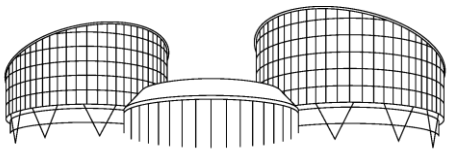

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BOGDEL v. LITHUANIA

(Application no. 41248/06)

JUDGMENT

STRASBOURG

26 November 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bogdel v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
Dragoljub Popović,
Işıl Karakaş,
Nebojša Vučinić,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 22 October 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 41248/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Lithuanian nationals, Mr Piotras Bogdel and Ms Snežana Bogdel ("the applicants"), on 13 October 2006.

2. The applicants were represented by Mr V. Mikelėnas, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicants alleged that when interpreting the period of statutory limitation relating to their civil claim the domestic courts had breached the principle of legal certainty, in violation of Article 6 § 1 of the Convention. They also argued that the annulment of their title to a plot of land in the town of Trakai was in breach of Article 1 of Protocol No. 1.

4. On 5 July 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1953 and 1986 respectively and live in Trakai.

6. By a decision of 12 March 1992 the Trakai City Council leased a plot of land 22 square metres in size, situated at no. 41 Karaimų Street in the town of Trakai, to Galina Bogdel, the wife of Piotras Bogdel and mother of Snežana Bogdel. The plot was situated on land which was State property. The plot was leased for a term of five years, for the construction of a kiosk (*pastatas-kioskas*) for selling pottery and souvenirs. The applicants stated that by February 1993 the kiosk had been built and was ready for use.

7. By decision no. 395v of 22 December 1993 the Trakai District Council established a territorial plan for the old town of Trakai city, on the basis of plans drawn up by experts on cultural heritage. The plans stipulated that plot no. 41 in Karaimų Street, situated at the entrance to Trakai castle, was not to be divided and was not to be privatised ("*neprivatizuojama: salos pilies prieigos; ribos lieka esamos*").

8. By a decision of 27 July 1994 the Trakai District Executive Council leased to Galina Bogdel, for a term of five years, a State-owned plot of land of 134 square metres, which consisted of the previous plot and enlarged it.

9. On 18 January 1995 the Trakai District Executive Council adopted a decision approving the sale of the said plot of 134 square metres to Galina Bogdel for 2,874 Lithuanian litas (LTL).

10. On 10 February 1995 a representative of the Trakai District Executive Council and Galina Bogdel signed the land purchase agreement. The land purchase agreement was registered at the Real Estate Registry and, in accordance with Lithuanian law, Galina Bogdel became the owner of the land.

11. Later that year Galina Bogdel died and her husband and daughter (the applicants) inherited the plot of land with the kiosk. According to the applicants, they subsequently obtained the necessary permission and transformed the kiosk into a café.

12. In July 1998 the applicants contacted the Trakai District Municipality to request the enlargement of the plot of land they owned to roughly twice its size by the addition of more State land. They mentioned that the building they had erected at 41 Karaimų Street was being used as premises for public catering (*kaip viešojo maitinimo patalpa*). As the number of tourists in Trakai was constantly growing, there was a need to expand the premises in order to meet the hygiene and sanitary needs of a public catering facility. The municipality informed them that a new territorial plan was necessary and by a decision of 28 July 1998 entrusted the coordination of the planning project to the applicants.

13. Once preliminary plans had been published in the Trakai town newspaper in August 1999, wide repercussions in connection with the plot of land in issue arose in the local community of Trakai. In particular, on 19 August 1999 ten residents of Karaimų Street wrote to the Head of the Vilnius County Administration (hereinafter – "the HVCA"), the director of Trakai Historical National Park and the Mayor of Trakai claiming that some

time ago a small building had been erected on the plot [it was not clear whether legally or illegally], and that it had now been turned into a noisy café. The residents asked the authorities not to permit any new construction on the plot, which was in a historical place – Trakai Historical National Park – and right in front of Trakai castle and other monuments of particular architectural and historical importance (*prie pat pilies, krantinės ir seniausių architektūrinių paminklų*).

Further, in accordance with the requirements of the Law on Territorial Planning, on 7 September 1999 a public meeting (*viešas svarstymas*) was held in Trakai city. The meeting was attended by residents and the Trakai town authorities. It is stated in the minutes of the meeting that some residents feared the construction of a large restaurant on the plot of land in issue.

14. In December 1999 a private person, R.L., who lived in Trakai city, wrote to the Committee of Education, Science and Culture of the Lithuanian Seimas. He submitted that Galina Bogdel, and later her heirs (the applicants), had been attempting to illegally obtain the plot of land situated at 41 Karaimų Street in Trakai since 1992, eventually succeeding in their unlawful endeavours. R.L. argued that the plot was situated immediately in front of Trakai castle in the Trakai Historical National Park and thus could not be privatised.

