CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30337/96
by Matti and Marianne HILTUNEN
against Finland

The European Court of Human Rights (Fourth Section) sitting on 28 September 1999 as a Chamber composed of

Mr G. Ress, *President*,
Mr M. Pellonpää,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 February 1996 by Matti and Marianne Hiltunen against Finland and registered on 28 February 1996 under file no. 30337/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 26 January 1998 and the observations in reply submitted by the applicants on 26 March 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, Finnish nationals, are born in 1948 and 1949, respectively, and live in Helsinki. They are represented before the Court by Ms Christine Hiltunen, Master of Law in Helsinki.

A. Particular circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants own jointly the real property Hälleberget 1:181 on the island of Svartholmen. The island is part of the Suvisaaristo archipelago in the Gulf of Finland and it belongs to the city of Espoo in the vicinity of Helsinki. The first applicant acquired the property in 1978 together with the second applicant's mother. The latter donated her part to the second applicant in 1987.

The real property consists of 7,800 m^2 and its value is estimated at about FIM 1,500,000 (about the same in FF). In the 1920s, a two-storey house with a surface of 103 m^2 was erected. It has been used exclusively as a summer cottage and has been registered as such. On the land there are also accessory buildings with a surface totalling 56 m^2.

At the beginning of the 1960s, the City Assembly of Espoo decided to start drawing up a master plan (*yleiskaava, generalplan*) for the area. On 28 July 1961, following the city's proposal, the Ministry of the Interior prohibited construction in the area by virtue of the Building Act. This building prohibition was prolonged repeatedly by three-year-long or five-year-long temporary orders. It remained in force until the end of 1980.

In 1978 and 1980 the inspection authorities of the city of Espoo certified that the property in question had been equipped with the required water and waste management systems, if necessary also for permanent habitation. On 3 November 1994, the applicant's cottage was inspected by the relevant authorities but was found not to meet the requirements of a dwelling for all-year-round use due to insufficient insulation

There are apparently three dwellings for all-year-round use on Svartholmen, these having been constructed in 1939, 1962 and 1965.

On 28 January 1981, the City Assembly of Espoo decided to start drawing up a more detailed town plan (*asemakaava, stadsplan*) for the area. As a result the area was placed under a building prohibition in accordance with section 42, subsection 2(3), of the Building Act (*rakennuslaki, byggnadslag*, 370/1958). By virtue of the same provision the building prohibition has been prolonged every other year.

In addition to the building prohibition under section 42, subsection 2(3), of the Building Act, a building prohibition under section 5, subsection 1, of the Building Act is also in force (prohibition on urban development). Exemptions may be granted from both prohibitions.

On 4 September 1985, the City Assembly of Espoo adopted a partial master plan (*osayleiskaava, delgeneralplan*) for, *inter alia*, the Suvisaaristo area. On 6 April 1988, the Ministry of Environment refused to confirm the plan, *inter alia*, in so far as it concerned the

island of Svartholmen and another island. The Ministry noted that the plan was largely based on the existence of independent drinking-water and waste-water management systems on each individual property designated for permanent habitation. So far there had existed only one dwelling for all-year-round use on Svartholmen, whereas the master plan had envisaged 21 new ones. Given the topography of the island and the significantly increased permanent habitation, the Ministry considered that the ground water conditions had not been sufficiently investigated.

On 13 June 1989, the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) upheld the Ministry's decision.

In 1990, the first applicant applied for an exemption from the building prohibition in force pursuant to section 5 of the Building Act. His request concerned the construction of a house with a surface of 280 m^2 and intended for all-year-round use. On 16 January 1991, the Ministry of the Environment refused to grant the exemption. On 3 March 1992, the Supreme Administrative Court upheld the Ministry's decision.

In 1994 the first applicant applied anew for an exemption from the building prohibition in force by virtue of section 5 of the Building Act. His request now concerned the construction of a permanent dwelling with a surface of 190 m^2. At the same time, the existing house would be demolished. The City Planning Director of Espoo favoured the request in his advisory opinion of 28 March 1994 to the Ministry of the Environment. The city found that the applicants' intention to replace the existing building, which was in poor condition, with a new dwelling would be in line with the objectives outlined for the use of the relevant area. Therefore, an exemption from the building prohibition would not create any significant obstacle to the implementation of the planning or other forms of organising the settlement in the area.

On 26 October 1994, the Ministry of Environment refused to grant the exemption. It noted that in 1988 part of the master plan had not been confirmed due to insufficient investigations concerning the groundwater conditions, bearing in mind the topography on the island of Svartholmen and the important growth of its permanent settlement which had been foreseen in the plan. These matters were to be clarified during the process of drawing up the town plan. The Ministry furthermore stressed the need to guarantee the equal treatment of the property owners affected by the building prohibition.

On 8 September 1995, the Supreme Administrative Court upheld the Ministry's decision.

On 8 July 1997, a regional plan (*seutukaava, regionplan*) for the Helsinki area, including the island of Svartholmen, gained legal force. In the regional plan the area in question was designated for urban development. This plan did not abolish the prohibition on urban development in force by virtue of section 5 of the Building Act.

