



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

SECOND SECTION

CASE OF BERNOTAS v. LITHUANIA

(Application no. 59065/21)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Obligation to reimburse the social security authorities for the lost working capacity pension paid to a person whom the applicant had accidentally injured • Proceedings afforded applicant a reasonable opportunity of putting his case to the appropriate authorities • Individual assessment • Open to the applicant to seek reassessment of amount of compensation due from him • Possibility under domestic law to seek reduction of amount • Domestic authorities acted in a flexible manner and took measures aimed at alleviating financial burden imposed on the applicant • Duration of interference at issue albeit long not disproportionate • Fair balance struck in case circumstances between competing interests at stake

Prepared by the Registry. Does not bind the Court.

STRASBOURG

30 January 2024

FINAL

30/04/2024

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

In the case of Bernotas v. Lithuania,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Pauliine Koskelo,

Saadet Yüksel,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 59065/21) 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 Jurgis Bernotas (“the applicant”), on 18 November 2021;

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

the parties’ observations;

Having deliberated in private on 9 January 2024,

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

INTRODUCTION

1. The case concerns the requirement that the applicant reimburse the social security authorities for the lost working capacity pension paid to a person whom he had accidentally injured.

THE FACTS

2. The applicant was born in 1957 and lives in Klaipėda. He was represented by Mr O. Drobitko, a lawyer practising in Klaipėda.

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

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

4. In January 2010 the applicant accidentally shot Ž.K. while cleaning his rifle after a hunt. The victim sustained multiple injuries in his abdomen, hip and leg. The applicant was charged with negligently causing serious damage to health (*sunkus sveikatos sutrikdymas*) contrary to Article 137 § 3 of the Criminal Code (see paragraph 47 below). He fully admitted his guilt.

5. Ž.K. lodged a civil claim in the criminal proceedings. He claimed 6,785 Lithuanian litai (LTL) (approximately 1,965 euros (EUR)) in respect of pecuniary damage, consisting of expenses for medication, hospital treatment and transport, and LTL 100,000 (approximately EUR 28,962) in respect of non-pecuniary damage. While the proceedings were pending, the applicant paid him LTL 9,000 (approximately EUR 2,607).

6. On 24 February 2011 the Skuodas Regional Court found the applicant guilty and sentenced him to two years' imprisonment, suspended for two years.

7. When determining the punishment, the court took into account the following: on the one hand, the applicant had no previous convictions, he had admitted his guilt, had expressed regret over the accident and had partly compensated for the damage caused to the victim (see paragraph 5 above); on the other hand, his crime had had serious consequences, he had violated the safety rules applicable to hunting and during the court proceedings he had attempted to conceal his true financial situation – he worked as a long-haul truck driver, and the court found that in addition to his monthly salary of LTL 800 (approximately EUR 232), he received around LTL 2,800 (approximately EUR 811) per month in daily allowances.

8. The court also noted that the accident had caused Ž.K. great physical pain, he had undergone surgery four times, had been hospitalised for several months and had had to have his hip replaced. Moreover, his working capacity had significantly diminished (see paragraph 13 below), he was no longer able to lift heavy objects or run or walk long distances and he had been dismissed from his job at the fire rescue service, which must have also caused him great psychological distress.

9. The court noted that the applicant had fully compensated Ž.K. for pecuniary damage and partly compensated him for non-pecuniary damage (see paragraph 5 above). It awarded Ž.K. an additional LTL 77,032 (approximately EUR 22,310) in respect of non-pecuniary damage.

10. The applicant appealed against the above-mentioned decision. In particular, he contended that the award made in respect of non-pecuniary damage was excessive and did not follow the domestic courts' case-law concerning similar cases. He also submitted that the first-instance court had not properly assessed his financial situation: he was 54 years old, his salary was low and he did not own real estate or have any savings. The court's findings that he received LTL 2,800 per month in daily allowances had been inaccurate because such an allowance had only been paid to him once, in order to help him compensate Ž.K. for the damage caused and to cover his own subsistence.

11. On 2 June 2011 the Klaipėda Regional Court amended the first-instance court's decision in part and reduced the award in respect of non-pecuniary damage to LTL 37,032 (approximately EUR 10,725). It held that the award made by the lower court had not followed the relevant

case-law. Moreover, the court found that the applicant's financial situation had not been assessed accurately – in particular, it had not been established that he received daily allowances on a regular basis (see paragraph 7 above). The court also noted that although the consequences of the accident had been serious, Ž.K. had found a new job and received various social allowances; his income had therefore not changed significantly.

12. Ž.K. brought an appeal on points of law, but on 30 August 2011 the Supreme Court refused to accept it for examination on the grounds that it did not raise any important legal issues.

II. LOST WORKING CAPACITY PENSION PAID TO THE VICTIM

13. In August 2010 the Disability and Capacity for Work Service under the Ministry of Social Security and Labour established that, as a result of the injuries sustained during the accident, Ž.K.'s working capacity had diminished by 60%.

14. That same month the State Social Insurance Fund (hereinafter "the SSIF") adopted a decision whereby Ž.K. became entitled to receive a lost working capacity pension (*netekto darbingumo pensija*). The amount of the pension was calculated on the basis of the following: the amount of the basic pension (*bazinė pensija*), which was established by the relevant authorities and reviewed on a regular basis; the level by which Ž.K.'s working capacity had been diminished; his length of service (*darbo stažas*); and the salary which he had previously received.

15. Ž.K.'s working capacity was reassessed at regular intervals:

- (a) In February 2011 it was established that it had diminished by 50%.
- (b) In February 2012 and February 2013 it had diminished by 45%.
- (c) In February 2015 it had diminished by 30%. Ž.K. disputed that assessment and his working capacity was reassessed. In June 2015 it was established that it had diminished by 45%.
- (d) In February 2017 it was established that Ž.K.'s working capacity had diminished by 45% and that it would remain unchanged until his retirement in 2039.

16. The lost working capacity pension which the SSIF paid to Ž.K. amounted to the following:

- (a) from August 2010 to October 2011 – LTL 9,279 (approximately EUR 2,687);
- (b) from November 2011 to March 2013 – LTL 7,912 (approximately EUR 2,291);
- (c) from April 2013 to February 2015 – EUR 3,146;
- (d) from March to May 2015 Ž.K. did not receive lost working capacity pension because it had been assessed that his working capacity had diminished by 30% (see paragraph 15(c) above) and therefore, according to the law, he was not entitled to receive that pension;

- (e) from June 2015 to January 2016 – EUR 1,021;
- (f) from February 2016 to January 2017 – EUR 1,799;
- (g) from February 2017 to September 2019 – EUR 5,597;
- (h) from October 2019 to April 2022 – EUR 6,790.

