise him to continue

occupying a plot of public land on which stands a house he has owned since 1960 and as a result of an order to demolish the house.

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

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

6. The applicant and the Government each filed observations.

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

There appeared before the Court:

(a) *for the Government*

Mrs E. BELLIARD, Director of Legal Affairs, Ministry of Foreign Affairs, *Agent*,

Ms A.-F. TISSIER, Head of the Human Rights Section, Department of Legal Affairs, Ministry of Foreign Affairs,

Ms M.-G. MERLOZ, Drafting Secretary, Human Rights Section, Department of Legal Affairs, Ministry of Foreign Affairs,

Ms C. STOVEN, Research Officer for the economic and tourist development of beaches, and Litigation Officer, Natural Maritime Public Property Litigation Department, Ministry of Ecology, Energy and Sustainable Development,

Ms D. MEDJAED, trainee judge, Department of Legal Affairs, Ministry of Foreign Affairs,
Mr P. BOURREAU, Director for the *département*, State Property Office, Directorate-General of Public Finances, Ministry of the Budget, *Advisers*;

(b) *for the applicant*
Mr P. BLONDEL, member of the *Conseil d'Etat* and Court of Cassation Bar, *Counsel*.

The Court heard addresses by Mr Blondel and Mrs Belliard.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1919 and lives in Monistrol-d'Allier.

A. The house in issue

9. On 3 November 1960 the applicant and his wife purchased by notarial deed a dwelling house built on land in the municipality of Arradon, in the *département* of Morbihan. The house had been built on a dyke that overlapped with land on the seashore falling within the category of maritime public property.

10. It can be seen from the various documents relating to the house that, by a decision of 5 December 1889, the prefect of Morbihan had authorised Mr A., in consideration of payment of a charge, to "retain on maritime public property in the cove of Kérion, in the municipality of Arradon, a dyke ... on which stands a dwelling house". The house had allegedly been built prior to that decision despite a decision of the prefect of 31 May 1856 refusing an application for a building permit. The decision of 1889 specified that "the existence of this dyke and dwelling house on maritime public property was recorded in 1886 ... and the permittee undertakes to pay the charge from 1 January 1887". It also pointed out that the dyke, irregularly shaped and of a surface area of 359.40 sq. m, on which stood the dwelling house measuring 7.60 m by 6.60 m, "cannot interfere in any way with navigation rights or maritime coastal traffic on condition that steps are built at each end of the dyke in order to facilitate public access" and that the authorities "reserved the right to modify or withdraw the authorisation without the permittee thereby acquiring any right to claim compensation or

damages in that regard. He must, if required, restore the site to its original state".

11. Prior to that, on 2 December 1889, the Directorate-General for Registration and Property had written to the prefect in the following terms:

> "... Having regard to Mr A.'s genuine lack of means, as a former seaman who has reached an advanced age and cannot possibly pay the normal charge, and considering, furthermore, that it would be a drastic measure to order the demolition of the little house that he has built on land reclaimed from the sea and uses as a dwelling house, I have decided to impose the minimum charge thus reflecting the precariousness of the occupancy and preventing the rights of the State from becoming time-barred.
>
> In the circumstances I consider ... that there is now no further obstacle to disposing of this case by issuing a concession order, but on Mr A.'s death, his heirs should be served with notice either to purchase the usurped land or to pay the charge at the rate applicable for private occupancy of maritime public property."

12. Following the death of Mr A., his two daughters requested authorisation from the authorities to keep the house on the same terms as their parents. Authorisation was granted them by a decision of 9 July 1897 conferring a right of temporary occupancy of the public property in question. The house was subsequently transferred in 1909 and sold in 1957, with the title deeds specifying each time that the small house built on maritime land was included in the sale. The deed of 1957 reads as follows:

> "Title and entry into possession: the purchasers shall hereby acquire title to the land and the little house of Kérion from today's date. The property is sold free of tenants or occupants."

13. The relevant passages of the deed of sale of 1960 read as follows:

> "Title – Entry into possession:
>
> The purchasers hereby acquire title to the property conveyed to them under this deed, and shall enter into actual possession thereof from today's date ...
>
> From the date of their entry into possession they shall pay all taxes and charges payable now or in the future on the house hereby sold together with the land. ...
>
> ... The present sale is concluded in consideration of the principal price of three thousand new francs ..."

14. Following this purchase, and in order to acquire legal access to the house, the applicant and his wife were granted rights of temporary occupancy of maritime public property that were regularly renewed in 1961 (year during which the applicant was permitted to extend the dyke and a public right of way was granted along the seaward edge of the dyke), 1975, 1986 and 1991. The authorisation of temporary occupancy of 1986 specified that the applicant sought "the renewal of the prefectoral decision of

17 August 1961 authorising the construction of a dyke with a dwelling house on it ...". The last agreement granting them the right to occupy public property expired on 31 December 1992. The decisions specified that "the requested dyke will not in any way interfere with navigation rights, on condition that it is levelled off above the highest water mark, or with maritime coastal traffic provided that public access is guaranteed at all times" and that "in accordance with Article A 26 of the Code of State Property [see paragraph 40 below], the authorities reserve the right to modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, without the permittee thereby acquiring any right to claim damages or compensation in that regard. The permittee must, if required, restore the site to its original state by demolishing the constructions built on the public property, including those existing on the date on which the decision was signed. Should he fail to comply with that obligation, the authorities shall do so of their own motion and at his expense".

B. Administrative proceedings

15. By a letter of 14 March 1993, the applicant and his wife requested the prefect of Morbihan to renew authorisation of their occupancy.

16. The prefect of Morbihan replied on 6 September 1993 informing the applicant that the entry into force of Law no. 86-2 of 3 January 1986 on the development, protection and enhancement of coastal areas ("the Coastal Areas Act"), and in particular section 25 thereof, no longer allowed him to renew authorisation on the previous terms and conditions. Section 25 provided that decisions regarding the use of maritime public property had to take account of the vocation of the zones in question, which ruled out any private use including dwelling houses. However, in order to take account of the length of occupancy and the applicant's sentimental attachment to the house in question, he proposed to enter into an agreement with the applicant that would authorise limited and strictly personal use and prohibit him from transferring or selling the land and house and from carrying out any work on the property other than maintenance and would include an option for the State, on the expiry of the authorisation, to have the property restored to its original condition or to reuse the buildings.

17. By a letter dated 19 November 1993, the applicant and his wife rejected the prefect's offer and requested a concession to build a dyke that would be valid as a transfer of ownership under Article L. 64 of the Code of State Property (see paragraph 43 below).

18. On 9 March 1994 the prefect of Morbihan gave a decision, based on section 25 of the Coastal Areas Act, in which he considered that there was no public interest justifying the concession requested. He did, however,

renew his offer to grant the applicant and his wife a right of temporary occupancy subject to conditions.

19. On 5 May 1994 the applicant and his wife applied to the Rennes Administrative Court for the prefect's decision of 9 March 1994 to be set aside. In support of their application, they submitted that the refusal to grant them a concession to build a dyke was unlawful.

20. By a letter of 4 July 1994, the prefect of Morbihan served notice on the applicant and his wife to regularise their status as unauthorised occupants of public property. That notice was renewed on 10 April 1995.

