



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

FOURTH SECTION

**CASE OF BRUNCRONA v. FINLAND**

*(Application no. 41673/98)*

JUDGMENT

STRASBOURG

16 November 2004

**FINAL**

***16/02/2005***

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



**In the case of Bruncrona v. Finland,**

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 14 October 2003 and on 26 October 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 41673/98) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") on 5 May 1998 under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Finnish nationals, Marcus and Petter Bruncrona, and the estate of the late Olof Bruncrona ("the applicants").

2. The applicants were represented by Henrik Mattson, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Arto Kosonen, Director in the Ministry for Foreign Affairs.

3. The applicants alleged that they had been effectively deprived of their property in violation of Article 1 of Protocol No. 1 to the Convention.

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

7. By a decision of 4 March 2003 the Court declared the application admissible.

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

9. On 24 June 2003 the Court decided to hold a hearing on the merits (Rule 54 § 3).

10. A hearing took place in public in the Human Rights Building, Strasbourg, on 14 October 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr A. KOSONEN, Director, Ministry for Foreign Affairs, *Agent*,  
Ms M. JOKELA, Counsellor of Legislation, Ministry of Justice,  
Ms M. ROSTI, Lawyer, National Park and Forestry Service,  
Ms P. ROTOLA-PUKKILA, Legal Officer, Ministry for Foreign Affairs;  
Ms V. KOIVU, Official, Ministry for Foreign Affairs, *Advisers*;

(b) *for the applicants*

Mr H. MATTSON, Advocate, *Counsel*,  
Mr M. BRUNCRONA, *Applicant*.

The Court heard addresses by Mr Kosonen and Mr Mattson.

11. On 26 October 2004 Mrs Strážnická replaced Mr Fischbach, who was unable to take part in further consideration of the case.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

12. The late Olof Bruncrona's heirs Marcus and Petter Bruncrona are Finnish nationals born in 1964 and 1967 and resident in Helsinki. The estate of Olof Bruncrona also acts as an applicant.

13. The applicants are the owners of the real property Karsby (registered as number 1:44; "the Karsby mansion") in the village of the same name, currently part of the city of Tammisaari (Ekenäs).

14. The applicants claim ownership in the form of a right of permanent usufruct<sup>1</sup> (in Finnish *vakaa hallinta-oikeus*; in Swedish *ständig besittningsrätt*) in respect of the property Bergö-Högholm (registered as number 1:0) in the village of the same name, also within the city limits of

---

<sup>1</sup> The applicants consistently call this "a right of perpetual usufruct", whereas the Government speak of "a permanent right of possession".

Tammisaari. The property comprises 165.4 hectares of water and some islands totalling 27.6 hectares. The islands originally belonged to the Swedish Crown (“Crown land”; *kruununluontoinen maa, jord av krononatur*).

15. Around the early 18th century the then owners of the Karsby mansion (*kartano, säteri*) were afforded the right to make use of the Bergö-Högholm islands in return for an annual levy (*sääntönäisvero, stadga or stadgad ränta*). The levy was collected from 1723 onwards. That arrangement was maintained by a decision of the Senate of the then Grand Duchy on 9 May 1862. The decision noted the following:

(In Swedish) “... så emedan dessa holmar äro påförde stadgade räntor och sedan medlet af förra århundradet opåtaladt innehafts ... pröve VI skäligt förklara desamma skola som hitintills förbliva under sagde säteri ... emot erläggande af de förre stadgade räntorne, hvarom anteckning likväl bör i jordeboken införas...”

(Translation into English) “... since these islands are subject to payment of an annual levy and have been made use of in an undisturbed manner since the middle of the last century ... we find it reasonable that they should remain, as heretofore, attached to the said mansion ... in return for payment of the annual levy, which should be entered into the land register ...”

16. When land taxation was abolished in 1924 the duty to pay a levy was replaced by a liability to pay State wealth tax (*varallisuusvero, förmögenhetsskatt*). Up to that year the levy had amounted to the equivalent of 1.29 euros (EUR) at today’s value.

17. The Bergö-Högholm property was formed through a supplementary land-parcelling procedure in 1975. At the same time it was registered as ordinary real property instead of Crown land, the State being indicated as its owner. According to the record of the land parcelling the owner description was incomplete, but the property was leased to the Karsby mansion. During the land-parcelling proceedings the owners of the Karsby mansion submitted that they did not question the State’s ownership. However, they claimed that they had a right of disposal (*dispositionsrätt* in Swedish).

