

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

SECOND SECTION

CASE OF NEKVEDAVIČIUS v. LITHUANIA

(Application no. 1471/05)

JUDGMENT
(Just satisfaction)

This version was rectified on 23 February 2016
under Rule 81 of the Rules of Court

STRASBOURG

17 November 2015

FINAL

02/05/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Nekvedavičius v. Lithuania,

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

Işıl Karakaş, *President,*
Nebojša Vučinić,
Helen Keller,
Ksenija Turković,
Egidijus Kūris,
Robert Spano,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, Section Registrar,

Having deliberated in private on 20 October 2015[1],

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

PROCEDURE

1. The case originated in an application (no. 1471/05) 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 and German national, Mr Christian Nekvedavičius ("the applicant"), on 10 December 2004.

2. In a judgment delivered on 10 December 2013 ("the principal judgment"), the Court held that there had been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the lengthy non-enforcement of a court judgment awarding the applicant restoration of his property rights by the means prescribed in the domestic law (*Nekvedavičius v. Lithuania*, no. 1471/05, §§ 54-67 and 82-92, 10 December 2013).

3. Under Article 41 of the Convention the applicant sought compensation of 920,702 euros (EUR) for pecuniary damage, representing the market value of the nationalised property as established by a property expert in 2007, plus an increase in value of 30%. The applicant also claimed EUR 72,000 for non-pecuniary damage and EUR 21,612 for costs and expenses incurred before the domestic courts and the Court.

4. In the principal judgment, the Court awarded the applicant EUR 7,800 for non-pecuniary damage and EUR 8,770 for costs and expenses. As regards pecuniary damage, the Court considered that the question of the application of Article 41 of the Convention in that respect was not ready for decision. Accordingly, the Court reserved the question of pecuniary damage and invited the Government and the applicant to submit, within six months,

[1] Rectified on 23 February 2016: the text was "Having deliberated in private on 20 November 2015"

their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 112, and point 4 of the operative provisions).

5. On 17 September 2014 the Court extended the deadline for the submission of the parties' observations with regard to pecuniary damage, setting a new deadline of 17 October 2014.

6. The applicant and the Government each submitted observations. In a letter of 17 October 2014 the Government informed the Court that an attempt to conclude a friendly settlement had been unsuccessful.

THE LAW

7. 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

1. The parties' submissions

(a) The applicant

8. The applicant claimed EUR 920,702 in respect of pecuniary damage, representing the market value of the nationalised plot of land, plus an increase in value of 30%.

9. In support of his claim, the applicant submitted a report prepared at his request by the Vilnius branch of the State Enterprise Centre of Registers in 2007 (hereafter "the expert report"). The expert report estimated the market value of the plot of land in question by referring to the market price of other plots which were similar in terms of size, location, purpose and other relevant characteristics. The report indicated that the estimated market value of the plot was "preliminary" (*preliminarus rinkos vertės nustatymas*) because, at the applicant's request, it did not take into account the existence of any buildings on the plot.

10. The applicant also submitted several advertisements of plots of land for sale in the city of Kaunas for sums similar to the amount he had claimed for pecuniary damage.

(b) The Government

11. The Government contested the applicant's claim for pecuniary damage as excessive and unsubstantiated. They argued that in the context of

restoration of property which had been nationalised by the Soviet regime, the State should not be obliged to compensate for the full market value of that property. The Government submitted that the domestic law provided for partial reparation of nationalised property, and thus the applicant could not have had a legitimate expectation to be compensated for the full market value of the plot of land. They also considered that awarding the applicant the full market value, as established in 2007, would upset the fair balance between the interests of the applicant and those of the entire society.

12. The Government further stated that action had been taken to provide the applicant with compensation on the domestic level. First, the applicant had been included on a list of individuals who would be provided with new plots of land in the city of Kaunas free of charge. Secondly, in accordance with the domestic law, the maximum plot with which the applicant could be provided in Kaunas was 0.12 hectares, so he would be compensated in cash for the remaining 0.1806 hectares. The Government submitted the decision of the National Land Service of June 2014 to restore the applicant's right to 0.1806 hectares of land in Kaunas by paying him compensation of 13,870 Lithuanian litai (LTL, EUR 4,017).

13. Lastly, the Government pointed out that the applicant had not cooperated with the domestic authorities in the restoration of his rights: he had not provided his bank details to the National Land Service in order to receive the above-mentioned compensation, and he had rejected the offer of a new plot in Kaunas, insisting that he would only accept the return of the original plot or compensation corresponding to its full market value.

2. The Court's assessment

14. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I).

15. The Court also reiterates that the most appropriate form of redress in cases which concern non-enforcement of domestic judgments is to ensure full enforcement of those judgments (see *Đurić and Others v. Bosnia and Herzegovina*, nos. 79867/12, 79873/12, 80027/12, 80182/12, 80203/12 and 115/13, § 36, 20 January 2015).

16. Turning to the present case, the Court found in the principal judgment that there had been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention as a result of the lengthy non-enforcement of a court judgment made on 27 November 2001, which held that the applicant's title to the property must be restored in accordance with the applicable domestic law (see §§ 54-67 and 82-92 of the principal judgment).

