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

FOURTH SECTION

CASE OF STRETCH v. THE UNITED KINGDOM

(Application no. 44277/98)

JUDGMENT

STRASBOURG

24 June 2003

FINAL

03/12/2003

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

In the case of Stretch v. the United Kingdom,

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

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

Having deliberated in private on 27 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 44277/98) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, Michael Stretch ("the applicant"), on 21 October 1998.

2. The applicant was represented by Mr H.S. Deans of Berrymans Lace Mawer, a firm of solicitors practising in Southampton. The United Kingdom Government ("the Government") were represented by their Agent, Mr H. Llewellyn of the Foreign and Commonwealth Office, London.

3. The applicant complained, under Article 1 of Protocol No. 1, that he had been denied the option for a further term of twenty-one years under a lease on the ground that the option granted by the local authority had been *ultra vires*.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

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

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 6 November 2001, the Court declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

9. The applicant died on 8 January 2003. His son, Mr Jonathan Stretch, the executor of the applicant's estate, has continued the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1934 and lived in Wareham.

11. By a lease dated 27 November 1969 the applicant was granted a building lease of industrial land by Dorchester Borough Council ("Dorchester") for twenty-two years from 29 September 1969. The lease required him to erect up to six buildings at his own expense for light industrial use and included an option to renew for a further twenty-one years in the following terms (at sub-clause 5(1)):

> "If the Lessee shall be desirous of taking a lease of the said demised premises for a further term of 21 years from the expiration of the terms hereby granted and shall, not more than 12 months nor less than six months before the expiration of the said terms, give the Corporation notice in writing of his desire and if he shall have paid the rents hereby reserved and shall have reasonably performed and observed the covenants, provisions and stipulations herein contained (...), then the Corporation will let the demised premises to the Lessee for the said further term of 21 years (...)".

12. The applicant states that he had requested a 43 year term in the course of negotiations but that this request was refused by Dorchester. The applicant was represented by solicitors when negotiating and entering into the lease.

13. In accordance with sub-clause 5(1) of the lease the applicant gave notice to exercise the option on 4 October 1990. At this date, he was paying a ground rent of 1,045 pounds sterling (GBP) per annum. He had paid GBP 20,020 in total rent over the 22 year period and his income from his sub-leases of the six units was GBP 58,599 for the year ending March 1991.

14. By this time West Dorset County Council ("West Dorset") had become the statutory successor to Dorchester. On 2 November 1990, West Dorset acknowledged the applicant's notice and indicated that it would be instructing surveyors to negotiate a new rent for the first seven years of the term. Negotiations commenced between the parties as to renewal of the lease and a draft lease was drawn up on the basis of an increased ground rent, which the applicant states was agreed at GBP 14,000 per annum. The applicant signed his copy of the draft and meanwhile commenced discussions with various of his tenants concerning increases of rent under

their subleases. In August 1991 however, West Dorset notified the applicant that it considered that the option could not be exercised. In the subsequent proceedings, it took three points: that the applicant was in breach of the repairing covenants in the 1969 lease; that the option was not capable of being exercised by the applicant because by granting five subleases for terms greater than the term of the 1969 lease he had assigned his interest in the units under sublease; and that the option was *ultra vires* Dorchester.

15. On 26 September 1991 the applicant applied to the Chancery Division of the High Court for a declaration that he was entitled to the grant of the further term and for an order of specific performance to enforce his right. His application was dismissed on 25 April 1996. The judge rejected West Dorset's claim as to breach of covenant but found in favour of West Dorset on their two other objections. He noted that the *ultra vires* point had not been raised until relatively late in the proceedings, namely, in an affidavit lodged by West Dorset dated 5 October 1995.

16. On 10 November 1997 the Court of Appeal upheld the judge's decision, on the ground that the grant of the option had been beyond Dorchester's powers.

