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

THIRD SECTION

DECISION

Application no. 56002/19
OÜ PAREM KALLAS
against Estonia

The European Court of Human Rights (Third Section), sitting on 5 July 2022 as a Committee composed of:

Georgios A. Serghides, *President,*
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 56002/19) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 October 2019 by OÜ Parem Kallas, a private limited company based in Pärnu ("the applicant company"), which was represented before the Court by Mr A. Jõks, a lawyer practising in Tallinn;

the decision to give notice of the application to the Estonian Government ("the Government"), represented by their Agent, Ms M. Kuurberg, Representative of Estonia to the European Court of Human Rights;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the delay in determining the amount of compensation for the expropriation of the applicant's land and the adequacy of that amount.

2. In spring 2002 the applicant company became the owner of a plot of land in Pärnu, part of which the local municipality had designated for public use (expansion of a street) in 2001. Under section 30(5) of the Planning and Construction Act (*planeerimis- ja ehitusseadus*), as in force at the material time, the local municipality was under an obligation to expropriate the part of

the land designated for public use in return for immediate and fair compensation at the owner's request. The applicant company submitted a request to that effect to the municipality in 2002, repeated its request in 2004 and initiated judicial proceedings thereafter.

3. In 2006 the domestic courts ordered the municipality to expropriate the land in question; those proceedings were followed by alternating administrative and court proceedings (hereinafter "the expropriation and compensation proceedings"). Between 2006 and 2015 the municipality gave four separate expropriation decisions indicating different amounts of compensation, which had been calculated on the basis of expert opinions, following guidelines given by the courts. The municipality itself declared one of those decisions void and the other three were set aside by the courts. Eventually, in 2019 the domestic courts upheld a decision adopted in 2017 to expropriate the plot in return for the sum of 30,000 euros (EUR). In doing so, the courts noted that the amount payable for the land had been determined on the basis of an adequate and reliable expert opinion, which was in accordance with the guidelines given by the courts, and that the expropriation decision had been sufficiently reasoned.

4. At the time the parties submitted their observations, the applicant company had not agreed to the municipality's proposal to finalise the transfer of ownership of the land plot. In the domestic proceedings, the applicant company indicated the ongoing proceedings before the Court as a reason for refusing to finalise the transaction.

5. In 2012, in parallel to the above-mentioned proceedings, and in view of the length of time that the expropriation and compensation proceedings had taken, the applicant company initiated another set of court proceedings against the municipality, claiming compensation in respect of pecuniary damage calculated so as to take into account, *inter alia*, the rate of inflation and default interest (hereinafter "the proceedings for damages"). Those proceedings were suspended at the applicant company's request from 2014 until 2019 and were resumed after the court upheld the municipality's latest expropriation decision in 2019. The applicant company did not inform the Court of those proceedings when lodging its application.

6. In the context of the proceedings for damages, on 26 August 2019 the applicant company sought to supplement its initial claim for damages with a claim for compensation in respect of non-pecuniary damage, which it alleged it had suffered on account of, *inter alia*, the excessive length of the expropriation and compensation proceedings. The Tallinn Administrative Court dismissed that application on 10 October 2019, finding that under domestic law, legal persons could not claim compensation in respect of non-pecuniary damage. That decision was amenable to appeal.

7. The Tallinn Administrative Court dismissed the applicant company's claim in respect of pecuniary damage (see paragraph 5 above) by a judgment of 13 January 2021. It viewed the various sets of expropriation and

compensation proceedings initiated from 2002 onwards as a whole (including the different sets of court proceedings) and agreed that the municipality could be seen as having unlawfully delayed those proceedings. However, it considered that the damage had not yet "materialised", as the expropriation proceedings had not been finalised owing to the applicant company's inactivity (see paragraph 4 above). It also noted that the applicant company had not appealed against its decision of 10 October 2019.

8. On 12 February 2021 the applicant company appealed against the above-mentioned judgment, noting, *inter alia*, that the Tallinn Administrative Court had overlooked its claim in respect of non-pecuniary damage and that, moreover, it had never been served with the Tallinn Administrative Court's decision of 10 October 2019.

9. The parties have not informed the Court of subsequent developments in the proceedings.

10. The applicant company complained of a violation of Article 6 § 1 of the Convention on account of the unreasonable length of the expropriation and compensation proceedings. It also complained, relying on Article 1 of Protocol No. 1 to the Convention, that the award of EUR 30,000, as upheld by the domestic courts, was not adequate, and that it had been waiting for fifteen years (from 2004) to be compensated.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 § 1 of the Convention

11. The Court notes the Government's preliminary objection concerning the applicability of Article 6 § 1 to the combination of administrative and judicial proceedings, as well as their assertion that the applicant company had (partly) failed to meet the six-month time-limit and that it had abused the right of application by not notifying the Court of the ongoing proceedings for damages. The applicant company contested those arguments.

12. It is not necessary to examine in detail all of the preliminary objections, as – even assuming that Article 6 § 1 is applicable – the Government's objection that the applicant company had failed to exhaust domestic remedies must be upheld. During the pending proceedings for damages the applicant company sought to supplement its initial claim with a claim for compensation in respect of the non-pecuniary harm it had suffered as a result of the length of the expropriation and compensation proceedings (see paragraph 6 above). The Tallinn Administrative Court dismissed the applicant company's supplementary claim, while assessing the municipality's responsibility for the length of the expropriation and compensation proceedings from 2002 onwards. Although the Tallinn Administrative Court later found that the applicant company had not appealed against that decision, the applicant company in its appeal against the

judgment of 13 January 2021 maintained that it had never been served with that decision (see paragraphs 7 and 8 above). This set of proceedings remained pending (see paragraph 9 above).