21. On 6 September 1995 the Public Works Department of the *département* of Morbihan drew up an official report recording the administrative offence of unlawful interference with the highway and noting the unlawful occupancy of the land by the applicant, contrary to the provisions of Article L. 28 of the Code of State Property (see paragraph 40 below).

22. On 20 December 1995 the prefect of Morbihan lodged an application with the Rennes Administrative Court citing the applicant and his wife as defendants in respect of an offence of unlawful interference with the highway as they continued to unlawfully occupy public property. He sought an order against them to pay a fine and restore the foreshore to its original state prior to construction of the house and to restore the dyke on which it stood, within three months.

23. On 19 February 1996 the Revenue Department served notice on the applicant to pay the sums due for the years 1995 and 1996 for unauthorised occupancy of public property, namely, a total of 56,754 French francs (FRF).

24. By two separate judgments delivered on 20 March 1997, the Rennes Administrative Court ruled on the application lodged by the applicants on 5 May 1994 (case no. 941506) and the application lodged by the prefect of Morbihan on 20 December 1995 (case no. 953517).

The application for the prefect's decision rejecting their request for a permit to build a dyke to be set aside (case no. 941506) was dismissed on the following grounds:

> "... In support of their argument that the stretch of land on which the dwelling house stands belongs to the category of maritime private property the applicants have exhibited in the proceedings a decision authorising the temporary occupancy of maritime public property dating back to 1889. However, this decision merely takes note that the land in question has been drained and does not certify the lawfulness thereof. Accordingly, it does not call into question the classification of the land as public property.
>
> In accordance with Article L. 64 of the Code of State Property, 'the State may concede, on conditions it shall determine ... the right to build a dyke'. While section 27 of the above-mentioned Act of 3 January 1986 [Coastal Areas Act] has reduced the scope of application of that Article, it does nonetheless specify that 'land draining carried out prior to the present Act shall continue to be governed by the

previous legislation'. Accordingly, the only provisions applicable to the present case are Article L. 64 of the above-mentioned Code and the Maritime Public Property Act of 28 November 1963, which provides that ... 'subject to any contrary provisions of deeds of concession, land artificially removed from the action of the tide shall be incorporated into the category of maritime public property'. In rejecting the request on the basis of the principles and guidelines laid down in the inter-ministerial circular of 3 January 1973 setting out the policy to be followed for the use of maritime public property, the prefect – when examining the applicant's particular situation involving an application for a concession – did not err as to the scope of the circular in question, which neither repeals nor amends the above-mentioned legislative provisions but is limited to applying them.

The above-mentioned circular, which instructs the authorities responsible for deciding whether or not to grant concessions to build dykes not to transfer title to the plots of land thus created and to accept only installations designed for collective use, to the exclusion of private dwellings, was issued in respect of an area in which the relevant authorities have discretionary power. In referring to the principles laid down in the circular, the prefect does not appear to have interpreted the legislative provisions inaccurately; nor did he fail to consider the specificity of the applicant's proposal before concluding that there was no special factor justifying an exemption from the instructions analysed above."

The application lodged by the prefect of Morbihan (case no. 953517) was granted. The court stated that "the land on which Mr and Mrs Depalle's dwelling house stands is indeed public property". With regard to the offence of unlawful interference with the highway, the court found as follows:

"*... The rules governing public property*

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

The administrative courts base their determination of the substance of artificial public property on the judicial interpretation of any private deeds that may be produced whose examination raises a serious difficulty. In the present case the dyke and the house are not publicly owned property, given the exclusively private use made of them and the fact that they do not belong to a public authority, as confirmed by the deed of sale dated 8 October 1960. Accordingly, as it is not seriously disputed that the property in question has been appropriated for private use, it is not necessary to adjourn the application. ...

Whether there has been unlawful interference with the highway

While Mr and Mrs Depalle have full title to the dwelling house occupied by them and claim, accordingly, that they are therefore not the unlawful occupants of public property, the fact remains that the erection of a permanent structure on public property could not be legally undertaken without either a concession to build a dyke or another type of concession. The investigation into the facts and, in particular, the absence of any documents evidencing that a concession was granted show that the dwelling house in question was illegally built on maritime public property. Accordingly, and despite the production by the owners of undisputed title deeds, the prefect is justified

in requesting an order against Mr Depalle to pay a fine and restore the foreshore to its original state prior to the construction of the house.

Penalty for the offence

... Mr Depalle is hereby ordered to pay a fine of FRF 500.

State property proceedings

Mr Depalle is hereby ordered to restore the property to the state it was in prior to the construction of the buildings within three months of service of this judgment. On expiry of that time-limit Mr Depalle shall pay a fine of FRF 100 per day's delay in the event of failure to comply with the present judgment and the authorities shall be authorised to enforce it at the cost and risk of the offender ..."

25. On 2 July 1997 the applicant and his wife lodged an appeal against the judgment delivered in case no. 953517. On 7 July 1997 they appealed against the judgment delivered in case no. 941506.

In support of their appeal against the judgment delivered in case no. 941506, the applicant and his wife submitted that the land in question was not public property belonging to the State. They maintained that the land was private property belonging to the State with the twofold effect that the usual rules governing acquisition by adverse possession under private law were applicable to their situation and that the administrative courts did not have jurisdiction to decide the dispute.

26. By a judgment of 8 December 1999, the Nantes Administrative Court decided to join the two sets of proceedings on the ground that they were connected and to dismiss the applicant and his wife's appeals on the following grounds:

"With regard to the application ... concerning the offence of unlawful interference with the highway:

Regarding the State property proceedings

Firstly, it is not disputed that the land on which the dyke on which the house occupied by Mr and Mrs Depalle was built was entirely covered by water, independently of any exceptional meteorological circumstances, prior to the draining works undertaken in order to build the dyke. It has not been established, or even alleged by the applicants moreover, that the undrained portion of this land had ever been removed from the action of the tide. The investigation shows, moreover, that the dyke is the result of land draining carried out prior to the entry into force of the above-mentioned Act of 28 November 1963 [the Maritime Public Property Act] ... and that, notwithstanding the various authorisations of temporary occupancy granted by the authorities, as this was not done in the manner prescribed for concessions for the construction of a dyke it has not had the effect of bringing this part of the land thus removed from the action of the tide outside the category of maritime public property. In accordance with the principles of inalienability and imprescriptibility of public property, the submissions by Mr and Mrs Depalle to the effect that the house was built legally and its occupancy accepted by the authorities for a very long time and

tolerated even after expiry of the last authorisation to occupy it do not alter the fact that the property falls within the category of maritime public property.

Secondly, as has been said, the last decision in favour of Mr and Mrs Depalle authorising temporary occupancy of the maritime public property expired on 31 December 1992. In the absence, since that date, of a lawful title of occupancy, the prefect of Morbihan is justified in requesting an order against the occupants to restore the site – if they have not already done so – to its original state prior to construction of the house on maritime public property. In disputing that obligation, the applicants cannot properly rely on the long period of occupancy of the premises or on the fact that the authorities have tolerated the continuation of that occupancy since 31 December 1992 and proposed draft occupancy agreements in order to regularise the situation, which, moreover, they have not taken up. ...

