CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18584/04
by HINGITAQ 53
against Denmark

The European Court of Human Rights (First Section), sitting on 12 January 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged with the European Court of Human Rights on 25 May 2004,

Having deliberated, decides as follows:

THE FACTS

The applicants are 428 individuals from the Thule District in Greenland, and Hingitaq 53, a group that represents the interests of relocated Inughuit (the Thule Tribe) and their descendants in a legal action against the Danish Government. They were represented before the Court by Mr Christian Harlang, a lawyer practising in Copenhagen.

A. The circumstances of the case

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

The population of Greenland (approximately 55,000) is predominantly Inuit, a people bearing an affinity and solidarity with the Inuit populations of Canada, Alaska and Siberia.

In the north-west of Greenland the Inuit people are Inughuit (also known as the Thule Tribe), a people living from hunting and fishing, who entered Greenland from Canada in around 2000 BC. They lived completely isolated until 1818, following which they received visits by whalers and expeditions.

In 1909 the Danish polar researcher Knud Rasmussen established a commercial trading station and privately initiated a colonisation of the area, which he called the Thule District. By a decree of 10 May 1921 the Thule District was incorporated into the Danish colonial area in Greenland. In order to preserve the people's way of living, in 1927 Knud Rasmussen established a Hunters' Council (*Fangerråd*), which adopted the "Laws of the Cape York Station Thule". In 1937 Denmark took over the trading station.

During World War II, after the German occupation of Denmark in 1940, the United States of America ("the US") invoked the Monroe Doctrine in respect of Greenland and reached an agreement in 1941 with the Danish minister at Washington that permitted the establishment of US military bases and meteorological stations. Thus, in 1946, among other places in Greenland, a so-called weather station was built in the Thule District. It appears that the Hunters' Councils received a sum of approximately 200 Danish kroner (DKK) in compensation for this.

After the war, Denmark and the US signed a treaty on the defence of Greenland, which was approved on 18 May 1951 by the Danish Parliament (called *Rigsdagen* at the relevant time) and entered into force on 8 June 1951.

Consequently, an American air base was established at the Dundas Peninsula in the Thule District amidst the applicants' hunting areas and in the vicinity of the applicants' native village site, Uummannaq (then called Thule).

As part of the base a 3 km-long airstrip was built, together with housing and facilities intended to accommodate 4,000 people. There appears to be dispute as to the exact size of the defence area at the relevant time and how much of it the Inughuit were excluded from. The applicants alleged that the defence area amounted to 2.743 square kilometres.

It is common ground, however, that Inughuit access to hunting and fishing was increasingly restricted and that the activities at the base eventually had a detrimental effect on the wildlife in the area.

In the spring of 1953 the US wished to establish an anti-aircraft artillery unit as well and requested permission to expand the base to cover the whole Dundas Peninsula. The request was granted, with the consequence that the Thule Tribe was evicted and had to settle outside the defence area. The tribe was informed of this on 25 May 1953 and within a few days, while they could still travel over the frozen sea ice with dog sleds, twenty-six Inuit families, consisting of 116 people, left Uummannaq, leaving behind their houses, a hospital, a school, a radio station, warehouses, a church and a graveyard (the family houses were later burned down and the church was moved to another village on the west coast).

Most of the families chose to move to Qaanaaq, more than 100 km north of Uummannaq, where they lived in tents until September 1953, when substitute housing was built for them (altogether twenty-seven wooden houses), together with facilities for a new village (including a school, a church, a hospital, administration buildings, a power station and road facilities). Also, groceries and equipment were handed out to the families.

The total cost of the relocation amounted to approximately DKK 8.65 million (equivalent to 1.15 million euros (EUR)), of which the US paid 700,000 United States dollars (USD), equivalent to DKK 4.9 million. It is estimated that the families' yearly income on average at the relevant time amounted to DKK 1,500.

On 5 June 1953 a new Danish Constitution was passed (to replace the previous one of 1849). It extended to all parts of the Danish Kingdom, including Greenland, which thus became an integral part of Denmark.

Subsequently, by Resolution 849 (IX) of 22 November 1954 the United Nations General Assembly approved the constitutional integration of Greenland into the Danish Realm and deleted Greenland from the list of non-self-governing territories.

