



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

FORMER SECOND SECTION

CASE OF JUCYS v. LITHUANIA

(Application no. 5457/03)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

08/04/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jucys v. Lithuania,

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

Jean-Paul Costa, *President*,

András Baka,

Ireneu Cabral Barreto,

Riza Türmen,

Mindia Ugrekhelidze,

Antonella Mularoni,

Danutė Jočienė, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006 and 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 5457/03) 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 Pranas Jucys (“the applicant”), on 7 February 2003.

2. The applicant was represented by Mr J. Jasiulevičius, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. On 7 September 2005 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Birštonas.

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

6. On 23 December 1995 the applicant was arrested while crossing the Lithuanian border. He was suspected of attempting to smuggle untreated mink furs. The furs were forfeited as evidence in the context of the criminal case.

7. On the basis of a decision taken by the prosecution, on 14 March 1996 the furs were auctioned – being goods prone to deterioration - for 882,173 Lithuanian litai (LTL, or about EUR 255,495¹). The money received from the auction was transferred to the State budget.

¹ At the current rate of exchange

8. On 30 January 1997 the applicant was acquitted by the Klaipėda Regional Court in view of the lack of any elements of a crime. The court did not rule on the issue of the forfeited evidence.

9. The applicant brought an appeal, requesting that this issue be resolved. However, on 26 March 1997 the Court of Appeal refused to deal with it, ruling that, since the furs had been sold, the handling of the proceeds from the sale was no longer within the jurisdiction of the criminal courts.

10. The applicant then brought an application before the Vilnius Regional Court, requesting compensation for the forfeited furs. On 8 October 1997 that court ruled that the question should be determined in civil proceedings.

11. On an unspecified date the applicant brought a civil action, claiming the LTL 749,847 (about EUR 217,171), i.e. the proceeds minus the auction expenses.

12. On an unspecified date, he brought a separate civil action, claiming the sum allegedly paid for the furs at the Copenhagen Fur Centre, corresponding to USD 327,542.57 or, at the then exchange rate, LTL 1,310,170 (EUR 379,451).

13. On 7 November 1997 the Klaipėda City District Court found that the tax authorities were obliged to pay the applicant LTL 749,847 (EUR 217,171). On 25 March 1998 that decision was quashed on procedural grounds by the Klaipėda Regional Court. The court held that the applicant should have applied to a Vilnius civil court. That decision was upheld by the Court of Appeal on 28 September 1998.

14. On 25 March 1998 the applicant re-applied, this time submitting his action to the Vilnius Regional Court and claiming the full proceeds of the auction sale - LTL 882,173 (about EUR 255,495).

15. On 28 January 2000 the court refused to admit the applicant's claim because he should have applied to the newly-created administrative courts (operational since May 1999). However, on 2 March 2000 the Court of Appeal quashed the decision of 28 January 2000, returning the case for a fresh examination by the Vilnius Regional Court by way of the civil procedure.

16. On 21 April 2000 the Klaipėda Regional Court decided to adjourn the examination of the applicant's claim pending the examination of his claim for the auction proceeds.

17. On 28 July 2000 the Vilnius Regional Court accepted the applicant's suit for the whole proceeds of the auction, awarding him LTL 882,173 (about EUR 255,495) against the Inland Revenue.

18. Upon appeal by the tax authorities, on 17 October 2000 the Court of Appeal quashed the lower court decision on the ground that the Ministry of Justice should have been the defendant in the proceedings. The case was remitted to the first instance court.

19. On 28 February 2001 the Supreme Court upheld the appellate decision, stating that both the Inland Revenue and the Ministry of Justice should have been the defendants in the proceedings. The Supreme Court further noted that the first-instance court should consider whether to join the case to the applicant's other claim for damages in the amount of LTL 1,310,170 (USD 327,542.57). It noted that in both cases the parties were the same, as was the nature of the claim, i.e. a request for compensation in respect of the value of the furs.

