

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

FOURTH SECTION

CASE OF ŠIDLAUSKAS v. LITHUANIA

(Application no. 51755/10)

JUDGMENT

STRASBOURG

11 July 2017

FINAL

11/10/2017

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



In the case of Šidlauskas v. Lithuania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Georges Ravarani,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 20 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 51755/10) 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 Antanas Šidlauskas ("the applicant"), on 6 August 2010.

2. The applicant was represented by Mr P. Astromskis, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged that he had been unlawfully deprived of his only home without receiving adequate compensation, in violation of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. On 7 March 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1945 and lives in Jonava.

A. Sale of the applicant's apartment at a public auction

6. In 1994 the applicant bought an apartment in Jonava. In 1998 he lost his regular job and was no longer able to pay for utilities.

7. In 2000 the utility provider instituted civil proceedings against the applicant concerning his debt of 2,861 Lithuanian litai (LTL – approximately 828.60 euros (EUR)). The domestic courts allowed the claim. In 2003 the judgment was transferred to a bailiff for enforcement. The bailiff decided to direct enforcement against the applicant's apartment. On 6 October 2004 he organised a public auction at which the apartment was sold to a third party for LTL 3,390 (approximately EUR 982). On 18 November 2004 a district court confirmed the transfer of the apartment to the third party.

8. Since that date, the applicant has not had a permanent home. He submitted that he had been living in temporary accommodation, at times in unsuitable conditions, and often in exchange for manual work.

9. Between 2006 and 2008 the apartment was resold and gifted to different individuals on several occasions.

B. Court proceedings for compensation

1. Judgment of the first-instance court

10. In November 2007 the applicant instituted civil proceedings before the Jonava District Court, arguing that the sale of his apartment at the public auction had been unlawful. The applicant submitted that, in accordance with the domestic law, taking a person's home in order to enforce a court judgment was only permitted when the debt in question was larger than LTL 3,000 (see paragraph 22 below), which had not been the case here (see paragraph 7 above). The applicant also submitted that he had owned 0.05 hectares of land near Jonava, so the enforcement should have begun in respect of that property and not his only home (*vienintelė gyvenamoji vieta*). In view of the alleged unlawfulness of the sale, the applicant claimed damages jointly from the bailiff and the bailiff's professional liability insurer. According to the applicant, restitution *in integrum* was not possible because there was no indication that the third party who had bought the apartment at the public auction had acted in bad faith. Therefore, he claimed LTL 51,000 (approximately EUR 14,770) in damages, an amount corresponding to the market price of the apartment at the time of the submission of the claim.

11. The defendants (the bailiff and his professional liability insurer) contested the applicant's claim. They submitted that the value of the applicant's land had been insufficient to cover his debt, so the enforcement had had to be directed against the apartment. They also argued that the applicant's debt (LTL 2,861) and the enforcement expenses (LTL 540),

taken together, had exceeded LTL 3,000, and thus the sale of his apartment had been in accordance with the domestic law. The defendants further argued that the applicant had acted in bad faith – he had not appealed against the execution writ or the results of the public auction, and he had submitted his claim at the very end of the time-limit because he had been waiting for the market price of the apartment to increase. Therefore, they argued that the applicant could not claim damages corresponding to the market price of the apartment at the time of the submission of the claim, but only the price for which the apartment had been sold at the public auction – LTL 3,390 (see paragraph 7 above).

12. On 17 June 2009 the Jonava District Court dismissed the applicant's claim. It acknowledged that his debt had been below the required threshold of LTL 3,000 and that the bailiff had erred by calculating the debt together with the enforcement expenses. However, the court considered that this breach had not been such as to warrant the annulment of the sale. Accordingly, it dismissed the applicant's claim for damages. The court also noted that the applicant had submitted his claim three years after the sale and on the last day permitted by the time-limit, when the market price of housing was several times higher than in 2004. Therefore, his claim for damages corresponding to the market price of the apartment at the time of the submission of the claim could be regarded as an attempt at unjust enrichment (*vertintinas kaip siekimas nepagrįstai praturtėti*).

