



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

FOURTH SECTION

CASE OF RAITA v. FINLAND

(Application no. 16207/05)

JUDGMENT

STRASBOURG

16 February 2010

FINAL

16/05/2010

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

In the case of Raita v. Finland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 16207/05) 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 Finnish national, Mr Juha Ilkka Tapio Raita (“the applicant”), on 3 May 2005.

2. The applicant was represented by Mr Pekka Somerkoski, 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. On 9 June and 18 December 2008 the President of the Fourth Section decided to communicate to the Government the complaints concerning the length of the proceedings and the non-communication of certain documents to the applicant. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in Wittenborn.

5. The applicant and his siblings inherited real property from their father. The property is situated in Piispankylä, Vantaa. At the time, a master plan (*yleiskaava*, *generalplan*) had been drawn up for the area but it had not reached the town planning stage.

6. On 17 June 1996 they sold the property for 210,000 Finnish marks (FIM) (some 35,420 euros) (EUR). The buyer was a company which was to be set up later and it was represented by the applicant.

7. On 26 August 1996 the city decided to use its first call on the property, since it had already negotiated the purchase of the surrounding properties and the purchase price was considered advantageous.

8. On 24 September 1996 the applicant challenged the city's decision.

9. On 2 May 1997 the Uusimaa County Administrative Court (*lääninoikeus, länsrätten*) rejected his appeal, finding that pursuant to the Pre-emption Act (*etuostolaki, förköpslagen*; Act no. 608/1977) the city had a first call on the property since the sellers and the buyer were not close relatives (sections 1 and 5). It did not uphold the applicant's argument that the pre-emption was manifestly unfair (section 6).

10. On 26 June 1997 the applicant appealed. On both parties' request, the consideration of the case was postponed pending negotiations with a view to reaching a friendly settlement.

11. On 10 March 1999 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) rejected the appeal.

12. On 10 September 1999 the applicant lodged an extraordinary appeal, arguing that the parties had been taken by surprise by the decision of March 1999 since they had been given to understand that the proceedings would be stayed until a settlement was reached.

13. On 18 June 2001 the Supreme Administrative Court upheld the applicant's appeal and annulled its earlier decision. Having examined the applicant's procedural complaint, and since the case file contained clarifications which had not been available to the County Administrative Court when it took its decision on 2 May 1997, the case was referred back to the lower court.

14. The Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*, which had replaced the County Administrative Court), received the parties' submissions, including, *inter alia*, a certificate according to which the property had a taxation value of FIM 611,776 in 1994 and an appraisal document according to which the property's market value was FIM 2.5 million. Both documents were lodged by the applicant. The city contested the appraisal document's relevance, arguing that it started from the wrong assumptions as to, *inter alia*, the size of the property and the planning situation. The city maintained that the purchase price, FIM 210,000, reflected the real value at the time of the purchase. The applicant also relied on a draft preliminary agreement (drawn up in 1998) between his father's estate and the city of Vantaa, which stated an aggregate purchase price of FIM 3.36 million concerning the property in issue and another property. However, that price had been fixed on the understanding that the area would be the subject of town planning before the conclusion of the contract.

15. On 13 February 2002 the Administrative Court revoked the city's decision. Although there was no evidence before it showing the market value of the property, it could however be concluded on the basis of an overall assessment of the case that the purchase price was below the market value. Having regard to the purchase price and the relationship between those who had signed the deed of sale, the court held that the pre-emption was manifestly unfair. It however rejected the applicant's complaint that the city had failed to duly inform him of its decision to pre-empt (sections 9 and 10 of the Pre-emption Act). Having noted that the buyer was not the applicant but a company to be set up later, it also rejected his complaint that the city could not pre-empt the property as the sellers and the buyer were close relatives (sections 1, 5 and 21a). The fact that the deed of sale had subsequently been altered to the effect that the applicant stated that he had taken the place of the company did not detract from this position. The alteration had been made only on 24 June 1997, that is, after the lower court had rejected the applicant's appeal.

16. The city appealed, arguing that the taxation value of 1994 had no relevance to the case as the taxation value did not follow the fluctuations in the economic situation of the country or the demand for real property at a given time. It was to be noted that during the period from 1993 to 1997 real property prices had dipped to one third of what they had been in 1990 and 1991 and that the taxation value was confirmed periodically and did not therefore reflect the situation in 1997. The city also argued that no relevance could be given to the relationship between those who had signed the deed of sale.

17. The applicant replied to the appeal, arguing that the market value was considerably higher than the taxation value. Furthermore, there had been no intention on the part of his family to sell the property to an outsider. He also argued that, following the entry into force of the Real Property Code (*maakaari, jordabalken*; Act no. 540/1995), on 1 January 1997, he was to be considered the owner under Chapter 2, section 4 since no company had been established.