20. On 1 May 2004 the applicant re-submitted his claim of LTL 882,173 to the Vilnius Regional Court. The State, the Office of the Prosecutor General, the Ministry of Finance and the Inland Revenue were cited as the respondents.

21. On 20 June 2005 the Vilnius Regional Court rejected the applicant's claim as he had not proved that he had owned the furs.

22. On 2 November 2005 the Court of Appeal upheld that decision.

23. The applicant lodged a cassation appeal, reiterating his claim for LTL 882,173. On 26 May 2006 the Supreme Court quashed the lower decisions, accepting the applicant's claim. It held that, following the applicant's acquittal, he had been entitled to compensation for the proceeds of the auction. In this respect the Supreme Court noted:

“A person who has acquired property without a legal ground shall return it. The obligation arises where the ground on which the property was acquired ceases to exist. Such property can be goods forfeited upon suspicion of criminal acts. If the suspected person is acquitted ... the State no longer has any legal ground to retain the items seized, or their value, where the items have been sold as perishable. ...

Unjust enrichment occurs to the detriment of the interests of a person whose property has been seized. ...

When returning the property acquired without a legal ground or, as in the present case, the value of the objects sold, being quickly perishable, the debtor has a right to require compensation for the expenses incurred in maintaining the property (Article 513 of the Civil Code). This is the right of an honest debtor. Therefore, it has to be established whether the State had grounds to start the investigation and forfeit the goods in order to ensure the effectiveness thereof. The fact that no evidence of a crime has eventually been found is not in itself sufficient to assume the lack of honesty on the part of the State. ... Indeed, [the applicant] had incorrectly filled in the customs declaration ... and this was a sufficient ground to start the investigation against him and seize the material evidence. Therefore, in accordance with Article 513, the State should be entitled to recover the expenses incurred during the sale; those expenses appear to have been necessary in order to safeguard the value of the goods.”

24. The applicant was finally awarded LTL 590,056.05 (about EUR 170,892) in pecuniary damages, corresponding to the value of the auctioned furs from which was deducted the auction expenses (LTL 132,325.95, or about EUR 38,324) and value-added tax (LTL 158,791, or about EUR 45,989), which the applicant should anyway have paid on importing the furs into Lithuania.

25. It appears that the examination of the applicant's claim for the purported full value of the furs at LTL 1,310,170 (USD 327,542.57), which had been stayed on 21 April 2000, was not resumed (paragraphs 12, 16, and 19 above). (The parties have not provided the Court with up-dated information on this aspect of the case.)

26. On an unspecified date the applicant claimed interest on LTL 882,173 (the whole sum of the auction proceeds), calculated from the moment of his acquittal. On 21 November 2006 the Vilnius Regional Court awarded him interest in the amount of LTL 1,616 (approximately EUR 468) – the sum corresponding to 5% interest calculated on the basis of the sum awarded as damages by the Supreme Court on 26 May 2006 (LTL 590,056), from the moment of that award to its actual payment 20 days later. The court dismissed the applicant's allegation that the interest should be calculated on the basis of the whole sum of the auction proceeds. It also refused to award interest for the whole period of civil litigation for damages. The court considered that the State was liable to pay interest only from the date when the fact of unjust enrichment became known – i.e. when it was so concluded by the Supreme Court on 26 May 2006. Until then, the State was deemed an honest acquirer, even after the acquittal of the applicant. The decision was upheld by the Court of Appeal on 30 March 2007. On 12 October 2007 the Supreme Court upheld the lower courts' decisions. It stated that in accordance with the rules of criminal procedure, the

confiscated goods should be returned to the acquitted person after his acquittal. It further stated that, as an honest acquirer of the auction proceeds, the State could not be liable to pay interest until the end of the criminal proceedings.

27. The applicant has presented an invoice issued by the Copenhagen Fur Centre on 15 December 1995, indicating that the furs had been purchased for USD 327,542.57 (about EUR 232,254).

