



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

FOURTH SECTION

CASE OF GRIGOLOVIČ v. LITHUANIA

(Application no. 54882/10)

JUDGMENT
(Just satisfaction)

STRASBOURG

15 January 2019

FINAL

15/04/2019

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

In the case of Grigolovič v. Lithuania,

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

Ganna Yudkivska, *President*,

Faris Vehabović,

Egidijus Kūris,

Carlo Ranzoni,

Georges Ravarani,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 11 December 2018,

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

PROCEDURE

1. The case originated in an application (no. 54882/10) 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, Mr Fabijan Grigolovič (“the applicant”), on 14 September 2010.

2. In a judgment delivered on 10 October 2017 (“the principal judgment”), the Court held that there had been a breach of Article 1 of Protocol No. 1 to the Convention on account of the failure of the authorities to restore the applicant’s property rights to the remaining plot of land of 9.3905 hectares (*Grigolovič v. Lithuania*, no. 54882/10, §§ 40-49, 10 October 2017).

3. Under Article 41 of the Convention the applicant sought compensation of 585,072 euros (EUR) in respect of pecuniary damage, representing the market value of the property that had not been returned to him, and EUR 16,000 in respect of non-pecuniary damage.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within six months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 56 and point 3 of the operative provisions).

5. The applicant and the Government each filed observations.

THE LAW

6. 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

1. *The parties' submissions*

7. The applicant claimed EUR 585,072 in respect of pecuniary damage, representing the market value of the three plots of land that were transferred to third parties and that were in the place where the applicant's father had previously had his land. In support of his claim, the applicant submitted a document prepared by the Vilnius branch of the State Enterprise Centre of Registers in 2018. The report estimated the market value of the three plots of land in question.

8. The applicant claimed EUR 16,000 in respect of non-pecuniary damage. He considered that an award of EUR 1,000 for each year his property rights had not been restored would be just.

9. The Government contested the applicant's claim for pecuniary damage as excessive and unsubstantiated. They argued that in the context of restoration of property which had been nationalised by the Soviet regime, the State should not be obliged to compensate for the full market value of that property. The Government submitted that the domestic law provided for partial reparation of nationalised property. They also submitted that the applicant was 1,650th in line to receive 0.12 hectares of land for individual construction. In addition, the Government claimed that it would not be possible to provide the applicant with a plot of land of equivalent value in Vilnius because there was not enough land. They considered that monetary compensation would be the best way to restore the remainder of the applicant's property rights. As the applicant was on the list to receive 0.12 hectares of land for individual construction, the remaining part to be restored would be 9.2705 hectares, and its value was EUR 26,085.84.

10. As regards compensation in respect of non-pecuniary damage, the Government considered the amount indicated by the applicant excessive. They submitted that an amount of EUR 4,000 would be just and that, in any event, the award should not exceed EUR 8,000.

2. *The Court's assessment*

11. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the

breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I, and *Nekvedavičius v. Lithuania* (just satisfaction), no. 1471/05, § 14, 17 November 2015).

12. Furthermore, if the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement this. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 80, ECHR 2014).

13. The Court reiterates that in the principal judgment it held that the domestic authorities had not acted in line with the principle of good governance to ensure that the applicant's property rights were protected. Moreover, the applicant's legitimate expectation to have his property rights restored to the remaining plot of land was unjustifiably affected by failure of the authorities to act. As a result, the balance which had to be struck between the general interest and the applicant's personal interest was upset, and he has had to bear an individual and excessive burden (see paragraph 48 of the principal judgment).

14. The Court notes that Article 1 of Protocol No. 1 to the Convention does not impose any restrictions on the Contracting States' freedom to determine the scope of property restitution or to choose the conditions under which they agree to restore title to property which was transferred to them before they ratified the Convention (see *Nekvedavičius* (just satisfaction), cited above, § 19 and the references therein). While Article 1 of Protocol No. 1 requires that the amount of compensation granted for property taken by the State be "reasonably related" to its value, the same rule does not apply to situations in which the compensatory entitlement arises not from any previous taking of individual property by the respondent State, but is designed to mitigate the effects of a taking or loss of property not attributable to that State – in such situations, the State is entitled to reduce, even substantially, the levels of compensation provided for by law (*ibid.*).

15. In this context the Court cannot accept the applicant's claim that he should be compensated for the full market value of the property, since no such right is guaranteed under domestic law (for the relevant domestic practice concerning calculation of compensation for property, see *Britaniškina v. Lithuania*, no. 67412/14, § 35, 9 January 2018).

16. The Court notes that the value of the land was not determined by the domestic courts, and that it had to be assessed in accordance with the applicable legislation, notably the Instruction on the Valuation of Land, adopted by the Government on 24 February 1999 (and subsequently amended several times). Relying on that Instruction, the Government

provided a document in which the indexed value (*indeksuota vertė*) of the plot of land to be restored to the applicant was set at EUR 26,085.84.

17. The Court takes note of the Government's claim that the applicant is entitled to receive a plot of land for individual construction in Vilnius (see paragraph 9 above) and confirms that any compensation received by the applicant would be taken into account for the purposes of calculating pecuniary damage under Article 41 of the Convention (see *Gladysheva v. Russia*, no. 7097/10, § 104, 6 December 2011). However, it appears that the applicant has still not been provided with a plot of land for individual construction. The Court will accordingly assume that as matters stand the applicant has not received any compensation. If any related claims subsequently come before the domestic authorities, the latter will be entitled to take into account the award made by this Court in this judgment (see *Beinarovič and Others v. Lithuania*, nos. 170520/10 and 2 others, § 142, 12 June 2018 and the references therein).

18. The Court reiterates that it has already accepted that the principle of partial restitution to rectify old wrongs conformed to the Convention, and that, consequently, the amount of compensation for long-extinguished property rights could be assessed in accordance with calculation methods established in the relevant legislation rather than with the full market value of such property (*ibid.*).

19. In these circumstances, the Court considers reasonable to award the applicant EUR 26,100 in respect of pecuniary damage.

20. The Court also holds that the applicant must have sustained non-pecuniary damage as a result of the protracted, unresolved situation regarding his property. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,500 in respect of non-pecuniary damage.

B. Costs and expenses

21. The applicant did not submit any claim in respect of costs and expenses. The Court therefore makes no award under this head.

C. Default interest

22. 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, UNANIMOUSLY,

1. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts:

(i) EUR 26,100 (twenty six thousand one hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 6,500 (six thousand five hundred euros), 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariálana Tsirli
Registrar

Ganna Yudkivska
President