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

The application regarding the refusal to grant a concession to build a dyke

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

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

By instructing the authorities responsible for granting concessions to build a dyke not to allow any plot of land whatsoever falling into the category of public property to be reclassified as private property with a view to transferring full title thereto, the ministers signatory to the circular of 3 January 1973 did not adopt any legal rules amending or supplementing the above-mentioned provisions of Article L. 64 of the Code of State Property but confined themselves to applying them. Accordingly, as stated above, the plot of land in question is State-owned public property. There is no evidence in the case that the prefect, before reaching his decision, either failed to examine the particular circumstances of Mr and Mrs Depalle's request or made a manifest error of assessment in concluding that there was no special feature or general-interest consideration in the case justifying an exemption from the above-mentioned rules."

27. On 21 February 2000 the applicant lodged an appeal on points of law against the judgment of 8 December 1999. The Government Commissioner pointed out, in the same submissions as those made in a similar case, that the value in today's terms of the purchase price of the house was 1,067,143 euros (EUR). He continued as follows:

"... However, the acquisition of rights *in rem* is not permitted under the Law of 25 July 1994 on State-owned Natural Public Property ... nor were these acquired before that Law was passed ... The appellants have not acquired any property rights over their houses; nor have they acquired rights *in rem* over public property as a result of the successive sales. Given the precarious situation of the buildings, the market value could not be established without taking account of that essential fact and it is to be hoped that the applicants were duly informed of the position when the purchase deeds were drawn up ... Lastly, and despite the fact that we are not especially enthusiastic about the outcome of this case, we have no alternative but to dismiss the appellants' pleadings. ... They probably committed a tactical error in refusing the prefect's reiterated offer. Even if they were not exactly delighted by the prospect, it was at least preferable to a straightforward demolition order which will have to be judicially enforced at their expense. All hope is perhaps not lost of renewing contact with the authorities with a view to finding what might be a less drastic solution.

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

28. By a judgment delivered on 6 March 2002, the *Conseil d'Etat* dismissed the applicant's appeal. It held that he could not rely on any right *in rem* over the land in question or over the buildings that had been erected on it and that the obligation to restore the land to its original state without any prior compensation was therefore not a measure prohibited by Article 1 of Protocol No. 1. It also held that the applicant could not rely on the fact that the authorities had tolerated the occupancy of the property in support of his submission that he should be allowed to restore the site to the state it had been in at the time of acquisition of the house.

29. Following a fire in 2005 the applicant applied for a building permit for identical refurbishment of the house. By a decision of 5 September 2005, he was issued with a building permit following a favourable opinion given by an architect from the *Architectes des bâtiments de France* under the Coastal Areas Act. The permit was subsequently revoked, however, at the request of the prefect lodged with the mayor of Arradon, on the ground that it was illegal because it had been issued in contravention of the rules of inalienability and imprescriptibility of public property.

30. In 2007 and 2008 the Revenue Department sent the applicant a reminder to pay the charges for the years 2006 and 2007 in the sum of EUR 5,518 and EUR 5,794 respectively, plus property tax.

31. The applicant produced a valuation of his house drawn up by an estate agent's office in November 2008 which states as follows:

"... a dwelling house ... situated on a plot of land measuring 850 sq. m. ... Having regard to the geographical situation of the property, the condition of the building, the surface area, its location on maritime public property and the local property market, and subject to the owners' ability to produce a concession agreement in respect of

maritime public property, this property is worth between EUR 1,150,000 and 1,200,000."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Maritime public property and management thereof

1. The protection of maritime public property

32. The idea that the foreshore is "common property", that is, cannot be appropriated for private use and is managed by the public authorities, dates back to Roman times (Institutiones Justiniani, Book II, Title I, *De rerum divisione*), when even then a permit was necessary in order to build on the seashore. Colbert's Ordinance of the Marine of August 1681 codified the principle and up until recently was still the legal basis for the State's management of maritime public property. In addition to defining what constituted the "seashore and foreshore", it laid down the applicable rules:

> "No one shall build on the foreshore, set stakes in the ground or erect any construction that may interfere with navigation, on pain of demolition of the constructions, confiscation of the materials and discretionary fines."

At the time of the Revolution, the idea developed that maritime public property was governed by the government in the interest of the nation, and not merely as part of the heritage that used to belong to the Crown and now belongs to the State. The management of maritime public property is still largely guided by this principle today. Over and above the idea of State ownership of such property, the conservation and management of it are more a matter of implementation of a policy regarding its use than the exercise of the owner's "civil" rights. The prefect has a major role in the protection of maritime public property. He is the authority who, generally, governs the use of the property at local level, decides whether or not to allow private occupancy and protects the integrity of the property by prosecuting offenders (source: www.mer.gouv.fr, consulted on 3 February 2010).

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

2. Substance of natural maritime public property

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

> "1. The seabed and marine substrata between the external boundary of the territorial waters and, on land, the foreshore.
>
> The foreshore comprises the whole area covered (and uncovered) by the sea, up to the high-tide mark under normal meteorological conditions;
>
> 2. The beds and substrata of salt pans communicating directly, naturally and permanently with the sea;
>
> 3. Land naturally reclaimed from the sea:
>
> (a) which was part of the State's private property at 1 December 1963, subject to third-party rights;
>
> (b) which has been constituted since 1 December 1963.
>
> ...
>
> 5. Land reserved for public-interest maritime, seaside or tourist needs which has been purchased by the State.
>
> Land artificially removed from the action of the tide shall remain in the category of natural maritime public property unless otherwise stipulated in legally concluded and lawfully executed deeds of concession transferring ownership."

3. Protection of maritime public property

(a) Principle of inalienability

34. The principle of inalienability of public land, which was established in the case-law and then incorporated into the Code of State Property (Article L. 52) and the CGPPP (Article L. 3111-1), is inextricably linked to the notion of public land. The basis of this principle is the designation of land for public use. As long as it remains thus designated, and no express decision has been taken reclassifying particular public land as private property, no transfer of land can be authorised. It is a means of preventing public land from being acquired by prescription or adverse possession under private law, hence the principle of imprescriptibility that is very often associated with the principle of inalienability. Accordingly, in its *Cazeaux*

judgment, on the subject of plots of land situated close to the seashore in the Arcachon Basin, the *Conseil d'Etat* found:

> "... while the public authorities have authorised various building works on this land and on several occasions waived their right to apply the rules governing public land ..., neither the founders of the *société du domaine des prés salés* nor the company itself have been able to acquire any property right over the land, which, being part of public land, was inalienable and imprescriptible ..."

35. The Constitutional Council has stated that inalienability is limited to precluding the transfer of public property that has not first been reclassified as private property (CC, no. 86-217 DC of 18 September 1986, Freedom of communication). It has not, however, recognised that the principle of inalienability has any constitutional status (CC, dec. no. 94-346 of 21 July 1994, Rights *in rem* over public property). The *Conseil d'Etat* has recently reiterated that "where property belonging to a public authority has been incorporated into the category of public land by virtue of a decision classifying it thus, it shall remain public land unless a decision is given expressly reclassifying it as private property". Accordingly, it has held that the question whether or not short-stay factories fell into the category of public property was not affected by the fact "that these short-stay factories were intended to be rented or assigned to the occupants or that the occupancy leases granted were private-law contracts" (CE, *Société Lucofer*, 26 March 2008).