18. The owners of the Karsby mansion made use of the Bergö-Högholm islands and the surrounding waters in an undisturbed manner until 1984, when the National Forestry Board granted fishing rights to a third party without Olof Bruncrona’s consent.

19. In 1985 Olof Bruncrona initiated proceedings with a view to having his ownership of the Bergö-Högholm property confirmed. In a judgment of 9 October 1987 the Tammisaari District Court (*kihlakunnanoikeus, häradsrätten*) found it established that the claimant and the previous owners of the Karsby mansion had been enjoying a right of permanent usufruct in respect of the property, that right having developed into ownership.

20. The District Court’s judgment was quashed by the Helsinki Court of Appeal (*hovioikeus, hovrätten*) on 22 November 1989. The appellate court found that the State had originally let the islands to the then owners of the

Karsby mansion. This lease had been maintained in 1862. The State had thus never given up its ownership, but had simply tacitly consented to the Karsby mansion's use of the property, initially subject to payment of a rent or levy and later subject to payment of wealth tax.

21. On 4 July 1990 the Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal.

22. The registration (*lainhuuto, lagfart*) of the State as the lawful owner of the property in 1991 was challenged by Olof Bruncrona in a new civil suit seeking to obtain confirmation of his right of permanent usufruct in respect of the Bergö-Högholm property and – should that right be deemed to have developed into ownership – confirmation of his ownership. Olof Bruncrona died on 24 May 1993 and his estate continued the lawsuit.

23. In a judgment of 18 October 1993 the District Court confirmed the applicants' right of permanent usufruct and revoked the State's title to the property.

24. The District Court's judgment was quashed by the Court of Appeal on 21 March 1996 on grounds similar to those relied on in its earlier judgment. It found, *inter alia*, that:

(a) the ownership issue had been finally settled in the first set of proceedings;

(b) the first reference to the islands of Bergö and Högholm had appeared in a judgment book (*tuomiokirja, dombok*) of the County of Tenala in 1672, and a yearly payment had been made in respect of the islands;

(c) it could be deduced from the written material submitted to the Court of Appeal that the islands had been leased to the owner of the Karsby mansion in the 1720s;

(d) in the 1750s the owner of the Karsby mansion had attempted to transform the islands from Crown land into tax land (see "Relevant domestic law and practice" below), but the official list of land thus transformed – drawn up in 1769 – had not included the islands;

(e) in 1862 the Senate had decided that the islands were to remain under the control of the Karsby mansion in return for the prescribed payments, rather than the lease being put up for tender for a period of six years, as had been suggested in the light of the practice with regard to certain other plots of Crown land;

(f) the owners of the Karsby mansion had enjoyed undisturbed possession of the islands until 1984, when the State had granted a fishing licence to a third party in respect of the waters surrounding the islands; and

(g) a right of permanent usufruct in respect of Crown land continued to be recognised under Finnish law, on condition that there was a clear legal basis for the right.

25. The Court of Appeal concluded that originally the Crown had leased the islands to the Karsby mansion, and that the Senate had upheld that lease in its decision of 9 May 1862. The payment of rent (in Finnish

*vuokranmaksu*) had later ceased and the mansion had paid tax in respect of the property, just as in respect of any other real property belonging to it. The Senate's decision had not established any right of permanent usufruct in favour of the Karsby mansion, and the applicants had not presented any evidence of any other acquisition upon which such a right could be founded.

26. On 12 November 1997 the Supreme Court refused leave to appeal.

27. Meanwhile, following Olof Bruncrona's death in May 1993, Marcus and Petter Bruncrona had declared that the Bergö-Högholm property formed part of the overall estate of the deceased for the purposes of the inventory of his possessions (*perukirja, bouppteckning*). Inheritance tax was levied *inter alia* in respect of the Bergö-Högholm property.

28. In a letter of 22 January 1998 the National Forestry and Park Service requested the applicants to vacate the Bergö-Högholm property. The applicants have apparently not yet complied with the request and no enforcement proceedings have been initiated to date. At the hearing before the Court on 14 October 2003 the Government argued that the letter in question amounted to the termination of the lease. The nature of the letter was disputed by the applicants.

29. Meanwhile, in 1984 the Private Forestry Association of Western Uusimaa (Nyland) had certified that the owners of the Karsby mansion had covered all the reforestation and other costs relating to the Bergö-Högholm islands and had also collected the full yield from the forestry activities carried out on the islands.

