



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

1959 · 50 · 2009

SECOND SECTION

CASE OF PADALEVIČIUS v. LITHUANIA

(Application no. 12278/03)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Padalevičius v. Lithuania,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*

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

Having deliberated in private on 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 12278/03) 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, Juozas Padalevičius (“the applicant”), on 4 April 2003.

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

3. On 11 May 2006 the Court decided to give notice to the Government of the applicant’s complaints under Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in the Kaunas region.

5. On an unspecified date in 1991 the former owners of the land belonging to the Noreikiškės settlement, situated on the territory of the Lithuanian Academy of Agriculture (“the LAA”), filed claims for restitution of their ownership rights.

6. On 13 March 1992 the Noreikiškės settlement local council assigned a plot of land for the applicant's use and for construction of a private house. On 20 July 1992 the applicant paid 2,970 Russian roubles (RUR) for the use of that plot.

7. On 13 October 1992 a meeting of the Kaunas Regional Board took place attended by the applicant, acting on behalf of the LAA, a representative of the pre-nationalisation owners who sought to restore their property rights to the land assigned to the territory of the new LAA settlement, and representatives of various municipal and State institutions. It was decided to organise another meeting to discuss the possibility of restoring property rights to the land in Noreikiškės settlement in kind and to propose to the Government that plots of 0.3 hectares be allocated to the former owners for the construction of private houses.

8. Between 1992 and 1995 the Government enacted several decrees allowing persons in the applicant's position to acquire ownership of the land they had been using.

9. On 11 April 1995 the applicant and the Kaunas municipality signed a land-purchase agreement which specified that on 20 July 1992 the applicant had paid 29.70 Lithuanian litas (LTL) for the plot of land. On 14 April 1995 the plot of land was registered in the State Land Registry in the applicant's name and, in accordance with Lithuanian law, the applicant became its owner.

10. On 5 June 1995, civil proceedings were brought by a group of eight private individuals for annulment of the land-purchase agreements, including that of the applicant. The plaintiffs claimed restitution of their property rights to the land in question, which the LAA had allocated for the building of private houses and which had been nationalised by the Soviet occupying power in the 1940s. The dispute involved a total of 129 co-defendants, including the applicant.

11. On 27 June 1995 the Kaunas District Court ordered the seizure of the applicant's land. The order was later upheld by the Kaunas Regional Court and the Supreme Court, and specified that the applicant could grow only plants with a one-year lifespan on the land at issue. Moreover, the applicant was forbidden from carrying out any construction activities on the land pending the court proceedings.

12. On 28 October 1996 the Kaunas District Court dismissed the action as unsubstantiated.

13. On 5 February 1998 the Kaunas Regional Court quashed the decision, noting that the lower court had failed to properly inform 38 defendants in the case about the forthcoming hearing. The case was returned for fresh examination at first instance.

14. On 26 February 1999 the Kaunas District Court again dismissed the action.

15. On an unspecified date the case was transferred to the Panevėžys Regional Court, which examined it on appeal.

16. On 14 March 2000 the Panevėžys Regional Court stayed the proceedings, deciding to submit a question as to the constitutionality of the Government decrees on the basis of which the land had been sold to the applicant.

17. On 6 March 2002 the Kaunas County Governor's Office informed the applicant that despite the courts' ban on pursuing any activities on the plot of land, "at present there are perennial plants and there is also a pond". The applicant was requested to "bring the illegal actions to an end". On 12 April 2002 the applicant informed the local authorities that "it was only from your letter that I learned about the seizure of my plot of land. The pond was dug, the plants were planted and other works were done in 1993, 1994 and the first half of 1995".

18. On 10 May 2002 the Constitutional Court adopted a ruling, finding that the Government decrees in question violated the rights of the former owners of the land, who had the right to restitution of their property. The decrees were declared unconstitutional as contradicting Article 23 of the Constitution and, *inter alia*, Article 12 § 1 (15) of the Law on the procedure and conditions governing the restoration of rights of ownership to existing real property (*Istatymas dėl piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atstatymo tvarkos ir sąlygų*) ("the Restitution Law"). The ruling read in part as follows:

"... although the legislature enjoys a certain discretion in establishing the conditions and procedure for the restoration of rights of ownership, in doing so it must take account of the constitutional principle of protection of the right of ownership. This principle also presupposes that, unless it is necessary for the needs of society, land unlawfully nationalised by the occupying government must be returned to its owners in kind under the procedure and conditions established by law...