15. By a letter of 25 January 2000 the Committee of Education, Science and Culture forwarded the letter to the Ministry of Culture and the State Audit Office (*Valstybės kontrolė*, hereinafter – "the SAO"), a body whose function is to supervise the lawfulness and effectiveness of management of State property, asking them to investigate the matter.

16. On 3 July 2000 the SAO adopted decision no. 70, finding that the decisions to lease to Galina Bogdel and subsequently to sell her the plot of land in question (paragraphs 6, 8 and 9 above) were in breach of the legislation on territorial planning, including Article 5 § 4 of the Law on the Protected Territories, the Regulations of the Trakai Historical National Park, approved by Government ruling no. 283 of 22 April 1992, and the Trakai District Council decision of 22 December 1993 (see paragraph 7 above).

The auditors also established that the Trakai municipality's decision of 28 July 1998 to put the applicants in charge of the project of enlarging their plot of land had breached the Law on the Protection of Immovable Cultural Heritage, in that it had not been agreed upon by the State Department for the Protection of Cultural Heritage.

17. The SAO invited the HVCA to take appropriate measures in respect of the plot at 41 Karaimų Street "which had been sold to Galina Bogdel in breach of the applicable laws". The SAO was to be informed of the HVCA's decision within two months.

The SAO observed that the Trakai municipality officials responsible for the decisions to sell the plot to Galina Bogdel no longer worked in the

relevant section. It nevertheless urged the Trakai District Mayor to respect the law when executing territorial planning.

18. In the meantime another investigation was ongoing. On 3 November another auditing body, this time that of the Trakai District Municipality itself, found that Galina Bogdel had obtained her ownership of the plot of land in question in breach of the laws on the protection of cultural heritage and the relevant territorial planning decisions.

19. On 24 January 2001 the Trakai District Council annulled the decision of 28 July 1998. The applicants challenged that decision in court.

20. On 18 April 2001 the HVCA asked the court to annul the decisions of 27 July 1994 and 18 January 1995 permitting Galina Bogdel to lease the plot of land and selling it to her respectively.

On 21 February the HVCA asked the court to annul the sale agreement of 10 February 1995.

21. Both cases were joined. The applicants then asked the court to dismiss the HVCA's action, arguing that it was time-barred.

22. By a decision of 11 July 2005 the Trakai District Court dismissed the applicants' action and granted all the HVCA's claims. It found that the time-limit for initiating court proceedings had not been missed by the HVCA. The three-year statutory time-limit had to be calculated from the date the HVCA had learned of or should have learned of the breach of the State's rights. That date was 3 July 2000, the date when the SAO had concluded that the land had been purchased in breach of the legislation on the protection of cultural heritage, protected territories and territorial planning. The court also noted that in 1995 the land had been sold to Galina Bogdel by a Trakai municipality official. However, in the same year the Lithuanian legislation had been amended and different administrative units – counties (in the present case, the County of Vilnius) – had been granted competence to deal with questions relating to the management of State land. Even so, after assuming competence over the administration of State land, the HVCA had had no legal obligation to initiate checks to verify whether contracts concluded by the municipalities in the past had been concluded lawfully.

23. On the merits of the case the Trakai District Court found that when concluding the agreements leasing the State-owned plot of land to Galina Bogdel and, subsequently, selling that plot to her, the officials of the Trakai District Municipality had breached the applicable laws and local regulations. Consequently, the court declared those agreements null and void. The court ordered restitution and returned the 134 square meters plot of land to the HVCA. No money was returned to the applicants.

24. The court also annulled the agreement of 27 July 1998 by which the Trakai District Municipality had entrusted the applicants with coordinating the preparation of the local plan.

25. The applicants appealed, arguing that more than six years had elapsed between the date the land had been bought and the date when the HVCA had initiated court proceedings for annulment. The applicants also submitted that the purpose of statutory limitation was to guarantee legal certainty. The stability of civil legal relations would be breached if a person could not reasonably expect the *status quo* to be maintained after the expiry of the limitation period. They also challenged the unilateral restitution. Lastly, the applicants argued that the lower court had erred in interpreting and applying the territorial planning legislation.

26. By a ruling of 8 November 2005 the Vilnius Regional Court upheld the reasoning of the Trakai District Court. However, it ordered double restitution. The applicants were to be refunded LTL 2,874 – the sum which Galina Bogdel had paid for the plot of land.

