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

SECOND SECTION

CASE OF ŠALTINYTĖ v. LITHUANIA

(Application no. 32934/19)

JUDGMENT

Art 14 (+ Art 1 P1) • Discrimination • Peaceful enjoyment of possessions • Upper age limit (35 years) for eligibility for "young families" housing subsidy based on objective data and justified • Applicant mother in a relevantly similar situation to younger eligible single mothers • Authorities' legitimate concerns about population decline due to emigration and low-birth rate among young people • Absence of European consensus • Applicable legal regulation subject to revision to adequately reflect country's actual demographic situation • Wide margin of appreciation in the field of economic and social strategy not overstepped Art 6 § 1 (civil) • Fair hearing • Supreme Administrative Court's decision dismissing applicant's referral request to Constitutional Court sufficiently reasoned

STRASBOURG

26 October 2021

FINAL

26/01/2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Šaltinytė v. Lithuania,

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Aleš Pejchal,
Egidijus Kūris,
Pauliine Koskelo,
Marko Bošnjak,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 32934/19) 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 Loreta Šaltinytė ("the applicant"), on 7 June 2019;

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

the parties' observations;

Having deliberated in private on 5 October 2021,

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

INTRODUCTION

1. The case concerns alleged discrimination on the grounds of age when granting housing assistance and the reasoning provided by the domestic courts for refusing to refer the matter to the Constitutional Court.

THE FACTS

2. The applicant was born in 1979 and lives in Vilnius. She was represented by Mr L. Biekša, a lawyer practising in Vilnius.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

4. The applicant is a single mother of a daughter born in 2012. In 2016 she applied for a housing subsidy available to "young families" of low income when buying their first home (see paragraph 24 below). The municipal authorities refused to grant her the subsidy on the grounds that the Law on Assistance for Home Acquisition or Rent (hereinafter "the Housing Assistance Act") defined "young families" as those in which both spouses, or the single parent, were not older than thirty-five years (see paragraph 25 below), whereas the applicant, at the time of the lodging of her application for the subsidy, had been thirty-seven years old.

5. The applicant and her daughter lodged a complaint with the administrative courts. They argued that the refusal to grant the applicant the housing subsidy had been based solely on the grounds of her age and had therefore amounted to direct discrimination. They submitted that discrimination on the grounds of age was prohibited by the Constitution and the Charter of Fundamental Rights of the European Union, and thus the municipal authorities should not have applied the domestic legal provision, which was contrary to legal instruments of higher rank. They argued that the burden of proof was on the State authorities to justify the difference in treatment of persons on the grounds of their age.

6. During the hearing before the Vilnius Regional Administrative Court the applicant also asked it to refer the matter to the Constitutional Court, in order to determine whether the relevant provision of the Housing Assistance Act was in compliance with the Constitution.

7. On 26 April 2017 the Vilnius Regional Administrative Court dismissed the complaint lodged by the applicant and her daughter. It held that the legislature had the discretion to decide which categories of persons or families were entitled to which kinds of welfare benefits. That discretion included the right to define which families were considered "young" for the purpose of obtaining housing subsidies. In the court's view, the claimants' arguments concerning discrimination had been based on assumptions and speculation. In accordance with the principle of non-discrimination, similar situations had to be treated similarly and different situations had to be treated differently. On those grounds, the court considered that the State had the right to determine the age of persons who could constitute "young families", and the impugned decision had been lawful and justified.

8. The applicant and her daughter lodged an appeal against that decision. They submitted that the lower court had not addressed their arguments concerning the alleged conflict between the Housing Assistance Act and the Constitution and EU law (see paragraph 5 above). They also submitted that the impugned provisions of the Housing Assistance Act were contrary to Articles 8 and 14 of the Convention. Lastly, they argued that the court had not shifted the burden onto the State to prove that the above-mentioned different treatment on the basis of age was justified and that it had not addressed their request to refer the matter to the Constitutional Court (see paragraph 6 above).

9. On 6 December 2018 the Supreme Administrative Court dismissed the appeal lodged by the applicant and her daughter. It referred to the case-law of the Constitutional Court concerning the principle of non-discrimination (see paragraphs 32-34 below) and the duty of the State to provide protection and support for families, taking account of their needs and of the available resources (see paragraphs 36-38 below). It held that the legislature had wide discretion in the area of social security and welfare and could determine the categories of persons who were entitled to receive

particular welfare benefits, as well as the grounds and conditions for receiving them; the legislature also had an obligation to have due regard to the needs of the most vulnerable groups in society (see paragraph 38 below). When deciding on those matters, the State had the right to take into account various social, demographic and economic factors, as well as its financial capabilities.