At the Hunters' Council's meeting in 1954 the question of compensation for the Thule Tribe's relocation arose for the first time, but not until after their meetings in 1959 and 1960 did they submit formal requests to the Ministry for Greenland. The latter requested a statement by the Chief of Greenland (*Landshøvdingen*), who submitted his reply on 3 December 1960. It is in dispute what happened thereafter, but the authorities claimed that the case file had disappeared. It reappeared in 2000. It is undisputed, however, that neither the Hunters' Council nor the Thule Tribe received a decision on their requests.

In 1979 home rule was introduced in Greenland, a scheme which left most of the important decision-making, excluding the areas of foreign policy and defence, to the Home Rule Government (*Landsstyret*).

In 1985, following the publication of a book on the Thule Tribe and the Thule Air Base (*Thule – fangerfolk og militæranlæg*), the Thule Tribe lodged a fresh claim for compensation via the municipality of Qaanaaq.

Consequently, several meetings were held between the Minister for Greenland, the municipality of Qaanaaq, and a working group appointed to safeguard the interests of the applicants. This led, *inter alia*, to the building of new houses instead of the original houses from the 1950s, and to an agreement between the Danish Government and the Home Rule Government to coordinate a plan to improve the conditions for the Thule municipality vis-à-vis its military neighbour in order to remedy the inconveniences resulting from the existence of the military base. The plan was implemented in the period 1985-1986. Thus, on 30 September 1986 the US and Denmark entered into an agreement reducing the area of the base to almost half its original size. Moreover, the Danish Government and the Home Rule Government agreed to seek a solution concerning an improvement in the use of the military base for additional civilian traffic and to create a civilian transit area funded by the Danish Government.

Finally, on 4 June 1987 the Minister of Justice set up a review committee to submit a report establishing the facts of the Thule Tribe's relocation in 1953. The committee consisted of a High Court judge, a senior archivist and a vice-bishop. As part of the review, numerous people gave statements to the committee, which submitted its report in December 1994.

The Home Rule Government made some very critical observations on the conclusions of the report, but found that the material that had been obtained as its basis had been satisfactory, apart from the above-mentioned case file that had apparently disappeared within the Ministry for Greenland and some security-related documents to which the committee had been unable to obtain access.

On 31 January 1997, in order to resolve the Thule case dispute, the Prime Minister's Office (*Statsministeriet*) and the Premier of the Home Rule Government (*Formanden for det Grønlandske Hjemmestyre*) entered into an agreement whereby the former agreed to donate DKK 47,000,000 towards the cost of a new airport in Thule.

In the meantime, on 20 December 1996 the applicants had brought a case against the Prime Minister's Office before the High Court of Eastern Denmark (*Østre Landsret*), seeking a declaration:

(1) that they had the right to live in and use their native settlement in Uummannaq/Dundas in the Thule District;

(2) that they had the right to move, stay and hunt in the entire Thule District;

(3) that the Thule Tribe was entitled to compensation in the amount of DKK 25,000,000 (equivalent to approximately EUR 3,333,333); and

(4) that each individual was entitled to compensation in the amount of DKK 250,000 (equivalent to approximately EUR 33,333).

The applicants had been granted free legal aid to bring their case, although this was restricted so that their claim for compensation could amount to a maximum of DKK 25,000,000 instead of DKK 136,200,000

(equivalent to approximately EUR 18,169,000), which was the amount that they had originally intended to claim.

Before the High Court numerous ethnographical, geographical, historical, political and autobiographical reports, books and minutes, *inter alia*, were submitted on the issue, including the report of December 1994 by the review committee. Witnesses gave evidence and the High Court visited the relevant areas in Greenland. In addition, experts were appointed to produce a report on the development of hunting in the Thule District. It was submitted on 29 January 1999.

