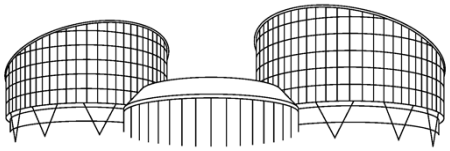

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DIGRYTĖ KLIBAVIČIENĖ v. LITHUANIA

(Application no. 34911/06)

JUDGMENT

STRASBOURG

21 October 2014

FINAL

21/01/2015

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

In the case of Digrytė Klibavičienė v. Lithuania,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 16 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 34911/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Virginija Digrytė Klibavičienė ("the applicant"), on 12 August 2006.

2. The applicant was initially represented by Mr K. Čilinskas, and subsequently by Mr V. Vasilionokas, both lawyers practising in Vilnius. The Lithuanian Government ("the Government") were initially represented by their former Agent, Ms E. Baltutytė, and subsequently by their Acting Agent, Ms K. Bubnytė.

3. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant alleged that the authorities had deprived her of a plot of land she had acquired several years earlier from the State in good faith. In so doing, they had breached her legitimate expectation to be able to continue to enjoy ownership rights to the land.

4. On 29 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Vilnius.

6. By an agreement of 18 July 2000 and an order of the Vilnius Region Administration of 21 June 2000 the applicant acquired from the State a plot of land measuring 0.2 ha for 59,776 Lithuanian litai (LTL; approximately 17,312 euros (EUR)) and registered it in the land registry in her name. According to the documents issued by the authorities, the plot was designated for residential use (*namų valda*). The applicant had previously, in 1999, acquired from a private person the remains of a burned-down house (registered in the real estate registry) which stood on that land, with the intention of renovating it.

7. In December 2002 after establishing that the sale was not in accordance with the law, a public prosecutor applied to the courts to have the sale contract and related legal acts of the authorities annulled in order to protect the public interest.

8. On 23 September 2003 the Vilnius 1st City District Court dismissed the claim. That decision was upheld by the Vilnius Regional Court on 18 December 2003. The courts rejected the arguments of the prosecutor that the applicant had not been entitled to buy the plot for residential use and that residential use of the land was no longer possible; however, on 26 April 2004 the Supreme Court remitted the case for re-examination.

9. On 10 February 2005 the Vilnius 1st City District Court dismissed the claim again.

10. On 17 June 2005 the Vilnius Regional Court overturned that decision and granted the claim; the applicant and her lawyer participated in the hearing. It was established that in 1999 to 2000 the State's plot had not been used as "residential land", and its sale had breached Government Resolution no. 260 of 9 March 1999 and the Law on Territorial Planning.

11. The transfer of title to the applicant was annulled and pursuant to Article 1.80 of the Civil Code the land was returned to the State while the applicant received back the money she had paid for it.

12. On 13 February 2006, by way of written proceedings, the Supreme Court dismissed a cassation appeal lodged by the applicant as unfounded.

13. According to the information submitted by the parties, in 2011 the disputed plot was assigned for restitution to a private individual, V.J. The applicant was still the owner of the remains of the house; however, its use or renovation was uncertain, given that she had no right to use the area of land on which the house stood.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. For relevant domestic law and practice see *Pyrantienė v. Lithuania* (no. 45092/07, §§ 16-22, 12 November 2013) and *Albergas and Arlauskas v. Lithuania* (no. 17978/05, 27 May 2014, §§ 21-33).

15. The relevant provisions of the Government's decree no. 260 of 9 March 1999 provided that Lithuanian citizens were entitled to purchase from the State plots of land used as residential land (paragraphs 2.1 and 6).

16. According to the Law on Territory Planning, as in force at the material time, all decisions delivered after adoption of an urban plan for a plot of land and in contradiction with that plan were invalid (Article 20 § 11).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

17. The applicant complained that the authorities had deprived of her property. In so doing, they had breached her legitimate expectation to be able to continue to enjoy ownership rights to it. She relied on Article 1 of Protocol No. 1, which 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."

A. Admissibility

18. The Government submitted that the applicant had failed to exhaust all effective domestic remedies by not initiating new separate proceedings under Article 6.271 of the Civil Code against the State for damages for the alleged violation of her property rights.

19. The applicant submitted that the remedy suggested by the Government was not effective at the time her application was lodged with the Court, and that there were no other remedies left to use.