17. In the course of the proceedings before the Court of Appeal, the applicant sought to rely upon two separate statutory provisions, each of which he said gave Dorchester power to grant the option. The first was section 172(3) of the Local Government Act 1933 ("the 1933 Act"). This provides (as relevant):

> "Where the council of a borough desire to dispose of corporate land otherwise than as aforesaid, they may, with the consent of the Minister, dispose of the land either by way of sale, exchange, mortgage, charge, demise, lease or otherwise, in such manner and on such terms and subject to such conditions ... as the Minister may approve."

18. The term "corporate land" is defined in section 305 of the 1933 Act as:

> "... [L]and belonging to, or held in trust for, or to be acquired by or held in trust for, a municipal corporation otherwise than for an express statutory purpose"

19. Following an examination of the history surrounding Dorchester's appropriation of the land in question, the Court of Appeal concluded that it had been held by Dorchester for an "express statutory purpose" at the time of the lease and was thus not "corporate land", with the result that section 172(3) did not apply.

20. The second statutory provision upon which the applicant sought to rely was section 164 of the 1933 Act, which provides:

> "A local authority may let any land which they may possess –
>
> (a) with the consent of the Minister, for any term;
>
> (b) without the consent of the Minister, for a term not exceeding seven years."

21. The crucial question on this provision was whether the power to let included the grant of an option to renew. The Court of Appeal had answered this in the negative, albeit *obiter dicta*, in the case of *Trustees of the Chippenham Golf Club v. North Wiltshire District Council* (1991) 64 P & CR 527. A deputy High Court judge reached the same conclusion when it was directly in issue before him in 1993. The Court of Appeal in the applicant's case referred to both of these decisions in finding that a grant of an option to renew was not the same as the exercise of a power to let. As a result, section 164 did not apply so as to give Dorchester the power to grant the option.

22. Lord Justice Peter Gibson, in summing up his judgment in the Court of Appeal, observed:

> "... I would dismiss this appeal. I do so with little satisfaction. It seems to me unjust that when public bodies misconstrue their own powers to enter into commercial transactions with unsuspecting members of the public, those bodies should be allowed to take advantage of their own errors to escape from the unlawful bargains which they have made. For a local authority to assert the illegality of its own action is an unattractive stance for it to adopt. It is the more striking when, as in this case, the transaction in question is as mundane as a building lease; and the local authority, by taking the point against the member of the public with whom it or its predecessor contracted, thereby robs that member of the public of part of the consideration for entering into the lease. ..."

23. On 7 May 1998 the House of Lords dismissed the applicant's petition for leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. Local authorities are statutory bodies whose powers are governed by domestic legislation. The legal consequences of entry into contractual commitments beyond statutory authority were explained by Hobhouse LJ in the case of *Credit Suisse v. Allerdale Borough Council* [1997] QB 306, where he stated (at 350 D-F):

> "Where a statutory corporation purports to enter into a contract which it is not empowered by the relevant statute to enter into, the corporation lacks the capacity to make the supposed contract. This lack of capacity means that the document and the agreement it contains do not have effect as a legal contract. It exists in fact but not in law. It is a legal nullity. The purported contract which is in truth not a contract does not confer any legal rights on either party. Neither party can sue on it."

He also emphasised:

> "Any third party dealing with a local authority should be aware of that fact [of limited capacity and competence] and of the potential legal risk."

He cited the old authority of *Chapleo v. Brunswick Permanent Building Society* ((1881) 6 QBD 696 at p. 712-713):

> "... persons who deal with corporations or societies that owe their constitution to or have their powered defined or limited by Act of Parliament, or are regulated by deeds of settlement or rules, deriving their effect more or less from Acts of Parliament, are bound to know or to ascertain for themselves the nature of the constitution, and the extent of the powers of the corporation or society with which they deal. The plaintiffs and everyone else who have dealings with a building society are bound to know that such a society has no power of borrowing, except such as is conferred upon it by its rules, and if dealing with such a society they neglect or fail to ascertain whether it has the power of borrowing or whether any limited power it may have has been exceeded, they must take the consequences of their carelessness."