On 20 August 1999 the High Court of Eastern Denmark delivered its judgment, which ran to 502 pages. It found, in particular: that the Thule Air Base had been legally established under the 1951 Defence Treaty, the adoption and content of which had been in accordance with Danish law; that the population at the relevant time could be regarded as a tribal people as this concept was now defined in Article 1.1 (a) of the International Labour Organisation's Convention no. 169 of 28 June 1989 concerning Indigenous and Tribal Peoples in Independent Countries ("the ILO Convention"); that the substantial restriction of access to hunting and fishing caused by the establishment of the Thule Air Base in 1951 and the eviction of the tribe from the Thule District in May 1953 had amounted to such serious interferences that they had to be regarded as expropriations; that the tribe had had too little time to prepare their departure; that expropriations could be carried out in Greenland at the relevant time without statutory authority; but that at the relevant time, pursuant to Article 73 of the UN Charter (*FN Pagten*), the Danish Government had had international obligations towards Greenland, as was confirmed by section 45 of the Greenland Administration Act of 1925 (*Loven af 1925 om Grønlands styrelse*); and that the applicants' claims had not become time-barred.

Since the exercise of the rights claimed by the applicants according to the wording of claims nos. (1) and (2) would be incompatible with the presence of the US air base, and having regard to its finding concerning the legal basis for the establishment of the base, the High Court found that claims nos. (1) and (2) could not be allowed, but that claims nos. (3) and (4) should be allowed in part.

In order to assess the compensation to be granted, the High Court took into account various accounts, minutes, witness statements and historical and political descriptions but stated that the material did not give an unambiguous and objective picture. In addition, the change in hunting possibilities had to be taken into account. The High Court found it established, for example, that fox hunting, which in 1953 had represented a very significant part of the Thule Tribe's hunting, had become more difficult since the distance to the fox-hunting fields had increased after the tribe's removal. On the other hand, the hunting of seals and narwhals had later become of crucial importance. Having regard to those factors, and to

the fact that the Danish authorities in the past had failed to examine and specify the loss suffered, the High Court decided to ease the burden of proof normally required for granting compensation for alleged loss. In addition, it found that the loss should be assessed only up to the mid-1960s, when a new site called Moriussaq had been established between Qaanaaq and Uummannaq in order to adapt to various changes in hunting. Finally, the High Court took into account the fact that substitute housing had been built for the families concerned.

In conclusion, the High Court found that the Thule Tribe should be granted DKK 500,000 (equivalent to approximately EUR 66,666) in compensation for its eviction and loss of hunting rights in the Thule District.

As regards the applicants' individual claims, the High Court did not find it established that they had suffered pecuniary damage which had not been covered by the substitute housing and the groceries and materials handed out to them in the summer of 1953, and the above amount granted to the tribe by way of compensation.

With regard to the claim for non-pecuniary damage, the High Court noted that at the relevant time there had been no legal rules authorising such compensation in relation to Greenland. Nevertheless, having regard to the nature and extent of the interference imposed by the colonial power on an isolated indigenous tribe, the High Court found that the individuals affected in 1953 should be granted an award for non-pecuniary damage. In the assessment of the amount to be awarded, the High Court found it appropriate to deviate from the general principles according to which the calculation of compensation should take as a point of reference the time at which the harm was sustained, in this case 1953, notably because the relevant applicants had been prevented for a long time from having their claim examined. The age of the individuals at the time of the eviction was also taken into account.

Accordingly, those applicants who at the relevant time had been at least 18 years of age were granted DKK 25,000 (equivalent to approximately EUR 3,333) in compensation for non-pecuniary damage and those who had been between 4 and 18 years old were granted DKK 15,000 (equivalent to approximately EUR 2,000).

In accordance with the applicants' claim, interest was payable on the amounts awarded as from the date on which the case had been brought before the High Court.

In the proceedings before the High Court, the applicants' two counsel was awarded fees in the amount of respectively DKK 1,200,000 and DKK 1,000,000 plus VAT.

