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

FOURTH SECTION

DECISION

Application no. 42307/09
Aldona FALKAUSKIENĖ
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 4 July 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Marko Bošnjak,
Péter Paczolay, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 14 July 2009,

Having regard to the decision of 25 April 2016 to communicate the complaints concerning peaceful enjoyment of possessions (Article 1 of Protocol No. 1) and excessive court fees (Article 6 § 1) and to declare inadmissible the remainder of the application pursuant to Rule 54 § 3 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Aldona Falkauskienė, is a Lithuanian national who was born in 1929 and lives in Girkalniai, Klaipėda Region. She was represented before the Court by Mr V. Falkauskas, a lawyer practising in Joniškis.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Historical and political background

4. The historical background to the case relating to the Soviet occupation and annexation of Lithuania from 1940-1990 is summarised in *Vasiliauskas v. Lithuania* ([GC], no. 35343/05, §§ 11-14, ECHR 2015). The historical background relating to the circumstances of the re-establishment of the Lithuanian independence is summarised in *Kuolelis and Others v. Lithuania* (nos. 74357/01 and 2 others, §§ 9-25, 19 February 2008).

5. On 11 March 1990 the Supreme Council (Parliament) elected in the first free parliamentary elections in Lithuania under Soviet rule adopted the Act on the Re-establishment of the State of Lithuania. That Act declared the Republic of Lithuania to be an independent and sovereign State and declared that Lithuania's incorporation into the Soviet Union had been null and void. On the same day the Supreme Council adopted the Provisional Fundamental Law (a provisional constitution) which set out the constitutional principles of the newly re-established State of Lithuania and permitted any earlier laws and other legal instruments to remain in force provided that they were not incompatible with the Provisional Fundamental Law.

6. On 13 March 1990 the Supreme Council adopted Regulation No. I-18 "On the status of enterprises, institutions and organisations of the Union, or of the Union and its republics, located on the territory of Lithuania" (*Dėl Lietuvos teritorijoje esančių sąjunginio ir sąjunginio-respublikinio pavaldumo įmonių, įstaigų ir organizacijų statuso*) which declared that all such enterprises, institutions and organisations henceforth came within the jurisdiction of Lithuania, and that issues relating to their takeover would be decided through negotiation with the Soviet Union (see paragraph 38 below).

7. On 16 March 1990 the Government of Lithuania adopted Regulation No. 73 "On the banks of the Republic of Lithuania" which was designed to implement aforementioned Regulation No. I-18 with respect to territorial branches of Soviet banks operating in Lithuania (see paragraph 6 above). Amongst other things, it provided that the Lithuanian branch of the Bank of Foreign Economic Affairs of the USSR (also known as "Vneshekonombank", *TSRS ekonominių ryšių su užsieniu bankas*) was to be restructured and transformed into the Lithuanian Bank of Foreign Economic Affairs (*Lietuvos ekonominių ryšių su užsieniu bankas*). The Regulation

established a special commission for taking over the relevant assets, liabilities, funds and reserves from the Soviet banks concerned, and ordered it to promptly begin negotiations with those banks concerning the takeover (see paragraph 39 below).

8. On 11 March 1992 the Bank of Foreign Economic Affairs of the former USSR issued Order No. 16 "On the termination of operations and subsequent liquidation of the branches of the Bank of Foreign Economic Affairs of the USSR located on the territories of the former republics of the USSR", which liquidated its branches in "sovereign States – the former republics of the USSR" and included Lithuania. It ordered the heads of the territorial branches to terminate banking operations. The Lithuanian branch of the bank terminated its activities on 15 March 1992.

9. On 2 April 1992 the Government of Lithuania adopted Regulation No. 223 "On the protection of currency deposits" (amended on 30 April 1992) which required the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR, which was then being liquidated, to transfer, by 1 May 1992, to the Bank of Lithuania (the central bank) the remainder of the funds which had been deposited with it by Lithuanian residents. Regulation No. 223 also provided that deposits transferred to the Bank of Lithuania would be guaranteed by the budget funds of the Republic of Lithuania (see paragraph 40 below).

10. On 25 October 1992 the Constitution of the Republic of Lithuania was adopted in a referendum. It entered into force on 2 November 1992.

11. In April 1993 the Ministry of Finance and the Bank of Lithuania informed the Government that the Lithuanian Bank of Foreign Economic Affairs had not been registered as an independent bank in Lithuania (see paragraph 37 below) and that it had not taken over the debts and obligations of the Bank of Foreign Economic Affairs of the former USSR. They expressed the view that the question of the return of foreign currency deposits to Lithuanian nationals should be decided via negotiations between the Lithuanian and Russian governments.

