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

SECOND SECTION

DECISION

Application no. 81624/17
Žilvinas POVILONIS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 7 December 2021 and 15 March 2022 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Marko Bošnjak,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Saadet Yüksel, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 November 2017,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Žilvinas Povilonis, is a Lithuanian national, who was born in 1961 and lives in Kaunas. He was represented by Ms E. Sutkienė, a lawyer practising in Vilnius.

2. The Government were represented by their Agents, Ms L. Urbaitė and Ms K. Bubnytė-Širmenė.

A. The circumstances of the case

1. Background to the case

3. In October 2009 R.B. bought, from private individuals, a boat rental facility (*valčių nuomos punktas*) in the resort town of Druskininkai. The building was situated on a State-owned plot of land of 0.2130 hectares, which was situated within the *Vijūnėlė* park territory (see paragraph 20 below).

The boat rental facility burned down in October 2010.

4. By an agreement of 17 February 2010 between R.B. and the Druskininkai municipal authorities, the aforementioned plot of land was leased to R.B., without competitive bidding. The agreement specified that the plot of land was designated as recreational land, for construction of long-term (immovable) recreational buildings. It was also noted that the possibility of changing the designation of the use of the plot of land was contingent upon the requirements set out in the general plan of the municipality or the special plan for tourism and recreational areas.

5. On 4 October 2011 the director of the Druskininkai municipal administration issued decision no. V35-632 approving a detailed plan ("the detailed plan"), which merged the plot of 0.2130 hectares with another State-owned plot of land. The detailed plan also changed the designation of the use of the newly formed plot of land from that of recreational land to residential land (for building of a residential house).

6. On 23 March 2012 the National Land Service, represented by the authorities in Druskininkai, leased the newly formed plot of land to R.B. for a term of eighteen years. The land lease agreement specified that the plot of land could be used as common-use land, residential land or recreational land, and also that a residential house could be built upon it.

7. On 15 May 2012 the Druskininkai municipal administration issued R.B. with a permit to demolish the boat rental facility.

8. On 17 December 2013 the Druskininkai municipal administration issued R.B. with a building permit for a residential house on the plot of land in question.

Afterwards, R.B. started building the residential house on that land.

By that time, there already was much public and media attention regarding the envisaged construction (see also paragraph 11 below).

9. On 25 April 2014 the applicant and his wife bought the unfinished residential house from R.B. The house was situated on the plot of land which belonged to the State.

On 28 May 2014 the applicant and his wife leased the plot of land from the State, replacing the prior tenant of that plot, namely R.B. (see paragraph 6 above).

10. Acting on the basis of the applicant's request, on 4 June 2014 the Druskininkai municipal administration issued him with a building permit to build the residential house, and he continued its construction.

2. Civil proceedings for annulment of administrative acts permitting construction and civil proceedings for demolition of house

11. In January 2014 the public prosecutor's office received a complaint from a non-governmental association, asking it to protect the public interest and to file an application with the court regarding the unlawful construction of the building at issue. The prosecutor asked the National Land Service and Druskininkai municipality for information on the matter.

12. On 3 June 2014 the prosecutor started court proceedings seeking the annulment, as breaching the public interest – protection of the environment – of the detailed plan of 4 October 2011 (see paragraph 5 above), and of the subsequently issued building permits (see paragraphs 8 and 10 above).

13. R.B. had been notified of those court proceedings on 4 June 2014. On 10 November 2014 the prosecutor's request for interim protective measures – a prohibition on R.B. constructing the building at issue – was granted by a court. Having learned that R.B. had sold the building to the applicant (see paragraph 9 above), on 1 December 2014 the prosecutor asked the court for those measures to continue to apply in respect of the applicant. A copy of the prosecutor's request was sent to the applicant, and the court granted the prosecutor's request on 3 December 2014. The Government specified that "at the time the interim protective measures were granted" the construction at issue was 36 per cent completed.

14. In their observations of 27 March 2019 the Government stated that according to the data from the Real Estate Register, as established on 25 May 2015, the construction of the building was 94 per cent completed.

(a) Vilnius City District Court's decision of 19 October 2015

15. On 19 October 2015 the Vilnius City District Court dismissed the prosecutor's application for annulment (see paragraph 12 above).

16. The court held that the law had not been breached during the process of merging the plots of land and preparing the detailed plan. It rejected the prosecutor's argument that the disputed plot of land fell within the resort protection zone, where construction of residential buildings was forbidden. The first-instance court also noted that, by Government Resolution no. 1025 of 23 September 2015, chapter XVI of Government Resolution no. 343 of 12 May 1992 had been annulled, a fact which the court saw as "an additional ground" (*papildomas motyvas*) to reject the prosecutor's application (see also paragraphs 64 and 65 below).

17. The prosecutor appealed.

(b) Vilnius Regional Court's decision of 23 December 2016

18. On 23 December 2016 the Vilnius Regional Court quashed the first-instance court's decision.

19. The court firstly quashed, as being in breach of higher-value legal acts and also breaching imperative norms of the law, the decision of 4 October 2011 of the director of the Druskininkai municipal administration, by which two plots of land had been joined and the detailed plan approved (see paragraph 5 above). The appellate court pointed out that the detailed plan's specifications (*detaliojo plano sprendiniai*) should not contradict the requirements laid down for the use of land by the Government Resolutions or general plans. In the general plan of the Druskininkai municipality's territory, the disputed plot of land fell within an area marked as "public space – passive recreation". Moreover, from the time when the disputed plot of land was formed and registered in the Real Estate Register, it fell under special use conditions – as a resort protection zone. This finding was supported by, *inter alia*, an extract of 28 January 2003 from the Real Estate Register, a decision of 27 January 2003 of the director of the Alytus region administration, and also a document issued by the Druskininkai municipality on 31 December 2002.