30. At the time of lodging their application with the Court the applicants were allegedly still obliged to pay wealth tax on the Bergö-Högholm property. In August 2001 the Government informed the Court that the taxation authorities would correct the relevant property register (*maatilarekisteri, jordbruksregistret*) with effect from 25 September 2001. The State would then be indicated as the rightful owner of the Bergö-Högholm property.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Account provided by the Government

31. According to the Government, there were no regulations in force in the early 18th century governing the transfer of ownership of Crown land, nor was there any consistency in the contracts concerning such transfers. The scope of each contract and the rights contained therein had therefore to

be determined in the light of the particular circumstances of each case. As a rule, it was not possible to transfer the ownership of Crown land before it had been transformed into privately owned land (*perinnöksiosto, skatteköp*). It was nevertheless possible to establish various rights relating to the enjoyment of the property and benefiting private individuals, municipalities or the Church. For example, the Crown could transfer a so-called permanent and exclusive right of possession in respect of the land, subject to a payment. Such a right required the land to be used for a specific purpose, and the Crown was entitled to regain possession of it either on payment of compensation or without having to redeem it. Over time the State's title to the land could change into an ordinary one, whereas it was not, for example, possible to change the amount of the payment (*stadga*) collected from the holder of a right attaching to the property.

32. Provisions on the procedure for transferring Crown land to private individuals were later included in specific Acts of Parliament, such as Act no. 598/1965 (*eräiden kruununluontoisten tilojen ja tilanosien järjestelystä annettu laki, lag om reglering av vissa lägenheter och lägenhetsdelar av krononatur*). These Acts did not, however, govern all Crown land or all cases where a right of usufruct had been attached to it.

33. In the 1995 Land Code (*maakaari, jordabalken* 540/1995) the special characteristics of Crown land are only dealt with in the provisions concerning property registration, the aim being to ensure that the registered data correspond as far as possible to the existing situation. Title may now be established in respect of former Crown land. Any right of permanent usufruct, leasing right or other form of enjoyment of property may also be registered. A title of ownership may not be registered in respect of an estate which is already subject to a permanent right of possession (see section 18a of the Act on the Implementation of the Land Code (*laki maakaaren voimaannpanosta, lagen om införande av jordabalken* 541/1995)).

34. Many scholars have supported the view that the permanent right of possession may be regarded as tantamount to actual ownership. Domestic courts have not accepted this view, preferring to focus on the purpose of the original transaction, even in cases where a right of usufruct was being enjoyed over a long period and in an undisturbed manner. Reference may be made to the Supreme Court's judgment no. 1989:73.

35. It was possible to lease land belonging to the Crown, either for a certain period of time or indefinitely. Rights based on such lease contracts have not been transformed into ownership by means of specific legislation to that effect. Nor has the long-term *de facto* enjoyment of a property been considered to constitute a basis for ownership or a right of permanent usufruct in respect of land subject to a lease contract. The fact that the owner of the land has been passive or has tacitly accepted that another person uses the land does not entail a transfer of ownership. Transfer of ownership requires a transaction.

36. For taxation purposes, leased Crown land has been regarded as the tenant's possession whenever he or she has been enjoying the right to use the property in spite of the State's formal ownership. Thus, according to the Income and Capital Gains Tax Act (*laki tulo- ja omaisuusverosta, lagen om skatt på inkomst och förmögenhet*; Act no. 207/1920, section 14; Act no. 306/1924, section 14; and Act no. 888/1943, section 32):

“[t]he property for which taxes shall be paid includes the assets of the person liable to pay taxes, subject to the restrictions set out below.

The assets shall also include:

(1) any right of usufruct in respect of real property, whether or not its validity has been defined in time or it remains valid during the holder's lifetime; any timber-felling rights; and any other right to make use of real property belonging to someone else.”

The existing Capital Gains Tax Act (*varallisuusverolaki, förmögenhetsskattelagen* 1537/1992) contains a comparable provision (section 9).

37. Anyone wishing to adjust the amount of their tax assessment must make a request to that effect in accordance with the Tax Assessment Procedure Act (*verotusmenettelylaki, lagen om beskattningsförfarande* 1558/95; Chapter 5).

## **B. Account provided by the applicants**

38. According to the applicants, the right to perpetual usufruct did exist in the early 18th century and was explicitly established, given that transfer of ownership *per se* was prohibited in respect of Crown land. A right of usufruct was granted permanently until 1766, when the Royal Finance Collegium (in Swedish *Kammarkollegiet*) decided to let Crown land for a fixed period of six years following a tendering procedure in the form of an auction. As the right claimed by the applicants in respect of the Bergö-Högholm property had been established well before, the 1766 Decree was irrelevant to this case. The nature of the payment collected from the then owners of the Karsby mansion (in Swedish *stadga* or *stadgad ränta*) was fiscal, which is evidenced by the fact that it was entered in the column of land tax in the land register, and replaced by wealth tax in 1924.