On 2 September 1999, in addition to signing a new agreement aimed at renewing the relationship between the Danish Government and the Home Rule Government, the Danish Prime Minister formally apologised to the

applicants for the forced relocation of the Inughuit in 1953, by stating as follows:

> "The Danish High Court has on 20 August 1999 ruled in the case regarding the forced movement of the Thule people in 1953. The Danish High Court states that the Danish authorities acted unlawful at the time. The forced movement was decided and carried out in such a way, and under such circumstances, that it has to be regarded as a serious encroachment towards the people. We cannot alter the historical events, but we have to answer for them and respect them. With the recent verdict, a limit has been set on the Government's encroachment towards the people.
>
> Today, no one can be made responsible for actions committed by past generations almost 50 years ago. But with the spirit of the Commonwealth, and with respect for Greenland and the inhabitants of Thule, the Government would, on behalf of the Danish State, like to offer an apology – *utoqqatserpugut (mamiasuktugut)* – to the Inughuit, the inhabitants of Thule, and to the rest of Greenland, for the way in which the decision regarding the forced movement was made and carried out in 1953. We wish to continue and strengthen our collaboration and solidarity between Denmark and Greenland. Danish-Greenlandic cooperation within the Commonwealth shall also in the future be based on mutual respect.
>
> With the amendment of the Constitution in 1953, the citizens of Greenland were made to enjoy the same rights as the Danish people. With the introduction of the Home Rule Government in 1979, Greenland obtained its own parliament, a fact which implied that decisions were and are made closer to the people in the Greenlandic democracy. Any possible repetition of what took place in 1953 is therefore out of the question.
>
> We recognise the achievements we have made through our cooperation and solidarity over the years since 1953. Our Commonwealth has experienced a very positive human, social and economic development for the benefit of the people of Greenland and Denmark.
>
> The Danish Government wishes to strengthen Greenlandic participation in matters to do with foreign policy and in security issues relating to Greenlandic interests. Dialogue regarding this matter has begun already on the basis of the report of the 'Anorak' Committee (committee comprising officials from both the Greenlandic and the Danish Governments), among other things. Representatives of the Greenlandic Government will be included in the negotiation process, when new agreements are made between the Danish Government and foreign States on matters which relate specifically to Greenland."

On appeal to the Supreme Court (*Højesteret*), the applicants argued that pursuant to Article 1.1 (b) of the ILO Convention, they had to be considered a distinct indigenous people separate from the rest of the Greenlandic population, for which reason Articles 1, 12, 14 and 16 of the ILO Convention should be applied in particular. They also increased their claim for compensation to DKK 235 million.

Before the Supreme Court all the evidence that had been presented before the High Court was submitted, together with the case file from the Ministry for Greenland that had reappeared in 2000. Witnesses also gave evidence.

In a judgment of 28 November 2003 the Supreme Court unanimously upheld the High Court's judgment and held as follows:

"The ILO Convention

In order to address the Prime Minister's Office's request for their claims to be dismissed, and in support of their own claims, [the applicants] have as their main argument referred to the provisions of the International Labour Organisation's Convention no. 169 of 28 June 1989 concerning Indigenous and Tribal Peoples in Independent Countries (the ILO Convention), particularly Articles 1, 12, 14 and 16. Thus, [the applicants] have argued that pursuant to Article 1.1 (b), the tribe is considered a distinct indigenous people separate from the rest of the Greenlandic population.

The Convention became operative for Denmark on 22 February 1997. At the time of ratification, the Greenlandic people as a whole were considered an indigenous people within the meaning of the Convention.

In support of its allegation that it is an indigenous people, the Thule Tribe has pointed out that its members descend from the people that lived in the Thule District at the time of the colonisation in 1921, and that its members retain some of their own social, economic, cultural and political institutions. According to its own definition, the Thule Tribe encompasses all descendants of this indigenous population and the descendants' spouses, irrespective of where they were born and where they live. The members of the tribe see themselves as belonging to one distinct indigenous people.

[The Supreme Court finds that] the assessment of whether or not the Thule Tribe is a distinct indigenous people within the meaning of the ILO Convention should be based on current circumstances. In Greenland, there are still regional variations in terms of language, business conditions and judicial systems, caused by the size of the country, communication and traffic conditions, and local natural conditions, among other things. After an overall assessment of the evidence before it, the Supreme Court finds that in all essential respects the population of the Thule District [live under] the same conditions as the rest of the Greenlandic people, and that they do not differ from the latter in any other relevant way. The particulars produced on the difference between the languages spoken in Qaanaaq and in West Greenland and the Thule Tribe's perception of itself as a distinct indigenous people cannot lead to any other conclusion. The Supreme Court therefore finds that the Thule Tribe does not 'retain some or all of its own social, economic, cultural and political institutions', and that accordingly the Thule Tribe is not a distinct indigenous people for the purposes of Article 1.1 (b) of the ILO Convention.