20. The court held that, when adopting the unlawful decision approving the detailed plan, the Druskininkai municipality had acted in breach of the public interest linked to the protection of the environment. At the time of its adoption, the disputed detailed plan had not satisfied, and to date still did not satisfy, the special condition for the use of land, namely compliance with the restrictions imposed on a resort protection zone, as applicable to the *Vijūnėlė* park territory, within which the disputed plot of land fell. Thus, there was reason to believe that the detailed plan had been prepared with a view to avoiding the restrictions established by law. However legal consequences created by abuse of the law could not be protected.

21. Having annulled the decisions on the basis of which the disputed building had been erected, the court also held that the sale agreement of 25 April 2014 for those buildings (see paragraph 9 above) was null and void *ab initio*. Consequently, the building permit issued to the applicant on 4 June 2014 (see paragraph 10 above) was also rescinded.

22. Lastly, the court held that, as regards the principles of proportionality and protection of legitimate expectations, in the present case the breached public interest outweighed the interest of the builders and of the acquiring parties in obtaining property rights in respect of the disputed building, which could not give rise to property rights since it had been built in breach of the law.

The court obliged the applicant and his wife to demolish the building within six months.

23. R.B., the Druskininkai municipality and the applicant submitted appeals on points of law.

(c) Supreme Court's ruling of 22 June 2017

24. On 22 June 2017 the Supreme Court agreed with the appellate court's findings.

(i) As to the lawfulness of the detailed plan (see paragraph 5 above)

25. The Supreme Court noted that the Vilnius Regional Court had reached its decision based on the entirety of the evidence relevant to the case, including a number of decisions of the Druskininkai municipality. The area in question had been designated for the purpose of running a boat rental facility, and it had indeed been such a facility which R.B. had acquired in October 2009 (see paragraph 3 above). Even though in October 2010 the boat rental facility had burned down, a year later a detailed plan had been approved allowing residential construction within the area in question (see paragraph 5 above), and after one more year, at R.B.'s request, a contract to lease State-owned land had been concluded with him (see paragraph 6 above). This was all despite the fact that the purpose intended for the use of that plot of land – a boat rental facility – as it had been designated in the Real Estate Register, no longer existed. The Supreme Court thus held that, when concluding the land lease agreement and building the residential house, R.B. "had acted against the principles of justice and honesty", and had therefore assumed the risk of consequences which could arise for having ignored imperative legal norms. Accordingly, under the principle of *ex injuria jus non oritur*, his expectation to use the plot of land as a priority could not be upheld.

26. The Supreme Court also held that one of the defendants in that case – the Druskininkai municipal administration – had not adduced proper arguments to dispel doubts as to why it had been necessary and lawful to merge the plot of land leased by R.B. with another plot of land managed by the Druskininkai municipality, and subsequently to change the designation of that newly formed plot of land. Accordingly, the conclusion reached by the Vilnius Regional Court, that merging those two plots of land and changes in the regulation regarding the designation of that land had been a precondition for allowing residential construction on that land, which had previously been forbidden, had been correct. Merging two plots of land could not be used as a means of circumventing applicable restrictions. The Supreme Court also found that in that manner "only the private interest of R.B. had been satisfied". Even though the Druskininkai municipal administration had argued that the principle of good public administration necessitated that a decision to lease a plot of land to its user be adopted, such an argument could only be upheld if such decision were compatible with the interests of those living in that municipality; a balance had to be struck between the personal interests of inhabitants and the interests of the community. The Supreme Court noted that, before approval of the detailed plan, the plot in question which had been leased for use by R.B., as the owner of the boat rental facility,

had been earmarked as a recreational area, to be used for long-term (immovable) recreational buildings. The amendment in the detailed plan changing the designated purpose of the use of the recreational area to another – residential use (construction of residential homes) – had not been permitted by Article 12 § 6 of the Law on Territorial Planning.

27. The Supreme Court also established that the detailed plan in question contradicted the specifications of a higher-value general plan, which had designated the area in question as "public space – passive recreation area" – and specifically the areas which were "most valuable aesthetically", as well as "greenery for recreational and common use" of Druskininkai. Furthermore, under the special plan of the Druskininkai municipality for tourism and recreational areas the disputed land was within the non-urbanisable area for recreational use, and it had special restrictions for environmental protection – zone of surface water protection, visual protection of landscape, and protection of a resort. It followed from the above that the challenged specifications of the detailed plan had been formed not only without taking into account the relevant planning specifications, but also in breach of Article 26 § 3 of the Law on Territorial Planning, which had "imperatively prohibited such conflict". The Supreme Court underscored that the requirements set out in the aforementioned legal provisions had been not formal, but corresponded to the State institutions' essential obligation to perform their functions adhering to the Constitution and the law, and to act in the interests of the nation and the State.

28. Regarding the special conditions applicable to the use of the plot of land in question, the Supreme Court also referred to the Constitutional Court's case-law, pursuant to which rational use and protection of land, forests and water constituted a matter of public interest protected by the Constitution (the Constitutional Court's ruling of 13 May 2005; see also *Tumeliai v. Lithuania*, no. 25545/14, § 52, 9 January 2018, and *Beinarovič and Others v. Lithuania*, nos. 70520/10 and 2 others, § 100, 12 June 2018), and that the State by law could adopt legal regulation to limit the use of individual objects of the natural environment (natural resources) (the Constitutional Court's rulings of 6 September 2007 and 4 July 2008).

29. The Supreme Court pointed out that under the existing common practice any restrictions on the use of land, including the resort protection zone, as a special condition for the use of the disputed plot of land, were set out in the Real Estate Register. Given that the information about the restrictions, as set out in the Register, was in the public domain, no person could claim that he or she had not been aware of them.

30. The Supreme Court also noted that "the [appellate] court had established" that the Druskininkai municipality had been aware not only that the resort protection zone applied to the disputed plot of land, but also that the restrictions listed in Government Resolution no. 343 of 12 May 1992 (see paragraph 64 below) were applicable to that plot. Pursuant to that Resolution,

construction in that zone was forbidden, unless it concerned works related to the purpose and development of the resort or its infrastructure. Building an individual house for private use could not be regarded as construction of resort infrastructure.

