



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ALEKSA v. LITHUANIA

(Application no. 27576/05)

JUDGMENT

STRASBOURG

21 July 2009

FINAL

21/10/2009

This judgment may be subject to editorial revision.

In the case of Aleksa 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,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 30 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 27576/05) 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 Valentinas Aleksa (“the applicant”), on 19 July 2005.

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

3. On 18 March 2008 the Court decided to give notice to the Government of the applicant’s complaints under Article 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 1951 and lives in Kaunas.

A. Proceedings regarding the premises

5. On 17 November 1992 the Kaunas City Board restored the applicant's property rights to part of a building in Kaunas. In particular, it restored the applicant's property rights to 1/12 of the uninhabited part of the building (hereafter "the disputed premises"). The property restitution decision specified that the property rights to the disputed premises would be restored in accordance with the procedure and terms fixed by the Government.

6. On 15 October 1993 the Kaunas City deputy mayor and the applicant signed a statement of transfer acceptance (*priėmimo-perdavimo aktas*), by which the disputed premises were transferred to the applicant. On 21 December 1993 the applicant registered his title to the property.

7. By a decision of 21 March 1994, the Kaunas City mayor declared the statement of transfer acceptance unlawful and consequently null and void. By a decision of 31 May 1994, the Kaunas City Board supplemented the decision of 17 November 1992 with a clause which specified the form in which the property rights were to be restored. It was decided to pay compensation for the disputed premises, at that time occupied by a pharmacy, after the Government had determined the means and the procedure by which compensation was to be paid.

8. By a decision of 14 June 1994, the Kaunas City Board transferred the disputed premises from the balance sheet of one State-run company to the balance sheet of the State-run company of Kaunas area pharmacies. Subsequently, by a decision of the Kaunas City Board of 14 June 1996 the disputed premises were transferred into the private ownership of the closed-stock company *Šlamučio vaistinė*.

9. On 3 June 1994 the applicant brought a civil claim ("the first civil case"), challenging the local authorities' decisions of 21 March 1994 and 31 May 1994. It was dismissed as unsubstantiated by the Kaunas City District Court on 4 July 1994.

10. On 22 August 1994 the Supreme Court quashed the lower court's decision and remitted the case for a fresh examination. The Supreme Court noted that the lower court had not examined all the relevant circumstances. In particular, it had not taken account of the fact that, at the time of the adoption of the impugned decisions, the applicant had already been recognised as the owner of the entire building. The Supreme Court observed that only a court and not a local authority could have annulled the applicant's ownership rights.

11. On 7 October 1994 the Kaunas City District Court decided to suspend the civil proceedings further to a request by the applicant, on account of the illness of one of his relatives, V.A., who was also a plaintiff in that case. The court ordered the applicant to inform it when his relative's state of health would allow her to participate in the proceedings.

12. On 3 October 1994 the State-run company of Kaunas area pharmacies brought a civil claim, seeking the partial annulment of the Kaunas City Board's decision of 17 November 1992 (hereinafter "the second civil case").

13. On 8 January 1996 the applicant and other plaintiffs brought a new civil claim (hereinafter "the third civil claim"), challenging the Kaunas City Board's decision of 14 June 1994.

14. On 1 July 1999 the Kaunas City District Court of its own motion resumed the civil proceedings in the first civil case.

15. On 2 September 1999 the Kaunas City District Court decided to join all three cases and examine them together.

16. On 9 September 1999 the Kaunas City District Court granted the applicant's claim. It declared the local authority's decisions of 21 March 1994 and 31 May 1994 null and void, restoring the applicant's title to the premises occupied by the pharmacy.

17. On 28 February 2000 the Kaunas Regional Court upheld that decision.

18. On 12 September 2000 the Supreme Court quashed the lower courts' decisions and returned the case to the Kaunas City District Court for an examination *de novo*. The Supreme Court considered that the lower courts had again failed to assess all the relevant circumstances – even those to which attention had been drawn in its decision of 22 August 1994 – and that they had erred in law.

19. On 18 February 2004 the Kaunas City District Court dismissed the applicant's claim. The court observed that the law had not provided for restitution in kind of immovable property if it had been occupied by public-interest institutions, such as a pharmacy. The court further interpreted the decision of 17 November 1992, noting that it could not have been read as guaranteeing restitution in kind of the entire building, but only of the unoccupied part. The court annulled the ambiguous phrasing of the decision, leaving it to the local authorities to determine how to remedy the situation, either by pecuniary compensation or by the transfer of an equivalent property.

20. On 23 September 2004 the Kaunas Regional Court upheld the decision of the first-instance court.

21. On 26 January 2005 the Supreme Court dismissed a cassation appeal by the applicant.

22. On 25 May 2005 certain parties to the case, including the applicant, submitted a request to the Kaunas City District Court to interpret its decision of 18 February 2004. Their request was dismissed on 21 June 2005.

23. On 3 April 2006 the applicant instituted civil proceedings challenging the initial proportions of his and other interested parties' property rights, as fixed by the decision of 17 November 1992. In a final

decision of 5 September 2007, the Kaunas City District Court noted that, although the applicant had been duly informed about the hearing, he or his lawyer had failed to appear, thus failing to contribute to the speedy resolution of the proceedings and showing no interest in their outcome. The applicant's claim was left unexamined.

