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

SECOND SECTION

DECISION

Application no. 26488/18
Vaidotas JANKAUSKAS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 13 February 2024 as a Committee composed of:

Pauliine Koskelo*, President*,
Egidijus Kūris,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 26488/18) 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") on 5 June 2018 by a Lithuanian national, Mr Vaidotas Jankauskas ("the applicant"), who was born in 1954, lives in Palanga and was represented by Mr M. Nosevič, a lawyer practising in Vilnius;

the decision to give notice of the application to the Lithuanian Government ("the Government"), represented by their Agent, Ms K. Bubnytė-Širmenė;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the annulment of the applicant's title to a 163-metre road leading to his house in the Klaipėda region, without the payment of compensation.

I. BACKGROUND TO THE CASE

2. Prior to the events in question, Mr A.K. and Ms L.K. were the owners of the house currently owned by the applicant.

3. On 17 March 2003 a technical proposal for building a road leading to the house, prepared at the request of Mr A.K. and Ms L.K., was approved by the relevant authorities, including the Klaipėda County Administration (hereinafter "the KCA"). On 27 March 2003, following consent by the KCA, the Klaipėda District Municipality (hereinafter "the KDM") issued Mr A.K. and Ms L.K. with a construction permit for the road, which was valid for ten years. The road, surfaced with gravel, was built in 2004, in compliance with the approved proposal.

4. In 2010, following an administrative reform, all county administrations were abolished and their rights and obligations in this area were taken over by the National Land Service (hereinafter "the NLS").

5. Following the applicant's acquisition in 2007 of Mr A.K. and Ms L.K.'s house (see paragraph 2 above), in 2011 a proposal by the applicant to surface the road with granite paving units was approved by the KDM and the Seaside Regional Park authorities. The construction permit was re-registered in the applicant's name on 30 January 2013, and a new road of granite paving units was built by the applicant. On 8 August 2013 the applicant filed a declaration of completion of the construction works, and the applicant's title to the road was registered in the land register.

6. On 16 May 2013 the applicant's neighbour L.L.D. had made a complaint to the prosecutor, asking for the applicant's title to the road to be annulled (see also paragraph 10 below) in an action for defence of the public interest. The prosecutor forwarded the complaint to the NLS, and in 2014 the NLS applied to the courts, challenging the applicant's title to the road, which was on State-owned land, seeking an order for the applicant to demolish the road and for the situation prior to the construction permit of 27 March 2003 to be restored. The NLS argued that the road had been constructed without the State's proper consent.

II. THE DECISION OF THE KLAIPĖDA DISTRICT COURT

7. On 31 October 2016 the court dismissed the NLS's claim, holding that the construction of the road had been started, carried out and concluded in compliance with the legal requirements for construction. The court rejected the NLS's argument that the State was the owner of the road, as there had been no agreement between the State and the applicant to that effect. It would be illogical to expect that a private individual would initiate a transfer to the State of property which he had built using his private means when no such obligation had been undertaken by that private individual. There was therefore no factual or legal basis on which the State or the municipality could take over the property given that it had been created using private means.

8. The court considered that a mistake had been made when the construction permit had been issued, since no agreement had been reached as to who would own the road once it had been constructed.

9. Nevertheless, the road had been situated on a State-owned plot of land within the Seaside Regional Park; it had been designated as a road in common use. As of 2005, when the seaside belt zone had been enlarged, the road had fallen within that zone. In 2010 the authorities in Klaipėda had designated that road as an integral part of the public street network, and under domestic law the municipalities owned the streets. The building of a pedestrian path from the disputed road to the sea was also planned. Accordingly, when the infrastructure of the Seaside Regional Park had been developed under the plans approved by the municipality, "the road would in essence unavoidably become public". It could also be concluded from territorial planning documents that in future the road could be used for public needs.

10. The road in question gave access (although not the main access) to the house of the applicant's neighbour L.L.D. It was also apparent from written evidence that in 2012 L.L.D. had contributed to the cost of building the road, having given the applicant a sum of 20,000 Lithuanian litai (approximately 5,800 euros (EUR)). It was also apparent from the applicant's testimony that a disagreement between him and L.L.D. regarding the usage of the road had arisen afterwards and, in the view of the court, had most likely prompted L.L.D.'s request to the prosecutor asking for the applicant's title to the road to be annulled. When the NLS officials inspected the situation in a site visit on 16 December 2015, they had found barriers set up on part of that road. A dispute had also arisen previously over barriers which had been set up on the road between 16 and 18 August 2013 so that L.L.D. had been unable to get to her house, and the law-enforcement authorities had been contacted. The court considered that even though the barriers had been removed, as had been established during the inspection on 13 September 2016, there remained a likelihood that in future the use of the disputed road by the persons who had such a right, or by others, for example, disabled persons, could be restricted.