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

charge, of any constructions and therefore undermine the "protection due to public property".

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

(b) Conservation policy

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

39. According to the *Conseil d'Etat*, conservation agencies have a duty to prosecute offenders (CE, *Ministre de l'équipement v. Association "des amis des chemins de ronde"*, 23 February 1979). Regarding a plot of land incorporated into maritime public property at Verghia beach (southern Corsica), the *Conseil d'Etat* decided the following:

> "... the fact that M.A. produced title deeds to the property in question and had been authorised to build on the land under the regional planning legislation, as distinct from the legislation governing maritime public property, does not mean that the offence of unlawful interference with the highway has not been made out and, in any event, cannot preclude prosecution by the prefect ..." (CE, no. 292956, 4 February 2008).

With regard to repairing damage caused to public property, the actual attitude adopted by the authorities prior to bringing proceedings for unlawful interference with the highway has been deemed to give rise to rights in favour of the offender, including the right not to assume personal responsibility for restoring the site to its original state (CE, *Koeberlin*, 21 November 1969).

4. Use of maritime public property

40. The use of maritime public property may be collective or private. Collective use which allows all citizens to benefit from public property

(navigation on watercourses, beaches) is freely exercisable, equally available to all and free of charge. However, the principle that use is free of charge has not been expressly incorporated into the CGPPP because it is subject to numerous exceptions.

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

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

> "Subject to authorisation being issued by the competent authority, no one may occupy any national public property or make use thereof over and above the right of use vested in everyone.
>
> The Property Department shall record any infringement of the provisions of the preceding paragraph with a view to instituting proceedings against illegal occupants, recovering compensation for charges in respect of which the Treasury Department has been defrauded, without prejudice to the institution of proceedings for unlawful interference with the highway." [Article A 26 specified that authorisation was revocable without compensation.]

41. According to the *Conseil d'Etat*:

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

42. The precariousness of these authorisations derives from the principle of inalienability, according to which the protection – and accordingly the disposal – of public land is vested in the authorities. According to the case-law:

> "... any authorisation to occupy public land is precarious and revocable. Consequently, the fact – assuming it is made out – that, prior to adoption of the decision being challenged, I. had been granted authorisation to occupy the part of common public property ... does not affect the lawfulness of the mayor's decision requesting him to demolish the buildings he had erected and restore the public land to its original state ..." (CE, *Isas*, 29 March 2000)

It also states very clearly that those to whom authorisation has been granted have not thereby "acquired rights" to renewal of the authorisation (CE, *Helie*, 14 October 1991).

43. The conditions of occupation of public property are determined either in unilateral concessions granted by the authorities (of the type referred to above in Article L. 28 of the Code of State Property) or in contracts signed with the occupant. The latter are called concessions to occupy public land, which – on maritime public property – may be a beach

concession or a concession to build a dyke. By means of this concession, the State authorises the concessionaire to carry out works on the foreshore by which land is removed from the action of the tide. In respect of natural maritime public property an arrangement was established in 1807, traditionally called a concession to build a dyke and by which ownership was transferred (former Article L. 64 of the Code of State Property): the concessionaire was authorised to drain land, which, once removed from the action of the tide, no longer fell within the definition of natural maritime public property and could therefore be reclassified as private property and transferred by the State. That arrangement, which was originally used to build agricultural polders, has more recently been used for property developments in the form of marinas, reclaimed from the sea. Following a reaction to what was perceived as a privatisation of the shore, a circular was issued in 1973 prohibiting such arrangements – a prohibition later confirmed by the Coastal Areas Act, which imposes a broader prohibition on any interference with the natural state of the shore. It is now no longer possible to build marinas or polders by means of concessions to build dykes by which ownership is transferred. This arrangement can now apply only to past draining works and is the sole means of legalising these (source: www.mer.gouv.fr, consulted on 3 February 2010).

B. The Coastal Areas Act

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

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

46. It is in the planning sphere that the principles established are the best known and have given rise to the most litigation. Planning permission for further development must be granted with regard to continuation of existing constructions or new hamlets. It is forbidden to build roads on the shore and

through roads cannot be built closer than 2,000 metres from the shore. In order to preserve natural sites the Act imposes a "no building" rule within a 100-metre band – outside urban centres – from the shore, and restricts development in areas near the shore. Lastly, sites of outstanding interest or characteristic of the shore must be preserved and only small-scale development can be allowed.

47. The Act has laid down rules for managing maritime public property which include a mandatory public inquiry prior to any substantive change of use, clarifying the procedures for delimiting the foreshore, prohibiting – other than in exceptional circumstances – interference with the natural state of the seashore and establishing specific rules for collective mooring. Lastly, it has established the principles of unobstructed and free public use of the beaches and facilitated public access to the sea (see Article 321-9 of the Environment Code and Article L. 2124-4 of the CGPPP:

> "Pedestrians shall have free access to beaches ... Beaches are fundamentally reserved for the unobstructed and free use of the public."

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

> "Decisions regarding the use of maritime public property shall take account of the vocation of the zones in question and those of the neighbouring terrestrial areas, as well as of the requirements of conservation of coastal sites and landscapes and biological resources. Accordingly, they shall be coordinated with, *inter alia*, decisions concerning neighbouring public land.
>
> Subject to specific provisions regarding national defence and the requirements of maritime safety, any substantive change of use of zones of maritime public property shall first be the subject of a public inquiry ..."

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

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

50. The following is an extract from the section entitled "Matching facts with the theory" of a report on the conditions of application of the Coastal

Areas Act, drawn up by the Highways Authority and sent to the Minister for Infrastructure, Housing and Transport in July 2000:

> "... there is an acute sense of unfairness when an application for planning permission is turned down in respect of a site where the presence of buildings would appear to suggest that at other times the authorities have been less particular. ...
>
> The right to enjoy 'for life' but not to transfer a dwelling house built on maritime public property, as recognised in an agreement signed with the prefect, the right granted to a married couple until their death to camp or park their caravan in a zone in which camping was now illegal, together with an agreement expressly stipulating that the right could not be inherited, illustrate the creativity shown by the authorities in this regard in Charente-Maritime and the Morbihan. ...
>
> All sorts of liberties are increasingly being taken in various degrees of good faith. ... Should we simply ignore the development of a black market in permits to occupy public property ... Should we not be attempting to establish liability on the part of public officials who in the course of their administrative duties have knowingly contributed to creating or exacerbating an illegal situation? ..."

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

> "The purpose of the Coastal Areas Act is to maintain or develop tourism in coastal areas. Sections 3 to 8 of the Act, in particular, lay down the conditions in which the public may visit natural sites, the seashore and the corresponding facilities. The provision of coastal paths goes some way towards giving effect to these legislative provisions. ... The public can continue to walk along the coast by virtue of an easement over private properties and a right of way over public land that may belong to the State (maritime public property), the Coastal Protection Agency or local and regional authorities ...
>
> Making a pathway often requires an on-site study of the terrain in order to determine whether the coastal area in question can be opened to pedestrians without harming the fauna, the flora or the stability of the soil. If the land is considered to be accessible without any risk to the environment, regard will have to be had to where the path is routed, particularly across private property, it being observed that the statutory route (three metres in width running along the boundary of maritime public property) is not always the most appropriate solution. If the statutory route across private properties has been modified, a public inquiry must be carried out. ..."