2. Judgment of the appellate court

13. The applicant appealed against the Jonava District Court's judgment. He and the defendants presented essentially the same arguments as in their pleadings before the first-instance court (see paragraphs 10-11 above).

14. On 1 October 2009 the Kaunas Regional Court quashed the first-instance judgment and allowed the applicant's claim in its entirety. The court held that the bailiff had acted in violation of domestic law, firstly by failing to direct the enforcement against the applicant's land, but also by selling his apartment at a public auction even though his debt had been less than LTL 3,000. The court considered that the bailiff had failed to respect the balance between the interests of the debtor (the applicant) and the creditor. It held that, because of the material breaches of the relevant law, the sale of the applicant's apartment had to be declared unlawful.

15. Accordingly, the Kaunas Regional Court decided to award the applicant damages from the bailiff's professional liability insurer. It stated that it "essentially agreed with the amount claimed by the applicant" (*iš esmės sutinka su ieškovo nurodyta suma*) and awarded him LTL 51,000 (approximately EUR 14,770), after subtracting the amount of his debt (see paragraph 7 above).

3. Judgment of the Supreme Court

16. The bailiff's professional liability insurer appealed against the Kaunas Regional Court's judgment. It submitted, *inter alia*, that the amount of damages awarded to the applicant had no basis, and the court should have either ordered restitution *in integrum* or awarded the applicant the amount for which his apartment had been sold at the auction (see paragraph 7 above), but not its market price in 2007, which had increased significantly since 2004.

17. The applicant contested the appeal, arguing that there was no legal obligation for him to ask for restitution rather than for damages, and that the amount of damages was a question of fact which the Supreme Court could not examine.

18. On 8 February 2010 the Supreme Court amended the judgment of the Kaunas Regional Court in part. It upheld the conclusion that the sale of the applicant's apartment had been unlawful for the reasons established by the lower court (see paragraph 14 above). The Supreme Court then reiterated its own case-law that, where the sale of property at a public auction is unlawful because of a bailiff's actions, restitution *in integrum* should not be applied; accordingly, it considered that the most appropriate way of protecting the applicant's rights was by awarding him damages. However, the court considered that, in line with "the nature of the obligation and the principles of equity, reasonableness and good faith" (*pagal prievolės esmę, atsižvelgiant į teisingumo, protingumo ir sąžiningumo kriterijus*), the amount of damages in the applicant's case had to be assessed at the moment of the unlawful act, that is, the sale of the apartment. According to the State Enterprise Centre of Registers, the market price of the applicant's apartment at the time of its sale had been LTL 12,100 (approximately EUR 3,504). Therefore, the Supreme Court awarded the applicant that amount, after subtracting his debt (see paragraph 7 above) and the bailiff's enforcement expenses (see paragraph 11 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional and statutory provisions

1. Constitution

19. The relevant provisions of the Constitution of the Republic of Lithuania read:

Article 23

"Property shall be inviolable.

The rights of ownership shall be protected by law.

Property may be taken only for the needs of society according to the procedure established by law and shall be justly compensated for."

Article 24

"A person's home shall be inviolable.

..."

Article 30

"A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.

Compensation for material and moral damage inflicted upon a person shall be established by law."

2. Code of Civil Procedure

20. Article 664 of the Code of Civil Procedure establishes the following order of precedence which must be used in relation to enforcement against a debtor's property: (1) mortgaged property, when the enforcement is for the benefit of a mortgage holder; (2) cash savings, property rights, securities, salary, scholarships or other income, or moveable property; (3) immovable property, except for farming land and the debtor's home; (4) farming land, when farming is the debtor's main occupation; (5) the debtor's home (*gyvenamasis būstas, kuriame jis gyvena*).