18. Pursuant to the practice in the Supreme Administrative Court, it invited the city's submissions in reply. The city argued (submission dated 12 August 2003) that the property's taxation value had dropped as follows: in 1996 to FIM 428,000; in 1997-2001 to FIM 250,000-270,000 and in 2003 to FIM 323,400. Furthermore, the fluctuations in the market value were reflected in the taxation value with a delay of several years. The drop in the relevant property's value followed the general price development. The city maintained that in considering whether the conditions for pre-emption were met at the time of the purchase in 1996, no relevance could be given to facts occurring thereafter. It also noted that no town plan had yet been drawn up.

19. On 4 November 2004 the Supreme Administrative Court overturned the lower court's decision. Referring to the Government Bill on the

enactment of the Pre-emption Act and on subsequent amendments thereto, the court noted that the aim of the said Act was, *inter alia*, to slow the increase in value of real property and to reduce the number of cases in which the parties to the purchase, in order to evade tax, did not state the full price in the deed of sale. It also noted that a considerably lower price than the market value could be relevant to the assessment of whether the conditions for pre-emption were fulfilled. The purchase price had, however, to be assessed in the light of the situation on the real estate market and the planning of the area at the time of the pre-emption. The court considered that the taxation value as such did not attest the property's market value and that the afore-mentioned appraisal document and draft preliminary agreement were in part based on wrong assumptions. It noted that no town plan had been drawn up and that the property consisted of vacant land, whose price was affected by the advantageous location as to traffic communication and the expectations as regards future lucrative use of the property. The assessment of the value, however, could not have been based on the price of the permitted building volume expected to be allocated by a town plan.

20. The Supreme Administrative Court considered that in assessing whether the pre-emption was manifestly unfair, the purchase price had to be considered in relation to the prevailing planning and real property market situation at the time of the pre-emption. The court found that no credible and undisputed evidence as to the relationship between the purchase price and the market value had been presented. It could not be concluded that the purchase price had been considerably lower than the market value simply on the basis of the location of the property and the existence of a master plan which lacked legal effect. Furthermore, manifest unfairness within the meaning of section 6 of the Pre-emption Act could not arise solely from an advantageous purchase price. Nor was a court required to make precise comparisons of purchase prices. The Supreme Administrative Court concluded that the use of the city's first call on the property was not manifestly unfair, having regard in addition to the content of section 6 and the aim of the Pre-emption Act, as explained in the *travaux préparatoires*, to improve the land situation of the municipality by guaranteeing the availability of vacant land to be used for building purposes and for forwarding, to check real property speculation and to reduce the number of cases in which, in order to evade tax, the full price was not stated in the deed of sale. The court also noted that there was no evidence to the effect that the parties to the purchase had a special bond with the property in question. As to the other complaints raised by the applicant, it confirmed the lower court's view. The decision ran to 21 pages, of which 9 pages contained reasons.

21. On 3 May 2005 the applicant lodged an extraordinary appeal with the Supreme Administrative Court claiming, *inter alia*, that the court had

not invited his submissions in reply to the city's second set of representations of 12 August 2003.

22. In its decision of 14 December 2006 the Supreme Administrative Court noted that the city's above-mentioned second set of representations had not been sent to the applicant for comment. Nor had he received them for information, which was the practice in the Supreme Administrative Court. The applicant had received the second set of representations after the decision of 4 November 2004 and he had been given an opportunity to comment on them during the extraordinary proceedings. Bearing in mind that the applicant had already been able to express his views in two sets of proceedings before the Administrative Court and the Supreme Administrative Court, and that the representations had not affected its decision of 4 November 2004 in such a way that the case should be reopened, the court rejected the applicant's extraordinary appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

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

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

24. The Government contested that argument.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The period to be taken into consideration began on 26 August 1996 and ended on 4 November 2004. It thus lasted over eight years and two months at two levels of jurisdiction, of which the lower level twice and the higher level three times.

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

28. The Government pointed out that during the first set of proceedings, both parties had made several requests for postponing the consideration of the case or the time-limits for submitting observations due to the ongoing friendly-settlement negotiations. The case had been postponed for approximately one year and four months. The Supreme Administrative Court had finally decided the case in spite of the parties' requests for postponement. The case had been somewhat complex as the parties had disagreed on the basic facts and had submitted a lot of material. The case had been referred back to the Administrative Court, *inter alia*, due to the new material submitted, at least partly, by the applicant. Each court had considered the case as expeditiously as possible.

29. The applicant did not comment on the length issue.

30. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

31. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

32. There has accordingly been a violation of Article 6 § 1.

II. REMAINDER OF THE APPLICATION

A. Non-communication of certain documents

33. The applicant further complained that the Supreme Administrative Court's final decision had been flawed by the fact that the court had not invited his submissions in reply to the city's second set of representations of 12 August 2003, which had included statistics on, *inter alia*, purchase prices. What is more, they had not even been communicated to him for information. The applicant maintained that the above-mentioned second set of representations had contained incorrect and misleading information which had influenced the Supreme Administrative Court's decision of 4 November 2004. The court should have heard the applicant as such a hearing could not be regarded as manifestly unnecessary.