... given that Government Decree no. 649 of 25 August 1993 and Government Decree no. 294 of 19 April 1994 established that the land allocated to the LAA also included an area designated for building private dwelling houses, and that it was established that the status of the land, subject to being bought out by the State, was granted because that land was on territory allocated to the scientific and educational establishment, and given also that Government Decree no. 350 of 9 March 1995 permitted natural persons to acquire private ownership of the plots of land on the territory attributed to the educational-production base of the LAA, the right of the owners to restore their ownership rights over the said land has been denied".

19. As a result, on 28 June 2002 the Panevėžys Regional Court reversed the decision of the Kaunas District Court of 26 February 1999. It was noted that the Government decrees on the basis of which the applicant had signed the land-purchase agreement had been declared unconstitutional. Consequently, the administrative acts whereby the land had been sold to the applicant were declared null and void. The court also observed that "the defendants [one of them being the applicant] have for the most part not

started the construction works. Not all the defendants have bought out the plots of land which were assigned to them for construction of private houses and not all the [defendants] who signed land-purchase agreements have had them registered". The court applied Article 1.80 of the Civil Code and ordered restitution, obliging the local authorities to return to the applicant the sum of LTL 29.70 which he had previously paid for the plot of land at issue. As some of the defendants had paid for their plots of land in 1992 with "single-use investment vouchers" (*vienkartinėmis išmokomis*), the court ordered that those sums be repaid to them.

20. The defendants, including the applicant, lodged an appeal on points of law. They alleged, *inter alia*, that the Panevėžys Regional Court had examined the case in the absence of their lawyer. The defendants further argued that it would be impossible to execute the appellate court's decision since it ordered restitution in "single-use investment vouchers", which no longer had any pecuniary value in Lithuania. Lastly, they contended that the annulment of the land-purchase contracts was contrary to the right to protection of private property and would amount to re-privatisation.

21. On 31 January 2003 the Supreme Court upheld the decision. It stated that the annulment of the impugned acts was necessary to protect the legitimate interests of the pre-nationalisation owners. The court acknowledged that the "single-use investment vouchers" had in the meantime ceased to exist as a means of payment. The Supreme Court noted, however, that the subject matter of the proceedings was the annulment of the land-purchase contracts and that the assessment of possible compensation for the investment vouchers had not been its subject matter. Finally, the court found that on 19 June 2002 the applicant's lawyer had been duly notified of the appellate court hearing which was to take place on 27 June 2002, and that she had requested that the hearing be postponed, given that she had to attend another court hearing at the same time. The Supreme Court, however, noted that the applicant's lawyer had failed to provide any proof of that hearing. The court ruled that, taking into account the need to ensure the speediness of the proceedings and the high number of participants in the case, the appellate court had taken a reasonable decision to hear the case in the lawyer's absence.

22. By a decision of 14 March 2005 the Deputy Governor of Kaunas County restored the former owners' title to the plot of land on the LAA settlement of which the applicant had acquired ownership under the annulled land-purchase agreement of 11 April 1995.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The Constitution of the Republic of Lithuania provides:

Article 23

“Property shall be inviolable. Rights of ownership shall be protected by law. Property may be expropriated only for the needs of society and in accordance with the procedure established by law, and shall be justly compensated.”

24. The Restitution Law, adopted on 18 June 1991 and amended on numerous occasions, provided that, in restoring property rights, priority was to be given to restitution in kind. The State retained the right to buy out the property from the previous owners if the current social conditions and relations so required (*atsižvelgiant į visuomeninius santykius*). In particular, Article 12 § 1 (15) of the Law provided that the State could buy out land which had been allocated to scientific or educational institutions for carrying out experiments or for other scientific purposes.

25. On 25 August 1993 the Government adopted decree no. 649 on the status of land used by the Lithuanian Academy of Agriculture and approval of the zoning scheme for its use. In an attempt to create better conditions for the LAA to address scientific, educational and social issues, it was decided that the land, which was used by the LAA and which the LAA’s management had earmarked for the construction of private housing, could be bought out by the State.

26. On 19 April 1994 the Government adopted decree no. 294 and partially amended decree no. 649, specifying that part of the total area of land used by the LAA was to be set aside for building private houses on campus. On 9 March 1995 the Government enacted decree no. 350, which granted natural persons the right to acquire private ownership of the plots of land which were on the territory of the LAA and which had been allocated to them by the Noreikiškės settlement local council prior to 15 March 1992 for the building of dwelling houses.