III. PROCEEDINGS FOR REIMBURSEMENT OF THE PENSION PAID TO THE VICTIM

A. The SSIF's claims for reimbursement made between 2011 and 2016

17. In November 2011 the SSIF notified the applicant that in accordance with Article 6.290 § 3 of the Civil Code (see paragraph 59 below), he was required to reimburse it for the amount which it had paid to Ž.K. in respect of lost working capacity pension from August 2010 to October 2011, namely LTL 9,279 (approximately EUR 2,687; see paragraph 16(a) above). The applicant informed the SSIF that he did not object to reimbursing the amount requested. However, he submitted that his salary was approximately LTL 900 (approximately EUR 260) per month and he had no savings; moreover, he was also required to pay Ž.K. the compensation in respect of non-pecuniary damage that had been awarded by the courts (see paragraph 11 above). Therefore, he was unable to pay the amount required by the SSIF at once. He asked to be allowed to pay it in instalments: he proposed to pay LTL 300 (approximately EUR 87) immediately and LTL 200 (approximately EUR 58) each subsequent month. The SSIF allowed the applicant to pay the required amount in instalments as he had proposed.

18. In May 2013 the SSIF notified the applicant that he was required to reimburse it a total of LTL 7,912 (approximately EUR 2,291) for payments made to Ž.K. from November 2011 to March 2013 (see paragraph 16 (b) above). It informed the applicant that he had the right to ask to pay by instalments. However, the applicant did not make such a request. He replied to the SSIF saying that he did not agree that he should reimburse it because he considered that the pension should not have been paid to Ž.K. The SSIF lodged a civil claim against the applicant. He did not submit a reply to the claim. Accordingly, in November 2013 the Klaipėda District Court found for the SSIF by default. The applicant did not request a review of the default judgment (see paragraph 60 below).

19. In May 2015 the SSIF lodged a new civil claim against the applicant for EUR 3,146 which it had paid to Ž.K. from April 2013 to February 2015 (see paragraph 16(c) above). The applicant did not submit a reply to the claim and in June 2015 the Klaipėda District Court found for the SSIF by default. The applicant did not apply for a review of the default judgment (see paragraph 60 below).

20. In July and November 2015 the SSIF notified the applicant that he had not yet fully paid the amounts which he had agreed or been ordered to pay to

date (see paragraphs 17 and 18 above). In view of the fact that his debt had increased even more (see paragraph 19 above), the SSIF suggested he pay it in monthly instalments over a period of two years. However, the applicant did not reply to the SSIF, which then asked a bailiff to start an enforcement process. In February 2016 bailiffs seized his car and bank account. That same month the applicant informed the SSIF that he accepted the proposal for payment of the sums stated in monthly instalments; he said that he had not been able to reply earlier because he had been away on a work trip. The seizure of his property was stayed in March 2016.

21. In April 2016 the SSIF lodged further proceedings against the applicant claiming EUR 1,021 which it had paid to Ž.K. from June 2015 to January 2016 (see paragraph 16(e) above). The applicant submitted a reply, in which he stated that he accepted the claim in part. However, his income was low and he had no valuable property. He therefore asked for payment to be deferred by one year and then to be made in monthly instalments over a period of a further year. In May 2016 the applicant and the SSIF reached a friendly settlement on that basis.

B. The SSIF's claim of 2017

22. In March 2017 the SSIF lodged a new civil claim against the applicant for EUR 1,799 which it had paid to Ž.K. from February 2016 to January 2017 (see paragraph 16(f) above).

23. In July 2017 the applicant asked the SSIF to be allowed to pay that amount in monthly instalments over a period of two years. The SSIF accepted his proposal and prepared a settlement agreement. However, the applicant did not sign it.

24. In October 2017 the applicant submitted a reply to the claim. He stated that Ž.K. was employed and that his salary was even higher than it had been before the accident, and that therefore he had not sustained any actual damage. The applicant also questioned the accuracy of the assessment of Ž.K.'s working capacity – he noted that in February 2015 it had been established that Ž.K.'s working capacity had diminished by 30%, but in June 2015 it had been reassessed as having diminished by 45% (see paragraph 15(c) above), which gave grounds to doubt those assessments. He asked the court to order a forensic examination of Ž.K.'s working capacity. The court made that order.

25. The report of the forensic examination was delivered in April 2018 and it found that it had been correctly established that Ž.K.'s working capacity had diminished by 45% and that the diminution had been the direct result of the injuries which he had sustained during the hunting accident.

26. In June 2018 the Klaipėda District Court allowed the claim lodged by the SSIF. It noted that, according to the Civil Code, anyone who caused damage to another person was required to compensate for it (see paragraph 50

below), that social allowances paid to someone who had been seriously injured were included in that damage (see paragraph 58 below) and entities which paid such allowances to an injured person had the right to claim reimbursement from the person who had caused the damage (see paragraph 59 below). In addition, the Law on State Social Insurance entitled the SSIF to claim compensation from those individuals and legal entities whose unlawful actions had caused it pecuniary damage (see paragraph 61 below). Moreover, according to the law, damage sustained by a seriously injured person included loss of income and expenses relating to the improvement of his or her health (see paragraphs 49, 54 and 57 below). The court observed that a forensic examination had established that Ž.K.'s working capacity had diminished by 45% and that that had been the direct result of the accident caused by the applicant (see paragraph 25 above). Accordingly, the SSIF, which had paid Ž.K. lost working capacity pension, had the right to require the applicant to reimburse the relevant amount. Having found that the applicant had already paid the SSIF EUR 426 of the EUR 1,799 which it had claimed, the court awarded it the remaining EUR 1,373.

27. The applicant appealed against that decision. He submitted that it had been established in the criminal proceedings that he had fully compensated Ž.K. for the pecuniary damage caused (see paragraph 9 above), and moreover, he had paid the award made in those proceedings in respect of the non-pecuniary damage (see paragraph 11 above). Therefore, he contended that he had fully compensated Ž.K. for all the damage the latter had sustained.

28. He further submitted that the first-instance court had disregarded relevant Constitutional Court and Supreme Court case-law. In particular, those courts had held that the social insurance authorities had the right to require a person who had caused damage to another person to reimburse social allowances paid to the latter only to the extent that the said allowances had been compensation for pecuniary damage caused by his or her actions (see paragraphs 64 and 66 below). Accordingly, it had to be examined whether Ž.K. had sustained any pecuniary damage and whether the pension paid by the SSIF was compensating him for that damage; however, the first-instance court had not examined those matters.

29. Lastly, the applicant submitted that, according to the law, anyone whose working capacity had diminished by at least 30% because of an accident or an illness became entitled to lost working capacity pension, irrespective of whether he or she continued to work and receive income and irrespective of whether his or her income had actually decreased (in this respect, the applicant relied on a legal instrument concerning social insurance for accidents at work and occupational diseases). He argued that the mere fact that Ž.K. was receiving a pension was not enough to prove that he had sustained damage as a result of the applicant's actions, nor that the pension compensated him for that damage. The applicant contended that the extent of

his obligation to compensate Ž.K. for the damage caused during the accident could not change solely because the SSIF had started paying him a pension.

30. On 21 March 2019 the Klaipėda Regional Court dismissed the applicant's appeal. It stated that, in line with the principle that the person who had taken over a claim could not obtain more rights than those held by the initial creditor (see paragraph 48 below), the entity seeking the reimbursement of the social allowance which it had paid to an injured person had to prove, among other things, that that allowance corresponded to the damage sustained by the person in question. In the case at hand, the pension was paid to Ž.K. because his working capacity had diminished (see paragraphs 13 and 14 above). In view of the doubts which the applicant had raised before the first-instance court regarding the accuracy of that assessment, an expert report had been ordered; it had established that the diminution of Ž.K.'s working capacity had been the direct result of the injury caused by the applicant (see paragraph 25 above). Accordingly, the Klaipėda Regional Court considered that it had been proved that the applicant had caused damage to Ž.K. and that the lost working capacity pension paid to him was the result of that damage. The court also found that it had been established that the amount of the pension was equal to the amount of damage sustained by Ž.K., and therefore, in accordance with the case-law of the Constitutional Court (see paragraph 64 below), the SSIF had the right to claim reimbursement of that entire amount from the applicant.

