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

FOURTH SECTION

CASE OF JOKELA v. FINLAND

(Application no. 28856/95)

JUDGMENT

STRASBOURG

21 May 2002

FINAL

21/08/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Jokela v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 and 30 April 2002,

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

PROCEDURE

1. The case originated in an application (no. 28856/95) against the Republic of Finland 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 four Finnish nationals, Ms Barbro Jokela, Ms Heidi Jokela, Mr Jussi Jokela and Mr Petri Jokela ("the applicants"), on 20 September 1995.

2. The applicants were represented before the Court by Ms J. Ojala, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr A. Kosonen, Director at the Ministry for Foreign Affairs.

3. The applicants alleged that their property rights had been violated on account of the discrepancy between the relevant authorities' and courts' assessments of the market value of expropriated property and the market value of property subject to inheritance tax. The applicants also complained that they had been denied a fair hearing in the expropriation proceedings.

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 Fourth 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. By a decision of 5 October 2000 the Chamber declared the application partly admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first applicant is the widow of the late Mr Timo Jokela ("Mr Jokela"), who died on 19 September 1992. The other applicants are his children and all the applicants are beneficiaries of his estate.

9. At the time of his death Mr Jokela possessed, *inter alia*, the following properties in the centre of Nakkila municipality: Saha 1:15, Saha I 5:55, Saha I 5:78 and Saha II 3:20. The size of the properties came about 2.9 ha in total. Mr Jokela had purchased a third of the land for 300,000 markkas (FIM) in December 1989. A regional master plan (*seutukaava, regionplan*) of 1977 had designated part of the land for roadworks. That designation had been maintained in a municipal building plan (*rakennuskaava, byggnadsplan*) of 1989, whereas construction mainly for industrial purposes had been allowed on the remaining part of the properties.

A. The expropriation proceedings

10. In June 1990 the Turku District Roads Authority requested the partial expropriation of Mr Jokela's properties with a view to constructing an overpass pursuant to a road plan confirmed in February 1990. The overall area to be expropriated covered about half of the properties in question (1.53 ha). The request was referred to a panel composed of a State-appointed land surveyor ("the expert") and two lay members chosen by the expert from a list drawn up by the municipality ("the trustees").

11. In the autumn of 1990 the Roads Authority took over those parts of the properties which were to be expropriated. In December 1990 Mr Jokela sold other parts of the properties Saha 1:15 and Saha II 3:20 for FIM 121 per square metre to a well-established service-station company intending to construct a new service station to replace the one situated on adjacent land subject to expropriation.

12. After reaching an agreement with the Roads Authority in March 1991 Mr Jokela received FIM 700,000 in compensation for the removal of the buildings, equipment and vegetation from the expropriated land. The removal took place the same year. The agreement did not concern the compensation to be paid for the land itself and the inconvenience suffered. On these points Mr Jokela and, following his death, the applicants disagreed with the Roads Authority.

13. The matter was then referred to the expert and the trustees who, on 3 June 1993, fixed the market value (*käypä arvo, gängse pris*) of the land at FIM 7.50 per square metre. They apparently arrived at this amount disregarding three voluntary sales of land in the vicinity, as they considered that the sellers – Mr Jokela and the municipality – had been "in a dominant position" at the time and thus able to dictate the price. Instead, the expert and trustees took into account the prices paid for land within a wider area. The applicants were awarded about FIM 115,000 in compensation for the land and some additional compensation for the inconvenience suffered.

14. The applicants and the Roads Authority appealed to the Land Court (*maaoikeus, jorddomstolen*) of Southern Finland which, on 27 September 1994, held an oral hearing also attended by the expert. The applicants, represented by counsel, argued that the market value of the expropriated land was between FIM 60 and FIM 112 per square metre. In support of their contention, they submitted various pieces of documentary evidence indicating a current value ranging between FIM 20 and FIM 114 per square metre. The evidence included, *inter alia*:

(1) an offer of 1990 in which the Nakkila municipality had stated its interest in purchasing 2.7 ha of the land for FIM 105,000 (i.e. FIM 38.50 per square metre);

(2) a decision of the Nakkila Inheritance Tax Board (*perintöverolautakunta, arvsskattenämnden*) of 27 May 1993 in which the current value of the applicants' properties had been estimated at FIM 600,000 (i.e. FIM 20 per square metre – see paragraph 23 below);

(3) a 1991 estimate by the same expert of the value of adjacent land which had been expropriated, for the purpose of carrying out the same roadworks, setting the price at FIM 44 per square metre (for land used for a service station) and FIM 10 per square metre (for an uncultivated field between two roads);

(4) an offer of 1991 in which the Nakkila municipality had proposed to lease certain land in the vicinity for 10% of its market value estimated at FIM 114 per square metre.

15. The applicants disputed the view of the expert and the trustees that Mr Jokela and the municipality had been able to dictate the prices of the three pieces of land previously sold to the service-station company. The municipality had sold the land at a price of FIM 40 per square metre, presumably below the market level in view of the importance attached to

maintaining a service station in the vicinity. Even though Mr Jokela had sold his land at a price exceeding FIM 100 per square metre, that had apparently not been considered excessive by the service-station company which otherwise could have asserted its right to redeem that land.

