

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

SECOND SECTION

CASE OF PYRANTIENĖ v. LITHUANIA

(Application no. 45092/07)

JUDGMENT
(merits)

STRASBOURG

12 November 2013

FINAL

12/02/2014

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



In the case of Pyrantienė v. Lithuania,

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

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
Dragoljub Popović,
Işıl Karakaş,
Nebojša Vučinić,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 22 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 45092/07) 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 Kotrina Pyrantienė ("the applicant"), on 11 October 2007.

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

3. The applicant alleged that she did not receive adequate compensation after decisions of the domestic courts had deprived her of the property she had owned for nine years, in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 29 June 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Akademija, Kaunas Region.

6. In 1994 a local authority assigned a plot of land of 0.5 hectares to the applicant. On 6 August 1996 the Kaunas Region Administration confirmed the sale of the land to the applicant.

7. By an agreement of 24 September 1996 she acquired the plot of land from the State for 61 "single-use investment vouchers" (*investiciniai čekiai*) and registered it with the Land Registry in her name.

8. The applicant then grew vegetables on the plot and sold them at the market.

9. Following a civil claim brought in December 2001 by third parties seeking restoration of ownership rights to that plot, on 2 October 2003 the Kaunas Regional Court, acting as a court of appeal, quashed the authorities' decision of 6 August 1996 as unlawful, and cancelled the sale of the disputed plot of land, which then had to be returned to the State. It was concluded that the authorities did not have the right to sell that plot of land as the former owners had already in 1991 lodged a request for restoration of their property rights to the nationalised property. It was also decided to remit the case to the first-instance court for the determination of questions of restitution and compensation, as the land-sale agreement had now been declared null and void. On 6 February 2004 the Supreme Court refused the applicant leave to appeal on points of law as out of time.

10. After the plot of land was taken from the applicant by the State, it was transferred to the former owners following a decision of 16 September 2005 by the Kaunas Region Administration to restore ownership rights to T.M.K. and J.R.

11. After the case had been remitted to the first-instance court an independent expert was appointed in the proceedings.

12. A valuation of the plot was carried out by an independent and certified valuer, which included a comprehensive assessment of the characteristics of that plot of land and estimated its value by comparing market prices.

13. It was established that the plot's market value in September 2005 was 112,500 Lithuanian litai (LTL, approximately 32,580 euros (EUR)) while in August 1996 it had amounted to LTL 18,000. Nonetheless, the Kaunas Regional Court, acting as a court of first instance, on 5 October 2006 decided to award the applicant LTL 1,466 (approximately EUR 430), noting that that price corresponded to the sum the applicant had paid in single-use investment vouchers in 1996.

14. On 26 February 2007 the Court of Appeal upheld the decision of the lower court and rejected the applicant's arguments that Article 6.147 § 2 of the Civil Code had to be applied by awarding the applicant the highest value of the property, as she had been deprived of it because of error by the State authorities.

15. On 8 May 2007 the Supreme Court refused to accept the applicant's cassation appeal for examination, on the ground that her appeal raised no important legal issues.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Statutory provisions

16. The Constitution of the Republic of Lithuania provides:

Article 23

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

17. The Law on the procedure and conditions for restoration of ownership rights to existing real property (*Įstatymas dėl piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atstatymo tvarkos ir sąlygų*), enacted on 18 June 1991 and amended on numerous occasions (hereinafter "the Restitution Law"), provided that, in restoring property rights, priority was to be given to restitution *in natura*. The State retained the right to buy out a property from the previous owners if the current social conditions and relations so required. In particular, Article 12 paragraph 1 (3) of the Law provided that the State could buy out land in a rural area which had been allocated to a farmer and was occupied by a personal plot, house or other structures of which the farmer had the right of ownership.

18. The relevant part of the Civil Code, in force since 1 July 2001, provides as follows:

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

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

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

Article 6.147 Estimation of monetary equivalent

"1. Monetary equivalent shall be estimated according to prices that were valid at the time when the debtor received what he is liable 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 when 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 fault, he shall be bound to return the highest value of the property."

19. Article 6.271 of the Civil Code provides that damage caused by unlawful acts by institutions of public authority must be compensated for by the State, irrespective of the fault of a particular public servant or other employee of the public authority institution.

20. The Government's decree no. 816 on allocation of plots of land for personal and service use, in force since 4 November 1993, provided that new plots of land for individual farming must be measured only in areas which had previously been used as individual farm plots or had been allocated as individual farm plots in accordance with the plans established for that territory during the land reform.