Article 1.1 (a) of the ILO Convention also includes 'tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations'. As reasoned above, the Supreme Court finds that the Thule Tribe does not fall within this provision of the Convention either.

This interpretation is consistent with the declaration made by the Danish Government, endorsed by the Greenland Home Rule Government, in connection with the ratification of the ILO Convention. According to this declaration, Denmark has 'only one indigenous people' within the meaning of the Convention, namely the original inhabitants of Greenland, the Inuit.

In its decision of March 2001 the ILO's Governing Body reached the same conclusion. It thus endorsed the report of 23 March 2001 by the ILO committee that had considered a complaint submitted by the Greenland trade union Sulinermik Inuussutissarsiuteqartut Kattuffiat (SIK) concerning Denmark's alleged breach of the Convention. The report states that 'there is no basis for regarding the inhabitants of the Uummannaq community as a 'people' separate from and different from other Greenlanders' and that 'the territory traditionally inhabited by the Inuit has been identified and consists of the entire territory of Greenland'.

It must be considered established that within the meaning of Article 1.1 of the ILO Convention the Thule Tribe does not constitute a tribal people or a distinct indigenous people within or coexisting with the Greenlandic people as a whole. Consequently, the Thule Tribe does not have separate rights under the said Convention.

The Prime Minister's Office's request for the claims to be dismissed

The fact that the Thule Tribe cannot be considered a tribal people or a distinct indigenous people within the meaning of the ILO Convention does not preclude the Thule Tribe from being entitled to take legal action in accordance with the general rules on the matter.

The Prime Minister's Office has not disputed that the organisation Hingitaq 53 may represent the Thule Tribe. As was stated by the High Court, the Thule Tribe must be considered a sufficiently clearly defined group of people. These matters are not altered by the fact that only 422 of the original approximately 600 individual plaintiffs have lodged individual appeals with the Supreme Court. The objection raised by the Prime Minister's Office that the Thule Tribe is not entitled to the claims, and that consequently [the tribe] is not the rightful plaintiff cannot result in their dismissal. In view of their substance, Claims 1 and 2 are not so ambiguous that they cannot form the basis of an examination of the case.

For this reason, the Supreme Court [agrees with the High Court] that the [Prime Minister's Office's] request to dismiss the Thule Tribe's Claims 1 and 2 should be rejected. For the same reason, the Supreme Court rejects the request to dismiss Claim 3.

The Supreme Court further agrees that the request to dismiss Claims 1 and 2 in respect of the individual appellants should also be rejected.

Access to habitation, travelling, hunting and fishing (Claims 1 and 2)

In support of Claims 1 and 2, [the applicants] have – in addition to the reference to the ILO Convention – argued in particular that the Thule Air Base was established illegally because the 1951 US-Denmark Defence Agreement is invalid under constitutional and international law. [The applicants] have also argued that no legal decision to move the settlement was taken.

As was stated by the High Court in section 7.3 of its judgment, the Thule Air Base was established under the 1951 US-Denmark Defence Agreement. The agreement was adopted by the *Rigsdagen* [name of the Danish parliament until 1953] pursuant to Article 18 of the Danish Constitution, as applicable at the relevant time, and accordingly the Supreme Court accepts that a constitutionally valid approval of the establishment of the base existed, although the technical appendix to the agreement was not submitted to the *Rigsdagen*. For this very reason, the agreement is also valid under international law.

The substantial restriction of access to hunting and fishing caused by the establishment of the Thule Air Base in 1951 cannot, for the reasons stated by the High Court in section 7.4, be considered a non-indemnifiable regulation, but an act of expropriation. This expropriation could, as stated by the High Court in section 7.3, be carried out without statutory authority. The Supreme Court therefore finds, for the reasons stated by the High Court, that the substantive law provisions of the Danish Constitution applicable at that time, including Article 80 on the inviolability of property, did not extend to Greenland, that the Greenland Administration Act did not include any claim to statutory authority, and that the question of establishing the base did not fall within the competence of the Hunters' Council.

