



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

FIRST SECTION

CASE OF RAUDSEPP v. ESTONIA

(Application no. 54191/07)

JUDGMENT

STRASBOURG

8 November 2011

FINAL

08/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Raudsepp v. Estonia,

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

Nina Vajić, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,
Priit Pikamäe, *ad hoc judge*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 54191/07) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Estonian national, Ms Vaike Raudsepp (“the applicant”), on 29 November 2007.

2. The Estonian Government (“the Government”) were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the administrative court proceedings to which she had been a party had been excessive. In substance, she also complained of the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 10 February 2009 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the above application was assigned to the newly composed First Section.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1942 and lives in Tallinn.

A. Various proceedings related to the apartment in which the applicant lives

7. The applicant had been a tenant of a municipal apartment in Tallinn since 1968.

8. By a decision of the Tallinn City Commission for the Return and Compensation of Unlawfully Expropriated Property (“the City Commission” – *Õigusvastaselt võõrandatud vara tagastamise ja kompenseerimise Tallinna linnakomisjon*) of 21 November 1994, S. was recognised as entitled under property reform legislation to have the ownership of the block of flats including the applicant’s apartment, being previously nationalised property, returned.

9. On 2 February 1995 the applicant lodged an application with the municipal authority to be given the opportunity to become owner of the apartment through the privatisation process being conducted under the Privatisation of Dwellings Act (*Eluruumide erastamise seadus*).

10. On 28 July 1995 the Tallinn City Government decided to return the property to S., who on 1 September 1999 sold it to a private limited company, C.

11. The applicant lodged a complaint with the Central Commission for the Return and Compensation of Unlawfully Expropriated Property (*Õigusvastaselt võõrandatud vara tagastamise ja kompenseerimise keskkomisjon*) after having discovered certain archived documents, on the basis of which she concluded that the property should not have been returned to S. By a decision of the Central Commission of 16 December 1999 the matter was referred to the Tallinn City Commission for fresh examination.

12. On 28 August 2000, after having reconsidered the case, the City Commission found that the new evidence did not warrant a different conclusion and therefore confirmed its earlier decision.

13. The applicant lodged a complaint with the Tallinn Administrative Court, which on 26 January 2001 declared the decision of the City Commission unlawful for lack of reasoning.

14. On 19 March 2001 the City Commission invalidated its decision of 21 November 1994 and took a new decision. Having assessed the evidence, including the additional evidence presented by the applicant, it once again recognised S. as the person entitled to the disputed property under property reform legislation.

15. Subsequently, the applicant brought a civil suit against the City of Tallinn, claiming damages for the lost opportunity to seek ownership of the disputed apartment through its privatisation. On 12 October 2001 the Tallinn City Court awarded her 700,000 kroons (EEK – corresponding to approximately 45,000 euros (EUR)). On 21 May 2002 the Tallinn Court of

Appeal quashed the City Court's judgment, finding that the administrative and not the civil courts had jurisdiction over the matter.

16. In 2002 R., a public limited company which had in the meantime become the owner of the apartment, agreed to sell the apartment to a third party. On 26 November 2002 the applicant exercised a right of pre-emption in her favour and bought the property for EEK 700,000. The purchase was financed by the applicant's daughter to whom the applicant gifted title to the disputed apartment on 25 May 2005.

B. Administrative court proceedings brought by the applicant

17. On 19 June 2002 the applicant lodged a complaint against the City of Tallinn with the Tallinn Administrative Court, seeking the award of EEK 880,000 (EUR 56,000) in damages for the loss of the opportunity to become the owner of the apartment through privatisation.

18. On 27 August 2002 the Administrative Court decided not to proceed with the case, as the relevant court fees had not been paid. On 1 October 2002, at the applicant's request, the Administrative Court granted her exemption from the payment of the fee. It scheduled a hearing for 31 January 2003.

19. On 31 January 2003 a hearing was held at the Tallinn Administrative Court. The applicant requested adjournment of the hearing as she wanted to make additional written submissions. The court granted the request and scheduled the next hearing for 27 February 2003.

20. On 13 February 2003 the applicant amended her complaint and also requested that parts of the City Commission's decision of 19 March 2001 be invalidated. The second complaint was initially registered as a separate case and the hearing of 27 February 2003 was adjourned because of the applicant's new complaint.

