



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

SECOND SECTION

**CASE OF ŠEIKO v. LITHUANIA**

*(Application no. 82968/17)*

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Recovery of damages arising from crime committed by applicant by deducting twenty per cent of her old-age pension on a monthly basis • Legitimate aim of protecting interests of victims of crime • Applicant not left devoid of all means of subsistence

STRASBOURG

11 February 2020

**FINAL**

**12/10/2020**

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



**In the case of Šeiko v. Lithuania,**

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

Robert Spano, *President*,

Marko Bošnjak,

Egidijus Kūris,

Ivana Jelić,

Arnfinn Bårdsen,

Saadet Yüksel,

Peeter Roosma, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to:

the application 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 Galina Šeiko (“the applicant”), on 5 December 2017;

the decision to give notice of the application to the Lithuanian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 21 January 2020,

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

## INTRODUCTION

The case concerns the recovery of damages from the applicant’s old age pension, which she sees as unlawful and causing her insurmountable hardship.

## THE FACTS

1. The applicant was born in 1950 and lives in Kretinga. She was granted legal aid and was represented by Ms L. Gudaitė, a lawyer practising in Vilnius.

2. The Government were represented by their Agent, Ms L. Urbaitė.

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

4. By a judgment of 31 December 2014, the Kretinga Region District Court convicted the applicant, who was an old-age pensioner, under Article 138 §§ 2 (5) and 5 and Article 145 § 2 of the Criminal Code, of minor psychological injury to and terrorising (*žmogaus terorizavimas*) a neighbouring family who lived in the apartment above. It was established that, over a period of one year and one month, on dozens of occasions the applicant had wrongfully informed on her neighbours’ family to the police and to the municipal and child care authorities, which had caused one of

those neighbours to suffer fear and post-traumatic stress disorder, which had eventually developed into medium-severity and then severe depression. Another member of that neighbouring family – a minor – also suffered from post-traumatic stress disorder as a consequence of the applicant's actions. The applicant was sentenced to two years and six months of imprisonment, with the execution of the sentence being suspended for two years. She was also ordered not to approach the victims. The court also partly granted a civil claim lodged by one of the victims in the criminal proceedings for compensation for pecuniary and non-pecuniary damage, awarding an amount of 5,908 euros (EUR). Appeals lodged against that decision by the applicant were dismissed by the appellate court in 2015 and by the cassation court in 2016.

5. Afterwards, on 24 November 2016, the Kretinga Region District Court issued a writ of execution. The applicant was encouraged by the bailiff to pay the amount owed in compensation. As the compensation was not paid within the prescribed time, the bailiff seized the applicant's property, namely a plot of land of 0.06 hectares.

6. On 22 December 2016 the bailiff also sent a letter regarding the recovery of the debt to the Kretinga division of the State Social Care Insurance (SODRA), seeking to recover the sums owed by the applicant by means of seizing twenty per cent of her monthly old-age pension.

7. As confirmed by the applicant, between 20 January 2017 and 13 March 2019, a total of EUR 2,019 was recovered from her. Of that amount, during that period, the monthly sums deducted from the applicant's old-age pension varied from EUR 20.24 to EUR 24.64.

8. As noted by the Government in their observations of 11 April 2019, and confirmed by the applicant in her observations in reply of 24 May 2019, at the time of those observations, the applicant was in receipt of a monthly old-age pension of EUR 123.21.

In addition to that, as of 2019 the applicant has also been receiving a monthly allowance of EUR 60.47, from which the debt has not been recovered.

9. The applicant also confirmed that as of 1993 she had been provided with municipal housing by the municipal authorities of the Kretinga region. As of December 2016 the applicant had to pay EUR 11.02 for that housing each month.

10. The parties also agreed that, in addition to her old-age pension, the applicant also received other monetary income from social assistance: a monthly social welfare allowance (*socialinė pašalpa*) of EUR 5, which was paid between January 2018 and March 2019, and a monthly social security pension (*šalpos pensija*) of EUR 2.59, which was paid in December 2016 and between January 2018 and March 2019. In addition to that, in January 2018 she received a one-time lump sum of EUR 76, and in January 2019 she received another one-time lump sum of EUR 114.