27. The applicants lodged an appeal on points of law. They argued that the lower courts had erred in interpreting the legal norms on the calculation of the limitation period, and the starting date of that term in particular. They did not argue that the courts had acted in a discriminatory fashion when interpreting the public authorities' civil action, compared with civil actions between private parties. They also submitted that the annulment of the land purchase agreement had breached their right of property, without in any way complaining that the sum they had received in restitution had been too little.

28. On 10 May 2006 the Supreme Court dismissed the applicants' appeal, endorsing the reasoning of the lower courts. It observed that at the time when the lease and sale contracts were concluded in 1994-1995, the 1964 Civil Code (Articles 84 and 86) had provided for a three-year statutory time-limit for initiating court proceedings. It had been established in the case that the HVCA had learned of the breaches of the law by those transactions on 3 July 2000, from the report by the SAO. Accordingly, when lodging its claim for the annulment of the land lease decision and the decision to sell the plot of land to Galina Bogdel, the HVCA had not missed the three-year statutory deadline. In the view of the Supreme Court, it would have been unreasonable to calculate the term of statutory limitation from 10 February 1995, the date when the land was sold to Galina Bogdel, because when the counties had been created [in 1995] the administration of each county had not been entrusted with the task of reviewing all the administrative decisions and contracts which the municipalities falling under its competence had adopted or concluded in the past.

29. As to the applicants' argument that there were no legal barriers to their owning the plot of land in question, the Supreme Court noted that the Trakai Historical National Park had been created by the Supreme Soviet (*Aukščiausioji Taryba*, the parliament of the Republic of Lithuania at that time) on 23 April 1992, and by a Government resolution of 22 April 1992 the old town of Trakai had been recognised as an urban heritage site (*urbanistinis draustinis*). For that reason, on 25 May 1992 the regulations

on cultural heritage established that the plot of land situated at 41 Karaimų Street was not to be privatised. Moreover, on 9 November 1993 the Law on the Protected Territories had been passed by the Seimas, providing that land in State-protected areas was not to be sold. Subsequently, by decision no. 395v of 22 December 1993, the Trakai District Council had approved a territorial plan for Trakai old town which specified that the plot of land in question was not to be privatised.

30. On the basis of the above, the Supreme Court held that the lower courts had been correct in quashing the Trakai municipal authorities' decisions of 27 July 1994 and 18 January and 10 February 1995 leasing and selling the plot of land to Galina Bogdel. Moreover, the appellate court had been correct in applying the restitution procedure and refunding to the applicants the sum of LTL 2,874.

31. The Government submitted that after the final decision by the Supreme Court, the applicants' property rights to the café built on the plot of land situated at 41 Karaimų Street had remained unchanged. Moreover, it can be seen from the documents submitted by the Government that after the Supreme Court's decision the HVCA still granted the applicants' request to lease the plot of land in question for a period of eighty-seven years. On 16 November 2006 two lease agreements were thus concluded – 34 square metres were leased to Snežana Bogdel, and 100 square metres were leased to Piotras Bogdel.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. Article 47 of the Civil Code of 1964, in force up to 30 June 2001 ("the old Civil Code"), provided that any transaction that failed to meet the requirements of the statutory provisions was null and void. Once a transaction had been declared null and void, each party was bound to return to the other party everything it had obtained as a result of the transaction.

The Civil Code in force since 1 July 2001 ("the new Civil Code") provides an analogous norm in Article 1.80 §§ 1 and 2.

33. As regards the statutory limitation period, it begins to run from the date on which the right to bring an action may be enforced. A person has the right to bring an action from the date on which he becomes aware or should have become aware of the violation of his right (Article 86 of the old Civil Code and Article 1.127 § 1 of the new Civil Code). The old Civil Code provided that the general term of limitation was three years (Article 84). Under the new Civil Code, the general term of limitation is ten years (Article 1.125).

34. As to the date on which the limitation period starts to run when the authorities lodge an action for annulment in order to defend the public interest, the Government referred to the Supreme Court's ruling of 28 April 2010 in civil case no. 3K-3-143/2010, which stated as follows:

"The case-law of the Supreme Court is coherent to the effect that in a case where a court (of either general or administrative jurisdiction) is approached with the aim of protecting the public interest, the limitation period for submitting a claim starts on the day when the plaintiff was provided with sufficient data to prove that the public interest had been breached."

35. The Ruling of the Senate of Judges of the Supreme Court of Lithuania No. 39 of 20 December 2002 "On the Case-law of the Courts of the Republic of Lithuania on the Application of the Legal Norms Governing the Limitation Period" reads as follows:

"5.3. If the limitation period for bringing a certain claim started running under the Civil Code of 1964 or other laws before 1 July 2001 [the date of entry into force of the new Civil Code], the rules governing the determination of the beginning of the limitation period under the Civil Code of 200[1] are not applicable, because the rules which were in force at the time when the limitation period started running shall be applicable.

