

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

FOURTH SECTION

CASE OF GRIGALIŪNIENĖ v. LITHUANIA

(Application no. 42322/09)

JUDGMENT
(*Merits*)

This version was rectified on 11 October 2016 under Rule 81 of the Rules of Court

STRASBOURG

23 February 2016

This judgment is final. It may be subject to editorial revision.



In the case of Grigaliūnienė v. Lithuania,

The European Court of Human Rights (Fourth Section), sitting on 2 February 2016 as a Committee composed of:

Nona Tsotsoria, *President,*
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 July 2009,

Having deliberated, decides as follows:

PROCEDURE

1. The case originated in an application (no. 42322/09) 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, Ms Violeta Grigaliūnienė ("the applicant"), on 13 July 2009.

2. The applicant was represented by Mr D. Jurgutis, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged that she had been deprived of her property by a decision of a domestic court and had not received adequate compensation, in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 29 June 2012 the application was communicated to the Government.

THE FACTS

5. The applicant was born in 1955 and lives in Kaunas.

6. In February 1993 the Kaunas Region Municipality (*Kauno rajono savivaldybė*) assigned a plot of land measuring 0.15 hectares in the settlement of Noreikiškės to the applicant for the construction of a house (hereinafter "the land"). In May 1995 she signed a land purchase agreement with the municipality and bought the land for 29.70 "single-use investment vouchers" (*investiciniai čekiai*). The purchase agreement indicated that the nominal value of the land was 2,976 Lithuanian litai (LTL – approximately 862 euros (EUR)). The applicant subsequently obtained a building permit and built a storehouse on the land.

7. On 10 May 2002 the Constitutional Court found that Government regulations which allowed land in Noreikiškės to be sold to private individuals were contrary to the Constitution of the Republic of Lithuania

and the Restitution Law (see *Padalevičius v. Lithuania*, no. 12278/03, § 18, 7 July 2009).

8. In December 2003 the Kaunas County Administration (hereinafter "the KCA") brought a claim before the Kaunas District Court (*Kauno rajono apylinkės teismas*) seeking the annulment of the administrative decisions and the purchase agreements on the basis of which plots of land had been sold to the applicant and to several other individuals. The KCA argued that the land in question had to be returned *in natura* to its former owners and thus had been sold to the applicant and other individuals unlawfully.

9. On 4 June 2004 the Kaunas District Court allowed the KCA's claim. The court annulled the administrative decision of 1993 assigning the land to the applicant and the land purchase agreement of 1995, and ordered the Kaunas Region Municipality to return 29.70 "single-use investment vouchers" to the applicant.

10. On 7 February 2005 the Kaunas Regional Court partially quashed the first-instance judgment. It found that the lower court had correctly annulled the administrative decision and purchase agreement, and upheld the judgment in that part. However, it noted that the "single-use investment vouchers" could no longer be used as a means of payment. Thus, in accordance with the Civil Code, the applicant should have received the monetary equivalent of what she had paid in 1995. The court remitted that part of the case for re-examination in order to assess the monetary equivalent. On 3 October 2005 the Supreme Court upheld the Regional Court's judgment.

11. The remitted part of the case was subsequently re-examined by the Kaunas Regional Court sitting as the court of first instance. During those proceedings, the applicant argued that the unlawful allocation and sale of the land had resulted from the State authorities' negligence. The applicant claimed that she, as a *bona fide* purchaser, was therefore entitled to receive compensation for the full market value as it was at the time of expropriation, in accordance with Article 6.147 § 2 of the Civil Code (see paragraph 16 below).

12. On 6 March 2008 the Kaunas Regional Court dismissed the applicant's request for compensation equating to the full market value of the land. The court found that the authorities could not be held solely responsible for the unlawful sale because the applicant had also had a duty to verify whether she had been buying the land lawfully. Thus, the court held that, for the purposes of Article 6.147 § 2 of the Civil Code, the applicant could not be considered a *bona fide* purchaser and was not entitled to compensation for the full market value. The court awarded her the nominal value of the land in 1995, which it assessed to be LTL 29.70 (EUR 8.60). The court also noted that if the applicant considered that she had suffered pecuniary damage, she had the right to institute separate proceedings against the State for damages.