27. On 27 May 1994 the Constitutional Court examined the issue of compatibility with the Constitution of the domestic laws on the restitution of property rights. In its decision the Constitutional Court held, *inter alia*, that possessions which had been nationalised by the Soviet authorities since 1940 should be considered as “property under the *de facto* control of the State”. The Constitutional Court also stated that, if possible, the property rights should be restored in kind. It further ruled that buying out land in the countryside for the purpose of building private housing served no public interest, since after such land was bought out it could be privatised, thereby breaching the previous owners’ right to restitution.

28. The Law on the initial privatisation of State property (*Valstybinio turto pirminio privatizavimo įstatymas*), adopted on 28 February 1991 and amended on numerous occasions, provided that Lithuanian citizens would be granted “single-use investment vouchers” (*vienkartinės išmokos*), for amounts ranging from RUR 2,000 to RUR 10,000, for the initial privatisation of State property.

29. On 16 September 1992 the Litas Committee adopted decision no. 2, pursuant to which the rouble as a currency unit was to be withdrawn from monetary transactions with effect from 1 October 1992. A new temporary currency, the talonas, was to be used instead of the rouble, the exchange rate between the two being 1:1.

30. Under the Litas Committee's decision of 14 June 1993 the talonas ceased to exist and was replaced by a new permanent currency, the Lithuanian litas. The exchange rate was 100 talonai to 1 litas.

31. The Civil Code, in force since 1 July 2001, provides insofar as relevant as follows:

Article 1.80 Nullity of a transaction that does not comply with the mandatory statutory provisions

“1. Any transaction that fails to comply with the mandatory statutory provisions shall be null and void.

2. When a transaction is declared null and void, each party shall be required to restore to the other party everything he or she has received by means of that transaction (restitution). Where it is impossible to restore in kind the items received, the parties shall be required to compensate each other in money, unless the law provides for other consequences as a result of the transaction's being declared void.

...”

Article 4.97 Payments on the return of items illegally possessed

“1. In claiming an item as stipulated by Article 4.95 of this Code, the owner shall have the right to demand: from the person who knew or should have known that his possession was illegal (possessor in bad faith), that he or she reimburse or provide compensation for all income he or she received or should have received during the entire period of possession; from an illegal possessor in good faith – all income which such possessor received or should have received since the time when he or she found out or should have found out about the possession being illegal or found out about the commencement of a civil case concerning restitution of the item concerned.

2. An illegal possessor in bad faith shall have the right in his or her turn to claim from the owner necessary expenses related to the item concerned from the time the owner receives income from it.

3. An illegal possessor in good faith shall have the right to claim from the owner compensation for all his expenses incurred in connection with the item concerned that have not been covered by income received from it.

4. An illegal possessor in good faith shall have the right to keep those parts that have been added to improve the item concerned, provided these can be removed without causing damage to it. If the parts added as improvement cannot be removed or if the item was improved in a different manner, the illegal possessor in good faith shall have the right to claim a compensation for the expenses arising from such improvement, in an amount not greater than the increase in value.”

Article 6.145 Grounds for restitution

“1. Restitution shall take place where a person is required to return to another person the property he or she has received either unlawfully or by error, or as a result of the transaction whereby the property was received by him or her being annulled *ab initio*, or as a result of the obligation becoming impossible to perform because of *force majeure*. ...”

Article 6.146 Manner of restitution

“Restitution shall be made in kind, except in cases where this is impossible or would cause serious inconvenience to the parties. In the latter case, restitution shall be effected by means of an equivalent monetary payment.”

Article 6.147 Estimation of monetary equivalent

“1. The monetary equivalent shall be estimated on the basis of the prices valid at the time when the debtor received the items he is required to restore.”

Article 6.150 Reimbursement for expenses incurred for the care of the property

“The repayment of expenses for the care and custody of the property subject to restitution which have been incurred by the person who is required to return the property shall be carried out in accordance with the provisions of Book IV of this Code, applicable in respect of possessors in good faith and possessors in bad faith.”

Article 6.151 Restoration of fruits and revenues

“1. The fruits and revenues accruing from the property subject to restitution shall belong to the person required to make restitution. This person shall bear all the expenses incurred in the production of those benefits and revenues. ...”

32. Article 240 of the Code of Civil Procedure, in force until 1 January 2003, provided that a court could suspend proceedings in a case, at the request of the participants in the proceedings or of its own motion, when it submitted a request to the Constitutional Court to resolve a question as to the constitutionality of the act applicable in that particular case. Under Article 241 of the Code, the proceedings were suspended until the Constitutional Court had given its ruling.