21. On 20 March 2003 the Administrative Court joined the two proceedings and asked the applicant to further specify her claim. On 15 April 2003 the court decided that the new complaint had been filed within the statutory time-limit and scheduled a hearing for 9 June 2003.

22. On 9 June 2003 a hearing was held at the Tallinn Administrative Court. By a judgment delivered on 20 June 2003 the Administrative Court dismissed the complaint.

23. In order to appeal, the applicant was required to give notice of her intention to lodge an appeal. She failed to give such notice. However, she subsequently lodged an appeal which was considered as having been lodged out of time because she had not given the prior notice. On 21 August 2003 the Administrative Court refused to restore the time-limit for lodging the appeal. On 23 October 2003 the Tallinn Court of Appeal dismissed a procedural appeal brought by the applicant against this refusal. On 29 January 2004 the Administrative Law Chamber of the Supreme Court

quashed the lower courts' decisions and restored the time-limit for the applicant to make an appeal.

24. On 9 February 2004 the Tallinn Administrative Court gave the applicant a ten-day time-limit for paying the court fee applicable to her appeal. The applicant's request for an exemption was dismissed by the Administrative Court but granted in part by the Tallinn Court of Appeal on 14 May 2004.

25. On 28 June 2005 the Tallinn Court of Appeal adjourned its hearing at the applicant's request because of negotiations between the parties. The hearing was rescheduled for 3 October 2005.

26. By a judgment delivered on 17 October 2005 the Tallinn Court of Appeal quashed the Administrative Court's judgment of 20 June 2003 in so far as it concerned the City Commission's decision of 19 March 2001, declaring that decision unlawful. It also amended the reasoning for dismissing the applicant's claim for damages.

27. The applicant did not appeal against the Court of Appeal's judgment. On 15 November 2005 the Tallinn City Government lodged an appeal with the Supreme Court challenging the Court of Appeal's judgment in so far as it concerned the unlawfulness of the City Commission's decision. On 1 February 2006 the Supreme Court adjourned its consideration of whether to accept the appeal for examination on the merits. The court determined that adjournment was necessary because the present case concerned matters similar to those dealt with in another case (no. 3-3-1-63-05) which the Administrative Law Chamber of the Supreme Court had referred to the plenary session of the Supreme Court on 19 December 2005. That case was finally resolved by the Supreme Court's judgment of 6 December 2006 (see paragraphs 45 to 48 below).

28. On 20 December 2006 the Administrative Law Chamber of the Supreme Court decided to accept the appeal by the Tallinn City Government in the case concerning the applicant and on 1 March 2007 it decided to refer the case to the full panel of the Administrative Law Chamber.

29. On 23 March 2007 the Administrative Law Chamber dismissed the applicant's request for an oral hearing.

30. On 19 June 2007 the Administrative Law Chamber decided to adjourn the proceedings in the case concerning the applicant pending the outcome of another case (no. 3-3-2-1-07) which had been referred to the plenary session of the Supreme Court on the same date. In the latter case Supreme Court's judgment was delivered on 10 March 2008 (see paragraphs 52 and 53 below).

31. By a judgment of 14 May 2008 the Administrative Law Chamber of the Supreme Court dismissed the appeal by the Tallinn City Government in the case concerning the applicant and upheld the Court of Appeal's judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation related to State liability and length of proceedings

32. Section 7(2-1) of the State Liability Act (*Riigivastutuse seadus*), which entered into force on 18 November 2006, provides that a person may claim compensation for damage caused by the unlawful acts of or failure to act by a public authority in the event that the European Court of Human Rights has found that his or her rights were violated, the violation was significant and no other remedies were available. Individuals who have lodged applications with the European Court of Human Rights regarding a similar matter or who have the right to lodge such applications are also entitled to claim compensation.

33. Section 7(3) provides that the above provision applies to direct pecuniary damage and loss of income.

34. On 27 January 2011 the Estonian Parliament (*Riigikogu*) adopted an act whereby the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) was amended so as to provide for the opportunity for parties to such proceedings to request the expedition of the court proceedings. These provisions also apply to administrative court proceedings. The amendments entered into force on 1 September 2011.