25. Where contracts are rendered legal nullities or void *ab initio* restitutionary principles may apply to require the restoration of the moneys paid under the contract (for example, W*estdetusche Landesbanke Girozentrale v. Islington LBC* [1994] 4 AER 890). The application of the principles of unjust enrichment may thus provide redress in circumstances where a contract or part of a contract is void.

26. The statutory regime in force has changed since 1969 when the lease was granted in this case. Section 123 of the Local Government Act 1972, where applicable, does not now prohibit the grant of an option such as was granted in this case nor does the Housing Act 1985. Pursuant to the Local Government (Contracts) Act 1997, the strictness of the principles of incapacity applying to a local authority which purports to contract beyond its statutory powers has been relaxed. Section 2 provides for such a contract to have effect as if the local authority had had power to enter into it and had properly exercised that power, so long as the contract has been certified in the manner set out in the Act.

THE LAW

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

27. The applicant complains that he was deprived of the benefit of the renewal option on the lease granted by the local authority, invoking Article 1 of Protocol No. 1 which 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 or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

1. The applicant

28. The applicant contended that West Dorset's refusal to grant the option, and the domestic courts' refusal to enforce the option, have denied him his right to peaceful enjoyment of his possessions, and have deprived him of those possessions, contrary to Article 1 of Protocol No. 1. It was not the option to renew itself but his contractual and property rights under the lease, namely his legal rights to part of the consideration for entering into the lease (which he lost) and the loss of value of his investment in his property (which he has partly lost) which together was his ability to enjoy his business assets as a whole, which were "possessions" within the meaning of Article 1 of Protocol No. 1. Although he accepted that, especially as he was represented by solicitors at the time, it was open to him to check the scope of Dorchester's powers before entering into the lease, he submitted that in 1969 it was "less than clear" to all involved that Dorchester had no power to grant the option. No relevant domestic case-law on the scope of the relevant powers existed until 1991. The grant of the purported option to renew in his case was analogous to the grant of outline planning permission in the case of Pine Valley (*Pine Valley Developments Ltd and Others v. Ireland,* judgment of 29 November 1991, Series A no. 222), in which the Court found a violation of Article 1 of Protocol No. 1 in circumstances where the domestic courts declared the planning permission a nullity on the ground that it had been granted *ultra vires*.

29. The applicant disputed that he could have insisted on a longer lease term as argued by the Government. It was uncontested in the domestic proceedings that he had negotiated for such a term and refused it. He stated that the deprivation of his possessions which he has suffered is wholly disproportionate as the loss caused to him as a result of failure to grant or enforce the option outweighs any real or perceived benefit to the general interest in applying the *ultra vires* principle, and that of corporate incapacity, on the facts of this case. He points to the lack of any compensation payable and to the passing of legislation which now permits local authorities to grant such options.

2. The Government

30. The Government submitted that the option granted to the applicant was not a "possession" for the purposes of Article 1. They stated that, as Dorchester did not have legal capacity to grant the option, it was for the purposes of domestic law a nullity. The applicant thus never had any right to the further term purported to be offered by the option. Although they accepted that the Court is not bound by domestic legal characterisation of what constitutes a "possession", the Government argued that the Court

should only consider departing from such a characterisation where it is manifestly out of step with broadly accepted notions of the concept. They contended that such a departure was inappropriate in the present case since there was nothing unreasonable or unusual in applying principles whereby a statutory body must act within the scope of its legislative powers and, in the event that it performs an act beyond such powers, that act is treated as a legal nullity. The Government highlighted the fact that the applicant was represented by solicitors when he entered into the lease granting the option and pointed out that he could have insisted upon a 43-year term for the lease when negotiating its term, but failed to do so.