12. On 25 June 1993 the currency of the Republic of Lithuania – Lithuanian litas (LTL) – entered into circulation (it was replaced by the euro (EUR) on 1 January 2015). From 1 April 1994 until 1 February 2002 the LTL was pegged to the US dollar (USD) at the exchange rate of 4 LTL to 1 USD.

13. On 20 June 1995 the Convention and its Protocol No. 1 entered into force in respect of Lithuania.

14. On 30 November 1995 the Bank of Foreign Economic Affairs of the former USSR sent a letter to its Lithuanian branch stating that on 14 March 1992 (that is, the day before the latter terminated its operations - see paragraph 8 above), the Lithuanian branch had had at its disposal approximately USD 1,100,000, and that the debt owed by the Bank of Foreign Economic Affairs of the former USSR to its Lithuanian branch

for the funds which had been deposited therein amounted to approximately USD 9,200,000. On 15 June 1995 the representatives of the Soviet bank and its Lithuanian branch signed a joint liquidation balance declaration.

15. Between March 1993 and March 1999 the Lithuanian authorities adopted several legal instruments providing for partial compensation to citizens who had deposited funds with the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR and had been unable to recover them (see paragraphs 42-43 below).

16. As submitted by the respondent Government, the bilateral Lithuanian-Russian working group on the return of the funds deposited with the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR held its first meeting in October 1997. In June 1999, during its third meeting, the working group adopted a draft procedure for the return of those deposits. In October 2011, during the eighth meeting of the working group, it was agreed that the technical and financial questions relating to the implementation of the draft procedure needed to be resolved more speedily; however, no further meetings have been held since then. According to the respondent Government, the Russian Government has failed to take any concrete action, and some of the positions which it expressed in the negotiations were not acceptable to Lithuania (see paragraph 41 below).

2. Proceedings concerning the applicant's deposit

17. In May 1991 the applicant received an inheritance of USD 15,800 from the USA. On 12 September 1991 she submitted a written request to the Lithuanian Bank of Foreign Economic Affairs to open a bank account in US dollars. Following her request, an account was opened and a record of the inheritance was made in that account.

The Government submitted that the applicant's inheritance had been actually transferred to the Bank of Foreign Economic Affairs of the USSR and not to the Lithuanian bank (see their observations in paragraph 53 below; see the applicant's observations in reply in paragraph 56 below).

18. In February 1992 the applicant went to the Lithuanian Bank of Foreign Economic Affairs and asked to withdraw the entire amount from her account. She was informed by the bank's management that it did not have sufficient funds to satisfy all requests for cash withdrawal, so any such requests could be satisfied only in part. The applicant was given USD 2,000.

19. In April 1993 the applicant received compensation of USD 400 in line with the Government's regulation on this matter. In August 1994 she received additional compensation of USD 500, and in April 1996 additional compensation of LTL 2,000 (see paragraphs 15 above and 42 below). The total compensation received by the applicant pursuant to the regulations in question amounted to LTL 5,600, or USD 1,400 when converted at the currency exchange rate applicable at that time (see paragraph 12 above).

20. The applicant subsequently sent written requests to various State institutions and officials enquiring about the possibility of recovering the remainder of her currency deposit. On 10 May 2001 the Ministry of Finance informed her that the Lithuanian and Russian authorities had agreed on a procedure for returning foreign currency deposits which had been deposited with the since-liquidated Bank of Foreign Economic Affairs of the former USSR (see paragraph 16 above) and that the Lithuanian Government would adopt appropriate decisions concerning the return of expropriated deposits to its citizens once the Russian Federation – the successor to the USSR - returned them. The letter also noted that the applicant had already received compensation in line with the Government's regulations of 1993, 1994 and 1996 (see paragraph 19 above). On 26 April 2002 the Ministry of Finance informed the applicant that the negotiations with the Russian authorities were ongoing, and that it had addressed the question of returning residents' deposits to the Ministry of Finance of the Russian Federation "many times", but had not received any official response. The applicant sent further letters to the authorities, but received essentially the same response on 5 December 2002 and 15 January 2003.

21. In October 2001 the applicant sent a letter to the Russian bank "Vneshekonombank" (formerly known as the Bank of Foreign Economic Affairs of the USSR) asking about her deposit, but on 8 November 2001 the bank replied that the applicant's account had been "nationalised by the Lithuanian authorities" and that she should address her requests to them.

22. On 7 December 2006 the applicant brought a civil claim against the Lithuanian State demanding the return of her deposit, together with the interest payable since 1991 – which the applicant estimated at between 7.5% and 50% per annum for different periods – and compensation for non-pecuniary damage. Her claim amounted to LTL 467,000 (approximately EUR 135,000) in total.

23. In its response to the applicant's claim, the Ministry of Finance submitted that the applicant's deposit had been taken over not by the Lithuanian authorities but by the USSR because the Lithuanian Bank of Foreign Economic Affairs had never been *de facto* established as an independent bank and it had not taken over any assets or liabilities of the Bank of Foreign Economic Affairs of the USSR. The Ministry also submitted that the negotiations with the Russian authorities concerning the return of all such expropriated deposits were still ongoing.