16. In its own appeal the Roads Authority had argued that the compensation to be awarded to the applicants should be lowered to FIM 5 per square metre. Its representative did not comment either in writing or at the Land Court's hearing on the above evidence adduced by the applicants.

17. In their written submissions to the Land Court the applicants further stated their readiness to examine the executive secretary of Nakkila municipality (V.) as a witness in respect of the contents of the municipality's above-mentioned offer of 1991, "should the Land Court deem [such an examination] necessary".

18. At the hearing the applicants allegedly also requested that the building inspector of the municipality (S.) be examined as a witness in respect of the status of their land from the point of view of planning. Contrary to the expert and the trustees, S. was allegedly of the opinion that the properties had been reserved for industrial purposes already set out in the regional master plan. According to the applicants, their request that S. be heard was not recorded in the Land Court's minutes. The Government, referring to the same minutes, noted that the applicants' representative had merely referred to having been in contact with S. before the hearing. Following the hearing the Land Court inspected the area in question.

19. In a judgment of 27 September 1994 the Land Court granted the applicants some FIM 4,000 additional compensation for inconvenience and costs but dismissed the remainder of their appeal. It noted that in the regional master plan of 1977 the expropriated land had been designated for roadworks. This designation had been maintained in the municipal building plan adopted in 1989. The Land Court therefore agreed with the assessment of the expert and the trustees as to the market value of the land. It noted, *inter alia*, the fact that the construction of the overpass had improved the road links connecting those parts of the applicants' properties which had not been expropriated. The Land Court expressly ignored the 1990 purchases of adjacent land for the purpose of constructing a service station near the overpass. As in fact only one plot of land could be sold for such a purpose, the seller had had a monopoly and the price of this land had not evolved freely.

20. The Land Court's judgment did not mention the written evidence adduced by the applicants, nor the fact that they had sought to examine witnesses.

21. On 20 March 1995 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicants leave to appeal.

B. The inheritance tax proceedings

22. In Finland inheritance tax is calculated on the basis of the market value of a property at the time of the death less 20% to 30% (the so-called "safe-assessment margin" – see paragraph 29 below). At the time of Mr Jokela's death, those parts of his properties which were subject to expropriation were still considered part of his possessions. In the inventory of the estate conducted by a member of the Bar and his assistant in February 1993, the total value of the four properties was estimated at FIM 150,000.

23. On 27 May 1993 the Nakkila Inheritance Tax Board fixed the inheritance tax to be imposed on Heidi, Jussi and Petri Jokela in respect of, *inter alia*, the four properties. Their market value was assessed at a total of FIM 600,000 (i.e. about FIM 20 per square metre). No reasons were given by the Tax Board.

24. The applicants appealed, arguing that the market value of the properties should be reduced to FIM 150,000 at most. On 5 September 1995 the Turku and Pori County Administrative Court (*lääninoikeus, länsrätten*) declined to examine the first applicant's appeal (as no inheritance tax had been imposed on her) and dismissed the other applicants' appeal in so far as it pertained to the market value of the properties. It noted, in particular, that the size of the properties came to a total of 32,000 sq. m (3.2 ha), a third of which had been purchased by the deceased for FIM 300,000 in December 1989. Even in the light of the elements adduced by the appellants, the market value of the properties had not been assessed too high. The court relied on sections 9 and 10 of the Inheritance and Gift Tax Act (*perintö- ja lahjaverolaki, lag om skatt på gåva och arv 370/1948*).

25. On 13 May 1996 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Expropriation for building public roads

26. In Finland the expropriation of real property for public use must be compensated according to its market value, that value being determined in the light of the general price level and the use to which the property was being put at the relevant time.

27. By section 35a of the Public Roads Act (*laki yleisistä teistä, lag om allmänna vägar 243/1954*) the compensation for expropriation must be determined in accordance with the criteria laid down in the Expropriation of Immovable Property and Special Rights Act (*laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta, lag om inlösen av fast egendom och*

särskilda rättigheter 603/1977 – "the Expropriation Act"). Section 67(1) of the Public Roads Act provides that full compensation within the meaning of the Expropriation Act is due for any expropriation, although such compensation may be adjusted according to the benefit to the remaining property which the road construction may produce.

28. Under section 30(1) of the Expropriation Act full compensation, corresponding to the market value, must be determined for the expropriated property. The time of the property transfer is decisive for the determination of this value. If the market value does not reflect the real loss sustained by the owner of the property or any related right, the assessment must be based on returns from the property or investments in it. If the purpose for which the expropriation is carried out has significantly increased or decreased the value of the property, the compensation due must be determined without taking this into account (section 31). In practice, the market value is adjusted to take account of developments other than temporary price fluctuations, up to the end of the expropriation procedure.