11. There were numerous houses in Lithuania which could be accessed via local roads or roads in common use, and therefore the applicant's argument that the road should be considered an appurtenance to the house was invalid.

12. Still and overall, the faulty situation was the result of changes in legal regulation, inconsistency in regulating certain situations and the unforeseen position taken by the State and the municipality. The situation could have been resolved by taking the property for public use, with fair compensation. However, no such proposals had been made in this case and therefore it was not for the court to decide them.

III. THE DECISION OF THE KLAIPĖDA REGIONAL COURT

13. On 24 March 2017 the Regional Court left the District Court's decision unchanged. It noted that the applicant had built the road, which was estimated to be worth about EUR 43,000, in accordance with the proposal

which had been previously approved by the authorities. The appropriate authorities' consent to the road construction project was sufficient proof that the State's will had been expressed, and to hold otherwise would be overly formalistic.

IV. THE DECISION OF THE SUPREME COURT

14. On 28 February 2018 the Supreme Court quashed the lower courts' decisions in so far as they upheld the applicant's title to the road.

15. The court noted that under Article 4.47 (4) of the Civil Code certain conditions had to be fulfilled in order to acquire rights of ownership by creating a new object. Firstly, the object had to be created without breaching any requirements set out in legislation, acting with proper authorisation, which had not been the case in the applicant's situation. Therefore, rights of ownership over the disputed road could not have been acquired under Article 4.47 (4). Secondly, in accordance with the settled practice of the Supreme Court (ruling no. 3K-3-287-611/2015 of 27 May 2015), a person could be considered to have the status of builder and acquire ownership rights to a newly constructed object only where he or she had a construction permit and legal possession of the relevant land. Those matters were regulated in more detail by the Law on Construction, which aimed to reconcile the rights and interests of builders and other persons: under Article 3 § 2 (1) and (3), the right to be a builder could be exercised by a person who was in possession of the land on which a construction was being erected, or by the landowner or by a person who managed and used the land under other arrangements as set out by the legislation; the same held in cases of reconstruction or repairs. It was primarily the builder's responsibility to see that all the conditions set out in Article 3 § 2 of the Law on Construction were met and to possess all the correct documentation enabling construction rights to be implemented. Proper fulfilment of those conditions would guarantee that agreement would be reached among all persons concerned. It was a prerequisite that the builder would not breach any other person's rights, so that no disputes would arise and no loss would be sustained on that account. Observance of the law guaranteed legal certainty. The Supreme Court also referred to its case-law (ruling no. 3K-3-674/2013 of 17 December 2013) whereby it had held that where a person intended to start construction on a plot which he or she did not own, the owner's consent was needed, and the law did not provide for any exceptions to that rule.

16. Contrary to what had been suggested by the applicant, the KCA representative's approval of the technical project could not be considered to be an approval of the transaction whereby the State's ownership of the land was transferred to the applicant. There was no evidence that the representative of the KCA had had the power to give such consent, rather than simply to approve the technical proposal for the road's construction. Even if the

representative had had such a power, it could not be held that by approving the technical proposal he had concluded a transaction that transferred the State-owned land to the applicant. There was no indication in the documentation that the KCA representative had intended to approve any such transaction. Likewise, no terms of the transfer of the State-owned land for the construction of the road had been proposed with which the representative of the KCA could have agreed. The details of the transaction which the applicant was trying to assert were also unclear: the place and size of the plot of land to be transferred to the applicant's ownership were unspecified, as were the terms of any such transfer. In the absence of any details about the granting of ownership rights to the plot of land, there was no basis to hold that such rights had been obtained by the builder.

17. Accordingly, by not complying with the requirements set out in Article 3 § 2 of the Law on Construction – to be the owner of the plot of land or to manage it on another legal basis – the builder had assumed the risk arising from the uncertainty of what rights he would acquire and the uncertainty that his expectations would be met. In the words of the Supreme Court, before constructing an object on land belonging to another person and forming expectations of obtaining ownership of it, a prudent and diligent person should clarify what rights he would have to the object once it had been constructed. Other persons' rights, including their right to property, could not be breached.