C. Comparative law

52. The Court examined the situation in sixteen coastal member States. Only four States (Albania, Bosnia and Herzegovina, Sweden and the United Kingdom) do not recognise the existence of maritime public property exclusive of any private ownership rights. In the other twelve States (Croatia, Germany, Greece, Ireland, Italy, Malta, Monaco, Montenegro, the Netherlands, Slovenia, Spain and Turkey), maritime public property belongs

either to the State or to other public bodies and is inalienable on that basis. In all these States maritime public property can nevertheless be designated for private use on the basis of fixed-term concessions. And in all these States illegal use exposes the offender to administrative or even criminal penalties. In particular, the illegal construction of immovable property can result in the offender being ordered to demolish the building concerned at his or her own expense and without compensation. This type of measure also exists in Sweden, where the private right of ownership of land on the seashore is recognised by law but the land is subject to relatively strict easements which prohibit the construction of new buildings and guarantee public access to the sea.

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

D. Council of Europe texts

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

THE LAW

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

55. The applicant alleged that his right of property guaranteed by Article 1 of Protocol No. 1 was infringed as a result of the French authorities' refusal to authorise him to continue occupying the maritime public land on which stands a house he has owned since 1960 and as a result of the order to demolish the house. Article 1 of Protocol No. 1 provides:

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

A. Applicability: existence of a "possession"

1. The parties' submissions

(a) The applicant

56. The applicant reiterated the autonomous nature of the concept of "possessions" (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 95-96, ECHR 2004-XII). In his submission, the rule that maritime public property was inalienable did not mean that in the present case the house was *res nullius* and did not fit into any legal category. The house had been built more than a hundred years ago and he had not been told that it had been built illegally on public land when he had purchased it in 1960. Having been kept in the dark for a long time about the possible demolition of his house, the applicant referred to the decades spent peacefully in a strong social and family environment. He pointed out that the house was liable to taxes and duties. The State had therefore *de facto* recognised a proprietary interest attaching directly to the house in question and to the movable property in it.

57. The applicant submitted, further, that when the prefect had written to him in 1993 proposing to extend authorisation just for his lifetime, he had referred to the possibility of "reusing the buildings", thus acknowledging the existence of a construction and therefore of a "possession". A house could not change status according to whether the State refused to renew authorisation and ordered demolition or refused to renew authorisation with a view to benefiting from ownership of the property, which, in such a case,

would be full ownership. By obliging a person who had been authorised to occupy land to demolish, at his own expense, a house in which the same family had been living for thirty-five years, regardless of the fact that it had been acquired in good faith following a sale, the State failed to comply with the duty incumbent on it to respect "possessions".

(b) The Government

58. As at the admissibility stage, the Government disputed the existence of a "possession" within the meaning of Article 1 of Protocol No. 1 on account of the impossibility of establishing rights *in rem* over maritime public property. The various – temporary, precarious and revocable – decisions authorising occupancy issued to the applicant and his predecessors had not had the effect of acknowledging that any property right had vested in the successive occupants. They pointed out that the legislative exceptions to the principle of inalienability excluded natural maritime public property, which was in issue here (see paragraph 36 above).

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

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

61. The impossibility of acquiring property by adverse possession invalidated the argument relating to the effect of the length of occupation of the site. No legitimate expectation of being able to continue enjoying the "possession" had arisen in favour of the applicant, unlike in *Hamer v. Belgium* (no. 21861/03, § 76, ECHR 2007-V), which, in the Government's view, concerned *negligence* on the part of the public authorities and not *tolerance*, authorising the existence of a proprietary interest in the peaceful enjoyment of one's house.

2. The Court's assessment

62. The Court reiterates that the concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning

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

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

64. Generally speaking, the imprescriptibility and inalienability of public land have not prevented the Court from concluding that "possessions" within the meaning of this provision were at stake (see *Öneryıldız*, cited above; *N.A. and Others v. Turkey*, no. 37451/97, ECHR 2005-X; *Tuncay v. Turkey*, no. 1250/02, 12 December 2006; *Köktepe v. Turkey*, no. 35785/03, 22 July 2008; *Turgut and Others v. Turkey*, no. 1411/03, 8 July 2008; and *Şatır v. Turkey*, no. 36192/03, 10 March 2009). However, in those cases, except for in *Öneryıldız*, the applicants' property titles were not disputable under the domestic law because the applicants could legitimately consider themselves to be "legally secure" in respect of the validity of those titles before they were annulled in favour of the Treasury (see *Turgut and Others*, cited above, § 89, and *Şatır*, cited above, § 32).

65. In the instant case it was not disputed before the Court that the plot of land on which the house was built belonged to the category of maritime public property. What is in dispute is the legal consequences of the deed of sale of 1960 and of the successive decisions authorising occupancy of the house.

66. The Court observes that the Administrative Court found that "[the applicant] ha[d] full title to the dwelling house occupied by [him]" (see paragraph 24 above). However, in strictly applying the principles governing public property – which authorise only precarious and revocable private occupancy – the other domestic courts ruled out any recognition of a right *in rem* over the house in favour of the applicant. The fact that he had occupied the house for a very long time did not, in their opinion, have any effect on the classification of the property as inalienable and imprescriptible maritime public property (see paragraph 26 above).

67. In the circumstances, and notwithstanding the fact that the house was purchased in good faith, as the decisions authorising occupancy did not

constitute rights *in rem* over public property – a fact of which the applicant could not have been unaware, just as he could not have been unaware of the consequences of that for his rights over the house – (see, by contrast, *Z.A.N.T.E. – Marathonisi A.E. v. Greece*, no. 14216/03, § 53, 6 December 2007), the Court doubts that he could reasonably have expected to continue having peaceful enjoyment of the property solely on the basis of the decisions authorising occupancy (see, *mutatis mutandis*, *Özden v. Turkey (no. 1)*, no. 11841/02, §§ 28-30, 3 May 2007, and *Gündüz v. Turkey* (dec.), no. 50253/99, 18 October 2007). It observes in this connection that all the prefectoral decisions referred to the obligation, in the event of revocation of the decision authorising occupancy, to restore the site to its original state if required to do so by the authorities (see paragraph 14 above).

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

B. Merits

1. The parties' submissions

(a) The applicant

69. The applicant challenged the ruthless application of the Coastal Areas Act to his case, forbidding his private use of the land. The authorisation to occupy the property that had been systematically renewed since the end of the nineteenth century should have had a bearing on the implementation of section 25 of the Coastal Areas Act. That provision specified, moreover, that account had to be taken of neighbouring land designated for public use; however, the house was surrounded by privately owned land and buildings and not undeveloped coastland. Furthermore, the Act did not contain any clear, binding measure. Authorisation had been renewed after the Act had been passed in 1986. Accordingly, however worthy a cause environmental conservation was, the legislation relied on did not, the applicant argued, have the scope attributed to it by the Government.