39. The nature of Crown land is described in the relevant preparatory work on the 1995 Land Code (Government Bill 214/1996). Real property was historically divided into Crown land, exempted land and tax land (in Swedish *krono-, frälse- och skattejord*). Land tax was levied only on Crown land and tax land. The distinction between Crown land and tax land was abolished by the 1995 Land Code which entered into force on 1 January 1997. As is evidenced by section 18a of the Implementation Act (541/1995)

and its drafting history, the concept of perpetual usufruct nevertheless remained recognised and may also be registered.

40. The preparatory work on the Implementation Act made clear that in examining historical rights to Crown land it must be established whether the Crown's intention when preparing the relevant contract was to transfer ownership *per se* or to grant a right of usufruct in respect of the land. If evidence of a transfer of ownership cannot be provided, a right of perpetual usufruct is registered as a special right. For land registration purposes such a right is treated as a leasing right, and its holder may put it up as collateral (section 18a, subsection 4, of the Implementation Act). A right of perpetual usufruct is nevertheless more extensive than a leasing right in that it entitles its holder to use and possess the land at his or her sole discretion and prevents the landowner from having his or her ownership registered or putting the land up as collateral (section 18a, subsection 2, of the Implementation Act).

### **C. Termination of a lease**

41. According to section 23(1) of the Rent on Land Act (*maanvuokralaki, jordlegolagen* 258/1966), which is applicable only to agreements made after 1 September 1966, a termination of lease must, if the addressee does not give his acknowledgment in writing, be effected in the presence of witnesses or in another demonstrable manner, and must specify the date on which the lease will end.

## **THE LAW**

### **I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS**

#### **A. The parties' submissions**

42. The Government submitted that the applicants had failed to comply with the six-month rule in Article 35 § 1 of the Convention, since on 4 July 1990 the Supreme Court had refused leave to appeal against the Court of Appeal's judgment of 22 November 1989 confirming the State's ownership of the Bergö-Högholm property. In that judgment the Court of Appeal had found that the islands forming part of the property had been in the possession of the Karsby mansion merely on the basis of a lease arrangement and that ownership proper had never been transferred to the owners of the mansion. Since the applicants had explicitly complained of a deprivation of their alleged property right, the six-month period had started to run from the date of the Supreme Court's decision in the first set of the proceedings.

43. The Government also questioned whether the applicants had exhausted domestic remedies in a proper manner. The last sentence of their statement of appeal to the Supreme Court had contained only a brief and literal reference to the Constitution and the Convention, no mention having been made of Article 1 of Protocol No. 1 as such.

44. The applicants maintained that they had complied with the six-month rule. The first set of proceedings ending on 4 July 1990 had concerned the question whether the late Olof Bruncrona's right of perpetual usufruct had evolved into formal ownership. While the courts had answered that question in the negative, in the second proceedings Olof Bruncrona had primarily sought confirmation of his right of usufruct. The fact that the domestic courts had examined the merits of his second action showed that the applicants' rights in respect of the estate had not been definitively established in the first set of proceedings.

45. The applicants furthermore maintained that they had exhausted domestic remedies. Their request for leave to appeal to the Supreme Court had concerned, *inter alia*, the grounds for establishing a right of perpetual usufruct – a matter only partly addressed by the Supreme Court in an earlier precedent – and, as a subsidiary issue, the Court of Appeal's decision not to examine the applicants' ownership right. In substance, they had therefore already brought the alleged deprivation of their possessions to the attention of the Supreme Court in their request for leave to appeal.

46. In the hearing before the Court the Government argued that the issue of the termination of the alleged lease had not been brought before a national court, a fact which was not denied by the applicants.

## **B. The Court's assessment**

47. In its decision on admissibility the Court decided to join the Government's objections under Article 35 of the Convention to the merits of the case.

48. The late Olof Bruncrona instituted proceedings with a view to having his ownership to the property confirmed. Having lost the first set of proceedings and the State having been registered as the lawful owner, he had a legitimate interest in instituting the second set of proceedings with a view to obtaining confirmation of his alleged right of permanent usufruct.