B. Case-law related to length of proceedings

35. By judgments of 21 May 2008 (case no. 3-07-1430) and 27 October 2008 (case no. 3-07-1129) the Tallinn Court of Appeal made awards to complainants who had been suspended from public service during criminal proceedings against them. The damage sustained by the complainants consisted of salary not received and the awards were made under section 16 of the State Liability Act, which provided for compensation, in certain cases, for pecuniary damage caused by a lawful administrative measure which restricted the fundamental rights of a person in a disproportionate manner.

36. By a decision of 30 December 2008 (case no. 3-4-1-12-08) the Constitutional Review Chamber of the Supreme Court dealt with a complaint concerning the length of criminal proceedings. It rejected the complaint, considering that the complainant could have had recourse to another effective remedy. The Supreme Court held:

“25. In the examination of [the complainant’s] request for compensation for the damage caused by the violation of fundamental rights, the Chamber agrees with the opinion expressed in the written opinions of the parties to the proceedings that [the complainant] can demand compensation for damage in an administrative court on the bases and pursuant to the procedure established by the State Liability Act.”

37. The above decision of the Supreme Court is extensively quoted in the case of *Malkov v. Estonia* (no. 31407/07, § 32, 4 February 2010).

38. By a judgment of 22 March 2011 (case no. 3-3-1-85-09) the Supreme Court, sitting in plenary session, dealt with a case concerning a claim for compensation for the excessive length of a preliminary investigation in a criminal case.

39. The complainant in that case had been suspected of murder. The preliminary investigation had lasted for ten years and had then been discontinued because the statutory limitation period had expired. On 14 June 2006 the complainant filed a claim seeking compensation for non-pecuniary damage with the Tallinn Administrative Court. The Administrative Court and the Tallinn Court of Appeal rejected the complaint, finding that it had been lodged too late. By a decision of 17 June 2008 the Supreme Court quashed the lower courts' decisions and remitted the case to the first-instance court for examination. The Tallinn Administrative Court and the Tallinn Court of Appeal dismissed the claim. On 21 June 2010 the Administrative Law Chamber of the Supreme Court referred the case to the Supreme Court's plenary session because of an issue of constitutionality. It found that the administrative courts had no jurisdiction to assess the lawfulness of criminal proceedings, including the question of whether the proceedings were conducted within a reasonable time. According to the Administrative Law Chamber, the matter was not regulated by the State Liability Act; the existing regulation or absence of appropriate regulation raised an issue of constitutionality.

40. The Supreme Court obtained, according to the Constitutional Review Court Procedure Act (*Põhiseaduslikkuse järelevalve kohtumenetluse seadus*), opinions from the Constitutional Committee of Parliament, the Police and Border Guard Board (*Politsei- ja Piirivalveamet*), the State Prosecutor's Office (*Riigiprokuratuur*), the Chancellor of Justice (*Õiguskantsler*), the Minister of Justice (*Justiitsminister*) and the Minister of the Interior (*Siseminister*).

41. The Supreme Court's plenary session delivered its judgment on 22 March 2011. It found that the State Liability Act did not provide for compensation for non-pecuniary damage caused by excessive length of a preliminary investigation in criminal proceedings. It considered such a situation unconstitutional. Therefore, the Supreme Court declared the State Liability Act unconstitutional in so far as it did not provide for compensation in the circumstances in question and awarded the complainant a sum of money.

42. The Supreme Court also noted that criminal proceedings constituted a specific area of the exercise of public authority subject to specific regulation. It would be unreasonable to decide on the damage caused by criminal proceedings according to the existing principles of state liability, which might subject criminal courts' rulings to review by the administrative

courts. Thus, the enactment of a special regulation for compensation for damage arising from criminal proceedings was required.

C. Legislation and case-law related to section 7(3) of the Property Reform (Principles) Act

43. Section 7(3) of the Property Reform (Principles) Act (*Omandireformi aluste seadus*), as in force from 2 March 1997 until 12 October 2006, provided that requests for return of or compensation for unlawfully expropriated property of persons who had left Estonia on the basis of agreements concluded with Germany were to be resolved by an international agreement.