24. On 11 December 2008 the head of the Kaunas City Municipality issued an order to pay the applicant pecuniary compensation for the disputed premises. The compensation was to be paid in three instalments from 2008 to 2010 and for that purpose, in a letter of 15 December 2008, the Kaunas City Municipality requested the applicant to indicate the details of his bank account. The applicant refused to accept the municipality's letter.

B. Proceedings regarding the plot of land

25. By the above-mentioned decision of 17 November 1992, the Kaunas City Board restored the applicant's property rights to 1/12 of the plot of land adjacent to the disputed premises and measuring 2,097 sq. m. Pursuant to that decision, 1/12 of a plot of land measuring 1,288 sq. m was to be returned to him in kind and for the remaining part, equivalent to 1/12 of 809 sq. m, compensation was to be paid.

26. On 12 November 1996 the Kaunas City Municipality adopted a detailed territorial-planning decision which specified that the actual existing size of the plot of land which was to be returned in kind was 950 sq. m and not 1,288 sq. m.

27. On 8 April 2002 the applicant submitted a claim to the Kaunas Regional Administrative Court, requesting it to oblige the Registers Centre to record the applicant as the owner of 1/12 of the plot of land of 1,288 sq. m adjacent to the disputed premises. On 15 May 2002 the applicant also challenged the detailed territorial-planning decision of 12 November 1996.

28. On 4 March 2005 the Kaunas Regional Administrative Court dismissed the applicant's claims. The court noted that the decision of 17 November 1992 did not specify the exact location of the particular plot of land to which the applicant's and other interested persons' property rights were restored, since at the time of the decision no territorial planning had been carried out and the plot of land had not been measured or marked in any particular place. It followed from the nature of the decision that it merely established that property rights to a plot of land had been restored, without specifying the particular location of that plot. Consequently, the decision of 17 November 1992 did not give the applicant the right to register his title to that plot in the State Land Registry.

29. The court also noted that the decision of 12 November 1996 had established that the plot of land of 1,288 sq. m did not exist, its real size

being 950 sq. m. No evidence had been submitted to the court which could question that finding. Since the decision of 17 November 1992 was valid, the issue of compensation for the difference in size of the plots (by assigning the applicant an equivalent plot) or their exact location was left for determination by the competent local authorities. The Kaunas Regional Administrative Court further noted that the territorial-planning decision aimed to establish the activity permitted on the disputed land and to safeguard the public interest.

30. On 21 June 2005 the Supreme Administrative Court upheld the lower court's decision. The court emphasised that, in accordance with domestic law, a plot of land in respect of which property rights were restored had to be delimited in a territorial plan. The decision of 17 November 1992 on the restoration of the applicant's property rights to the plot of land at issue lacked any characterisation allowing it to be specifically identified (cartographically or by any other form of delimitation) as an item of immovable property. Moreover, data of that kind had not even existed at the time of the Supreme Administrative Court's decision. It followed that the Kaunas City Board had not established the applicant's entitlement to a particular plot of land, but only his right to obtain restitution in kind of 1/12 of a plot of land measuring 1,288 sq. m.

31. On 22 January 2006 a cadastral survey was carried out, which fixed the dimensions of the plot of land adjacent to the disputed premises at 1,038 sq. m. The applicant took part in the process and accepted the results of the survey as regards the area of the land in question. On 9 May 2007, on the basis of the cadastral survey, the Kaunas County Governor adopted a decision on the basis of which the plot of land adjacent to the disputed premises was registered in the State Land Registry. On 2 April 2008 the Kaunas County Governor issued an order establishing the parts of the plot of land to be assigned to the applicant.

32. On 4 June 2008 the applicant requested the Kaunas Regional Administrative Court to discontinue the case regarding his claim of 8 April 2002.

33. By a decision of 13 October 2008, the head of the Kaunas Regional Administration restored the applicant's property rights to a plot of land of 44 sq. m, adjacent to the disputed premises. The decision specified that the applicant was entitled to compensation for the remaining 131 sq. m.

34. In a letter of 11 December 2008 the local authorities requested the applicant to state his preference as regards compensation for the remaining 131 sq. m.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. The relevant domestic law and practice concerning the domestic remedies with regard to length of proceedings complaints have been

summarised in the judgment *Četvertakas and Others v. Lithuania* (no. 16013/02, §§ 19-22, 20 January 2009). In addition, Article 484 of the Civil Code, in force until 1 July 2001, provided that an organisation was to compensate for any damage which its employees had caused while performing their professional duties.

36. The Law on the procedure and conditions for restoration of ownership rights to existing real property (*Istatymas dėl piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atstatymo tvarkos ir sąlygų*), enacted on 18 June 1991 and amended on numerous occasions, provided for two forms of restitution – the return of the property in kind or compensation for it, if its physical return was not possible. Article 12 of the Law provided that the State was to buy out the land which was situated within the limits of a town and on which an infrastructure necessary for public needs had been built. Pursuant to Article 14 of the Law, if a house had been converted into non-residential premises which had been given to a medical institution or used for medical purposes, those premises were to be bought out by the State. The local authorities were competent to decide on the method of compensation.

37. On 27 May 1994 the Constitutional Court examined the issue of the compatibility of the Constitution with the domestic laws on the restoration 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 treated as “property under the *de facto* control of the State”. The Constitutional Court stated:

“The rights of a former owner to particular property have not been restored until the property is returned or appropriate compensation is afforded. The law does not itself provide any rights while it is not applied to a concrete person in respect of a specific property. In such a situation the legal effect of a decision by a competent authority to return the property or to provide compensation is such that only from that moment does the former owner obtain property rights to a specific property.”