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

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

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

(b) The Government

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

73. The Government explained that pursuit of the legitimate aim, in accordance with the public interest in ensuring that public property was directly and permanently designated for use by all citizens, required the authorities to protect land from illegal occupation. Such protection, which evolved over time according to society's expectations and concerns, included, in the event of private use that was not compatible with the designated use of the land, the right to call into question a right of occupation granted in the past. In the present case, authorisation had been repeatedly renewed because this had been compatible with the designated use of the public land: for fishing and navigation.

74. The position had changed today with the enactment of the Coastal Areas Act, which established the principle that there should be no interference with the natural state of the seashore and provided for enhanced public access to that public property. The Government pointed out that the authorities thus assumed a responsibility which should in practice result in their intervention at the appropriate time in order to ensure that the statutory provisions enacted with the purpose of protecting the environment were not entirely ineffective (see *Hamer*, cited above, § 79). The "tolerance" shown by the authorities towards the applicant could not be maintained unchanged

since allowing dwelling houses to remain standing, for purely private use, was no longer compatible with the designated use of the property henceforth subject to environmental requirements. The refusal to renew the authorisation was therefore entirely justified. It was consistent with the careful and progressive implementation of the Coastal Areas Act in so far as it called into question a situation, as in this case, that had gone on for a very long time.

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

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

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

2. The Court's assessment

77. The Court reiterates that, according to its case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (see, *inter alia*, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98): the first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid

down in the first rule (see *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004, and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

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

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

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

81. The Court cannot agree with the applicant's submission that the aim of the interference was not in the general interest, namely, the protection of the property's designation as public property and of the environment. It accepts that the domestic courts analysed the interference with the property in question only from the standpoint of its classification as public property. It observes, further, that by issuing successive decisions authorising occupancy, the State *de facto* weakened the protection of the property's designation as land for the benefit of the public. However, it is since the enactment of the Coastal Areas Act – section 1 of which provides that "the coast is a geographical entity that requires a specific development, conservation and enhancement policy" – that authorisations have no longer been renewed, with the aim of protecting the seashore and more generally

the environment. The Court reiterates that environmental conservation, which in today's society is an increasingly important consideration (see *Fredin v. Sweden (no. 1)*, 18 February 1991, § 48, Series A no. 192), has become a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities. The Court has stressed this point a number of times with regard to the protection of the countryside and forests (see *Turgut and Others*, cited above, § 90; *Köktepe*, cited above, § 87; and *Şatır*, cited above, § 33). The protection of coastal areas, and in particular beaches, which are "a public area open to all", is another example (see *N.A. and Others*, cited above, § 40) of an area where an appropriate planning policy is required. The Court therefore considers that the interference pursued a legitimate aim that was in the general interest: to promote unrestricted access to the shore, the importance of which has been clearly established (see paragraphs 46-49 and 51 and 54 above).

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

83. According to well-established case-law, the second paragraph of Article 1 of Protocol No. 1 is to be read in the light of the principle enunciated in the first sentence. Consequently, an interference must achieve a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The search for this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, and therefore also in the second paragraph thereof: there must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III). The requisite balance will not be achieved if the person concerned has had to bear an individual and excessive burden.

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

85. The Court observes that the applicant did not build the house himself but purchased it by notarial deed in 1960 (see paragraphs 9 and 13 above). Since then he has occupied and maintained the house, and paid the taxes and charges on it. The Court also observes that the house was apparently built over a century ago on public land drained for that purpose without any concession authorising the construction (see paragraph 24 above). In the Court's view, the question of whether the house was legally built should not be a matter for consideration in the present case. In any event, the alleged illegality of the building should not be held against the applicant, particularly as it is not disputed that he acquired his "possession" in good faith. His situation is therefore clearly different from that of an individual who has knowingly erected a building without a permit (see, by contrast, *Öneryıldız*; *Saliba*; and *Hamer*, all cited above). The house in question is not therefore comparable with those that have recently been illegally built along the coast.

86. At all events, since the applicant purchased the "possession", or possibly even since it was built, the authorities have been aware of the existence of the house because it has been occupied on the basis of a decision authorising occupancy which specified that "the dyke cannot interfere in any way with navigation rights ... or maritime coastal traffic on condition that it is accessible to the public at all times". Each prefectoral decision authorising occupancy specified the length of the authorisation and, in accordance with former Article A 26 of the Code of State Property, that the authorities could modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, without the permittee thereby acquiring any right to claim compensation. Furthermore, it was specified that the permittee must, if required, restore the site to its original state by demolishing the constructions built on the public property, including those existing on the date on which the decision was signed. The Court concludes from this that the applicant had always known that the decisions authorising occupancy were precarious and revocable and considers that the authorities cannot therefore be deemed to have contributed to maintaining uncertainty regarding the legal status of the "possession" (see, by contrast, *Beyeler v. Italy* [GC], no. 33202/96, § 119, ECHR 2000-I).

Admittedly, the applicant has had peaceful enjoyment of the "possession" for a long time. The Court does not, however, see any negligence on the part of the authorities, but rather tolerance of the ongoing occupancy, which has, moreover, been subject to certain rules. Accordingly, there is no evidence to support the applicant's suggestion that the authorities' responsibility for the uncertainty regarding the status of the house increased with the passage of time (see paragraph 60 above). The exceptional length of the occupancy and certain hesitations on the part of the authorities (see paragraphs 14 and 29 above) should be viewed in the context at the relevant time, when development and environmental concerns

had not yet reached the degree witnessed today. It was not until 1986 that the applicant's situation changed, following the enactment of the Coastal Areas Act which put an end to a policy of protecting coastal areas merely by applying the rules governing public property. In any event, the above-mentioned tolerance could not result in a legalisation *ex post facto* of the status quo.

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

88. It goes without saying that after such a long period of time demolition would amount to a radical interference with the applicant's "possession". It is true that in the past the authorities were perhaps less strict about private occupancy of public land. Furthermore, prior to the Coastal Areas Act, the applicant did not request a concession to build a dyke at a time when he could perhaps still have done so. However, the State started reacting as early as 1973 to the risk of public property being used for private ends (see paragraph 43 above).

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

Allowing an exemption from the law in the case of the applicant, who cannot rely on acquired rights, would go against the aims of the Coastal Areas Act (see paragraphs 45-49 above) and undermine efforts to achieve a better organisation of the relations between private use and public use (see paragraph 50 above). Moreover, the applicant has not provided proof of any inconsistency on the part of the authorities in applying such a policy, either by showing that neighbours in a similar situation have been exempted from the obligation to demolish their house or by referring to any overriding

higher interest, be it architectural and/or dictated by a concern to protect the national heritage.

90. The Court notes, further, that the applicant refused the compromise solution and the prefect's proposal to continue enjoyment of the house subject to conditions. The Court shares the opinion of the Government Commissioner of the *Conseil d'Etat* that the proposal in question could have provided a solution reconciling the competing interests (see paragraph 27 above). It did not seem an unreasonable offer, having regard to the length of the occupancy and the applicant's "sentimental attachment" to the house and the time sometimes required to implement an Act. The same solution has, moreover, been adopted when implementing recent coastal laws in other coastal countries (see, for example, Spain, paragraph 53 above).