In 2017 the difference between the amount of the applicant's actual income and the level of State-supported income was not sufficiently significant, thus the above-mentioned social benefits were not paid.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### A. The Code of Civil Procedure

11. As concerns the execution of court decisions, the Code of Civil Procedure, in so far as relevant, reads as follows:

#### **Article 663. Restrictions on recovering a debt from the property of a physical person**

"1. A sum of money may not be recovered by seizing a debtor's property if the debtor can provide the bailiff with proof that the debt can be cleared within six months by making deductions in line with the percentages laid down in Article 736 of the Code, from the debtor's salary, pension, scholarship or other income. In such circumstances, the bailiff may seize the debtor's property ... [only] if it appears that the deductions from the debtor's salary, pension, scholarship or other income would not be sufficient to execute the court decision.

2. Periodical payments (*periodinės išmokos*) can also be directly recovered from the debtor's salary, pension, scholarship or other income, if they can be recovered by making the deductions referred to in Article 736 of this Code. ..."

#### **Article 643. Rights of a debtor**

"A debtor shall be entitled:

1) to be personally involved, or involved through his representatives, in the steps taken for execution;

...

4) to dispute the ownership of property or its valuation;

5) to appeal against the actions of a bailiff;

6) to submit requests ... ;

7) to conclude out-of-court settlements; ..."

#### **Article 668. Property which may not be seized for debt recovery**

"1. When recovering a debt from a natural person, no recovery steps can be taken against ... property which is indispensable for the debtor's or his or her family's subsistence ... In addition, no recovery steps can be taken against an amount of money that does not exceed the minimum monthly salary ..."

#### **Article 736. Size of deductions to be taken from debtor's salary or other income**

"1. Deductions of a part of a debtor's salary, or analogous payments and allowances, which do not exceed the minimum monthly salary as fixed by the Government, shall be made under the writ of execution until the recoverable amounts are recovered in full:

1) in relation to recovering periodical maintenance payments, compensation for damage to health ... as well as for compensation for damage caused by criminal acts – up to fifty per cent, unless otherwise indicated in the writ of execution or established by law or a court;

2) in relation to all other recoveries – up to twenty per cent, unless otherwise indicated in the writ of execution or established by law or a court.

...

2. Seventy per cent can be deducted from the part of the salary, or analogous benefits, exceeding the minimum monthly salary as set by the Government, unless otherwise established by law or a court. ...”

**Article 736. Size of deductions to be taken from debtor’s salary or other income (as in force from 1 December 2018)**

“1. Deductions of a part of a debtor’s salary, or analogous payments and allowances, which do not exceed the minimum monthly salary as fixed by the Government, shall be made under the writ of execution until the recoverable amounts are recovered in full:

1) in relation to recovering periodical maintenance payments, compensation for damage to health ... up to thirty per cent, unless otherwise indicated in the writ of execution or established by law or court;

2) in relation to all other recoveries – up to twenty per cent, unless otherwise indicated in the writ of execution or established by law or court. ...”

**Article 737. Recovery from the debtor’s other income, analogous to a salary**

“The rules relating to recovery from a salary shall also apply when recovery is made from the debtor’s:

...

7) pensions.”

**Article 739. Sums of money which are not subject to recovery**

“It is not permitted to recover a debt from sums paid to the debtor as:

...

6) under the Law on State Social Allowances and other allowances and compensation paid from State or municipal budgets for the social care of indigent persons.”

**B. The Supreme Court’s case-law**

12. On 19 December 2017 the enlarged chamber of the Supreme Court in case no. 3K-7-315-421/2017 examined the situation concerning the recovery of money from a prisoner’s account, which had originally been transferred into that account by other persons (such as the prisoner’s family members, although the Supreme Court did not specify). The Supreme Court firstly noted that the restriction set out in Article 668 § 1 of the Code of

Civil Procedure aimed to safeguard the interests of the debtor so that, when the recovery process was started, the debtor would have a sufficient sum at his disposal to satisfy his basic needs and the minimum amount required for subsistence. That restriction also aimed to balance the interests of the creditor and the debtor, in order to ensure that the debtor's rights were not breached.

That being so, such a restriction requiring the recovery of sums exceeding the value of one minimum monthly salary was a "one-time restriction" (*vienkartinis apribojimas*). The Supreme Court also held that the law did not provide for any exceptions which would mean that recovery from the accounts of persons serving a prison sentence would be performed any differently from recovery from those persons who were not in prison. The fact that the debtor in that case – a prisoner – had been provided with clothing and food in prison, was irrelevant.