49. Having regard, therefore, to the scope of the second set of proceedings, which ended on 12 November 1997 when the Supreme Court refused the applicants leave to appeal, and to the case as a whole, the Court finds that the applicants have complied with the six-month rule as they lodged their application on 5 May 1998. Furthermore, they raised before the domestic courts the issues brought before the Strasbourg institutions, having relied on their property rights not only under Finnish law but also under the Convention in their last application for leave to appeal to the Supreme Court. It follows that the Government's preliminary objections must be dismissed.

50. The Government argued at the hearing that the issue of the termination of the applicants' lease had not been brought before a national court. In so far as this could be regarded as a new non-exhaustion argument, the Court notes that it was not raised at the admissibility stage and cannot therefore be sustained (see *Malama v. Greece*, no. 43622/98, § 40, ECHR 2001-II).

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

51. The applicants claimed to be victims of a breach of Article 1 of Protocol No. 1 to the Convention, which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

### A. The parties' submissions

#### 1. The applicants

52. The applicants complained of a deprivation of their right of property in breach of Article 1 of Protocol No. 1 to the Convention. The nature of that right was either full ownership or at least a right of usufruct. By

upholding the State's ownership of the Bergö-Högholm property, as registered in 1991, the Court of Appeal had in its judgment of 1996 effectively confiscated the applicants' property without any justification under the second sentence of the first paragraph of Article 1 of Protocol No. 1. This provision was applicable, since the applicants' interests relating to the Bergö-Högholm property constituted a "possession" for the purposes of Article 1 of Protocol No. 1. Their right to make use of the property had been equivalent to a right of ownership peacefully enjoyed for over 300 years, the sole limitation being that the legal title could not be transferred from the State to the owners of the Karsby mansion. In all other respects those owners had continuously enjoyed the rights and obligations pertaining to a *de facto* proprietary interest: the State had levied payments of a fiscal nature and later wealth tax; it had levied inheritance tax following Olof Bruncrona's death; the owners' right had been recorded as a right of perpetual usufruct in the official land register; and over the centuries the authorities had on several occasions confirmed the nature of that right.

53. The applicants submitted that in presuming – incorrectly and without explaining why – that the original contract had had the character of a lease, the Court of Appeal in 1996 had shifted the burden of proof to them, requiring them to show the existence of a right of perpetual usufruct, which according to that court could only be asserted if it derived from a written resolution or agreement to that effect. The Court of Appeal had thus deprived the applicants of the possibility of relying on any other means of evidence. All known relevant land-register extracts and court decisions had been produced in the domestic proceedings, and the transfer of the relevant right to the applicants' predecessors had never been based on a specific deed or agreement. As the Court had found in *The Holy Monasteries v. Greece* (judgment of 9 December 1994, Series A no. 301-A, p. 32, § 60), adverse possession could be relied upon both against the State and against third parties after an extensive period of possession, in the absence of any legal title. The applicants' peaceful enjoyment of the Bergö-Högholm property for over 300 years should therefore have sufficed for a claim based on adverse possession. At the very least the applicants should have been given the benefit of the doubt.

54. It appeared to the applicants that the Court of Appeal had taken the Supreme Court's precedent no. 1989:73 as a starting point. In that case, however, the perpetual right had been found to have been established by the Senate only in 1876, whereas in the applicants' case the Senate had, in 1862, upheld an already existing right. Even though the cases had not been fully comparable, in both of them the Senate had spoken of "attaching the islands to an estate in return for payment of a levy" (in Swedish *underläggs ... mot en stadgad ränta*). The evidence adduced had contained nothing to support the Court of Appeal's view that the applicants' right constituted a leasing right, as opposed to a right of perpetual usufruct. On the contrary,

the permanent nature of their right had been clearly evidenced by the documentation and, by analogy, by the Supreme Court's judgment no. 1989:73. To the applicants' understanding, the Government had accepted that the applicants' right was "permanent and exclusive". A leasing right could not be perpetual in nature.

55. Other than the Supreme Court's precedent no. 1989:73 – in which the existence of a perpetual right of usufruct had been confirmed – the applicants had not been made aware of any relevant court practice. They therefore contested the Government's claim that the domestic case-law had been applied consistently in cases involving a right of that character. The Court of Appeal's judgment of 1996 had not been foreseeable. In addition, the Court of Appeal had not referred to any public or general interest justifying the interference with the applicants' property rights. Moreover, as the deprivation of the applicants' possession had taken place without any compensation, it had not satisfied the condition of proportionality. There had been no exceptional circumstances justifying the absence of compensation, nor had the State referred to any such circumstances.

