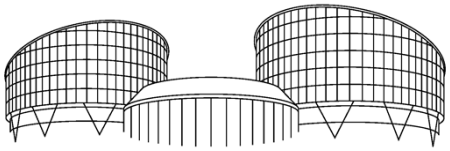

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ČERNIAK v. LITHUANIA

(Application no. 37723/11)

JUDGMENT

STRASBOURG

18 December 2018

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Černiak v. Lithuania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 27 November 2018,

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

PROCEDURE

1. The case originated in an application (no. 37723/11) 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 Edvard Černiak ("the applicant"), on 31 May 2011.

2. The applicant was represented by Ms E. Jankovska, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, most recently Ms K. Bubnytė-Širmenė.

3. On 6 December 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Juodšiliai in the Vilnius Region.

5. In 1991 the applicant's mother applied for restoration of her property rights to land which had been nationalised by the Soviet regime.

6. On 27 September 2001 the Vilnius County Administration (hereinafter "the VCA") restored the applicant's mother's property rights by giving her a plot of six hectares in Pagiriai, an area in the Vilnius city municipality. As the applicant's mother had died in 1995, the applicant was issued with a certificate of inheritance in respect of the plot on 13 March 2003.

A. Annulment of property rights to six hectares

7. On 4 December 2008 the prosecutor of the Vilnius Region (hereinafter "the prosecutor") lodged a claim with the Vilnius Regional Court, seeking to have the applicant's mother's property rights to the six hectares given to her annulled. The prosecutor submitted that, according to the data provided by the State Forest Management Service, 5.59 hectares of the plot was covered by forest. Since that forest was situated in a city, it was considered a forest of national importance and could therefore only be owned by the State (see the relevant domestic law cited in *Beinarovič and Others v. Lithuania*, nos. 70520/10 and 2 others, §§ 86-89, 12 June 2018). In view of the circumstances, the VCA's decision had to be declared unlawful and its effects annulled. The prosecutor asked that after annulling the applicant's mother's property rights to the plot, the applicant's property rights to it also be annulled.

8. The applicant and the VCA disputed the prosecutor's claim. However, on 15 September 2009 the Vilnius Regional Court allowed the prosecutor's claim and annulled the VCA's decision to restore the applicant's mother's property rights to six hectares of land, as well as the applicant's property rights to that land.

9. The applicant and the VCA lodged appeals against that decision, arguing that the restoration of the applicant's mother's property rights had complied with the relevant legislation. The applicant also submitted that he was being deprived of his property without any compensation. However, on 1 June 2010 the Court of Appeal dismissed the appeals and upheld the lower court's decision in its entirety.

10. The applicant lodged an appeal on points of law, arguing that the lower courts had incorrectly found that the forest on his land constituted an urban forest, but on 25 January 2011 it was dismissed by the Supreme Court.

B. Subsequent restitution process

11. On 23 February 2012 the applicant received a letter from the National Land Service (the institution which took over the relevant functions of the VCA after an administrative reform – hereinafter "the NLS") confirming that his mother had retained the right to have her property rights to six hectares of land restored. It stated that there was no more vacant land in Pagiriai and asked the applicant to inform the authorities of his choice as to one of the forms of restitution provided for by the domestic law (ibid., § 92). It is unclear whether he replied to this letter.

12. On 24 July 2012 the applicant received another letter from the NLS which stated that there was a possibility for the applicant to receive a plot of land for the construction of an individual home in the Vilnius city area but

as there were 4,806 other candidates waiting to receive plots in the area, the restitution process would take a long time. The applicant was asked to consider an alternative form of restitution, such as a plot of land in a rural area, a plot of land for the construction of an individual home in a different city, or monetary compensation (ibid., § 92). He was also informed that there might be some vacant land in Pagiriai, so if he wished to receive a plot in that area, his request would be considered when the land plan was being prepared.

13. On 21 August 2012 the applicant sent a letter to the NLS. He submitted that the annulment of his property rights to six hectares of land had caused him pecuniary damage in the amount of 251,217 Lithuanian litai (LTL – approximately 72,760 euros (EUR)), according to an assessment of the value of the land carried out in May 2012. In the applicant's view, being put on the list with 4,806 other candidates and being made to wait for an undetermined period of time for restitution was unacceptable. He asked to be allocated a plot of land for the construction of an individual home in Vilnius in the order of priority, and if that was not possible, to be informed how many plots were available in Vilnius and when he might expect to receive one. If he could not be given such a plot, he wished to receive compensation of LTL 251,217. The applicant also stated that he would only be able to decide whether he wished to receive a plot in Pagiriai after being presented with a plan of a specific plot. He stated that he did not wish to choose any other form of restitution.