In accordance with the general rule governing the determination of the commencement of the statutory limitation period, that period shall start on the day on which the right to bring an action may be enforced, and the right to bring an action arises on the date when a person becomes aware or should have become aware of the violation of his right. Thus under Article 1.127 (Article 86 of the Civil Code of 1964) the limitation period starts running only after a person is subjectively aware, or should be aware, of the violation of his right.

The law links the beginning of the limitation period with the following criteria: the day when the person became aware (subjective criterion) or the day when the person should have become aware (objective criterion). ... Therefore, when deciding the question of the beginning of the limitation period, the court must first of all determine the precise moment of the violation of the law. The day when the person becomes aware of the violation of the law is the day when the person realises in fact that his right or interest protected by law has been violated or disputed. ... In cases where a person claims that he/she did not become aware of the violation of his/her right on the day when it was violated, the court must verify whether there is any evidence indicating the contrary and whether a claimant became aware of the violation of the law no later than would any prudent and careful person in the same situation."

36. As regards the rules for establishing the date on which the limitation starts to run in cases where a claim has been submitted by private entities, the applicants submitted that the Supreme Court had held that the limitation period in respect of the invalidity of a contract started on the exact date the parties became aware that the contract had been concluded (decisions in case no. 3K-3-229/2006 of 24 April 2006 and case no. 3K-7-4/2006 of 3 January 2006). They also referred to the Supreme Court's decision in case no. 3K-3-11/2010 of 5 January 2010, in which it had held that the claimant (a private party) was deemed to have been aware of the infringement of her rights from the date the authorities had adopted an official decision regarding her property rights.

37. The question of balancing the protection of the public interest and the necessity to ensure the stability of legal relations had also been examined by the Supreme Administrative Court in case no. A[575]-1576/08 of

26 September 2008. In that case a municipal institution had sold a plot of land designated for agricultural use to a private person in 1994. In 2006 the State authorities discovered that the person had been allowed to purchase the plot in error, for the mere reason that she did not live in the area where the plot was situated, that being a precondition for becoming its owner. The Supreme Administrative Court nevertheless found that, given that that private person had paid taxes on that land and managed it up to 2008, she had a legitimate expectation that her rights to that plot of land would be protected:

> "The enlarged chamber of the Supreme Administrative Court in case no. A^{146}-335-2008 of 25 July 2008 has stated that not only prosecutors but also other State bodies or municipalities are responsible for the protection of the public interest. Even though not all of them have competence to bring an action in court to defend the public interest, the principles of the rule of law, cooperation among institutions, effectiveness and other principles of good administration require that, once a breach of the public interest has been established, an institution must inform a prosecutor or another competent body of the breach without undue delay ... The principle of the rule of law requires that the stability of legal relations be preserved. Such stability would be not guaranteed if persons could never be sure that court proceedings for [the annulment] of administrative acts adopted in respect of them could always be initiated. If State or municipal institutions acted with unjustified delay ... it would mean that the opportunity to initiate court proceedings to protect the public interest would become unlimited in time, and such situation is not possible in a State governed by the rule of law. Therefore, a court, having examined the balance to be struck between the values protected and the need to guarantee the stability of legal relations, may refuse to protect the public interest even in those cases where [the institution] has not missed [the statutory time limit] for bringing court proceedings (counting from the moment when the evidence of the breached public interest was gathered or should have been gathered), if a sufficiently long period of time has passed since the administrative legal acts were adopted and legal relations were established."

The Supreme Administrative Court then established that the authorities had learned that the plot of land had been given to the private person in breach of certain laws in July 2006, but had started court proceedings only in July 2007. In particular, a significant period of time had elapsed between the time when the private person had obtained title to the plot in 1994 and when the State authorities had initiated court proceedings to annul her title. The court therefore refused to protect the public interest in order that the stability of legal relations would be preserved. It also noted that such a conclusion was supported by the practice of the Lithuanian courts, namely, the Supreme Administrative Court's ruling no. A^{10}-131/2007 of 6 February 2007, where it had held that the time-limit had been missed because eleven years had elapsed since the challenged administrative act had been adopted.

38. The Law on the Territorial Planning (*Teritorijų planavimo įstatymas*) provided at the relevant time that territorial plans were public and residents had a right to take part in the public consideration (*viešas svarstymas*) of new territorial plans (Articles 25-28).

39. Pursuant to Article 5 of the Law on the Protection of Immovable Cultural Heritage (*Nekilnojamųjų kultūros vertybių apsaugos įstatymas*), if a decision of a ministry or municipality could have an impact on the protection of immovable cultural heritage and related land, it had to be approved by the Department for the Protection of Cultural Heritage. Decisions without such approval were considered unlawful.