56. Should the Court conclude that there had been no "deprivation" of property, the applicants submitted in the alternative that the Court of Appeal's judgment had violated the second paragraph of Article 1 of Protocol No. 1. The interference with their property right was unlawful and the Government had not even argued that it had been necessary to control the use of the Bergö-Högholm property in accordance with the general interest or for other reasons.

57. Finally, the applicants contended that even though no eviction order had been issued against them, there was no guarantee that none would be issued in the future. That being so, there had been an interference with their right to the peaceful enjoyment of their possessions which amounted to a "deprivation" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (they referred, *inter alia*, to the *Holy Monasteries* judgment cited above, p. 33, § 65). At any rate, even a reasonable expectation to continue enjoying a profit or revenue qualified as a "possession" (here they cited *Tre Traktörer v. Sweden*, judgment of 7 July 1989, Series A no. 159, p. 21, § 53). It was the applicants' understanding that the Government had conceded that they could no longer profit from the estate.

## 2. The Government

58. The Government submitted at the outset that neither the Convention nor any of its Protocols protected a right to obtain possessions. As the applicants had never owned the Bergö-Högholm property, the civil proceedings had not resulted in the "deprivation" or "confiscation" of their "possessions". The applicants had tried in vain to obtain confirmation either of their formal ownership of the property or of their right of permanent

usufruct. The courts had twice examined whether ownership of the Crown land in question had been transferred from the State to the owners of the Karsby mansion, whether the owners of the mansion had a permanent right of usufruct in respect of the land and, if so, whether that right could be considered to constitute formal ownership. To that end the courts had examined legal documents from the 18th century onwards (in contrast to the position in *The Holy Monasteries*, cited above, p. 32, § 60). Different interpretations had been possible, as was demonstrated by the different decisions given by the courts. The legal experts relied on by the parties had also disagreed with one another. The Court of Appeal had found, in the light of the evidence adduced, that the applicants had never enjoyed full ownership or even a permanent right of usufruct, as the right originally afforded to the Karsby mansion had had the character of a mere lease. The restricted right of usufruct afforded by that lease did not under current domestic law entail a right of ownership on the mere ground that the property had been in the tenant's actual possession for a long time. It was not for the European Court to take the place of the national courts in determining whether the land in question belonged to the State or whether – contrary to the Court of Appeal's judgment of 1996 – the applicants should have been recognised as owners of the land on one legal basis or another.

59. The Government considered that the applicants had not been subject to a deprivation of possessions within the meaning of the second paragraph of Article 1 or to any other interference with their rights within the meaning of its first paragraph. As a result of the domestic proceedings, the applicants could no longer profit from an estate which did not belong to them in the first place. They had not made any substantiated complaint, either before the domestic courts or the Strasbourg institutions, about their alleged loss of profit resulting from their having to vacate the property.

60. Even assuming that there had been an interference with the applicants' property rights, the Government considered it lawful within the meaning of Article 1 of Protocol No. 1. By the time the matter had been settled by the domestic courts, the relevant domestic case-law had evolved in a way that had led to the relevant rule being applied consistently. Any interference had therefore been consistent with the requirement of lawfulness as it had not resulted in an unforeseeable or arbitrary outcome or deprived the applicants of effective protection of their rights (in contrast to the position in *Carbonara and Ventura v. Italy* [GC], no. 24638/94, ECHR 2000-VI, § 65). Moreover, in the present case it was the national courts that had decided on the applicants' claims, whereas in *The Holy Monasteries v. Greece* the legal position had been amended by the legislature.

61. The Government reiterated that the applicants had been able to retain the yield from Bergö-Högholm property in return for payment of State tax, the initial obligation to pay rent having been abolished long ago. As to the

collection of wealth tax and inheritance tax, the Government submitted that this had been based on information provided by the applicants.

62. The general interest in the present case consisted primarily in upholding the principles of legality and equality and the general principles of property law, namely the protection of lawful titles to property, ensuring the purchase and disposal of property, and the validity and reliability of rights and interests in real property. Under the system of property law, it was important that all persons, including the State, were subject to the same rules.

63. As to whether the alleged interference had been proportionate, the only issue to be addressed in respect of a possible interference with the applicants' right to the peaceful enjoyment of their possessions was the profit or revenue to which they had possibly already contributed but which they had not yielded before the termination of the lease. At the hearing before the Court, the Government argued that the National Forestry and Park Service's letter of 22 January 1998 was a notice of termination of the lease. Its intention to terminate the lease had, however, already been indicated in its letter of 13 July 1990, but at that time it had considered it wise to let the situation stand as it was.