31. Lastly, the court dismissed the applicant's argument that he had already compensated Ž.K. for any pecuniary and non-pecuniary damage which the latter had sustained (see paragraph 27 above). It stated that the damage caused to Ž.K. by the accident, for which the applicant had already paid compensation, could not be equated to the damage which had arisen after the accident and which had consisted of Ž.K.'s diminished capacity to work and gain income. It noted that, according to the case-law of the Supreme Court, a lost working capacity pension sought both to compensate the victim for the income lost as a result of the injury and to cover the additional expenses which he or she had sustained; both those categories constituted pecuniary damage which had to be compensated for (see paragraph 69 below).

32. The applicant appealed on points of law, raising essentially the same arguments as before (see paragraphs 27-29 above), but on 27 June 2019 the Supreme Court refused to accept his appeal for examination on the grounds that it did not raise any important legal issues.

C. The SSIF's claim of 2019

33. In September 2019 the SSIF lodged a new civil claim against the applicant for EUR 5,597 which it had paid to Ž.K. from February 2017 to September 2019 (see paragraph 16(g) above), as well as EUR 227 which was

part of the amount the applicant had previously agreed to pay (see paragraph 20 above) but which he had not paid to date.

34. The applicant contested the claim, relying on essentially the same arguments as those which he had raised in the previous set of proceedings (see paragraphs 27-29 above). In addition, he submitted that the amount of the pension paid to Ž.K. depended, among other factors, on his length of service (see paragraph 14 above). Since Ž.K. was employed and his length of service kept increasing, the amount of the pension which he received increased as well. However, the applicant argued that it would not be fair to find that the increase in the pension meant that the damage sustained by Ž.K. was increasing. Lastly, he submitted that the fact that the SSIF lodged regular claims against him concerning the same issue and he was thus forced to participate in repeated court proceedings despite having already been convicted and paid compensation to Ž.K. violated his right under Article 6 of the Convention to receive a fair hearing within a reasonable time.

35. On 29 September 2020 the Klaipėda District Court found for the SSIF. It reiterated that, according to the relevant law, damage inflicted on a person had to be fully compensated for by the person who had caused the damage and that the social insurance authorities had the right to claim reimbursement of social allowances paid to the victim from the person who had caused the damage (see paragraphs 50 and 59 below). The court observed that it had not been disputed that Ž.K.'s working capacity had diminished and that he had the right to receive a lost working capacity pension. The purpose of that pension was to compensate him for the loss of income and to cover the additional expenses arising from the injury (see paragraphs 49 and 54 below). The Klaipėda District Court further noted that in the previous set of proceedings it had been established that Ž.K.'s working capacity had diminished because of the applicant's actions, and that in accordance with the Constitutional Court's case-law, the SSIF had the right to claim the entire amount of the pension which it had paid to Ž.K. from the applicant (see paragraph 30 above). In those proceedings it had also been established that the damage caused to Ž.K. at the time of the accident, for which the applicant had paid compensation, could not be equated to the damage which had arisen after the accident and which had consisted of Ž.K.'s diminished capacity to work and gain income (see paragraph 30 above).

36. Furthermore, with regard to the applicant's argument that the amount of the pension kept increasing as Ž.K.'s length of service increased (see paragraph 34 above), the court stated that Ž.K. had been injured when he had been 35 years old, so there were no grounds to believe that, without the injury, his length of service and income would not have increased. The court also reiterated that the lost working capacity pension served a dual purpose: on the one hand, it was aimed at compensating an injured person for lost income, and on the other hand, it sought to compensate him or her for additional expenses arising from the injury, such as medication, rehabilitation or care;

those expenses could increase over time because of economic factors such as inflation. Accordingly, the court considered that the fact that the amount of the pension could increase did not in itself make the obligation for the applicant to reimburse it unfair. It also observed that the pension paid to Ž.K. at the end of the period in question (September 2019) had increased by approximately EUR 30 compared to the start of that period (February 2017). The court considered that the increase was not such as to lead to a conclusion that the amount of the pension exceeded the damage which Ž.K. had sustained because of the injury.

37. The applicant appealed against that decision. He argued that the first-instance court had incorrectly interpreted the Constitutional Court's case-law (see paragraph 64 below) and that the SSIF could not claim any more from him than the amount of pension to which Ž.K. had been entitled in 2010 (see paragraph 14 above). He further submitted that, according to the Civil Code, damage caused by an injury could be compensated in instalments or by a single final payment of the entire amount of damage (see paragraph 57 below); if the victim's health deteriorated after the compensation for the damage had been decided, he or she had the right to bring a claim for the additional expenses incurred, except when the compensation had been paid in a single final payment (see paragraph 55 below). The applicant submitted that he had paid compensation to Ž.K. in the criminal proceedings (see paragraph 11 above), and there were no grounds to believe that Ž.K.'s health had deteriorated since then. Therefore, the applicant could not be required to cover any further expenses which Ž.K. might have incurred. He also contended that the situation where the SSIF regularly instituted court proceedings against him was incompatible with Article 6 § 1 of the Convention.

38. When lodging the appeal, the applicant submitted that his income was low and asked the court to defer the payment of the stamp duty until the examination of the case for that reason. That request was granted.

39. On 8 February 2021 the Klaipėda Regional Court dismissed the applicant's appeal and upheld the lower court's decision in its entirety, finding that that decision had been in line with Constitutional Court and Supreme Court case-law and moreover that it had followed the conclusions reached in the previous set of proceedings instituted by the SSIF. The Klaipėda Regional Court also rejected the applicant's argument that the SSIF could not claim more from him than the amount of pension to which Ž.K. had become entitled in 2010 (see paragraph 37 above) and found that the gradual increase of the amount of the pension was justified by the changing economic situation in the country, such as the increasing minimum wage and average monthly salary. Lastly, it reiterated that the compensation which the applicant had paid to Ž.K. in the criminal proceedings had been aimed at compensating him for the damage sustained at the time of the accident, whereas the lost working capacity pension sought to compensate Ž.K. for his diminished

working capacity and reduced ability to gain income, which had occurred after the accident. Accordingly, the applicant would be under an obligation to reimburse the pension paid to Ž.K. for as long as his working capacity remained diminished, and there were no grounds to find that that might be contrary to the domestic law or to Article 6 § 1 of the Convention.