THE LAW

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

33. The applicant submitted that the length of the proceedings in his case had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. *The parties’ arguments*

34. The Government contended that the applicant could have applied to the domestic courts, claiming redress under Article 6.272 of the Civil Code for the length of the civil proceedings. Relying on the ruling of the Constitutional Court of 19 August 2006, the Government also argued that, even assuming that specific redress had not been enshrined in any law, the applicant could have claimed redress by relying directly on the Constitution. In view of the applicant’s failure to lodge such a claim in the present case, the complaint about the length of the proceedings should be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention. The Government further submitted that part of the impugned civil proceedings fell outside the Court’s competence *ratione temporis*. Lastly, the Government submitted that the applicant’s complaint was manifestly ill-founded.

35. The applicant contested the Government’s arguments.

2. *The Court’s assessment*

36. The Court observes first that it has no competence to examine events which occurred prior to 20 June 1995, the date of the entry into force of the Convention with regard to Lithuania. In so far as part of the civil proceedings took place before that date, this part of the application should be rejected under Article 35 §§ 3 and 4 as being incompatible *ratione temporis* with the provisions of the Convention.

37. As to the Government’s plea concerning the exhaustion of domestic remedies, the Court recalls its conclusion in the case of *Četvertakas and Others v. Lithuania* (no. 16013/02, §§ 29-31, 20 January 2009), where it decided that a claim for damages under Article 6.272 of the Civil Code or the Constitution did not satisfy the test of “effectiveness” in contexts of the present kind. The Court finds no reason to depart from its existing case-law

in this regard. It therefore remains unconvinced that the possibility of claiming damages for the excessive length of proceedings under Article 6.272 of the Civil Code or the Constitution had – at the moment of the introduction of the present application – already acquired a sufficient degree of legal certainty requiring its exhaustion for the purposes of Article 35 § 1 of the Convention.

38. That being so, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

39. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

40. The Government contended that the proceedings had been protracted due to their complexity, not as a result of any omissions on the part of the State. In particular, the case involved many participants who had submitted numerous claims and counterclaims. Some of the parties to the case during the civil proceedings had been replaced by other persons. The case file consisted of six volumes (1,852 pages) and the case was complicated from the legal point of view due to its restitution aspect. They also argued that, taking into account what was at stake for the applicant, the civil proceedings had not caused him prejudice to such an extent as to impose on the courts concerned a duty to deal with his case as a matter of great urgency, as was true of certain types of litigation.

41. The Government also drew the Court's attention to the fact that part of the proceedings had taken place before the Constitutional Court, which heard cases *in corpore* and was the only institution which exercised constitutional review. Since its role as guardian of the Constitution made it particularly necessary for the Constitutional Court to sometimes take into account other considerations than mere chronological order in deciding which cases were entered on its list, such as the nature of the case and its importance in political and social terms, the length of the proceedings before that court had been reasonable. Lastly, the Government emphasised that in Lithuania the Constitutional Court did not belong to the ordinary courts system and was not entitled to review their decisions. Since the Constitutional Court could not hear civil or criminal cases or investigate individual complaints concerning alleged violations of constitutional rights, the part of the proceedings conducted before the Constitutional Court should not be taken into account in assessing the reasonableness of length of proceedings in a civil case.

42. In view of the above the Government concluded that there had been no breach of the right to a hearing within a “reasonable time”, conferred by Article 6 § 1 of the Convention.

43. The applicant disagreed, stating that the complexity of the case was not sufficient to discharge the State of its obligation to respect the reasonable-time requirement. He further argued that before the proceedings had been initiated he had started preparations to build his home on the plot of land at issue and that therefore the delay in the proceedings had caused him considerable financial uncertainty and stress.

2. The Court’s assessment

(a) Applicability of Article 6 § 1 of the Convention

44. The Court has regard to the Government’s argument that from 14 March 2000 until 10 May 2002 proceedings in the civil case had been suspended until the Constitutional Court had given its ruling. In this connection the Court reiterates, however, that proceedings come within the scope of Article 6 § 1, even if they are conducted before a constitutional court, where their outcome is decisive for civil rights and obligations (see *Pammel v. Germany*, 1 July 1997, § 53, *Reports of Judgments and Decisions* 1997-IV).

45. In the present case the Court points out that the applicant had bought the land from the State and that, later, civil proceedings were instituted by a group of persons with a view to having the land-purchase agreement declared void (see paragraphs 9 and 10 above). The dispute before the civil courts therefore concerned the applicant’s right to protection of his property, which is certainly a civil right within the meaning of Article 6 § 1 of the Convention.

46. At a later stage in the proceedings the Panevėžys Regional Court referred the case to the Constitutional Court for a ruling on the constitutionality of the Government decrees on the basis of which the applicant had purchased the plot of land (see paragraph 16 above) and, acting on the basis of Article 240 of the Code of Civil Procedure, stayed the proceedings.