40. The State Audit Office (*Valstybės kontrolė*) is the institution tasked with controlling the legality of privatisations of State property as well as the legality of the use of State-owned land and other natural resources (Article 10 §§ 13 and 14 of the Law on the State Audit Office).

41. In accordance with Article 49 of the Code of Civil Procedure, in the cases provided for by law a prosecutor or other public or municipal authority may submit a civil claim for the protection of a public interest.

42. The Law on the Protected Territories (*Saugomų teritorijų įstatymas*) provided at the relevant time that the land in State-protected areas was not subject to sale (Article 5 § 4). In this connection, the Constitutional Court has held that by that prohibition the State sought to ensure the protection and longevity of State-protected areas and recreation zones as areas of particular importance. Accordingly, the land specified may not be transferred to private ownership (ruling of 14 March 2006).

By a resolution no. 283 of 22 April 1992 the Government recognised the old town of Trakai as an urban heritage site (*urbanistinis draustinis*) in the historical national park of Trakai.

43. On 9 February 2010 the Constitutional Court gave a Ruling "On the Compliance of Government Resolution no. 912 'On the Approval of the Trakai Historical National Park Planning Scheme' of 6 December 1993 with the Constitution of the Republic of Lithuania", in which it held as follows:

> "7. On 31 March 1992 (when the accession document was deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO)), the Republic of Lithuania joined the Convention concerning the Protection of the World Cultural and Natural Heritage ... which was adopted on 16 November 1972 in Paris. In the Republic of Lithuania the Convention came into force on 30 June 1992. In joining the Convention, the Republic of Lithuania undertook the obligation to protect the cultural and natural heritage in its territory and acquired the right to propose properties in its territory for inclusion in the UNESCO World Heritage List.
>
> In 2002, UNESCO experts, while in Lithuania, looked at the properties of Trakai Historical National Park, which received their favorable evaluation, and recommended that a nomination be prepared in respect of that Lithuanian item for the UNESCO World Heritage List. At the Conference 'The Trakai Historical National Park – on the UNESCO World Heritage Lists – the Need and Opportunities', held on 3-4 April 2003 in Lithuania, a resolution was adopted wherein it was held, *inter alia*, as follows: 'Taking into consideration the particular value of the landscape as a whole, the Trakai Historical National Park should be nominated for the World Heritage List of Mixed Properties' and it was decided to ask 'the Ministry of Culture to approve the inclusion of the Trakai Historical National Park in the World Heritage

List of Mixed Properties, to approve a working group, and to delegate to it the task of preparing, in accordance with the terms established, the submission of the Trakai Historical National Park to the World Heritage Committee and to allocate the funds necessary for [that] purpose'.

On 28 July 2003, upon submission by the Ministry of Culture of the Republic of Lithuania, Trakai Historical National Park was included in a tentative list for [nomination to] the UNESCO World Heritage List (category of properties – mixed).

8. Thus, the State of Lithuania has treated and treats Trakai and its environs as a unique complex of landscape created by nature and man, a territory which must be protected and in respect of which a special legal regime must be created; this is a universally acknowledged fact."

44. The new Civil Code provides that the State must compensate damage caused by unlawful acts of institutions of public authority, irrespective of the fault of a particular public servant or other employee of a public authority institution (Article 6.271).

III. RELEVANT INTERNATIONAL LAW

45. The Council of Europe Convention for the Protection of the Architectural Heritage of Europe, ratified by Lithuania on 7 December 1999, reads, inasmuch as relevant, as follows:

Article 3

"Each Party undertakes:

1. to take statutory measures to protect the architectural heritage;

2. within the framework of such measures and by means specific to each State or region, to make provision for the protection of monuments, groups of buildings and sites."

Article 4

"Each Party undertakes:

...

2. to prevent the disfigurement, dilapidation or demolition of protected properties. To this end, each Party undertakes to introduce, if it has not already done so, legislation which:

...

(d) allows compulsory purchase of a protected property."

THE LAW

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

46. The applicants complained that divesting them of their title to the plot of land in question amounted to an unjustified deprivation of property. This complaint falls to be examined under 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

1. The applicants

47. The applicants argued that they had been arbitrarily deprived of their title to the plot of land in question. Firstly, they challenged the Lithuanian courts' interpretation of the domestic law regulating territorial planning in general, and that in respect of Trakai town in particular. Secondly, the applicants maintained that their spouse and mother, Galina Bogdel, had been an honest acquirer: neither she nor the applicants had ever committed any breach of the law. It was therefore unfair for the applicants to bear responsibility for the mistakes of the municipal institutions, which, moreover, should have known the applicable laws at the time of the transaction. On this last point the applicants referred to the Court's case-law to the effect that if a mistake was made by the authorities themselves, without any fault on the part of a third party, a different proportionality approach must be taken in determining whether the burden borne by an applicant was excessive (see *Moskal v. Poland*, no. 10373/05, § 73, 15 September 2009). They also argued that the mistakes or errors of the State authorities should serve to the benefit of the defendant. In other words, the risk of any mistake made by the State authorities must be borne by the State and the errors must not be remedied at the expense of the individual concerned (see, *mutatis mutandis*, *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007).