40. The applicant lodged an appeal on points of law in which he raised similar arguments as before (see paragraphs 34 and 37 above). In addition, he submitted that requiring him to reimburse an amount which was higher than the lost working capacity pension awarded to Ž.K. at the time of the accident was contrary to the principle of *lex retro non agit*. Moreover, the amount of the pension depended on various factors liable to change, such as the political will to increase the basic social pension or the victim's length of service (see paragraph 14 above), and that requiring the applicant to keep making payments whose amount he could not foresee was contrary to the principles of fairness, reasonableness and proportionality. He further submitted that, according to the Supreme Court's case-law in cases which concerned the taking of another person's life, the compensation awarded to family members of the deceased person was calculated on the basis of the income which he or she used to receive and the amount of maintenance to which they were entitled; after the required compensation had been established, it was not subject to any further review, regardless of changing economic circumstances or the possibility that the victim's income might have increased in the future, in order to avoid unjust enrichment of the family members. The applicant contended that compensation in cases such as his should be determined in the same way because someone who had injured another person should not be put in a worse situation than someone who had taken another person's life.

41. On 18 May 2021 the Supreme Court refused to accept the appeal on points of law for examination on the grounds that it did not raise any important legal issues.

42. In April 2021 the applicant asked the SSIF to allow him to pay the amount awarded from him in monthly instalments over a period of nineteen months. The SSIF agreed to that request.

D. The SSIF's claim of 2022

43. In April 2022 the SSIF lodged a new civil claim against the applicant for reimbursement of EUR 6,790 paid to Ž.K. from October 2019 to April 2022 (see paragraph 16(h) above).

44. The applicant contested the claim. In July 2022 he informed the Klaipėda District Court that he had lodged the present application with the Court and asked that the case be adjourned until the case had been heard by the Court.

45. On 16 August 2022 the Klaipėda District Court granted the applicant's request and adjourned the examination of the case. On 10 November 2022 the Klaipėda Regional Court upheld that decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT STATUTORY PROVISIONS

A. Constitution

46. The relevant provisions of the Constitution state:

Article 30

"A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.

Compensation for material and moral damage caused to a person shall be established by law."

Article 52

"The State shall guarantee its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, loss of dependency, and in other cases provided for by law."

B. Criminal Code

47. The relevant parts of Article 137 of the Criminal Code provide:

Article 137. Causing a serious health impairment by negligence

"1. Anyone who negligently causes another person serious impairment to health or illness shall be punished by detention or imprisonment of up to three years.

...

3. Anyone who commits the acts specified in paragraphs 1 or 2 of this Article by violating the relevant safety legislation shall be punished by imprisonment of up to seven years. ..."

C. Civil Code

48. Article 6.113 states that a third person who has taken over the right to bring or pursue a claim cannot acquire more rights than those held by the initial creditor.

49. Article 6.249 § 1 provides, *inter alia*, that damage includes loss of or damage to property, expenses incurred or loss of income which the person would have obtained had the unlawful actions not taken place.

50. Article 6.263 § 2 states that pecuniary damage inflicted on a person or property, and in cases provided for by law non-pecuniary damage, must be fully compensated for by the person who caused it.

51. Article 6.251 § 1 states that damage must be compensated for fully, unless the law provides for limited liability. Article 6.251 § 2 states, *inter alia*, that the court, taking account of the nature of the liability in question, the financial situation of the parties and the relationship between them may reduce the amount of the damage to be compensated for if full compensation would lead to unacceptable and serious consequences.

52. Article 6.282 § 3 states that the court may reduce the amount of the compensation to be paid in respect of damage if the person who caused the said damage was in a difficult financial situation, except for cases where the damage was caused intentionally.

53. Article 6.280 § 1 provides that a person who has compensated someone for damage caused by another person has the right to require reimbursement of the amount of the compensation paid, unless the law provides for the reimbursement of a different amount.

54. Article 6.283 § 1 provides that where a person has been maimed (*suluošintas*) or otherwise seriously injured, the person who caused the damage must compensate the victim for the losses and non-pecuniary damage sustained. According to Article 6.283 § 2, those losses include the loss of the income which the victim would have received if his or her health had not been damaged, as well as medical and related expenses (treatment, nutrition, medication, prostheses, care, acquisition of special means of transport, and other necessary expenses).

55. Article 6.283 § 3 provides that when the victim's health deteriorates after compensation for the damage has been assessed, he or she has the right to bring a claim for additional expenses incurred, except when the compensation was specified to be a single final payment.

56. Article 6.287 provides that a person who has been ordered to pay compensation for damage caused by maiming or injury has the right to bring a new claim asking for the amount of compensation to be reduced if the victim's working capacity increases, except where the compensation was ordered as a single final payment.

57. Article 6.288 § 3 provides, *inter alia*, that damage caused by maiming, other serious injury or the taking of a person's life may be compensated for in instalments or by a single final payment of the entire amount of damages.

58. Article 6.290 § 1 provides that social allowances paid in the event of injury or death caused by another person's actions constitute damage for which compensation has to be paid.

59. Article 6.290 § 3 provides that social insurance authorities which have made social insurance payments to a person who has sustained damage have the right to claim the amount paid from the person who caused the damage,

except where the person who caused the damage had paid social insurance contributions in respect of the victim.

D. Code of Civil Procedure

60. Article 287 § 1 of the Code of Civil Procedure provides, *inter alia*, that a party against whom a default judgment has been made has the right to ask the court to review it; an application for review has to be lodged within twenty days after the date of the default judgment. That time-limit may be extended if the court finds that it was missed for important reasons.

E. Law on State Social Insurance

61. Article 21 § 1 of the Law on State Social Insurance provides, *inter alia*, that individuals and legal entities whose unlawful actions cause pecuniary damage to the SSIF have to compensate it for that damage in accordance with the procedure established by law.

62. Article 40 § 6 (4) provides, *inter alia*, that the SSIF may decide to waive its right to claim reimbursement of social payments where such a claim would not be appropriate from the social and/or economic point of view because the person in question does not have any property or only has property of low value, or his or her financial situation is difficult and he or she receives social assistance for persons with low income.

F. Other legal instruments

63. The Description of the procedure for waiving state social insurance fund administration agencies' claims arising from overpayments or reimbursement rights was approved by the director of the board of the SSIF on 1 April 2021. It provides that a claim may be waived either on the initiative of the relevant agency, where it establishes that any of the conditions for waiving a claim, provided in Article 40 § 6 of the Law on State Social Insurance, are met (paragraph 3.1), or at the written request lodged by the debtor (paragraph 3.2).

II. PRACTICE OF DOMESTIC COURTS

A. Constitutional Court

64. In a ruling of 18 April 2012 the Constitutional Court was called to examine whether several legislative provisions, including Article 6.290 § 3 of the Civil Code (see paragraph 59 above), were in compliance with the Constitution, *inter alia*, in so far as they did not clearly establish the extent of the right of social insurance authorities that have paid insurance claims to obtain reimbursement from the person who caused the damage. The

Constitutional Court discontinued the examination of that matter, on the following grounds:

“... ”

[T]he petitioners ask [the Constitutional Court to examine] whether Article 6.290 § 3 of the Civil Code, in so far as, according to the petitioners, it does not clearly establish the extent of the right of social insurance authorities that have paid insurance claims to obtain reimbursement from the person who caused the damage, is in compliance with ... Article 30 § 2 and Article 52 of the Constitution and the constitutional principle of a State under the rule of law.

... The petitioners have raised doubts whether, by omitting to limit the extent to which social insurance payments may be recovered from the person who caused the damage, the legislator may have ... transferred the duty of the State to provide social support, which duty is established in Article 52 of the Constitution, onto the person who caused the damage, in violation of the constitutional principles of equality of persons and proportionality.