47. In the instant case the proceedings in the Constitutional Court were therefore closely linked to those in the civil courts; not only was the former’s decision directly decisive for the applicant’s civil right but in addition, as the proceedings arose from an application for a ruling on constitutionality, the Panevėžys Regional Court had to wait for the Constitutional Court’s decision before it could give a decision. It follows that Article 6 § 1 is also applicable to the part of the proceedings which took place before the Constitutional Court.

(b) Compliance with Article 6 § 1 of the Convention*(i) Period to be taken into consideration*

48. The Court notes at the outset that although the civil proceedings were instituted on 6 June 1995, the period falling within the Court's jurisdiction only began on 20 June 1995, when the Convention came into force with regard to Lithuania, and lasted until 31 January 2003, when the Supreme Court adopted a final decision in the case. The overall length of the proceedings was thus around 7 years and 8 months.

(ii) Applicable criteria

49. The Court has held on numerous occasions that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. Although this obligation cannot be construed in the same way for a constitutional court as for an ordinary court, it is for the Strasbourg Court in the last instance to verify that it has been complied with, having regard to the particular circumstances of each case and the criteria laid down in its case-law (see *Klein v. Germany*, no. 33379/96, § 42, 27 July 2000, and the case-law cited therein).

50. The Court also reiterates that 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 the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

51. The Court shares the Government's view that the applicant's case was indeed complex, particularly due to the number of participants, ongoing legislative changes and its restitution and constitutionality aspects. That, however, cannot justify the total, significant length of the proceedings.

52. On the facts of this case the Court finds no evidence to demonstrate that at any stage of the proceedings the applicant displayed dilatory conduct or otherwise disrupted the proper conduct of those proceedings. As regards the conduct of the authorities, however, the Court cannot overlook the fact that, owing to the Kaunas District Court's failure to properly summon 38 defendants, the case was returned to it for fresh examination, which prolonged the civil proceedings by more than two years (see paragraphs 12-14 above). As to the Government's argument regarding the overburdening of the Constitutional Court, it should be pointed out that a general work overload is no justification for an unreasonable delay, and that the other social factors relied on by the Government can have played only a secondary role in the present case (see *Pitra v. Croatia*, no. 41075/02, § 23,

16 June 2005). The Government's argument in this respect should therefore be rejected.

53. In the light of all the circumstances of the case, the Court concludes that the reasonable time required by Article 6 § 1 was exceeded, and that there has therefore been a breach of that provision.

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

54. The applicant complained about the annulment of the land-purchase agreement. He further argued that the compensation granted to him by the courts for that land had been derisory. 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. The parties' arguments

55. The Government submitted at the outset that the applicant had never had a “possession” as regards the plot of land at issue, since when concluding the annulled land-purchase agreement of 11 April 1995 he had not been acting *bona fide* and therefore could not enjoy the protection of Article 1 of Protocol No. 1 to the Convention. In particular, on 13 October 1992 the applicant, as the vice-rector of the LAA and on its behalf, attended the meeting also attended by representatives of the local authorities and pre-nationalisation land owners, which was held in order to solve the question of the further development of the LAA settlement and to resolve the land restitution matter (see paragraph 7 above). Consequently, the applicant was well aware that the land allocated to LAA employees so that they could build private houses on it was the object of the restitution claim. By declaring the land-purchase agreements, including that of the applicant, null and void the domestic courts were striving to protect the rights of those former owners, which had been denied to them.

56. As regards the currency which the applicant used to pay for the plot of land, the Government observed that on 20 July 1992 the applicant paid for the use of the land a sum 2,970 Russian roubles, which was the currency in circulation at that period. Given that at the time the land-purchase

agreement of 11 April 1995 was signed the Lithuanian litas was the official currency in the Republic, that agreement indicated that the applicant had paid a sum of 29.70 litas (for legislative changes regarding currency regulations see paragraphs 29 and 30 above). Subsequently the Panevėžys Regional Court annulled the applicant's title to the plot of land and ordered that the said amount of LTL 29.70 be repaid to him. Even allowing for the fact that due to the depreciation of the currency, inflation and other economic factors, the purchasing power of RUR 2,970 in 1992 would have been higher than that of LTL 29.70 in 2002, the applicant had not suffered substantial losses in the present case. The Government accordingly considered that the burden on the applicant, who was required to return the property, had not been excessive and that the means employed to protect the former owners' right to property had not been disproportionate in relation to the public interest.