The Constitutional Court also held that fair compensation for property which could not be returned in kind was compatible with the principle of the protection of property.

38. On 20 June 1995 the Constitutional Court affirmed that the choice by Parliament of the partial reparation principle was influenced by the difficult political and social conditions, in that “new generations had grown, new proprietary and other socio-economic relations had been formed during the 50 years of occupation, which could not be ignored in deciding the question of restitution of property”.

39. The Law on the restoration of citizens’ ownership rights to existing real property (*Piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymas*), which was enacted on 1 July 1997 and which repealed the Law on the procedure and conditions for the restoration of ownership rights to existing real property, at the material time read as follows:

Article 8 Conditions and procedures for restoration of ownership rights to residential houses, portions thereof and flats

“1. Ownership rights to residential houses, portions thereof and flats shall be restored to persons specified in Article 2 of this Law by returning them in kind, except for residential houses, portions thereof and flats which are subject to a State buyout pursuant to Article 15 of this Law...”

Article 15 Residential houses, portions thereof and flats bought out by the State

“Residential houses, portions thereof and flats shall be bought out by the State from the citizens specified in Article 2 of this Law, who shall be afforded compensation in accordance with Article 16 of this Law, provided that such residential houses, portions thereof or flats:

(1) have been converted into premises unfit for human occupancy and used for educational, health care protection, cultural or scientific purposes, or by communal care residences. The list of such premises shall be approved by the Government...”

Article 16 Compensation to citizens for real property bought out by the State

“1. The State shall compensate citizens for existing real property which is bought out by the State, as well as for real property which existed prior to 1 August 1991, but subsequently ceased to exist as a result of decisions adopted by the State or local authorities.

2. When the State compensates citizens for real property which, in accordance with this Law, is not given back in kind, the principle of equal value shall be applied to both the property that is not returned and other property which is transferred instead of it as compensation for the property bought out by the State. ...

7. Compensation for buildings used for economic and commercial purposes, residential houses, portions thereof and flats which are not returned pursuant to this Law shall be established in accordance with the methods approved by the Government. ...”

40. Article 2 of the Land Act (*Žemės įstatymas*), enacted on 26 April 1994, provides that a “plot of land” is a part of the territory, which has fixed boundaries and has an established purpose for which it is used.

41. The Land Reform Act (*Žemės reformos įstatymas*), enacted on 25 July 1991, provided:

Article 6: Privatisation of land

“2. In the implementation of land reform, land shall be acquired either by restoring the right to ownership, or by purchasing the land. ...”

Article 22: Delimitation of plots of land and distribution of documentation on land ownership

“On the basis of the land-use plans produced in connection with the land reform, the State Institute of Land-Use Management shall mark the boundaries of plots of land and shall prepare documentation attesting to land ownership or land-usage rights.”

42. Article 3 of the Territorial Planning Act, enacted on 12 December 1995, provides that one of the objectives of territorial planning is to reconcile the interests of natural and legal entities with the interests of the public, municipalities and the State regarding the conditions for the use of a particular territory and plots of land. Pursuant to Article 18 of the Act, detailed plans are drawn up which impose restrictions on possible activities on the plot of land in question. The requirements relating to any construction, territorial development and the purpose of land use are determined, and land and other real property may be expropriated for public needs. These detailed plans may entitle natural and legal persons to develop activities on the plot of land in question.

43. Articles 2 and 3 of the Immovable Property Cadastre Act, which was enacted on 27 June 2000 and is applicable when denoting items of immovable property, provide that an item of immovable property must be registered in the form of a written text, figures, graphical elements (dots and lines) as well as information expressed by cartographical methods, defining the quantitative and qualitative characteristics of the immovable property.

44. On 15 November 1991 the Government of the Republic of Lithuania adopted Resolution No. 470 on the implementation of the Law on the procedure and conditions for restoration of ownership rights to existing real property. Article 9 of the Resolution provided that property rights to land were to be formally established in accordance with the appropriate territorial plan (*Nuosavybės teisė į žemę įforminama pagal atitinkamos teritorijos žemėtvarkos projektą*).

45. The Code of Civil Procedure, in force since 1 January 2003, provides that a judge may withdraw from a hearing on his or her own initiative, or the parties to the procedure may request the judge's removal, when there are circumstances raising doubts as to that person's impartiality (Article 68). Article 366 § 1 (8) of the Code provides that civil proceedings may be reopened if an unlawfully constituted court heard the case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

46. The applicant complained that the length of the civil proceedings regarding the restitution of the disputed premises 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 ... hearing within a reasonable time by an independent and impartial tribunal...”

A. Admissibility

47. The Government submitted that the applicant should have brought a claim for damages before a civil court under Articles 483 and 484 of the Civil Code, in force until 1 July 2001. 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 directly relying on the Constitution.

48. The Government also contended that the applicant could have applied to the domestic courts, seeking redress for the length of the civil proceedings under Article 6.272 of the Civil Code, in force since 1 July 2001. In this connection they submitted a copy of a judgment delivered by the Supreme Court on 6 February 2007 whereby a person had been awarded damages under Article 6.272 of the Civil Code for the excessive length of proceedings, albeit criminal, which had been instituted in 1998 and discontinued in 2004. 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. Lastly, the Government submitted that part of the impugned civil proceedings fell outside the Court’s competence *ratione temporis*.