...

4.3. ... [U]nder the regulation laid down in Article 6.290 § 3 of the Civil Code, social insurance authorities that have paid insurance claims acquire a right to claim against the person who caused the damage for the social insurance payment or part thereof of the amount that is paid to reimburse the victim or members of his or her family for pecuniary damage caused by the injury or taking of life, that is, in those cases where the insurance payment is equal to or lower than the amount of the pecuniary damage caused to the victim, the social insurance authority has the right to claim from the person who caused the damage the total amount of the insurance payment, whereas in the case where the insurance payment is higher than the amount of the pecuniary damage caused to the victim, the social insurance authority has the right to claim from the person who caused the damage the part of the social insurance payment which is paid to reimburse the victim or members of his or her family for the pecuniary damage caused.

...

When the legal regulation laid down in Article 6.290 § 3 of the Civil Code is construed in the aforementioned way, the doubts expressed [by the petitioners] regarding the compliance of the said regulation with the Constitution no longer arise ... Consequently, the petitions do not raise the question of the compliance of Article 6.290 § 3 of the Civil Code with the Constitution, but the question of its interpretation and application ...

[That] part of the case ... must be discontinued. ...”

B. Supreme Court

65. In a decision of 17 November 2008 in case no. 3K-7-496/2008 the Supreme Court held as follows:

“The main function of civil liability is compensatory and its aim is to provide satisfaction, that is to say, to compensate the victim for the damage caused by the violation of his or her rights and thereby restore the situation which existed prior to the violation ... For various reasons, for instance, the fulfilment of the State’s social function by providing members of society with the necessary economic and social means, or the duration of the civil proceedings and the impossibility of achieving the aims of civil liability (where the defendant lacks means), the damage caused may be

compensated for not through personal liability but by some alternative means of compensation. However, [in the latter case], there remains a relationship between the alternative means of compensation and civil liability because only the application of civil liability enables the use of financial means of coercion against the person who caused the damage. In such instances, civil liability is implemented through the right to claim reimbursement because the State or its authorities may require the person liable for the damage to reimburse the amounts which had been paid [in compensation].

Tort liability is based not only on the principle of full compensation for damage (Article 6.263 § 2 of the Civil Code) but also on other principles complementing it. One of those principles is that nobody can benefit from his or her unlawful actions. The refusal to recognise the State's right to claim reimbursement of payments [made to the victim] from the person who [caused the damage] would undoubtedly breach that principle. It must be noted that the function of tort liability is not only compensatory but also educational and dissuasive. If the State (or another person who paid compensation to the victim for the damage sustained) did not acquire the right to claim reimbursement from the person who caused the damage, that would not only deprive the law of its deterrent effect but might also encourage persons to act unlawfully because they would not face any consequences for their unlawful actions. Moreover, the refusal to recognise the right to claim reimbursement would mean that the person who caused the damage would completely avoid responsibility and that the obligation to compensate for the damage would be transferred onto the taxpayers ..."

66. In a decision of 28 June 2013 in case no. 3K-3-388/2013 the Supreme Court noted that the Civil Code and the Law on State Social Insurance provided for the right of the social insurance entity which had paid an allowance to a person who had sustained damage to claim reimbursement of that allowance from the person who had caused the damage (see paragraphs 59 and 61 above); however, those legal instruments did not define the extent of that right. Relying on the case-law of the Constitutional Court (see paragraph 64 above) and on its own case-law, the Supreme Court stated that Article 6.290 § 3 of the Civil Code had to be interpreted as granting the social insurance entity the right to claim from the person who caused the damage only the amount which corresponded to the damage caused by that person's actions. In cases where the allowance paid by the social insurance entity had exceeded the amount of the damage, it could claim from the person who had caused the damage only the amount corresponding to the damage, because the new creditor (the social insurance entity) could not obtain more rights than the original creditor (the victim; see paragraph 48 above).

67. In a decision of 29 November 2013 in case no. 3K-3-620/2013, the Supreme Court examined a case in which a person had been injured at work and had become entitled to two different social allowances: an allowance paid by the authority dealing with social insurance against occupational disease and workplace accidents, and a disability pension. The Supreme Court noted that the former allowance was aimed at compensating the victim for the loss of income whereas the latter sought to compensate him or her for other related expenses such as medication, care, rehabilitation and so on, thereby ensuring that all the damage sustained because of the injury was fully compensated. While the total amount of the allowances paid to the victim could exceed the

salary which he or she used to receive prior to the injury, that was not in itself sufficient to conclude that those payments exceeded the damage sustained by the victim or that their payment led to unjust enrichment.

68. In a decision of 10 January 2014, in case no. 3K-3-130/2014, the Supreme Court reiterated that each party bore the burden of proving the circumstances on which it based its arguments. Accordingly, a social insurance entity which was claiming the reimbursement of social insurance payments from the person who had caused damage to the victim had to prove that all the conditions for civil liability to arise had been met: the person's guilt, the unlawfulness of his or her actions, the damage, and a causal link between the unlawful actions and the damage. When the victim's working capacity had been lost or diminished, he or she became entitled to a social allowance compensating for the loss of his or her income. The allowance was paid on the basis of assessments of the victim's working capacity, calculation of relevant monthly salary, and other documents and decisions adopted by social insurance authorities. Accordingly, documents provided by social insurance authorities with regard to the social allowances paid to the victim had to be treated as evidence for the damage sustained by the victim and compensated for by the social insurance authorities. That did not limit the right of the defendant to challenge the compensation paid to the victim if he or she believed it exceeded the damage actually sustained and to seek to prove by all means provided by law that he or she had not caused any damage to the victim or that the damage had been less than the compensation paid by the social insurance entity. In such cases, the amount of the damage had to be determined by the court in the light of all the available evidence.

69. In a decision of 3 March 2014 in case no. 3K-3-64/2014 the Supreme Court noted that under Article 6.249 of the Civil Code (see paragraph 49 above) damage for which compensation had to be made to a person who had been injured comprised lost income and additional expenses incurred as a result of the injury, such as the cost of medication, care, rehabilitation and other expenses linked to the injury. Although the Law on State Social Insurance Pensions did not explicitly state whether the lost working capacity pension was compensation for lost income or for other expenses, in the light of the general aims of State social insurance and the text of that Law read as a whole, it had to be concluded that lost working capacity pensions sought both to compensate for income lost as a result of injury and to cover additional expenses incurred because of that injury. The Supreme Court also reiterated that, according to its case-law, a person claiming that the amount of social allowance paid to a victim exceeded the damage actually sustained bore the burden of proving that.

C. Other courts

70. In the following decisions, which were later upheld by higher courts and became final, first-instance courts examining reimbursement claims by various authorities against persons who had injured others allowed those claims but reduced the amounts to be reimbursed:

(a) In a decision of 21 November 2007 the Vilnius City 3rd District Court reduced the amount to be reimbursed from LTL 29,067 (approximately EUR 8,418) to LTL 25,000 (approximately EUR 7,241), in view of the fact that the injury had been caused unintentionally and the defendant's financial situation was difficult.