13. On 19 August 2008 the Court of Appeal partially amended the Regional Court's judgment. It reiterated that the applicant could not be considered a *bona fide* purchaser merely because she had bought the land from the State – she had also had a duty to verify the lawfulness of the sale. However, the Court of Appeal found that the lower court had incorrectly assessed the nominal value of the land in 1995. Referring to the text of the purchase agreement (see paragraph 6 above), the court awarded the applicant LTL 2,976 (EUR 862).

14. On 27 January 2009 the Supreme Court upheld the judgment of the Court of Appeal; however, it partially amended the reasoning. The Supreme Court stated that the nominal value of the land had been indicated in the purchase agreement, so it had not been necessary to apply Article 6.147 of the Civil Code and assess the monetary equivalent. As a result, the applicant's good faith had been irrelevant in determining the amount of compensation and should not have been examined. Nonetheless, the Supreme Court considered that that error had not affected the lawfulness of the Court of Appeal's judgment.

I. RELEVANT DOMESTIC LAW AND PRACTICE

15. For relevant domestic law and practice, see *Albergas and Arlauskas v. Lithuania* (no. 17978/05, §§ 21-33, 27 May 2014).

16. In addition, Articles 6.146 and 6.147 of the Civil Code provide as follows:

> **"Article 6.146. Mode of restitution**
>
> Restitution shall be made in kind, except in cases where this is impossible or would cause serious inconvenience to the parties. In these cases, restitution shall be effectuated by means of a monetary equivalent payment.
>
> **Article 6.147. Estimation of monetary equivalent**
>
> 1. The monetary equivalent shall be estimated based on prices valid at the time the debtor received what he or she is required to restore.
>
> 2. In the event of destruction or transfer of property subject to restitution, the person shall be bound to compensate for the value of the property as it was at the time the property was received, destroyed or transferred, or at the time of its restitution, whichever value is the lowest. In the event of the person liable to make restitution being in bad faith, or where the restitution is due to his or her fault, he or she shall be bound to return the highest value of the property."

THE LAW

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

17. The applicant complained that the State had unlawfully deprived her of her property and had not provided her with adequate compensation. She 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 ..."

A. Admissibility

18. The Government submitted that the applicant had failed to exhaust domestic remedies by not initiating separate judicial proceedings against the State under Article 6.271 of the Civil Code for redress for her allegedly inadequate compensation.

19. The applicant argued that such a remedy would not have been effective.

20. The Court refers to its findings in the cases of *Pyrantienė v. Lithuania* (no. 45092/07, § 27, 12 November 2013) and *Albergas and Arlauskas v. Lithuania* (no. 17978/05, § 44, 27 May 2014), where it was not demonstrated that at the time the application was lodged with the Court, a claim under Article 6.271 of the Civil Code would have been an effective remedy with any prospect of success (see, *mutatis mutandis*, *Beshiri and Others v. Albania*, no. 7352/03, § 55, 22 August 2006). The Court does not find any reasons to reach a different conclusion in the present case.

21. Accordingly, the Court dismisses the Government's objection that the applicant failed to exhaust domestic remedies.

22. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

23. The applicant submitted that she had acquired the land in good faith because she could not have reasonably expected the State authorities to be acting unlawfully. She pointed out that at the time of the purchase agreement no former owners had claimed the land which had been sold to her. The applicant also submitted that she had had to bear an individual and excessive burden because the compensation equating to the nominal value

of the land was clearly insufficient for her to buy a similar plot of land at the current market price. She stated that it was no longer possible to buy land for a nominal price, so she had been denied that opportunity because of the authorities' fault. As a result, the applicant submitted that she should have been compensated for the full market value of the land at the time of its expropriation so that she could buy a new equivalent plot. According to the applicant, during the domestic court proceedings a court-appointed expert estimated that the market value of the land in March 2007 was LTL 189,600 (EUR 54,900).