B. Inheritance tax

29. Section 9 of the Inheritance and Gift Tax Act provides that the assessment of inheritance tax must be based on the value of the property at the time of the death. The value of the property must be assessed in accordance with the provisions applicable to the taxation of income and capital gains (sections 10 and 29). Under the 1992 Capital Gains Tax Act (*varallisuusverolaki, förmögenhetsskattelag 1537/1992*) the assessment must be based on the market price of the property. In practice, the market value for the purpose of setting inheritance tax is the price which would most probably be paid for the particular property at the relevant location. The market price thus arrived at is normally reduced by 20% to 30% so as to avoid any overvaluation of the property at the time of the death.

30. At the relevant time the competent Tax Commissioner (*verojohtaja, skattedirektören*) was under a duty to ensure, *inter alia,* that the value of the property subject to inheritance tax had been correctly assessed in the estate inventory (section 35 of the Inheritance and Gift Tax Act). The tax was to be imposed by the Inheritance Tax Board after careful consideration of the information pertaining to the property, including commonly known facts such as the prevailing price levels in the municipality, and changes in the value of such property in general (section 39 as interpreted in practice). In 1994 the inheritance tax boards were abolished and the imposition of this tax was assigned to the ordinary tax authorities (Law no. 318/1994).

C. Proceedings before the land courts

31. Under section 331 of the Partition Act (*jakolaki, lag om skifte 604/1951*), as in force at the relevant time, proceedings before the land courts were governed by the provisions applicable to the general courts, unless otherwise stated. In accordance with the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) a land court could therefore decide not to admit evidence which was deemed to be irrelevant or had been proposed in order to prove an already established fact or where the evidence could be obtained in a significantly less cumbersome or cheaper manner (Chapter 17, section 7).

THE LAW

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

A. The interference with the applicants' property rights

32. The applicants complained that the authorities' and the courts' assessments of the market value of, on the one hand, the land at the time when it was taken over by the authorities and, on the other hand, the properties as a whole at the time of Mr Jokela's death, were arbitrary. The applicants relied on Article 1 of Protocol No. 1, which reads as follows:

> "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."

33. The Government submitted that this provision had not been violated. The expropriation of part of Mr Jokela's land had been based on section 29 of the Public Roads Act and had served a legitimate public interest. The interference in question had therefore been covered by the second sentence of the first paragraph of Article 1 of Protocol No. 1.

34. As to the proportionality of the interference, the Government did not find the calculation methods used by the expert and trustees or by the Land Court flawed or inadequate. The Government conceded that the Expropriation Act had not afforded the authorities any discretion as to

whether or not to apply the principle of the market value in the determination of the compensation to be paid for the land. Nonetheless, as the exact market price of a given property was usually not available, it had to be assessed by various methods which were statistically reliable within a certain range. As long as the result remained within that range it had to be considered representative of the market value. In practice, the amount of compensation had to reflect the purchase prices of comparable properties after temporary price fluctuations had been excluded.

35. Thus, the market value had to be assessed on the basis of the market price at the time the land in question had been taken over by the authorities, that is, in September 1990, but also by adjusting that price in the light of the price levels in 1993, when the expert and trustees had given their decision. As reflected in the minutes of the proceedings before the expert and trustees, they had familiarised themselves with all the sales of non-developed properties occurring between January 1989 and April 1993 within the area covered by the municipal building plan, as well with the sales in sparsely populated areas and the sales of agricultural and non-designated real property during the same period. The expert and trustees had noted that after 1990 the relevant prices had decreased in a manner which could not be considered temporary. For example, the National Surveying Board's statistics had shown a 25% decrease from 1990 to 1993 in the prices of non-designated land and an average price decrease exceeding 30% in respect of nationwide property sales.

36. The Government conceded that, whilst Article 1 of Protocol No. 1 did not in all circumstances guarantee a right to full compensation for deprivation of property, the normal circumstances of the present case did entitle the applicants to compensation at such a level. Having regard to the wide margin of appreciation afforded to the State, the Government considered, however, that the compensation for the expropriated property had been reasonably related to its market value at the relevant time. The Government concluded therefore that the interference with the applicants' property rights had been proportionate to the legitimate aim sought to be achieved.

37. Turning to the inheritance tax imposed on three of the applicants, the Government submitted that it had been based on sections 9 and 10 of the Inheritance and Gift Tax Act and had served the general interest referred to in the second paragraph of Article 1 of Protocol No. 1. That interference had not been disproportionate either, even though the market value forming the basis for setting the inheritance tax had been increased from FIM 150,000 – the estimate reported in the inventory of the estate – to FIM 600,000. Nor could it be deduced from that increase that the compensation fixed in the expropriation proceedings had been too small. The market value for taxation purposes had taken into account Mr Jokela's 1989 purchase of a third of the property for FIM 300,000 as well as his 1990 sale of 4,000 sq. m for

FIM 450,000 (which, according to the Government's calculations, corresponded to a price of FIM 28 and FIM 112 per square metre respectively).