31. The Supreme Court also held that the appellate court had been correct in annulling the decision of 4 October 2011, by which the detailed plan had been approved (see paragraph 5 above).

(ii) As to the validity of Government Resolution no. 343

32. The Supreme Court also had regard to Government Resolution no. 438 of 2 May 2016, which annulled its Resolution no. 1025 of 23 September 2015, to the *travaux préparatoires* in respect of Resolution no. 438, and also to the Constitutional Court's ruling of 8 July 2016, which held that Resolution no. 1025 had been removed from Lithuania's legal system (see paragraphs 65 and 67 below). Against that legal background, and referring to the principle of legal clarity, the Supreme Court held that Government Resolution no. 1025 had ceased to exist, which also meant that its result – annulment of chapter XVI of Government Resolution no. 343 of 12 May 1992 – was no longer valid. This also meant that the State institutions could again apply the rules set out in chapter XVI in order to guarantee genuine defence of protected areas.

(iii) As to the elimination of the consequences of illegal construction

33. Referring to its constant case-law, the Supreme Court noted that the consequences of illegal construction should be eliminated under the rules set out in the Civil Code, the Law on Construction and the Law on State Supervision of Territorial Planning and Construction. Those legal provisions allowed demolition of unlawfully constructed buildings and were in compliance with Article 23 of the Constitution, which protects the right to property, since the latter provision also meant that the owner could perform with his property all actions except for those prohibited by law, and use his or her property in any way which did not breach the rights of others. Under the Constitution, the right to property was not absolute.

34. In the applicant's case, once the detailed plan, as approved in breach of imperative legal norms, had been annulled, it had been necessary to follow the rules set out in the general plan and those set out in the special plan for tourism and recreational areas. None of those documents, nor Government Resolution no. 343 of 12 May 1992 (see paragraph 64 below), permitted residential construction in the area in question. On the contrary, the disputed area had been designated as a recreational area which should not be urbanised.

35. The Supreme Court also underscored that the restrictions had not been goals in themselves (*nėra savitiksliai*): they were based on the nature of the plot of land, suitable for recreational purposes and therefore important for the

resort, and on the need to guarantee the rational and purposeful use of such an area. The extent of land suitable for recreation within the city was limited, thus such land could not be used in a manner contrary to its purpose. Should a residential house be erected on recreational land, with a plot of land belonging to the State serving to make use of that house, the homogeneity of the entire area would be distorted, since part of the area designated for recreation would fall outside the community's reach. It followed that there was no possibility of eliminating the consequences of the unlawful construction without demolishing the building.

36. The Supreme Court further pointed out that demolition of a building, as a means of eliminating illegal construction, had been acknowledged as a proportionate measure by the Court (it referred to *Hamer v. Belgium*, no. 21861/03, ECHR 2007-V (extracts)), where it was held that economic (financial) imperatives and even certain fundamental rights, such as the right to property, could not override the environmental protection imperatives and the need to guarantee the protection of the public interest, especially in cases where the State had established a special protection regime for construction.

37. The obligation to demolish the building fell upon the person who had erected it, or, if the property rights had been transferred, upon its owner. Under the Supreme Court's case-law, this was applicable even in situations where the owner had not himself performed any illegal actions and where it was not his fault that the building permit had been annulled. In such a situation, the owner of the building would be entitled to bring separate proceedings for damages and claim them back from the liable party.

3. Circumstances related to the adoption of the Government Resolution no. 1025

38. While the aforementioned litigation (see paragraphs 11-17 above) was pending, on 23 September 2015 the Government passed Resolution no. 1025, a fact which caused much public and media attention, also because of the revealed telephone conversations between R.M. and the members of Government, so that that Resolution be adopted (see also paragraph 51 below). As a result, the question of the constitutionality of that Resolution was later referred to the Constitutional Court by the President of the Republic (for details see paragraphs 65-68 below).

4. Civil proceedings for damages

39. On 31 October 2017 the applicant started court proceedings against the actions of the State and the Druskininkai municipal authorities, resulting in the domestic courts' decisions to demolish the house at issue, "which he had every intention of using". The applicant argued that he had bought the buildings and obtained the building permit, but as a result of the Vilnius Regional Court's decision of 23 December 2016 (see paragraphs 18-22

above) was obliged to demolish his property. The applicant considered that the State and municipal authorities were liable for the pecuniary and non-pecuniary damage caused to him, since those institutions had pursued procedures of detailed planning and lease of State-owned land.

40. By a decision of 28 October 2019 the Regional Administrative Court of Regions, Kaunas Chamber (the "RACRKC") recounted the time-line and the decisions taken in the proceedings related to the demolition of the building at issue – starting with the Druskininkai municipality's decision of 4 October 2011 to approve the detailed plan (see paragraph 5 above) and until the Supreme Court's ruling of 12 July 2019 (see paragraphs 46 and 47 below), rejecting the applicant's request to change the manner of enforcement of the Vilnius Regional Court's decision of 23 December 2016 (see paragraphs 18-22 above). The administrative court pointed out that, under Article 6.271 § 1 of the Civil Code, for the State's liability to arise it was sufficient to establish that its officials had not acted as they should have done under the law. The court concluded that "having regard to the factual circumstances of the case and the legal regulation applicable to the situation of the dispute, by unlawful acts of the State authorities damage had been done to the [applicant]".

41. That being so, the administrative court also observed that, at that time, the house had not yet been demolished. On that basis, the court rejected the claim for pecuniary and non-pecuniary damage, until the demolition had taken place: at that point, when the damage had materialised and had thus become clear, the applicant would retain the right to lodge a claim with a court.

42. The RACRKC decision of 28 October 2019 became final, as no appeal had been lodged against it.

5. Civil proceedings for change in enforcement manner

43. In March 2018 the applicant brought a new set of court proceedings, asking that the enforcement procedure established in the court decision of 23 December 2016 (see paragraphs 18-22 above) be changed, namely that instead of demolishing the house he should be permitted to rebuild it in order for it to comply with the requirements for the recreational area.