64. Summing up, the Government considered that a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of the applicants' fundamental rights within the meaning of Article 1 of Protocol No. 1. The burden on the applicants had not been an individual and excessive one.

## **B. The Court's assessment**

### *1. General principles*

65. 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).

66. Each of the two forms of interference 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).

67. An interference with the peaceful enjoyment of possessions must nevertheless strike a “fair balance” between the demands of the public or general interest of the community and the requirements of the protection of the individual’s fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions or controlling their use. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance, and notably, whether it does not impose a disproportionate burden on the applicant (see *Former King of Greece and Others*, [GC], no. 25701/94, § 89, ECHR 2000-XII).

68. 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).

69. 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, among other authorities, *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

## 2. *Whether there was a deprivation of possessions in the present case*

70. The Court will first examine whether the alleged interference as a result of the court proceedings amounted to a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

71. A unique feature of the present case is that it is impossible to separate the situation of the applicants from complex historical developments. It is common ground that the property in question had been in the possession of the Karsby mansion from the 1720s at the latest. In 1862 the Senate upheld that arrangement without, however, stating anything

about its nature. Thus, the Senate's decision merely maintained the status quo. Nor did the land-parcelling proceedings in 1975 or the granting of fishing rights to a third party in 1984 expressly change the nature of the arrangement, although the granting of fishing rights affected the applicants' situation in practical terms.

72. In the first set of court proceedings, Olof Bruncrona claimed ownership of the property. While the District Court found in his favour, the Court of Appeal held that the lease arrangement on the basis of which the islands had been attached to the Karsby mansion had never evolved into ownership.

73. In the second set of proceedings, Olof Bruncrona challenged the registration of the State's title to the property. In its judgment the District Court found that the applicant's right was one of permanent usufruct. However, the Court of Appeal in its judgment of 21 March 1996 again came to a different conclusion, finding that there was no evidence that showed that the right in question was of a permanent nature. The court repeated the stand it had taken in the first set of proceedings, namely that the islands had come into the possession of the Karsby mansion on the basis of a lease.

74. The applicants argued that the above-mentioned court decisions amounted to a deprivation of their possessions, that is of their alleged right of permanent usufruct, and that the deprivation did not comply with the requirements of Article 1 of Protocol No. 1.

75. The applicants' argument presupposes that they had a property right of which they could be deprived within the meaning of the above-mentioned provision. However, this was not the position of the Court of Appeal, which denied that the applicants were either owners or holders of a right of usufruct. The Court reiterates that it has only 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) as it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 543-44, § 41). Only if the interpretation by the domestic courts is arbitrary or manifestly wrong can it be set aside by the Court.

76. It is obvious that different interpretations concerning the classification in domestic law of the property interest at issue were possible. This is shown by the contradictory conclusions drawn by the District Court and the Court of Appeal in both sets of proceedings. This, however, is far from saying that the classification by the Court of Appeal, which became final, was arbitrary or manifestly wrong and therefore incompatible with the Convention.

77. The Court, indeed, cannot discern any arbitrariness. It considers that the Court of Appeal's interpretation is not incompatible with the historical context, the prevailing legal opinion or the notion of a lease. As to the taxes

levied on the applicants, the Court considers that no conclusions can be drawn from the levying of inheritance tax with regard to the Bergö-Högholm property, since it was a mere result of the inclusion of the property in the inventory of Olof Bruncrona's estate. As to the levying of wealth tax, the Court notes that according to domestic law, leased Crown land has been regarded as the tenant's possession for taxation purposes. Thus, the taxes levied are not inconsistent with the Court of Appeal's interpretation.

78. While there may also be arguments in favour of a contrary conclusion in these circumstances, the Court sees no reason to depart from the final finding reached in the domestic proceedings, namely that there was neither any right of ownership in the proper sense, nor any right of permanent usufruct (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 59-60, ECHR 2004-...). It follows that the court proceedings ending with the Court of Appeal judgment cannot be said to have deprived the applicants of any such right. Nor can the other interferences, to be discussed below, be regarded as a deprivation; rather, they fall to be discussed under the other rules contained in Article 1 of Protocol No. 1.