38. To the Government, it was evident from the relevant provisions of domestic law that the market value of inherited real property was not determined in the same way as the market value of expropriated property. Under the tax legislation the value of real property always took account of buildings thereon, of the purpose for which the property had been designated in local or regional plans, and of any existing building rights. In the present case the assessment of the inheritance tax had thus taken into account the building right existing in respect of part of the inherited – but not expropriated – land. Apart from compensation for the expropriated land, Mr Jokela had been awarded a further FIM 700,000 (about 118,000 euros) in compensation for the buildings, the equipment and the vegetation removed from that area. Moreover, the market value of the land in question had been assessed at different times and the property in respect of which inheritance tax had been levied had not been identical with the expropriated land.

39. The applicants rejected the Government's assertion that the market value of real property had to be defined differently depending on whether it was to be compensated following expropriation or whether it formed the basis for setting the tax to be levied on inherited land.

40. In their submissions to the Land Court the applicants had presented detailed evidence of the relevant value of the expropriated land, including an extract from the National Surveying Board's 1994 statistics of property sales. True, those records had shown that the price of both forest and agricultural land, as well as of planned real property, had clearly decreased between 1989 and 1993. Nevertheless, the starting-point when determining the market value of the expropriated land had to be the price level in the autumn of 1990, when the Roads Authority had taken over the land in question. Domestic practice likewise spelled out the principle of basing the market value on the reference prices dating back to the time of the initial interference with the property. Any domestic law or practice to the contrary would in itself be in breach of Article 1 of Protocol No. 1: if the compensation were not based on the price level at the time when the property had been interfered with, the property owner's right to compensation would depend solely on the efficiency of the authorities in processing the matter.

41. Even assuming that the market value of the expropriated land had correctly taken account of the development of prices up to June 1993, the market value for the purposes of inheritance tax – which the applicants accepted – had been fixed only nine months earlier. The market value for the purposes of the expropriation proceedings could not possibly have dropped from FIM 30 – or even from FIM 20 following the 20% to 30%

"safe-assessment reduction" – to FIM 7.50 per square metre during such a short period.

42. While acknowledging the different sizes of the areas in question, the applicants pointed out that all of the expropriated land had also formed part of the overall real property in respect of which inheritance tax had been imposed. The expropriated part had amounted to approximately half of the latter area and the two areas had not differed from one another from the point of view of applicable planning regulations. A building plan had been in force on both of them, allowing construction on up to 20% of the overall area. In these circumstances, the market value of the expropriated area should have amounted to about half of the market value arrived at in the assessment of the inheritance tax. The compensation for removed buildings could have no bearing on the determination of the market value of the expropriated land as such, given that the inheritance tax had likewise been based on an estimation of the market value of the land only.

43. In sum, the applicants contended that the determination of the current value of the land had not been governed by the same criteria in the taxation and expropriation proceedings. As the difference in the authorities' assessment had been arbitrary, the requisite balance between the public interest and that of the applicants had not been struck. Accordingly, the State had overstepped its margin of appreciation under Article 1 of Protocol No. 1.

B. Justification of the interference

1. The Court's overall approach

44. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, *Fredin v. Sweden (no. 1),* judgment of 18 February 1991, Series A no. 192, p. 14, § 41).

45. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the proceedings at issue must also afford the individual a reasonable opportunity of putting his or her case to the responsible

authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see, for example, *AGOSI v. the United Kingdom,* judgment of 24 October 1986, Series A no. 108, p. 19, § 55, and *Hentrich v. France,* judgment of 22 September 1994, Series A no. 296-A, p. 21, § 49).

46. It is common ground that the expropriation of part of Mr Jokela's property constituted a deprivation of the applicants' possessions to be examined under the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Papamichalopoulos and Others v. Greece,* judgment of 24 June 1993, Series A no. 260-B, pp. 69-70, §§ 41-46).

47. It is likewise undisputed that the tax levied in respect of the inherited real property also interfered with the applicants' rights under Article 1 of Protocol No. 1. That interference in itself falls to be considered under the second paragraph of Article 1 of Protocol No. 1 (see, for example, *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 41, 9 November 1999).

48. Each of the two forms of interference defined must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, *Beyeler v. Italy* [GC], no. 33202/96, §§ 108-14, ECHR 2000-I).

49. The Court finds, however, that the interconnected factual and legal elements of this case prevent its being classified in part as a matter of mere deprivation and in part as a question of mere taxation, to be examined under the second and the third rule contained in Article 1 of Protocol No. 1 respectively. Moreover, the situations envisaged in the second sentence of the first paragraph of Article 1 as well as in its second paragraph are only particular instances of interference with the right to the peaceful enjoyment of property as guaranteed by the general rule set forth in the first sentence of the first paragraph.

50. The Court will therefore first examine whether the two individual forms of interference were compatible with Article 1. In the affirmative, it will remain to be considered whether the effects of those forms of interference on the applicants' situation as a whole were compatible with the general rule in the first sentence of the first paragraph of Article 1.