31. The Government went on to submit that, even if the option is characterised as a "possession", neither West Dorset's refusal to grant it nor the domestic courts' refusal to enforce it constituted an interference with the applicant's peaceful enjoyment of his possessions or a deprivation of them for the purposes of Article 1. This was because the option never conferred rights on the applicant because it was a nullity. They argued that it is necessary and important to impose limits on the legal capacity of local authorities for the benefit of the public as a whole. As a result, they argued that, even if there was an interference or deprivation, it was compatible with Article 1. In their view, this case, which concerns the capacity to contract and not issues of planning permission, was to be distinguished from the case of *Pine Valley* (cited above), which in any event did not lay down any broad property right based on "legitimate expectation". It was essential not to undermine the doctrine of capacity which protects the public by ensuring that local authorities and statutory bodies act responsibly within their limits.

B. The Court's assessment

1. Whether there were possessions within the meaning of Article 1 of Protocol No. 1

32. The Court recalls that, according to the established case-law of the Convention organs, "possessions" can be "existing possessions" or assets, including claims, in respect of which the applicant can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see, *inter alia*, *Pine Valley Developments Ltd and Others v. Ireland*, cited above, § 51, *Pressos Companía Naviera S.A. v. Belgium* judgment of 20 November 1995, Series A no. 332, p. 21, § 31). By way of contrast, the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see the recapitulation of the relevant principles in *Malhous v. the Czech Republic* (dec.), no. 33071/96, 13 December 2000,

ECHR 2000-XII, with further references, in particular to the Commission's case-law; also *Prince Hans-Adam II v. Germany* [GC], no. 42527/98, ECHR 2001-VIII, § 85, and *Nerva v. the United Kingdom*, no. 42295/98, judgment of 24 September 2002, § 43).

33. In the present case, the applicant contracted to lease land from Dorchester for a term of 22 years. Under the terms of the lease, he had to erect at his own expense a number of buildings for light industrial use, which he could sub-let for rent. The lease contained an option for renewal for a further 21 years. However, when the applicant gave notice to exercise the option, West Dorset (succeeding Dorchester as local authority) took the view that its predecessor had unknowingly acted *ultra vires* in granting the option, which was therefore invalid. This position was upheld, reluctantly, by the English courts (see Gibson LJ's comments, paragraph 22).

34. While it is true that under English law the option was rendered invalid due to the operation of the doctrine of *ultra vires*, the Court observes that the applicant had entered into the agreement with Dorchester on the basis that he would have the possibility of extending the term of the lease. Neither party had been aware that there was any legal obstacle to this term forming part of the applicant's consideration for agreeing to the contract. The applicant proceeded to build on the land, pay ground rent to the local authority and enter into sub-leases with other persons who conducted business in the premises which he constructed. He clearly expected to be able to renew the option and continue to obtain the benefit of rent from the occupation of those premises which he had sub-let. He reached in negotiations with the local authority the stage of preparing a draft renewal lease with an agreed increased ground rent, already signed on his side and had proceeded to enter into agreements with his sub-lessees. The local authority, West Dorset, itself only raised the problem of invalidity at a very late stage (October 1995, according to the first instance judge).

35. The Court considers, in the circumstances of this case, that the applicant must be regarded as having at least a legitimate expectation of exercising the option to renew and this may be regarded, for the purposes of Article 1 of Protocol No. 1, as attached to the property rights granted to him by Dorchester under the lease.

2. Whether there was an interference with possessions

36. The Government argued that, since the local authority, West Dorset, was not obliged under law to renew the lease, the refusal to do so could not amount to an interference with the applicant's possessions. Given however the terms of the agreement entered into by West Dorset's predecessor with the applicant, the Court is of the view that West Dorset's actions may be regarded as frustrating the applicant's legitimate expectations under the lease and depriving him in part of the consideration which he gave in entering into the agreement. Whether it is regarded as interference with the

peaceful enjoyment of the applicant's possessions within the meaning of the first sentence of Article 1 or as a deprivation of possessions within the second sentence, the same principles apply in the present case and require the measure to be justified in accordance with requirements of that Article as interpreted by the established case-law of the Court (see amongst many authorities, *Gasus Dosier-unde Fördertechnik GmbH v. the Netherlands*, judgment of 23 February 1995, Series A no. 306-B, § 55).