21. Article 662 § 4 provides that enforcement may be directed against property of a lower rank only if the bailiff is not aware of any property of a higher rank, or if that property may not be sufficient to cover the debt and the enforcement expenses, or if that property is not liquid, or if the debtor so requests.

22. At the material time, Article 663 § 3 provided that enforcement could be directed against a debtor's home only if the amount to be recovered (*išieškoma suma*) exceeded LTL 3,000.

23. At the material time, Article 512 provided that an appeal against any actions of a bailiff could be submitted within ten days from the date on which the person submitting such an appeal found out or ought to have found out about the action in question, but not later than thirty days after that action had been taken.

3. Civil Code

24. Article 1.125 § 8 of the Civil Code establishes a three-year time-limit for submitting a claim for damages.

25. Article 6.146 provides that, after a transaction has been annulled, restitution shall be made in kind, except in cases where this would be impossible or would cause serious inconvenience for the parties. In such cases, restitution shall be executed by payment of the monetary equivalent.

26. Article 6.249 § 5 provides that the amount of damages shall be assessed according to the valid market prices on the day when the court judgment was issued, unless the law or the nature of the obligation requires the application of prices which were valid on the day when the damage arose or on the day when the claim was brought.

B. Domestic court practice

27. In its ruling of 19 August 2006 the Constitutional Court held:

> "In the course of protection and defence of human rights and freedoms ... particular importance falls on the institute of compensation for damage. It is established in Article 30 § 2 of the Constitution that compensation for material and moral damage inflicted upon an individual shall be established by law. Thus, the necessity to compensate material and moral damage is a constitutional principle ... [T]he Constitution does not permit to establish any exceptions when moral and/or material damage would not be compensated, for example, because it was inflicted by unlawful actions of officials or institutions of the State itself. If the law, let alone other legal acts, established such legal regulation whereby the State would be fully or partially exempt from the duty to justly compensate for material and/or moral damage inflicted by unlawful actions of State institution or officials, it would not only disregard the constitutional concept of compensation for damage and be contrary to the Constitution (*inter alia*, Article 30 § 2 thereof), but it would also undermine the *raison d'être* of the State itself ...
>
> [I]t should be particularly emphasised that the Constitution does not tolerate any legal regulation by virtue of which an individual who has sustained material and/or moral damage because of unlawful actions of State institutions and officials would be unable to claim in court just compensation for such damage, or a court ... would be unable, while taking into account all relevant circumstances of the case, to establish the size of the material and/or moral damage inflicted and to award just compensation for [that damage] in line with, *inter alia*, the imperatives of justice, reasonableness and proportionality."

28. In its ruling of 21 September 2006 the Constitutional Court held:

> "The constitutional imperatives that only courts administer justice [and] that the law [must be] public, as well as the requirement arising from the Constitution to examine a case in a fair manner, imply that every court judgment (or other final decision of a court) must be based on legal arguments (reasoning). The process of reasoning must be rational: a judgment ... must contain sufficient arguments to [make it well-founded] ... In this context, it must be noted that the requirement of legal clarity, which arises from the constitutional principle of a state under the rule of law, means, *inter alia*, that a court judgment ... cannot contain any implicit arguments, nor any unspecified circumstances which are relevant to the issuing of a fair judgment ... Court judgments ... must be clear to the parties in the case, as well as to other people. If this requirement is disregarded, then this is not the administration of justice required by the Constitution."

THE LAW

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

29. The applicant complained that he had been unlawfully deprived of his apartment, and that the damages awarded to him by the domestic courts had been insufficient for him to acquire a new comparable apartment. He relied on Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

The Court, being the master of the characterisation to be given in law to the facts of a case, considers that this complaint falls to be examined solely under 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

30. The Government submitted that the applicant had failed to appeal against any actions of the bailiff or other authorities during the enforcement proceedings, such as the execution writ concerning his apartment, the assessment of the apartment's price, or the results of the public auction. The Government referred to the domestic law provisions allowing for such appeals, and submitted examples of cases where appeals had been successful.