20. The Court refers to its findings in *Pyrantienė* (cited above, § 27) and *Albergas and Arlauskas* (cited above, § 44), where it was not demonstrated that at the time the application was lodged with the Court, a claim under Article 6.271 of the Civil Code would have been an effective remedy and would have had any prospects of success (see, *mutatis mutandis*, *Beshiri and Others v. Albania*, no. 7352/03, § 55, 22 August 2006).

21. For the same reasons, the Court dismisses the Government's objection that the applicant had failed to exhaust domestic remedies.

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

B. Merits

1. The parties' submissions

23. The applicant submitted that she had acquired the property legally, on the basis of the order of the Vilnius Region Administration. She was not responsible for erroneous decisions taken by competent State authorities and their officers. Furthermore, declaring the land sale null and void had not been in the public interest.

24. The Government disputed this argument and submitted that the annulment of the sale and return of the purchase price to the applicant should be considered as a restoration of the *status quo*. She could not expect to have a house built on that plot, as it did not have the status of "residential land" and had not been used by the applicant for that purpose.

25. The applicant disagreed and submitted that several domestic courts up until June 2005 – when the Vilnius Regional Court overturned the decision of the lower court – had held that the land was "for residential use" and had been acquired lawfully by the applicant. She had paid land taxes and had had plans to build a new house on the remains of the old one. The acquisition of the land had been her long-term investment and its economic value was subject to change over time; a simple return of the purchase price could not therefore mitigate the negative impact on her.

26. The Government further submitted that the applicant had only started paying land taxes after the institution of the civil proceedings. In addition, they claimed that she had acquired the land without participating in a public auction and had paid an advantageous price. The Government acknowledged that a deprivation of property had taken place, but justified it by the need to protect the public interest.

2. The Court's assessment

(a) General principles

27. The relevant general principles are set out in *Pyrantienė* (§§ 37-40, cited above).

28. In the present case, it is not disputed that there has been a "deprivation of possessions" within the meaning of the second sentence of

Article 1 of Protocol No. 1. The Court must therefore ascertain whether the impugned deprivation was justified under that provision.

(b) Application of the above principles in the present case

(i) Lawfulness of the interference

29. The decision of the courts to annul the purchase contract was prescribed by law, as it was based on provisions of the Law on Territorial Planning, Article 1.80 of the Civil Code and Government Resolution no. 260 of 9 March 1999, and was in line with the case-law of the Supreme and Constitutional Courts. The Court therefore finds that the deprivation was in accordance with the law, as required by Article 1 of Protocol No. 1.

(ii) Legitimate aim

30. As in *Pyrantienė* and *Albergas and Arlauskas*, the measures complained of were designed to correct the authorities' mistakes and to defend the interests of former owners by restoring their ownership rights to plots of land *in natura*. The Court thus considers that the interference pursued a legitimate aim (see *Pyrantienė*, cited above, §§ 44-48, and *Bečvář and Bečvářová v. the Czech Republic*, no. 58358/00, § 67, 14 December 2004).

(iii) Proportionality

31. The Court reiterates that any interference with property must, in addition to being lawful and pursuing a legitimate aim, also satisfy the requirement of proportionality. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

32. The Court observes at the outset that the applicant did not argue that she had not received adequate compensation for the property she had been deprived of. The present complaint concerns the breach of her legitimate expectation that she would be able to continue to enjoy her ownership rights to the land, and the burden she had to bear for mistakes made by the authorities.

33. In examining the conformity of the interference with the Convention, the Court notes the particular importance of the principle of good governance. It requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as property rights, the public authorities must act in good time and in an

appropriate and above all consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 128, ECHR 2004-XII; and *Moskal v. Poland*, no. 10373/05, § 51, 15 September 2009). In particular, it is incumbent on the public authorities to put in place internal procedures which enhance the transparency and clarity of their operations, minimise the risk of mistakes (see, for example, *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010, and *Toşcuţă and Others v. Romania*, no. 36900/03, § 37, 25 November 2008) and foster legal certainty in civil transactions affecting property interests (see *Rysovskyy v. Ukraine,* no. 29979/04, § 70, 20 October 2011).

34. It should be reiterated that the risk of any mistake made by the State authority must be borne by the State itself and that the errors must not be remedied at the expense of the individuals concerned (see, among other authorities, *mutatis mutandis*, *Rysovskyy,* cited above, § 71; *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007; and *Trgo v. Croatia*, no. 35298/04, § 67, 11 June 2009).