13. On 28 February 2018 the Supreme Court, in case no. 3K-3-74-313/2018, again examined the situation concerning the recovery of money from a prisoner's account. The Supreme Court pointed out that a prisoner's right to obtain money transfers and to have cash brought into the correctional institution had been established in Article 98 of the Code for the Execution of Sentences. Such money would then be placed in the prisoner's account at the correctional institution and was his property, which the prisoner could then use to satisfy his basic needs. Neither the Code for the Execution of Sentences nor the Code of Civil Procedure or other laws prohibited debt recovery from such money.

14. The Supreme Court then reiterated that, under Article 668 § 1 of the Code of the Civil Procedure, debts could not be recovered from a sum of money that did not exceed one minimum monthly salary. However, that was a "one-time restriction". If, after the recovery process had been initiated, the bailiff established that the debt to be recovered was larger than the sums recovered on the first attempt, the bailiff could then take recovery steps against the debtor's salary or any other income which the debtor would receive in the future. In relation to that future income, money transferred into a prisoner's account by other persons fell into the category of "other income" under Article 736 of the Code of Civil Procedure, which could then be the object of recovery under the rules set out in that Article (the Supreme Court referred to its earlier ruling of 19 December 2017, cited above).

## THE LAW

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

15. The applicant complained, under Article 3 of the Convention, that the recovery of damages from her old-age pension, by deducting one-fifth of it, was unlawful and had caused her insurmountable hardship.

16. The Court decides to examine the applicant's complaint under Article 1 of Protocol No. 1 to the Convention, 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. The submissions by the parties

##### 1. The applicant

17. The applicant firstly contended that, having regard to the purpose of the restriction on the applicant's income, her complaint fell to be assessed from the perspective of the third rule of Article 1 of Protocol No. 1 – the control of the use of property (she referred to *Phillips v. the United Kingdom*, no. 41087/98, § 51, ECHR 2001-VII). The applicant also admitted that in that area the State enjoyed a wide margin of appreciation, especially in the absence of a consensus among the Member States as concerns the income or level of income from which there can be no recovery of damages. That being so, she also pleaded that, even in the absence of such a consensus, recovery of a debt could not be taken from the minimum funds required for the applicant's survival, which in this particular case were equal to the minimum monthly salary, as stated in Article 668 § 1 of the Code of Civil Procedure (see paragraph 11 above). The applicant viewed the minimum monthly salary as an indispensable amount for buying food and basic items and, as such, she argued that it could not be the object of recovery.

18. The applicant asserted that recovery by attachment of her old-age pension had been against the law. She referred to Article 668 § 1 of the Code of Civil Procedure, which prohibited recovery from a natural person where the amount possessed by the debtor did not exceed the minimum monthly salary, which at the relevant time was EUR 380, whereas her old-age pension was equal to EUR 123 and thus was more than three times

lower. In that regard the applicant disagreed with the Government's interpretation of that legal provision (see paragraph 23 below). Namely, the applicant insisted that the aforementioned legal provision imposed a permanent restriction on any recovery being made at any given time from a balance of money, both in cash and funds kept in bank accounts, which did not exceed the minimum monthly salary. This meant that each time, that is every month, before commencing the execution procedure, the bailiff had to estimate the amount of all the assets possessed by the debtor at that particular moment of recovery, and only take steps for recovery against such funds as exceeded the minimum monthly salary at that particular point in time.

19. The applicant admitted that the purpose of the seizure of her income was related to the execution of a court judgment under which she had been found liable for having caused pecuniary and non-pecuniary damage. However, in that regard the applicant believed that the State had subjected her to starvation and humiliation by depriving her of the minimum means necessary to survive, which could not be justified by the State's intention to deter persons from illegal activities. Deterrence could be achieved by employing humane methods. Thus, the measures taken to ensure the implementation of a court order requiring the payment of compensation for damage could not be considered as aiming to protect the individual interests of the victim, or the broader general interests of society.

20. Lastly, the applicant considered that the burden imposed on her had been disproportionate. The applicant admitted, at the outset, that in addition to her old-age pension, over the relevant period of time she had also been in regular receipt of "symbolic monetary social assistance" in the form of a social welfare allowance, subsidies for heating and water costs, and the occasional one-time allowances. Nevertheless, she considered that recovery could not be made from assets or funds below the minimum level, such as her old-age pension which, on a monthly basis, did not exceed the minimum monthly salary, because those funds were still vital for the applicant's survival on the same monthly basis. Moreover, the possibility of recovering the debt from income that was lower than the minimum monthly salary could not be justified by the fact that the State provided other social assistance to persons in need in various forms – such as housing, various allowances, social benefits and maintenance. The applicant considered that all such social assistance was directed at ensuring the recipient's basic survival, and could not be viewed as being granted to a person in order to cover any additional burden imposed by the recovery of debt. This would also be applicable to other benefits, such as transport costs or compensation for medication costs, guaranteed in the form of discounts or exemptions which could be enjoyed by people who had reached retirement age. In other words, the purpose of the entire social welfare package awarded to the

applicant under the given circumstances was to ensure the person's survival, and it could not be employed as a source to recover debts.