24. The Government admitted that the applicant had been deprived of her property, but argued that such deprivation was in compliance with Article 1 of Protocol No. 1 to the Convention. They submitted that the land had been assigned and sold to the applicant in breach of "imperative legal norms" protecting the interests of former owners, as found by the Constitutional Court, so the relevant administrative decision and purchase agreement had been annulled in accordance with the Civil Code. They also maintained that the interference with the applicant's property rights was justified as being "in the public interest", namely in defence of the rights of former owners who had lost their title to land during the Soviet regime.

25. The Government also contended that the applicant had owned the property for a relatively short period of time: the land purchase agreement was signed in May 1995, and already in June 1995 third parties had initiated civil proceedings for the annulment of similar purchase agreements concerning adjacent plots of land. Accordingly, the Government submitted that the applicant should have been aware of the restitution proceedings in the country at the time and the risk that she was taking. The Government further submitted that LTL 2,976 was adequate compensation for the applicant's loss.

26. Lastly, the Government argued that any errors made by the domestic authorities had occurred in the context of land reform, which was linked to the process of restoration of former owners' rights to property that had been previously nationalised by the Soviet regime. According to the Court's case-law in the context of central and eastern European States, the circumstances concerning the transition from a totalitarian regime to a democracy and the specific circumstances of each case therefore had to be taken into account.

2. The Court's assessment

(a) General principles

27. The relevant general principles are set out in *Pyrantienė* (cited above, §§ 37-40).

(b) Application of the above principles in the present case

28. In the present case, it is not disputed that there has been a "deprivation of possessions" within the meaning of the second sentence of

Article 1 of Protocol No. 1. The Court must therefore ascertain whether the deprivation in question was justified under that provision.

(i) Lawfulness of the interference

29. The domestic courts' decision to annul the administrative decision of 1993 and the land purchase agreement of 1995 was based on Articles 1.80, 6.146 and 6.147 of the Civil Code, and the principle of the priority of former owners' rights established in the Supreme Court's case-law. The Court therefore finds that the deprivation was in accordance with the law, as required by Article 1 of Protocol No. 1.

(ii) Legitimate aim

30. As in *Pyrantienė* and *Albergas and Arlauskas* (both cited above), the measures complained of were designed to correct the authorities' mistakes and to defend the interests of former owners by restoring their ownership rights to land *in natura*. The Court thus considers that the interference pursued a legitimate aim (see *Pyrantienė*, cited above, §§ 44-48; see also *Bečvář and Bečvářová v. the Czech Republic*, no. 58358/00, § 67, 14 December 2004).

(iii) Proportionality

31. The Court reiterates that any interference with property must, in addition to being lawful and having a legitimate aim, also satisfy the requirement of proportionality. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52; *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII; and *Anthony Aquilina v. Malta*, no. 3851/12, §§ 58-59, 11 December 2014, and the cases cited therein).

32. On several occasions in similar cases which, as in the present case, concerned the correction of mistakes made by the State authorities in the process of restitution, the Court has emphasised the necessity of ensuring that the remedying of old injustices does not create disproportionate new wrongs (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, § 178, 15 March 2007). To that end, the legislation should make it possible to take into account the particular circumstances of each case, so that individuals who have acquired their possessions in good faith are not made to bear the burden of responsibility, which is rightfully that of the State which confiscated those possessions. In other words, the risk of any mistake made by the State authority must be borne by the State, and errors must not be remedied at the expense of the individual concerned (see *Gladysheva*

v. Russia, no. 7097/10, § 80, 6 December 2011, and *Pyrantienė*, cited above, § 70).

33. In order to assess the burden borne by the applicant, the Court must examine the particular circumstances of each case, such as the conditions under which the disputed property was acquired and the compensation that was received by the applicant in exchange for the property, as well as his or her personal and social situation (see *Pyrantienė*, cited above, § 51).

34. In the present case, the applicant became entitled to a plot of land following a decision taken by the local administrative authorities in 1993, and purchased it from the State in 1995. The procedures for the sale of the land were conducted by official bodies exercising the authority of the State, and the land purchase agreement signed by the applicant and the Kaunas Region Municipality incorporated the standard conditions of sale (see paragraph 6 above). The Court considers that the applicant had very little opportunity, if any, to influence the terms of the contract or the purchase price, as this was within the State's exclusive competence. The authorities were therefore under an obligation to verify the applicant's eligibility for allocation of the land and the conformity of the land sale with the procedures and laws in force (see, *mutatis mutandis*, *Gladysheva*, § 79, and *Pyrantienė*, § 54, both cited above).