35. The applicant's title was annulled after it was established that six years before, in 2000, the authorities had not been entitled to sell the State's plot of land because it did not meet the "residential use" (*naudojama namų valda*) requirement. The procedures for the sale of the land were conducted by official bodies exercising the authority of the State, and the sale contract signed by the applicant and the Vilnius Region Administration incorporated the standard conditions of sale. The Court considers that the applicant had very limited opportunity, if any, to influence the terms of the contract or the purchase price, as this was within the State's exclusive competence (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, § 79, 6 December 2011).

36. The sale contract of 18 July 2000 and the related acts of the authorities were legally binding, thus the applicant was entitled to assume that the legal acts on the basis of which she had acquired the property would not be retrospectively invalidated to her detriment (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 47, ECHR 2004-IX, and *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 51, Series A no. 222). Even assuming that the Government had proved that she had paid a preferential price for the land in question, for the Court this fact is immaterial in terms of her rights of ownership (see, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 121, 25 October 2012).

37. In view of the above considerations, the Court is satisfied that the applicant acquired the property in good faith. In the present case, by officially designating plot of land as being "for residential use" the State created a legitimate expectation that the applicant, as its *bona fide* owner, would be able to use it for that purpose (see *Pyrantienė*, cited above, § 59, and compare *Hamer v. Belgium*, no. 21861/03, § 76, ECHR 2007-V).

38. The Court further observes that after the mistake by the authorities was noticed, almost four years passed before the applicant's title was finally extinguished in 2006. In total, it took almost six years for the domestic authorities to correct their own mistake and return the situation to the status quo.

39. It appears that that situation has been further aggravated by the applicant's continued inability to obtain any rights to use the area of land on which the remains of the house stand (see paragraph 13 above).

40. In view of the foregoing, the Court accepts the applicant's argument and considers that the situation inevitably caused a certain inconvenience to her. Not only was the applicant unable to peacefully enjoy her property rights, but she was also forced to bear the uncertainty as to when that interference might be brought to an end (see *Broniowski v. Poland* [GC], no. 31443/96, § 151, ECHR 2004-V; and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal,* nos. 29813/96 and 30229/96, § 54, ECHR 2000-I). This is even more so given that the acquisition of the land was the applicant's long-term investment and that she had plans to build a new house on the remains of the old one. In rejecting the Government's argument that the applicant could not have reasonably expected to proceed with renovation of the house, the Court stresses that it was not until the case was remitted for re-examination and the judgment of 17 June 2005 was adopted that the unlawfulness of the sale of 18 July 2000 was determined by the domestic courts for the first time.

41. In that connection, the Court considers that the reimbursement of the price of the property to the applicant could only partially redress the violation of her rights.

42. The foregoing considerations are sufficient for the Court to conclude that the conditions under which the applicant had her title to the plot of land removed imposed an individual and excessive burden on her, and that the authorities failed to strike a fair balance between the demands of the public interest on the one hand and the applicant's right to the peaceful enjoyment of her possessions on the other.

43. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS

44. The applicant complained under Articles 14 and 17 that the Supreme Court had examined her appeal by way of written proceedings. As a result, she had been discriminated against and deprived of a public court hearing.

45. The Court considers it appropriate to examine this complaint under Article 6 of the Convention.

46. The Court has held on a number of occasions that, provided that there has been a public hearing at first instance, the absence of public

hearings at second or third instance may be justified by the special features of the proceedings at issue. Thus, proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even where the appellant was not given an opportunity to be heard in person by the appellate or cassation courts (see, for example, *Sutter v. Switzerland*, 22 February 1984, § 30, Series A no. 74, p. 13, and *Bulut v. Austria*, 22 February 1996, § 41, *Reports of Judgments and Decisions* 1996-II, p. 358). In the present case the applicant did take part in the proceedings before the first instance court and the appellate court whereas the proceedings before the Supreme Court involved only questions of law (see *Dachnevič v. Lithuania*, no. 41338/06, § 32, 20 November 2012). In the view of the foregoing, the Court considers that this complaint must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

47. The applicant further complained under Article 6 § 1 of the Convention about the fairness of the proceedings, alleging that the domestic courts had erred in their assessment of the evidence and application of the law.