44. On 29 June 2018 the Vilnius City District Court, and on 30 October 2018 the Vilnius Regional Court, rejected the applicant's request. The courts pointed out that on 22 June 2017 the Supreme Court had already explained in detail why the only way of eliminating the consequences of the illegal construction was to demolish the building (see paragraphs 33-37 above). Likewise, as noted by the regional court, "the criteria related to the honesty of the persons involved in the construction process" (*kriterijai, susiję su statybos proceso dalyvių sąžiningumu*), together with the public need to save that land for passive recreational use, had already been assessed.

45. The applicant lodged an appeal on points of law. An appeal on points of law was also lodged by the Druskininkai municipal administration, which considered that the building at issue could be rebuilt as a public-use building, which in its view would comply with the requirements of the law.

46. In a final ruling of 12 July 2019, the enlarged chamber of seven judges of the Supreme Court rejected the applicant's requests.

47. The Supreme Court held that the question whether the execution of the demolition order could be suspended had already been examined and decided during the first set of civil proceedings, wherein the Supreme Court had explained how the consequences of unlawful construction had to be eliminated (see paragraphs 33-37 above). The Supreme Court's evaluation of all possible ways to rectify the outcome of the unlawful construction had been comprehensive, and that court had not considered that any other option to rectify the situation, such as making the constructed building lawful (*įteisinti*), had been a possibility. Accordingly, the relevant circumstances had already been established and on that basis the conclusion had been reached that demolition was the only solution to rectify the consequences of the unlawful construction.

6. The demolition of the building at issue

48. On 24 August 2020 the applicant wrote to the Court that the building in question had been demolished, as commissioned by him. The applicant stated that in that connection he had sustained pecuniary loss in the sum of EUR 599,613 for expenses (EUR 456,722 for the construction of the house and EUR 142,891 for the demolition). He provided the Court with some of the documents to substantiate those claims.

49. According to the Government's letter of 20 October 2020, at the date of the latest information possessed by the Government at that time – 2 October 2020 –, after the building was demolished the applicant had not brought any fresh court proceedings seeking compensation for damage.

7. Related criminal proceedings and the parties' comments regarding that information

50. As stated by the Government in their letter of 3 December 2019, on 20 February 2019 suspicions of committing criminal acts under Article 226 § 3 (bribery) and 227 § 3 (trading in influence) of the Criminal Code had been notified to the applicant as well as other persons allegedly acting in complicity to seek a favourable outcome in the proceedings concerning a change in the enforcement of the Vilnius Regional Court's decision of 23 December 2016 (see paragraphs 43-47 above). The pre-trial investigation materials, provided to the Court by the Government, reveal the following.

51. On 20 February 2019, when interviewed as a suspect at the office of the Special Investigation Service and in the presence of his lawyer, the applicant testified having known R.M., the mayor of Druskininkai, for some ten years; they had been family friends. In the spring of 2014 R.M. had told the applicant that he wished to acquire the house in question, but that at that time R.M. had no financial means. They agreed that the applicant would buy the house, and R.M. would later sell his own house and buy the house in question from the applicant. The interior fitting of the building at issue had been carried out to satisfy R.M.'s choices. In the applicant's words, "it had been relevant (*buvo aktualu*) for the applicant to re-sell the house to R.M., and for R.M. it had been relevant (*buvo aktualu*) to fit out the house according to his own wishes". Both the applicant and R.M. had the keys of the house.

The applicant further testified that, in July 2014, on R.M.'s request, the applicant and his wife had signed a will whereby, in case of their death, the building at issue would be transferred to a third person, L.P., chosen by R.M. The applicant gave copies of the will to R.M. and to L.P.

52. On 21 February 2019, when interviewed as a suspect before the pre-trial investigating judge and in the presence of his lawyer, the applicant testified that he had acquired the house in question in 2014 and had started reconstructing it, but, given that the court had imposed protective measures, he would proceed only with small interior works. The applicant reiterated his previous testimony that it had been R.M.'s wish to acquire the house in question. As at that time R.M. had had no means, they had decided that the applicant would buy the house and R.M. would afterwards buy the house from the applicant. In the applicant's words, such had been "an honourable agreement between the two men" (*buvo garbingas susitarimas tarp dviejų vyrų*), without any paperwork being drawn up. R.M. would instruct the applicant as to what equipment, such as windows and the roof, should be acquired and installed in the house; those elements would be chosen by R.M. and the applicant would only pay the invoices. The applicant would meet R.M. once or twice a month.

The applicant also admitted that during the domestic court proceedings he had been in continuous contact with A.K., who had represented the Druskininkai municipality in the litigation, and that A.K. would inform the applicant about the course of that litigation.

Lastly, the applicant reiterated his testimony (see also paragraph 51 above) that he, upon R.M.'s request, had drawn up the will so that the house in question would be inherited by a certain L.P., whom the applicant in his lifetime had seen on three occasions only, and had not known except for the fact that L.P. lived in Druskininkai.

53. On 5 June 2019, when interviewed as a suspect at the Special Investigation Service and in the presence of his lawyer, the applicant added that he had become acquainted with A.K., *via* R.M., after the applicant had bought the building at issue. Given that the defendants in the civil

proceedings had been the applicant and the Druskininkai municipality (see paragraphs 23 and 26 above), R.M. had instructed the applicant to communicate with A.K. The applicant and R.M. had agreed to share legal expenses of that litigation by half; they had also agreed that the applicant would include part of the legal costs he paid in the price of the building at issue. The applicant and A.K. would communicate frequently; A.K. kept the applicant informed about the litigation. A.K. also chose the law firms that the applicant would sign contracts with to represent the applicant, but the applicant had not communicated with his own lawyers.