13. The Government referred to the Supreme Court's judgment of 6 March 2015 in case no. 3-3-1-78-14 as an example of awarding compensation to legal persons for the excessive length of proceedings. In that case, the Supreme Court explained that, concerning a claim for damages, the legal person could have relied on the Convention if there had been an interference with its rights under Article 6 § 1. It added that certain types of non-pecuniary damage which a legal person could sustain within the meaning of the case-law of the Court could be considered as pecuniary damage under domestic law (for example, damage to the reputation of a company). The Government also relied on a practical example of such compensation having been granted to a legal person.

14. In the light of the above information, and considering that the parties have not informed the Court of the progress of the proceedings for damages, the Court is left to conclude that the applicant company has either failed to exhaust domestic remedies on account of not having appealed against the decision of the Tallinn Administrative Court of 10 October 2019 or, alternatively – since it raised the relevant issue in its appeal of 12 February 2021 – the complaint is premature, as it is still being assessed in the ongoing domestic proceedings.

15. Accordingly, the Court finds that the domestic remedies have not been exhausted and the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

16. The applicant company's complaint under Article 1 of Protocol No.1 may, in the Court's view, be seen as consisting of two elements: (i) the adequacy of the proposed compensation for the land (EUR 30,000), and (ii) the compensation for the pecuniary damage allegedly caused by the length of the expropriation and compensation proceedings.

1. Regarding the amount proposed in the expropriation and compensation proceedings

17. The Court takes note of the Government's preliminary objections as to the non-exhaustion of domestic remedies and abuse of the right of application, as well as their remark that the applicant company had been aware of the restrictions related to the public use of the land in question when it had acquired it. The Government also argued that, as the applicant company had refused to finalise the expropriation transaction, it could no longer be considered a victim of the alleged violation or, alternatively, that that fact rendered the complaint manifestly ill-founded. The applicant company

disagreed with all the objections. It noted that, had it signed the contract for the plot's expropriation, it could no longer argue before the Court that the amount offered in compensation for the plot was inadequate.

18. Section 30(5) of the Planning and Construction Act (as in force at the relevant time) granted the applicant company the right to have the land in question expropriated, if so requested, in return for immediate and fair compensation. This right was not made dependent on whether it had known about the impugned restrictions when obtaining the land. In the Court's view such a right can be seen as constituting a proprietary interest which is eligible for protection under Article 1 of Protocol No. 1 (compare *Kutlu and Others v. Turkey*, no. 51861/11, §§ 55-58, 13 December 2016). The municipality never contested that it had an obligation to expropriate the land and pay a compensation. The existence of such an obligation was also confirmed by the domestic courts.

19. However, the applicant company's right to be compensated was dependent on its own actions. It had to initiate the proceedings by submitting a request to the municipality and, once the amount payable for the plot was determined, it had to take steps to finalise the transaction. The applicant company has refused to complete those steps (see paragraph 4 above).

20. Against this background, the Court concludes that the applicant company itself has failed to take steps to realise its right to be compensated (compare *Fizgejer v. Estonia* (dec.), no. 43480/17, §§ 60-65, 2 June 2020, where the applicant had failed to take the necessary steps to allow the authorities to pay her an old-age pension). Finalising the expropriation transaction in Estonia would not have deprived the applicant company of the right to argue its case before the Court. In any event, the decision to set the compensation at EUR 30,000 was based on an expert opinion, drawn up in accordance with the parameters set by the domestic courts. The applicant company was able to actively participate in the administrative proceedings leading to the adoption of the contested decision, and its arguments, including those in respect of a previous expert report proposing a higher amount of compensation, were thoroughly addressed by the municipality and by the courts. An earlier decision to expropriate the plot for the same amount of compensation had been set aside largely because of the lack of reasons provided by the municipality, not because of the inadequacy of the expert report or of the sum proposed (see paragraph 3 above). The applicant company has not discharged the burden of showing that the compensation as assessed by the domestic courts did not bear a reasonable relationship to the value of its property (see, for example, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 108-114, 25 October 2012).

21. Accordingly, the complaint as to the amount of compensation for the expropriation of the land is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Regarding compensation in view of the passage of time

22. The Court observes that the final amount of the compensation determined by the municipality (as upheld by the courts) was calculated on the basis of the market value of the land at the date on which the restrictions relating to the public use of the land were imposed in 2001.

23. The applicant company essentially complained that the above-mentioned amount did not take into account the passage of time, more specifically, the sum offered did not include default interest and did not take into account the effects of inflation.

24. The Court has previously held that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay (see *Frendo Randon and Others v. Malta*, no. 2226/10, § 55, 22 November 2011).

25. The Court does not find it necessary to rule on the Government's preliminary objection concerning the abuse of the right of individual petition. However, the Government's objection of inadmissibility on grounds of non-exhaustion of domestic remedies must be upheld.

26. In 2012 the applicant company initiated proceedings for damages against the municipality (see paragraph 5 above). Those proceedings concerned, *inter alia*, the municipality's obligation to pay the applicant default interest and compensation to offset the effects of inflation in view of the length of the expropriation and compensation proceedings. The Court thus finds that the domestic proceedings for damages concern the same subject matter in relation to which the applicant company has asked the Court to find a violation.

27. As those proceedings are still ongoing (see paragraphs 8 and 9 above), the Court concludes that the complaint concerning compensation for the effects of the passage of time is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 July 2022.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President