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. According to Article 92 of the Code of Criminal Procedure (as then in force), an item which has been seized as material evidence pending criminal proceedings, and which is prone to deterioration, shall be sold in accordance with the applicable civil procedure.

29. Article 512 of the old Civil Code (valid until 30 June 2001) dealt with situations of unjust enrichment, providing for an obligation to return property acquired without a legal ground or to reimburse its value. Article 513 further stipulated:

“A person who has acquired property without any legal ground shall return or reimburse all the receipts that he [or she] obtained or ought to have obtained in using that property from the moment when he [or she] knew or ought to have known about the lack of grounds for ... enrichment.

This person has a right to require compensation for all the necessary expenses incurred during the same period in maintaining the property acquired without legal ground.”

30. Article 6.272 § 1 of the new Civil Code (which entered into force on 1 July 2001) allows a civil claim for pecuniary and non-pecuniary damage, in view of the unlawful actions of the investigating authorities or courts, in the context of a criminal case. The provision envisages compensation for an unlawful conviction, an unlawful arrest or detention, the application of unlawful procedural measures of enforcement or the imposition of an unlawful administrative penalty.

THE LAW

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

31. The applicant complained that he had suffered damage as a result of the length of the criminal proceedings against him which resulted in considerable financial loss for him, commencing with the forfeiture and sale by the State of his mink furs. In particular, he alleged that, due to the incompetent assessment of the State experts, the furs had been sold for less than their market value. He also complained that he could not use his property during a prolonged period and had suffered a loss of profits. Furthermore, he complained about his inability to obtain adequate compensation, at least for the amount of the auction proceeds, and that, due to the long-lasting civil litigation, the value of those proceeds had depreciated. The applicant alleged a violation of Article 1 of Protocol No. 1, which states 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

32. The Court considers that the main problems arising in the present case under Article 1 of Protocol No. 1 to the Convention were the difficulty for the applicant – who had been acquitted – to recover the sum corresponding to the value of the goods auctioned by the State and the length of the related proceedings.

33. The applicant's complaints in this respect are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

34. The Court considers that both the forfeiture and sale of the furs, whilst involving a deprivation of property, in the circumstances formed a constituent element of the procedure by which the customs authorities control importations. The measures thus also involved a restriction on the movement of goods falling within the scope of the second paragraph of Article 1 of Protocol No. 1, concerning “a control of the use of property” (see, *AGOSI v. the United Kingdom*, judgment of 24 October 1986, Series A no. 108, § 51).

35. It was not contested by the applicant that the forfeiture and sale of his furs was “lawful,” as required by Article 1 of Protocol No. 1.

36. The Court recalls that any seizure or confiscation entails damage. However, to be compatible with Article 1 of Protocol No. 1 to the Convention, the actual damage sustained should not be more extensive than that which is inevitable (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, § 33). The Court considers that the “innocent” owner of smuggled goods should in principle be entitled to recover the forfeited items. This principle should apply equally in cases where such an owner is acquitted of smuggling.

37. The Court observes that, following his acquittal, the applicant was able to claim the actual proceeds of the auction. However, it took more than eight and a half years for the courts to resolve this matter, even though it presented no complexities. The facts had already been determined in the preceding criminal proceedings against the applicant (paragraphs 6-8 above). Instead, several years of these civil proceedings were taken up with the domestic courts' endeavours to determine the jurisdictional question (paragraphs 9-10 and 13-15 above) or the appropriate respondents (paragraphs 18-19 above). There is nothing to indicate any lack of diligence on the part of the applicant.

38. Consequently, after having undergone the strains of an unfounded criminal prosecution, and having lost the control of his possessions which were hurriedly auctioned off as perishable goods, the applicant was then precluded from at least enjoying the auctioned fruits of those possessions for many years.

39. Having regard to the above factors and in particular the delay in the proceedings, the Court concludes that the applicant has had to bear a disproportionate and excessive burden in the circumstances of the present case. Having dealt with the main issue raised by the applicant, the Court considers that there is no need to examine other aspects of his complaint under Article 1 of Protocol No. 1.