2. Expropriation of inherited land

51. The applicants appear to dispute that the deprivation in question was "subject to the conditions provided for by law", arguing that the compensation awarded to them was not assessed in accordance with the prevailing domestic practice. The Court would reiterate, however, that it has limited power to review compliance with domestic law (see, for example, *Håkansson and Sturesson v. Sweden,* judgment of 21 February 1990,

Series A no. 171-A, p. 16, § 47). The Court accepts that the expropriation was based on section 29 of the Public Roads Act.

52. The Court reiterates that the national authorities – with their direct knowledge of their society and its needs – are in principle better placed than the international judge to appreciate what is "in the public interest". In performing their assessment in matters arising in the field of Article 1 of Protocol No. 1 the national authorities therefore enjoy a wide margin of appreciation (see, for example, *Fredin (no. 1)*, cited above, p. 17, § 51). The Court accepts that the expropriation of part of Mr Jokela's property for the purpose of implementing the road plan took place in the public interest.

53. An interference with the peaceful enjoyment of possessions must also strike a "fair balance" between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicant. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. This provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II). If, however, the compensation bears no reasonable relation to the value of the expropriated land, Article 1 of Protocol No. 1 has been violated (see *Malama v. Greece*, no. 43622/98, § 52, ECHR 2001-II, and *Platakou v. Greece*, no. 38460/97, § 57, ECHR 2001-I).

54. Having regard to all the evidence adduced, the Court finds no indication that the relevant authorities arbitrarily failed to consider the arguments put forward by the applicants through their counsel as regards the criteria to be used for estimating the market value of the expropriated land. In particular, it can reasonably be deduced from the evidence at hand that the significant decrease in property prices up to the beginning of 1993 was taken into account. Bearing also in mind the wide margin of appreciation which Article 1 of Protocol No. 1 affords national authorities, the Court accepts that the compensation paid for the expropriated land bore a reasonable relation to the value of this land.

55. Turning lastly to the procedural requirement inherent in Article 1 of Protocol No. 1, the Court finds that the expropriation proceedings viewed as a whole afforded the applicants a reasonable opportunity for putting their case to the competent authorities with a view to establishing a fair balance between the conflicting interests at stake.

56. In sum, there has been no violation of Article 1 of Protocol No. 1 in respect of the expropriation alone of part of the property which the applicants inherited from Mr Jokela.

3. The inheritance tax levied in respect of the real property

57. The Court accepts that the interference in the form of the taxation of the inherited real property was based on sections 9 and 10 of the Inheritance and Gift Tax Act and served the general interest referred to in the second paragraph of Article 1 of Protocol No. 1. This provision expressly reserves the right of Contracting States to enforce such laws as they may deem necessary to secure the payment of taxes (see *Špaček, s.r.o.*, cited above, § 41). The margin of appreciation afforded to the national authorities must likewise be wide (see, *mutatis mutandis*, *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, judgment of 23 February 1995, Series A no. 306-B, pp. 48-49, § 60).

58. While the notion of the "market value" of the property as applied in determining the inheritance tax may leave something to be desired as to its preciseness, the Court accepts that the interference in question was in principle compatible with the States' power to enforce tax laws as recognised in the second paragraph of Article 1 of Protocol No. 1.

59. Even so, the Court must consider whether the market value of the land as defined for the purpose of inheritance tax placed a disproportionate burden on Heidi, Jussi and Petri Jokela, given the previously assessed market value of the expropriated parts. The Court considers that certain allowances must be made for the fact that the market value was assessed, in the first instance, by local bodies independent of one another and, at the appeal level, by a land court and an administrative court acting equally independently. Moreover, under domestic law the market value was to be based on the price level prevailing at different times depending on the subject matter of the proceedings. In such circumstances, and given the wide margin afforded to the national authorities, Article 1 of Protocol No. 1 cannot be interpreted as requiring that exactly the same market value per square metre be fixed in the different sets of proceedings.

60. Considering also that the applicants enjoyed the benefit of adversarial court proceedings, the Court concludes that the fixing of the inheritance tax, taken separately, did not exceed the State's wide margin of appreciation in this field. There has thus been no violation of Article 1 of Protocol No. 1 in respect of the taxation proceedings either.

4. The combined effect of the expropriation and the inheritance tax

61. The Convention is intended to safeguard rights which are "practical and effective" as opposed to "theoretical" or "illusory" (see, for example, *Papamichalopoulos and Others*, cited above, p. 69, § 42). It follows that,

even though the Court has found no violation of Article 1 of Protocol No. 1 as a result of either of the two distinct forms of interference which it has examined separately above, it must also satisfy itself that their combined effect was not such as to violate the applicants' general right to the peaceful enjoyment of their possessions as guaranteed by the first sentence of the first paragraph of that provision. In the Court's view this right includes the expectation of a reasonable consistency between interrelated, albeit separate, decisions concerning the same property.

62. The Court notes to begin with that the market value fixed for the levying of inheritance tax was assessed to be four times higher per square metre than the market value which had been reported in the inventory of Mr Jokela's estate, drawn up by a member of the Bar. The Inheritance Tax Board gave no reason for that discrepancy, which must be regarded as somewhat striking, even accepting that the market value of the property as assessed in the inventory of Mr Jokela's estate was low.