49. The applicant contested the Government’s argument, stating that no adequate remedy existed which he could use in relation to his Convention complaint as to the excessive length of the proceedings.

50. The Court observes at the outset 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 in respect of Lithuania. In so far as part of the civil proceedings took place before that date, this aspect of the application should be rejected under Article 35 §§ 3 and 4 as being incompatible *ratione temporis* with the provisions of the Convention.

51. As to the Government's plea of non-exhaustion of domestic remedies the Court refers to its conclusion in *Baškienė v. Lithuania* (no. 11529/04, §§ 68-72, 24 July 2007), where it held that a claim for damages under Article 6.272 of the Civil Code did not satisfy the test of "effectiveness". The Court finds no reason to depart from its existing case-law in this regard. It further observes that, as an example of the relevant domestic case-law regarding Article 6.272 of the Civil Code, the Government relied on the decision of the Supreme Court of 6 February 2007. However, in the instant case the civil proceedings lasted from 3 June 1994 until 26 January 2005 (see paragraphs 9 and 21 above), while the application was lodged with the Court on 19 July 2005. Consequently, the Court remains unconvinced that the possibility of claiming damages for the excessive length of proceedings under Article 6.272 of the Civil Code had – at the time when the present application was submitted – already acquired a sufficient degree of legal certainty requiring its use for the purposes of Article 35 § 1 of the Convention.

52. As to the Government's argument that the applicant could have brought a claim based on Articles 483 and 484 of the Civil Code, in force until 1 July 2001, or on the Constitution, they have not adduced any evidence to demonstrate that such a remedy had any reasonable prospect of success, especially before the ruling of the Constitutional Court on 19 August 2006 (see *Četvertakas and Others v. Lithuania*, no. 16013/02, § 30, 20 January 2009).

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

54. 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

55. The Government argued that the overall length of the civil proceedings regarding the disputed premises was reasonable. They submitted that the length of the proceedings had been affected by the serious illness of one of the parties. In particular, they noted that the civil proceedings had been suspended for almost five years and that this delay had been partly attributable to the conduct of the applicant, who had failed to request the domestic court to resume them (see paragraphs 11 and 14 above). They further contended that the case was complex since it had involved many plaintiffs, who had submitted numerous claims and counterclaims. A number of parties to the case had been replaced by other persons. The Government also drew the Court's attention to the fact that the case file consisted of 8 volumes (2,234 pages) and that there had been

frequent changes in domestic legislation regulating the restitution process. It followed that there had been no breach of the right to a hearing within a “reasonable time”, conferred by Article 6 § 1 of the Convention.

56. The applicant disagreed, stating that the complexity of the case was not sufficient to discharge the State of its obligation to observe the reasonable time requirement. He noted, in particular, that the case had been suspended before the Kaunas City District Court for almost five years. The applicant conceded that he had been under an obligation to inform the court when his relative’s state of health would allow her to participate in the proceedings. Nonetheless, he argued that it was the court which was primarily responsible for the swift resolution of the case. The applicant further observed that after the decision of the Supreme Court of 12 September 2000, by which the case had been returned to the first-instance court for a fresh examination, the Kaunas City District had only given its decision on 18 February 2004. Consequently, the length of these proceedings had been excessive.

57. The Court notes that although the civil proceedings were instituted on 3 June 1994, the period falling within its jurisdiction began only on 20 June 1995 (see paragraph 52 above) and lasted until 26 January 2005. The overall length of the proceedings was thus nine years and seven months for three levels of jurisdiction. However, the Court observes that by 20 June 1995 the proceedings had already been pending for a year.

58. The Court 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).

59. The Court has frequently found violations of Article 6 § 1 of the Convention in applications raising issues similar to the one in the present case (see *Szilágyi v. Hungary*, no. 73376/01, 5 April 2005).

60. The Court observes that the present proceedings were indeed complex, particularly because of the number of participants, several interrelated court proceedings, the ongoing legislative amendments and the restitution aspect. That, however, cannot justify their significant overall length.

61. The Court shares the Government’s view that the applicant has himself contributed to the length of the proceedings, given that from 7 October 1994 until 1 July 1999 they had been suspended since he had failed to inform the Kaunas City District Court about his relative’s state of health (see paragraphs 11 and 14 above). Furthermore, while those proceedings were pending the applicant initiated new civil proceedings concerning the same issues (see paragraph 13 above). Nevertheless, the Court cannot fail to observe that the length of proceedings was also

preconditioned by certain omissions on the part of the State. Namely, owing to the lower courts' failure to assess all the relevant circumstances in the case, the Supreme Court twice remitted the case to them for a fresh examination (see paragraphs 10 and 18 above). It should also be noted that it took the Kaunas City District Court three and a half years to adopt a new decision after the Supreme Court had returned the case to it for an examination *de novo* (see paragraphs 18 and 19 above and the judgment *Kobelyan v. Georgia*, no. 40022/05, not yet final, § 19).

62. The foregoing considerations are sufficient to enable the Court to conclude that the total length of the impugned civil proceedings breached the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE PARTIALITY OF THE DOMESTIC COURTS

63. The applicant further complained that the judge of the Kaunas City District Court who had heard his case on 18 February 2004 and a judge of the Kaunas Regional Court who had heard his case on 23 September 2004 had been biased since both judges had previously worked in the same Kaunas law office as the lawyers for the opposing party. He relied on the right to an impartial tribunal under Article 6 § 1 of the Convention.