31. The applicant submitted that his right to appeal against the bailiff's actions had not been explained to him, and that such appeals had to be submitted within ten days, which was too short a period (see paragraph 23 above). He also submitted that, because of the emotional distress and lack of legal assistance, at that time he had been unable to understand that his rights had been violated.

32. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism. It has previously recognised that it would be unduly formalistic to require applicants to exercise a remedy which even the highest court of the country concerned had not obliged them to use (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 116-18, ECHR 2007-IV).

33. In the present case, the Court observes that the domestic courts, including the Supreme Court, accepted the applicant's civil claim and examined it on the merits. They did not find that his failure to appeal against the bailiff's actions during the enforcement proceedings precluded him from claiming damages or affected the amount of the damages to be awarded (see paragraphs 10-18 above). In such circumstances, the Court is of the view that it would be unduly formalistic to find that the applicant did not exhaust domestic remedies. The Government's objection is therefore dismissed.

34. The Court further notes that the application 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

35. The applicant submitted that the unlawfulness of the sale of his apartment had been acknowledged by the domestic courts at all three instances, so the State was under an obligation to provide him with redress. According to the applicant, the violation of his right to peaceful enjoyment of his possessions could have been remedied by awarding him sufficient compensation to enable him to acquire a new comparable apartment. He submitted that the rule under domestic law was to assess the amount of damages at the time a court's judgment was issued, and only in exceptional situations could that amount be assessed at the time of the unlawful act (see paragraph 26 above), but the Supreme Court had not explained why such an exception existed in the applicant's case. Furthermore, the Supreme Court had failed to examine whether the damages awarded would have put the applicant in the same situation in which he would have been had the unlawful act not occurred. The applicant argued that awarding him an amount equal to the apartment's market price in 2004, which amounted to about one fifth of its market price at the time of the final domestic judgment, had been manifestly insufficient in terms of enabling him to acquire a new comparable apartment.

36. The applicant also submitted that he had lodged his claim for damages three years after the sale of the apartment because until then he had not had any legal assistance and, due to his age, state of health and financial situation, he had not been able to understand that the sale had been unlawful, nor had he known how to defend his rights.

(b) The Government

37. The Government did not dispute that the apartment had been the applicant's home and that the amount of damages awarded to him had been below the market price of comparable apartments at the time when that award had been made. They acknowledged that the applicant's eviction from his home had constituted an interference with his rights, but argued that that interference had complied with the requirements of the Convention – in particular, that the applicant had not had to bear an individual and excessive burden.

38. The Government submitted that the domestic law allowed the assessment of the amount of damages at the moment of an unlawful act, if the circumstances of a case so required (see paragraph 26 above). They also submitted that courts, when assessing damages, could take into account an aggrieved party's (in this case, the applicant's) actions which had contributed to losses or constituted acceptance of the risk of such losses. The Government argued that the applicant's actions had demonstrated his bad faith and his wish to obtain "the greatest pecuniary gain possible": firstly, he had lodged his claim three years after the sale, when the market price of his apartment had been several times higher than in 2004; secondly, he had not asked the domestic courts for restitution *in integrum*, which showed that he had not been interested in getting his apartment back, but only in a monetary award. The Government also contended that it was important to take into account the fact that the applicant's apartment had been sold in order to cover his debts for utility services, so there had been a public interest in protecting the utility provider.

39. The Government further submitted that, even though the above-mentioned circumstances had not been explicitly stated in the Supreme Court's judgment (see paragraph 18 above), that court must have implicitly taken them into account. The Government drew the Court's attention to the fact that the arguments relating to the applicant's behaviour had been raised by the defendants in the case (see paragraph 16 above), and thus the Supreme Court must have agreed with them when declining to award the applicant such damages as he had claimed.