24. On 11 February 2008 the Vilnius Regional Court dismissed the applicant's claim. It found that the Lithuanian branch of the Bank of Foreign Economic Affairs of the USSR had never been *de facto* restructured as an independent Lithuanian bank because the Soviet bank had never transferred its assets, liabilities, funds and reserves to the Lithuanian authorities; furthermore, the Lithuanian Bank of Foreign Economic Affairs had never been registered as an independent bank with the Bank of

Lithuania, as required by domestic law (see paragraph 37 below). Accordingly, the court held that in September 1991 the applicant's inheritance had been transferred to the Soviet bank and not to a Lithuanian bank. Relying on the submissions of the Ministry of Finance, the court also held that during its liquidation the Soviet bank had not complied with the Lithuanian Government's requirement to transfer all the deposits of Lithuanian nationals to the Bank of Lithuania, and deposits which had not been transferred were not guaranteed by the Lithuanian budget funds (see paragraph 9 above). The court therefore concluded that the Lithuanian State was not under an obligation to repay to the applicant the full amount of her deposit, nor the interest or the compensation for non-pecuniary damage. The court also observed that the Government had already fulfilled its obligation to partly compensate the applicant for her lost deposit (see paragraph 19 above).

25. The applicant appealed against that judgment, arguing that the Vilnius Regional Court had erred in finding that the Lithuanian Bank of Foreign Economic Affairs had not been established as an independent bank and that her deposit had not been taken over by the Lithuanian authorities. She submitted that legal instruments adopted by the Lithuanian authorities had unequivocally established that the Lithuanian Bank of Foreign Economic Affairs came within the jurisdiction of Lithuania (see paragraphs 6, 7 and 9 above), and Lithuania was therefore under an obligation to return the applicant's deposit.

26. On 7 November 2008 the Court of Appeal dismissed the applicant's appeal and upheld the first-instance judgment. The court reiterated that, despite various legal instruments providing for the restructuring of the Bank of Foreign Economic Affairs of the USSR as a Lithuanian bank, no such Lithuanian bank had actually been established. The court also observed that until 15 March 1992 the Soviet bank had continued to provide cash withdrawals to its depositors (see paragraph 8 above) – including the applicant (see paragraph 18 above). The Soviet bank subsequently acknowledged that it was indebted to individuals who had deposited their funds with its Lithuanian branch (see paragraph 14 above), and the questions relating to those debts were being addressed in the ongoing negotiations between the Lithuanian and Russian authorities (see paragraph 16 above). The court therefore dismissed the applicant's claim that the Lithuanian State was under an obligation to pay to her the full amount of her deposit, together with interest and compensation for non-pecuniary damage.

27. The applicant submitted an appeal on points of law, but on 14 April 2009 the Supreme Court dismissed it and upheld the findings of the lower courts in their entirety. It reiterated that, having established that the Lithuanian authorities had not *de facto* taken over the assets of the Soviet bank, no obligation to return to the applicant deposit kept in the latter bank

could arise. The Supreme Court also observed that the fact that the negotiations between the Lithuanian and Russian authorities had not yet produced a positive result could not constitute grounds for obliging the Lithuanian State to pay to the applicant the amount she claimed.

3. Court fees paid by the applicant

28. The applicant initially submitted her claim of 7 December 2006 (see paragraph 22 above) to the Vilnius Regional Administrative Court. In line with domestic law, such a claim was not subject to any court fees (see paragraph 46 below). On 16 May 2007 a panel of judges specialising in the determination of jurisdictional disputes ruled that the applicant's case related to a pecuniary claim and should therefore have been brought before a court of general jurisdiction and not before an administrative court (see paragraph 45 below). The applicant's claim was therefore transferred to the Vilnius Regional Court.

29. On 24 May 2007 the Vilnius Regional Court ordered the applicant to pay court fees which, in line with domestic law (see paragraph 47 below), amounted to LTL 8,670 (approximately EUR 2,510).

30. The applicant asked the court to exempt her from the obligation to pay court fees. She submitted that she had lodged her claim before an administrative court and that the claim had been transferred to a court of general jurisdiction against her will. She also argued that applying different rules concerning court fees in administrative and civil court proceedings was unfair and discriminatory. However, the Vilnius Regional Court refused to examine the applicant's request on the grounds of failure to comply with the formal requirements.