As was stated by the High Court in section 7.4, the intervention in the Uummannaq settlement and the Thule colony that took place in connection with the decision in 1953 to move the population is also to be considered an act of expropriation. This intervention may also be considered to have been carried out under the 1951 US-Denmark Defence Agreement and the expropriation it entailed could take place without statutory authority.

[The Supreme Court] notes that any inadequate information provided to the Hunters' Council in 1951 and 1953 cannot constitute grounds for invalidity.

The Supreme Court therefore finds that both the intervention in 1951 regarding access to hunting and fishing and the intervention in 1953 on relocation of the settlement were legal and valid. In this context, it is not necessary to decide whether or not the population of the Thule District at that time constituted a tribal people or a distinct indigenous people in the sense in which these terms are now defined in Article 1 § 1 of the ILO Convention.

The purport of the Thule Tribe's Claims 1 and 2 is that tribe members are entitled to live in and utilise the abandoned settlement and to travel, stay, hunt and fish in the entire Thule District. For the very reason that, owing to the acts of expropriation, the exercise of this right of enjoyment has been prevented or curtailed in the areas affected by such acts, the appellants' Claims 1 and 2 cannot be complied with.

This finding applies to Claim 1, although in February 2003 the US and Denmark, including the Greenland Home Rule Government, in continuation of the 1951 US-Denmark Defence Agreement, signed a memorandum of understanding about isolating Dundas – the area in which the settlement and colony were placed – from the defence area at Thule. In this connection, it should be noted that the Thule Tribe, which as stated is not considered a tribal people or a distinct indigenous people within the meaning of the ILO Convention, cannot claim privileges regarding Dundas with reference to Article 16 § 3 of the Convention. Nor does Greenland customary law give cause for such privileges.

The Supreme Court therefore finds for the Prime Minister's Office as concerns the appellants' Claims 1 and 2.

The Thule Tribe's claim for damages (Claim 3)

The primary claim for damages in the amount of around DKK 235 million relates in the first place to the Thule Tribe's loss owing to the lost and reduced hunting and fishing opportunities as a result of the establishment of the base and the relocation of the population from the Uummannaq settlement.

For the reasons stated by the High Court in section 7.4, the Supreme Court finds that compensation for this loss should be granted according to the principles of Article 80

of the Danish Constitution as applicable at that time, although this provision was not directly applicable to Greenland.

After making an overall assessment and weighing up the pros and cons, the High Court set the compensation at an estimated DKK 500,000, and the Prime Minister's Office has requested that this decision be upheld.

For the reasons stated by the High Court, the Supreme Court finds that there has to be a certain adjustment of the standard of proof as to the loss incurred.

The calculations on which the Thule Tribe's claims are based cannot be accorded any weight. These calculations use factors that, to a large extent, may be deemed arbitrary, while discounting various matters that ought to have been included in the assessment. The calculations are not based on developments in the species being hunted. The primary claim in the amount of around DKK 235 million is based on the size of the confiscated land without clarifying the correlation between surface area and hunting potential. The calculation comprises a period of 45 years without taking into account the substantial reduction in the area of the base in 1986 and the general limitation of the indemnification period. These calculation factors relate to an annual compensation figure of DKK 200, the sum which was granted when the weather station in Thule was established in 1946 and whose basis remains unknown. The alternative claim in the amount of around DKK 136 million is mainly based on a presumed increase in costs owing to the longer distances required for hunting, without taking into account the fact that, according to the experts' report, it was not a general rule that the distances to the most significant hunting grounds increased. The adaptation of the species in question to the changed conditions has not been taken into consideration. The number of hunters included in the calculation – approximately half of the original plaintiffs – is not consistent with the number of hunters affected by the interventions.

The Supreme Court agrees, on the whole, with the High Court's assessment of the facts to be considered when determining the amount of compensation, such as the character of the confiscated hunting grounds, the distances to the most significant hunting grounds, general developments in the patterns of the species concerned – especially the decrease in the fox population and the increase in the narwhal population – and the limitation of the period to be included in the assessment.