2. The Court's assessment

(a) Applicability of Article 1 of Protocol No. 1

40. The Court notes at the outset that the applicant's apartment was sold at a public auction in 2004, that is, more than six months before the present application was submitted to the Court (6 August 2010). Therefore, it cannot assess the compliance of that sale with Article 1 of Protocol No. 1 (see *Vinniychuk v. Ukraine*, no. 34000/07, § 49, 20 October 2016). However, domestic courts acknowledged that the sale had been unlawful (see paragraphs 12, 14 and 18 above) and, in line with domestic law (see

paragraphs 25-27 above), the applicant was entitled to compensation. Accordingly, the Court considers that the applicant's entitlement to compensation for the unlawful sale of his apartment was sufficiently established to constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. That provision is therefore applicable.

41. As to which part of that provision applies in the present case, the Court observes that the applicant's complaint concerned the amount of compensation awarded to him, which was insufficient for him to buy a new comparable apartment. The Court considers it most appropriate to examine this complaint under the first sentence of the first paragraph of Article 1 of Protocol No. 1, which lays down in general terms the principle of the peaceful enjoyment of property (see *Kirilova and Others v. Bulgaria*, nos. 42908/98 and 3 others, §§ 104-5, 9 June 2005).

(b) Compliance with Article 1 of Protocol No. 1

42. The Court reiterates that Article 1 of Protocol No. 1 to the Convention requires a fair balance to be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Such a balance will not be achieved where an individual has had to bear a disproportionate and excessive burden (see, among many other authorities, *Broniowski v. Poland* [GC], no. 31443/96, § 150, ECHR 2004-V).

43. The Court also reiterates that compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance, and notably whether the measure imposes a disproportionate burden on the applicant. In this connection, the Court has held that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 110, 25 October 2012, and the cases cited therein). It has also considered that, where there is "an extreme disproportion" between the value of the expropriated property and the compensation awarded to the applicants, only very exceptional circumstances can justify such a situation (ibid., § 119, and the cases cited therein).

44. Turning to the circumstances of the present case, the Court observes that the amount of damages awarded to the applicant by the Supreme Court in its judgment of 8 February 2010 (EUR 3,504) was about four times lower than the amount he claimed (EUR 14,770). It was not disputed by the parties that the amount claimed by the applicant corresponded to the apartment's market value at the time when he had submitted that claim, nor was it disputed that EUR 3,504 had not been sufficient for him to acquire a new comparable apartment at the time when that award was made (see paragraph 37 above). While the Court does not consider that the disproportion between the market value of the apartment at the time when

the applicant submitted his claim and the compensation received by him was "extreme" (see paragraph 43 above), it is nonetheless of the view that the domestic courts needed to provide adequate reasons to justify that difference.

45. In this connection, the Court notes that the rule established in Article 6.249 § 5 of the Civil Code was to assess the amount of damages on the basis of market prices at the time when the award for damages was made, unless there were reasons to rely on market prices at a different time (see paragraph 26 above). When making the award, the Supreme Court considered that "the nature of the obligation and the principles of equity, reasonableness and good faith" warranted relying on market prices at the time when the apartment had been sold at a public auction (see paragraph 18 above). However, the Supreme Court did not provide any explanation as to how those principles applied in the applicant's case, nor why they justified such a decision in the particular circumstances. The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (see *Albergas and Arlauskas v. Lithuania*, no. 17978/05, § 67, 27 May 2014, and *Paliutis v. Lithuania*, no. 34085/09, § 45, 24 November 2015; see also the relevant practice of the Lithuanian Constitutional Court in paragraph 28 above). It considers that, in the present case, a reiteration of principles without any accompanying reasoning was clearly inadequate to justify the rejection of the applicant's claim.