31. The applicant was subsequently granted State-guaranteed legal aid, whereby 50% of her legal expenses were covered by the State. As a result, on 21 June 2007 the Vilnius Regional Court reduced the court fees payable by the applicant by 50% and ordered her to pay LTL 4,330 (approximately EUR 1,250). The applicant appealed against that decision, asking to be completely exempted from paying court fees. She raised the same arguments as in her previous request (see paragraph 30 above) and also submitted that the fees were excessively high and restricted her right of access to court, but she did not make any reference to, or provide any details about her financial situation. The Court of Appeal dismissed her appeal, and the applicant subsequently paid the amount demanded.

32. After the Vilnius Regional Court had dismissed the applicant's civil claim, the latter lodged an appeal (see paragraphs 24-25 above). In line with domestic law, the court fees for the submission of an appeal were calculated in the same way as those for the initial claim (see paragraph 47 below). The applicant was therefore ordered to pay LTL 4,330 (approximately EUR 1,250).

33. The applicant paid half of the court fees and asked the court to allow her to defer payment of the remaining half until after examination of her appeal, as provided in Article 84 of the Code of Civil Proceedings (hereinafter "the CCP"; see paragraph 48 below). She submitted that she was retired, that her retirement allowance was her only income, and that the total cost of the court fees was nearly equal to her annual income. On 27 March 2008 the Vilnius Regional Court allowed the applicant's request and postponed the payment of half of the court fees until after the examination of the appeal. After the Court of Appeal had adopted its judgment in the civil proceedings (see paragraph 26 above), the applicant paid the remaining half of the court fees.

34. When the applicant submitted an appeal on points of law to the Supreme Court (see paragraph 27 above), she asked to be exempted from the obligation to pay court fees, or to defer payment until after the examination of her appeal on points of law. The applicant argued that court fees constituted an unjustified and discriminatory restriction on her right to access to court. She also submitted that her income was insufficient to afford the court fees demanded of her in the present proceedings. On 13 February 2009 the Supreme Court postponed the payment of the court fees. After dismissing the applicant's appeal on points of law (see paragraph 27 above), the Supreme Court noted that the domestic law did not enable it to completely exempt the applicant from paying court fees (see paragraph 48 below). However, because of her difficult financial situation, the Supreme Court decided to reduce the amount demanded and ordered the applicant to pay LTL 100 (EUR 29). The applicant paid that amount.

B. Relevant domestic law and practice

1. General provisions on property rights

35. Article 44 of the Provisional Fundamental Law, adopted on 11 March 1990 and in force until 2 November 1992, provided, in its relevant parts:

> "The Republic of Lithuania guarantees to all holders of property rights the opportunity to independently manage and use their possessions in line with the Lithuanian laws ...
>
> All holders of property rights are entitled to equal legal remedies.
>
> The Republic of Lithuania shall protect the rights of property holders in other states."

36. Article 23 of the Constitution of the Republic of Lithuania, in force since 2 November 1992, provides:

> "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."

2. Issues relating to the status of Soviet banks after the restoration of the independence of Lithuania

37. Article 16 of the Law on the Bank of Lithuania, entitled "Establishing credit institutions", in force from 13 February 1990 (i.e. before the restoration of the independence of Lithuania) until 23 December 1994, provided, in relevant parts:

"Any credit institution in the Republic [of Lithuania] can be established only with the permission of the Bank of Lithuania ...

All established credit institutions shall be registered in the registration book of the Bank of Lithuania. On the day of the registration, the credit institution becomes a legal entity and acquires the right to conduct banking operations."

38. Regulation No. I-18 of the Supreme Council of the Republic of Lithuania of 13 March 1990 "On the status of the enterprises, institutions and organisations of the Union, or of the Union and its republics, located on the territory of Lithuania" (*Dėl Lietuvos teritorijoje esančių sąjunginio ir sąjunginio-respublikinio pavaldumo įmonių, įstaigų ir organizacijų statuso*) provides, in relevant parts:

"The Supreme Council of the Republic of Lithuania hereby decides:

1. To establish that all State enterprises, institutions and organisations of the Union, or of the Union and its republics, located on the territory of Lithuania on the day of the adoption of the present Regulation, henceforth come within the jurisdiction of Lithuania (*pereina Lietuvos Respublikos jurisdikcijai*);

...

4. To resolve the issues related to the takeover of the entities indicated in paragraph 1 by negotiations with the USSR."

39. Regulation No. 73 of the Government of the Republic of Lithuania of 16 March 1990 "On the banks of the Republic of Lithuania" provides, in relevant parts:

"Implementing the Regulation No. I-18 of the Supreme Council of the Republic of Lithuania of 13 March 1990 ... the Council of Ministers of the Republic of Lithuania hereby decides:

1. To restructure the following Lithuanian republican banks (*Lietuvos respublikiniai bankai*) together with their institutions and organisations, leaving the latter subordinate to the restructured banks:

...

e) the Bank of Foreign Economic Affairs of the USSR – into the Lithuanian Bank of Foreign Economic Affairs;

...