35. The applicant's title to the land was invalidated after the KCA lodged a civil claim, which was then allowed by the domestic courts. It was established that the local authorities had not been entitled to transfer the disputed property to the applicant before the question of restoration of the former owners' rights had been resolved. The Government argued that the errors made by the domestic authorities had occurred in the context of land reform, which was linked to the complex process of restoration of former owners' property rights in Lithuania. In the Court's view, although it is true that States face complex legal and factual issues when resolving such matters, in the present case the hindrance to the peaceful enjoyment of the property is attributable exclusively to the respondent State, and the existence of any justifying exceptional circumstances has not been demonstrated by the Government (see *Nekvedavičius v. Lithuania*, no. 1471/05, § 88, 10 December 2013, and *Albergas and Arlauskas*, cited above, § 62).

36. In this context, the Court reiterates the particular importance of the principle of good governance, which requires that where an issue pertaining to the general interest is at stake – especially when it affects fundamental human rights, including property rights – the public authorities must act promptly and in an appropriate and consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I; *Rysovskyy v. Ukraine*, no. 29979/04, § 71, 20 October 2011; and *Pyrantienė*, cited above, § 55).

37. The Court further notes that the domestic courts at lower levels of jurisdiction questioned the applicant's good faith, despite the fact that she had bought the land from the State under standard conditions, and that the Supreme Court quashed that reasoning, albeit without explicitly declaring

the applicant a *bona fide* purchaser (see paragraphs 12-14 above). The applicant was an ordinary citizen and the purchase was based on laws applicable to all persons having the same status, so there are no grounds to find that she took advantage of her privileged position or otherwise acted unlawfully to acquire property (see *Albergas and Arlauskas*, cited above, § 68). The applicant was unaware that the land had been sold to her in breach of the law; the unlawfulness of her land purchase was only established by the District Court on 4 June 2004 (see paragraph 9 above). In this connection, and in the absence of any submissions by the Government to the contrary, the Court is satisfied that the applicant was a *bona fide* owner, and that her proprietary interest in the enjoyment of the land was sufficiently established (see *Pyrantienė*, cited above, § 60, and *Albergas and Arlauskas*, cited above, §§ 68-69).

38. Moreover, the Court considers that the applicant was also entitled to rely on the fact that the administrative decision taken in 1993, and the land purchase agreement signed in 1995, on the basis of which she had acquired the property, would not be retrospectively invalidated to her detriment. In these circumstances, the "legitimate expectation" is also based on a reasonably justified reliance on administrative decisions which have a sound legal basis and which bear on property rights (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 45-47, ECHR 2004-IX, and *Pyrantienė*, cited above, § 61). Even assuming that the applicant had paid a preferential price for the land in question, for the Court this fact is immaterial in terms of her rights of ownership (see *Digrytė Klibavičienė v. Lithuania*, no. 34911/06, § 36, 21 October 2014). As a result, it finds that the applicant had a "legitimate expectation" of being able to continue to enjoy that possession.

39. After the applicant lost her title to the land, she was paid LTL 2,976 (EUR 862), the nominal price of the land in 1995. According to her, a court-appointed expert had estimated that the market value of the land in March 2007 had been LTL 189,600 (EUR 54,900). While the domestic courts did not make any findings in regard of that assessment, the Court finds it reasonable to conclude that the market value of the land in 2009, when the final judgment of the Supreme Court was adopted, was higher than the nominal price paid by the applicant in 1995. It should also be noted that the LTL 2,976 returned to the applicant had obviously suffered considerable devaluation and could not be reasonably related to the value of the land fourteen years later. Accordingly, the Court finds that the compensation of LTL 2,976 paid to the applicant in 2009 was clearly insufficient for the purchase of a new comparable plot of land (see, *mutatis mutandis*, *Velikovi and Others*, cited above, § 207).