46. The Government argued that the Supreme Court had implicitly based its judgment on the defendants' submissions that the applicant had acted in bad faith because he had not asked for restitution *in integrum*, and because he had deliberately waited until the last day to submit his claim in order to obtain a higher monetary award than he would have received in 2004 (see paragraphs 11, 16 and 39 above). However, the Court is not convinced by the Government's argument. It firstly observes that the applicant submitted his claim within the time-limit provided in the domestic law, and his exercise of his procedural rights cannot be interpreted as evidence of bad faith (see, *mutatis mutandis*, *Kolomiyets v. Russia*, no. 76835/01, § 29, 22 February 2007). The Court further notes that the Supreme Court explicitly held that, according to its own case-law, restitution *in integrum* should not have been applied in the applicant's case (see paragraph 18 above). Furthermore, the Supreme Court did not make any mention of the applicant's alleged bad faith, either in relation to the reasons presented by the Government, or in relation to anything else (contrast with the judgment of the first-instance court in the applicant's case – see paragraph 12 above). Therefore, in the absence of adequate reasons in the final judgment, the Court considers the Government's position that that judgment relied on the

applicant's alleged bad faith to be purely speculative and does not accept it (see, *mutatis mutandis*, *Albergas and Arlauskas*, cited above, §§ 66-67).

47. The Court further observes that the Supreme Court, when determining the amount of damages to be awarded to the applicant, did not assess the balance between his right to the peaceful enjoyment of his possessions and any competing interests – in fact, it did not even specify whether any such competing interests existed in the applicant's case (see, *mutatis mutandis*, *Tuleshov and Others v. Russia*, no. 32718/02, § 47, 24 May 2007). In particular, although the applicant made it clear that he had not had a home following the unlawful sale of his apartment, and that the amount of damages which he claimed was intended to cover the purchase of a new comparable apartment (see paragraph 10 above), it does not appear that the Supreme Court took any account of the applicant's ability to obtain a new home (see, *mutatis mutandis*, *Rousk v. Sweden*, no. 27183/04, § 140, 25 July 2013; compare and contrast *Zrilić v. Croatia*, no. 46726/11, § 69, 3 October 2013). In such circumstances, the Court considers that the domestic courts failed to strike a fair balance between the applicant's right to the peaceful enjoyment of his property and any competing general interest, and that awarding the applicant compensation which was several times below the market value of his apartment at the time when he submitted his claim to the domestic courts and which was insufficient for him to obtain a new comparable apartment imposed an individual and excessive burden on him.

48. It therefore concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 11,580 euros (EUR) in respect of pecuniary damage, an amount corresponding to the market price of the apartment in November 2007 (the time when he submitted his claim to the domestic courts), after subtracting his debt to the utility service provider and the amount already awarded to him by domestic courts. The applicant relied on an estimate made by the State Enterprise Centre of Registers. He also

claimed EUR 28,960 in respect of non-pecuniary damage for his emotional distress caused by the violation of his rights.

51. The Government submitted that the applicant's claim in respect of pecuniary and non-pecuniary damage was unsubstantiated and excessive.

2. The Court's assessment

52. The Court notes that it has found a violation of Article 1 of Protocol No. 1 in this case, and considers that the applicant suffered pecuniary damage in connection with the violation found. Taking into account the documents submitted by the applicant, and noting that the estimate of the apartment's market value at the time when the applicant submitted his claim to the domestic courts was not disputed by the Government, the Court considers it appropriate to award the applicant EUR 11,580 in respect of pecuniary damage.

53. The Court further considers that the applicant undoubtedly suffered distress and frustration resulting from the violation of his property rights by the authorities. However, it finds the amount claimed by him excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,500 in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicant also claimed EUR 690 for legal costs incurred before the domestic courts. He submitted an invoice and a bank receipt showing that he had actually paid that amount to his lawyer. He underlined that those expenses had not been awarded to him in the domestic proceedings.

55. The Government submitted that the applicant had failed to provide a legal services agreement or an itemised list of the services provided to him, so his legal costs could not be considered as actually and necessarily incurred.

56. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 690 for costs and expenses in the domestic proceedings.

C. Default interest

57. 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 application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 11,580 (eleven thousand five hundred and eighty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 690 (six hundred and ninety euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President