63. Furthermore, while the County Administrative Court dismissed the relevant applicants' appeal in respect of the market value of the land with reference to Mr Jokela's purchase of part of that land for FIM 300,000, that summary reasoning does not in the Court's view suffice for the decision to be regarded as adequate for the purposes of the general principle of the peaceful enjoyment of property. In particular, the decision failed to explain in an adequate manner to what extent the County Administrative Court had taken account of the significant decrease in the prices of property which the parties agree had occurred after the late Mr Jokela's purchase of one third of the land in 1989.

64. In sum, notwithstanding the Government's various explanations of the discrepancy in the market value arrived at in the different sets of proceedings, those reasons were not borne out in the decisions given in the tax proceedings, even though the County Administrative Court gave its decision after the Land Court's assessment of the market value of the expropriated land had acquired legal force – an assessment which, as the Court has found above (see paragraph 54), took into account the market value in as late as 1993.

65. The Court considers that the applicants could legitimately expect a reasonably consistent approach from the authorities and courts which were required to determine the market value of the land in the different sets of proceedings and, in the absence of such consistency, a sufficient explanation for the different valuation of the property in question. For the reasons indicated above, there was neither consistency nor any such explanation for the lack of consistency as to be compatible with the applicants' legally protected expectations as property owners. In these circumstances, the outcome of those proceedings was incompatible with the applicants' general right to the peaceful enjoyment of their possessions as guaranteed in the first

sentence of the first paragraph of Article 1 of Protocol No. 1. Accordingly, this provision has been violated.

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

A. The Land Court's alleged failure to examine witnesses S. and V.

66. The applicants first complained that the expropriation proceedings had not met the requirements of Article 6 § 1 of the Convention in that the Land Court had declined to examine witnesses S. and V., who had been proposed by the applicants were the Land Court to disagree with the applicants as to the applicable planning rules governing the land to be expropriated. The applicants contended that they had expressly requested that the witness S. be examined, but that the Land Court had failed to record this request. Article 6 § 1 reads, in its relevant parts, as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law. ..."

67. The Government submitted that there had been no violation of this provision either. The proceedings having been civil in nature, it had been up to the parties themselves to select the witnesses to be examined. The minutes indicated, however, that the applicants, although represented by counsel, had not expressly requested that witnesses S. and V. be examined. The applicants' allegation that their request to examine S. had not been recorded in the minutes was unconvincing: they had not demanded a separate decision from the Land Court on the examination of that witness or on a request for postponement with a view to enabling witnesses to attend. Nor did the decision or the minutes show that it had become necessary for the Land Court to ascertain whether S. had claimed compensation for appearing at the hearing.

68. The Court must ascertain whether the overall proceedings, including the way in which evidence was dealt with, were fair within the meaning of Article 6 § 1. This provision places the domestic court under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision. The requirements inherent in the concept of "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge. This is borne out by the absence of detailed provisions such as paragraphs 2 and 3 of Article 6 applying to cases of the former category. Thus, although these provisions have a certain relevance outside the strict confines of criminal law, the Contracting States have greater latitude when dealing with civil cases concerning civil rights

and obligations than they have when dealing with criminal cases (see, for example, *Dombo Beheer B.V. v. the Netherlands,* judgment of 27 October 1993, Series A no. 274, p. 19, §§ 32-33).

69. The Court notes that the applicants were legally represented throughout the expropriation proceedings and had ample opportunity to request that witnesses S. and V. be examined before the Land Court. On the evidence adduced, the Court does not find it established that the applicants' counsel made such a request in an unambiguous and unconditional manner calling for a reasoned decision of the Land Court in the event of a refusal. Article 6 § 1 of the Convention has thus not been violated in this respect.

B. The Land Court's alleged failure to examine the applicants' submissions adequately

70. The applicants further complained that the Land Court had failed to provide reasons as to why it had not based its judgment on the written evidence adduced in support of their claims. Although Mr Jokela's previous property transaction involving a service-station company had been taken into account when the inheritance tax had been fixed, the applicants' reference to the same purchase was expressly dismissed in the Land Court's judgment.

71. In the Government's opinion the Land Court's decision had been sufficiently detailed. Even though the decision itself had not indicated all evidence adduced, it had been recorded in the minutes. Furthermore, the Land Court had admitted all the written evidence adduced by the applicants.

72. The Court reiterates that Article 6 § 1 places the domestic court under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision. This provision further obliges the courts to give adequate reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which the duty to give reasons applies may vary according to the nature of the decision at issue. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. The question whether a court has failed to fulfil the obligation to state reasons can therefore only be determined in the light of the circumstances of the case.

73. The notion of a fair procedure requires furthermore that a national court which has given sparse reasons for its decision, whether by incorporating the reasons of a lower court or otherwise, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower

instance. Where an appellate court simply endorses the reasons for the lower court's decision when dismissing an appeal, the lower court or authority must have provided such reasons as to enable the parties to make effective use of their right of appeal (see, for example, *Helle v. Finland,* judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2928-30, §§ 55-60; *García Ruiz v. Spain* [GC], no. 30544/98, § 26*,* ECHR 1999-I; and *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001).