44. By a judgment of 28 October 2002 (case no. 3-4-1-5-02) the Supreme Court, sitting in plenary session, declared section 7(3) of the Property Reform (Principles) Act unconstitutional because in the absence of the international agreement referred to in that provision it was in conflict with the principle of legal certainty. The Supreme Court refrained from invalidating the provision, considering that to be a political decision reserved for the legislature. It instructed Parliament to bring the provision in question into conformity with the principle of legal certainty.

45. On 19 December 2005 the Administrative Law Chamber of the Supreme Court referred case no. 3-3-1-63-05 to the Supreme Court's plenary session, as it had given rise to an issue of constitutionality.

46. By a partial judgment of 12 April 2006 the Supreme Court, sitting in plenary session, invalidated section 7(3) of the Property Reform (Principles) Act. It noted that the provision had not been amended since its judgment of 28 October 2002, nor had an international agreement been signed in the meantime. However, the Supreme Court adjourned the invalidation of section 7(3) for six months, leaving Parliament time to enact the necessary legislation.

47. As no pertinent legislation had entered into force by 12 October 2006, section 7(3) became invalid on that date.

48. By a judgment of 6 December 2006 the Supreme Court, sitting in plenary session, finally resolved case no. 3-3-1-63-05, basing its decision on the fact that section 7(3) had become invalid.

49. In the meantime, on 14 September 2006, Parliament adopted an act whereby section 7(3) of the Property Reform (Principles) Act was repealed. The act also contained certain other provisions aimed at regulating situations affected by section 7(3) no longer being in force.

50. The President of the Republic vetoed the act, considering that it was contrary to the principle of legal certainty. The Parliament again adopted the act without amendments and on 6 October 2006 the President of the Republic asked the Supreme Court to declare it unconstitutional.

51. By a judgment of 31 January 2007 (case no. 3-4-1-14-06) the Constitutional Review Chamber of the Supreme Court declared the act unconstitutional. As a result, it did not enter into force.

52. On 19 June 2007 the Administrative Law Chamber of the Supreme Court decided to refer case no. 3-3-2-1-07 to the Supreme Court's plenary session, considering it necessary for the uniform application of the law.

53. The Supreme Court, sitting in plenary session, delivered its judgment on 10 March 2008. It dismissed an application of 12 December 2006 by K.E. for the reopening of a case (*teistmisavaldus*) that had been decided in 1999 on the basis of section 7(3) of the Property Reform (Principles) Act. Moreover, going beyond the circumstances of the particular case, the Supreme Court outlined its general position on handling applications concerning property reform affected by section 7(3).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

55. The applicant provided different views concerning the starting date of the proceedings. In her application lodged on 29 November 2007 she noted that the case had been before the courts for more than six years, including more than two years with the Supreme Court. In her subsequent observations she submitted that the proceedings had lasted for six years before the executive authorities (from 2 February 1995 to 25 January 2001) and for more than eight years before different judicial instances, that is from the first judgment delivered on 26 January 2001 until the date of submission of the applicant's observations (27 August 2009).

56. The Government were of the opinion that only the latest set of administrative court proceedings was the subject matter of the present case (that is, the proceedings summarised in paragraphs 17 to 31 above). They noted that the applicant had filed her complaint with an administrative court on 19 June 2002 but had brought it into conformity with the applicable requirements, as requested by that court, on 1 October 2002. The Government considered that the latter date should be taken as the starting date of the proceedings. The proceedings had ended on 14 May 2008.

57. The Court considers that the various administrative and court proceedings the applicant has been involved in have to be seen as being distinct proceedings and it agrees with the Government's view as to the subject matter of the present case. However, the Court considers that the proceedings in question started on 19 June 2002 when the applicant filed her complaint with the administrative court. The time spent on bringing the complaint into conformity with the applicable requirements is a factor to be taken into account in the assessment of the reasonableness of the length of the proceedings. The Court considers that the administrative court proceedings in question ended with the delivery of the Supreme Court's judgment on 14 May 2008. Thus, the proceedings lasted nearly five years and eleven months across three levels of jurisdiction.

A. Admissibility

1. *The parties' submissions*

58. The Government pleaded failure to exhaust domestic remedies with regard to the complaint under Article 6 § 1 of the Convention.

59. Firstly, the Government argued that the applicant could have claimed compensation under section 7(2-1) of the State Liability Act. She had been in a similar situation, as required by that provision, to the applicants in earlier cases concerning length of proceedings before the Court (*Saarekallas OÜ v. Estonia*, no. 11548/04, 8 November 2007; *Shchiglitsov v. Estonia*, no. 35062/03, 18 January 2007; and *Treial v. Estonia*, no. 48129/99, 2 December 2003).