B. Lithuanian courts' practice

21. In its ruling of 27 May 1994 the Constitutional Court held, *inter alia*, that possessions which had been nationalised by the Soviet authorities since 1940 should be considered as "property under the *de facto* control of the State". The Constitutional Court also stated that, if possible, the property rights should be restored *in natura*. It further ruled that buying out land in rural areas for the purpose of building private housing served no public interest, since after such land had been bought out it could be privatised, thereby breaching the previous owners' right to restitution.

22. On the issue of the lawfulness of the sale of previously nationalised property, in its decisions nos. 3K-3-384/1999 of 6 September 1999 and 3K-3-698/2003 of 16 June 2003 the Supreme Court held that as long the question of the restoration of the former owner's property rights was pending and had not been definitively resolved, that property had to be considered as disputed. Accordingly, such properties could not be transferred to third parties, because this could result in successive violations of the former owner's ownership rights.

THE LAW

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

23. The applicant complained that she had not been adequately compensated for the deprivation of her land by the authorities. The domestic courts failed to take into account the plot's market value in 2005 and applied instead its nominal value in 1996, which was many times lower. As a result, the applicant was unable to acquire a new similar plot of land with

the compensation she had been awarded. She relied on Article 1 of Protocol No. 1, 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

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

25. The applicant did not comment on that argument.

26. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for breaches alleged to have taken place. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; *Aksoy v. Turkey*, no. 21987/93, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI; and *Akdivar and Others v. Turkey*, no. 21893/93, §§ 65-67, *Reports* 1996-IV).

27. The Court finds that the remedy referred to by the Government was inadequate to secure redress for the alleged breach, as the Government did not provide evidence of its effectiveness at the time when the present application was introduced.

28. What is more, the Court does not see how those new proceedings could effectively have offered a more favourable outcome to the applicant than those which she had already undergone after the case's remittal for re-examination to have the amount of compensation for returned property established (see paragraph 11 above). As a result, it has not been demonstrated that a claim under Article 6.271 of the Civil Code would have been an effective remedy in the applicant's case (see, *mutatis mutandis*, *Beshiri and Others v. Albania*, no. 7352/03, § 55, 22 August 2006, and *Zwierzynski v. Poland* (dec.), no. 34049/96, 15 June 2000).

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

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

B. Merits

1. The parties' submissions

31. The applicant alleged that the compensation awarded to her was unfair and inadequate, as it was many times lower than the market value of the land when she lost her title to it. Therefore, she could not afford to acquire a new comparable plot of land, especially taking into account her advanced age and the fact that she had had a disability since 1994. The applicant also did not agree with the Government's allegation that such interference was necessary to protect the public interest.

32. The applicant further argued that in 1996 she purchased the property in good faith and in accordance with the laws in force and the authorities' decisions. Therefore she should not be made to bear the burden of responsibility, which rightly belonged to the State.

33. The applicant lastly contended that being an honest acquirer of the disputed land and relying on the decisions of the State authorities she had legitimate expectations that she would remain the owner and could engage in agricultural activities, which she actually did for nine years.

34. The Government contested those arguments and submitted that the interference complained of was carried out in accordance with the provisions of the Civil Code concerning the return of property after a contract of sale is declared null and void by the courts. The size of the compensation was predetermined also by the fact that the applicant had paid an advantageous price in 1996 and had not made any major improvements to the plot. Moreover, having regard to the fact that the applicant lived elsewhere, the property did not constitute her only home, so the present case had to be distinguished from other similar cases examined by the Court. According to the Government, reimbursement of the full market price would have resulted in unjust enrichment of the applicant.

35. They also maintained that the interference with the applicant's property rights was justified by the public interest, namely by the defence of the rights of the former owners, who lost their title to the land during the communist regime. As such, the decision of the courts to declare the relevant administrative acts of 1994-96 unlawful were taken in accordance with the Restitution Law and well-established practice of the Supreme Court and of the Constitutional Court of Lithuania. In the process of restoration of property rights priority is given to the return of previously nationalised property to its former owners *in natura;* therefore, nationalised property cannot be transferred to other individuals if the question of the restoration of ownership rights of the former owners is still pending.

36. In addition, the domestic courts established that the allocation of the land to the applicant in 1996 was in breach of Government Resolution 816 of 29 October 1993, because that land had not been farmed before it was allocated to the applicant as an individual farm plot.