40. The Court reiterates that the taking of property without payment of an amount reasonably related to its value will normally fail to respect the requisite fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights and will constitute a disproportionate burden on the applicant (see *The Holy Monasteries v. Greece*, 9 December 1994, § 71,

Series A no. 301-A, and *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII). In line with the Court's case-law in similar cases concerning expropriation of property, the balance mentioned above is generally achieved where compensation paid to the person whose property has been taken reasonably relates to its "market" value as determined at the time of the expropriation (see *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 53, ECHR 2002-VIII, and *Vistiņš and Perepjolkins* [GC], no. 71243, § 111, 25 October 2012). It follows that the amount of compensation for the applicant's loss of title to the land must be calculated using the value of the property on the date ownership was lost.

41. The Court takes the view that in the present case, as the applicant had acquired the land for a very low price, the authorities were in principle justified in deciding not to compensate for the full market value of the property (see, *mutatis mutandis*, *Vistiņš and Perepjolkins*, cited above, §§ 118 and 130). However, the Court considers that awarding the applicant compensation of LTL 2,976 did not sufficiently mitigate the negative consequences for her of losing her title to the property. The disproportion between the land's market value and the compensation awarded is too significant for the Court to find that a "fair balance" was struck between the interests of the community and the applicant's fundamental rights (see, *mutatis mutandis*, *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 126, 27 November 2007; *Pyrantienė*, cited above, § 68; and *Albergas and Arlauskas*, cited above, § 74).

42. The foregoing considerations are sufficient to enable the Court to conclude that the conditions under which the applicant had her title to the land removed imposed an individual and excessive burden on her, and that the authorities failed to strike a fair balance between the demands of the public interest on the one hand and the applicant's right to peaceful enjoyment of her possessions on the other. There has, accordingly, been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. The applicant also complained that the domestic courts had erred in applying the relevant provisions of the Civil Code. She relied on Article 6 § 1 of the Convention.

44. The Court reiterates that it is the role of the domestic courts to interpret and apply the relevant rules of procedural and substantive law (see, among many other authorities, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015). In the present case, the domestic courts' interpretation of the relevant provision of domestic law does not appear to be arbitrary or unreasonable, and therefore does not appear to be in breach of Article 6 § 1 of the Convention. The Court thus considers that this complaint must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 60,000 Lithuanian litai (LTL, 17,400 euros (EUR)) in respect of pecuniary damage, corresponding to the market value of the land and the storehouse which she had built on it. She noted that her claim was lower than the total market value of the land, assessed by a court-appointed expert in the domestic proceedings as LTL 189,600 (EUR 54,900). However, the applicant did not submit a copy of that expert's assessment or any other assessment.

47. The applicant also claimed LTL 80,000 (EUR 23,200) in respect of non-pecuniary damage for the stress and discomfort caused by the taking of her property.

48. The Government submitted that the applicant had not substantiated her claim for pecuniary damage. They further submitted that her claim for non-pecuniary damage was excessive.

49. In these circumstances, the Court considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

50. Accordingly, the Court reserves this question and invites the Government and the applicant to submit, within three months, their written observations on the amount of damages to be awarded to the applicant and, in particular, to notify the Court of any agreement that they may reach.[1]

B. Costs and expenses

51. The applicant did not submit a claim for the costs and expenses incurred before the domestic courts and before the Court. Accordingly, the Court makes no award under this head.

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1. Rectified on 11 October 2016: the text was "50. Accordingly, the Court reserves this question and invites the Government and the applicant to submit, within six months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, their written observations on the amount of damages to be awarded to the applicant and, in particular, to notify the Court of any agreement that they may reach."

C. Default interest

52. The Court considers it appropriate that the default interest rate 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 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 a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that the question of the application of Article 41 is not ready for decision in so far as pecuniary and non-pecuniary damage resulting from the violation found in the present case is concerned, and accordingly, and accordingly:
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicant to submit, within three months from the date of notification of this judgment, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President the power to fix the same if need be.

Fatoş Aracı
Deputy Registrar

Nona Tsotsoria
President