



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

FOURTH SECTION

CASE OF BRUNCRONA v. FINLAND

(Application no. 41673/98)

JUDGMENT
(Just satisfaction)

STRASBOURG

25 April 2006

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 J. CASADEVALL,

Mr M. PELLONPÄÄ,

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 28 March 2006,

Delivers the following judgment, which was adopted on that 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, Mr Marcus Bruncrona and Mr Petter Bruncrona, and the estate of Mr Olof Bruncrona ("the applicants").

2. In its principal judgment of 16 November 2004 ("the principal judgment"), the Court held that there had been a breach of Article 1 of Protocol No. 1 to the Convention. In particular, the Court found a violation on account of the procedure adopted in terminating the applicants' proprietary interest in the Bergö-Högholm islands (*Bruncrona v. Finland*, no. 41673/98, 16 November 2004).

3. Under Article 41 of the Convention the applicants had sought just satisfaction of several hundred thousand euros for damage sustained and costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 91 and point 3(c) of the operative provisions).

5. The applicants and the Government each filed observations, whereupon they replied to each others' observations.

THE LAW

6. 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

7. 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, all amounts together with annual interest provided for in section 4(3) of the Interest Act. The first amount consisted of the aggregate value of the estate, the second of the aggregate net value of the land lease together with the timber situated on the estate and the third of the aggregate net value of the timber situated on the estate. The applicants emphasised that the compensation to be awarded should put them in the situation they would have been had there been no violation of the Convention. The amount awarded should take into account the loss of enjoyment suffered as well as the loss of profit resulting from the fact that they were unable to benefit from the forestry improvements which they and their ancestors had carried out. The Bergö-Högholm islands had enjoyed an undisturbed part of the forestry plan of the Karsby estate since the early 19th century and they had been taxed in respect of forest income.

The applicants did not put forward any claim in respect of non-pecuniary damage.

8. The Government emphasised that the violation found had been of a procedural nature only. The applicants had not owned the timber and they had not had the right to benefit financially from the islands in the same way as an owner. Even if the proprietary interest had been terminated in a regular manner, the applicants would not have had the right to continue logging operations on the islands. The Government submitted that only revenue to which the applicants had possibly contributed but from which they had not derived benefit before the termination of the lease, such as costs for maintenance of forest if any, could possibly be compensated. They rejected the amounts claimed as being entirely based on assumptions and excessive as to *quantum*. Were the Court to award any compensation, it should not exceed EUR 10,000.

As the applicants had not claimed any non-pecuniary damage, the Government considered that no compensation should be awarded.

9. The Court reiterates that, in principle, a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to

restore as far as possible the situation existing before the breach (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

10. The Court observes that, in its principal judgment, it found no reason to depart from the final finding reached in the domestic proceedings, namely that there had been neither any right of ownership, nor any right of permanent usufruct. Therefore, there had been no deprivation of any such right. The Court found a violation on account of the procedure adopted in terminating the applicants' proprietary interest in the islands. It held that the procedure had been 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 to the Convention.

11. The parties disagree on the assumptions upon which the assessment of the pecuniary damage depends. The Court takes note of the applicants' view that it is in within the nature of any lease of real property that the lessee is entitled to the revenue, yield or profit of the property and that the applicants should have been afforded an opportunity to collect the yield resulting from their and their ancestors' forestry operations. The Court observes that in 1984 the Private Forestry Association of Western Uusimaa certified that over the years 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 (§ 29 of the principal judgment). This was also found established by the District Court of Tammisaari in the first set of the proceedings. It is furthermore confirmed by a certificate of 28 April 2003 by the above forestry association's successor that the most recent felling of timber took place in the early 1970s. At that time, a two hectare area was reforested. The parties agree that the most recent cutting of timber took place in 1972. According to a valuation certificate there were 4,860 m³ of timber on 28 April 2003, which was valued at some EUR 110,000. The Government have not contested the existence or the assessment of the timber.