48. The Court reiterates that it is not a court of appeal for the decisions of domestic courts and that, as a general rule, it is for those courts to interpret domestic law and assess the evidence before them (see *Kern v. Austria*, no. 14206/02, § 61, 24 February 2005, and *Wittek v. Germany*, no. 37290/97, § 49, ECHR 2000-X). On the basis of the material in its possession, the Court observes that the complaint at hand is essentially of a "fourth instance" nature. As a result, this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed non-pecuniary damage in view of the violation of her property rights. She did not specify the amount and left this question to be decided by the Court.

51. In the absence of any indication as to the precise amount of non-pecuniary damage claimed by the applicant, the Government did not

comment on the alleged damage and held that the claim should be dismissed.

52. The applicant did not submit any claim in respect of pecuniary damage. The Court therefore makes no award under this head.

53. The Court considers that the applicant suffered frustration and uncertainty, resulting from the annulment of her title to the plot of land because of a mistake made by the authorities. Making its assessment on an equitable basis, the Court awards the applicant 3,000 euros in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicant also claimed reimbursement of the costs and expenses incurred by her without, however, specifying the amounts, thus leaving this question to be decided by the Court.

55. The Government did not comment on that issue and suggested that the claim be dismissed as unsubstantiated.

56. 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 are reasonable as to quantum. In the absence of specification of any amounts paid by the applicant and supporting documents thereof, the Court rejects the claim for costs and expenses.

C. Default interest

57. The Court considers it appropriate that the default interest rate 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

1. *Declares*, unanimously, the complaint under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*, by six votes to one,
   (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 3,000 (three thousand euros), to

be converted into Lithuanian litai at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(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*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kjølbro is annexed to this judgment.

G.R.A.
S.H.N.

DISSENTING OPINION OF JUDGE KJØLBRO

1. I agree with my colleagues that there has been a deprivation of property (see paragraph 28 of the judgment), that the interference was prescribed by law (see paragraph 29), and that it was designated to correct a mistake made by the authorities and thus pursued a legitimate aim (see paragraph 30). But I respectfully disagree with my colleagues that the interference did not comply with the requirement of proportionality (see paragraphs 35-43). For that reason, I voted against finding a violation of Article 1 of Protocol No. 1.

2. As recognised by the majority, Article 1 of Protocol No. 1 does not, in general, preclude the authorities from correcting mistakes made by them, even when correction of the mistake will interfere with a person's property rights.

3. Thus, the fact that the applicant acted in good faith when she acquired the plot of land from the authorities and had a legitimate expectation that she would be able to retain and make use of the property in question does not, in itself, preclude correction of a mistake.

4. The applicant acquired the plot of land in 2000, and under domestic legislation it was a condition of sale that the plot of land be designated for residential use. In 2002, that is, a year and half after the acquisition, the authorities discovered that a mistake had been made, thus rendering the transfer unlawful, as the plot of land had not be used as residential land. Since the applicant disputed the authorities' assessment, court proceedings had to be instituted in order to have the transfer annulled. The court proceedings, at three levels, ended in 2006, that is, after a little more than three years. The transfer was annulled, the plot of land was returned to the State, and the applicant received back the sum she had paid for the land.

5. The fact that a mistake was made, discovered and corrected by the authorities cannot, as stated above, in itself constitute a violation of Article 1 of Protocol No. 1.

6. Nor can the length of the court proceedings, which lasted only around three years, justify the finding of a violation of Article 1 of Protocol No. 1.

7. Equally, the fact that the applicant did not receive any compensation for pecuniary or non-pecuniary damage cannot justify finding a violation. Indeed, the applicant never claimed compensation for damages, either in the annulment proceedings or in separate civil proceedings. The applicant wished, first and foremost, to retain the plot of land that had been unlawfully transferred to her. Thus, the lack of payment of compensation for damages cannot, in the specific circumstances of the case, justify finding a violation of Article 1 of Protocol No. 1.

8. Furthermore, the application is, in my view, distinguishable from *Pyrantienė v. Lithuania*, no. 45092/07, 12 November 2013; *Albergas and Arlauskas v. Lithuania*, no. 17978/05, 27 May 2014; and *Paplauskiene*

v. Lithuania, no. 31102/06, 14 October 2014 (not final), in which the Court did find a violation of Article 1 of Protocol No. 1. These cases differ from the present case on account of the excessive length of the periods in question and the lack of or insufficient compensation for damages resulting from the authorities' mistakes.

9. Therefore, in my view, the reasons given by the majority are not convincing, and the judgment will, in practice, make it very difficult for authorities to correct mistakes without violating Article 1 of Protocol No. 1, even if they react promptly and without unnecessary delays.