Between 1986 and 1997, 18 exemptions from the building prohibition were granted by the Ministry for the Environment on the island of Sommarö in the immediate vicinity of Svartholmen. The permitted construction included, *inter alia,* changing summer cottages into all-year-round residences.

The area comprising the applicants' property has not been included in the programme for town planning to be completed during the years 1997-2001.

B. Relevant domestic law

According to section 5 of the Building Act, only an area for which there is a confirmed town plan, building plan or shore plan may be used for urban development (*taaja-asutus, tätbebyggelse*). For special reasons, exemptions may nonetheless be granted by the competent county administrative board or, in respect of larger cities, the Ministry of the Environment. The relevant local authority shall be consulted regarding any application for an exemption.

According to section 7 of the Building Act, a building permit is required for all new construction. Subject to the municipality's discretion this requirement may be waived in respect of construction of accessory buildings belonging to an existing dwelling or farm in an area outside a town plan or building plan. Building permits are issued by the local building committees (*rakennuslautakunta, byggnadsnämnd*).

In considering an application for a building permit the authority shall satisfy itself that the proposed building is in accordance with any confirmed plan and does not contravene any building prohibition or related regulations. In the absence of any obstacles, a permit shall be granted.

COMPLAINT

The applicants complain that the prohibition on construction on their property has unlawfully impaired their right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. They allege that the continued prohibition has rendered the rational and effective use of their property impossible. They furthermore maintain that the building prohibition is not justified in the public interest, in particular as the local municipality accepts that the intended construction on the applicants' property would not run counter to the foreseen planning of the area.

PROCEDURE

The application was introduced on 6 February 1996 before the European Commission of Human Rights and registered on 28 February 1996.

On 23 October 1997, the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 26 January 1998. The applicants replied on 26 March 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicants complain that Article 1 of Protocol No. 1 to the Convention has been violated as a result of the excessive duration of the building prohibition.

Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government first recall that the Convention entered into force with regard to Finland on 10 May 1990. In so far as the decisions concerning building prohibitions were made before this date, the application is outside the Court's competence *ratione remporis*.

Regarding the substance of the application, the Government consider it ill-founded. The building prohibitions successively in force pending the elaboration of a town plan have been based on the Building Act. It is true that there is no intention to draw up a town plan for the relevant area in the near future. The building prohibitions have nonetheless been aimed, and continue to be aimed, at facilitating town planning, which is in the general interest. The restrictions have also been related to environmental protection, an increasingly important consideration.

The Government furthermore recall that the applicants acquired the property in 1978 and 1987, respectively. The first applicant applied for an exemption from the building prohibition as late as in 1990 and 1994. The applicants have not therefore been left in uncertainty for a long period of time as to their possibility of replacing their summer cottage with a permanent dwelling. Furthermore, when they became property owners they cannot reasonably have been unaware of the building prohibition and of the resultant requirement of an exemption for the construction of a new dwelling. Even though there are houses in all-year-round use in the Suvisaaristo archipelago, only one out of a total of fourteen dwellings is in permanent use on Svartholmen. Thus the applicants could not have had any legitimate expectation to obtain permission to construct such a dwelling. At any rate, the applicants have been able to continue to use their property on the same conditions as when they acquired it. Neither are there any obstacles to maintaining and renovating the summer cottage.

The Government furthermore submit that lately the building prohibitions have been valid for only two years at a time with the possibility of renewing them for further periods of two years. Thus the need to maintain them has been examined regularly. The applicants have not appealed against any of the decisions to renew the prohibition. Exemptions from the prohibition may be granted where the planning procedure would not be obstructed. These procedures provide a possibility for weighing the public interest against that of the individual. No absolute right of the applicants to erect a considerably larger and permanent dwelling in replacement of the summer cottage can be deduced from the Building Act or any other

legislation. The applicants' requests for an exemption were also rejected with reference to the need to ensure equal treatment of the other land-owners on the island of Svartholmen. Around the time when the applicants were refused an exemption to the prohibition several other owners of summer cottages on the island had also lodged applications with a view to constructing a permanent dwelling. The Government also refer to the risk of sanitary problems and pollution of the ground water. The fact that the city of Espoo has favoured the request for exemption is not decisive, the competent decision-making authority being the Ministry of the Environment.

The Government conclude that the interference with the applicants' property rights has not upset the balance of the conflicting interests at stake, regard also being had to the State's wide margin of appreciation in this field and to the procedural safeguards afforded to the applicants.

The applicants point out that the building prohibitions, although valid only for a few years at a time, have been renewed at the expiration of a previous prohibition, this resulting in a *de facto* prohibition on construction in force since 1961 and indefinitely. The fact that this prohibition was in effect already prior to the entry into force of the Convention with respect to Finland further emphasises the long-term nature of the prohibition. The ongoing prohibition has imposed a significant financial burden on the applicants by restricting the potential use of their property and thereby forcing them to incur significant living expenses elsewhere, while also incurring maintenance costs in respect of the property. Regarding the equal treatment of land owners, the applicants maintain that as from the late 1950s the Suvisaaristo archipelago has developed into a community of dwellings inhabited throughout the year. Between 1986 and 1997, 18 exemptions from the building prohibition were granted already within a small portion of the archipelago in the close vicinity of Svartholmen. All except one exemption were granted for the construction of a permanent dwelling. In total, well over 20 permanent dwellings now exist in the area and three on the island of Svartholmen. The principle of equal treatment of land owners therefore ought to have led the authorities to grant an exemption also to the applicants.