10. The Supreme Administrative Court furthermore observed that the Housing Assistance Act provided for the affording of assistance to various categories of families, and their eligibility for such assistance was not always linked to their age (see paragraph 23 above). Moreover, the Act also provided for the affording of assistance to various other categories of persons, such as persons who lived without parental care (*likę be tėvų globos asmenys*) until they reached the age of thirty-five, families with three or more children, disabled individuals or families that included disabled individuals, and families in which one of the parents was deceased (see paragraph 24 below). This demonstrated that the legislature had chosen to support certain vulnerable groups by providing them with housing assistance.

11. The court also noted that several other relevant legal instruments also defined "young families" as those in which both spouses or parents, or the single parent, were not older than thirty-five. It observed that, according to the available statistical data, in 2016 the average age of Lithuanian nationals who got married was thirty-four years for men and thirty-one years for women, and that between 2012 and 2016 the number of women who had given birth at the age of thirty-five had grown significantly.

12. The Supreme Administrative Court concluded that all the aforementioned circumstances demonstrated that the refusal to provide the applicant with the housing subsidy available to young families had been justified. It also stated that the applicant and her daughter had not provided any arguments that the child's interests could be protected only by them obtaining that specific type of social assistance.

13. Lastly, the Supreme Administrative Court stated that it was not bound by the claimants' request to refer the matter to the Constitutional Court and that such a referral would be made only if the court itself had doubts that the relevant legal provisions may be in conflict with the Constitution (see paragraph 18 below). In the present case, it considered that there were no grounds to doubt that Article 2 § 6 of the Housing Assistance Act (see paragraph 25 below) complied with the Constitution. The court held that the claimants had not provided any legal arguments to demonstrate that the legislature, when defining the notion of "young families" and determining a specific age limit, had failed to respect the provisions of the Constitution.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

14. Article 29 of the Constitution states that all persons are equal before the law, courts, and other State institutions and officials. Human rights may not be restricted, and no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views.

15. Article 38 provides, *inter alia*, that family is the basis of society and the State, and that family, motherhood, fatherhood, and childhood are under the protection and care of the State.

16. Article 39 provides, *inter alia*, that the State must provide care and support for families raising children at home. There must be legal provisions entitling working mothers to paid leave before and after childbirth, as well as to favourable working conditions and other relevant concessions.

17. Under Article 52, the State must guarantee to its citizens, *inter alia*, the right to receive social assistance in the event of unemployment, sickness, widowhood, or the loss of the breadwinner, and in other cases provided by law.

18. Under Article 110, judges may not apply any laws that are in conflict with the Constitution. In cases where there are grounds to believe that a law or another legal instrument that should be applied in a specific case is in conflict with the Constitution, the judge must suspend the examination of the case and apply to the Constitutional Court, asking it to assess whether the said legal instrument is in compliance with the Constitution.

19. For the legal provisions concerning the right to lodge an individual constitutional complaint, in force from 1 September 2019, see *Ancient Baltic religious association "Romuva" v. Lithuania* (no. 48329/19, §§ 38-39, 8 June 2021).

II. LAW ON THE ASSISTANCE FOR HOME ACQUISITION OR RENT (THE HOUSING ASSISTANCE ACT)

20. The Housing Assistance Act entered into force on 1 January 2015 and was subsequently amended. Its Article 3 provides:

> "Housing assistance is provided in accordance with the following principles:
>
> 1) Equal rights: housing assistance is provided in a manner that respects the equality of persons and families;
>
> 2) Social justice: housing assistance is provided to persons and families after taking into account their assets, income and other circumstances relating to their social situation;

3) Choice: the provision of housing assistance is based on the right of persons and families to choose one of several forms of such assistance;

4) Efficiency and effectiveness: housing assistance is provided with the aim of increasing the motivation of the persons and families who have the right to receive housing assistance in accordance with this Act in order to integrate into the labour market and to use the available resources rationally."

21. Article 6 §§ 1 and 2 provide for the following types of housing assistance: a housing subsidy that covers part of a loan for buying a home; the right to rent social housing from the State; and a partial rebate in respect of rent payments. Article 6 § 3 states that persons and families who meet the criteria for obtaining several types of housing assistance are only entitled to receive one type of assistance at any given time.

22. Article 8 lays down the general conditions that a person or a family must meet in order to be eligible for assistance to buy a home:

(1) their annual income must not exceed the threshold laid down by other provisions of the Housing Assistance Act;

(2) they must seek to obtain their first home in Lithuania or, alternatively, meet one of the following conditions: (a) not have owned residential property for the previous five years and not have already received this type of housing assistance; (b) the residential property that they own must fall under the threshold, established by law, concerning its surface and depreciation; or (c) they are a person with disabilities or a family containing such a person, and the residential property that they own is not adapted to their needs.

23. Persons or families whose annual income is even lower than that indicated in Article 8 (see paragraph 22 above) may also be eligible for other types of housing assistance (see paragraph 21 above). Their eligibility for those types of housing assistance is linked to their income and property.

