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

FOURTH SECTION

DECISION

Application no. 54909/13
Kastytis ŠPAKAUSKAS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 19 September 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 23 August 2013,

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, Mr Kastytis Špakauskas, is a Lithuanian national, who was born in 1975 and lives in Kaunas. He was represented before the Court by Mr D. Ramanauskas, a lawyer practising in Jurbarkas.

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

A. The circumstances of the case

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

4. The applicant was born in 1975 and lives in Kaunas.

5. In January 1992 M.G. asked the national authorities to restore his property rights to a plot of land in Šakiai Region, that had originally belonged to his deceased wife's father. He gave only his own name in his restitution request, failing to mention the fact that after his spouse's death he had married again in 1976, to P.G., or that there were any other successors to whom the property rights could be restored.

6. M.G. died in November 1996.

7. On 17 August 1998 M.G.'s property rights were restored in respect of 3 hectares of land in Šakiai Region. The decision stated that M.G. had passed away and that it should be served on his heir.

8. In June 2008 P.G. authorised the applicant, who was the husband of M.G.'s granddaughter, to act on her behalf in the matter of the inheritance from M.G. and to represent her before the national authorities.

9. P.G. asked the Šakiai District Court to establish as a legal fact that she was the owner of M.G.'s property for the purposes of inheritance. The claim was signed by the applicant. During the proceedings before the Šakiai District Court, where the applicant was present, M.G.'s children contested P.G.'s right to inherit the property, including the plot of land. They argued that the land did not belong to M.G., but to his deceased wife's father. Nevertheless, on 20 November 2008 the Šakiai District Court established as a legal fact that P.G. had become the owner of the property, including the plot of land in question, after M.G.'s death.

10. In February 2009 the applicant received a certificate which stated that P.G. had inherited M.G.'s property, including the land in question.

11. On 23 March 2009 P.G. sold the 3 hectares of land and associated buildings to the applicant and his wife for 30,000 Lithuanian litai (LTL – approximately 8,689 euros (EUR)) in total. The price of the land itself was LTL 10,000 (approximately EUR 2,896).

12. On 26 July 2010 a prosecutor started court proceedings and asked the Šakiai District Court to annul the order which had restored M.G.'s property rights, the part of M.G.'s will concerning the land and the purchase agreement on the grounds that M.G. had not had the right to seek the restoration of ownership of the land in question (see paragraphs 34-36 below). The applicant submitted that the prosecutor had missed the thirty-day time-limit for lodging such a complaint.

13. On 7 October 2011 the Šakiai District Court granted the prosecutor's application in part. It annulled the property restitution order of 17 August 1998 and the parts of the will and purchase agreement concerning the land. As regards the time-limit, the court held that the prosecutor had started court proceedings on 26 July 2010. However, he had not received a letter about an act that was allegedly contrary to the public interest until 13 May 2010, when he had also had to ask for additional documents from the authorities, which he had only received on 23 June 2010. The court held that the

time-limit had not been missed by much and decided that it was not an obstacle to examining the case on the merits. The court decided to apply the rules on restitution and to return the land to the State. The court held that M.G. had not had any property rights to restore because the land in question had belonged to his deceased wife's father, while M.G., a widower at the time, had remarried in 1976, to P.G. That meant he had not fallen within the scope of persons to whom property rights could be restored in accordance with domestic law (see paragraphs 18, 20 and 22 below). The court noted that M.G. had failed to mention that he had remarried and an employee of the National Land Service confirmed that if M.G. had provided that information he would not have been able to claim the property. The court also noted that the applicant had been authorised to represent P.G. before the national authorities in the inheritance procedure and that his wife was one of M.G.'s granddaughters. He should therefore have known that restoring those property rights to M.G. had been unlawful. The court thus declared that the applicant and his wife were not acquirers of the property in good faith.

14. As a result of the decision of the Šakiai District Court (see paragraph 13 above), on 29 March 2012 the plot of land was returned to the State.