17. The judgment of 27 November 2001 concerned the restoration of the applicant's title to a plot of land which had belonged to his father and had been nationalised by the Soviet regime. In that judgment the domestic court held that, as the original plot could not be returned to the applicant, his title to the property would have to be restored by other means provided for under the Restitution of Property Act (see § 13 of the principal judgment).

18. The Court notes that the Restitution of Property Act at the material time provided that in those cases where the original property could not be returned, compensation would have to be made in the form of money or land (see § 28 of the principal judgment). In addition, the Constitutional Court of the Republic of Lithuania held in 1995 that the restitution of property in Lithuania essentially implied partial reparation, because the Lithuanian authorities had not been responsible for the acts of the Soviet regime and because it was necessary to take into account, *inter alia*, the prevailing difficult political and social conditions (see § 30 of the principal judgment). The domestic judgment of 27 November 2001, which guaranteed the restoration of the applicant's property rights in accordance with the applicable domestic law, must be read in the context of those legal provisions and case-law.

19. In this connection, the Court reiterates that Article 1 of Protocol No. 1 does not impose any restrictions on the Contracting States' freedom to determine the scope of property restitution or to choose the conditions under which they accept to restore title to property which had been transferred to them before they ratified the Convention (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003; *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX; and *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V). While Article 1 of Protocol No. 1 requires that the amount of compensation granted for property taken by the State be "reasonably related" to its value, the same rule does not apply to situations in which the compensatory entitlement arises not from any previous taking of individual property by the respondent State, but is designed to mitigate the effects of a taking or loss of property not attributable to that State – in such situations, the State is entitled to reduce, even substantially, levels of compensation provided for by law (see *Broniowski v. Poland* [GC], no. 31443/96, § 186, ECHR 2004-V).

20. In this context the Court cannot accept the applicant's claim that he should be compensated for the full market value of the property, since no such right had been guaranteed to him under the applicable domestic law or in the judgment of 27 November 2001 (see, *mutatis mutandis*, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, §§ 72-74, ECHR 2002-VII, and *Maria Atanasiu and Others v. Romania*, nos. 30767/05 and 33800/06, § 137, 12 October 2010). If that judgment had been promptly enforced by the domestic authorities, the applicant would not

have been awarded the full market value of his late father's land. Accordingly, the Court does not discern a direct link between the violation of the Convention found in the principal judgment and the pecuniary damage claimed by the applicant.

21. Therefore, when deciding on the amount of just satisfaction to be awarded to the applicant for the lengthy non-enforcement of the domestic judgment, the Court will consider the amount to which he had a "legitimate expectation" in accordance with the domestic law (see § 91 of the principal judgment).

22. The judgment of 27 November 2001 did not determine the amount of compensation to be awarded to the applicant. That amount had to be assessed in accordance with the Instruction on the Valuation of Land, adopted by the Government on 24 February 1999 (and subsequently amended several times). On 13 July 2007 the Kaunas County Administration, relying on that Instruction, sought to enforce the judgment of 2001. It assessed the indexed value (*indeksuota vertė*) of the plot of land to be LTL 23,086 (EUR 6,690) and decided to grant the applicant compensation in the form of Government bonds (see §§ 19 and 60 of the principal judgment). That decision was subsequently overturned by the administrative courts owing to a procedural error (see §§ 21 and 60 of the principal judgment); however, the courts confirmed that the plot had been valued in accordance with the applicable legislation. In this connection, the Court reiterates that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among others, *Gäfgen v. Germany* [GC], no. 22978/05, § 93, ECHR 2010). Accordingly, the Court considers that the judgment of 27 November 2001 entitled the applicant to receive compensation of EUR 6,690.

23. The Court notes the Government's claim that the applicant has already been awarded compensation of EUR 4,017 and that he is entitled to receive a new plot of land in the city of Kaunas (see paragraph 13 above). The Court reiterates that any compensation received by the applicant would be taken into account for the purposes of calculating pecuniary damage under Article 41 of the Convention (see *Gladysheva v. Russia*, no. 7097/10, § 104, 6 December 2011). However, it appears that the applicant has still not been provided with a new plot or with monetary compensation for the remaining 0.12 hectares. Accordingly, the Court will proceed to examine the issue of just satisfaction. If any related claims subsequently come before the domestic authorities, the latter will be entitled to take into account the award made by the Court in this judgment (ibid.).

24. Lastly, the Court reiterates that when awarding pecuniary damage resulting from the lengthy non-enforcement of a judgment, it may take into account the default interest in accordance with the domestic law and award

additional compensation for monetary depreciation, if claimed and as necessary (see *Akkuş v. Turkey*, 9 July 1997, § 35, *Reports of Judgments and Decisions* 1997-IV, and *Aka v. Turkey*, 23 September 1998, § 56, *Reports* 1998-VI).

25. In these circumstances, the Court considers reasonable to award the applicant EUR 11,600 in respect of pecuniary damage.

B. Default interest

26. 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. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,600 (eleven thousand six hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
   (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;

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

Done in English, and notified in writing on 17 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President