24. At the material time, Article 13 § 1 provided that a housing subsidy covering part of a loan for buying a home could be granted to persons or families who met the conditions laid down in Article 8 (see paragraph 22 above) and belonged to one of the following categories:

(1) Persons without parental care, until they reached the age of thirty-five, and their families; or families with three or more children; or persons with disabilities and their families. Persons belonging to these categories were entitled to a housing subsidy covering 20% of the loan for buying a home;

(2) Young families with one or more children; or families where one of the parents was deceased. They were entitled to a housing subsidy covering 10% of the loan for buying a home.

25. At the material time Article 2 § 6 defined a young family as a family in which each spouse was not older than thirty-five years or that in which the single parent was not older than thirty-five years.

26. Following an amendment to the Act that entered into force on 21 February 2019, a "young family" is currently defined as a family in which each spouse is not older than thirty-six years or in which the single parent is not older than thirty-six years (Article 2 § 4). In the other provisions of the Act, which previously set the maximum age limit for obtaining housing assistance at thirty-five years (see paragraph 24 above), that limit has likewise been changed to thirty-six.

III. DOCUMENTS RELATING TO THE DEMOGRAPHIC POLICY

27. On 20 April 2017 the Seimas adopted decision no. XIII-297, in which it noted that low birth rate and continuing emigration had had a negative effect on the national economy, the system of social security and the development of the Lithuanian nation. It recommended that the Government take certain measures aimed at, *inter alia*, encouraging Lithuanians to have more children.

28. On 20 September 2018 the Seimas adopted a document entitled "Strategy for demographic, migration and integration policy for 2018-2030". It stated that one of the central goals of the strategy was to foster a positive demographic shift. The Lithuanian population had been steadily decreasing since the 1990s for two main reasons – high emigration among young people and low birth rate. As a result, the number of children being born had been gradually declining, whereas the number of old people had been growing. Although in recent years the birth rate had increased slightly, it was still insufficient to ensure a natural population growth.

29. One of the priorities of the State, as outlined in the document, was to create a social and economic environment that would be conducive to the creation of families. In order to achieve that, it was considered necessary to take measures to support parents and families: namely, to provide for adequate parental leave, childcare facilities, financial and social assistance to single parents and families with many children, and housing assistance – especially to young families and families with children.

30. The document also outlined various types of support that was already available to families, such as allowances for parents who took care of their children at home, one-time allowances for pregnant women, welfare benefits for persons in need (including compensation for utilities), and support for children from families in need (such as providing them with free food at school and giving financial aid for buying school supplies). It was emphasised that the State must continue to aid families, within the limits of its financial capabilities.

31. With regard to emigration, the document noted that young people were a priority target group for the State when taking measures aimed at encouraging them to remain in Lithuania, since it was that group in which the level of emigration was the highest.

IV. CASE-LAW OF THE CONSTITUTIONAL COURT

A. Principle of equal treatment and non-discrimination

32. The Constitutional Court has held on numerous occasions that the constitutional principle of equality before the law, which guaranteed the fundamental human right to be treated equally to others, had to be respected both when enacting laws and when applying them. According to this principle, situations that were essentially the same had to be treated equally, and there could not be any arbitrary differences in treatment. Nonetheless, the constitutional principle of equality did not rule out the possibility of establishing differentiated legal regulation with respect to certain categories of persons who were in different situations (among others, rulings of 24 January 1996, 2 April 2001, 23 April 2002, 4 July 2003 and 26 September 2007).

33. The Constitutional Court has also stated in many rulings that the principle of equality before the law would be breached if the law treated differently certain groups of people without there being differences of such nature and scope that might objectively justify such differential treatment (among others, rulings of 20 November 1996, 3 December 2003 and 26 September 2007).

34. The Constitutional Court has furthermore held that a difference in treatment could not be considered discriminatory if it was applicable to all groups that shared certain characteristics and if it pursued aims that were important to society (among others, rulings of 4 July 2003 and 3 December 2003).

35. In its rulings of 11 January 2019, 10 February 2020 and 3 June 2020, the Constitutional Court stated that the list of prohibited grounds of discrimination provided in Article 29 of the Constitution (see paragraph 14 above) was not exhaustive and that the latter provision also prohibited discrimination on the grounds of age.

B. State's obligations in the area of social welfare

36. The Constitutional Court has held on many occasions that the State has wide discretion when determining the particular forms of social assistance to be granted to individuals and to families, and that when doing so, it may take into account various social, economic and demographic factors, as well as its resources and financial capabilities (among others, its rulings of 26 September 2007, 29 April 2008, 27 February 2012, 26 May 2015 and 22 September 2015).