60. Secondly, the Government contended that the applicant could have lodged a claim for compensation of non-pecuniary damage with an administrative court. In this context, they argued that the domestic case-law had developed since the Court's judgments in the cases of *Saarekallas* (cited above) and *Missenjov v. Estonia* (no. 43276/06, 29 January 2009), where the Court had found that no remedy in respect of length of proceedings had existed. In particular, the Government referred to two judgments of the Tallinn Court of Appeal where complainants had been awarded compensation for damage related to criminal proceedings (see paragraph 35 above) and to the Supreme Court's decision of 30 December 2008 (see paragraphs 36 and 37 above) where the Supreme Court had affirmed that a person could request compensation for damage caused by the length of proceedings in an administrative court.

61. The applicant did not comment on the possibility of seeking compensation for non-pecuniary damage arising from the length of the court proceedings under the State Liability Act by having recourse to the administrative courts as suggested by the Government.

2. *The Court's assessment*

62. The Court notes at the outset that it has found in earlier cases that no effective remedy existed in Estonia for length-of-proceedings complaints (see the above-cited cases of *Treial*, *Shchiglitsov*, *Saarekallas*, and *Missenjoy*). In respect of the new arguments advanced by the Government, the Court notes that section 7 of the State Liability Act applies to direct pecuniary damage and loss of income. Furthermore, in the two judgments of the Tallinn Administrative Court referred to by the Government, compensation was awarded for pecuniary damage (that is, salary not received) the complainants had sustained because they had been suspended from public service. However, in the present case the question is whether the applicant had an effective remedy for claiming compensation for non-pecuniary damage caused by lengthy court proceedings.

63. The Court further notes that, in its decision of 30 December 2008 (see paragraphs 36 and 37 above), the Constitutional Review Chamber of the Supreme Court found that a claim for damages for the length of court proceedings had to be filed with an administrative court, which had to decide on the matter on the basis of, and pursuant to, the procedure established by the State Liability Act. However, in a later judgment, delivered on 22 March 2011 (see paragraphs 38 to 42 above), the Supreme Court's plenary session found that the State Liability Act did not provide for grounds for compensation for non-pecuniary damage caused by the length of criminal proceedings and declared the lack of pertinent regulation unconstitutional. The complainant was awarded monetary compensation. Although that judgment dealt with the length of a preliminary investigation in criminal proceedings, it was, in the Court's view, similar to the present case in that the underlying proceedings were not themselves unlawful and that the distress and prolonged uncertainty caused by the protracted proceedings served as the basis for the claim for compensation of non-pecuniary damage.

64. The Court therefore has to determine whether the applicant in the present case was required to have recourse to the administrative courts to obtain a ruling similar to the Supreme Court's judgment of 22 March 2011. In other words, it has to examine whether such administrative court proceedings constituted an effective, adequate and accessible remedy for a length-of-proceedings complaint which the applicant was required to exhaust (for comparison and for the principles established in the Court's case-law concerning remedies in length-of-proceedings cases, see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 173-216, ECHR 2006-V).

65. In this context, the Court observes that the proceedings in the above-mentioned domestic case (no. 3-3-1-85-09) lasted for nearly five years, involved two rounds of proceedings before three judicial instances and came to their end before the Supreme Court sitting in plenary session, which declared the underlying legislation unconstitutional after having obtained

opinions from a number of State institutions in the course of the constitutional review procedure (see paragraphs 38 to 42 above). Furthermore, the Court observes that although the Supreme Court awarded compensation to the complainant in that particular case, it found that the State Liability Act did not provide for grounds for making such an award, considered the legislation in force inappropriate and called for the enactment of specific regulation to resolve such matters. Having regard to the length of such proceedings and the uncertainty of their outcome in the absence of a clear basis in legislation or jurisprudence, the Court does not consider that such proceedings constituted an effective, adequate and accessible remedy for a length-of-proceedings complaint which the applicant was required to exhaust.