*3. Whether there was an interference with the peaceful enjoyment of the applicants' possessions in breach of Article 1 of Protocol No. 1*

79. While the court proceedings cannot be qualified as a deprivation of possessions, they nevertheless confirmed that the applicants had been granted a proprietary interest, which was classified as a lease. The events starting at the latest from the granting of fishing rights to a third party in 1984 amounted to an interference with a proprietary interest protected by Article 1 of Protocol No. 1. That interference was not intended as a means of controlling the applicants' property but rather reflected the authorities' view, ultimately confirmed by the courts, that the property, that is to say the islands, belonged to the State. In these circumstances, the interference with the applicants' proprietary interest should be analysed in the light of the general rule in the first sentence of Article 1 of Protocol No. 1 (see *Broniowski v. Poland* [GC], no. 31443/96, § 136, ECHR 2004-V).

80. Turning to the question whether the interference with the applicants' proprietary interest may be considered justified by the public or general interest, the Court notes that the Government's main argument was that the aim in general was to uphold the principles of real-property law and, in particular, to clarify, by way of updating the register concerning legal title to land, that the State had ownership of the land in question. The Court does not doubt that these are legitimate interests for the purposes of Article 1 of Protocol No 1.

81. Even so, the Court must also satisfy itself that a fair balance was struck between the public interest and the interests of the applicants. In the circumstances of the present case, the question is whether the applicants'

proprietary interest, classified by the Court of Appeal as an interest based on a lease, has received protection compatible with the principle of peaceful enjoyment of possessions.

82. The Court observes that the property had been in the possession of the Karsby mansion from the 1720s at the latest. That arrangement was upheld by the Senate's decision of 1862. Neither was the arrangement affected by the land-parcelling proceedings in 1975. The owners of the Karsby mansion made use of the islands in an undisturbed manner until 1984, when the State granted fishing rights to a third party. This act does not seem to have been accompanied by any explanation to Olof Bruncrona that the granting of fishing rights was based on the State's ownership of the islands. Instead, a few years later Olof Bruncrona himself instituted proceedings which dealt, firstly, with the ownership of the islands and, secondly, with the possible existence of a right of permanent usufruct. The court proceedings confirmed that Olof Bruncrona was neither the owner of the islands nor the holder of a permanent right of usufruct. At the same time, however, the proceedings confirmed that the relationship between the State and the Karsby mansion had been based on the lease of the property in question. No explicit termination of the lease has taken place.

83. Yet in a letter of January 1998 the National Forestry and Park Services requested that the property in question be vacated. In the proceedings before the Court, and in particular at the oral hearing, the Government argued that the letter amounted to a notice of termination of the lease. In this connection the Government explained that there were no specific requirements as to form for the termination of a lease.

84. It is not the Court's task to give a ruling as to whether, under Finnish law, a lease can be validly terminated by the kind of letter at issue. The Court can, however, rule on the compatibility with the Convention of the manner in which the applicants' proprietary interest in the islands purportedly came to an end.

85. In this respect the Court notes that the letter which the Government now maintain is a notice of termination, on the face of it rather gives the impression of referring to a relationship which had already come to an end before the letter had been sent. The applicants could reasonably have expected at the very least to be informed of the date of the expiry of the lease in the notice of termination. Although the existing provision to this effect in current Finnish law (see the Rent on Land Act, paragraph 41 above) was not directly applicable in the present case, the same requirement should be regarded as a minimum under Article 1 of Protocol No. 1. Moreover, after the purported termination of the lease it took until 2001 before the authorities updated the relevant property register to reflect the termination.

86. The Court considers that this manner of proceeding is not an acceptable means of terminating a right which had been enjoyed for almost

300 years, and cannot be said to respect the right enshrined in Article 1 of Protocol No. 1. Lastly, the Court notes that the State has not compensated the applicants for the irregular manner in which their lease was terminated, nor has it been alleged that domestic law provides a legal basis for obtaining compensation for that irregularity.

87. In these circumstances, the procedure of terminating the applicants' proprietary interest in the islands was incompatible with the 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, there has been a violation of Article 1 of Protocol No. 1.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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.”

89. In respect of pecuniary damage the applicants claimed EUR 589,694, in the alternative EUR 530,129.60 and in the further alternative EUR 110,129.60. They further claimed EUR 41,775.28 in respect of their costs and expenses in the national courts and before the Convention institutions up to the date of the hearing before the Court, and EUR 15,831.30 in respect of costs and expenses relating to the hearing.

90. The Government submitted that if the Court were to find a breach of Article 1 of Protocol No. 1, it would be necessary to give the parties an opportunity to make further observations on the issue of just satisfaction.

91. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the Government and the applicants (Rule 75 § 1 of the Rules of Court).

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the question of the application of Article 41 is not ready for decision and accordingly;

- (a) *reserves* the said question in whole;
- (b) *invites* the Government and the applicants to submit, within six months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
- (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 16 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President