37. In its ruling of 27 February 2012, the Constitutional Court held as follows:

> "The State's duty of protection and care, under Article 38 § 2 of the Constitution, is implemented by taking various measures aimed at creating a favourable environment for the family, motherhood, fatherhood and childhood ... [In the course of the implementation of the said duty], various forms of protection and support may be developed, such as ensuring conditions for parents to balance their professional activities with duties related to raising children, and establishing an adequate network of child care and educational institutions in order to assist families in discharging the functions of upbringing and education of children, and other necessary infrastructure ... ; while taking account of the needs of families and the capabilities of society and the State, a certain level of support must also be guaranteed to non-working mothers and to families raising ... children at home. In this area the legislature, while taking account of various social, demographic and economic factors – *inter alia*, the material and financial capabilities of the State – enjoys broad discretion to choose specific instruments of protection and support.
>
> Moreover, in this context it needs to be noted that the State's obligation to protect and care for the family, motherhood, fatherhood and childhood, as entrenched in Article 38 § 2 of the Constitution, may not be construed in isolation from, *inter alia*, the right and duty of parents to bring up their children to be honest people and faithful citizens and to support them until they come of age, which is provided in Article 38 § 6; it implies that it is first of all the parents who are responsible for the raising and upbringing of their children and for their support until they come of age."

38. In its ruling of 26 May 2015, the Constitutional Court held the following:

> "The Constitutional Court has held that, under the Constitution, the State of Lithuania is socially oriented. The social orientation of the State is reflected in various provisions of the Constitution that enshrine economic, social and cultural rights, as well as civil and political rights; relations between society and the State; [and] the foundations of social assistance and social security, ... among others ...
>
> ...
>
> The Constitutional Court has held on more than one occasion that ... social assistance – that is to say the contribution of society to the maintenance of those who, for important reasons specified by law, are unable to support themselves through work or other income or are insufficiently provided for – has the status of a constitutional value; social security measures express the idea of social solidarity and help persons to protect themselves from potential social risks ...
>
> The Constitutional Court has noted that the principle of solidarity in a civil society does not negate personal responsibility for one's own fate. Therefore, legal regulation in the area of social security should be such as to create the conditions and incentives for every member of society to take care of his or her own well-being and not to rely solely on the social security guaranteed by the State ... Social assistance should not discourage a person from pursuing a higher income or from making efforts to seek possibilities for ensuring dignified living conditions for oneself and one's own family. Social assistance must not become a privilege ... The recognition of shared responsibility of an individual and society is important in ensuring social harmony, guaranteeing the freedom of a person and the possibility to protect oneself from difficulties that could not be overcome by one person alone ... Thus, under the

Constitution, a duty arises for the legislature to establish by law such grounds or conditions for providing social assistance, as well as types and amounts of social assistance, as to create an incentive for each person to first and foremost make an effort to take care of one's own or one's family's well-being and to contribute to the well-being of society as a whole ...

...

[T]he imperative of the protection and defence of human dignity as a special constitutional value, as entrenched in Article 21 of the Constitution, and the social orientation of the State, give rise to the duty of the State, by taking account of the capabilities of the State and society, to help persons lacking access to housing, who are unable to obtain such access through work and/or other income, to obtain access to a home that meets at least the minimum socially acceptable criteria. While regulating the provision of social assistance to such persons [with the aim of helping them obtain] access to housing, the legislature enjoys broad discretion in choosing the forms of rendering such assistance: *inter alia*, it can provide financial assistance for acquiring or renting residential property, or it can grant access to State-owned or State-leased housing. It must be emphasised that the social orientation of the State also implies the duty of the legislature, when regulating these matters, to take into consideration the needs of certain groups comprising the most vulnerable persons in society who need particular social assistance.

Under the Constitution, the legislature ... must define the persons who are unable to obtain access to housing through their own work or other income and who are therefore entitled to receive State assistance in obtaining access to housing. The legislature must also define the grounds and conditions for providing such assistance and the amount thereof ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

39. The applicant complained that she had been refused a housing subsidy on the grounds of her age, in violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. These provisions read as follows:

Article 14 (prohibition of discrimination)

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1 (protection of property)

"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

40. 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.

B. Merits

1. The parties' submissions

(a) The applicant

41. The applicant submitted that she had been refused the housing subsidy solely on the grounds of her age, as she had met all the other requirements provided by law (see paragraphs 22 and 24 above). She argued that the State authorities had failed to provide an objective justification for limiting the availability of the said housing subsidy to parents whose age did not exceed thirty-five years.

42. The applicant contended that the Government had not demonstrated that there were "factual inequalities" between families in which the parents' age did not exceed thirty-five years and those in which the parents were older. She submitted that the statistics provided by the Government (see paragraph 53 below) were unrelated to "young families" and their housing needs. She contended that having small children significantly increased a family's needs, irrespective of the parents' age. Therefore, she argued that there was "no general interest" to restrict access to the housing subsidy merely because a family with a small child fell outside the brackets of the statistically average age of such families in Lithuania.