3. Whether the interference was justified

37. According to the Court's well-established case-law, an interference must strike a "fair balance" between the demands of the general interests of the community and the requirements of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph. There must therefore be a reasonable relationship of proportionality between the means employed and the aims pursued. Furthermore, as in other areas of social, financial or economic policy, national authorities enjoy a certain margin of appreciation in implementation of laws regulating property and contractual relationships (see, *mutatis mutandis*, *AGOSI v. the United Kingdom*, judgment of 24 October 1986, Series A no. 108, § 52).

38. The Government have emphasised in this case the doctrine of *ultra vires* which provides an important safeguard against abuse of power by local or statutory authorities acting beyond the competence given to them under domestic law. The Court does not dispute the purpose or usefulness of this doctrine which indeed reflects the notion of the rule of law underlying much of the Convention itself. It is not however persuaded that the application of the doctrine in the present case respects the principle of proportionality.

39. The Court observes that local authorities inevitably enter into many agreements of a private law nature with ordinary citizens in the pursuance of their functions, not all of which however will concern matters of vital public concern. In the present case, the local authority entered in a lease and was unaware that its powers to do so did not include the possibility of agreeing to an option for renewal of the lease. It nonetheless obtained the agreed rent for the lease and, on exercise of the renewal of the option, had the possibility of negotiating an increase in ground rent. There is no issue that the local authority acted against the public interest in the way in which it disposed of the property under its control or that any third party interests or the pursuit of any other statutory function would have been prejudiced by giving effect to the renewal option. The subsequent statutory amendments further illustrate that there was nothing *per se* objectionable or inappropriate in a local authority including such a term in lease agreements (see paragraph 26).

40. The Government argued that the applicant, as with all persons entering into contract with the local authority, should have been aware of the consequences of any incapacity and that he had the opportunity to take legal advice, or sue his solicitors for negligence in giving any such advice. Since however the local authority itself considered that it had the power to grant an option, it does not appear unreasonable that the applicant and his legal advisers entertained the same belief. While the Government also referred to the doctrine of *ultra vires* being mitigated by the principles of unjust enrichment, it is not suggested that in this case the applicant had any possibility to obtain some kind of compensation for the application of the rule in his case. The applicant not only had the expectation of deriving future return from his investment in the lease but, as was noted in the Court of Appeal, the option to renew had been an important part of the lease for a person undertaking building obligations and who otherwise would have had a limited period in which to recoup his expenditure.

41. Having regard to those considerations, the Court finds that in this case there was a disproportionate interference with the applicant's peaceful enjoyment of his possessions and therefore, concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. Article 41 of the Convention provides:

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

A. Damage

1. The parties' submissions

(a) The applicant

43. The applicant claimed for pecuniary damage 1,250,874 pounds sterling (GBP) for net loss of rental income. He stated that he was the effective lessee throughout, though he used a company, of which he was co-director and shareholder with his wife, as a vehicle for collecting rents.

In support of his claim for loss of rental income, the applicant provided a report from a chartered surveyor who included the above figure as the estimated loss of rental income over the additional 21 year period as at the date of his report in 2002 and the alternative sum of GBP 580,616 calculated as the estimated loss suffered by the applicant as at the date of

failure to grant the renewal lease in 1991. The applicant considered that the former more accurately represented his loss although the second calculation followed the usual rule of application in English law as to the date on which the wrong was committed. He stated that he would give credit for the rental income which he continued to receive after 1991 (GBP 168,052.67) and for income tax (GBP 297,086.48), which in the Court's calculation appears to reduce his claim to GBP 785,735 for net loss of rental income. On the alternative calculation, assessed at the date of damage, the claim would be reduced to GBP 115,476.85.