34. The Government pointed out that the applicant had complained about this same issue in his extraordinary appeal to the Supreme Administrative Court. The applicant had received the second set of representations and he had been given an opportunity to comment on them during the extraordinary proceedings in the Supreme Administrative Court. On 14 December 2006 the court had found that the non-communication had amounted to a procedural error under national law but it had not affected the decision in question in such a manner that the judgment should be annulled. It thus followed that the applicant had not been placed in a disadvantageous position *vis-à-vis* the other party to the proceedings.

35. The Court notes that the Supreme Administrative Court had acknowledged in its decision of 14 December 2006 that the city's above-mentioned second set of representations had not been sent to the applicant for comment, nor had he received them for information. However, the applicant had received the second set of representations after the decision of 4 November 2004 and he had been given an opportunity to comment on them during the extraordinary proceedings in the Supreme Administrative Court. Moreover, the Supreme Administrative Court had noted in its decision that the applicant had already been able to express his views in two sets of proceedings before the Administrative Court and the Supreme Administrative Court, and that the representations had not affected its decision of 4 November 2004 in such a way as to justify reopening the case.

36. Having regard to the foregoing and bearing in mind the practice of the Supreme Administrative Court of sending second sets of representations to the opposing party for information only, the Court finds that the failure of the Supreme Administrative Court to communicate certain documents was remedied by the same court during the extraordinary proceedings.

37. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Complaints under Article 6 and Article 1 of Protocol No. 1 to the Convention

38. The applicant also complained, under Article 6 and Article 1 of Protocol No. 1 to the Convention, that the Supreme Administrative Court had failed in its duty to find out the market value of the property or alternatively, that it should have drawn the parties' attention to the need to submit further evidence on the issue. He complained about the allegedly incorrect application of law by the Supreme Administrative Court, in particular sections 6, 9, 10 and 21a of the Pre-emption Act and Chapter 2, section 4, of the Real Estate Code. Furthermore, the applicant complained that his negotiations with a view to reaching a friendly settlement with the city of Vantaa had broken down due to the Supreme Administrative Court's move to decide the case on 10 March 1999 without informing the parties in

advance. Lastly, he complained that the facts of the case disclosed a violation of his property rights.

39. As to the first complaint, the Court notes that while it is true that national law places the administrative courts under a general duty to examine and clarify the cases brought before them, the principle that the initiative also lies with the parties is also relevant. Having regard to the subject matter, the fact that the Supreme Administrative Court did not obtain evidence as to the market value of its own motion or invite the parties to submit further evidence does not disclose any appearance of a violation. As to the allegedly incorrect application of law by the Supreme Administrative Court, the Court recalls that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I.). In the present case there is no indication of any violation in this respect. Neither does the complaint that the friendly settlement negotiations broke down due to the Supreme Administrative Court's decision to decide the case without warning the parties disclose any appearance of a Convention violation as the Supreme Administrative Court later annulled that decision.

40. As concerns the alleged violation of the applicant's property rights, the Court considers that, even assuming that there was an interference with the rights of the applicant, who had sold the property to a company to be set up later (see paragraph 6 above), it was prescribed by law and served the legitimate aim of, *inter alia*, guaranteeing the availability of appropriate land to be used for town development purposes. As to the proportionality, the applicant had the possibility to obtain the city's pre-approval. In case of a refusal, the parties to the purchase could either have raised the purchase price to make the deal less attractive for the city or, at least, to get a satisfactory sale price in case of pre-emption. Finally, the applicant could have bought the property in his own name had he considered it important that it stay in the family. The Court thus finds that this complaint does not disclose any appearance of a violation of the applicant's rights under the Convention.

41. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Rest of the applicant's complaints

42. Moreover, the applicant lodged several new complaints under Article 6 of the Convention in his letters dated 9 July, 17 August and 23 October 2009.

43. As regards these complaints, the Court notes that they were not lodged with the Court within the six months' time-limit. It follows that these

complaints must be rejected as being out of time within the meaning of Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed compensation in respect of pecuniary damage without specifying any amount.

46. The Government contested the claim. No specific claim for pecuniary damage had been submitted by the applicant within the meaning of Rule 60 of the Rules of Court. In any event, there was no causal link between the alleged violations of Article 6 of the Convention and any pecuniary damage suffered. Consequently, the claim should be rejected.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Costs and expenses

48. The applicant also claimed compensation for the costs and expenses incurred before the domestic courts without specifying the amount and EUR 4,500 for those incurred before the Court.

49. The Government contested these claims. The applicant’s claim for costs and expenses had not been specified within the meaning of Rule 60 of the Rules of Court. In any event, the Government suggested that the Court should not exceed an award of EUR 1,000 (inclusive of value-added tax) to the applicant under this heading.

50. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,500 (inclusive of value-added tax) for the proceedings before the Court.

C. Default interest

51. 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. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros), in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President