The applicant also testified that, after the court decisions ordering that the house should be demolished (see paragraphs 22 and 37 above) he would ask R.M. when the latter intended to buy the house; R.M. would reply that it was necessary to wait for the outcome of court proceedings regarding execution of the court decisions ordering demolition. In the applicant's words, A.K. and R.M. sought that the house in question would not be demolished. The applicant thought that it had been clutching at straws when court proceedings to change the final court decision to demolish the house, *via* new court proceedings aiming to change of designation of the building, had been initiated.

In the applicant's words, "overall, it had been R.M. who had come up with the idea to buy the house" (*bendrai namo pirkimą sugalvojo R.M.*). For his part, the applicant had had disposable means and had invested in that house to help a friend. The applicant stated that he had not taken part in any "operations" against the Lithuanian institutions: there had been no "logic or arguments" for him to give a bribe for the house that he intended to sell.

54. On 9 June 2021 the Court asked the Government to inform it, by 18 June 2021, about the status of the criminal proceedings referred to in their letter of 3 December 2019 (see paragraph 50 above). At the Government's request, that time-limit was extended to 30 June 2021 (for the Government's response, see paragraphs 55-61 below).

On 9 June 2021 the Court also asked the applicant if he wished to make any comments, and, if so, to submit them by 18 June 2021, regarding the content of the documents the Government had submitted to the Court on 3 December 2019, a copy of those documents having been sent to the applicant on 12 December 2019. The applicant did not respond, as the Court requested.

(a) Information received from the Government

55. The Government responded on 29 June 2021, and on 2 July 2021 a copy of their letter was sent to the applicant for information.

56. The Government first recalled that, after the building at issue was demolished and on condition the applicant provided the domestic courts with sufficient evidence as regards damages sustained, the issue of damages could be examined on the merits by the domestic courts (see paragraphs 39-42

above). On the basis of the information they possessed on 28 June 2021, the Government considered that the applicant had not instituted any court proceedings seeking compensation for damages.

57. Regarding the pre-trial investigation at issue (see paragraph 50 above), it was ongoing due to its significant volume: more than a hundred alleged criminal acts were being investigated, and there were more than thirty suspects. The applicant's procedural status remained that of a suspect regarding the criminal acts of bribery and trading in influence, committed in an organised group.

58. The Government provided the Court with the record of the applicant's interview of 19 November 2019 at the Special Investigation Service, in the capacity of a suspect, and in the presence of his lawyer. As pointed out by the Government and as the record reads, the applicant reiterated having been a friend of R.M., who had asked the applicant to purchase the building in question for the purpose of later reselling that building to R.M., although no written contract had ever been drawn up for the purpose. The applicant also repeated his earlier position that the interior fitting of the building had been carried out to meet the requirements put forward by R.M., for the applicant had been one hundred per cent sure that R.M. would buy the house.

59. During the same interview the applicant confirmed his earlier statements about the will (see paragraphs 51 and 52 above). A copy of that will, provided by the Government, reads that it was signed by the applicant at the notary's office on 8 July 2014. The Government wished to point out that that was "just two months and thirteen days after the applicant had formally purchased the unfinished building in issue".

60. The Government also referred to a record of the testimony given by a witness on 12 December 2019, who stated that the plot of land and the boat rental facility (see paragraph 3 above) had been her and her former husband's property. To the question whether she had been familiar with the buyers of that property, the witness responded that her former husband had agreed to enter into a sham agreement (*fiktyvi sutartis*), so that R.M. would acquire the boat rental facility, but that other persons would be named as purchasers, seeking to keep the name and surname of R.M. secret (*nors objektą Druskininkuose pirks R.M., tačiau realiai bus kiti pirkėjai, tam kad nesimatytų jo vardo, pavardės*).

61. By a letter of 28 October 2021 the Government informed the Court that both the applicant and R.M. were suspects in the aforementioned criminal proceedings (see paragraph 50 above). The Government wished to clarify that they had provided the materials from the said pre-trial investigation not for the purpose of establishing the applicant's criminal responsibility, which was the domain of the competent domestic authorities, but for the purpose of furnishing the Court with the facts which were relevant for the examination of the present case before the Court.

(b) Information received from the applicant

62. On 6 October 2021 the Court received the applicant's letter of 22 September 2021, wherein "he gave explanations regarding the arguments set out in the Government's letter of 29 July 2021" (see paragraphs 55-60 above). As to the acquisition of the house in question, the applicant claimed he had entered into a lawful agreement, based on which he had become the owner of the house, the construction of which had already been started, and then had lawfully carried out its construction, in accordance with the permits previously issued by the authorities in 2012-2014. He had been the lawful owner of the house, the sale transaction having been certified by a notary and the ownership fact having been entered in the Real Estate Register. The applicant mentioned that after the acquisition of the house he had asked for R.M.'s assistance in coordinating the construction. However, this had no bearing on the lawfulness of the detailed plan. In the applicant's words, legal acts did not give a right to mayors, such as R.M., to take part in territorial planning procedures, or those for delivery of building permits. Any accusations of bad faith, directed towards the applicant by the Government, were therefore groundless.

63. As to the pre-trial investigation materials, concerning a possible agreement between the applicant and R.M., referred to by the Government, those were employed by them only to form a negative opinion about the applicant. Those materials in no way substantiated that the applicant had influenced the processes of territorial planning or delivery of building permits. Besides, the pre-trial investigation referred to by the Government had been ongoing for more than two years, yet no offence had been identified. The applicant thus laid emphasis on the principle of the presumption of innocence, and saw the Government's actions, in what he considered as selective use of the pre-trial investigation materials, as potentially breaching that principle and portraying the applicant as a criminal, notwithstanding the fact that no charges had been brought against him, nor had he been convicted.

B. Relevant domestic law and practice

64. Government Resolution no. 343 of 12 May 1992, on the approval of special conditions of use for land and forest (*Dėl specialiųjų žemės ir miško naudojimo sąlygų patvirtinimo*), provided for detailed restrictions entailing that construction, unrelated to the usage of resort zones in accordance with their purpose, was forbidden in those zones (chapter XVI of the Resolution).