The applicant also claimed interest at 8% above bank base rate or such rate or rates as the Court found just.

44. The applicant claimed a separate award for non-pecuniary loss, stating that he had suffered distress and anxiety as a direct consequence of the violation, including the loss of his livelihood.

(b) The Government

45. The Government submitted that no pecuniary award should be made. It did not follow from the finding of violation that the applicant would have had the benefit of the option as there were a variety of ways that the consequences of the incapacity in this case could have been dealt with in a manner which struck a fair balance. They also argued that he had not shown any loss as at some point he transferred the benefit of the lease to a company called Stretch Properties Ltd which went into liquidation in 1994 on petition of the Inland Revenue. Furthermore, the applicant took the chance on the capacity of the local authority to grant him the option and it should be presumed he knew domestic law.

In any event, the appropriate date for an award should be September 1991 and the lower figure should be taken as a starting point. No detailed breakdown of received rent after 1991 had been provided and these figures had not been taken into account in his chartered surveyor's calculations. Nor was it established that the local authority would have agreed the sum of GBP 14,000 as ground rent bearing in mind the applicant's anticipated receipt of rent from his sub-tenants at GBP 70-80,000 per annum. No allowance had been made for tax liability after 2002 nor for any costs and expenses to be incurred in maintaining the rental income from his sub-lessees (e.g. in managing the premises and repairing the buildings). They considered that any award should not exceed the range GBP 50,000 to GBP 75,000.

The Government also disputed that interest should be payable and certainly not at the rate claimed.

46. As regarded non-pecuniary damage, the Government did not consider that any stress or anxiety had been caused by any violation and that no award was appropriate. If an award was made, a figure of GBP 5,000 was, in their view, more than adequate.

2. *The Court's assessment*

(a) General principles

47. As regards the applicants' claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, amongst other authorities, *Barberà, Messegué and Jabardo v. Spain* (former Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20; *Cakıcı v. Turkey*, judgment of 8 July 1999, *Reports* 1999-IV, § 127).

48. A precise calculation of the sums necessary to make complete reparation *(restitutio in integrum*) in respect of the pecuniary losses suffered by applicants may be prevented by the inherently uncertain character of the damage flowing from the violation (*Young, James and Webster v. the United Kingdom* (former Article 50*)*, judgment of 18 October 1982, Series A no. 55, p. 7, § 11). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary loss, which it is necessary to award to each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (Sunday Times v. the United Kingdom (former Article 50), judgment of 6 November 1989, Series A no. 38, p. 9, § 15; *Lustig-Prean and Beckett v. the United Kingdom* (Article 41), judgment of 25 July 2000, §§ 22-23).

(b) Application in the present case

49. The Court has found above that there has been an unjustified interference with the applicant's possessions due to the disproportionate consequences of the invalidity of the option to renew the lease. Even if the applicant transferred the lease to his company at some point, it was never argued by the Government that he was not a victim of the violation of the breach and the Court is satisfied, *inter alia* from the way in which the domestic proceedings were conducted, that the applicant can claim to be suffering loss from events.

50. Nonetheless, the Court considers that the sums claimed by the applicant are too high and finds weight in the Government's criticisms, *inter alia*, as to the date of calculation of the losses and the failure to take fully into account expenses in running the further lease period and future tax liabilities. However, even if the applicant entertained a legitimate expectation of being able to exercise the option to renew which was

attached to the original lease, this is not the same as a finding that he was deprived of the property right which would have been bestowed by a further 21 years lease. The position under domestic law was that the option was unenforceable and incapable of giving rise to that further lease. The Court would also note that the domestic system could arguably have reconciled the doctrine of incapacity with the individual interests at stake without necessarily enforcing the option in its original form, for example, by providing an alternative benefit or form of compensation or return of his consideration. Indeed, while there is no specific indication in the original lease agreement as to what the consideration was for the option to renew, it would appear to the Court that this may be regarded as the element which would most appropriately reflect the loss suffered by the applicant when he entered into the lease agreement containing an unenforceable option clause. It recalls that the applicant paid GBP 20,020 by way of rent for the lease and though he has not specified his expenses in building on the land, it has not been argued that the applicant was unable to recoup the cost through the rent collected from the sub-tenants during that period or unable to make a significant profit at the same time.