18. Although Mr A.K. and Ms L.K., the original builders of the road, had obtained a construction permit for it, there had been no agreement between them and the owner of the land as to the specific conditions for the use of the State-owned land. The same was true for the applicant, who had completed the process of building the road and had renovated it without having such an agreement. By acting in such a manner, they had assumed the risk arising from the uncertainty of the rights to the road. Having no rights to the land on which the road was situated, the applicant had no legal basis for restricting the landowner's rights to that land or for demanding the grant of any rights to that land on conditions that would suit him. The fact that in 2003 the construction permit had been issued without the agreement of the landowner (the State) led to uncertainty about the applicant's rights to the constructed item, since he was undertaking the construction on land that did not belong to him.

19. The former owners of the applicant's house, Mr A.K. and Ms L.K., who had *de facto* finished building the gravel road, without having an agreement with the State as to any specific rights to the land on which the road was situated, had made no claims and had not attempted to register the road as private property. The applicant, as their successor in title, could not have more rights than them. The applicant, who had bought the house in question in 2007, had also not taken any action to register property rights to the road until 2013.

20. The court referred to the observation of the Seaside Regional Park Directorate and the Klaipėda authorities that the construction of the gravel road had been approved in order not to thwart the original builders' intention of laying and improving a path giving access to the house in question. The court noted that in the territorial planning documents approved by the KCA in 2000, 2005 and 2008, the road was marked as a road in common use. Furthermore, according to a special plan approved by the authorities in 2010, the road was marked as an integral part of the public street network and there was a plan to build a pedestrian path leading from it to the sea.

21. There was no evidence about the physical state of the road before the construction permit had been issued on 27 March 2003, so it would be impossible to order the applicant to demolish the construction and restore the road to its former condition. Moreover, according to the NLS, the mere existence of the road did not damage the public interest as it formed part of a planned network of streets. Therefore, to protect the State's property rights and the public interest it was sufficient to annul the applicant's title to the road.

V. SUBSEQUENT DEVELOPMENTS

22. The Government indicated that on 28 November 2019 the KDM had included the road in question in the list of streets (local roads) of the Klaipėda Region Municipality.

THE COURT'S ASSESSMENT

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

23. The applicant complained under Article 1 of Protocol No. 1 to the Convention that his title to the road had been annulled.

24. The Court finds that there was no dispute between the parties that the applicant had built the road, that his title to the road had been registered in the land register, and that later that title had been annulled by a final court decision (see paragraphs 5 and 21 *in fine* above). These circumstances are sufficient to find that the applicant was deprived of his possessions for the purposes of the second sentence of Article 1 of Protocol No. 1 to the Convention (see *Pyrantienė v. Lithuania*, no. 45092/07, §§ 41 and 42, 12 November 2013).

25. The Supreme Court's decision to annul the applicant's title to the road was based on several provisions of domestic legislation, as well as its case-law (see paragraph 15 above). The Court therefore accepts that the applicant was deprived of his possessions in accordance with the conditions

provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

26. The Court observes in that context that the applicant's title to the road in question was upheld by the first and second-instance courts, which considered that there had been no factual or legal basis for the State or the Klaipėda municipality to take over ownership of the road, and suggested that the authorities' consent to road building was a sufficient basis for upholding the applicant's title (see paragraphs 7 and 13 above). Those findings were overturned by the Supreme Court (see paragraphs 15 and 16 above). The Court reiterates the fundamental principle that it is for the national authorities, particularly the courts, to interpret domestic law (see *Tarvydas v. Lithuania*, no. 36098/19, § 48, 23 November 2021). It is therefore not within the Court's competence to question the Supreme Court's final decision, including its interpretation of the domestic law regarding the builder's need to have a proper legal basis (ownership or management rights over the land) for construction, or how and by what authority the consent to carry out construction on State-owned land should be given, or what the content of such consent or agreement should be (see paragraphs 15 and 16 above).

27. The annulment of the title was in accordance with the public interest, since it involved bringing the ownership of the property into conformity with the domestic legislation on the ownership of a constructed item (namely the road) which fell within the seaside belt zone and which could be used by others (see paragraph 9 above; compare also, *mutatis mutandis*, *Povilonis v. Lithuania* (dec.), no. 81624/17, § 28, 15 March 2022). The debate therefore centres on the proportionality of that interference. The requisite balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights will be upset if the person concerned has had to bear "an individual and excessive burden" (see, in particular, *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98).