65. Government Resolution no. 1025, of 23 September 2015, which entered into force on 30 September 2015, provided:

> "The Government ... decides to change the special conditions of use for land and forests, as approved by Resolution no. 343 of the Government ... of 12 May 1992 'On the approval of special conditions of use for land and forests', and to annul its chapter XVI (*pripažinti netekusiu galios*)."

66. Government Resolution no. 438 of 2 May 2016, which entered into force on 5 May 2016, provided:

> "The Government ... decides to annul Resolution no. 1025 of the Government ... of 23 September 2015 ..."

67. In a ruling of 8 July 2016 the Constitutional Court held that Government Resolution no. 438 of 2 May 2016 had been adopted to "dispel doubts as to the legitimacy" of Government Resolution no. 1025.

The Constitutional Court pointed out that the President of the Republic had asked it to review the constitutionality of Government Resolution no. 1025. As it transpired from the *travaux préparatoires* for Government Resolution no. 438, the Government likewise had had certain doubts regarding the lawfulness of its Resolution no. 1025, and therefore the Government had adopted Resolution no. 438, annulling Resolution no. 1025. That being so, and "given that the challenged legal act (Resolution no. 1025) had been removed from the legal system, to examine the compatibility of the Resolution no. 1025 with the Constitution or legislation would be a goal in itself" (*kadangi ginčijamas teisės aktas yra pašalintas iš teisės sistemos, jo atitikties Konstitucijai ir įstatymams tyrimas pagal priėmimo tvarką būtų savitikslis*).

68. On 14 March 2018 the Government requested the Constitutional Court to interpret whether the Constitutional Court's ruling of 8 July 2016 meant that, as transpired from the Supreme Court's ruling of 22 June 2017 (compare paragraph 32 above), given that Government Resolution no. 1025 had ceased to exist, the validity of the rules set out in chapter XVI of Government Resolution no. 343 of 12 May 1992 had been automatically restored.

By the decision of 17 April 2018 the Constitutional Court refused the Government's request. It stated that the legal consequences of the annulment of the Government Resolution no. 1025 of 23 September 2015 had not been decided upon in its ruling of 8 July 2016 (see paragraph 67 above); the applicability of chapter XVI of the Government Resolution no. 343 of 12 May 1992, after the adoption of the Government Resolution no. 438 of 2 May 2016, had not been examined in that ruling either.

69. The Supreme Court held that a person who had erected a building in breach of the requirements of domestic law was obliged to demolish that building and to tidy up the construction site. This obligation had to be fulfilled even if that person had not acted unlawfully and was not responsible for the annulment of the building permit (the Supreme Court's ruling of 13 November 2014, no. 3K-3-499/2014). In such a case, the damage sustained from the demolition of the building could be the subject of separate proceedings (the Supreme Court's ruling of 3 April 2013, no. 3K-3-196/2013).

COMPLAINT

70. The applicant complained that he had been deprived of the right to the peaceful enjoyment of possessions, due to demolition of the house in question, at his expense.

THE LAW

71. The applicant relied on 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..."

A. The parties' submissions

1. The applicant

(a) The submissions of 30 November 2017 and 31 July 2019

72. In his application of 30 November 2017, the applicant stated that he had acquired the house at issue on 25 April 2014 as an honest buyer. Referring to the domestic court's decisions to the effect that the house should be demolished within six months (see paragraph 22 above), the applicant found himself in a situation where "in the very near future he would lose all possibilities to use the acquired house" (*jau artimiausiu metu neteks bet kokios galimybės naudotis įsigytu namu*). Referring to Article 1 of Protocol No. 1 to the Convention, the applicant complained that after the State had annulled the permits for the construction of the house in question, "the applicant's right and expectation to use his property without hindrance had clearly been breached" (*pareiškėjo teisė bei lūkestis netrukdomai naudotis savo nuosavybe neabejotinai buvo pažeisti*).

73. In his observations of 31 July 2019 the applicant reiterated that, as he had bought an already registered construction in progress, and as R.B. had been a lawful owner of that property for a certain period of time, the applicant had therefore had a possession and "a legitimate expectation of using [it]". It was noteworthy that State and municipal institutions had taken part in the planning, the issuance of the construction permits, the sale of the house to the applicant and other connected transactions. The applicant had not taken part either in the planning procedures or in the process of issuing the construction permits. Instead, he had acquired the house as a construction in progress, with all necessary permits and approvals by the State authorities. In his view, the

performance of his duties as the buyer had been sufficient and confirmed the fulfilment of his duty of care.

74. The applicant maintained that any accusations by the Government as to him being a bad faith buyer of the house in question were "absurd".

75. He considered that construction of a residential house on the disputed plot of land had been possible, and asserted that other houses had been erected in the same resort protection zone. In that connection he also challenged the interpretation and application of the domestic law by the Supreme Court, which, in his opinion, had overstepped the limits of its competence when it found that Government Resolution No. 1025 had lost its legal effect (see paragraph 32 above). The applicant had studied numerous domestic law provisions as well as planning documents which led him to believe that no resort protection zones had been or were established in Druskininkai.

76. Secondly, contrary to what had been suggested by the Government (see paragraph 85 below), the circumstance that the applicant knew R.M., the mayor of Druskininkai, did not reflect any bad faith on the applicant's part. Even though the applicant had asked R.M. to assist him with the coordination of the house construction (building supervision), this had nothing to do with any allegation of unlawfulness of the detailed plan, approved more than four years previously, or the building permit approved more than two years before.

(b) The submissions of 22 September 2021

77. The applicant's response to the Government's statements of 29 June 2021 is summarised in paragraphs 62 and 63 above.

2. The Government

(a) The submissions of 27 March 2019 and 30 October 2019

78. The Government agreed that the domestic courts' order to demolish the building amounted to an interference under Article 1 of Protocol No. 1 to the Convention.

79. That being so, the interference had been lawful, had pursued a legitimate aim, and had been proportionate.

80. The conclusions as to the illegality of the construction of the building at issue, which had resulted in its subsequent demolition, had been reached by courts at two levels of jurisdiction, the Vilnius Regional Court (see paragraphs 18-22 above) and the Supreme Court (see paragraphs 24-37 above), on the basis of a number of legal acts which had been in force at the time the detailed plan for the construction of the building had been approved.