43. Moreover, the applicant argued that the Government had not indicated the criteria on the basis of which the limit of thirty-five years had been chosen. She acknowledged that policies aimed at providing social assistance to young persons could legitimately determine the upper age limit and that that age limit could be thirty-five or thirty-six years. However, the same age limit could not be used to determine whether a family was "young". In the applicant's view, decisions concerning the provision of housing subsidies to families should adequately take into account the best interests of the child, and the width of the margin of appreciation accorded to the State should be determined in that light as well.

44. Whereas the applicant accepted that the State enjoyed a wide margin of appreciation in the field of social security and that it could, in principle, make distinctions between certain groups of people for budgetary reasons,

she nonetheless argued that that could not justify the difference in treatment based exclusively on the grounds of age.

45. Furthermore, she contended that the social assistance scheme in question had been shaped by general assumptions and prevailing social attitudes that a family should be formed, and children should be born, before a certain age. However, that was not an acceptable justification for the difference in treatment.

46. Lastly, in reply to the Government's argument that she could have applied for the housing subsidy earlier, while she had still been under the age of thirty-five (see paragraph 55 below), the applicant submitted that she had applied for the subsidy when her income became sufficient for her to expect to receive a loan from the bank.

(b) The Government

47. The Government submitted that it was not necessary to take a position on whether the applicant was in an "analogous or relevantly similar situation" to a younger person who, in the same circumstances, would be likely to receive the housing subsidy in question, because in any event, the impugned difference in treatment had had an objective and reasonable justification.

48. They submitted that, by enacting the Housing Assistance Act, the legislature had sought to correct factual inequalities between young families and families in which the parents were older, thereby pursuing the legitimate aim of protecting "socially vulnerable groups".

49. They furthermore submitted that the impugned measure should be assessed in the wider context of the demographic situation in Lithuania. The Lithuanian population was ageing rapidly and that was causing various economic and social problems – in particular, the size of the working population was declining and the number of persons dependent on old-age pensions was growing (see paragraphs 27-31 above). Therefore, the housing subsidy to young families sought to improve the demographic situation.

50. The Government submitted that the Lithuanian law provided for various types of social assistance to families, including welfare benefits to persons with very low income, to which no age limits were applied (see paragraphs 21-24 above). However, the housing subsidy to young families was not aimed at persons with extremely low income – rather, its aim was to assist young people when acquiring residential property and thereby to encourage a positive demographic shift within Lithuanian society. There were other measures which sought the same aim – for example, another law provided for additional housing subsidies to families which were raising three or more children and in which the parents' age did not exceed forty years.

51. The Government furthermore submitted that there was no European consensus in the area of granting housing subsidies to various demographic

groups. Certain States, such as the Netherlands, did not provide any subsidies for the purchase of housing. Meanwhile, in those States that did provide housing subsidies, the conditions for obtaining them, including age limits, were not uniform. Nonetheless, there were States, such as Latvia, the Czech Republic, Russia, Ukraine and Armenia, that had opted for a maximum age limit of thirty-five or thirty-six years when granting various types of housing assistance to families. Therefore, in view of the lack of common ground among the Contracting States, the margin of appreciation left to the authorities of each State ought to be wide.

52. The Government also stated that many European States provided social assistance specifically to young people. While the exact definition of "a young person" varied among States, it was generally acknowledged that young people might require additional assistance from the State in order to enter into the labour market or to obtain housing independent from that of their parents.

53. They also provided to the Court statistics showing the average age, in Lithuania, of persons at the time of marriage, of giving birth and of giving birth for the first time. In each of those categories, the average age was increasing slightly every year. According to the most recent data provided, in 2019 the average age of marriage was approximately thirty-five years for men and approximately thirty-two years for women, the average age of women giving birth was approximately thirty years, and the average age of women giving birth to their first child was twenty-eight years. In addition, statistics showed that the majority of housing loans from banks were given to persons whose average age did not exceed thirty-five years.

54. Therefore, the Government contended that setting an upper age limit for obtaining the housing subsidy in question had had an objective and reasonable justification, taking into account the average age of marriage and childbirth in Lithuania, the average age at which Lithuanians obtained housing loans, and the desire of the legislature to address the particular needs of young people and young families.

55. Moreover, they submitted that, at the time when the applicant had given birth to her daughter, she and her daughter had met the definition of a "young family" under the law, and the applicant had thus had an opportunity to apply for the subsidy in question then.

56. Lastly, the Government stated that the relevant age limits were revised regularly, in accordance with the statistical data reflecting the demographic situation in the country (see paragraph 26 above).

2. *The Court's assessment*

(a) Applicability of Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1

(i) General principles

57. The relevant general principles have been summarised in *Stummer v. Austria* ([GC], no. 37452/02, §§ 81-83, ECHR 2011, and the cases cited therein).