2. The Court's assessment

(a) General principles

37. The Court refers to its established case-law on the structure of Article 1 of Protocol No. 1 and the manner in which the three rules contained in that provision are to be applied (see, among many other authorities, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 52, ECHR 2007-III; *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004; and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

38. The Court reiterates that any interference by a public authority with the peaceful enjoyment of possessions should be lawful, must be in the public interest, and must pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see *Doğrusöz and Aslan v. Turkey*, no. 1262/02, § 27, 30 May 2006, and *Moskal v. Poland*, no. 10373/05, §§ 49-50, 15 September 2009).

39. An interference with the peaceful enjoyment of possessions must therefore strike a "fair balance" between the demands of the public or general interest of the community and the requirements of the protection of the individual's fundamental rights.

40. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. This provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate "public interest" objectives may call for reimbursement of less than the full market value (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

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

(i) Whether there has been an interference with the applicant's possessions

41. The Court reiterates that the plot of land was allocated to the applicant in 1994 and she purchased it from the Kaunas Region Administration in 1996. It was registered in her name, without interruption, until 2005.

42. The Court thus finds that the decision of the domestic courts to annul the applicant's title had clearly the effect of depriving the applicant of her property within the meaning of the second sentence of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Doğrusöz and Aslan,* cited above, § 29).

(ii) Lawfulness of the interference

43. The decision of the courts to annul the land purchase agreement was prescribed by law, as it was based on provisions of the Restitution Law,

Articles 1.80, 6.146 and 6.147 of the Civil Code, as well as in line with the jurisprudence of the Supreme Court and the Constitutional Court. The Court therefore finds that there is no reason to doubt that the deprivation was in accordance with the law, as required by Article 1 of Protocol No. 1.

(iii) Legitimate aim

44. The Court must now determine whether this deprivation of property pursued a legitimate aim, that is, whether it was "in the public interest". To this end it notes that in *Padalevičius v. Lithuania (*no. 12278/03, § 61, 7 July 2009) the domestic courts invalidated the applicant's title to the property acquired in 1995 in order to satisfy the restitution claims of persons from whom that property had been expropriated in the 1940s. The Court considers that in the present case the aim of the interference was similar.

45. The Court has also held that because of their direct knowledge of society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make an initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation (see *Moskal,* cited above, § 61; *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 47, ECHR 2002-VIII; and *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, § 168, 15 March 2007).

46. Furthermore, the notion of "public interest" is necessarily extensive. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98, and *Broniowski,* cited above, § 149).

47. As stated above, the measure complained of was designed to correct the mistake of the authorities and to defend the interests of the former owners by restoring their ownership rights to the plot of land *in natura*.

48. The Court accepts that the general objective of restitution laws, namely to mitigate the consequences of certain infringements of property rights committed by the communist regime, is a legitimate aim and a means of safeguarding the lawfulness of legal transactions, protecting the country's socio-economic development (see *Pincová and Pinc*, cited above, § 58), or, as in the present case, securing the rights of former owners. In these circumstances, and having regard to the State's margin of appreciation, the Court accepts that the deprivation of property experienced by the applicant

served not only the interests of the original owners of the land in question, but also the general interests of society as a whole (see *Bečvář and Bečvářová v. the Czech Republic*, no. 58358/00, § 67, 14 December 2004, and *Padalevičius*, cited above, § 65).

(iv) Proportionality

49. 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, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

50. 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 injuries does not create disproportionate new wrongs (see *Velikovi and Others*, cited above, § 178). 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 has confiscated those possessions.

51. In order to assess the burden borne by the applicant, the Court must assess the particular circumstances of each case, namely 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 the applicant's personal and social situation (see, *mutatis mutandis*, *Mohylová v. the Czech Republic* (dec.), no. 75115/01, 6 September 2005).

52. It should first be noted, however, that in the present case, unlike in the cases mentioned above, acquisition of the disputed property by the applicant took place in 1994-96, that is after the re-establishment of the independence of the country, and not during the Soviet regime. Thus, the unlawful act of selling the property to the applicant is attributable to the authorities of the present State, and not that of the Soviet regime (see, *mutatis mutandis*, *Gashi v. Croatia*, no. 32457/05, §§ 27-34, 13 December 2007, and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 124, 25 October 2012).

53. Quite differently from the cases where the former owners argued their entitlement to a restoration of ownership rights to property that was nationalised during the communist regime, the present case does not concern an applicant's claim to have his property returned or for

compensation for nationalised possessions (see *Broniowski,* cited above, § 121; *Jasiūnienė v. Lithuania*, no. 41510/98, § 40, 6 March 2003; and *Jurevičius v. Lithuania*, no. 30165/02, § 23, 14 November 2006).