From an overall assessment the Supreme Court finds no grounds for increasing the compensation of DKK 500,000 set by the High Court.

For the reasons stated by the High Court, no separate compensation for the church should be granted.

The Supreme Court therefore accepts the request by the Prime Minister's Office to uphold the Thule Tribe's Claim 3.

Individual claims (Claim 4)

The appellants concerned by this claim are members of the Thule Tribe who were affected by the relocation in 1953 or their heirs. They have repeated their claim for compensation of DKK 250,000 each.

As was stated by the High Court in section 7.4, the inhabitants of Uummannaq are deemed to have received full compensation for giving up their houses in Uummannaq when they were granted substitute housing. Having been supplied with free goods and equipment from the store, they are further deemed to have received full compensation for special expenses incurred as a result of the relocation.

Thus, the claims under Claim 4 relate solely to compensation for the injury that the persons in question suffered owing to the circumstances of their relocation.

Before the Supreme Court, the Prime Minister's Office has admitted that the relocation of the population of Uummannaq, as described by the High Court in section 7.1, was decided and carried out in a way and under circumstances that constituted a serious interference and unlawful conduct towards the population of Uummannaq. Against this background, the Prime Minister's Office has accepted the amounts of compensation determined by the High Court.

In assessing the awards of compensation to be granted, the Supreme Court endorses the High Court's statements in section 7.5 concerning the matters that have to be taken into consideration. The Supreme Court also agrees that weight should be attached to the population's age at the time of the relocation as outlined by the High Court, so that persons aged 18 or more at the time of relocation are granted a larger amount of compensation than those who were younger, and persons who were under 4 years of age receive no compensation.

The Supreme Court finds no grounds for increasing the compensation awarded by the High Court. The request by the Prime Minister's Office to uphold Claim 4 is therefore to be complied with.

... Thus, the Supreme Court upholds entirely the High Court's judgment.

None of the parties are to pay costs for the proceedings before the Supreme Court to the other party or to the Treasury. "

On 2 December 2003 the Supreme Court decided on the fee to be awarded the applicant's counsel. The latter had submitted that since the lodging of the appeal with the Supreme Court he had spent 1,429 hours on the case. The Supreme Court found such an amount of hours to be excessive and granted counsel a legal fee in the amount of DKK 1,500,000 plus VAT (equivalent to approximately EUR 200,000 plus VAT) in addition to compensation for costs and expenses incurred in the amount of DKK 122,605.

B. Relevant domestic and international law

[…]

THE LAW

A. Complaints under Article 1 of Protocol No. 1 to the Convention and Article 8 of the Convention

The Court considers that the complaints under Article 8 of the Convention fall to be examined together with the complaints under Article 1 of Protocol No. 1, which provides 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 Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see, among other authorities, *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

Moreover, "deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of 'deprivation of a right'" (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74 ECHR 2005-...., and *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

In the present case, the applicants maintained that they had, on a continuing basis, been deprived of their homeland and hunting territories and denied the opportunity to use, peacefully enjoy, develop and control their land, in breach of Article 1 of Protocol No. 1 to the Convention.

Having regard to the above, however, the Court considers that the interferences in the present case consisted, firstly, in the substantial restriction of Inughuit access to hunting and fishing as a result of the establishment of the Thule Air Base in 1951 and, secondly, in the relocation of the population from their settlement in Uummannaq in May 1953; they were therefore instantaneous acts.

It should be reiterated in this connection that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party. As regards Denmark, the Convention entered into force on 3 September 1953 and Protocol No. 1 on 18 May 1954.

Accordingly, with regard to the above-mentioned interferences, the Court has no jurisdiction and the applicants' complaints relating to them are incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

The applicants' remaining complaints that do fall within the Court's competence and comply with the criteria set out in Article 35 § 1 relate to the proceedings before the High Court and the Supreme Court and their outcome.