64. The Government contended that the applicant's complaint was manifestly ill-founded. They pointed out that until 11 March 1990, when Lithuania had restored its independence, and for several years after that date there had been only one law office in the city of Kaunas: the Kaunas law office. The lawyers who worked there were not bound by partnership relations. The Government conceded that the lawyers for the opposing party had indeed worked at the same Kaunas law office as the judges who had heard the applicant's case. However, those lawyers had stopped working at the Kaunas law office in 1992 and had established their own law firm. As regards the judges, they had stopped working at that law office in 1997 and 2002 respectively, when they had been appointed as judges. The Government lastly argued that the applicant had failed to exhaust domestic remedies, since he had failed, in accordance with the requirements of domestic law, to challenge the composition of the courts that had decided his case.

65. The Court notes that the applicant failed to complain to the domestic courts regarding the alleged partiality of the judges. In particular, he did not raise that issue in his appeal or in his cassation appeal. Moreover, if the applicant had found out about the previous professional relations of the judges and the lawyers for the opposing party only after the civil proceedings had ended with the Supreme Court's judgment

of 26 January 2005, he could have submitted a request for the reopening of the proceedings under Article 366 § 1 (8) of the Code of Civil Procedure. However, the Court has no information to suggest that the applicant ever took such a step. Hence this complaint is inadmissible for failure to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

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

A. The applicant's inability to recover the disputed premises in kind

66. The applicant also complained that he had not been able to obtain restitution of the disputed premises in kind. He alleged a violation of Article 1 of Protocol No. 1 to the Convention, which provides:

“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.”

67. The Government submitted at the outset that this part of the applicant's complaint under Article 1 of Protocol No. 1 as well as his remaining complaints under that Article were inadmissible *ratione temporis*, since they related to events which had occurred before 24 May 1996, when Protocol No. 1 to the Convention entered into force in respect of Lithuania.

68. The Government pointed out that the focus of the dispute between the applicant and the authorities was not the restoration of his property rights as such, but the question whether the applicant had been entitled to restitution of the disputed premises in kind. By the decisions of 21 March 1994 and 31 May 1994, the local authorities had not annulled the applicant's property rights but had only specified the form of restitution. As under national law it was not possible to return the disputed premises in kind, the local authorities and, later, the courts decided that the applicant had to be compensated for the disputed premises either by allocating him a property of equivalent value or by paying him pecuniary compensation. In the Government's opinion, this possibility for the applicant to obtain compensation for the premises at issue ensured a reasonable balance between the interests of the applicant and the public, and had been approved by the courts at three levels of jurisdiction.

69. The applicant noted that on 17 November 1992 the local authorities had restored his property rights. He disagreed with the Government and argued that, even though the disputed decisions of 21 March 1994 and 31 May 1994 regarding the way his property rights should be restored had been adopted prior to the entry into force of Protocol No. 1 in respect of Lithuania, the civil proceedings regarding the validity of those decisions had lasted until the Supreme Court's ruling of 26 January 2005. Taking that factor into account, the present complaint fell within the Court's competence *ratione temporis*.

70. The applicant further argued that the domestic courts had misinterpreted the national law in finding that the disputed premises could not have been returned to him in kind. In particular, he alleged that there was no public interest in refusing him ownership of those premises and in transferring title to the pharmacy. In the applicant's view, there was no public interest in that particular pharmacy conducting its business on those particular premises. Moreover, the restoration of the applicant's property rights in kind did not preclude the pharmacy from renting the premises. As the domestic courts had not established a sufficient public interest for the expropriation of the applicant's property, there had been a violation of Article 1 of Protocol No. 1 to the Convention.

71. The Court notes the Government's argument that the impugned restitution-related decisions were adopted between 1992 and 1994, that is to say, before 24 May 1996, when Protocol No. 1 entered into force in respect of Lithuania. However, the Court observes that even though the judicial proceedings as to the lawfulness of those decisions, to the extent that they related to the disputed premises, were initiated on 3 June 1994, they lasted until 26 January 2005. During that period the applicant was restricted in his enjoyment of his possessions. Furthermore, not until 11 December 2008 did the head of the Kaunas City Municipality issue an order to pay the applicant pecuniary compensation for the disputed premises (see paragraph 24 above). Moreover, as regards the restitution of land, the Court notes that the proceedings were initiated on 8 April 2002. It follows that this part of the applicant's complaint as to the alleged violation of Article 1 of Protocol No. 1 to the Convention, as well as his remaining complaints under that provision, cannot be dismissed as being incompatible *ratione temporis*.

72. To the extent that the applicant complained about his inability to recover the disputed premises in kind following the re-establishment of the Lithuanian State, the Court reiterates that Article 1 of Protocol No. 1 to the Convention does not guarantee, as such, the right to the restitution of property. Nor can it be interpreted as creating any general obligation for the Contracting States to restore property which had been expropriated before they ratified the Convention, or as imposing any restrictions on their freedom to determine the scope and conditions of any property restitution to former owners (see, among many authorities, *Jantner v. Slovakia*,

no. 39050/97, § 34, 4 March 2003; *Bergauer and Others v. the Czech Republic* (dec.), no. 17120/04, 13 December 2005).