(b) In a decision of 11 December 2012 the Plungė District Court reduced the amount to be reimbursed from LTL 19,878 (approximately EUR 5,757) to LTL 12,000 (approximately EUR 3,475), in view of the fact that the injury had been caused unintentionally, the defendant had paid substantial compensation to the victim directly and had covered her treatment costs, and the victim continued receiving a lost working capacity pension.

(c) In a decision of 6 June 2016 the Plungė District Court reduced the amount to be reimbursed from EUR 3,281 to EUR 1,970, in view of the defendant's difficult financial situation and the fact that the injury had been caused unintentionally, the defendant had paid substantial compensation to the victim directly and had covered her treatment costs, and the victim had retained 50% of her working capacity, was employed and received income.

THE LAW

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

71. The applicant complained that it had been unjustified and disproportionate to make him reimburse the lost working capacity pension paid to Ž.K. He relied on Articles 6, 7, 8 and 14 of the Convention.

72. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the applicant's complaint falls to be examined 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. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

74. The applicant submitted that the injury to the victim, Ž.K., had been caused unintentionally, he had admitted his guilt and had fully compensated Ž.K. for the injuries by paying him the compensation in respect of pecuniary and non-pecuniary damage that had been awarded in the criminal proceedings. Therefore, the requirement for him to make any further payments was unjustified.

75. He further submitted that domestic law did not provide for any limits to his obligation to reimburse the SSIF for the lost working capacity pension paid to Ž.K., and as a result, he would be obliged to continue making regular payments to the SSIF for as long as Ž.K. was alive. He contended that such an obligation constituted a disproportionate interference with his property rights, in particular in view of the fact that the amount of the pension paid to Ž.K. was constantly increasing and the applicant was unable to foresee how much he would have to pay in the future. In the applicant's view, that would eventually lead to him sustaining greater pecuniary damage than he had accidentally caused to Ž.K.

76. Lastly, the applicant submitted that a lost working capacity pension was a type of social assistance granted by the State to its citizens who were less able to work, in order to provide them with a minimum standard of subsistence. He had contributed to the public funds used for that purpose by paying taxes and other social contributions. However, in the case at hand, he was made to finance the pension paid to the victim from his personal funds, thereby transferring the State's obligation onto him and making him pay twice.

(b) The Government

77. The Government acknowledged that the requirement for the applicant to reimburse to the SSIF the pension paid to Ž.K. constituted an interference with his right to the peaceful enjoyment of his possessions. However, they submitted that that interference had complied with the requirements of Article 1 of Protocol No. 1 to the Convention.

78. The impugned interference was provided for by law, namely Article 6.280 § 1 and Article 6.290 §§ 1 and 3 of the Civil Code (see

paragraphs 53 and 59 above), as well as Article 21 § 1 of the Law on State Social Insurance (see paragraph 61 above). The Constitutional Court had examined Article 6.290 § 3 of the Civil Code and found no reasons to doubt its compliance with the Constitution (see paragraph 64 above).

79. Moreover, the interference pursued the legitimate aim of protecting the interests of the victims of crime, by compensating them for damage sustained as a result of injury and by enforcing the obligation of the person liable for the damage to compensate for it. The interference also pursued the aim of protecting the public purse, by making the liable person reimburse the SSIF for the pension which it had paid from the State's budget and thereby replenishing public funds. The Government submitted that both those aims had been accepted by the Court as being legitimate (they referred, *mutatis mutandis*, to *Šeiko v. Lithuania*, no. 82968/17, § 31, 11 February 2020, and *Bélané Nagy v. Hungary* [GC], no. 53080/13, § 121, 13 December 2016).

80. With regard to the proportionality of the interference, the Government firstly emphasised that under domestic law anyone who caused damage to another person was liable to fully compensate for that damage (see paragraph 50 above). The fact that the victim received social allowances did not exempt the liable person from his or her obligation to compensate for the damage. However, the person who had caused the damage could be required to reimburse the social insurance authorities for the social allowances paid to the victim only to the extent that those allowances corresponded to the damage sustained by the victim (see paragraphs 64 and 66 above); where he or she believed that the social allowance exceeded the actual damage, he or she bore the burden of proving it (see paragraphs 68 and 69 above).

81. The Government submitted that the domestic law provided for two different models of compensating a victim for pecuniary damage arising out of an injury caused by another person. Under the first model, the liable person could pay compensation directly to the victim. Under the second model, where the victim met certain conditions provided by law such as having a minimum length of service, having social insurance, and having lost his or her working capacity or having had it diminished, compensation was paid by the SSIF in the form of a social allowance. The Government also submitted that the full extent of the effects on the injured person's health could not be known in advance, and therefore it was not possible to fully compensate for the damage with a single final payment. They contended that if the State did not have the right to claim reimbursement from the person who had caused damage to the victim, that would mean that in those instances where the compensation was paid by the State and not by the liable person directly, the liable person would be treated more favourably.

82. The Government further submitted that, as held by the Supreme Court, if the State could not claim reimbursement, this would deprive the law of its deterrent effect, as persons who had acted unlawfully would not face any consequences of their actions. Moreover, it would allow the person who

caused the damage to completely avoid responsibility and would transfer the obligation to compensate for the damage onto the taxpayer (see paragraph 65 above).

83. Turning to the circumstances of the applicant's case, the Government submitted that the domestic courts had thoroughly examined whether the lost working capacity pension paid to Ž.K. was equal to the damage he had sustained because of the applicant's actions. An examination had been ordered to assess Ž.K.'s working capacity and it had established that its diminution had resulted solely from the injury caused by the applicant (see paragraph 25 above), and the applicant had failed to provide any evidence to the contrary. Although in the domestic proceedings the applicant had argued that Ž.K. continued to work and that his salary was even higher than before the accident (see paragraph 24 above), the Government submitted that, according to the well-established domestic case-law, a lost working capacity pension was aimed not only at compensating the victim for the loss of income but also at covering other expenses linked to the injury, such as treatment or medication, and the fact that such a pension was higher than the victim's previous salary did not mean that it exceeded the damage sustained by the latter (see paragraph 67 above).

84. Moreover, if in the future the victim's working capacity were to increase, the applicant had the right to ask the courts to reduce the amount of compensation he was required to pay (see paragraph 56 above).

85. They further submitted that domestic law allowed the applicant to ask the courts to reduce the amount of compensation he had to pay or to ask the SSIF to waive its reimbursement claims against him if his financial situation was difficult (see paragraphs 51, 52, 62 and 63 above). They referred to examples of cases in which the courts had reduced the amount defendants had had to reimburse on the grounds of, among other considerations, their difficult financial situation, the fact that the damage had not been caused intentionally or the fact that they had paid some compensation directly to the victims (see paragraph 70 above). However, the applicant had never asked the courts to reduce the amount he had to reimburse to the SSIF – he had only ever referred to his difficult financial situation when asking to pay the compensation in instalments (see paragraphs 17 and 21 above) or for the payment of stamp duty to be deferred (see paragraph 38 above), all of which requests had been granted. In this connection, the Government noted that the applicant was employed and that in 2021 he had started receiving an old-age pension, and that there was no indication that he was in need of any social assistance. Accordingly, the impugned measure did not leave him devoid of all means of subsistence (they referred by contrast to *Bélané Nagy*, cited above, §§ 123-26).