48. For the applicants, the deprivation of their property rights was disproportionate and had imposed an excessive burden on them, causing them significant disadvantage. They considered that not every case which

dealt with privatisation of State-owned property included a public-interest element. On the contrary, in every case many other aspects had to be evaluated, for example, how the State property was used and whether it was in the public interest. In this connection, they submitted that most of the neighbouring plots of land in Karaimų Street in Trakai had been privatised by private persons who used them for economic and commercial activities. The applicants then challenged the pertinence of the territorial planning scheme in respect of Trakai old town, maintaining that their plot was no different from neighbouring plots and thus had no exceptional importance. The fact that after the annulment of the land purchase agreement the State had leased that particular plot of land to them for eighty-seven years confirmed that ownership of the plot by the applicants and its use as a café would not conflict with any public interest.

2. The Government

49. The Government maintained that, even supposing that the annulment of the applicants' title to the plot of land in question constituted an interference with their right to property, that interference was lawful, had a legitimate aim and was proportionate.

50. Firstly, as had been established by the SAO, the plot of land had been transferred to Galina Bogdel's ownership, and subsequently inherited by the applicants, in violation of numerous pieces of legislation and administrative regulations concerning territorial planning and protection of the cultural and historical heritage. That being so, there was a genuine and clear legitimate interest in having the plot returned to the State's ownership: the impugned plot of land was located in an urban heritage area, a territory subject to the strictest legal protection and which was of unique cultural and historic value, situated in the heart of one of the most unique areas of cultural and historical heritage in Lithuania, the Trakai Historical National Park, as confirmed by the Constitutional Court in its decisions of 14 March 2006 and 9 February 2010 (see paragraphs 42 and 43 above). Moreover, the existence of a public interest was perfectly illustrated by the fact that the initiative for the annulment of the land purchase agreement had come not from the State authorities, but from the residents of Trakai town themselves, who were concerned that the historic old town was being destroyed (see paragraphs 13 and 14 above). In this context the Government also relied on the reasoning of the Court's judgment in *Moskal* (cited above, § 73) to the effect that public authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence, because holding otherwise would be contrary to the doctrine of unjust enrichment.

51. The Government also considered that the interference with the applicants' rights was proportionate. Even though they had lost their title to the plot of land in question, their right of property in respect of the café they

had built on that plot of land remained unchanged. Most importantly, after the annulment of the land purchase agreement the HVCA had granted the applicants' request and leased them the same plot of land for a period of eighty-seven years. That meant that the applicants had never been precluded from exercising their commercial activity on that land. It was also noteworthy that after the annulment of the land purchase agreement the appellate and cassation courts had ordered full restitution, and the applicants had received the sum of LTL 2,874 which Galina Bogdel had paid for the plot. Given that the applicants had not questioned the adequacy of that sum in their appeal on points of law, it had to be considered that the sum was fair. Lastly, if the applicants considered that the sum was too low, it had been and still was open to them to seek damages from the State under Article 6.271 of the Civil Code.

B. The Court's assessment

1. Admissibility

52. The Court turns first to the Government's suggestion that the applicants could have lodged a new civil claim for damages if they had thought that the sum of money returned to them in compensation for the annulment of the land purchase agreement was too low. It considers, however, that such a claim in separate civil proceedings, once civil proceedings as regards their title to the plot of land had been completed, would have placed a somewhat excessive burden on the applicants' shoulders. The Court therefore finds that that was not a remedy to be exhausted in the circumstances of this case.

53. The Court also finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

54. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not, however, unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle

laid down in the first rule (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 78, ECHR 2006-V).

55. Turning to the circumstances of the instant case the Court recalls that in 1995 the applicants inherited title to the disputed plot of land, which the first applicant's wife and the second applicant's mother Galina Bogdel had earlier acquired for LTL 2,874 and which had been registered in the Real Estate Registry (see paragraphs 9–11 above). It therefore considers that the Supreme Court's decision of 10 May 2006 annulling the applicants' title to that plot amounted to a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. It must therefore be ascertained whether the interference was justified under that provision.

56. To be compatible with Article 1 of Protocol No. 1, a measure of interference must fulfil three basic conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities, must be "in the public interest", and must strike a fair balance between the owner's rights and the interests of the community (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012).