There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

40. The applicant complained that the length of the civil proceedings for damages had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

41. The Government submitted that the applicant had failed to exhaust domestic remedies because he should have filed a claim for damages before a civil court under Article 6.272 of the Civil Code, in conjunction with the general domestic provisions on compensation for breaches of personal rights. However, the Court rejects the Government's argument for the same reasons as those stipulated in the *Simonavičius v. Lithuania* judgment (no. 37415/02, §§ 32-34, 27 June 2006; see also, more recently, *Baškienė v. Lithuania*, no. 11529/04, §§ 67-74, 24 July 2007).

42. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other ground. It must therefore be declared admissible. However, in view of the finding of a violation of Article 1 of Protocol No. 1 above (paragraphs 36-38), it finds it unnecessary to examine the merits of essentially the same issue under Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

44. The applicant claimed LTL 2,174,253.60 (about EUR 629,707) in pecuniary damage. He also claimed LTL 1,000,000 (about EUR 289,168) for non-pecuniary damage.

45. The Government contested these claims as being unjustified.

46. The Court considers that, in view of the violation of Article 1 of Protocol No. 1, the applicant has suffered both pecuniary and non-pecuniary damage. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the

Court awards the applicant the global sum of EUR 25,000 for all forms of damage suffered.

B. Costs and expenses

47. The applicant also claimed LTL 2,800.00 (EUR 810.94) for legal costs and expenses, this amount being based on a bill issued to the applicant by his lawyer for the preparation of his pleadings.

48. The Government contested the claim.

49. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the claim in full.

C. Default interest

50. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that it is not necessary to make a separate examination of the merits of the claim under Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
 - (i) EUR 25,000 (twenty five thousand euros) for both pecuniary and non-pecuniary damage, and
 - (ii) EUR 810.94 (eight hundred and ten euros and ninety-four cents) in respect of costs and expenses,
 - (iii) plus any tax that may be chargeable. These amounts to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Jean-Paul Costa
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Cabral Barreto;
- (b) partly concurring opinion of Judge Jočienė.

J.-P.C.
F.E.P.

CONCURRING OPINION OF JUDGE CABRAL BARRETO

(Translation)

Although I voted with the majority in finding that there has been a violation of Article 1 of Protocol No. 1 in this case, I am unable to follow its reasoning.

I am unable to accept the majority's reasoning on the following grounds:

1. I agree that, once acquitted, the applicant was entitled to have his property returned; the domestic authorities have never challenged this longer contested in themselves; the applicant could therefore expect to receive compensation from the State, corresponding to the market value of the furs.

The applicant thus had a claim against the State.

However, the specific amount of compensation was not defined: in particular, the costs of auctioning the furs and the taxes to be deducted from the sale proceeds had to right.

The furs had been sold, for reasons which are not to be taken into account in calculating the sum to be awarded to the applicant.

In short, the debt towards the applicant had to be “liquidated” in order to become payable; prior to the Supreme Court's decision of 20 May 2006, the amount that the State had to pay the applicant was not known and, in addition, the debt could not be the subject of enforcement proceedings.

In contrast to the situations examined in the judgments *AGOSI v. the United Kingdom* (24 October 1986, Series A no. 108) and *Raimondo v. Italy* (22 February 1994, Series A no. 281-A), where the assets in dispute were well defined, in the case before us the debt towards the applicant was, prior to the “liquidation” phase, certain and current, but not enforceable.

The Court has reiterated that “a claim cannot qualify as a “possession” within the meaning of Article 1 of Protocol No. 1 unless it has been recognised and determined by a judicial decision having final effect. That is the condition for determining whether a claim may be regarded as definite and enforceable and so entitled to the protection of Article 1 of Protocol No. 1 (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B)” (*Fernandez-Molina Gonzalez and Others v. Spain* (dec.), no. 64359/01, ECHR 2002-IX, p. 299).