58. In particular, the Court reiterates that Article 1 of Protocol No. 1 to the Convention places no restriction on a Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit, that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (ibid., § 82, and the cases cited therein).

59. Moreover, in cases concerning a complaint that the applicant has been denied all or part of a particular benefit on a discriminatory ground covered by Article 14 of the Convention, the relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question. Although Article 1 of Protocol No. 1 does not include the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner that is compatible with Article 14 of the Convention (ibid., § 83, and the cases cited therein).

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

60. In the present case, the applicant applied for a housing subsidy that was available to persons whose income did not exceed a certain threshold established by law, who sought to buy their first home, and who met the definition of a "young family" (see paragraphs 22 and 24 above). It was not disputed, either on the domestic level or in the proceedings before the Court, that she fulfilled the first two requirements and that the reason for which she was refused the housing subsidy was her age – she did not fall within the category of "young families" because, at the time of the lodging of her application for the said subsidy, she was older than thirty-five years (see paragraph 4 above). It follows that, had the applicant been younger, she would have been granted the housing subsidy in question.

61. Accordingly, the Court finds that the applicant's complaint falls within the scope of Article 1 of Protocol No. 1 to the Convention and the right to peaceful enjoyment of possessions that it safeguards. As a result, Article 14 of the Convention is applicable.

(b) Compliance with Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1

(i) General principles

62. The relevant general principles have been summarised in *Fábián v. Hungary* ([GC], no. 78117/13, §§ 112-17, 5 September 2017, and the cases cited therein).

63. In particular, the Court reiterates that not every difference in treatment will amount to a violation of Article 14 of the Convention. Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see, among many other authorities, *Molla Sali v. Greece* [GC], no. 20452/14, § 134, 19 December 2018). The Court has recognised that age might constitute "other status" for the purposes of Article 14 of the Convention (see *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, § 88, 15 September 2016). However, it has not, to date, suggested that discrimination on grounds of age should be equated with certain other grounds of discrimination, such as ethnic origin, gender or sexual orientation, which would require particularly convincing and very weighty reasons in order for the difference in treatment to be seen as compatible with the Convention (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 176, ECHR 2007-IV, with regard to ethnic origin; *Konstantin Markin v. Russia* [GC], no. 30078/06, § 127, ECHR 2012 (extracts), with regard to gender; and *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 114, 14 January 2020, with regard to sexual orientation).

64. Moreover, a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than an international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation". In more general terms, the Court has held that the provisions of the Convention do not prevent Contracting States from introducing general policy schemes by way of legislative measures whereby a certain category or group of individuals is treated differently from others, provided that the interference with the rights of the statutory category or group as a whole can be justified under the Convention (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 83, ECHR 2009, and *J.D. and A v. the United Kingdom*, nos. 32949/17 and 34614/17, § 88, 24 October 2019, and the cases cited therein).

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

(α) Whether there was a difference in treatment between persons in analogous or relevantly similar situations

65. In the present case, the applicant was a single mother who applied for a housing subsidy available under the Housing Assistance Act; her income did not exceed the threshold established in the relevant provision of that Act and she sought to buy her first home (see paragraph 60 above). The Court takes note of the applicant's argument that all parents raising small children may have similar needs, regardless of the parents' age (see paragraph 43 above). It is prepared to accept that she was in a relevantly similar situation to a younger single mother who, in the same circumstances, would have likely been granted the housing subsidy in question (see, *mutatis mutandis*, *Schwizgebel v. Switzerland*, no. 25762/07, § 85, ECHR 2010 (extracts)).

66. The Government argued that the applicant could have applied for the housing subsidy earlier, while she was still under the age of thirty-five (see the Government's argument in paragraph 55 above). However, the applicant submitted that, at that time, her income had not been sufficient for her to expect to receive a loan from the bank (see paragraph 46 above), and the Government did not offer any evidence to the contrary. Therefore, the Court sees no need to address this argument further.

67. Accordingly, the Court finds that, in the present case, there has been a difference in treatment between persons in relevantly similar situations on the grounds of age.

(β) Whether the difference in treatment was justified

68. For the purposes of Article 14 of the Convention, a difference in treatment is discriminatory if it "has no objective and reasonable justification" – that is to say if it does not pursue a "legitimate aim" or if there is no "reasonable relationship of proportionality" between the means employed and the aim sought to be realised (see *Molla Sali*, cited above, § 135).

69. The Court observes that the Housing Assistance Act provides for different types of housing assistance (see paragraph 21 above). Some of them are available to persons with very low income, irrespective of their age or other personal circumstances (see paragraph 23 above). Others are available to persons receiving slightly higher income who are nonetheless considered as being in need of housing assistance in view of their personal circumstances, such as disability or family situation (see paragraphs 22 and 24 above). The housing subsidy at issue, for "young families", falls within the latter category (see paragraph 24 above).