74. The Court notes that the applicants, who were legally represented before the Land Court, had ample opportunity to make submissions in support of their contention that the market value of the land at the relevant point in time should have been increased. True, the evidence which they had adduced in the proceedings before the Land Court comprised the Inheritance Tax Board's decision in their case as well as other official documents suggesting a market value ranging between FIM 21 and FIM 114 per square metre, whereas the compensation awarded to them had amounted to FIM 7.50 per square metre. Furthermore, the Land Court expressly declined, to the applicants' detriment, to take account of the 1990 transactions involving a service-station company. In its appeal, however, the Roads Authority had challenged that level of compensation, arguing that it should be lowered to FIM 5. Moreover, the Court has already found that the significant decrease in the property prices up to the beginning of 1993 had been taken into account in the assessment of the market value (see paragraph 54 above).

75. Having regard to all the evidence adduced, the Court finds no indication that the expert and the trustees or the Land Court arbitrarily failed to consider the arguments put forward by the applicants as regards the criteria to be applied when fixing the market value of the expropriated land.

76. In these circumstances, the Court concludes that the requirement under Article 6 § 1 that a court must provide sufficient reasons for its decision was satisfied in the particular circumstances of the instant case. Article 6 of the Convention has therefore not been violated in this respect either.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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. Pecuniary damage

78. The applicants pointed out that the expropriated land came to 16,650 sq. m, for which they had received FIM 7.50 (1.26 euros (EUR)) per square metre – totalling FIM 124,875 (EUR 21,002) – in compensation for its market value at the relevant time. The tax levied on the inherited land had been set on the basis of a market value estimated at FIM 30 (EUR 5.05) per square metre, giving total of FIM 499,500 (EUR 84,010), following which the "safe-assessment reduction" had been applied.

79. On the assumption that the market value underlying the inheritance tax had been assessed correctly, the applicants concluded that the market value of the land for which compensation had been due in the expropriation proceedings should have amounted to FIM 37.5 (EUR 6.31) per square metre. It followed that they should have been entitled to compensation in the amount of FIM 624,375 (EUR 105,012), whereas they had received only FIM 124,875 (EUR 21,002). The applicants therefore claimed the difference (FIM 499,500 or EUR 84,010) in just satisfaction for pecuniary damage.

80. If, on the other hand, the market value of the land as assessed in the expropriation proceedings (FIM 7.50 per square metre) were to be considered the correct assessment, the inheritance tax should have been set at FIM 152,250 (7.50 x 29,000 x 0.70), including the 30% "safe-assessment reduction". Without such a reduction the amount of the tax would have been FIM 217,500. In either case the market value for the tax purposes had been overvalued in the amount of FIM 400-450,000, which had resulted in an excessive tax burden estimated at FIM 12,500 on each of the three applicants in question.

81. The Government pointed out that the price analysis in the expropriation proceedings had been based on all real property sales between 1 January 1989 and 30 April 1993. The prices of each type of real property had been surveyed; on the basis of this survey, the likely market value of the land in question had been established, which had then constituted the ground for the decision on compensation. The Government noted that the price statistics which the applicants had obtained from the National Surveying Board illustrated the development in the price of forests, agricultural land and detached-house properties between 1985 and 1994 and were similar to those presented by the Government. The statistics relied on by the Government were nevertheless based on a larger number of sales of the main types of real property, and therefore gave a more precise picture of the general development of prices than the records relied on by the applicants, which illustrated the development in the prices of certain types of real property. The Government furthermore contended that the prices per

square metre in the documents submitted by the applicants in no respect illustrated the price of the land subject to dispute, and no conclusions as to the market value of the land in question could therefore be made on the basis of those records.

82. The Government accepted FIM 7.50 per square metre as the market value of the land in issue, this having been established in the expropriation proceedings and confirmed by the Land Court and being based mainly on the market price of non-designated land. Were the Court to find a breach of Article 1 of Protocol No. 1, the Government therefore considered that the applicants Heidi, Jussi and Petri Jokela should be awarded appropriate compensation for the pecuniary damage suffered as a result of the overvaluation of the property subject to inheritance tax.

83. Should the basis of the assessment of the market value of that property be FIM 7.50 per square metre, it was the Government's view that the total price of that property had amounted to approximately FIM 200,000. The loss suffered by Heidi, Jussi and Petri Jokela would have corresponded to the difference between the inheritance tax calculated on the basis of the amounts given above, and the tax imposed would have been FIM 8,125 less in respect of each of those applicants. In addition, if the reference point to be used was the market value of FIM 7.50 per square metre, changes in the total value of the land in respect of which inheritance tax was levied could have affected the inheritance tax rate and thereby the amount of loss sustained. Moreover, a smaller inheritance tax had the effect of increasing the possible tax on capital gains. Therefore, the actual loss which each of the three applicants might have incurred as a result of the excessively high inheritance tax would have amounted to about FIM 8,000.