14. On 7 October 2013 the NLS approved the list of candidates to receive plots of land in several areas around Vilnius, including Pagiriai. The applicant's mother was included in that list as a candidate to receive six hectares of land. On 22 October 2013 the NLS held a meeting in which candidates were offered plots in the relevant areas and the applicant took part in that meeting. According to the minutes of the meeting, which were approved by the NLS, he stated that the question of the restoration of his property rights was pending before the European Court of Human Rights, that he was dissatisfied with the available vacant land and that he refused to choose any plots (*žemės sklypų nesirinko*).

15. On 22 April 2016 the NLS held another meeting in which the applicant took part. According to the minutes of the meeting, which were approved by the NLS and signed by the applicant, he asked to be shown the plots which had been offered to him at their location and not just on a plan. He stated that he had lodged an application with the European Court of Human Rights and wished to receive its decision – only then would he "decide what to do with his land". The applicant examined the land plan but did not make any decisions with regard to the available plots (*jokių sprendimų nepriėmė*), stating that he would "seek solutions from organisations of a higher instance".

16. At a subsequent meeting held on 17 May 2016, the applicant stated that he had seen the plots offered to him but that they could not be used according to their purpose because of their uneven surface and the presence of electricity and other installations on them. He therefore "saw no possibility of choosing any plots" (*žemės sklypų pasirinkimo galimybių nemato*). The applicant further stated that the plot which had been taken away from him had been large and of good quality, and that he preferred to "wait for decisions of a higher instance".

17. On 9 October 2017 the NLS approved the list of candidates to receive plots of land in several areas around Vilnius, including Pagiriai. The applicant's mother was included in that list as a candidate to receive six hectares of land. On 25 October 2017 the NLS held a meeting for candidates in which the applicant took part. According to the minutes of the meeting, which were approved by the NLS and signed by the applicant, he was dissatisfied with the size and location of the plots which had been offered to him. He again stated that he had lodged an application with the European Court of Human Rights and wished to receive that Court's decision – only then would he decide "what to do with the land which had not been returned to him". He refused to make any decisions during the meeting (*susirinkimo metu jokių sprendimų nepriėmė*) on the grounds that he was "waiting for a response from a competent institution".

18. On 24 November 2017 the NLS held yet another meeting of candidates to receive plots of land in the aforementioned areas and the applicant took part in that meeting. According to the minutes of the meeting, approved by the NLS and signed by the applicant, he again refused to make any decisions (*susirinkimo metu jokių sprendimų nepriėmė*) and repeated that he was waiting for a response from the European Court of Human Rights.

19. At the date of the latest information provided to the Court (13 February 2018), the applicant's property rights to six hectares of land had still not been restored.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. For the relevant domestic law and practice, see *Beinarovič and Others v. Lithuania* (nos. 70520/10 and 2 others, §§ 84-103, 12 June 2018).

THE LAW

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

21. The applicant complained that his property rights had been annulled because of mistakes made by the authorities and that he had not been compensated either by restitution in kind or in monetary terms. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

Exhaustion of domestic remedies

22. The Government submitted that the applicant had had the ability to institute separate civil proceedings against the State and claim compensation for non-pecuniary damage caused by the allegedly unlawful actions of the authorities. They referred to several rulings of the Supreme Court and the Supreme Administrative Court which they considered relevant in the circumstances (see *Beinarovič and Others*, nos. 70520/10 and 2 others, § 107, 12 June 2018).

23. The applicant submitted that in his appeals he had asked the courts to protect his property rights and apply the law in a "fair" manner but no compensation had been offered to him.

24. The Court has already examined the Government's submissions related to the domestic remedies available in a situation such as the applicant's and held that instituting separate civil proceedings against the State could not be considered an effective remedy within the meaning of Article 35 § 1 of the Convention (ibid., §§ 111-13). It sees no reason to adopt a different conclusion in the present case. The Government's objection is therefore dismissed.

25. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

26. The applicant submitted essentially the same arguments as those submitted by the applicants in *Beinarovič and Others* (cited above, §§ 121-24).

27. He additionally submitted that he had not been offered any plots equal in value to the land which he had been given previously – the plots offered to him had been covered by electricity installations or had been in swamps, or insufficient in size. He submitted that he had refused those plots because of their poor quality and not because his case was pending before the Court. In the applicant's view, it was unacceptable that the authorities had first offered him such land and then accused him of non-cooperation (see paragraph 29 below).

(b) The Government

28. The Government submitted essentially the same arguments as those which they had submitted in *Beinarovič and Others* (cited above, §§ 125-31).

29. The Government further contended that cooperation of applicants with the public authorities in the restitution process was of key importance when determining the proportionality of the interference with their property rights. They submitted that the domestic authorities had been active in contacting the applicant and informing him about the restitution process, but were not entitled to take over the initiative from him. The restitution could not be finalised until the applicant expressed his intentions as to his preferred form of restitution. However, the applicant had failed to cooperate with the authorities and he had actively precluded the finalisation of the restitution process by refusing to choose any plots until his case was decided by the Court (see paragraphs 14-18 above).