70. The Court furthermore observes that the present case does not concern the applicant's eligibility for welfare benefits that are aimed at

persons with the lowest income. Indeed, the applicant did not argue that her age might have precluded her from receiving social assistance directed at those who were most in need (see, *mutatis mutandis*, *Bah v. the United Kingdom*, no. 56328/07, § 51, ECHR 2011). In this regard, the Court also takes note of various other welfare benefits that are available to parents and families in Lithuania (see paragraphs 30 and 37 above). Thus, it has no grounds to find that the applicant was left without any possibility to obtain social assistance, should she require it (see, *mutatis mutandis*, *Stummer*, cited above, § 108).

71. Instead, in the present case the Court is called on to examine one specific welfare benefit, which may be seen as additional assistance granted by the State to certain families, namely "young families" as defined in the domestic law. It has to assess whether by limiting the eligibility for the said subsidy to those parents whose age did not exceed thirty-five years (see paragraph 25 above; see also the later amendments to the legal regulation referred to in paragraph 26 above) the respondent State complied with the requirements of Article 14 of the Convention.

– *Legitimate aim*

72. When addressing the aims pursued by the impugned measure, the main argument of the Government was that it sought to take into account the needs of "socially vulnerable groups" and to correct factual inequalities between different types of families (see paragraph 48 above).

73. The Court has previously acknowledged that Article 14 of the Convention does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may, in the absence of an objective and reasonable justification, give rise to a breach of Article 14 (ibid., § 88, and the cases cited therein). However, in the present case it is unable to find that the Government sufficiently demonstrated the existence of factual inequalities between families in which the spouses or the single parent were not older than thirty-five years and those families in which the spouses or parents were older. In particular, the Court is not persuaded that statistical data showing the average age of marriage, giving birth or obtaining a housing loan (see paragraph 53 above) constitutes evidence of inequalities or hardship allegedly experienced by "young families". It is therefore unable to accept the Government's arguments in this respect.

74. However, throughout their observations the Government also contended that the impugned measure sought to address the problem of the ageing population and to improve the demographic situation in the country (see paragraphs 49 and 50 above). The applicant did not dispute the Government's description of the demographic situation or the fact that the impugned housing subsidy was one of the tools employed to encourage a

positive demographic shift. In the light of the documents submitted by the Government, the Court considers it sufficiently established that by granting the housing subsidy to people of a younger age the national authorities sought to encourage them to have more children and thereby offset the decrease of the population caused by emigration and low birth rate (see paragraph 28 above). Given the circumstances, it is prepared to accept that the impugned measure pursued a legitimate aim in the public interest.

– *Proportionality between the means employed and the aim sought to be realised*

75. When examining the proportionality of the choices made by the national authorities in the area of social security and welfare, the Court cannot disregard the specific national context (compare *Andrle v. the Czech Republic*, no. 6268/08, §§ 55-58, 17 February 2011). According to the documents in its possession, a steady decline of the Lithuanian population has been observed since the 1990s, caused mainly by high rates of emigration, especially among young people, and a low birth rate (see paragraphs 28 and 31 above). The Court has no grounds to doubt that the decreasing number of children and the ageing population are legitimate causes of concern to the national authorities, which must seek ways of altering the demographic trends by employing various measures within their powers (see paragraphs 29, 30 and 50 above).

76. The applicant did not dispute that the national authorities were entitled to adopt measures aimed at encouraging a positive demographic shift or that they enjoyed broad discretion when doing so. However, she argued that age could not be legitimately used as the sole criterion for determining eligibility for the housing subsidy in question (see paragraphs 42-44 above).

77. The Court acknowledges the merit of the applicant's argument that all parents who raise small children may have similar needs for social assistance, irrespective of their age (see paragraph 42 above). However, it is also mindful of the difficult task facing the domestic authorities when allocating limited public resources, and the need to set certain limits to eligibility for specific welfare benefits (see, *mutatis mutandis*, *Bah*, cited above, § 49, and the cases cited therein). In view of their familiarity with the demands made on the social security system, as well as with the funds available to meet those demands, the national authorities are in a better position than an international court to carry out an assessment of the priorities in the context of the allocation of limited State resources (see, *mutatis mutandis*, *Pentiacova and Others v. Moldova* (dec.), no. 14462/03, 4 January 2005, and the cases cited therein). When it comes to general measures of economic or social strategy, the States enjoy a wide margin of appreciation (see the references in paragraph 64 above), and in cases where the Court is called on to assess any such measures, it must be mindful of its

subsidiary role (see *Maurice v. France* [GC], no. 11810/03, § 117, ECHR 2005-IX, and the cases cited therein). Provided that the legislature chose a method that could be regarded as reasonable and suited to achieving the legitimate aim being pursued, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way (see *Fábián*, cited above, § 68).