66. In the light of the foregoing considerations, the Court dismisses the Government's objection concerning the non-exhaustion of domestic remedies. It further notes that the applicant's complaint under Article 6 § 1 of the Convention is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

67. The applicant considered that the length of the court proceedings had been excessive. She was of the opinion that the delays in the examination of the case related to the determination of the court fee to be paid and the question of whether her appeal had been filed within the statutory time-limit had been caused by the incompetence of the courts. The applicant's negotiations with the defendant had been meant to resolve the dispute speedily and not to protract the proceedings.

68. The Government were of the opinion that the case had involved extremely complicated legal and political issues. The only delay had occurred in the Supreme Court in connection with the adjudication of similar cases by the Supreme Court's plenary session, whose rulings were binding for the Supreme Court's chambers, and by the Constitutional Review Chamber, whose rulings affected the validity of applicable legislation. The Government referred to the development of pertinent legislation and case-law which has been summarised in paragraphs 43 to 53 above.

69. The Government pointed out that certain delays in the proceedings had been caused by the applicant's failure to immediately seek exemption from the court fee at the onset of the proceedings and by her introduction of an additional complaint several months after the proceedings concerning her original complaint had started. She had also requested adjournment of a

hearing in order to have time to further specify her claim. Furthermore, had the applicant filed her appeal on time, the proceedings related to the restoration of the time-limit could have been avoided. A delay had also been caused by the applicant's failure to immediately seek exemption from the court fee when she filed the appeal. In the Court of Appeal, there had been a lengthy stay after the receipt by the court of the respondent's submissions but another delay had also been caused by the applicant's request for an adjournment because she had started negotiations with the Tallinn City Government aimed at settling the case. The postponement of the proceedings in the Supreme Court had only been caused by the complexity of the case and the need to wait for the outcome of other similar cases. The Government noted that the applicant had not requested the resumption of the proceedings before the Supreme Court.

70. Lastly, in respect of what was at stake for the applicant, the Government pointed out that her claim for compensation had been rejected by the Court of Appeal's judgment, which had become final when the applicant had not exercised her right to appeal against it. The Supreme Court had only dealt with the applicant's abstract right to challenge an administrative act given in respect of third parties. Thus, the delay in the proceedings in the Supreme Court had not caused any delay in the award or payment of damages to the applicant.

2. The Court's assessment

71. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case; the conduct of the applicant and the relevant authorities; and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

72. The Court has also recognised the special role of Constitutional Courts as guardians of the Constitution and the fact that they sometimes have to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice (see *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 132, ECHR 2005-V).

73. Turning to the present case, the Court accepts that its resolution presupposed important political and judicial decision-making concerning questions of principle which, in the interaction between the Supreme Court, Parliament, the President of the Republic and other State institutions inevitably required more time compared to ordinary judicial proceedings. The case was related to the validity of section 7(3) of the Property Reform

(Principles) Act, in which connection the Supreme Court sitting in plenary session gave three judgments and the Constitutional Review Chamber of the Supreme Court delivered one judgment during the time the applicant's case was pending before it. The Supreme Court faced the difficult task of deciding the matter within a reasonable time, ensuring, at the same time, the proper administration of justice, comprising, *inter alia*, balancing the rights and interests of various stake-holders in the complex environment of property reform, consistency in its case-law and exercising such judicial restraint as it deemed appropriate in the circumstances. Indeed, swift resolution of the present case could hardly have been seen as serving the interests of the parties or constituting the proper exercise of judicial power if a more authoritative formation within the Supreme Court would have overturned the underlying reasoning shortly thereafter.

74. In respect of the conduct of the applicant, the Court observes that certain delays, such as those caused by her failure to immediately seek exemption from court fees upon filing her complaint with the courts and upon filing her appeal against the first-instance court's judgment, were attributable to her. Three adjournments were caused by the applicant's conduct: the first, when she wished to make additional submissions; the second because of her new complaint; and the third due to her negotiations with the defendant aimed at settling the case. As concerns the conduct of the authorities, the Court observes that a certain period of inactivity appears to have occurred in the Court of Appeal. Lastly, it took two and a half years for the Supreme Court to decide the case. This period appears to have been almost entirely caused by the Supreme Court's decision to suspend the proceedings pending the outcome of other leading cases.