51. Deciding therefore on an equitable basis, the Court awards the applicant's estate 31,000 euros (EUR) for pecuniary damage. As the applicant must also have suffered feelings of frustration and not inconsiderable inconvenience as a result of events, it also finds it appropriate to make an award of EUR 5,000 for non-pecuniary damage has been shown to flow from the breach.

B. Costs and expenses

52. The applicant claimed GBP 72,072.74 for costs incurred in domestic proceedings and GBP 31,357.14 for costs in the Strasbourg proceedings, including GBP 17,376.94 for solicitors' fees, GBP 9,891.74 for counsels' fees and GBP 4,089 for the chartered surveyor's report. He refers to paying GBP 2,004.40 as a contribution to the legal aid expenses in the domestic proceedings and to private costs and disbursements in these proceedings of GBP 29,515.09.

53. The Government argued that it was not clear as regarded the claimed costs of domestic proceedings whether the items listed directly related to the litigation against the local authority as opposed to the other avenues pursued at the time (including advice about proceedings against his former solicitors and his financial affairs). The applicant also appeared to be claiming for the sums of legal aid assessed costs paid by the legal aid scheme and it was not apparent whether he was claiming that he was liable to pay these. In any event, there was no detailed breakdown of these claims.

As concerned the Strasbourg proceedings, there was no detailed breakdown either of the solicitors' or surveyor's fees and the total sum

claimed was excessive. Counsel appeared to have doubled the amounts claimed on the basis of a contingency fee. While the time spent appears reasonable an hourly rate of GBP 700 was excessive.

They proposed that no award be made in respect of the domestic proceedings and that a total of GBP 6,260 plus VAT plus any substantiated expenses would be reasonable for legal and experts' fees.

54. The Court recalls the established principle in relation to domestic legal costs is that an applicant is entitled to be reimbursed those costs actually and necessarily incurred to prevent or redress the breach of the Convention, to the extent that the costs are reasonable as to quantum (see, for example, *I.J.L., G.M.R. and A.K.P. v. the United Kingdom* (*Article 41*), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001). It finds that the proceedings brought by the applicant against West Dorset to enforce the option may be regarded as incurred to prevent or redress the breach of Article 1 of Protocol No. 1 complained of by the applicant. Noting that items included in the claimed costs do not relate directly to the litigation with West Dorset and that the legal aid disbursements were not made by the applicant, the Court, making an assessment on an equitable basis, awards the applicant EUR 25,000, plus any value-added tax that may be payable.

55. Having regard to the limited number of issues in this application and the procedure adopted before the Court in this case as well as the lack of itemisation of some of the fees claimed, the Court finds the amount claimed for the proceedings in Strasbourg cannot be regarded as either necessarily incurred or reasonable as to quantum (see, amongst other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). It awards the sum of EUR 20,000 for legal costs and expenses, plus any VAT that may be payable. The total award of EUR 45,000 is to be converted to pounds sterling at the date of settlement.

C. Default interest

56. The applicable interest rate is the marginal lending rate of the European Central Bank plus three percentage points (see no. 28957/95, *Christine Goodwin v. the United Kingdom* [GC], judgment of 11 July 2002, to be published in ECHR 2002-..., § 124).

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds*

(a) that the respondent State is to pay the applicant's estate, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, plus any tax that may be chargeable, the following amounts to be converted into pounds sterling at the date of settlement:

(i) EUR 31,000 (thirty one thousand euros) in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

(iii) EUR 45,000 (forty five thousand euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President