86. The Government also submitted that the applicant had brought the situation on himself by committing a criminal offence and seriously injuring the victim (they referred, *mutatis mutandis*, to *Šeiko*, cited above, § 32). If he

had not been required to reimburse the SSIF for the pension paid to the victim from its budget, that would have led to the State sustaining pecuniary damage because of the applicant's actions.

87. In response to the applicant's argument that he already contributed to the pension paid to Ž.K. by paying taxes and other social contributions (see paragraph 76 above), the Government submitted that the social contributions paid by the applicant were aimed at ensuring that he himself would be entitled to receive social allowances in case of need, but not to cover for his civil liability for injuring another person. Individuals who wished to avoid reimbursement claims in the event of causing damage to others could obtain private civil liability insurance, in which case the insurance provider would be responsible for reimbursing the State for the damage caused by the insured person; however, under Lithuanian law, private civil liability insurance did not cover risks related to the use of a gun, as that was considered to be a particularly risky activity.

88. Lastly, the Government pointed out that the SSIF had sought to resolve the dispute with the applicant amicably: it had lodged civil claims with the courts only after he had refused to pay the required amounts (see paragraphs 17 and 18 above) and it had agreed to all of his requests to pay in instalments (see paragraphs 17, 20, 21, 23 and 42 above).

2. *The Court's assessment*

(a) *Scope of the case*

89. The Court observes that the present application was lodged with it on 18 November 2021. Accordingly, it does not have jurisdiction to review the compatibility with Article 1 of Protocol No. 1 to the Convention of the SSIF's claims for reimbursement made between 2011 and 2016, which the applicant did not dispute in the domestic courts (see paragraphs 17-21 above), or the claim made in 2017 which he disputed and which dispute was concluded by the final court decision on 27 June 2019 (see paragraphs 22-32 above), since those proceedings ended more than six months prior to the date of the lodging of the present application.

90. Nonetheless, in its review of the proceedings relating to the reimbursement claim lodged by the SSIF in September 2019, which were concluded on 18 May 2021 (see paragraph 41 above) and which it therefore has jurisdiction to examine, the Court will have to put the relevant decisions in context, which inevitably means that it must to some degree have regard to the former proceedings and decisions (see, *mutatis mutandis*, *Bélané Nagy*, cited above, §§ 91-92, and *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 147-48, 10 September 2019).

(b) Whether there was an interference and the applicable rule

91. In the domestic proceedings at issue in the present case the applicant was ordered to pay to the SSIF the amount of EUR 5,824 as reimbursement for the lost working capacity pension which the SSIF had paid to the person that the applicant had accidentally injured (see paragraph 33 above). There was no dispute between the parties that that obligation constituted an interference with his rights under Article 1 of Protocol No. 1 to the Convention and the Court has no reason to find otherwise (see, *mutatis mutandis*, *Šeiko*, cited above, § 28).

92. The Court considers that the present case should be examined in the light of the general principle laid down in the first rule of Article 1 of Protocol No. 1, which enunciates the principle of peaceful enjoyment of property (see *Bélané Nagy*, § 72, and, *mutatis mutandis*, *Šeiko*, §§ 28-29, both cited above).

(c) Whether the interference was provided for by law

93. The Court observes that Article 6.263 § 2 of the Civil Code establishes the obligation for anyone who has caused pecuniary damage to another person to fully compensate for such damage (see paragraph 50 above). According to Article 6.290 § 1 of the Civil Code, damage which has to be compensated for includes social allowances paid in the event of an injury (see paragraph 58 above). Moreover, Article 6.290 § 3 of the Civil Code and Article 21 § 1 of the Law on State Social Insurance provide that social insurance authorities which have paid allowances to a person who has sustained damage because of another person's actions may claim reimbursement of the amounts paid from the person who caused the damage in question (see paragraphs 59 and 61 above). Article 6.290 § 3 of the Civil Code was examined by the Constitutional Court which found no grounds to question its compliance with the Constitution (see paragraph 64 above).

94. The applicant did not present any arguments questioning the lawfulness of the interference at issue. Accordingly, the Court concludes that it had a basis in the domestic law.

(d) Whether the interference pursued a legitimate aim

95. The Government submitted that the interference pursued the legitimate aims of protecting the interests of the victims of crime and protecting the public purse (see paragraph 79 above) and the applicant did not dispute that submission.

96. The Court reiterates that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and it will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Bélané Nagy*, cited above, § 113, and the cases cited therein).

97. The Court has no reason to doubt that protecting the public purse serves a communal interest (*ibid.*, § 121). Moreover, in view of the fact that the measure in question was aimed at ensuring the ability of the public authorities to pay lost working capacity pension to the person whom the applicant had injured, the Court accepts that it sought to protect the interests of the victim of the crime (see *Šeiko*, cited above, § 31). Therefore, it is satisfied that the interference at issue pursued legitimate aims in the public interest.

(e) Whether the interference was proportionate to the aim pursued

(i) General principles

98. The Court reiterates that Article 1 of Protocol No. 1 to the Convention requires that any interference be reasonably proportionate to the aim sought to be realised. The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (*ibid.*, § 115, and the cases cited therein).

99. In addition, the importance of the procedural obligations under Article 1 of Protocol No. 1 must not be overlooked. Thus the Court has, on many occasions, noted that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must also afford the individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. An interference with the rights provided for by Article 1 of Protocol No. 1 cannot therefore have any legitimacy in the absence of adversarial proceedings that comply with the principle of equality of arms, allowing discussion of aspects that are important for the outcome of the case. In order to ensure that this condition is satisfied, the applicable procedures should be considered from a general standpoint (see *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 302, 28 June 2018, and the cases cited therein).

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

100. At the outset, the Court observes that the applicant did not dispute the fact that he had seriously injured Ž.K. in a hunting accident and that he was therefore under an obligation to compensate the latter for the damage which he had caused. However, he disputed the extent of that obligation and argued that the requirement for him to reimburse the SSIF for the lost working capacity pension paid to the victim imposed a disproportionate burden on him.

101. Firstly, the applicant argued that he had fully compensated Ž.K. for the pecuniary and non-pecuniary damage he had caused by paying the compensation awarded in the criminal proceedings and that any further

claims against him were unjustified (see paragraph 74 above). However, the Court is unable to accept this argument. It refers to the position of the Supreme Court and the courts which examined the applicant's case, which distinguished between, on the one hand, the pecuniary damage caused to the victim at the time of the injury – in the present case, Ž.K.'s expenses for medication, hospitalisation and transport incurred immediately after the injury (see paragraph 5 above) – and on the other hand, pecuniary damage arising later, such as loss of income because of the diminished capacity to work and additional expenses for medication, care or rehabilitation (see paragraphs 31, 35, 36, 39 and 69 above). It also takes note of the Government's submission that the full extent of the damage caused by the injury cannot always be identified at the time when that injury occurs (see paragraph 81 above) and accepts that, for that reason, the victim may need to be able to bring further claims to cover any new expenses which arise after the injury. Accordingly, the Court rejects the applicant's argument that the compensation which he had paid to Ž.K. during the criminal proceedings had fully covered the damage caused and that any further claims against him were unjustified.