In their judgments of 20 August 1999 and 28 November 2003, respectively, the High Court and the Supreme Court found that both the substantial restriction of access to hunting and fishing as a result of the establishment of the Thule Air Base in 1951 and the intervention in the Uummannaq settlement and the Thule colony in connection with the decision in 1953 to move the population were to be considered acts of expropriation carried out in the public interest, which at the relevant time were legal and valid. Moreover, for the very reason that, owing to the acts of expropriation, exercise of the right of peaceful enjoyment had been prevented or curtailed in the areas affected by those acts, the appellants' claims Nos. 1 and 2 could not be allowed.

The Court considers that that was not an arbitrary interpretation and reiterates in that connection that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 31, and *Glässner v. Germany* (dec.), no. 46362/99, ECHR 2001-VII).

It remains for the Court to consider whether the Supreme Court, having found that the interferences in 1951 and May 1953 amounted to acts of expropriation, struck a "fair balance" in its judgment between the general interest of the community and the need to protect the individual's fundamental rights.

Both the High Court and the Supreme Court found that the applicants' claims for compensation had not become time-barred and that owing to the Danish authorities' failure in the past to examine and specify the loss suffered, the burden of proof for the loss incurred had to be eased.

The courts took into account, on the one hand, the fact that the relocation of the population of Uummannaq had been decided and carried out in such a way and under such circumstances that it constituted a serious interference and unlawful conduct towards them.

On the other hand, it reiterated that in September 1953 substitute housing had been built for the families (in addition to facilities for a new village, including a school, a church, a hospital, administration buildings, a power station and road facilities), and that groceries and equipment had been handed out to them in the summer of 1953.

As regards the applicants' calculation of their claim for compensation, the Supreme Court stated, *inter alia*:

> "The calculations on which the Thule Tribe's claims are based cannot be accorded any weight. These calculations use factors that, to a large extent, may be deemed arbitrary, while discounting various matters that ought to have been included in the assessment. The calculations are not based on developments in the species being hunted. The primary claim in the amount of around DKK 235 million is based on the size of the confiscated land without clarifying the correlation between surface area and hunting potential. The calculation comprises a period of 45 years without taking into account the substantial reduction in the area of the base in 1986 and the general limitation of the indemnification period. These calculation factors relate to an annual compensation figure of DKK 200, the sum which was granted when the weather station in Thule was established in 1946 and whose basis remains unknown. The alternative claim in the amount of around DKK 136 million is mainly based on a presumed increase in costs owing to the longer distances required for hunting, without taking into account the fact that, according to the experts' report, it was not a general rule that the distances to the most significant hunting grounds increased. The adaptation of the species in question to the changed conditions has not been taken into consideration. The number of hunters included in the calculation – approximately half of the original plaintiffs – is not consistent with the number of hunters affected by the interventions."

Moreover, having heard evidence from the applicants and witnesses, and having assessed the extensive material submitted before it, consisting of numerous ethnographical, geographical, historical, political and autobiographical statements, books, minutes and reports, including the report produced by experts during the proceedings on the development of hunting in the Thule District, the Supreme Court agreed with the High Court as to the factors to be considered when assessing the amount of compensation to be granted.

Accordingly, the Thule Tribe was granted DKK 500,000 in compensation for its eviction and loss of hunting rights in the Thule District; in addition, those applicants who at the relevant time had been at least 18 years of age were granted DKK 25,000 in compensation for non-pecuniary damage and those who had been between 4 and 18 years old were granted DKK 15,000.

Furthermore, the Court recalls that some time after 1985 new houses were built in Qaanaaq instead of the original houses from the 1950s; that in 1986 the US and Denmark entered into an agreement reducing the area of the base to almost half its original size; and that the Danish Government and the Home Rule Government agreed to seek a solution concerning an improvement in the use of the military base for additional civilian traffic to create a civilian transit area funded by the Danish Government. Subsequently, in 1997 the latter agreed to donate DKK 47,000,000 toward the cost of a new airport in Thule.

Against this background, the Court finds that the national authorities did strike a fair balance between the proprietary interests of the persons

concerned and is satisfied that the present case does not disclose any appearance of a violation of Article 1 of Protocol No. 1. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

B. The remainder of the applicants' complaints

The Court has examined the applicants' complaints as they have been submitted. In the light of all the material in its possession, and in so far as the criteria set out in Article 35 § 1 have been complied with and the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President