28. The present case concerns rules applicable to town planning and environmental protection, areas in which States enjoy a wide margin of appreciation. Restrictions on property rights may be allowed on condition, naturally, that a fair balance is maintained between the individual and collective interests concerned (see *Hamer v. Belgium*, no. 21861/03, §§ 78-80, ECHR 2007-V (extracts); see also *Beinarovič and Others v. Lithuania*, nos. 70520/10 and 2 others, §§ 138-42, 12 June 2018).

29. In assessing the proportionality of the interference the Court firstly refers to the District Court's findings that the civil proceedings which led to the annulment of the applicant's title to the road had been prompted not by the authorities' own initiative but rather by a request to defend the public interest lodged by the applicant's neighbour, who had in fact previously contributed to building the road (see paragraph 6 above), but who in 2013 had been prevented from using the road when the applicant installed barriers (see

paragraph 10 above). Although the District Court ruled in favour of the applicant, it observed not only that the barriers had been put up again in 2015 but also that even though they had been removed in 2016, it remained possible that the use of the road by others, including disabled persons, could be restricted in future (see paragraph 10 above). In the Court's view, such findings of the District Court weighed heavily towards the public interest in the road being State property. Indeed, the fact that the road would unavoidably become public when the public infrastructure of the Seaside Regional Park was developed was noted by the District Court and the Supreme Court (see paragraphs 9 and 20 above), and this is what occurred in 2019 (see paragraph 22 above).

30. Furthermore, as noted by the Supreme Court, the initial documents regarding the construction of the road had been prepared on the basis that the road would allow the then owners of the applicant's house improved access to the house (see paragraph 20 above). As pointed out by the Supreme Court, unlike the applicant, the individuals from whom the applicant had acquired his house had never sought to assert ownership rights to the road in question, and the applicant could not have more rights than them (see paragraph 19 above). The Court acknowledges the domestic courts' arguments as to a certain lack of oversight on the part of the State and municipal authorities, which arose from their failure to foresee the present situation when issuing the construction permit (see paragraphs 8, 12 and 13 above). Be that as it may, the good-governance principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence (see *Beinarovič and Others*, cited above, § 140). Moreover, as pointed out by the Supreme Court, neither the original owners of the house nor the applicant had exercised the standard of care of a prudent and diligent owner, and they had assumed certain risks arising from the uncertainty of their rights to the road, having acted without having a clear agreement about those rights (see paragraphs 17 and 18 above). Furthermore, as early as 2000 the road was marked out as being in common use, and a pedestrian path leading from it to the sea was planned (see paragraph 20 above). In addition, even though the applicant had been the owner of the house in question since 2007, it was only in January 2013 that he had re-registered the construction permit in his name and in August 2013 that he had completed the construction works (see paragraph 5 above). It was within that period that the applicant's neighbour had complained to the authorities, which reacted promptly in bringing court proceedings for annulment of the applicant's title (see paragraph 6 above). The fact that the applicant had not been the owner of the land on which the road was built and that the authorities had reacted quickly given the overall time frame of this case should not have given the applicant the impression that proceedings could not be brought against him (see, *mutatis mutandis*, *Hamer*, cited above, § 85).

31. The Court also accepts the Government's arguments regarding the limited burden borne by the applicant, since he can still use the road without any hindrance and he does not need to repair or maintain it as this is now the municipality's responsibility. The applicant's case is therefore different from those where the courts have ordered the demolition of unlawfully constructed buildings (contrast, in respect of the facts, also, *mutatis mutandis*, *Povilonis*, cited above, §§ 33-37). Furthermore, the Court does not overlook the fact that the disputed road had been constructed partly at the expense of the applicant's neighbour (see paragraph 10 above). Lastly, as has been suggested by the Government and the District Court (see paragraph 12 *in fine* above), and as also transpires from the domestic case-law (see, *mutatis mutandis*, *Povilonis*, cited above, §§ 39-41), it would appear that the applicant remains free to start court proceedings for damages and to seek compensation for the money invested in the construction of the road (see *Beinarovič and Others*, cited above, § 142).

32. All the above leads the Court to conclude that the correction of errors by the annulment of the applicant's title to the road in question has not created disproportionate new wrongs (compare and contrast *Beinarovič and Others*, cited above, § 145, and *Bērziņš and Others v. Latvia*, no. 73105/12, § 107, 21 September 2021). It follows that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 March 2024.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President