91. Lastly, the Court reiterates that where a measure controlling the use of property is in issue, the lack of compensation is a factor to be taken into consideration in determining whether a fair balance has been achieved but is not of itself sufficient to constitute a violation of Article 1 of Protocol No. 1 (see *Galtieri*, cited above, and *Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, no. 35332/05, § 45, 21 February 2008). In the instant case, having regard to the rules governing public property, and considering that the applicant could not have been unaware of the principle that no compensation was payable, which was clearly stated in every decision issued since 1961 authorising his temporary occupancy of the public property (see paragraph 14 above), the lack of compensation cannot, in the Court's view, be regarded as a measure disproportionate to control of the use of the applicant's property, carried out in pursuit of the general interest.

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

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

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

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

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

95. The Government raised two objections on grounds of inadmissibility. They submitted, firstly, that the applicant had not raised the allegation of a violation of Article 8 before the national courts or before the Court, which had raised this complaint of its own motion, and, secondly, that the Convention provision was inapplicable to second homes.

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

FOR THESE REASONS, THE COURT

1. *Holds* by thirteen votes to four that there has been no violation of Article 1 of Protocol No. 1;

2. *Holds* by sixteen votes to one that it is not necessary to examine separately the complaint under Article 8 of the Convention.

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

Michael O'Boyle
Deputy Registrar

Nicolas Bratza
President

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

(a) concurring opinion of Judge Casadevall;

(b) joint partly dissenting opinion of Judges Bratza, Vajić, Davíd Thór Björgvinsson and Kalaydjieva;

(c) partly dissenting opinion of Judge Kovler.

N.B.
M.O’B.

CONCURRING OPINION OF JUDGE CASADEVALL

(*Translation*)

1. I voted with the majority in favour of finding that there had not been a violation of Article 1 of Protocol No. 1. However, for similar reasons, *mutatis mutandis*, to those expressed in my dissenting opinion annexed to the *Öneryıldız v. Turkey* judgment ([GC], no. 48939/99, ECHR 2004-XII) (referred to in the present judgment), I would have preferred the Court to determine the matter in issue at an earlier stage of its reasoning and to conclude that Article 1 of Protocol No. 1 was inapplicable in this case.

2. The applicant and his wife had the benefit of temporary authorisations to occupy maritime public property in the *département* of Morbihan. Between 1961 and 1991 authorisation was renewed on several occasions. I can accept that, up until 31 December 1992, when the last agreement for temporary occupation expired (see paragraph 14 of the judgment), the applicant and his wife could legitimately claim that they had a "possession" within the meaning of Article 1 of Protocol No. 1 and the Court's case-law, but I consider that they could no longer do so after that date.

3. Admittedly, the concept of "possessions" under Article 1 of Protocol No. 1 has an autonomous meaning and certain interests constituting assets can be regarded as "possessions" for the purposes of this provision. However, a legitimate expectation of being able to continue having peaceful enjoyment of a "possession" must have a "sufficient basis in national law" (see paragraph 63 of the judgment). Once the last agreement authorising temporary occupation of the site had expired, however, the applicant and his wife did not have any sufficient basis in French law.

4. Indeed, the prefect's decisions, which were never disputed, indicated the length of the temporary authorisation in clear and unambiguous terms, and stipulated – in accordance with the legislation in force – that the authorities reserved the right to modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, without the permittee thereby acquiring a right to claim any compensation or damages in that regard, and referred to the obligation to restore the site to its original state in the event of revocation of the decision authorising occupation if required to do so by the authorities (see paragraph 67 of the judgment). The Court concluded from this that the applicant and his wife had always known that the decisions authorising occupation were precarious and revocable and considered that the authorities could not therefore be deemed to have contributed to maintaining uncertainty regarding the legal status of the "possession" (see paragraph 86).

5. I find it difficult to agree with the conclusion reached by the majority in paragraph 68 of the judgment – which, to my mind, partly conflicts with the considerations set out in paragraphs 62 to 67 – according to which "[i]n

the present case the time that elapsed had the effect of vesting in the applicant a proprietary interest in peaceful enjoyment of the house ...". Alas, as stated several times in the judgment, public property is not only inalienable but also imprescriptible (protection against adverse possession under private law), from which it follows that the passage of time, however long, can have no legal consequences. I agree with the Government's submission that the impossibility of acquiring property by adverse possession invalidates the argument relating to the effect of the length of occupation of the site; accordingly, no legitimate expectation of being able to continue enjoying the "possession" arose in favour of the applicant and his wife (see paragraph 61 of the judgment).

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

JOINT PARTLY DISSENTING OPINION OF JUDGES BRATZA, VAJIĆ, DAVÍD THÓR BJÖRGVINSSON AND KALAYDJIEVA

1. We are unable to agree with the majority of the Court that there has been no violation of Article 1 of Protocol No. 1 in the present case. In our view the order that the applicant should restore the land on which his house is built to the state it was in prior to its construction, by abandoning and demolishing the house which has stood on the land for at least 120 years and which has been owned and maintained by him and his wife since 1960, amounted to a disproportionate and unjustified interference with the applicant's "possessions" for the purposes of that Article.

2. We share the view of the majority of the Court that, despite the fact that the order to demolish the house will result in the applicant's loss of his possessions, the case is to be viewed as one involving not a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 but rather, a control of use of property within the second paragraph of the Article, the order being designed to give effect to planning restrictions contained in the Coastal Areas Act 1986 ("the 1986 Act") and earlier legislation relating to the use of maritime public property and the restoration of the natural state of the seashore. Nevertheless, as the Court has consistently emphasised, the three "rules" in Article 1 are not to be seen as watertight or unconnected rules, all three rules importing a requirement of proportionality and the necessity of striking a fair balance between the demands of the community as a whole and the protection of the rights and interests of the individual. Moreover, the fact that the measures of control applied in the present case would have particularly serious consequences for the applicant, in resulting in the loss of a valuable asset, is a factor which must be weighed in the balance even if the case is to be examined under the second paragraph of the Article.

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

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

5. The impact on the applicant of the measures if implemented is exceptionally serious – a requirement to leave and demolish, without

compensation, a house which he purchased in good faith, in which he has lawfully resided for 50 years and in which he has invested over the years time and money, as well as being responsible for paying the relevant taxes and duties. It is true that the applicant has always been aware that his continued possession and occupation of the house was precarious, the decisions authorising the temporary occupation of the dyke and house, from the date of purchase, expressly reserving to the authorities the right to modify or withdraw the authorisation should they deem it necessary on any ground, without the permittee acquiring a right to claim damages or compensation in that regard. The decisions also made clear that, if required, the permittee would be obliged to restore the site to its original state by demolishing any constructions built on the public property, including those existing on the date of the decision, and that should he fail to comply with that obligation, the authorities would do so of their own motion and at his expense. However, it is also true that the authorisation had been consistently renewed by the authorities, after the applicant had purchased the house, in the years 1961, 1975, 1986 and 1991 without the applicant being given any reason to believe that the authorisation would not continue to be granted for a house which had been in existence from the 1880s. It is particularly significant that the authorisations of 1986 and 1991 were issued after the coming into force of the 1986 Act, the provisions of which were relied on by the authorities as preventing the further renewal of the authorisation in 1993.

