



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

FOURTH SECTION

CASE OF SAARENPÄÄN LOMA KY v. FINLAND

(Application no. 54508/00)

JUDGMENT

STRASBOURG

13 February 2007

FINAL

13/05/2007

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 Saarenpään Loma Ky v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 9 May 2006 and on 23 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 54508/00) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a limited partnership company domiciled in Finland, Saarenpään Loma Ky (“the applicant”), on 3 January 2000.

2. The applicant was represented by Mr Risto Kurki-Suonio, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant company alleged that the length of the proceedings in its case had been excessive.

4. By a decision of 9 May 2006, the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a limited liability company whose main field of activity consisted of building and hiring holiday cottages as well as

providing accommodation and travel services. It is owned by Mr Kari Saarenpää and Mrs Eevaliisa Saarenpää, who live in Valkeala.

The exemption permit proceedings

7. On 22 November 1993 the applicant requested the Kymi County Administrative Board (*lääninhallitus, länsstyrelse*) to grant it an exemption permit (*poikkeuslupa, undantagstillstånd*) to erect four cabins and one sauna building on a piece of land called Mustalamminvuori, situated within the Penttimäki property 1:464 in the Repovesi wilderness area in the municipality of Valkeala. The intended cabins were to be located in an area which was not covered by a shore plan (*rantakaava, strandplan*) adopted in January 1986 upon Mr Kari Saarenpää's application.

8. The County Administrative Board refused the application on 16 December 1994, noting, *inter alia*, that part of the Penttimäki property was located within an area included in the nationwide shore protection programme (*rantojensuojeluohjelma, strandskyddsprogrammet*), adopted in December 1990, and that the intended construction would hamper significantly the implementation of a shore plan and the overall settlement of the area.

9. The applicant's appeal was rejected by the Ministry of the Environment (*ympäristöministeriö, miljöministeriet*, "Ministry") on 7 December 1995.

10. Following the applicant's further appeal the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) conducted an inspection *in situ* and held an oral hearing. On 24 March 1997 it quashed the decisions and remitted the matter to the Environmental Centre of South-East of Finland (*Kaakkois-Suomen ympäristökeskus, Sydöstra Finlands miljöcentral*), which had succeeded the County Administrative Board as the competent first-instance body. The Supreme Administrative Court noted, *inter alia*, the small-scale nature of the project and found that the intended construction would not hamper significantly the implementation of planning regulations or the overall settlement of the area. The legal conditions for granting the exemption permit had therefore existed.

11. On 20 October 1997 the Environmental Centre nevertheless refused the applicant the exemption permit. It considered that it was not expedient to grant an exemption permit as a national park or a nature conservation area might be established in that area.

12. Upon the applicant's appeal, the Ministry granted the exemption permit on 16 November 1998. It referred to the Supreme Administrative Court's decision of 24 March 1997 and observed that the application could not be rejected on the sole ground that no final decision had been made on the establishment of a nature conservation area. Subsequently, on 24 June 1999 the Valkeala municipality granted the building permit. The last-mentioned decision acquired legal force on 13 July 1999.

The prohibition on activity

13. On 9 July 1999, however, the Environmental Centre, of its own motion and without hearing the applicant, prohibited any activity which could jeopardise the natural state or landscape of the area. The prohibition on activity (*toimenpidekielto, åtgärdsförbud*) was enforceable immediately and was to remain in force for two years. The Environmental Centre noted the building permit which had just been granted to the applicant but recalled the decision on the shore protection programme, according to which the authorities should attempt to preserve the areas designated in the programme - such as Repovesi - in their natural and undeveloped state. The undeveloped Repovesi area was exceptionally large and its nature conservation value had been recognised in various national nature inventories.

14. The applicant did not appeal to the Kymi Administrative Court.

The expropriation and compensation proceedings

15. On 4 May 2001, *i.e.* before the prohibition on activity had expired, the Environmental Centre initiated expropriation proceedings with a view to acquiring the Repovesi area. The area, consisting of 82.5 hectares belonging to the applicant, was expropriated by the State under a decision made by the Ministry on 24 July 2001. On 4 June 2002 the Supreme Administrative Court rejected the applicant's appeal.

16. Subsequently, on 7 August 2002 the compensation proceedings began. On 14 February 2003 the Expropriation Committee (*lunastustoimikunta, inlösningskommissionen*) decided on the amount of compensation. The decision was upheld by the Mikkeli Land Court (*maaoikeus, jorrdomstolen*) on 22 August 2003. It appears that the applicant did not lodge a further appeal. On 22 September 2003 the compensation awarded was paid to the applicant.

THE LAW

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

17. The applicant claimed to be a victim of a breach of the “reasonable time” requirement of Article 6 § 1 of the Convention, which provides, in so far as relevant:

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

A. Period to be taken into account

The applicant's submission

18. The applicant admitted that there had been three separate rounds of appeals during the period 1997 – 2002. In its view, however, the length of the proceedings had to be considered as a whole for the purposes of Article 6 § 1. On that understanding, the total length was thus over eight years and six months (from November 1993 until June 2002). It stressed that in each round of appeals the facts were the same, *i.e.* the legal effects of the shore protection programme on its right to build on the land. Having “won” the first round in the exemption permit proceedings, the environmental authorities failed to comply with the Supreme Court’s decision. Having “won” also the second round in the exemption permit proceedings before the Ministry, the environmental authorities initiated new proceedings *ex officio*, this time by issuing a prohibition on activity. In this way, in the applicant’s view, the environmental authorities had effectively prevented it from building on the land during the said period of time, until the Environmental Centre had finally “won” the third round of appeals. Accordingly, the total length of the proceedings could not, on any view, be attributable to the applicant, but solely to the authorities.