73. In the context of the present case, the Court has regard to the decision of the Kaunas City District Court of 18 February 2004 that, in accordance with the applicable domestic legislation, the applicant had no right to recover the actual disputed premises. The authorities were simply required to compensate him, either by allocating to him another property of equal value or by paying him pecuniary compensation. The Court sees no cause to depart from the domestic court's findings, which were based on its direct knowledge of the national law and the factual circumstances of the case. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be rejected under Article 35 § 4.

B. Modification of the size and location of the plot of land

74. The applicant further alleged that in its decision of 12 November 1996 the Kaunas City Municipality had unlawfully reduced the size and modified the location of the plot of land assigned to him. In particular, he contended that on 17 November 1992 the Kaunas City Board had restored his property rights to 1/12 of the plot of land adjacent to the disputed premises, measuring 1,288 sq. m. However, the aforementioned decision of 12 November 1996 specified that the overall size of the plot in question was 950 sq. m. The applicant invoked the right to the protection of property under Article 1 of Protocol No. 1 to the Convention.

75. The Government emphasised that the decision of 17 November 1992 had never been modified with regard to the size of the plot of land in respect of which the applicant's property rights had been restored, namely 1/12 of 2,097 sq. m. The decision to restore the applicant's property rights had been based exclusively on archived documents - *inter alia* an inventory file from 1947 indicating the size of the plot as being 2,097 sq. m. However, in 1965 the Soviet authorities had decided to set aside part of that land for the building of a kindergarten. In accordance with Article 12 of the Restoration of Property Act of 1991, the State had to buy out land which was occupied by infrastructures needed for social purposes. Thus, the property restitution decision was not based on the actual size of a factually existing plot of land. Moreover, that part of the restitution decision remained in force, as had been confirmed by the administrative courts.

76. As for the location of the plot of land, the Government noted that the decision of 17 November 1992 had not created an enforceable right to the physical return of 1/12 of a specific plot measuring 1,288 sq. m since, as had been confirmed by the national courts, that plot lacked any characterisation allowing it to be specifically identified cartographically. The part of the plot adjacent to the disputed premises which could be

restored to the applicant in kind had been determined in accordance with the provisions of national law, whilst taking into account the actual area of the land at issue.

77. The Government lastly noted that the applicant could no longer claim to be the victim of a violation of Article 1 of Protocol No. 1 to the Convention since on 22 January 2006 the cadastral delimitation of the plot of land adjacent to the disputed premises had been carried out and the applicant had accepted the area of the land established as a result of that exercise. Moreover, on 4 June 2008 the applicant had requested the Kaunas Regional Administrative Court to discontinue the case regarding his claim of 8 April 2002 to ownership of 1/12 of the plot of land of 1,288 sq. m adjacent to the disputed premises in kind. The Government concluded that this part of the application was manifestly ill-founded and had to be declared inadmissible under Article 34 and Article 35 §§ 3 and 4 of the Convention.

78. As regards the location of the plot of land, the Court notes the domestic courts' conclusion that the decision of 17 November 1992 had not granted the applicant any property right to a particular plot of land, but had only established his right to obtain restitution of 1/12 part of a plot, measuring 2,097 sq. m. The courts also observed, and the Court sees no ground to hold otherwise, that that order required, by its very nature, a decision specifying the exact location of the plot by reference to the cartographical indicators determined by the territorial plan (see paragraphs 28-30 above). The Court also endorses the Government's argument that part of the plot of land which could physically be returned to the applicant in 2008 was determined in accordance with the provisions of national law, whilst taking into account the actual area of the plot land at issue. The Court lastly observes that the applicant himself consented to the cadastral delimitation and accepted its results (see paragraph 31 above).

79. Regarding the size of the plot of land in respect of which the applicant's property rights were restored, the Court takes into account the fact that the Kaunas Regional Administrative Court, while noting that the plot of 1,288 sq. m in reality did not exist, emphasised that the restitution decision of 17 November 1992 remained in force. The court observed that the local authorities had an obligation to resolve the issue of compensation for the difference in the size of the plot. In this connection the Court notes the decision of 13 October 2008 in which an area of land measuring 44 sq. m was physically returned to the applicant and he was offered compensation (in the form of property or money) for the remaining 131 sq. m, which means that he could actually obtain the equivalent of 175 sq. m, constituting 1/12 of 2,097 sq. m.

80. It follows that the applicant's complaints regarding the location of the plot of land and the size of the plot in respect of which his property rights were restored are manifestly ill-founded within the meaning of

Article 35 § 3 of the Convention. They must therefore be rejected under Article 35 § 4.

C. The overall delay in finalising the restitution process

81. Lastly, invoking the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention, the applicant contended that, as a result of the overall delay in finalising the restitution process, he had been unduly restricted in the enjoyment of his property.

82. As regards the disputed premises, the Government pointed out that the delay in finalising the restitution process had mainly been caused by the behaviour of the applicant, who had obstructed the expeditious restoration of his property rights by insisting on the return of the premises in kind. In addition, the applicant had not acted in a cooperative manner as regards his conduct during the proceedings. Lastly, even after the Supreme Court's decision of 26 January 2005, by which it was acknowledged that he was not entitled to the physical restitution of the disputed premises, the applicant had initiated additional judicial proceedings which further prolonged the finalisation of the restitution process.