57. The Government pointed out that while the vast majority of the defendants in the civil proceedings concerning the land they had acquired had paid with "single-use investment vouchers", some of them, including the applicant, had paid for their plots in roubles. In the appeal on points of law the defendants had claimed that it would be impossible to execute the appellate court's decision, since compensation for the expired vouchers had been estimated in a non-existent currency – "single-use investment vouchers". However, in its decision of 31 January 2003 the Supreme Court held that the question of compensation for the lost "single-use investment vouchers" was not the subject matter of that case. As regards the other defendants, including the applicant, who had paid for their plots in roubles, the Government emphasised that they had failed to claim that the compensation the court awarded them had been inadequate.

Relying on the above the Government concluded that this part of the application should be declared inadmissible and rejected under Article 35 §§ 3 and 4 of the Convention.

58. The applicant disagreed with the Government and claimed that the latter could not rely on defects in its own legislation as a basis for depriving him of his property rights. He further argued that he had acquired the property in good faith. Regarding the damage he had allegedly suffered, the applicant contended that, after the local authorities had assigned the plot of land to him, he had started preparations to build a house on it and the annulment of the land-purchase agreement had caused him loss of the time, labour and money he had invested in that connection. It was unfair that the only compensation he could secure was reimbursement of the price he had paid for the land in 1992, when the purchasing power of 2,970 roubles in Lithuania was far higher than its equivalent of LTL 29.70 in 2002. Moreover, the price of land in Lithuania back in 1992 had been significantly lower than at the present time.

B. Admissibility

1. Whether there was interference

59. The Court notes that on 11 April 1995, that is to say before 24 May 1996, the date on which Protocol No. 1 to the Convention entered into force with regard to Lithuania, the applicant bought the plot of land in question and, even while accepting the existence of certain restrictions on the property at that time, became its owner (see paragraphs 9 and 11 above). The Court observes further that the applicant was deprived of his property as a consequence of the findings of the Constitutional Court and the Supreme Court in their respective decisions of 10 May 2002 and 31 January 2003. By virtue of those decisions the applicant's property title to the plot of land in question was nullified.

60. The Court finds, therefore, that there was a deprivation of property within the meaning of the second sentence of Article 1 of Protocol No. 1 to the Convention. Such deprivation of property must be lawful, in the public interest and must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Gashi v. Croatia*, no. 32457/05, § 28, 13 December 2007).

2. Whether the interference was provided for by law

61. It is not disputed that the applicant was deprived of his property as a consequence of the adoption by Parliament and application by the courts of the Restitution Law. By virtue of that law as interpreted and applied by the courts, the authorities allowed the nullification of his property title acquired in 1995, in order to satisfy the restitution claims of persons from whom that property had been expropriated in the 1940s. Moreover, the question of the compensation for that property was decided under Lithuanian civil law. The Court is thus satisfied that the nullification of the applicant's property title was in accordance with domestic law.

3. Legitimate aim and proportionality

62. The Court must next determine whether a fair balance was struck between the general interests of the community and the individual's fundamental rights (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 38, Series A no. 332).

63. The Court recalls that it has already dealt with the question of the annulment of contracts of sale under which applicants bought property that previously had been nationalised during the communist regime (see *Panikian v. Bulgaria*, no. 29583/96, Commission decision of 10 July 1997; *Pincová and Pinc v. the Czech Republic*, no. 36548/97, ECHR 2002-

VIII; *Bečvář and Bečvářová v. the Czech Republic*, no. 58358/00, 14 December 2004; *Mohylová v. the Czech Republic* (dec.), no. 75115/01, 6 September 2005; and *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, 15 March 2007). In those cases the Court and the Commission were called upon to assess difficult situations, all of which concerned legislation adopted with the aim of making good injustices dating back decades and inherited from communist rule in the respective States.

64. In this connection the Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is “in the public interest”. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment of the existence of a problem of public concern warranting measures which may interfere with property rights. Where the legislature has made a choice by enacting laws which it considers to be in the general interest, the possible existence of alternative solutions does not in itself nullify the justification behind the contested legislation. Accordingly, States enjoy a certain margin of appreciation in this sphere (see, *Malama v. Greece*, no. 43622/98, § 46, ECHR 2001-II). It is not for the Court to say whether the legislation represented the best solution, provided that the authorities remain within the bounds of that margin (see, *mutatis mutandis*, *Mellacher and Others v. Austria*, 19 December 1989, § 53, Series A no. 169).