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

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

In the first place, the dyke on which the applicant's house was built, and the house itself, were constructed a century before the 1986 Act, which itself drew a distinction between works which had been carried out before and after the coming into effect of the Act, the former continuing to be governed by previous legislation. Both the dyke and the house were likewise constructed long before the Code of State Property 1957 and the subsequent ministerial circular of 1973 which prohibited the grant of concessions to carry out works on the seashore and to occupy maritime public property, a prohibition which was later confirmed by the 1986 Act.

It is particularly striking that, although the house was originally built despite a decision of the prefect of 31 May 1856 refusing an application for a building permit, the prefect's decision of 5 December 1889 expressly authorised the then owner, Mr A., in consideration of payment of a charge, to retain on maritime public property both the dyke and the house built on it. Moreover, in 1961 the applicant himself was expressly permitted to extend the dyke and a public right of way was granted along its seaward edge.

8. Secondly, as noted above, decisions authorising occupation of the property had been issued successively for over a century. The Government argue that authorisation had been repeatedly renewed because this had been compatible with the designated use of the public land for fishing and navigation. It is argued that the position had changed with the enactment of the 1986 Act, which established the principle that there should be no interference with the natural state of the seashore and provided for enhanced public access to that public property. It is further argued that the refusal to renew the authorisation was entirely justified, as being consistent with the careful and progressive implementation of the 1986 Act in so far as it called into question a situation that had gone on for a very long time.

We do not find this argument to be convincing. Even if it is correct, as stated in the judgment (paragraph 86), that the exceptional length of the occupancy should be viewed in the context at the relevant time, when "development and environmental concerns had not yet reached the degree witnessed today" and that "[i]t was not until 1986 that the applicant's situation changed", it is notable that three authorisations were granted after the ministerial circular of 1973 had been issued and that the last two of these were granted after the coming into effect of the 1986 Act itself.

The majority of the Court have found that this was not an example of negligence on the part of the authorities but rather of tolerance of the ongoing occupancy of the house. It is said that this offers no support to the applicants' suggestion that the authorities' responsibility for the uncertainty regarding the status of the house increased with the passage of time. While we do not find it necessary to characterise the actions of the authorities as negligence, we attach weight to the lack of coherence of those actions which, to use the words of the Government Commissioner, allowed occupants of public property to nurture for almost a century the hope that they would not be brutally compelled to demolish their property. This lack of coherence is reinforced by the events following a fire in 2005 when the applicant applied for a building permit to restore the house to its previous condition. By a decision of 5 September 2005, he was issued with a building permit after a favourable opinion given by an architect from the *Architectes des bâtiments de France* under the 1986 Act; however, the permit was subsequently revoked at the request of the prefect on the ground that it was illegal because it had been issued in contravention of the rules of inalienability and imprescriptibility of public property. In this respect, we

reiterate the Court's finding that, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I).

9. Thirdly, we note that the principal ground for the refusal to renew the authorisations and to require demolition of the house was not related to any environmental damage caused by the house or to the fact that the house was incompatible with the coastal landscape. On the contrary, there is nothing in the decisions of the prefect or in the judgments of the domestic courts to cast doubt on the applicant's submission that the house had become perfectly integrated into the local landscape and was part of the national heritage.

The sole ground for the decision was, instead, that the house which was privately occupied had been constructed on maritime public land and that such private use was ruled out by the law. We have difficulty in finding that this ground, which had persisted since the house was first erected in the nineteenth century, was sufficient to justify what the judgment correctly describes as "a radical interference" with the applicant's possessions, particularly in a case where the prefect himself had initially envisaged extending the authorisations for occupancy of the house.

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

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

PARTLY DISSENTING OPINION OF JUDGE KOVLER

(*Translation*)

I regret to say that I am not on the same "wavelength" as the majority of the Court regarding the analysis of the complaint under Article 8 of the Convention. The majority preferred to conclude that there was no need to examine separately the applicant's complaint under Article 8, on the formal ground that the complaint "ar[ose] out of the same facts as those examined under Article 1 of Protocol No. 1" and therefore "[did] not raise any separate issue under this provision" (see paragraph 96 of the judgment). In so doing, the majority adopted the reasoning followed in other similar judgments (see, among other authorities, *Hamer v. Belgium*, no. 21861/03, § 93, 27 November 2007, and *Öneryıldız v. Turkey* [GC], no. 48939/99, § 160, ECHR 2004-XII). The present case can be distinguished from the above-mentioned ones, however. The applicant, who was unaware when he bought his house that it had been built illegally built on publicly owned land, referred to the decades spent peacefully in a strong social and family environment, thus raising a matter which, in my opinion, falls within the category of a right to "private life" and to "family life" guaranteed by Article 8. I would have preferred the Court to examine the case under that provision rather than under Article 1 of Protocol No. 1. Far from calling into question the submissions of the applicants' representatives or the Court, I simply subscribe to the concurring opinion of Judge Casadevall, who expressed doubts as to the applicability of Article 1 of Protocol No. 1 in this case, and rightly so, as it is in reality the right to respect for "home" ("house" if this concept is applied to a second home) that is at stake here.

I feel compelled to point out that in the *Buckley* judgment the Court expressed itself as follows:

> "In Mrs Buckley's and the Commission's submission there was nothing in the wording of Article 8 or in the case-law of the Court or Commission to suggest that the concept of 'home' was limited to residences which had been lawfully established." (see *Buckley v. the United Kingdom*, 25 September 1996, § 53, *Reports of Judgments and Decisions* 1996-IV)

Admittedly, that "generosity" in the interpretation of Article 8 could be explained by the fact that, in that case as in *Chapman v. the United Kingdom* ([GC], no. 27238/95, ECHR 2001-I), the Court sought to protect the traditional lifestyle of Gypsies, of which caravan homes and travel are a part. While the applicant does not belong to the category of persons requiring special protection in the eyes of the Strasbourg judges, his "advanced" years and his attachment to the house nonetheless deserved a more nuanced approach. The applicant submitted that the measure in question – namely, the refusal on the part of the national authorities to allow him to continue occupying the land and house – also interfered with his

right to respect for his home as guaranteed by Article 8, "on account of the interference, of a non-pecuniary nature, that severely affected all the strong roots his family had laid down over the years" (see paragraph 94). The Court had already attempted to combine the two provisions in the *Menteş and Others* judgment, which concerned the demolition of houses and the eviction of villagers:

> "Furthermore, the Court observes that the facts established by the Commission ... and which it has accepted disclose a particularly grave interference with the first three applicants' right to respect for private life, family life and home, as guaranteed by Article 8 and that the measure was devoid of justification." (see *Menteş and Others v. Turkey*, 28 November 1997, § 73, *Reports* 1997-VIII)

I regret the Court's failure to take the opportunity offered to it here to spell out its approach to the home (house)/private and family life diptych that emerges very clearly in the present case.