After the Supreme Court had specified the amount to be paid to the applicant, the existing information suggests that the applicant received compensation within a short time; Article 1 of Protocol No. 1, which was undoubtedly applicable from the moment that the Supreme Court's judgment became final, was respected in this case once the State had unhesitatingly complied with the Supreme Court's order.

2. It is true that the phase of “liquidating” the applicant's right lasted from 30 January 1997, date of his acquittal, to May 2006 (date of the Supreme Court's judgment): in other words, more than nine years.

This is a long period, which is mainly attributable to the conduct of the authorities, and especially the domestic courts, in proceedings which were of no particular complexity.

I therefore considered that there had been a violation of Article 6 of the Convention.

However, by following another line of case-law inspired by the judgments in *Akkus v. Turkey* (9 July 1997, *Reports of Judgments and Decisions* 1997-IV, pp. 1309-1310, § 29) and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, pp. 130-131, § 54, ECHR 2000-I), I also conclude that there has been a violation of Article 1 of Protocol No. 1, but on the basis of reasoning which I believe to be more solid.

I consider that the applicant could claim to be entitled to recover his debt against the State, which would make it possible to conclude, in principle, that Article 1 of Protocol No. 1 was applicable.

In my opinion, the disputed situation comes within the first sentence of that paragraph, which lays down the principle of peaceful enjoyment of property (see *Matos e Silva, Lda., and Others v. Portugal*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1113, § 81, referred to in the *Almeida Garret, Mascarenhas Falcão and Others* judgment, cited above, § 48).

It remains to rule on compliance with the provision in question.

Continuing to follow the reasoning in the *Almeida Garret, Mascarenhas Falcão and Others* judgment, it is necessary to ascertain whether a proper balance has been struck between the demands of the community's general interest and the requirements of protecting the fundamental rights of the individual.

I note that nine years elapsed without the applicant receiving the sum corresponding to the value of the furs.

It is undeniable that the length of time in question is imputable to the State, and that no valid justification has been put forward.

In addition, the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay (see *Akkus*, cited above, pp. 1309-1310, § 29; and, *mutatis mutandis*, *Stran Greek Refineries and Stratis Andreadis*, cited above, p. 90, § 82).

The difference between the value of the applicant's claim at the time of his acquittal and its value when actually paid caused the applicant to sustain a loss which, moreover, was not compensated by adequate default interest.

Equally, by deferring for nine years the payment of the disputed compensation, the domestic authorities left the applicant in a state of uncertainty, which leads me to consider that he has had to bear an individual and excessive burden which has upset the fair balance that should be struck between the requirements of the general interest and the protection of the right to the peaceful enjoyment of possessions.

There has therefore been a violation of Article 1 of Protocol No. 1.

PARTLY CONCURRING OPINION OF JUDGE JOČIENĖ

1. I am in agreement with the majority in finding a violation of Article 1 of Protocol No. 1 of the Convention in this case. However, my conclusion is based on some further arguments which I explain below. I do not share the majority's conclusion that the finding of a violation of Article 1 of Protocol No. 1 makes it unnecessary to examine separately the merits of the claim under Article 6 § 1 of the Convention (right to a hearing within a reasonable time). In my opinion, Article 6 and Article 1 of Protocol No. 1 reflect two separate values of the Convention, both of which are of fundamental importance, namely the rule of law and fair administration of justice on the one hand, and the peaceful enjoyment of possessions on the other, and which should have been dealt with separately in this particular case.

2. It should be reiterated that it is for the Contracting States to organise their legal systems in such a way that their courts are able to guarantee to everyone the right to a final decision within a reasonable time in the determination of one's civil rights and obligations (see *Caillot v. France*, no. 36932/97, § 27, 4 June 1999, unreported). No one disputes that the applicant's civil rights were at issue in the present case. Furthermore, under the well-established case-law of the European Court of Human Rights, the “reasonableness” of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV; *Frydlender v. France*, no. 30979/96, §§ 43, 45, 27 June 2000; *Simonavicius v. Lithuania*, no. 374158/02, § 39, 27 June 2006, etc.).