83. On the matter of the plot of land, the Government noted that the land restitution process in Lithuania was very complicated and lengthy because of the difficult political and social conditions as new proprietary relations had emerged. Judicial disputes, which were common in restitution cases, were also to be regarded as an obstacle to the rapidity of the process. It followed that the cooperation of claimants played an important role. The possibility of finalising the restitution process with the least delay often depended on the readiness of claimants to choose a type of restitution not involving the physical return of the property at issue and to reach an agreement with other co-owners. The Government also pointed out that, under the domestic law, the restitution process concerning the plot of land was directly related to the finalisation of the restoration of property rights to the disputed premises. As long as the exact part of the premises which was owned by the applicant was not determined, it was not possible to establish the size of the plot of land. Since the applicant to a great extent had himself obstructed the smooth restoration of property rights to the premises, this had subsequently caused delays in finalising the restitution of the land. Taking all of the above into account, the Government argued that the applicant had not acted with a view to finalising the restitution of the land in question expeditiously.

84. The Court observes that, by a decision of 17 November 1992, the Kaunas City Board granted the applicant the right to obtain compensation corresponding to the value of the disputed premises. Even though that right was created in an inchoate form, as its materialisation was to be effected by an administrative decision allocating State assets to him, according to the

rules fixed by the Government, it clearly constituted a legal basis for the State's obligation to implement it. However, as the decision to pay pecuniary compensation to the applicant was only taken on 11 December 2008 (see paragraph 24 above), that is to say, many years later, the Court considers that the applicant faced certain restrictions on his right to the peaceful enjoyment of his possessions, conferred by the first sentence of Article 1 of Protocol No. 1 to the Convention. Accordingly, this complaint must be declared admissible, no ground of inadmissibility having been established. Moreover, the Court is of the view that this part of the complaint, although already partly addressed when examining the length of proceedings complaint under Article 6 § 1, merits a separate examination under Article 1 of Protocol No. 1 to the Convention (see the judgment of *Igariene and Petrauskiene vs. Lithuania*, no. 26892/05, § 55, 21 July 2009, not yet final).

85. It is recalled that, for the purposes of the above-mentioned provision, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 68, Series A no. 52). The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Străin and Others v. Romania*, no. 57001/00, § 44, ECHR 2005-VII).

86. The Court takes cognisance of the fact that the present case concerns restitution of property and is not unmindful of the complexity of the legal and factual issues a State faces when resolving such questions (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, § 166, 15 March 2007). It follows that certain impediments to the realisation of the applicant's right to the peaceful enjoyment of his possessions are not in themselves open to criticism. However, there is a risk that such restitution proceedings may unreasonably restrict an applicant's ability to deal with his or her possessions, particularly if such proceedings are protracted (see, *mutatis mutandis*, *Luordo v. Italy*, no. 32190/96, § 70, ECHR 2003-IX). The state of uncertainty which an applicant may experience as a result of delays attributable to the authorities is a factor to be taken into account in assessing the State's conduct (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 54, ECHR 2000-I, and *Broniowski v. Poland* [GC], no. 31443/96, §§ 151 and 185, ECHR 2004-V).

87. In the context of the present case, the Court observes that the State recognised the applicant's right to compensation for the disputed premises as early as 17 November 1992. Even taking into account that Protocol No. 1 to the Convention came into force with regard to Lithuania only four years later, the applicant has still not been paid to date. The Court is not insensitive to the complexities inherent in the restitution process. However,

in the present case the hindrance to the peaceful enjoyment of his property is mainly attributable to the respondent State, since the Court has already found that the related civil proceedings breached the “reasonable time” requirement (see paragraph 62 above). In the Court’s view, notwithstanding the uncooperative attitude of the applicant, the overall length of the restitution proceedings upset the balance which had to be struck between the general interest in securing the disputed premises for public needs and the applicant’s personal interest in the peaceful enjoyment of his possessions. The interference with the applicant’s right was accordingly disproportionate to the aim pursued.

88. On the matter of the plot of land, the Court takes note of the Government’s argument that, under domestic law, its restitution was directly linked with the finalisation of the restoration of property rights to the premises. Therefore the Court considers that no separate examination of this part of the applicant’s complaint is needed.

89. Having regard to the foregoing, the Court finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

90. The applicant further complained, under Article 6 § 1 of the Convention, that the courts had incorrectly applied domestic procedural and substantive law when examining his claims regarding restitution.

91. The Court reiterates that it is not its task under the Convention to act as a court of appeal, or a so-called court of fourth instance, from the decisions taken by domestic courts. It is the role of the latter to interpret and apply the domestic law (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 86, ECHR 2005-VI). It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 180,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

94. The Government contested these claims as unsubstantiated and excessive.

95. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant has suffered some non-pecuniary damage. In the light of the parties' submissions and, in particular, having regard to the applicant's failure to effectively cooperate with the authorities as regards the swift resolution of the restitution dispute, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

96. The applicant claimed 5,299 Lithuanian litai (LTL – approximately 1,535 euros (EUR)) for the legal costs and expenses incurred before the domestic courts and the Strasbourg Court. To substantiate his claim he submitted bills and receipts for the sum of LTL 2,299 (approximately EUR 665) and contended that the documents proving the remaining expenses had been stolen.

97. The Government contested these claims as unsubstantiated and unreasonable.

98. 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 considers it reasonable to award the applicant EUR 665.