(a) Compliance with the principle of lawfulness

57. Turning to the circumstances of the instant case, the Court observes that the SAO and, later, the Lithuanian courts at three levels of jurisdiction found that the transfer of the plot of land in issue to the applicants' ownership had been in breach of a number of legal provisions concerning the protection of cultural and historical heritage (see paragraphs 16 and 29 above). Moreover, the Court cannot find that the HVCA acted arbitrarily when instituting court proceedings for the annulment of the applicants' title to the plot of land at 41 Karaimų Street in Trakai. In this context the Court also takes cognisance of the Supreme Court's finding, based on its knowledge of the domestic law, that the HVCA, like the heads of the other counties, was not under an obligation to review contracts concluded by the municipalities prior to the date when the new administrative units – counties – were established (see paragraph 28 above).

58. The Court, giving due deference to the findings of the domestic courts, accepts that the proceedings in the applicants' case were opened as a consequence of the discovery of the municipal authority's mistake in allowing the privatisation of a plot of land in an urban heritage area. The challenged procedure was thus used to correct an error on the part of the Trakai municipality and to divest the applicants of their title to that plot, which they had acquired unjustly (see *Moskal*, cited above, § 56).

59. The Court therefore concludes that the interference with the applicants' property rights was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

(b) "In the public interest"

60. The Court has held that the conservation of the cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants. As such, they are an essential value, the protection and promotion of which are incumbent on the public authorities (see *SCEA Ferme de Fresnoy v. France* (dec.), no. 61093/00, ECHR 2005-XIII (extracts); *Debelianovi v. Bulgaria*, no. 61951/00, § 54, 29 March 2007; *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 54, 19 February 2009; and *Potomska and Potomski v. Poland*, no. 33949/05, § 64, 29 March 2011). In this connection the Court also refers to the Convention for the Protection of the Architectural Heritage of Europe, which sets out tangible measures, specifically with regard to the architectural heritage (see paragraph 45 above).

61. Turning to the circumstances of the instant case the Court recalls that the HVCA instituted court proceedings challenging the privatisation of the plot of land by Galina Bogdel, and its subsequent transfer to the applicants, in the name of protecting the public interest – the historical and cultural heritage of the State – since the site was on the State's tentative list for UNESCO World Heritage status. The Court further notes that the domestic court proceedings were in fact prompted by Trakai residents themselves, who were concerned that the plot of land had been misappropriated by the applicants who, moreover, intended to enlarge their property and to build a larger building on territory designated as an urban heritage site. That being so, the Court perceives nothing liable to refute the Government's argument that deprivation of the applicants' title was "in the public interest". It also reiterates its constant case-law to the effect that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest" (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII).

62. The Court therefore concludes that the interference with the applicants' property rights was "in the public interest", within the meaning of Article 1 of Protocol No. 1 to the Convention.

(c) Proportionality

63. Even if lawful and carried out in the public interest, a measure of interference with the right to the peaceful enjoyment of possessions must always strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Scordino*, cited above, § 93).

64. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Vistiņš and Perepjolkins*, cited above, § 109). Nevertheless, the Court cannot abdicate its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 93, ECHR 2005-VI).

65. In the present case the HVCA, with a view to protecting the State's cultural and historical heritage, instituted court proceedings to quash the municipal decisions and contract concluded with Galina Bogdel which had been adopted and concluded some six years earlier (see paragraph 20 above). In this connection the Court reiterates the particular importance of the principle of "good governance". It requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as those involving property, the public authorities must act in good time and in an appropriate and above all consistent manner (see *Rysovskyy v. Ukraine*, no. 29979/04, §§ 70-71, 20 October 2011).

66. The good governance principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence (see *Moskal*, cited above, § 73). However, the need to correct an old "wrong" should not disproportionately interfere with a new right which has been acquired by an individual relying on the legitimacy of the public authority's action in good faith (see, *mutatis mutandis*, *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 58, ECHR 2002-VIII). In other words, State authorities which fail to put in place or adhere to their own procedures should not be allowed to profit from their wrongdoing or to escape their obligations (see *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010). The risk of any mistake made by the State authority must be borne by the State itself and the errors must not be remedied at the expense of the individuals concerned (see, among other authorities, *mutatis mutandis*, *Pincová and Pinc*, cited above, § 58; *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007; and *Trgo v. Croatia*, no. 35298/04, § 67, 11 June 2009). In the context of revoking ownership of a property transferred erroneously, the good governance principle may not only impose on the authorities an obligation to act promptly in correcting their mistake (see, for example, *Moskal*, cited above, § 69), but may also necessitate the payment of adequate compensation or another type of appropriate reparation to the former *bona fide* holder of the property (see *Pincová and Pinc*, cited above, § 53, and *Toşcuţă and Others v. Romania*, no. 36900/03, § 38, 25 November 2008).