54. The applicant's title was invalidated after the former owners lodged a civil claim, which was then allowed by the domestic courts. It was established that the local authorities were not entitled to transfer the disputed property to the applicant before the question of restoration of rights of the former owners had been resolved. The procedures for the sale of the land were conducted by official bodies exercising the authority of the State (see paragraphs 6-7 above) and the land purchase agreement was signed between the applicant and the Kaunas Region Administration under the standard conditions. The Court considers that the applicant had very limited opportunities, if any, to influence the terms of the contract or the purchase price, as this was within the State's exclusive competence (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, § 79, 6 December 2011). Therefore, it was the obligation of the authorities to verify the applicant's eligibility for allocation of the land and the conformity of the land sale with procedures and laws in force.

55. In examining the conformity of these events with the Convention, the Court reiterates the particular importance of the principle of good governance. It 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 above all consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I; *Megadat.com SRL v. Moldova*, no. 21151/04, § 72, ECHR 2008; and *Rysovskyy v. Ukraine,* no. 29979/04, § 71, 20 October 2011).

56. The grounds on which the applicant's title was declared null and void included violations of substantive provisions of the relevant legislation on restitution of ownership rights. The local authorities' decision to sell the applicant the land appears to have been taken without an appropriate examination of all the conditions first being carried out.

57. As regards the applicant's legitimate expectations, the Court notes that her good faith as to the acquisition of the property in question has never been disputed at the national level (see, *mutatis mutandis*, *Vistiņš and Perepjolkins* cited above, § 120). As noted above, it was not for the applicant to shoulder the risk of ownership being revoked on account of procedural defects which should have been eliminated, and for which specially designed procedures existed. The applicant was unaware that the land had been sold to her in breach of the law and did not know that this was the result of omissions on the part of the administration; the unlawfulness of the land purchase was established by the appellate court for the first time only on 2 October 2003.

58. Moreover, in contrast with the facts in *Padalevičius* (cited above, § 68), in the present case there are no signs that the applicant could have been aware of certain problems concerning the plot which she later acquired from the State, or any assumptions that she could have used her privileged position.

59. The applicant in the current situation was rather an ordinary citizen, enjoying no special privileges, and the purchase was based on laws which were applicable to everyone. Thus, the Court is of the opinion that her situation must be distinguished from the cases of individuals who have taken advantage of their privileged position or have otherwise acted unlawfully to acquire property in a totalitarian regime, as well as their heirs, and who cannot expect to keep their gain in a society governed democratically through the rule of law. The underlying public interest in such cases is to restore justice and respect for the rule of law (see *Mohylová,* cited above, and *Velikovi and Others,* cited above, § 201).

60. In this connection the Court is satisfied that the applicant acquired the possession in good faith, without knowing that it had previously been confiscated and without being able to influence the terms of the contract. It holds that she was a bona fide owner and her proprietary interest in the enjoyment of the land had been sufficiently established (see, for comparison, *Hamer v. Belgium*, no. 21861/03, § 76, ECHR 2007-V (extracts)). For the Court, the fact that the applicant paid for the disputed plot of land with investment vouchers is immaterial in terms of her rights of ownership (see, *mutatis mutandis*, *Vistiņš and Perepjolkins*, cited above, § 121).

61. Moreover, the Court considers that the applicant was also entitled to rely on the fact that the legal act 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 a legal act which has a sound legal basis and which bears on property rights (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 47, ECHR 2004-IX, and *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 51, Series A no. 222). As a result, the applicant had a "legitimate expectation" of being able to continue to enjoy that possession.

62. As regards the applicant's personal and social situation, she lost her title to the land at the age of sixty-three and has been disabled since 1994. From the very beginning of the proceedings the applicant has been claiming that the land was used for agriculture and was one of the main sources of her income. The Government did not contest that assertion.

63. The applicant was awarded LTL 1,466 (the nominal price of the land in 1996) for the land whose market value in September 2005 was estimated by court-appointed authorised experts to be LTL 112,500, or almost eighty times that amount. It should also be noted that the nominal 1996 price,

which was awarded to the applicant, had obviously suffered considerable devaluation and could not reasonably be related to its value nine years later.

64. In view of the above, and given the significant increase in the prices of real property since 1996, the amount was clearly insufficient for the purchase of a new comparable plot of land at market prices (see *Velikovi and Others,* cited above, § 207).

65. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant. In this connection, the Court has already found that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference (see *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A; *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII; and *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 70, ECHR 2002-IX).