C. Default interest

99. 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

1. *Declares* admissible, unanimously, the applicant's complaints concerning the excessive length of the civil proceedings and his inability to enjoy his possessions;
2. *Declares* inadmissible, unanimously, the remainder of the application;

3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds* unanimously
 - (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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
 - (ii) EUR 655 (six hundred and fifty-five 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;
6. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 21 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Jočienė is annexed to this judgment.

S.D.
F.T.

PARTLY DISSENTING OPINION OF JUDGE JOČIENĖ

1. I agree with the majority of my colleagues on all aspects of the case concerning the violation of Article 6 § 1 of the Convention, as well as with all inadmissibility issues decided therein, but I cannot agree with their finding that there has been a violation of Article 1 of Protocol No. 1 concerning the overall delay in finalising the restitution process.

2. Nevertheless, I agree with the majority's position (see paragraph 84 of the judgment) that the particular circumstances of the case require a separate examination of the merits of this complaint, even after finding a violation of Article 6 § 1 of the Convention (see also *Okçu v. Turkey*, no. 39515/03, 21 July 2009, §§ 48-50, not yet final). Consequently, I also agree that this part of complaint is admissible (*ibid*).

3. The applicant in this part of his application is complaining that, as a result of the overall delay in finalising the restitution process, he had been unduly restricted in the enjoyment of his property.

4. First of all, I note that the restitution process was very complicated and lengthy because of the difficult political and social conditions which emerged with the creation of new proprietary relations (see, *mutatis mutandis*, *Kopecký v. Slovakia*, [GC] no. 44912/98, §§ 35, 37, ECHR 2004-IX). Judicial disputes, which were common in restitution cases, were also to be regarded as an obstacle to the rapidity of the process. It follows that the cooperation of claimants played an important role. Therefore, the possibility of finalising the restitution process with the least delay often depended on the readiness of claimants to choose a type of restitution not involving the physical return of the property at issue, and to reach an agreement with other co-owners. Of course, even accepting that some difficulties will arise for the State in the restitution process, I fully agree with the well developed jurisprudence of the Court, that a "fair balance" must be struck between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 68-69, Series A no. 52), and that an excessive burden cannot be placed on the person concerned (see *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII). I also agree with the Court's established position that a person cannot be unreasonably placed in a situation where he cannot effectively deal with his possessions, particularly where such situations are protracted due the State authorities' fault (see paragraph 86 of the judgment).

5. Turning to the present case, I note that the case file and all the documents therein show that the delay in finalising the restitution process for the disputed premises had mainly been caused by the behaviour of the applicant and his failure to effectively cooperate with the authorities. It was the applicant who had obstructed the expeditious restoration of his property rights by insisting on the return of the premises in kind, knowing that no

such possibility existed (see paragraphs 66, 69-70 and 72-73 of the judgment). In addition, the applicant did not act in a cooperative manner during the civil proceedings. In particular, the civil case was suspended from 7 October 1994 until 1 July 1999 since the applicant failed to inform the Kaunas City District Court about his relative's state of health (see paragraphs 11, 13-14 and 22 of the judgment). Even after the Supreme Court's final decision of 26 January 2005, by which it was acknowledged that he was not entitled to the physical restitution of the disputed premises, the applicant initiated further judicial proceedings, by submitting new requests and claims to the domestic courts, whilst at the same time showing no interest in their possible outcome by, inexplicably, failing to appear before the court (see paragraphs 22 and 23 of the judgment). Moreover, the applicant failed to cooperate with the local authorities, given that he refused to accept the letter of 15 December 2008 in which the Kaunas City Municipality requested him to indicate his bank account details in order to pay him compensation for the disputed premises (see paragraph 24 of the judgment).

6. As regards the plot of land, I note that the Court decided not to examine this complaint separately (see paragraph 88 of the judgment). In my view, this aspect could have been examined separately, because it could have confirmed the conclusion of no violation of Article 1 of Protocol 1 of the Convention. Under the domestic law, the restitution of the plot of land in this case was directly linked with the finalisation of the restoration of property rights to the premises, the latter process having been delayed by the applicant himself. I observe that, after the final decision of 21 June 2005 of the Supreme Administrative Court, the restitution proceedings were quite rapid. The process of cadastral delimitation and measurement was completed on 22 January 2006, and in 2007 the plot of land adjacent to the disputed premises was registered in the State Land Registry. Finally, after the applicant withdrew his administrative claim on 4 June 2008, the head of the Kaunas Regional Administration adopted a decision specifying the size and location of the plot of land, physically returned to him an area of land measuring 44 sq. m, and requested him to indicate his preferences regarding compensation for the remaining 131 sq. m of the plot. Therefore, I cannot see any unjustified delays which could be attributable to the State in finalising the restitution of the plot of land.

7. In the context of the present case, I agree with the Court that the overall delay in finalising the restitution process was substantial (see paragraph 62 of the judgment). However, having regard to the considerations above, particularly the applicant's uncooperative attitude towards the authorities (see *Užkurėlienė and Others v. Lithuania*, no. 62988/00, §§ 34-36, 7 April 2005), which attitude negatively influenced the rights of other plaintiffs in the case (see the judgment of *Igarienė and Petrauskienė v. Lithuania*, no. 26892/05, 21 July 2009, not yet final), I think

that there has been no infringement of the applicant's right to the peaceful enjoyment of his possessions and that a "fair balance" has been struck.

Accordingly, I find no violation Article 1 of Protocol No. 1 to the Convention in this case.