4. In order to take over the assets, liabilities ... other material resources ... of the banks listed in paragraph 1 from the USSR, to create the following commission ... The commission must promptly begin negotiations with the boards of the Soviet banks concerning the takeover of the assets, liabilities, funds and reserves indicated in this paragraph.

..."

40. Regulation No. 223 of the Government of Lithuania of 2 April 1992 "On the protection of currency deposits" (amended on 30 April 1992) provides, in relevant parts:

"Having regard to the fact that, at the order of the Bank of Foreign Economic Affairs of the former USSR, the Lithuanian branch of that bank (the Lithuanian Bank of Foreign Economic Affairs) is being liquidated, the Government of Lithuania hereby decides:

1. By 1 May 1992, the Lithuanian Bank of Foreign Economic Affairs shall transfer to the Bank of Lithuania the remaining part of the currency deposits of natural persons (*fizinių asmenų indėlių likučiai*) and open bank accounts for them.

2. The currency deposits of natural persons transferred from the Lithuanian Bank of Foreign Economic Affairs to the Bank of Lithuania shall be guaranteed by currency funds (the budget funds) of the Republic of Lithuania. ...

3. The Bank of Lithuania shall immediately begin negotiations with the Bank of Foreign Economic Affairs of the former USSR – the successor – concerning the return of the expropriated funds (*nusavintos valiutinės lėšos*) of Lithuanian natural persons and legal entities which had been deposited with the Lithuanian branch of the latter bank (in the Lithuanian Bank of Foreign Economic Affairs)."

41. On 19 June 2007 the Parliamentary Ombudsperson issued Conclusion No. 4D-2007/1-648 concerning a complaint by N.J.G. that she had not been able to recover her funds which had been deposited with a Soviet bank. It stated:

"...

The restructuring of the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR was not conducted in accordance with the procedure provided in [domestic] legislation. During its liquidation, the Lithuanian Bank of Foreign Economic Affairs did not transfer any deposits to the Bank of Lithuania, and for that reason the Bank of Lithuania was unable to take any related actions. The Bank of Lithuania refused to become the successor of the debts and obligations of [the Lithuanian Bank of Foreign Economic Affairs].

...

The Parliamentary Ombudsperson was informed [by the Ministry of Finance] that the question of returning funds which had been deposited with the [Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR] was being constantly raised in meetings between Lithuanian and Russian officials.

...

During the meeting of the Intergovernmental Commission of the Republic of Lithuania and the Russian Federation which took place on 10-12 November 2005, the Lithuanian delegation proposed that the draft procedure, agreed upon in 1999, would

> be implemented from 1 January 2006, but the Russian delegation was of the view that the question of returning the funds deposited with [the Soviet bank] to natural persons could be resolved only after the Lithuanian and Russian governments settled the issue of external debts and assets of the former USSR. The Parliamentary Ombudsperson was told that the Lithuanian delegation considered that the debt of [the bank] was a credit institution's debt to its creditors, and therefore debts of natural persons should not be linked to the question of the external debt and assets of the former USSR.
>
> ...
>
> The applicant's complaints ... that the officials of the Ministry of Finance failed to adequately address the questions concerning the return of currency deposits have proved to be unfounded – the officials dealt with the applicant's problems within the limits of their authority and in accordance with applicable legislation."

3. Compensation for lost funds deposited with Soviet banks

42. On 5 March 1993 the Government of Lithuania adopted Regulation No. 140 "On partial compensation for the losses to the citizens and permanent legitimate residents of the Republic of Lithuania who had deposited their foreign currency deposits with the liquidated Lithuanian branch of the Bank of Foreign Economic Affairs of the USSR", which established that each depositor was entitled to partial compensation of up to USD 400, but not exceeding 90% of the total amount of the deposit, from the State's budget. On 16 March 1994 the Government adopted Regulation No. 176 which provided for additional compensation of up to USD 500 for each depositor, and on 2 February 1996 it adopted Regulation No. 174 which provided for further compensation of up to LTL 2,000 for each depositor.

43. On 5 June 1997 the Lithuanian Parliament enacted the Law on the Restoration of Residents' Deposits, which set out the order of priority and conditions for refunding deposits which had been kept in "State banks of Lithuania" (*indėliai, sukaupti Lietuvos valstybiniuose bankuose*). On 30 March 1999 that Law was amended to also provide for compensation for deposits which had been deposited with the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR. According to its Article 3 § 5, the maximum refundable amount was set at LTL 6,000, after deducting the compensation already paid in accordance with other legal instruments (see paragraph 42 above).

44. On 25 November 2010 the Lithuanian Parliament enacted the Law on Repealing the Law on the Restoration of Residents' Deposits and its Amendments (see paragraph 43 above), Article 2 § 6 of which provides that funds which had been deposited with the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR would be returned to the depositors once they had been recovered from the Russian Federation.