84. The Court has found a violation of the applicants' general right to the peaceful enjoyment of their possessions. As the lack of sufficient explanations for the estimation of the value of the property at a prima facie high level in the inheritance tax proceedings was the principal reason for the finding of the violation, the Court accepts that Heidi, Jussi and Petri Jokela have suffered pecuniary damage in the form of excessive inheritance tax. In these circumstances there is, for the purposes of Article 41, also a sufficient causal link between the violation and the pecuniary damage suffered. On the other hand, the Court cannot speculate as to the exact amount of the pecuniary damage suffered by the applicants. Making an assessment on an equitable basis, the Court awards EUR 1,600 (FIM 9,513.17) to each of those three applicants. Finding no causal link between the remainder of the alleged pecuniary damage and the violation found, the Court rejects that part of the claim.

2. Non-pecuniary damage

85. The applicants claimed EUR 16,819 (FIM 100,000) in compensation for suffering a violation of Article 1 of Protocol No. 1 or, in the alternative,

EUR 100,913 (FIM 600,000) were the Court to find that they had suffered no pecuniary damage. They also claimed a further EUR 16,819 (FIM 100,000) in compensation for having suffered a violation of Article 6 § 1 of the Convention.

86. Were the Court to find a breach of Article 1 of Protocol No. 1 as a result of excessive inheritance tax, the Government considered that Heidi, Jussi and Petri Jokela should be awarded FIM 7,500 each in just satisfaction for non-pecuniary damage.

87. Should the Court also find that Article 6 § 1 to the Convention had been violated, the Government considered the applicants' claim in this respect excessive and left it to the Court's discretion whether any award should be made under this head. Any such award should include all four applicants.

88. The Court accepts that the violation of the property rights of Heidi, Jussi and Petri Jokela in the aftermath of their father's death caused them distress which cannot be made good by the Court's mere finding of a violation. Making its assessment on an equitable basis, the Court therefore awards each of these applicants EUR 1,300 (FIM 7,729.45) in compensation under this head. The Court considers that the finding of a violation constitutes sufficient just satisfaction for Barbro Jokela, who was only indirectly affected by the violation established.

B. Costs and expenses

89. The applicants claimed EUR 11,639 (FIM 69,200) in compensation for legal fees and costs incurred in the expropriation and inheritance tax proceedings (FIM 33,800) as well as before the Convention institutions (FIM 35,400). They requested that EUR 2,560 (FIM 15,224) in value-added tax (22%) be added to the overall amount.

90. The Government left it to the Court's discretion to decide whether the applicants had substantiated their claim adequately. At any rate, part of the lawyer's fees concerned the applicants' complaint under Article 14 of the Convention which had been declared inadmissible. Moreover, assuming that a violation of Article 1 of Protocol No. 1 were to result from the inheritance tax levied, the fees and expenses incurred in the expropriation proceedings (that is a total of FIM 29,800 without chargeable value-added tax) should not be reimbursed. The fees and costs incurred by the applicant Barbro Jokela should likewise be deducted from such an award. The number of hours claimed to have been spent by the lawyer on the case also appeared somewhat excessive.

91. 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 (see, among other authorities, *Hertel v. Switzerland,* judgment of 25 August 1998, *Reports*

1998-VI, p. 2334, § 63). Not only the costs and expenses incurred before the Strasbourg institutions but also those incurred before the national courts may be awarded. However, only those fees and expenses which relate to a complaint declared admissible can be awarded (see, for example, *Mats Jacobsson v. Sweden,* judgment of 28 June 1990, Series A no. 180-A, p. 16, § 46).

92. The Court finds that the claims under this head have been properly substantiated. Moreover, the costs and expenses which the applicants incurred both in the expropriation and the inheritance tax proceedings can be considered to have been actually and necessarily incurred in order for them to avoid, or obtain redress for, the violation found. It follows that the award under this head should benefit all applicants jointly. The Court reiterates, however, that the applicants' complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 was declared inadmissible.

93. In these circumstances and making its assessment on an equitable basis, the Court awards the applicants jointly EUR 11,000 (FIM 65,403), to be increased by any relevant value-added tax.

C. Default interest

94. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of adoption of the present judgment is 11% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention in so far as witnesses S. and V. were not examined before the Land Court;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the Land Court's reasons for dismissing the appeal lodged by Heidi, Jussi and Petri Jokela;

4. *Holds*

   (a) that the respondent State is to pay to each of the applicants Heidi, Jussi and Petri Jokela, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 1,600 (one thousand six hundred euros) in respect of pecuniary damage;
(ii) EUR 1,300 (one thousand three hundred euros) in respect of non-pecuniary damage;

(b) that the respondent State is to pay to all the applicants jointly EUR 11,000 (eleven thousand euros) in respect of costs and expenses, together with any value-added tax that may be chargeable;

(c) that simple interest at an annual rate of 11% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English and notified in writing on 21 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Sir Nicolas BRATZA
President