The applicants further submit that although the letter of the domestic law has been followed, its *ratio* has been violated. The continuous use of building prohibitions of a temporary nature has not been aimed at facilitating town planning. The competent authority for such planning, the city of Espoo, has found that the construction proposed by the applicants would be in full compliance with the future town planning of the area. The interference with their property rights cannot therefore be considered justified with reference to the legitimate aim of planning the total area in question. At the time of acquiring ownership of the property the applicants could legitimately expect that the intended aim of the building prohibition, namely to allow for a town plan to be drawn up, would be reached within a reasonable period of time. Seventeen years later, however, there is still no precise intention to draw up such a plan. As a result there continues to exist considerable uncertainty as to if and when the applicants will be allowed to replace their summer cottage with a permanent dwelling.

The applicants point out that in the regional plan including the Svartholmen island and confirmed in 1997 their property has been designated for urban development and not for public recreation. Neither was any such designation stipulated in the partial master plan which the city of Espoo adopted in 1985 .

In so far as environmental protection has been referred to as justification for the building prohibitions, the applicants submit that the Government have failed to specify any applicable requirement as regards water and waste management which the applicants' property would not fulfil. In these respects the competent authorities already in 1978 and 1980 approved the individual arrangements on the property for all-year-round use. Moreover, the dwellings in the vicinity, most of which are in permanent use, have been equipped with similar individual water and waste management systems. The environmental hazards could potentially materialise only with a significantly larger increase of dwellings in the area.

The applicants therefore maintain that the ongoing building prohibition has upset the fair balance between the protection of their property rights and the requirements of the general interest.

The Court first recalls that the Convention entered into force with respect to Finland on 10 May 1990. The Court will therefore limit its examination to whether the facts occurring after that date disclose a breach of the Convention. Events prior to 10 May 1990 will nonetheless be taken into account as a background to the issue before the Court (see, e.g., Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 19, § 53).

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 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 peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see Allan Jacobsson v. Sweden (no. 1) judgment of 25 October 1989, Series A no. 163, p. 16, § 53).

Moreover, although Article 1 contains no explicit procedural requirements, the proceedings at issue must 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 his rights under Article 1 of Protocol No. 1. In ascertaining whether this condition has been satisfied a comprehensive view must be taken of the applicable procedures (see, e.g., Agosi v. the United Kingdom judgment of 24 October 1986, Series A no. 108, p. 19, § 55; Hentrich v. France judgment of 22 September 1994, Series A no. 296-A, p. 21, § 49).

The Court considers that that the situation complained of constitutes a control of the use of the applicants' property which is to be examined under the second paragraph of Article 1 of Protocol No. 1. The building prohibition has been and continues to be based on different provisions of the Building Act. The Court is not convinced by the applicants' argument that the prohibition has not been aimed at facilitating planning, a legitimate aim for the purposes of this interference.

As for the proportionality of the interference, the Court can accept that the applicants have been left in uncertainty for a certain period as to their possibilities to replace their summer cottage with a larger permanent dwelling. The Court notes, however, that the

regional plan which reserved the area in question for urban development gained legal force only in 1997. In these circumstances the Court cannot find it established that the applicants had, prior to 8 July 1997, acquired any unconditional right to construct a new permanent dwelling on Svartholmen instead of the house they wish to demolish. As the regional plan did not in itself revoke the prohibition on urban development the applicants cannot even today be considered to enjoy such an absolute right. Nor have the applicants argued that the ongoing building prohibition would prevent them from renovating the summer cottage on the property or from continuing to make use of the property on the same conditions as when they acquired it.

It is true that during the 1980s and 1990s the Ministry for the Environment has granted a significant number of exemptions from the building prohibition on the larger island in the immediate vicinity of Svartholmen, allowing for the construction of all-year-round dwellings. As far as the Court is aware, however, no similar exemptions have been granted lately on Svartholmen, where the three permanent dwellings were constructed in the 1960s or earlier.

The Court further notes that during the 1990s the building prohibition has been valid for only two years at a time, thereby allowing for the possibility of challenging any extension of the prohibition..

The Court finally notes that the applicants have not submitted any evidence showing that the value of the property in question has been substantially diminished on account of the ongoing building prohibition (cf. No. 21343/93, Dec. 10.10.94, D.R. 79-A, pp. 34, 45).

The Court, taking into account the State's wide margin of appreciation in the control the use of property, concludes therefore that no such adverse effects which could render the balancing of interests unfair have been shown to exist as a result of the ongoing building prohibition. Accordingly, there is no appearance of an improper balance between the protection of the applicants' property rights and the demands of the general interest and, consequently, no appearance of a violation of the applicants' right to the peaceful enjoyment of their possessions.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President