4. Jurisdiction of administrative and general courts

45. Article 36 § 3 of the CCP and Article 22 § 3 of the Law on Administrative Proceedings provide that when it is not clear whether a case should be examined by an administrative court or by a court of general jurisdiction, the question of jurisdiction is to be decided in written proceedings by a special panel of judges composed of the chairperson of the Civil Section of the Supreme Court, the deputy chairperson of the Supreme Administrative Court, and two other judges appointed by them.

5. Court fees and legal aid

46. Article 36 § 1 (10) of the Law on Administrative Proceedings provides that claims concerning damage caused by unlawful actions on the part of public administration entities are not subject to any court fees.

47. At the material time, Article 80 § 1 (1) of the CCP provided that court fees for monetary claims exceeding LTL 300,000 amounted to LTL 7,000, plus 1% of that part of the respective claim in excess of LTL 300,000. Article 80 § 4 provided that court fees for the submission of an appeal, including an appeal on points of law, were calculated in the same way as those for the initial claim.

48. Article 83 § 3 of the CCP provides that a person may be partly exempt from paying court fees because of his or her financial situation, and Article 84 provides that the payment of court fees may be deferred for the same reason. A person wishing to obtain such an exemption or deferment must submit a properly reasoned request to the court examining the case.

49. Article 20 § 4 of the Law on State-Guaranteed Legal Aid provides that the granting of legal aid does not preclude its recipient from requesting other exemptions provided for in laws governing civil and administrative proceedings.

COMPLAINTS

50. The applicant complained under Article 1 of Protocol No. 1 to the Convention that she had been unable to recover her foreign currency deposit.

51. She also complained under Article 6 § 1 of the Convention that in the civil proceedings concerning the recovery of the currency deposit she had been obliged to pay excessive court fees, which constituted a restriction of her right of access to court.

THE LAW

A. Complaint under Article 1 of Protocol No. 1 to the Convention

52. The applicant considered that the impossibility to fully recover her foreign currency deposit, together with the interest accrued since 1992, amounted to a violation of her right to the peaceful enjoyment of her possessions, guaranteed by Article 1 of Protocol No. 1 to the Convention.

This provision 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."

1. The parties' submissions

(a) The Government

53. The Government argued that the applicant's complaint was incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a). They submitted that the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR had never been restructured into an independent Lithuanian bank – despite legal provisions providing for such a restructuring, that it had never been registered as an independent Lithuanian bank and had never begun operating as such. Therefore, any reference to the "Lithuanian Bank of Foreign Economic Affairs" meant the Lithuanian branch of the Soviet bank, but not an independent Lithuanian bank. The Government submitted that the applicant's deposit had been transferred to the Soviet bank and had been taken over by that bank and not by a Lithuanian bank or any Lithuanian authority, meaning that the conduct complained of by the applicant was not attributable to Lithuania. The Government noted that the three instances of domestic courts which had examined the applicant's claim had reached the same conclusions (see paragraphs 24, 26 and 27 above), and argued that the Court should not depart from their findings of fact.

54. The Government also stated that Lithuania was not a successor of the Soviet Union and had not taken over the assets of the Soviet banks which had operated on its territory, so it could not be required to assume their debts. The Lithuanian State had agreed only to guarantee deposits which had been transferred from the USSR to Lithuanian banks (see paragraph 40 above), but the applicant's deposit had not been transferred in

this way and that guarantee therefore did not apply to it. The Government also submitted that the Soviet bank had itself acknowledged its debt to its Lithuanian branch for the funds of natural persons which had been deposited with it (see paragraph 14 above).

55. Lastly, the Government submitted that, despite not being liable for the loss of the applicant's deposit, the Lithuanian authorities had partly compensated the applicant for her losses (see paragraph 19 above) and had continued to negotiate with the Russian authorities for the full recovery of the deposits of Lithuanian nationals (see paragraph 16 above). The Government therefore argued that they had complied with any positive obligations which may have been incurred under Article 1 of Protocol No. 1 to the Convention.

(b) The applicant

56. The applicant submitted that the legal instruments adopted soon after the restoration of Lithuania's independence clearly stated that all Soviet banks which had operated on the territory of Lithuania would fall under Lithuanian jurisdiction (see paragraphs 38-40 above). The Lithuanian authorities appointed new chairpersons to the newly restructured banks – including the Lithuanian Bank of Foreign Economic Affairs – who signed various letters and other documents, thereby proving that those banks were fully functioning. The applicant also submitted that she had never had a bank account with the Bank of Foreign Economic Affairs of the USSR, so her deposit had therefore been transferred to the Lithuanian Bank of Foreign Economic Affairs, and it had been the latter bank which had paid her USD 2,000 (see paragraph 18 above), again proving the bank was fully functioning.