12. The Court must decide within its discretion the level of just satisfaction having regard to what is equitable (see the *Sunday Times v. the United Kingdom* judgment of 6 November 1989 (*Article 50*), Series A no. 38, p. 9, § 15). In doing so it must bear in mind that the issue of the ownership of the Bergö-Högholm islands has been subject to proceedings in the national courts and that Mr Olof Bruncrona was not found to own the land or to hold a right of usufruct. Therefore, compensation corresponding to the value of the property is excluded.

13. On the other hand, the Court finds that some compensation can reasonably be claimed for the loss associated with the irregular procedure adopted in terminating the proprietary interest in the islands. Given the nature of the proprietary interest and the procedural character of the

violation found, the Court considers that compensation can be awarded for the costs Mr Olof Bruncrona and, following his death, his estate have invested in the islands and from which they have not been able to benefit, whereas no award can be made as regards the loss of the earnings that could have been received by felling the timber.

14. As to the taxation, the Court takes note of the applicants' submission of 29 April 2003 according to which no tax on wealth has been levied since 1999. As to the period prior to that, the Court observes that there was no irregularity in the fact that tax on wealth was levied on proprietary interests such as those of the applicants (§ 77 of the principal judgment). Therefore, there is no ground for awarding compensation as to this part.

15. As to the inheritance tax levied, which was based on the inventory of Mr Olof Bruncrona's estate, the Court observes that there was a procedure for having it corrected. However, the applicants have not made use of the remedies available under national law and therefore no reproach can be levelled against the Government on this account. Accordingly, the Court makes no award as to this part, either.

16. As to the tax on forest income levied up until 1999, the Court notes that it was levied solely on the basis of the forest area regardless of whether or not there was any actual income from the sale of timber. As no sale of timber has occurred since 1972, Mr Olof Bruncrona and, following his death, his estate have since then effectively been paying tax on expected future income which has not been realised. The same applies to the fact that they have paid an annual forest maintenance fee up until 2000. Accordingly, the applicants have been denied the opportunity to derive benefit from the sums of taxes and forest maintenance fees paid. The Court finds it just that they should be compensated for the moneys from which they never derived any corresponding benefit.

In such circumstances, and making its assessment on an equitable basis, the Court awards compensation in the amount of EUR 11,000.

B. Costs and expenses

17. The applicants claimed EUR 10,966.98 in respect of their costs and expenses in the national courts and EUR 44,020.05 before the Convention institutions, both amounts together with annual interest provided for in section 4(3) of the Interest Act and inclusive of value-added tax. The hours spent on the case at Strasbourg were about 195 and the hourly rate some EUR 188 (net of value-added tax).

18. The Government took the view that only those costs and expenses which related to the violation found should be compensated. There was no justification for making an award as far as the domestic proceedings were concerned, since the appropriateness of the termination of the lease had not been examined at the national level. As to the Strasbourg proceedings, the

award should be adjusted in relation to the procedural nature of the violation. The Government left it to the Court's discretion whether the applicants had submitted sufficient documentation to support their claims. The Government also considered the amounts claimed to be excessive as to *quantum*. An award should not exceed EUR 20,500 (inclusive of value-added tax).

19. 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).

The Court finds that the claims relating to the costs and expenses in the domestic proceedings can reasonably be considered to have been necessarily incurred in order to avoid the violation found. However, they have not been fully substantiated. Having regard to all the circumstances, the Court awards EUR 8,000 (inclusive of value-added tax).

The Court finds that the claims have been fully substantiated as far as the costs and expenses at Strasbourg are concerned. However, they cannot be awarded in full as the Court dismissed the applicants' complaint in part when it found that there had not been any deprivation of property. Having regard to all the circumstances, the Court awards EUR 30,000 (inclusive of value-added tax).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds*

(a) that the respondent State is to pay Mr Olof Bruncrona's estate within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts:

- (i) EUR 11,000 (eleven thousand euros) in respect of pecuniary damage;
- (ii) EUR 38,000 (thirty-eight thousand euros) in respect of costs and expenses;
- (iii) any tax that may be chargeable on the above amounts;

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

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

Done in English, and notified in writing on 25 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President