21. Lastly, regardless of whether the applicant's liability for the debt originated from her criminal acts, that could not be a valid justification for subjecting her to starvation and inhuman treatment. A reduction of either twenty or fifty per cent in her monthly income from her old-age pension was an unbearable burden for her. Moreover, although the bailiff had not yet announced a public auction with regard to the plot of land that had been seized, the applicant considered that, by subjecting her to starvation, the State was forcing her to sell that plot for a symbolic fee.

## *2. The Government*

22. The Government agreed that the applicant's complaint fell under Article 1 of Protocol No. 1 to the Convention, but did not consider it necessary to establish which specific rule of that Article – whether control of the use of property or deprivation of property – should be applied in this case (they also referred to *Phillips*, cited above).

23. The Government did not contest that the seizure of part of the applicant's income in order to ensure the execution of the court order amounted to an interference with the applicant's possessions. However, that interference had been lawful: the applicant's liability for the debt had originated in her conviction whereby she had been obliged to pay compensation for damage that she had inflicted. Part – namely twenty per cent – of the applicant's old age pension had effectively been seized by the bailiff in accordance with the provisions of the Code of Civil Procedure. In that context the Government wished to explain to the Court that the restriction on the amount to be recovered, as referred to by the applicant, was only a one-time restriction. That had been confirmed by the Supreme Court's practice. Accordingly, the recovery from the applicant's old-age pension had been lawful and within permissible limits.

24. Furthermore, the purpose of the seizure of part of the applicant's income was linked to the execution of the court's judgment whereby the applicant had been found to have committed a crime and to have inflicted pecuniary and non-pecuniary damage. Hence, the seizure aimed to secure protection and redress for the victims of a crime, which fell within the broader general interest of society.

25. The Government argued that the domestic legal system had properly balanced the interests of both creditors and debtors. It was worth pointing out that, although at the relevant time the law had provided that up to fifty per cent of a pension could be used for the recovery of debt, in the applicant's case only the minimum proportion of twenty per cent had been deducted from her pension for the purposes of recovery. Furthermore, the possibility of recovering debts from income which was lower than the minimum salary could be supported by the fact that the State provided

social assistance to persons in need in a variety of forms – such as granting them social housing or various allowances and social benefits. That had been precisely the applicant's situation. In addition, the bailiff had not announced a public auction with regard to the plot of land that had been seized from the applicant, and she thus had had an opportunity to organise the sale of that land on her own terms. In their observations of 11 April 2019 the Government noted that the plot of land in question had not yet been sold at public auction (*varžytinės*). Lastly, the Government indicated that the applicant had had the opportunity to agree an acceptable payment plan with her creditors.

26. As a result, the burden imposed by the steps taken to recover the debt had not been excessive.

## **B. The Court's assessment**

### *1. Admissibility*

27. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### *2. Merits*

28. The Court observes that the “possession” which forms the object of this complaint is the sum of money, namely between EUR 20.24 and EUR 24.64, which was deducted from the applicant's old-age pension on a monthly basis (see paragraph 7 above). It considers that the deduction amounted to an interference with the applicant's right to the peaceful enjoyment of her possessions and that Article 1 of Protocol No. 1 is therefore applicable (see *Phillips*, cited above, § 50). Indeed, the parties did not argue to the contrary.

29. The Court will examine the case in the light of the general principle laid down in the first rule of Article 1 of Protocol No. 1 (see *Lekić v. Slovenia* [GC], no. 36480/07, § 93, 11 December 2018). It reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only “subject to the conditions provided for by law” and the second paragraph recognises that States have the right to control the use of property by enforcing “laws”. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (*ibid.*, § 94). Furthermore, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate general interest (*ibid.*, § 105). Finally, there must exist a reasonable relationship of

proportionality between the means employed and the aim sought to be realised (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 293, 28 June 2018). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Fábián v. Hungary* [GC], no. 78117/13, § 29, 5 September 2017, with further references).