15. On 14 November 2012 title to 3 hectares of land was restored to V.J., one of the original owner's heirs. The plot included the land in question, apart from 20 ares under the buildings owned by the applicant and his wife, which were excluded. The remaining 20 ares were restored to V.J. in the adjacent plot of land.

16. The applicant and his wife appealed, and on 29 November 2012 the Kaunas Regional Court upheld the decision of the court of first instance. It held that the applicant and his wife had acted in bad faith and that the guarantees for owners who had acquired property in good faith were not applicable. The applicant and his wife argued that the prosecutor had missed the time-limit of thirty days to lodge a complaint, but the court held that the prosecutor had only become aware of an act that was contrary to the public interest on 28 June 2010 and had started court proceedings on 26 July 2010. The time-limit had therefore not been missed.

17. On 5 March 2013 the Supreme Court dismissed an appeal on points of law by the applicant as not raising any important legal issues.

B. Relevant domestic law and practice

18. Article 2 of the Law on the Procedure and Conditions for the Restoration of Citizens' Ownership Rights to Existing Real Property (*Įstatymas „Dėl piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atstatymo tvarkos ir sąlygų"*), enacted on 18 June 1991 and amended on numerous occasions, provided that when the owner of property died, title

could be restored to the person's children, including adopted children, parents, including adoptive parents, or any surviving spouse. After the death of the former owner's child, ownership rights could be restored to that person's spouse or children if they were citizens and permanent residents of Lithuania.

19. On 15 November 1991, the Government approved Resolution no. 470 on the "Order for Execution of the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property" (*Lietuvos Respublikos įstatymo „Dėl piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atstatymo tvarkos ir sąlygų" įgyvendinimo tvarka*), which provided that when the owner of property died, title could be restored to the person's children, including adopted children, parents, including adoptive parents, or any surviving spouse, if they were citizens of Lithuania, had a document proving the citizenship and were permanent residents of Lithuania.

20. On 1 July 1997 the Seimas (the Lithuanian Parliament) enacted a new law on restitution, the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property (*Piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymas* – hereinafter "the Law on Restitution"), which repealed the 1991 law. Article 2 § 1 of the Law on Restitution provided that ownership of existing real property could be restored to a spouse, parents, including adoptive parents, and the children, including adopted children, of an owner who had died without making a will. It could also be restored to the spouse or children, including adopted children, of an owner's deceased child, including an adopted child.

21. Article 19 § 1 of the Law on Restitution provided that decisions by the national authorities concerning the restitution of existing real property were subject to appeal within thirty days.

22. On 29 September 1997, the Government approved Resolution no. 1057 on the "Order for the Execution of the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property" (*Lietuvos Respublikos piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymo įgyvendinimo tvarka*), which provided that spouses who had not remarried had the right to have property rights restored to them if the marriage had ended because the owner of the property had died and the owner's child was also dead (Point 3).

23. Article 25 § 1 of the Law on Land provided that agricultural land contained plots of land, that were used of could be used for producing agricultural products; plots of land that were built upon by the private houses and farm houses of the landowner, if they were not delimited as separate plots of land; yards; plots of land, suitable for transforming into agricultural land; plots of land that had buildings used for producing agricultural products and plots of forest approved by the Government, provided that they are not delimited as separate plots, as well as other

non-agricultural plots of land that are in between the above mentioned plots of land.

24. Article 1.6 of the Civil Code establishes the presumption of knowledge of the law and provides that ignorance or insufficient understanding of laws does not absolve anyone of application of sanctions and does not justify the failure to comply with requirements of the law or inadequate compliance with them. This was confirmed by the Supreme Court (for example, decisions of 16 October 2006 (no. 3K-3-558/2006); 30 March 2007 (no. 3K-3-126/2007)).

25. The Supreme Court has held that laws are public and every responsible person can find out about his or her rights and obligations. Ignorance of laws and failure to show interest in one's rights and obligations is unreasonable, and such person cannot justify him or herself that he or she does not know the law (for example, decisions of 22 October 2007 (no. 3K-3-384/2007); 14 March 2013 (no. 3K-3-146/2013); 19 March 2013 (no. 3K-3-174/2013)).