2. The Court's assessment

(a) Existence of an interference with the right to peaceful enjoyment of possessions, its lawfulness and legitimate aim

30. In its recent judgment in the case of *Beinarovič and Others* (cited above), the Court examined decisions to annul the applicants' property rights to land which had been given to them by the public authorities, on the grounds that that land included forests of national importance. In that case the Court found that the annulment of the applicants' property rights had constituted an interference with their right to peaceful enjoyment of their possessions, that that interference had been in accordance with the law and

that it had pursued a legitimate aim in the public interest, namely the protection of forests of national importance (ibid., §§ 132-37). In view of the similarity between the facts in *Beinarovič and Others* and the present case, the Court sees no reason to depart from the conclusions reached in that judgment. It remains to be ascertained whether the interference was proportionate in the particular circumstances of the present case.

(b) Proportionality of the interference

31. The relevant general principles concerning the proportionality of interference with the right to peaceful enjoyment of possession in cases where the interference resulted from the need to correct mistakes made by the public authorities were summarised in *Beinarovič and Others* (cited above, §§ 138-42).

32. In the present case, the applicant complained that the annulment of his property rights to the plot of land restored to his mother, which he had inherited, had been contrary to Article 1 of Protocol No. 1 to the Convention. In line with its case-law (ibid., §§ 139, 140 and 143), the Court considers that the Lithuanian authorities were entitled to correct their mistakes and annul the restoration of the applicant's property rights in order to protect forests classified as being of national importance. Accordingly, it is of the view that the annulment in itself did not constitute a violation of the applicant's rights under Article 1 of Protocol No. 1. At the same time, the Court underlines that the correction of the authorities' errors should not create disproportionate new wrongs (ibid., § 140, and the cases cited therein). It must therefore assess whether the authorities complied with their obligation to promptly and adequately compensate the applicant for the loss which he suffered as a result of their mistakes.

33. The Court observes that the applicant's property rights to six hectares of land were annulled by the final court decision of 25 January 2011 (see paragraph 10 above). The applicant was informed about the forms of restitution provided for by law and asked to indicate his choice in February 2012 (see paragraph 11 above), that is slightly more than one year after his property rights had been annulled. He was invited to attend a meeting of candidates to receive land in the relevant area in October 2013 (see paragraph 14 above), that is approximately two years and nine months after his property rights had been annulled. In the circumstances of the present case, the Court is prepared to accept that that period was not excessive.

34. The Court cannot fail to notice that during all the meetings which the applicant attended between October 2013 and November 2017 he refused to make any decisions with regard to the plots which had been offered to him (see paragraphs 14-18 above). Although the applicant criticised the quality of those plots during the meetings and in his submissions to the Court (see paragraphs 14-18 and 27 above), he did not make any decisions formally

refusing the plots offered to him and indicating the reasons for the refusal (compare and contrast *Beinarovič and Others*, cited above, §§ 34 and 152). Instead, as demonstrated by the minutes of those meetings, which he had signed, on each occasion he reiterated that he wished to wait for the decision of the Court in the present case, or for a response from "a competent institution" (see paragraphs 14-18 above). In this connection, the Court takes note of the Government's position that the cooperation of applicants with the public authorities in the restitution process is of key importance when determining the proportionality of the interference with their property rights (see paragraph 29 above; see also *Paukštis v. Lithuania*, no. 17467/07, §§ 85-86, 24 November 2015, and *Valančienė v. Lithuania*, no. 2657/10, §§ 71-72, 18 April 2017). In the present case, not only did the applicant not cooperate with the authorities, but he explicitly refused to participate in the restitution process in accordance with domestic law. In the Court's view, the applicant himself effectively suspended the restitution process and therefore the delay in the restoration of his property rights cannot be considered the responsibility of the authorities (see *Beinarovič and Others*, cited above, § 162). In this connection, the Court also reiterates that within the scheme of the Convention it is intended to be subsidiary to the national systems safeguarding human rights (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008; *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 61, ECHR 2012; and *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, §§ 29-32, 12 December 2017). It should therefore not be treated as the first-instance authority for restoring property rights, without allowing the domestic authorities an opportunity to do so.

35. Accordingly, the Court finds that, even though at the date of the last available information (see paragraph 19 above) the applicant's property rights had still not been restored, this has been caused by his own explicit refusal to participate in the restitution process, for which the authorities cannot be held responsible. There has therefore been no violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. The applicant further complained under Article 6 § 1 and Article 13 of the Convention that the domestic courts in the proceedings concerning the annulment of his property rights had disregarded his arguments and had adopted unfair and unfounded decisions. Lastly, he complained under Article 14 of the Convention that he had been discriminated against on the basis of his national origin – he submitted that the majority of individuals who had had their rights to forests restored and later annulled had been Polish.

37. The Court finds that the material in its possession does not disclose any appearance of a violation of the provisions invoked by the applicant. This part of the application must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention

Done in English, and notified in writing on 18 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President