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

FOURTH SECTION

DECISION

Application no. 17969/10
Janina Gelena SELINA
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 5 September 2017 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 March 2010,

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 Janina Gelena Selina, is a Lithuanian national who was born in 1950 and lives in Vilnius. She was represented before the Court by Mr A. Bambalas, a lawyer practising in Vilnius.

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

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

A. The restoration of the applicant's property rights

4. In 1992 the applicant's mother asked the Lithuanian authorities to restore her property rights to the land of her father-in-law.

5. On an unspecified date the applicant's mother died and the applicant became her heir.

6. On 7 July 1998 the Vilnius County Administration (hereinafter – "the VCA") decided that the property rights to 1.1021 hectares of land would be restored to the applicant by providing her with a plot of land for residential purposes (*namų valdos žemės sklypas*).

7. In July 2003 the VCA stated to the Vilnius municipality administration (hereinafter – "the VMA") that the applicant wanted to have her property rights restored *in natura* and asked the VMA to establish, among other issues, whether the land was not State redeemable, and if it was not, to delineate a plot of land and to prepare a plan of the land. In December 2003 the VMA informed the VCA that the plot of land would be delineated.

8. In May 2005 the VCA asked the applicant to provide it with an original plan of the plot of land initially used by her mother's father-in-law and specified that only then the issue on the return of the plot would be decided. The information, whether the applicant provided the VCA with an original plan, was not provided to the Court.

9. In May 2006 the VMA decided that the plot of land to be returned was 0.6857 hectares.

10. In January and February 2007 the applicant asked the VCA why her property rights had not been restored to the 0.6857 hectares of land under and near her house.

11. In March 2007 the VCA informed the VMA and the applicant that the plot of land of 0.6857 hectares which had been demarcated in May 2006 (see paragraph 9 above) fell within the territory of the Turniškės landscape reserve, which was in the Verkiai Regional Park and could not be returned *in natura*. The VMA was asked to review its decision and to demarcate a plot of land of 0.1819 hectares instead.

12. The applicant disagreed with that decision and in March 2007 requested that the authorities demarcate a plot of land of 0.6857 hectares. Later that month, she was informed once again by the VCA that the plot of land in question could not be returned *in natura* and that the VMA had to newly demarcate the plot of land for residential purposes.

13. Between 2007 and 2009 the applicant complained to the authorities and the domestic courts and asked them to oblige the VCA to take the decision on the restoration of the property rights to the plot of land of 0.6857 hectares. Her claims were rejected.

14. On 4 May 2009 the VCA informed the VMA that the Vilnius Land-Reform Division had specified the margins of the plot of land owned by the father-in-law of the applicant's mother and established that he had owned 1.2704 hectares of land before nationalisation.

B. Further developments of the applicant's case reported in the Government's observations

15. In their observations on the admissibility and merits of the case, the Government informed the Court about the following developments of the applicant's case.

16. On 17 and 26 May 2011 the applicant's property rights were restored *in natura* to 0.1703 and 0.2959 hectares of land respectively and it was noted that her property rights to the remaining 0.8042 hectares would be restored at a later date.

17. In July 2011 the VMA determined that there were no possibilities to return additional plots of land *in natura.*

18. In February 2012 the National Land Service informed the applicant that the remaining part of the land, that is to say 0.8042 hectares, had to be restored by other means provided for by law and stated that one of these means was monetary compensation. The applicant was informed that she could, from 1 February to 1 June 2012 ask the authorities to pay her monetary compensation. The applicant did not avail herself of this opportunity.

19. In November 2014 the National Land Service informed the applicant that after a change of the relevant law it would become possible to restore her property rights to the remaining plot of land by choosing a plot of forest of equal value. In February 2015 the applicant asked to have her property rights restored by being provided with a plot of forest of equal value, except for 0.12 hectares which she would use for construction of a home.

20. On 18 March 2015 the National Land Service held that the applicant wanted to be provided with a plot of forest that was equal in value to the 0.6842 hectares of land that was to be restored. On 1 June 2017 the applicant's property rights to 0.6842 hectares of land were restored by providing her with 1.53 hectares of forest.

21. In October 2016 the VMA decided to organise the additional demarcation of the land and to specify the margins of the plot of land in question.

22. As regards the remaining part to be restored, that is, 0.12 hectares, on 21 October 2016 the authorities organised a meeting, where the applicant had a possibility to choose a new plot of land for construction of a home. The applicant did not choose any plot.