57. The applicant further submitted that the Lithuanian State had assumed an obligation to guarantee citizens' deposits (see paragraph 40 above). She argued that the Lithuanian branch had had at its disposal at least USD 1,100,000 (see paragraph 14 above), as confirmed by the Soviet bank, meaning that those funds could have been used to return her deposit to her.

2. The Court's assessment

(a) General principles

58. The Court reiterates that Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of the restitution of such property or to choose the conditions under which they agree to restore property rights of former owners (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35 (d), ECHR 2004-IX). Furthermore, the Convention

imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to their ratification of the Convention (ibid., § 38). However, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (ibid., § 35 (d)).

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

59. The Court observes that the principal dispute between the parties in the present case concerns a determination of fact – namely whether the applicant's inheritance had been deposited with a Soviet bank or with a Lithuanian bank. In this connection the Court reiterates that it is not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Jantner v. Slovakia*, no. 39050/97, § 32, 4 March 2003). In other words, the Court cannot question the assessment of the domestic authorities unless there is clear evidence of arbitrariness (see, among many other authorities, *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 89, ECHR 2007-I).

60. In the present case, the Court sees no evidence of such arbitrariness. It acknowledges that, following the restoration of Lithuania's independence, the factual situation in respect of banks appeared uncertain for a considerable period of time, and therefore it was not entirely unreasonable for the applicant to believe that her inheritance had been deposited with a Lithuanian bank. In particular, various legal instruments provided for restructuring of Soviet banks and their transfer into the Lithuanian jurisdiction (see paragraphs 38-39 above), and the Lithuanian branch of the Bank of Foreign Economic Affairs of the USSR was known by the name of the Lithuanian Bank of Foreign Economic Affairs, which was also the name of the bank that the Lithuanian authorities intended to establish, thereby creating some confusion as to which bank was actually operating (see paragraphs 39 and 53 above). Furthermore, as submitted by the applicant, some actions taken by the Lithuanian branch of the Soviet bank and by the Lithuanian authorities may have created the impression that a Lithuanian bank had in fact been functioning as a fully-fledged banking institution (see paragraphs 20 and 56 above).

61. However, three instances of domestic courts concluded that the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR had not been restructured into an independent Lithuanian Bank of Foreign Economic Affairs. The courts established that the Lithuanian Bank of Foreign Economic Affairs had not been registered with the central bank, as required by domestic law (see paragraphs 24 and 37 above), that the Soviet bank had not transferred any of its assets to the Lithuanian banks or authorities (see paragraphs 24 and 27 above), that the Soviet bank had acknowledged its debt to individuals who had deposited their funds with its Lithuanian branch (see paragraphs 14 and 26 above), and that the negotiations between the Lithuanian and Russian authorities concerning the return of all such deposits were ongoing (see paragraphs 16 and 27 above). Therefore, the domestic courts held that, since the Lithuanian State had not taken over the applicant's deposit, it could not be obliged to return it to her. The courts also found that Lithuania had assumed an obligation only to provide partial compensation for lost deposits, and that it had fulfilled that obligation in respect of the applicant (see paragraphs 15, 19, 24 and 42 above).

62. Having regard to the information before it and considering its limited power to deal with alleged errors of fact committed by domestic authorities, the Court considers that it cannot substitute its view for that of the Lithuanian courts. Their findings that the Lithuanian branch of the Bank of Foreign Economic Affairs of the former USSR had not been restructured into an independent Lithuanian bank and that the Lithuanian State had not taken over the applicant's deposit were based on a thorough analysis of available documents, and there is nothing to indicate that they were arbitrary. Similarly, on the basis of the material made available to it by the parties, the Court sees no reason to question the domestic courts' conclusion that, under the relevant law, the Lithuanian State had never assumed any obligation to return deposits which had not been transferred to Lithuanian banks (see paragraphs 24, 26 and 27 above). In all of their correspondence with the applicant and their submissions to domestic courts, the Lithuanian authorities consistently stated that the return of deposits such as the applicant's was dependent on the negotiations with Russia (see paragraphs 20 and 23 above) – which, to date, have not produced a satisfactory result. The Court further observes that Lithuania, which had been occupied and annexed by the Soviet Union (see paragraph 4 above), was not its successor and had not accepted any of its obligations concerning currency funds deposited in Soviet banks (see *Jasinskij and Others v. Lithuania*, no. 38985/97, Commission decision of 9 September 1998; see also, *mutatis mutandis*, *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01 and 2 others, §§ 87-88, ECHR 2005-V, and *Baťa v. the Czech Republic* (dec.), no. 43775/05, § 77, 24 June 2008; contrast *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 99-101, 19 December 2002;

Suljagić v. Bosnia and Herzegovina, no. 27912/02, § 36, 3 November 2009; and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, §§ 77-79, ECHR 2014). In accordance with the relevant domestic law, Lithuania had undertaken, on its own initiative and in good faith, to pay compensation for lost deposits; that compensation was only partial (see paragraphs 42-43 above), which is in keeping with the Court's case-law under Article 1 of Protocol No. 1 (see *Kopecký*, §§ 37-38, and *Von Maltzan*, § 77, both cited above).