26. Article 1.80 of the Civil Code provides that any transaction that fails to comply with mandatory statutory provisions is null and void. When a transaction is declared null and void, each party is required to restore to the other party everything that he or she has received by means of that transaction (restitution). Where it is impossible to restore the assets received in kind, the parties are required to compensate each other in money, unless the law provides for other consequences as a result of the transaction's being declared void.

27. Article 4.26 § 4 of the Civil Code provides that possession in bad faith comes about when an owner knew or ought to have known that he or she had no right to become the owner of a possession or that another person had more rights to the possession in question.

28. Article 4.95 of the Civil Code provides that an owner has the right to claim a possession when it is owned illegally by someone else.

29. According to Article 4.97 § 2 of the Civil Code, a person who acquired property in bad faith has the right to require the lawful owner to provide compensation for any necessary expenses incurred for the property in question from the time the lawful owner had the right to income from it.

30. The Supreme Court has held that a person who acquired property in bad faith has the right to require the lawful owner to provide compensation for any necessary expenses incurred for the property in question from the time the lawful owner had the right to income from it (see decision of 21 December 2009 (no. 3K-3-569/2009)).

31. Article 6.145 of the Civil Code provides that restitution is to take place where a person is bound to return to another person the property he has received either unlawfully or by error, or as a result of the transaction in which the property was received being annulled *ab initio*, or as a result of the obligation becoming impossible to perform because of *force majeure*. In

exceptional cases, a court may modify the method of restitution or refuse restitution altogether where it would impose an undue and unfair burden on one party and, accordingly, bring undue advantage to the other party.

32. Article 6.153 of the Civil Code provides that third parties acting in good faith who in a transaction for valuable consideration acquire property subject to restitution can rely on that transaction against a person who claims restitution. Third parties acting in good faith who in a transaction without valuable consideration acquire property subject to restitution cannot rely on that transaction against a person who claims restitution if the time-limit for such a claim has not been exceeded by the latter. Any other actions performed in favour of a third party acting in good faith may be relied on against a person who claims restitution.

33. Article 6.245 § 1 of the Civil Code provides that civil liability is a pecuniary obligation by which one party has the right to require compensation and the other party has to pay compensation.

34. In accordance with Article 49 of the Code of Civil Procedure, prosecutors can bring a claim in order to protect the public interest in the cases established by law.

35. Article 31 § 1 (2) of the Law on Prosecution Service provides that a prosecutor, after having received a request or any other information about violations of state interests or persons' rights, prepares documents necessary to start civil proceedings if the state proprietary interests had been breached and the authorities had not taken any actions to eliminate the violations.

36. The Supreme Court has held that the restoration of property rights is a public interest (for example, decisions of 24 April 2006 (no. 3K-3-242/2006); of 23 July 2007 (no. 3K-3-310/2007); 9 October 2009 (no. 3K-3-397/2009)).

COMPLAINT

37. The applicant alleged that the domestic courts deprived him and his wife of the plot of land and that the money they had paid for it was not returned, in breach of Article 1 of Protocol No. 1 to the Convention.

THE LAW

38. The applicant complained that the domestic courts had ordered him to return land to the State which he had bought from P.G. and that the money for the land had not been returned to him. He 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 or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

39. The applicant submitted that he had purchased the land and buildings on 23 March 2009 and that the Šakiai District Court had not annulled the purchase contract concerning the plot of land of 3 hectares until 7 October 2011. That meant that he had been the legitimate owner of the property for more than two years.

40. The applicant argued that the domestic courts had acted unreasonably in holding that he had acquired the land in bad faith. He stated that he had not been aware that M.G.'s property rights had been restored in breach of domestic regulations. In his view, this was further confirmed by the fact that he had acquired the land from P.G., who had inherited it from M.G. The applicant was not obliged to know who the owner had been before or whether M.G.'s property rights had been restored lawfully. As a result, the applicant had been deprived of his possessions and, as P.G. had died in 2012, he had had no opportunity to reclaim the money he had paid.