75. As concerns what was at stake for the applicant, the Court notes that the case concerned her claim for compensation against the municipal authority. As the Government pointed out, this aspect of the case was finally decided by the judgment given by the Court of Appeal, against which the applicant did not appeal. The remaining part of the case related to an administrative decision which concerned the building where the applicant lived. It is difficult for the Court to assess the practical significance of the outcome of this dispute for the applicant. The Court notes, however, that the ownership of the apartment had already passed to the applicant's family in 2002 and it does not therefore appear that the dispute immediately affected her right of residence in the apartment but rather might have had a bearing on the financial matters related to it.

76. In the light of all the circumstances of the case, the Court finds that the "reasonable time" prescribed by Article 6 § 1 was not exceeded. There has accordingly been no breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

77. In substance, the applicant further complained under Article 13 of the Convention of the fact that in Estonia there was no court to which an application could have been made to complain of the excessive length of proceedings. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

78. The Court considers that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. The complaint must therefore be declared admissible.

B. Merits

79. The Government argued that it had been open to the applicant to claim compensation for the length of the proceedings (see paragraphs 59 and 60 above). Furthermore, the Government noted that draft legislation providing for measures expediting court proceedings had been prepared.

80. The applicant did not comment on the possibility of seeking non-pecuniary damages for the length of the court proceedings under the State Liability Act.

81. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

82. In the present case, the Court notes that the measures expediting the proceedings referred to by the Government were not in force at the material time (see paragraph 34 above) and that this remedy was therefore not available to the applicant. As regards compensatory remedies, the Court has already found that there was no effective remedy available to the applicant that she would have been required to exhaust (see paragraphs 62 to 66 above). This conclusion also applies in respect of Article 13 of the Convention.

83. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby, at the time when she lodged her

application, the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed EUR 136,000, the price of a three-room apartment, in respect of pecuniary damage. She further claimed EUR 13,800 in respect of non-pecuniary damage.

86. The Government noted that the applicant would be able to claim damages from the domestic authorities under section 7(2-1) of the State Liability Act if the Court found a violation of her rights guaranteed under the Convention. Therefore, the Government considered that there was no reason for the Court to make any award.

87. Moreover, the Government argued that the alleged pecuniary damage was clearly not caused by the length of the proceedings and the claim was unsubstantiated.

88. In respect of the alleged non-pecuniary damage, the Government considered the applicant's claim disproportionate and not related to the case. If the Court were to find a violation of the Convention, the Government called on it to award a reasonable sum in compensation.

89. As regards the Government's argument that the applicant could seek compensation under national law, the Court has already found that the provision of the State Liability Act relied on by the Government only relates to pecuniary damage (see paragraph 62 above). Moreover, according to the Court's case-law, an applicant who has already exhausted domestic remedies in vain before complaining to this Court of a violation of his or her rights is not obliged to do so a second time before being able to obtain just satisfaction from the Court (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16, Series A no. 14, and, more recently, *Jalloh v. Germany* [GC], no. 54810/00, § 129, ECHR 2006-IX). Accordingly, the Court is not prevented from making an award for that reason.

90. However, in so far as the pecuniary damage is concerned, the Court does not discern any causal link between the violation found and the

damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 800 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

91. The applicant claimed EEK 159,718 (EUR 10,208) for costs and expenses, including EEK 54,096.50 (EUR 3,457) of costs and expenses incurred before the Court.

92. The Government contested these claims.

93. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found and are reasonable as to quantum (see, among other authorities, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 105, ECHR 2007-IV).

94. In the present case, the costs and expenses at the domestic level were not relevant to the complaint of the lack of an effective remedy in respect of the excessive length of the proceedings. Therefore, the applicant's claims cannot be sustained in this part.

95. The Court finds that the costs and expenses arising in the Strasbourg proceedings were only related to the violation found in part, given that the Court has dismissed the applicant's complaints in part. Furthermore, the applicant's obligation to pay legal costs in the amount claimed was conditional on the outcome of the case, in particular, on whether she would be awarded the sum of pecuniary damage claimed. Therefore, these costs and expenses can only be sustained in part. Having regard to all the circumstances, the Court awards EUR 1,000 under this head, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

96. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 800 (eight hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on these amounts;

(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;

5. *Dismisses* the remainder of the applicant's claims for just satisfaction and costs and expenses.

Done in English, and notified in writing on 8 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President