23. On 15 February 2017, after additional measurements had been conducted, the VMA suggested to restore the applicant's property rights to 0.1793 hectares of land and to rent out 0.026 hectares. As a result, in addition to 0.1703 hectares that had already been restored (see paragraph 15 above), 0.009 hectares were returned *in natura* to the applicant on 11 May 2017.

COMPLAINT

24. The applicant complained under Article 1 of Protocol No.1 to the Convention that the plot of land of 0.6857 hectares had not been returned to her *in natura*.

THE LAW

25. The applicant complained that the State authorities had breached her rights by not restoring her property rights *in natura* to part of the land of the father-in-law of her mother. She relied on Article 1 of Protocol No. 1 to the Convention, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

26. The Government argued that the applicant had no "possession" within the meaning of Article 1 of Protocol No. 1. They observed that although the VMA had demarcated the land, the VCA had still had to adopt the decision to restore the applicant's property rights, and this decision had not been taken. The Government further stated that the applicant's claim could also not be regarded as having been based on a "legitimate expectation" because the relevant provisions of Lithuanian law had not allowed the applicant to have expected that the plot of land of 0.6857 hectares would have been returned to her *in natura*. There had been no decision of the domestic courts, obliging the VCA to demarcate a plot of 0.6857 hectares. The Government thus stated that the application was incompatible *ratione materiae* with the provisions of the Convention.

27. The Government also claimed that the applicant had failed to exhaust the domestic remedies because she could have claimed non-pecuniary damage caused by the allegedly unlawful actions of the authorities, specifically unlawful demarcation of the land, and failure to act in due time and to amend the order where the plot of land had been unlawfully demarcated.

28. The applicant claimed that she had had more than a mere hope that her property rights to a plot of land of 0.6857 hectares would have been

restored *in natura.* She had asked that her property rights to that specific plot be restored in 1992 and had continued to meet the requirements of the domestic law throughout the years. Moreover, the national authorities had confirmed several times that her property rights to that plot of land would be restored *in natura* (see paragraph 7 above).

29. The applicant further argued that she had exhausted all domestic remedies available to her.

B. The Court's assessment

30. The Court does not find it necessary to examine the Government's objections of incompatibility *ratione materiae* and of non-exhaustion of domestic remedies, the present case being in any event inadmissible for abuse of the right of application, for the following reasons.

31. The Court reiterates that dismissing an application for abuse of the right of application is an exceptional measure. The term "abuse" in Article 35 § 3 (a) of the Convention suggests that a person is exercising his or her rights in a detrimental manner outside of their purpose (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009, and *Šumbera v. the Czech Republic* (dec.), no. 36687/09, 17 September 2013). An application may be rejected as an abuse under Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). Incomplete and therefore 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 given for the failure to disclose that information (see *Hadrabová and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007, and *Liuiza v. Lithuania*, no. 13472/06, § 52, 31 July 2012). The Court also reiterates notes that where important developments occur during the proceedings pending before the Court and, despite his obligation prescribed in the Rules of Procedure, the applicant fails to inform the Court thereof, thus preventing the Court from determining the case in full knowledge of the facts, the application may be dismissed for abuse of right (see *Gatto v. Italy*, (dec.) no. 19424/08, § 29, 8 March 2016, and the authorities cited therein).

32. The Court notes that the applicant claimed in the domestic proceedings and before the Court that she had not been able to restore her property rights to a plot of land of 0.6857 hectares *in natura*.

33. The Court observes that the applicant failed to inform the Court that in 2011 her property rights had been restored *in natura* to two plots of land of 0.1793 and 0.2959 hectares respectively, that it had been decided to rent out to her a plot of land of 0.026 hectares and that the decision to restore her property rights to a plot of forest of equal value had been taken (see paragraphs 15, 20 and 23 above). The Court further notes that the applicant

did not inform the Court about any of the subsequent developments in her situation (see paragraphs 15-23 above).

34. The Court notes that that the applicant has not furnished any plausible explanation for the failure to inform the Court of the further developments in the restitution process. The Court considers that this information concerns the very core of the case, because most of the land had already been returned to the applicant in some way, except for the remaining 0.12 hectares which she herself had asked the authorities to be excluded from the plot of forest of equal value as she wanted to receive this plot separately for construction of a home (see paragraph 19 above). The Court thus finds that these facts are directly relevant for the present application, in relation to the question of the applicant's victim status within the meaning of Article 34 of the Convention and, as the case may be in the event of a violation being found, of any just satisfaction to be awarded under Article 41 of the Convention.

35. In the light of the above, the Court finds the applicant's conduct to be contrary to the purpose of the right of individual application (see, *mutatis mutandis*, *Hadrabová and Others*, decision cited above). The application must accordingly be rejected as an abuse of the right of application, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President