41. The Government argued that the applicant had neither had "possessions" within the meaning of Article 1 of Protocol No. 1 nor a legitimate expectation that a particular plot of land would continue to be in his ownership. The Government stated that the applicant had acquired the plot of land in bad faith, as established by the domestic courts, and that he had therefore not had a substantive interest protected by Article 1 of Protocol No. 1.

42. The Government added that depriving the applicant of the plot of land the authorities had acted in good time and in an appropriate and consistent manner, as the purchase agreement had been concluded on 23 March 2009 and the prosecutor had started court proceedings on 26 July 2010. Secondly, both the Šakiai District Court and the Kaunas Regional Court had established that the applicant and his wife had acted in bad faith when they had acquired the land. The applicant had been authorised by P.G. to represent her when dealing with the domestic institutions regarding the inheritance from M.G. and he had had access to all the available information concerning the land. Moreover, the applicant's wife was M.G.'s granddaughter and she should have known that the property rights had been restored unlawfully to M.G. Thirdly, the applicant had not been using the land in question – even after he and his wife had purchased it, P.G. had

continued to use it and live in the house, which meant that the decision to return the land to the State had not affected the applicant's main source of income. The Government, moreover, expressed doubts whether any money had been paid for the land at all: there were no receipts confirming payment and at some point P.G. had asserted that the land had been taken from her by deception. In the Government's view, such doubts were strengthened by the fact that the applicant had previously been found guilty of forging documents. Fourthly, the applicant and his wife still owned the buildings on the property and the land underneath them had not been returned to V.J. The applicant was still able to use the 20 ares in question, however, he had not concluded any lease or purchase agreement with the State concerning that land. Fifthly, the Government stated that no compensation had been paid for the land that had been returned to the State because the applicant had acted in bad faith and in such instances a total lack of compensation was justifiable. In accordance with domestic law issues concerning compensation had to be dealt with in separate court proceedings, but the applicant had never started such a procedure. Moreover, he had had the right to reclaim the expenses he had incurred when looking after the land (see paragraph 29 above), however, he had never done that.

B. The Court's assessment

43. The Court finds that it is not necessary to address all the issues raised by the parties because the applicant's complaint is in any event inadmissible for the following reasons.

44. The Court reiterates that it has only limited powers to deal with alleged errors of fact or law committed by national courts and it cannot substitute its view for that of the domestic courts on the applicant's ownership of the plot of land (see *Jantner v. Slovakia*, no. 39050/97, § 32, 4 March 2003, and *Čadek and Others v. the Czech Republic*, nos. 31933/08 and 9 others, § 52, 22 November 2012).

45. In the present case, the Court observes that the domestic courts examining the case of the annulment of the applicant's title to the land established that he must have been aware from the outset that he was not entitled to acquire that property (see paragraphs 13 and 16 above). The applicant had been authorised to act on behalf of P.G. in the inheritance proceedings, he had access to all the relevant documents and himself participated in the court proceedings on the establishment of the legal facts (see paragraphs 8-10 above) where doubts were expressed about the lawfulness of the restoration of M.G.'s property rights (see also paragraph 9 above). The applicant was able to appeal against the Šakiai District Court's decision depriving him of his title to the land (see paragraph 16 above). Those proceedings were conducted in an adversarial manner and the applicant was able to submit the evidence and arguments which he thought

necessary to protect his interests. The applicant also had the possibility to submit an appeal on points of law (see paragraph 17 above).

46. The Court observes that the decisions of the domestic courts are well-reasoned, based on provisions of domestic law which establish the presumption of knowledge of the law and are not arbitrary. In the light of the foregoing, the Court sees no reason to depart from the findings of the domestic courts in the present case and considers that nothing in the file discloses any appearance of an infringement of the guarantees set forth by Article 1 of Protocol No. 1 to the Convention.

47. It follows that the applicant's complaint is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 October 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President