65. The Court accepts that the general objective of restitution laws, namely to attenuate the consequences of certain infringements of property rights caused by the communist regime, is a legitimate aim and a means of safeguarding the lawfulness of legal transactions, protecting the country’s socio-economic development (see *Pincová and Pinc*, cited above, § 58), or, as in present case, securing the rights of former owners. In these circumstances, and having regard to the State’s margin of appreciation, the Court accepts that the deprivation of property experienced by the applicant served not only the interests of the original owners of the land in question, but also the general interests of society as a whole (see *Bečvář and Bečvářová*, cited above, § 67).

66. Much argument was devoted by the parties to the amount of compensation the applicant received after the courts annulled his title to the plot of land. In this connection the Court reiterates that a person deprived of property must in principle obtain compensation which is reasonably related to its value, even though the legitimate objectives of public interest may call for the reimbursement of less than the full market value (see *Pressos Compania Naviera S.A. and Others*, cited above, § 38, and *The Holy Monasteries v. Greece*, 9 December 1994, §§ 70-71, Series A no. 301-A). Thus, Article 1 of Protocol No. 1 does not guarantee a right to full

compensation in all circumstances (see *Broniowski v. Poland* [GC], no. 31443/96, § 182, ECHR 2004-V).

67. At the same time, whilst accepting the legitimacy of the general objective of restitution laws, the Court considers it necessary to ensure that the attenuation of past injustices does not create new wrongs. To that end, legislation should make it possible to take into account the particular circumstances of each case, so that persons who acquired possessions in good faith are not made to bear the burden of responsibility which is rightfully that of the State which previously confiscated the disputed possessions (see *Pinc and Pincová*, cited above, § 58).

68. Turning to the present case the Court takes notice of the Government's argument that the applicant had bought the previously nationalised plot of land under favourable conditions and owing to his privileged position as a vice-rector of the LAA. While acknowledging that the applicant could have been aware that certain problems with regard to the plot of land he was about to acquire existed at the material time (see paragraph 7 above), the Court cannot follow the Government's argument that he purchased that plot in bad faith. The Court would emphasise its previous case-law to the effect that it is for the domestic courts to establish, on the basis of evidence adduced by the parties to the civil proceedings, whether or not there has been unlawful profiteering in a particular case. Where the domestic courts have not made such a finding, the respondent Government cannot rely before the Court on suppositions in the opposite sense. Such an approach would run contrary to the principle of rule of law inherent in the Convention (see *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, §§ 187-188, 15 March 2007). In the instant case the domestic courts established no such abuse of position.

69. On the question of the burden borne by the applicant in the instant case, the Court would emphasise that it is not required to decide on what basis the domestic courts should have assessed the amount of compensation payable; it cannot take the place of the Lithuanian authorities in determining the year that should have been taken into consideration for the valuation of the land (see, *mutatis mutandis*, *Malama*, cited above, § 51, and *Pinc and Pincová*, cited above, § 60). Instead, the Court observes that in 2003 the applicant was reimbursed the original purchase price, fixed in 1992. There can be no doubt that over time the sum he had paid suffered some devaluation. Neither can the Court fail to note that the value of the land, as it was in 1992, cannot reasonably be related to its value eleven years later.

70. The Court points out, however, that the applicant signed the land-purchase agreement on 11 April 1995 and three days later registered his title to that property in the State Land Registry, thereby becoming its owner. The Court cannot overlook the fact that as far back as 5 June 1995 civil proceedings had been instituted by the initial owners whose property

had been nationalised during the communist era. It follows that there was only a rather short period when the applicant could have reasonably considered himself as being the undisputed owner of the land (see, by converse implication, *Panikian v. Bulgaria*, cited above). What is more, as early as 27 June 1995 the Kaunas District Court ordered the seizure of the applicant's land, allowing him to grow only annual plants and at the same time prohibiting him from carrying out any long-term agricultural or construction activities on that land while the court proceedings were pending. In this relation the Court notes that there was some activity at the plot – perennial plants were planted and a pond was dug (see paragraph 17 above). It is not for the Court to speculate as to whether those actions were completed by the time the Kaunas District Court issued its injunction, or after that ban. The Court can only note that the applicant's title to the plot of land was annulled in 2003 and that therefore during that period he was not prevented from making use of the plot and the pond as well as enjoying the fruits of the plants which, under Article 6.151 § 1 of the Civil Code, he did not have to return to the lawful owners of that land.