81. Having regard to a number of different available and clear legal provisions which had been in force before the applicant purchased the unfinished building at issue, and which precluded the construction of the residential building on the plot of land in question, it could only be concluded

that the applicable legislation had not given the applicant any reasonable expectation that the building at issue was a legal construction.

82. The domestic courts' decisions had been duly reasoned, in terms of the facts and of the law. One also had to bear in mind that the applicant himself had been suspected of having influenced the courts (see paragraph 50 above). The Government also stated that the case was surrounded by "an unprecedented scandal in Lithuania", which, among other things, involved alleged corruption on the part of numerous judges, and "genuine legal nihilism".

83. The demolition order had served the purpose of protecting the environment which was a valuable part of Lithuanian territory, the importance of which had been clearly established in the domestic law.

84. Given the wide margin of appreciation afforded to the legislature in implementing social, economic and environmental policies, the interference had also been proportionate.

85. Firstly, the applicant should have been aware of the territorial restrictions before acquiring the property. As of September 2013 there had been much news regarding the unlawful construction in the press. It followed that the applicant could not legitimately have believed that he was safe from further court proceedings related to the unlawful construction of the building at issue. Likewise, before acquiring the property the applicant should have made inquiries regarding the applicable legal regulation, which had been publicly available, but which he had not consulted. That only demonstrated a lack of diligence on the applicant's part. Besides, as later noted by the Vilnius Regional Court, the Supreme Court had taken into consideration the elements related to "good faith" of the persons involved in the construction process (compare paragraph 44 above).

86. Secondly, the applicant had maintained close relations with the Druskininkai mayor, R.M., who, according to the Government, had helped the applicant to purchase the building and who also had known about the ongoing prosecutor's investigation (see paragraphs 11 and 76 above). Politicians, including R.M., who had a private interest in the outcome of the civil case regarding the demolition of the building, had influenced the Government so that Chapter XVI of its Resolution No. 343 be annulled (see paragraphs 64-67 above), which was seen as an unprecedented case in the history of government of Lithuania and had been deplored by the President of the Republic. This meant that the applicant's good faith in acquiring that property had been wanting.

87. As regards the actions of the authorities, they had not contributed to the applicant's uncertainty about the status of the construction of the building at issue. Quite the opposite, as before the applicant had acquired the unfinished construction at issue, the authorities had taken the necessary steps in order to prevent further construction by applying for and issuing interim protective measures (see paragraph 13 above). Yet, the applicant had ignored

the protective measures, since at the time they had been issued that building was 36 per cent complete, whereas by 2015 it was already 94 per cent complete (see paragraphs 13 and 14 above).

88. In conclusion, the applicant, as a diligent person, and before consenting to participate in such a "business plan", could have reasonably anticipated that the domestic courts would find the construction of the building at issue to be illegal and order its demolition.

(b) The submissions of 29 June 2021 and 28 October 2021

89. Without explicitly arguing abuse of the right to application, the Government informed the Court about the status of the criminal proceedings and the witness statements given therein (see paragraphs 55-61 above).

B. The Court's assessment

1. Relevant principles

90. The Court reiterates that an application may be rejected as abusive under Article 35 § 3 of the Convention if, among other reasons, it was knowingly based on untrue facts and false declarations (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000 X; *Rehak v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Kerechasvili v. Georgia* (dec.), no. 5667/02, ECHR 2006 V; *Bagheri and Maliki v. the Netherlands* (dec.), no. 30164/06, 15 May 2007; *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007; *Miroļubovs and Others v. Latvia*, no. 798/05, § 63, 15 September 2009; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012; and *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Hüttner v. Germany* (dec.), no. 23130/04, 19 June 2006; *Kowal v. Poland* (dec.), no. 2912/11, 18 September 2012; and *Gross*, cited above, § 28). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002; *Melnik v. Ukraine*, no. 72286/01, §§ 58-60, 28 March 2006; and *Nold v. Germany*, no. 27250/02, § 87, 29 June 2006). An application can also be rejected as abusive if applicants – despite their obligation under Rule 47 of the Rules of Court – fail to inform the Court about new, important developments regarding their pending applications, given that such conduct prevents the Court from ruling on the matter in question with full knowledge of the facts (see *Pirtskhalaishvili v. Georgia* (dec.), no. 44328/05, 29 April 2010, and *Bekauri v. Georgia* (dec.), no. 14102/02, §§ 21-23, 10 April 2012).

91. The notion of abuse of the right of application is not limited to these scenarios, however. In general terms, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and that impedes the proper functioning of the Court, or the proper conduct of the proceedings before it, constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009; *Martins Alves v. Portugal* (dec.), no. 56297/11, § 9, 21 January 2014; and, most recently, *Zambrano v. France* (dec.), no. 41994/21, § 34, 7 October 2021).

2. Application of these principles to the present case

92. The Court observes that in the application form the applicant specifically stated that the court decisions ordering the demolition of the house in question had interfered with his right to use the house as "his property" (see paragraph 72 above). The applicant reiterated this message in his observations to the Court (see paragraph 73 above). Thus, the Court finds it reasonable to hold that, both in his application to the Court and in his observations, the applicant expressed the position that the house had been envisaged as property for his enjoyment. For their part, in response to the applicant's initial submissions, the Government have not denied that the court order for demolition of the house amounted to an interference with the applicant's rights under Article 1 of Protocol No. 1 of the Convention.

93. That notwithstanding, the Court cannot ignore the pre-trial investigation materials provided by the Government (see paragraphs 50-53 and 57-60 above). In that connection, the Court stresses that the criminal proceedings, wherein the applicant remains a suspect, have not been terminated by a final court verdict (see paragraph 57 above). Accordingly, it will have regard to that information only inasmuch as it has a bearing on the applicant's complaint regarding the alleged breach of Article 1 of Protocol No. 1 of the Convention. In other words, the Court will not draw any inferences in connection with the criminal acts the applicant is suspected of, or other offences of any other persons that may feature in any domestic investigation, for to do otherwise would be incompatible with the principle of the presumption of innocence (see also the Government's statement in paragraph 61 above).