66. Having regard to the circumstances of the present case and the Court's case-law in similar cases concerning the expropriation of property, the balance mentioned above is generally achieved where the compensation paid to the person whose property has been taken is reasonably related to its "market" value, as determined at the time of the expropriation (see *Pincová and Pinc* cited above, § 53, *Gashi*, cited above, § 41; and, *mutatis mutandis*, *Vistiņš and Perepjolkins*, cited above, § 111; *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 103, 22 December 2009).

67. It follows that the amount of compensation for the annulment of the applicant's title to the land must be calculated on the basis of the value of the property on the date on which ownership thereof was lost.

68. In the view of the above, the fact that compensation of LTL 1,466 was awarded by the national courts does not sufficiently mitigate the negative circumstances for the applicant, in particular given the disproportion between the amount of the compensation and the actual value of the land at the time she was deprived of it.

69. It appears that in the present case the domestic courts paid significantly greater attention to the annulment of the land-sale transaction and to the defence of the rights of the former owners, while failing at the same time to take into consideration the property rights and legitimate expectations of the bona fide owner, the applicant.

70. The Court reiterates that mistakes or errors by State authorities should serve to the benefit of those affected, especially where no other conflicting private interest is at stake. 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 *Gashi*, cited above, § 40, and *Gladysheva*, cited above, § 80).

71. Turning to the case at hand, the Court holds that the compensation awarded to the applicant did not take account of her personal and social situation, nor did it reflect the real value of the property or the fact that it had been acquired by the applicant in good faith. 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 applicants' fundamental rights (see, *mutatis mutandis*, *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 126, 27 November 2007, and *Vistiņš and Perepjolkins*, cited above, § 130).

72. The foregoing considerations are sufficient to enable the Court to conclude that the conditions under which the applicant had her title to the plot of land removed imposed an individual and excessive burden on her and that the authorities have failed to strike a fair balance between the demands of the public interest on the one hand and the applicant's right to the peaceful enjoyment of her possessions on the other.

73. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS

74. Citing Article 13 of the Convention the applicant complained of a violation of her right to an effective remedy, because the Supreme Court had refused her cassation appeal for the examination. The Court considers it appropriate to examine this complaint under Article 6 of the Convention.

75. The Court reiterates that it is for the national courts to resolve questions of domestic law. The "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *García Manibardo v. Spain*, no. 38695/97, § 36, ECHR 2000-II, and *Mortier v. France*, no. 42195/98, § 33, 31 July 2001). What is more, the conditions of admissibility of an appeal on points of law may be more rigorous than those for an ordinary appeal (see *Běleš and Others v. the Czech Republic*, no. 47273/99, § 62, ECHR 2002-IX).

76. Given that the assessment of the grounds for cassation is a matter over which the Lithuanian Supreme Court has sole jurisdiction, it is not for the Court to speculate whether the applicant should have been given leave to appeal by the Supreme Court (see *Impar Ltd v. Lithuania*, no. 13102/04, § 32, 5 January 2010). In the view of the above and in the absence of any unreasonable restriction on the applicant's access to the Supreme Court, the Court considers that this complaint must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

77. The applicant further complained that the domestic courts erred in the application of the relevant provisions of substantive law.

78. 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, *Baumann v. Austria*, no. 76809/01, § 49, 7 October 2004). In the present case, the interpretation of the relevant provision of domestic law by the national courts does not appear to be in breach of Article 6 § 1 of the Convention. The Court thus considers that this part of the application 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

79. 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."

80. The applicant claimed 112,500 Lithuanian litai (LTL, 32,580 euros (EUR)) in compensation for pecuniary damage and LTL 50,000 (EUR 14,480) for non-pecuniary damage. Relying on the expert's report of September 2005, she submitted that the amount for pecuniary damage corresponded to the market value of the plot of land at the time of deprivation. The applicant further claimed EUR 524 for costs and expenses incurred before the Court.

81. The Government considered the amount for pecuniary damage to be excessive and rejected the findings of the expert's report as lacking objectivity and depending exclusively on the calculation methodology. The Government also argued that the Court could not award pecuniary damage unless that matter had been examined by the domestic courts. However, in support of their arguments the Government did not submit any alternative assessment of the market value of the disputed plot, for example, a record from the real-estate register with relevant information on the value of the property.

82. In the circumstances of the case 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).

83. Accordingly, the Court reserves this question and invites the Government and the applicant company to notify it, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 1 of Protocol No. 1 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 and accordingly,
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicant to notify the Court, within six months from the date of which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach;
   (c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 12 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Guido Raimondi President