71. In the past the Court has already dealt with cases concerning housing in which the applicants lived for many decades and which the latter were obliged to leave because of restitution of property. Following restitution decisions taken years later, those applicants were unable to purchase alternative accommodation and consequently were left in an uncertain and indeed difficult situation. This was one of the arguments prompting the Court to find a violation of Article 1 of Protocol No. 1 to the Convention (see *Pinc and Pincová*, cited above, §§ 61-64). That reasoning, however, does not apply to the present case, where the restitution process in particular aimed at protecting the rights of former owners (see paragraph 18 above). What is more, the applicant had another dwelling, had not built a house on the plot of land at issue and, in addition, was explicitly prohibited from doing so by the domestic courts pending the civil litigation. It follows that as regards the possibility to have a roof above his head the applicant was not placed in a particularly vulnerable situation and therefore did not have to bear an excessive burden which would have upset the fair balance that should be maintained between the demands of the general interest on the one hand and protection of the right to protection of property on the other.

72. Lastly, the Court places particular emphasis on the fact that the applicant never raised before the domestic courts the question of the adequacy of the compensation for the plot of land he was deprived of. As noted by the Supreme Court in its decision of 31 January 2003, the civil proceedings merely concerned the annulment of land-purchase contracts (see paragraph 21 above). It is true that some of the defendants in that case complained that they would have no use for “single-use investment vouchers”. However, as is clear from the material before the Court, the applicant purchased the land in roubles, whereas the courts ordered

restitution in litas, which is the Lithuanian currency after 1993. The Court further observes that, under Article 4.97 §§ 3 and 4 of the Civil Code, the applicant could have claimed compensation from the persons entitled to restitution of the land for the expenses he had incurred in looking after or improving it. However, the Court has no information to suggest that the applicant ever brought such claims.

73. As stated earlier (see paragraph 63 above) the Court, mindful of the importance of the legitimate aims pursued by the Restitution Law and the particular difficulties involved in regulating the restitution of nationalised property after decades of totalitarian rule, would not regard as disproportionate every imbalance between the relevant public interest and the Restitution Law's effects on the particular individual concerned. A certain "threshold" of hardship must have been crossed for the Court to find a breach of the applicant's Article 1 Protocol No. 1 rights (see *Velikovi and Others*, cited above, § 234).

74. In the cumulative circumstances of the present case the Court does not consider that such a threshold of hardship has been reached. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

75. The applicant argued under Article 6 § 1 of the Convention that the courts had incorrectly applied domestic procedural and substantive law when examining his claims regarding restitution of the land in question. The applicant further alleged that the appellate court had examined the case in the absence of his lawyer.

76. As regards the alleged misapplication of domestic law, the Court considers that it is not its place to act as a court of appeal or, as is sometimes said, as a court of fourth instance, against decisions taken by the domestic courts. It is the role of the domestic courts to interpret and apply the relevant rules of procedural and substantive law (see, among many authorities, *Baumann v. Austria*, no. 76809/01, § 49, 7 October 2004). The Court notes, however, that in the present case the courts did give detailed reasoning, addressing every relevant objection raised by the applicant and explaining their factual findings and the interpretation of the law.

77. Neither is the Court persuaded by the applicant's argument that his defence rights were breached because his lawyer could not represent him at the appellate instance. It must be borne in mind that on 19 June 2002 the applicant's lawyer already knew that the hearing of the appellate court would take place on 27 June 2002. She requested the Panevėžys Regional Court to postpone the hearing because she had another court hearing at that time; however, as observed by the Supreme Court, she failed to bring any

proof in that connection (see paragraph 21 above). The Court sees no reason to depart from the Supreme Court's findings, which were based on its direct knowledge of the facts of the case. Consequently, the applicant's complaints that there has been a breach of Article 6 § 1 of the Convention cannot be entertained and should be dismissed as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 thereof.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed LTL 180,000 (approximately 52,174 euros (EUR)) in respect of pecuniary damage and LTL 100,000 (approximately EUR 28,985) in respect of non-pecuniary damage.

80. The Government contested these claims as unreasonable and excessive.

81. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage as a result of the violation found. Ruling on an equitable basis, it awards him EUR 2,500 under that head.

B. Costs and expenses

82. The applicant also claimed LTL 3,000 (approximately EUR 869) for the costs and expenses incurred before the Court. He submitted to the Court the agreement with his lawyer according to which the said amount was to be paid in two instalments: LTL 600, which had already been paid, for preparation of the applicant's observations and the remaining part of LTL 2,400 to be paid after the Court adopted its decision.

83. The Government contested the claim as excessive.

84. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 documents in its possession and the above criteria, the Court finds that the sum claimed should be awarded in full.

C. Default interest

85. 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 applicant's complaint concerning the excessive length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of that State at the rate applicable on the date of settlement:
 - (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
 - (ii) EUR 869 (eight hundred and sixty-nine euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President