30. Although the applicant insisted that the deduction from her old-age pension had been against the law, the Court cannot subscribe to this view. It refers to the consistent practice of the Supreme Court, which was also relied on by the Government, to the effect that whilst Article 668 § 1 of the Code of Civil Procedure restricts the recovery of debt from such part of a person's income that falls below the minimum monthly salary, this is a one-time restriction (see paragraphs 12 and 14 above). On the facts of this case, the Court observes that whilst the writ of execution was issued by the court on 24 November 2016 and the bailiff submitted it to the SODRA and served it on the applicant on 22 December 2016, the first deduction from the applicant's old-age pension, according to the information furnished to the Court by the parties, did not take place until 20 January 2017 (see paragraphs 5 and 6 above). Furthermore, that and subsequent deductions were also in compliance with Article 736 of the Code of Civil Procedure, which stipulated that in the case of compensation for damage to health, as was the situation in the applicant's case, between twenty and fifty per cent of a pension could be deducted (see paragraph 11 above). That being so, the Court finds that the interference with the applicant's rights under Article 1 of Protocol No. 1 to the Convention was in accordance with the law.

31. Secondly, the Court sees no reason to disagree with the Government's suggestion that the interference had a legitimate aim of protecting the interests of the victims of the crime. Indeed, a similar statement has been made by the Supreme Court in another case, which, somewhat similarly to the facts of the instant case, concerned the recovery of money, albeit from a prisoner's account (see paragraph 12 above).

32. The Court lastly turns to the proportionality of the interference. At the outset, and by a way of general observation, the Court refers to its earlier case-law to the effect that, in principle, it cannot substitute itself for the national authorities in assessing or reviewing the level of financial benefits available under a social assistance scheme (see *Larioshina v. Russia* ((dec.)), no. 56869/00, 23 April 2002). Although the applicant's situation differs from that examined in that case, as in the instant case the applicant complained that her hardship had been aggravated by the fact that twenty per cent of her already low pension was being deducted by the State, the Court does not overlook the fact that, unlike in the case of *Larioshina*, the present applicant brought this situation on herself by "terrorising" her neighbours and causing them psychological injury (see paragraph 4 above). Moreover, the case at hand does not concern either the permanent, complete

loss of the applicant's pension entitlement or the reduction thereof but rather deduction of part of her monthly pension payment until she repays her debt (see *Fábián*, cited above, §§ 74 and 76).

33. On the facts of the present application, the Court notes that the applicant's total income over the period in question was not high (see paragraph 8 above). However, the applicant has failed to substantiate her allegation that the lack of funds translated itself into actual suffering (see, *mutatis mutandis*, *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009). Furthermore, the Court cannot but note that, besides her old-age pension, the applicant was in receipt of a number of other social allowances, including for housing (as of 1993), for water, and, at least on occasion, for food (see paragraphs 9 and 10 above). It has not been alleged that there were any delays in the payment of those benefits or that there had been any other interference with the applicant's "possessions" in this respect, within the meaning of Article 1 of Protocol No. 1 (see *Larioshina*, cited above). Likewise, as of 2019 the applicant has been receiving a monthly allowance of EUR 60.47, which is almost three times more than the sum being deducted from her old-age pension (see paragraph 8 above). That being so, the Court cannot find that the deduction from the applicant's pension left her devoid of all means of subsistence (see *Fábián*, cited above, § 78). In this context the Court also notes that by March 2019 more than one third of the debt had already been repaid.

34. Lastly, the Court observes that the applicant is the owner of a plot of land which, although it has been seized by the bailiff, has not yet been sold (see paragraphs 5 and 25 above). Without it being necessary for the Court to speculate as to the likely value of that plot, the Court considers that the applicant, if she was indeed suffering an unsurmountable hardship due to the deductions being made from her old-age pension, retained the right to sell that plot in order to clear her debt to the victims of her crime. However, the applicant did not take any such steps in order to alleviate her financial situation (see also, *mutatis mutandis*, *Fábián*, cited above, §§ 76 and 77).

35. In the light of the foregoing, the Court is unable to find that the debt recovery steps taken in respect of her old-age pension, which arose as a result of the crime committed by the applicant, imposed an excessive burden on the applicant and accordingly upset the balance that must be struck between the protection of the right of property and the requirements of the general interest.

36. There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 11 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Robert Spano  
President