3. In the present case, the applicant was acquitted in the criminal case and had been seeking to recover his seized possessions for more than eight and a half years (see paragraphs 11, 23 and 24 of the judgment). In my opinion, all of the arguments used by the Court in paragraph 37 of the judgment reflect a violation of the right enshrined in Article 6 § 1 of the Convention, namely the right to have one's civil rights determined within a reasonable time. The Court in paragraph 37 based its analysis on factors – such as the period of time which elapsed from the moment of bringing the civil action to claim LTL 749,847 and the date of the final decision in that case; the absence of complexity; the domestic courts' disputes in determining the jurisdictional question and establishing appropriate respondents; and no lack of diligence on the part of the applicant – which, under the above-mentioned principles as developed by the Court, must be assessed when analysing the “reasonableness” of the length of proceedings. Accordingly, I have departed in this case from my colleagues' decision not to examine separately the merits of the claim under Article 6 § 1 with regard

to the “reasonableness” of the length of proceedings since, in my opinion, there has been a separate violation of this provision.

4. While agreeing with the finding of a violation of Article 1 of Protocol No. 1, I would add another set of considerations which influenced me in voting for a breach of this provision.

5. In my opinion, the Court should placed greater emphasis on the most important aspect of the applicant's claims, namely the fact that he could not obtain adequate compensation, at least the value of the auction proceeds, for a prolonged period of time. In my opinion, this aspect contains two different elements. Firstly, it should be remembered that the applicant was awarded LTL 590,056.05 in pecuniary damages by the decision of the Supreme Court of Lithuania of 26 May 2006 (see paragraphs 23 and 24 of the judgment). The question to be determined is whether, in these particular circumstances, the deduction of the total amount of the auction expenses (LTL 132,325.95) from the sum awarded to the applicant is to be regarded as a disproportionate and excessive burden, placed solely on the applicant even after his final acquittal. In my opinion, this question should be answered in the affirmative, despite the fact that the State was acting as an honest acquirer in the case, and had had legitimate grounds to start an investigation and the right to require compensation for the expenses incurred in maintaining the property, in line with the Civil Code of Lithuania. Ultimately, however, the applicant was acquitted of the criminal charges brought against him. This crucial factor should have led the State to reconsider and to agree to pay at least some of the auction expenses, which have now been placed solely on the applicant's shoulders.

6. Secondly, my main problem in this case relates to the interest paid to the applicant for only 20 days (see paragraph 26 of the judgment). I cannot agree with the domestic courts' evaluation concerning the period for which the State was liable to pay interest. I accept the argument that the State is obliged to pay interest only from the date on which the fact of unjust enrichment became known. However, I do not share the domestic courts' conclusion that this date was 26 May 2006, when the Supreme Court of Lithuania adopted a decision under which compensation for the seized mink furs was to be paid to the applicant. In my opinion, the starting point was the day of the applicant's final acquittal. It should be noted that certain contradictions may be observed in the reasoning of the domestic courts. On the one hand, the Supreme Court of Lithuania, in its decision of 12 October 2007 (see paragraph 26 of the judgment) upholding the decisions of the lower courts, clearly stated that, in accordance with the rules of criminal procedure, the confiscated goods should be returned to the acquitted person after his acquittal. It further added that, as an honest acquirer of the auction proceeds, the State could not be liable to pay interest “until the end of the criminal proceedings”. On the other hand, the State was deemed an honest acquirer, even after the applicant's acquittal. Consequently, an issue arises,

namely the fact that the applicant was acquitted in January 1997 but the State was deemed an honest acquirer even after that date, until the issue of compensation for the auction proceeds was resolved by the civil courts approximately nine years later. In my opinion, this means that the applicant should have been paid interest for the whole period from his acquittal on 30 January 1997 until the compensation for the seized mink furs was actually paid to him (20 days after the decision of the Supreme Court of Lithuania was adopted on 26 May 2006).