94. On the basis of the applicant's own testimony given in those criminal proceedings, the Court notes that, contrary to what has been asserted by the applicant to the Court (see paragraphs 72 and 73 above), he testified having never sought to acquire the house in question to retain it as his possession, or as property for his own use. Indeed, such had never been his intention: in fact, the acquisition, which the applicant described as "an honourable agreement between the two men", was nothing but a ploy for the applicant to buy the house in question and to furnish it according to the taste of the Druskininkai mayor, R.M., who afterwards would purchase the house from the applicant

(see paragraphs 51, 52 and 58 above). Although such an "honourable" agreement was not drawn up on paper, it was followed up by other rather striking elements, such as the will drawn up by the applicant, wherein in case of death the house would be left to a near stranger, designated by R.M. (see paragraphs 51 and 52 above). Likewise, it does not escape the Court's attention that both the applicant and the Druskininkai municipality, which previously had approved the detailed plan and issued within a short time the building permit for the residential house in question, had been defendants in the civil litigation regarding the lawfulness of those decisions, which the Vilnius Regional Court and the Supreme Court subsequently found to be in breach of numerous legal acts as well as in contravention of the public interest (see paragraphs 19, 20, 26, 27, 28, 34 and 35 above), and that, as instructed by the Druskininkai mayor, R.M., the applicant had relinquished the defence of what should have been his interests to R.M.'s designated lawyer, rather than acting on his own, through his own lawyers, to defend what he claimed to the Court to be his property (see paragraphs 52 and 53 above).

95. The applicant has not alleged that his testimony, referred to by the Government, was obtained against his will. In fact, as the record of his questioning reads, he gave that testimony in the presence of his lawyer, and not only to the law enforcement officers of the Special Investigation Service, but also to a pre-trial investigating judge (see paragraphs 51, 52, 53 and 58 above). Whilst being cautious to observe that this was only the applicant's testimony, and not a fact which was accepted as proved by a final domestic court decision, the Court is prepared to accept that those statements affirm the applicant's position, especially given that, when requested to comment, the applicant did not refute those words before the Court.

96. Similarly, on the basis of the materials available to the Court, and without prejudging the weight of that testimony, it appears that a sham transaction had been concluded from the very outset, with R.M.'s intention to acquire the house in the long term (see paragraph 60 above). This has also been stated by the applicant (see paragraph 53 above).

97. The Court considers that the above information concerns facts that are important for the Court's assessment of the complaint and thus concerns the very essence of the applicant's complaint under Article 1 of Protocol No. 1 of the Convention (see *Predescu v. Romania*, no. 21447/03, §§ 25-27, 2 December 2008, and *Tatalović and Dekić v. Serbia* (dec.), no. 15433/07, 29 May 2012).

98. That being so, the Court finds, at the very least, that the applicant has presented in the criminal proceedings a version of the facts which clearly is difficult to reconcile with the one presented in his application and observations submitted to the Court, which incontrovertibly casts serious doubt on the accuracy, credibility and reliability of his submissions and claims before this Court. The Court also considers that the above elements demonstrate the applicant's negligence when communicating with the Court

and portraying, as his own property, what in reality was nothing more than, in the Government's words, a "business plan" (see paragraph 88 above). It is clear that, when in the application form presenting the factual background of the case, the applicant decided to forgo any mention about such a "business plan", thus furnishing incomplete and therefore misleading information. Once the above information was revealed by the Government in their observations on the admissibility and merits of the case as well as in their subsequent letters to the Court, the applicant omitted to provide any plausible explanation to rebut the facts presented by the Government regarding his testimony in the domestic proceedings and thus explain how those elements could be reconciled with his version presented to the Court (see paragraphs 55-63 above).

99. Lastly, the Court will in principle defer to the national courts' interpretation and application of domestic law (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 251, 1 December 2020). The Court considers that the information concerning the genesis of the acquisition of the building at issue, and, most importantly, the applicant's role in that transaction, was of great importance in the determination of the question whether the application was meritorious. The Court takes notice of what the Government referred to as "an unprecedented scandal in Lithuania" and a testament to "genuine legal nihilism" (see paragraph 82 above). Against what has been suggested by the applicant (see paragraph 75 above), and whilst this is not conclusive in itself, it notes the Supreme Court's findings regarding Government Resolution no. 1025 (see paragraph 32 above); the Constitutional Court's conclusions that this Resolution, which had made construction possible in the protected areas such as that where the house in question was being built, had been removed from Lithuanian legal system to "dispel doubts as to its legitimacy" (see paragraph 67 above; see also the Government's statement in paragraph 86 above); the domestic courts' findings that the entire sequence of acquisition of the edifice – the boat rental facility, drawing up of the detailed plan within the Druskininkai municipality, and subsequent construction of the house in question had been plagued by failure to follow the law on the part of those involved, including R.B. and the Druskininkai municipality (see paragraphs 20, 25, 26, 30 and 44 above). This only adds more certainty (see paragraph 90 above) for the Court to hold that the applicant attempted to mislead it when lodging a complaint under Article 1 of Protocol No. 1 of the Convention.

100. The Court would again underscore that its findings in the present case have no bearing on the outcome of the criminal proceedings in Lithuania, which are ongoing, or any other existing or potential domestic proceedings. In other words, the Court's findings in this decision cannot be interpreted as facts for the purpose of those domestic criminal or other proceedings.

101. The Court considers that the applicant's conduct in the present case was contrary to the purpose of the right of individual petition as provided for

in Article 34 of the Convention and that the application must therefore be rejected as an abuse thereof, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 7 April 2022.

Hasan Bakırcı Deputy Registrar	Jon Fridrik Kjølbro President