102. In his submissions before the Court, the applicant also argued that he had been made to finance the payment of Ž.K.'s pension twice because he already contributed to it by paying taxes and other social contributions (see paragraph 76 above and see the Government's position in paragraph 87 above). However, he did not raise this argument with the domestic authorities and therefore the Court will not take it into consideration.

103. The applicant further submitted that a lost working capacity pension was a type of social assistance granted by the State to those citizens who needed it and that the payment of such social assistance should not be transferred onto private individuals (see paragraph 76 above). In this connection, the Court reiterates that Article 1 of Protocol No. 1 imposes no restriction on the Contracting States' 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 (see *Béláné Nagy*, cited above, § 82, and the cases cited therein). It also reiterates that the Convention does not provide for the institution of an *actio popularis* and that its task is not normally to review the relevant law and practice *in abstracto* but to determine whether the manner in which they were applied to, or affected, the applicants gave rise to a violation of the Convention (see, among many other authorities, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015).

104. Accordingly, the role of the Court in the present case is not to examine *in abstracto* whether the system established under the Lithuanian law, whereby the financial burden of paying social allowances to persons who have been injured through others' fault is borne not by the State but by the persons responsible for the injuries, is compatible with Article 1 of

Protocol No. 1. Instead, the issue before it is whether, taking into account the individual circumstances of the applicant, the obligation for him to reimburse to the SSIF the lost working capacity pension paid to Ž.K. struck a fair balance between the general interest of the community and the applicant's property rights; such a balance would not be struck if the applicant had to bear an excessive burden.

105. In this connection, the Court firstly notes that the requirement for the applicant to reimburse the payments which the SSIF made to Ž.K. was not a mandatory or automatic consequence of him being found guilty of the criminal offence (contrast *Krayeva v. Ukraine*, no. 72858/13, §§ 31-32, 13 January 2022). Instead, in the domestic proceedings, the courts examined whether the diminution of Ž.K.'s working capacity had resulted from the applicant's actions and whether the pension paid to him was equal to the damage sustained from the injuries (see paragraphs 26, 30 and 35 above); under the domestic law, the applicant could be required to reimburse the SSIF only for the amount of the pension corresponding to the damage caused by his actions (see paragraph 66 above). Moreover, the applicant had an opportunity to challenge the causal link between his actions and the extent of the victim's injuries and a forensic examination was ordered at his request in the proceedings which concerned the claim for reimbursement lodged by the SSIF in 2017 (see paragraph 25 above). He did not allege either in the domestic courts or before the Court that that examination had been conducted improperly or that its conclusions were inaccurate. Thus, the Court is satisfied that the proceedings viewed as a whole afforded him a reasonable opportunity of putting his case to the appropriate authorities with a view to their establishing a fair balance between the conflicting interests at stake (see *Bäck v. Finland*, no. 37598/97, §§ 64 and 67, ECHR 2004-VIII).

106. The Court further observes that the amount of the lost working capacity pension paid to Ž.K. was likewise established not in an automatic manner but on the basis of his individual circumstances and the actual damage which he had sustained. In particular, the calculation of the pension took into account the level of Ž.K.'s working capacity, his length of service and the salary which he used to receive prior to the injury (see paragraph 14 above); during one period when his working capacity was assessed as being sufficiently high (70%), no pension was paid (see paragraph 16 (d) above).

107. The Court takes note of the argument which the applicant raised in the domestic proceedings that the amount of pension paid to Ž.K. also depended on the amount of the basic pension, which is determined by the government in the light of various economic or political factors (see paragraph 40 above). It observes that, as established by the domestic courts, one of the purposes of the lost working capacity pension is to compensate the victim for the additional expenses arising from the consequences of the injury and that those expenses are liable to increase over time because of factors such as inflation (see paragraph 36 above). The Court has previously accepted

the possibility of amendments to social security legislation which may be adopted in response to, among other things, societal changes (see *Bélané Nagy*, cited above, § 88). Accordingly, it is unable to find that adjusting the amount of the lost working capacity pension so that it reflects the changing economic reality in the country is arbitrary or unreasonable. It also notes that the applicant did not argue that the gradual increase of Ž.K.'s pension had been significant (see paragraph 36 above) or that it had resulted in that pension no longer corresponding to the damage sustained by Ž.K.'s because of the injuries.

108. The Court also considers it relevant for the assessment of the proportionality of the interference that, should the victim's working capacity improve in the future, the applicant has the right to ask the courts to reassess the amount of compensation due from him (see paragraph 56 above).

109. Furthermore, the Court finds it particularly important that the domestic law provides the applicant with an opportunity to seek the reduction of the amount which he is required to pay, on account of, among other considerations, his financial situation, the fact that the injury had been caused unintentionally or the fact that he had already compensated the victim for a substantial part of the damage caused (see the relevant provisions of the domestic law in paragraphs 51, 52, 62 and 63 above and the relevant case-law in paragraph 70 above). However, as pointed out by the Government, the applicant never made any such request either to the SSIF or in court proceedings. Thus, he did not avail himself of the opportunity provided by the domestic law to seek the reduction of the financial burden imposed on him and he did not provide any explanation to the Court for omitting to do so.

110. Moreover, in his submissions to the Court, the applicant did not allege that the obligation to reimburse the SSIF deprived him of the means of subsistence or otherwise constituted an excessive burden in view of his financial situation (see, *mutatis mutandis*, *Fábián v. Hungary* [GC], no. 78117/13, § 78, 5 September 2017, and *Šeiko*, cited above, § 33; compare and contrast *Moskal v. Poland*, no. 10373/05, § 74, 15 September 2009; *Bélané Nagy*, cited above, § 123; and *Čakarević v. Croatia*, no. 48921/13, §§ 88-89, 26 April 2018).

111. The Court also observes that the SSIF granted all of the applicant's requests to make payments in monthly instalments (see paragraphs 17, 20, 21, 23 and 42 above) and it initiated court proceedings against him only after he had refused to make those payments voluntarily (see paragraph 18 above). Accordingly, it is satisfied that, on those occasions on which the applicant availed himself of the various opportunities provided by the domestic law, the domestic authorities acted in a flexible manner and took measures aimed at alleviating the financial burden imposed on him (see, *mutatis mutandis*, *Kaminskas v. Lithuania*, no. 44817/18, § 63, 4 August 2020).

112. Lastly, the Court is mindful of the fact that the present case concerns not a certain defined amount of debt which the applicant might hope to eventually repay, but the obligation imposed on him to make regular payments, which are liable to gradually increase, to the SSIF until 2039, when Ž.K. will reach retirement age (contrast *Šeiko*, cited above, § 32). It notes that the duration of his obligation to reimburse the SSIF for the lost working capacity pension paid to the victim, while undoubtedly long, is the same as the period during which the victim's capacity to work and gain income remains diminished, that is to say, the same as the period during which the victim will continue to suffer the consequences of the applicant's negligent actions. Accordingly, the Court is unable to find that the duration of the interference at issue suffices to make it disproportionate.

113. All the foregoing considerations taken together lead the Court to conclude that, in the particular circumstances of the present case, a fair balance was struck between, on the one hand, the general interest of the community and, on the other hand, the applicant's property rights.

114. 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 30 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President