19. Furthermore, in the applicant’s opinion its application for an exemption permit should have been considered only once and matters of law and expediency dealt with at the same time. The failure to do so in its case proved that the Finnish court practice was not in compliance with the requirements of a fair trial.

20. Furthermore, it took over nine years and two months before the applicant was entitled to any compensation.

The Government's submission

21. The Government contested the argument that the length of the proceedings had been excessive. They submitted that there were various sets of proceedings involved. The first concerned the lawfulness of the exemption permit. Those proceedings lasted from 22 November 1993 until 24 March 1997, when the Supreme Administrative Court remitted the matter to the lower instance. The second set of proceedings, ending with the Ministry’s decision of 16 November 1998, concerned the expediency of granting the applicant a permit. In the Government’s view, this set of proceedings had to be excluded from the examination under Article 6. Were the Court to decide that Article 6 § 1 was applicable to this set of proceedings, the Government submitted that the proceedings lasted until 16 November 1998 when the Ministry repealed the decision of 20 October 1997 of the Environmental Centre and granted the applicant the permit it

had requested. In the alternative, the proceedings lasted from 16 December 1994 until 16 November 1998.

22. The Government further argued that the proceedings concerning the prohibition on activity as well as the expropriation and the following appeal proceedings were not related to the exemption permit proceedings. Further, those proceedings lasted some ten months, or alternatively, some two years and ten months. In the Government's view, the compensation proceedings did not concern the conditions for expropriation but the amount of compensation and, consequently, were unrelated to the exemption permit proceedings, a fact which the applicant also accepted.

23. The Government added that what was at stake for the applicant did not require special diligence on the part of the authorities.

The Court's assessment

24. The Court notes at the outset that the applicant's property was the subject of judicial proceedings from 22 November 1993 to 22 August 2003, *i.e.* during a period of about nine years and nine months.

25. However, the question arises whether and to what extent the different sets of proceedings can be considered *in toto* for the purposes of Article 6 § 1 of the Convention. In the Government's view, there were different sets of proceedings, none of which was excessive, whereas the applicant maintained that the different proceedings up until June 2002 related to its possibility to develop the land.

26. It was undisputed that the proceedings began on 22 November 1993 when the applicant requested an exemption permit. The Court notes that the exemption permit proceedings ended on 24 June 1999 when the exemption permit was granted by the municipal authorities. Assuming that Article 6 applies to the proceedings before the Environmental Centre and the Ministry when they decided on the expediency of granting the exemption permit, the Court notes that the proceedings lasted about five years and seven months in total.

27. The Court does not agree with the applicant's assertion that the time taken to conclude the expropriation proceedings in June 2002 should be added to this period. While it is true that a prohibition on activity was issued in respect of the property on 9 July 1999, the expropriation proceedings did not flow from the exemption permit proceedings. Further, the applicant did not appeal against the prohibition issued on 9 July 1999. The Court finds that the mere imposition of a prohibition on activity does not disclose the existence of "proceedings" within the meaning of Article 6 § 1.

28. The Court further notes that the expropriation proceedings began on 4 May 2001 when the Environmental Centre requested the Ministry to expropriate the area. These proceedings ended on 4 June 2002 when the Supreme Administrative Court rendered its decision. While it is somewhat unclear from the applicant's submissions whether its length complaint

includes also the compensation proceedings flowing from the expropriation, the Court finds that these proceedings lasted from 7 August 2002 until 22 August 2003. Consequently, the total length of these two sets of proceedings, which may be considered *in toto* (see, *mutatis mutandis*, *Kukkola v. Finland*, no. 26890/95, § 41, 15 November 2005), was about two years and one month.

B. The reasonableness of the length of the proceedings

29. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

30. As to the exemption permit proceedings, the Court notes that it took three years and four months to consider the legal grounds for an exemption permit before three instances. The Supreme Administrative Court, before which the case was pending for some fifteen months, carried out an inspection *in situ* and held an oral hearing before deciding that the case should be remitted to the Environmental Centre. Assuming that Article 6 applies to that part of the exemption permit proceedings, which concerned the expediency of granting the exemption permit, the Court notes that these proceedings were conducted speedily as the exemption permit was granted within two years and three months of the start of the proceedings in which three instances had been involved. Further, the Court finds no unexplained delays in the proceedings.

31. As to the expropriation proceedings, the time taken, some thirteen months before the Ministry and the Supreme Administrative Court, cannot be considered excessive in the circumstances. Furthermore, assuming that the length complaint also related to the compensation proceedings, the Court does not find any delays in the proceedings before the Expropriation Committee and the Land Court.

32. The Court concludes, having regard to the above considerations and taking into account the fact that there were no delays attributable to the authorities in the exemption permit proceedings or in the expropriation and compensation proceedings, the length of the proceedings did not exceed a reasonable time.

33. Accordingly, there has been no breach of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President