63. On the basis of the foregoing considerations, relying on the facts established by the domestic courts that neither a Lithuanian bank nor any other Lithuanian authorities had taken over the applicant's deposit, and considering the limited extent of the obligations undertaken by the Lithuanian State with respect to deposits kept in Soviet banks, the Court concludes that the applicant's complaint against Lithuania under Article 1 of Protocol No. 1 is incompatible *ratione personae* with the provisions of the Convention and must therefore be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4.

B. Complaint under Article 6 § 1 of the Convention

64. The applicant complained that in the civil proceedings concerning the recovery of the currency deposit she had been obliged to pay excessive court fees, which constituted a restriction of her right of access to court, guaranteed by Article 6 § 1 of the Convention.

In so far as relevant, this provision reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

65. The Government submitted that the applicant had failed to exhaust the domestic remedies as required by Article 35 § 1 of the Convention. They stated that domestic law allowed applicants to ask for partial exemption from court fees or deferment of the payment of those fees because of their financial situation (see paragraphs 48-49 above); however, in her application to the Vilnius Regional Court the applicant had not mentioned her financial situation and had not asked for exemption from court fees for that reason (see paragraph 30 above), meaning that the court had had no grounds to grant her such an exemption. The Government further submitted that in her application to the Court of Appeal, although she relied on her financial situation, the applicant had not asked for exemption from court fees but only for the payment of those fees to be deferred (see paragraph 33 above), which the Court of Appeal granted. It was only in her application to

the Supreme Court that the applicant asked for an exemption from court fees because of her financial situation, and that request was granted (see paragraph 34 above). Accordingly, the Government argued that in the proceedings before the Vilnius Regional Court and the Court of Appeal the applicant had failed to ask for partial exemption from court fees on the grounds of her financial situation, and her application should therefore be declared inadmissible for failure to exhaust domestic remedies.

66. The applicant contested that argument by essentially reiterating her submissions before the domestic courts (see paragraphs 30, 33 and 34 above).

2. The Court's assessment

67. The Court reiterates that, under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII, and *Vučković and Others v. Serbia* [GC], no. 17153/11, § 70, 25 March 2014). The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his or her Convention grievances. The applicants must further comply with the applicable rules and procedures of domestic law, failing which their application is likely to fall foul of the condition laid down in Article 35 § 1 (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996‑IV, and *Vučković*, cited above, § 72). The Court also reiterates that Article 35 § 1 does not require a Convention right to be explicitly raised in domestic proceedings, provided that the complaint is raised at least in substance (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

68. In the present case, Article 83 § 3 of the CCP allowed individuals to ask to be partly exempted from paying court fees on the grounds of their financial situation (see paragraph 48 above). The Court observes that in the request for exemption she submitted to the Vilnius Regional Court, the applicant did not make any reference to her individual financial situation - she raised only general arguments that the requirement to pay court fees was unfair and discriminatory, and that the amount demanded of her was excessive (see paragraphs 30-31 above). In the Court's view, it cannot thus be said that the applicant raised her complaint about the inability to pay court fees "in substance" before the Vilnius Regional Court, nor that she complied with the requirement of Article 83 § 3 of the CCP to substantiate her request.

69. The Court further observes that although the applicant did rely on her financial situation in the request she submitted to the Court of Appeal

(see paragraph 33 above), she did not ask to be exempted from paying court fees, in line with Article 83 § 3 of the CCP, but only to have the payment of those fees deferred until after the adoption of that court's judgment, in line with Article 84 of the CCP – and that request was granted (see paragraph 33 above). In the Court's view, the difference between the remedies offered by those two legal provisions was sufficiently clear, and the applicant herself did not argue otherwise.

70. The Court finds it indicative that the only time that the applicant submitted a properly reasoned request for exemption from court fees on the grounds of her financial situation, the Supreme Court granted that request and ordered her to pay a relatively small fee of LTL 100 (approximately EUR 29; see paragraph 34 above). In such circumstances, the Court sees no reason to doubt that a request to be partly exempted from paying court fees because of her difficult financial situation, in line with Article 83 § 3 of the CCP, was an effective domestic remedy. Since the applicant failed to avail herself of that remedy before the courts of the first and the appellate instance, this complaint must be declared inadmissible for failure to exhaust domestic remedies and dismissed in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court,

Declares, by a majority, the complaint under Article 1 of Protocol No. 1 to the Convention inadmissible;

Declares, unanimously, the complaint under Article 6 § 1 of the Convention inadmissible.

Done in English and notified in writing on 21 September 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President