78. The Court takes note of the information provided by the Government concerning the lack of consensus among various Contracting States when deciding whether to grant any housing assistance at all or when determining the conditions of eligibility for such assistance, as well as the fact that some Contracting States have established upper age limits for its recipients (see paragraphs 51 and 52 above and, *mutatis mutandis*, *Schwizgebel*, cited above, §§ 90-92).

79. In the Court's view, the decision of the Lithuanian legislature to provide additional social assistance to families constituted of persons of a younger age cannot, in and of itself, be seen as manifestly without reasonable foundation, having regard to the fact that young people's financial situation is an important factor influencing their decisions on whether to emigrate, whether to have children, and when to do so.

80. Moreover, taking note of the statistical data provided by the Government, showing that, on average, Lithuanians get married, have their first child and obtain a housing loan between the ages of twenty-eight and thirty-five (see paragraph 53 above), the Court is able to accept that the impugned age limit of thirty-five years was reasonably based on objective data, and not on general assumptions or prevailing social attitudes, as alleged by the applicant (see paragraph 45 above).

81. Lastly, the Court attaches weight to the fact that the impugned age limit has been updated in the light of more recent data (see paragraphs 26 and 56 above). In its view, it is important that the legal regulation, even if it is aimed at encouraging people to have children at a younger age, should nonetheless adequately reflect the actual demographic situation in the country.

82. In the light of the foregoing, the Court concludes that the State did not overstep its wide margin of appreciation when deciding to provide additional housing assistance to those families in which the spouses or the single parent were not older than thirty-five years, and that there was a reasonable relationship of proportionality between the impugned difference in treatment and the legitimate aim sought.

83. There has accordingly been no violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

84. The applicant complained that the administrative courts had refused to refer her case to the Constitutional Court without providing adequate reasons. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

85. 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.

B. Merits

1. The parties' submissions

86. The applicant submitted that she had provided detailed arguments as to why the impugned legal regulation amounted to discrimination on the grounds of age and was therefore contrary to the Constitution and the Convention (see paragraphs 5, 6 and 8 above). However, the Vilnius Regional Administrative Court did not address in any way her request for the matter to be referred to the Constitutional Court (see paragraph 7 above), and the Supreme Administrative Court only did so in a cursory manner, without engaging with the substance of her arguments (see paragraph 13 above).

87. The Government submitted that the Supreme Administrative Court had provided adequate reasons for refusing to refer the applicant's case to the Constitutional Court – it had referred to the existing case-law of the Constitutional Court and considered that that case-law did not leave room for doubt that the impugned legal regulation was in compliance with the Constitution (see paragraphs 9-13 above).

2. The Court's assessment

88. The Court reiterates that the Convention does not guarantee, as such, any right to have a case referred by a domestic court to another national or international authority for a preliminary ruling. However, the Court does not rule out the possibility that, where a preliminary reference mechanism exists, a refusal by a domestic court to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings – *inter alia*, where the refusal has not been duly reasoned (see *Pronina v. Ukraine*,

no. 63566/00, § 24, 18 July 2006, concerning referral to the national Constitutional Court; see also *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, §§ 57-60, 20 September 2011; *Baydar v. the Netherlands*, no. 55385/14, § 39, 24 April 2018; and *Somorjai v. Hungary*, no. 60934/13, § 56, 28 August 2018, concerning referral to the Court of Justice of the European Union).

89. In the present case, the Court cannot disregard the fact that the Vilnius Regional Administrative Court did not explicitly address the applicant's request for the case to be referred to the Constitutional Court, which she had submitted during the oral hearing (see paragraphs 6 and 7 above).

90. However, the same cannot be found with regard to the Supreme Administrative Court, which had the full power to review the decision taken by the lower court. The latter court made extensive references to the relevant case-law of the Constitutional Court, examined the applicant's complaint in the light of the principles established therein and provided detailed reasons for rejecting it (see paragraphs 9-12 above). Having done so, the Supreme Administrative Court concluded that it had no grounds to doubt that the impugned legal regulation was in line with the relevant provisions of the Constitution (see paragraphs 13 and 18 above). The Court observes that, at the relevant time, the domestic law did not provide for an individual constitutional complaint (see paragraph 19 above); therefore, the only ground for referring a matter to the Constitutional Court was a doubt faced by the court examining the case with regard to the constitutionality of the relevant legal provision, and the courts were not bound by the parties' requests for referral (see paragraph 18 above).

91. In the Court's view, the reasoning provided by the Supreme Administrative Court was sufficient to demonstrate to the applicant that her main arguments had been heard and to enable her to understand the grounds on which her request for referral had been rejected (compare and contrast *Baltic Master Ltd. v. Lithuania* [Committee], no. 55092/16, §§ 41-43, 16 April 2019).

92. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 26 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President