67. In the circumstances of the instant case the Court firstly notes that once the Trakai town residents drew the attention of the Seimas Committee for Education, Science and Culture to the possible violations as regards territorial planning in Trakai, the Lithuanian authorities acted without undue delay. Once the auditors had confirmed breaches of the law with regard to the privatisation of the State's land, the HVCA started court proceedings within months (see paragraphs 14-20 above). Above all, the Court cannot find that the earlier mistakes of the Trakai municipality were remedied at the expense of the applicants. Firstly, immediately after the land lease agreements and land purchase agreement were annulled by the Supreme Court, at the applicants' request the HVCA leased the same plot to the applicants for a fairly long period – eighty-seven years. The Court also notes that the appellate and cassation courts applied a double restitution procedure and that even though the plot of land was returned to the State's ownership, the applicants received the sum of LTL 2,874 which Galina Bogdel had paid for the plot. Lastly, the Court takes note of the Government's argument that the applicants have continuously remained the owners of the café built on the plot of land and have continued to be able to use that property. That being so, and observing that the applicants indeed did not dispute the adequacy of the sum they received before the Supreme Court, the Court finds that the applicants were fairly compensated for the Trakai municipality's authorities' mistakes in privatising that plot of land in 1994-5 (see, by converse implication, *Maksymenko and Gerasymenko v. Ukraine,* no. 49317/07, § 67, 16 May 2013). The interference with the applicants' property rights was therefore proportionate.

68. In the light of the above considerations, the Court holds that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

69. The applicants complained that they had not had a fair hearing of their case. They submitted that the Lithuanian courts had misinterpreted the domestic law when calculating the statutory limitation period and thus breached the principle of legal certainty in respect of civil legal relations.

70. The Court considers that the complaint falls to be examined under Article 6 § 1 of the Convention, which reads as follows:

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

A. The parties' submissions

1. The applicants

71. The applicants acknowledged from the outset that it was not the Court's task to take place of the domestic courts in interpreting the domestic legislation. They considered, however, that any misapplication of domestic law in respect of the calculation of the limitation period not only constituted a breach of procedural law but also infringed the principle of legal certainty and negated the substantive rights of the person, for example, the right to property. The domestic courts thus had discretion to establish and interpret the rules regulating statutory limitation only in so far as the rights and interests protected by the Convention were not thereby infringed.

72. The applicants' main argument rested on what they saw as discrimination between private parties and the State with regard to the way the limitation period was applied by the Lithuanian courts in general, and in their case in particular. They noted that under Lithuanian law the right to bring an action could be enforced from the date on which a person became aware or should have become aware of a violation of his or her rights (Article 86 of the old Civil Code and Article 1.127 of the new Civil Code). Accordingly, the principle of equality of arms required that the same interpretation of the above-mentioned provision be applied both in cases where the claimant was a private entity and when the claimant was the State, represented by its officials or institutions. However, the domestic courts' decisions showed two different results in civil cases: when examining claims submitted by private entities, the limitation period for challenging the validity of a contract was considered to begin on the date when the parties became aware that the contract had been concluded (see paragraph 36 above), and when deciding claims lodged by State authorities, the courts took as the starting-point the date when the claimant had been provided with sufficient data to prove that a particular legal act or transaction was against the law, as in the case in issue (see paragraph 34 above).

73. The applicants considered that such an interpretation by the domestic courts as to the beginning of the limitation period was contrary to the general aim and essence of the principle of statutory limitation, which was to ensure the stability of civil legal relations. Furthermore, from a practical point of view, such an interpretation was tantamount to a rule that the limitation period should not apply to claims submitted by the State regarding its property at all, because in practice it was almost impossible to miss a general limitation deadline of three or ten years calculated from the date the State institutions became aware and were provided with sufficient data to prove that a public interest had been breached. For the applicants, the above interpretation of the rules regarding the commencement of the limitation period embodied the idea that the State institutions were not

obliged to verify the lawfulness of their decisions and transactions in due time. The State's obligation to verify the decisions and transactions of its institutions was therefore not subject to a time-limit.

74. The applicants lastly contended that the domestic courts had erred in establishing that even after the administrative reform of 1995 county governors in general, and the HVCA in particular, did not have competence to and were not obliged to review the Trakai local authorities' decisions on the lease and sale of the disputed plot to Galina Bogdel. On that premise they therefore argued that the start of the limitation period should have been calculated as 10 February 1995 – the date when the land purchase agreement was concluded. In their case, however, the courts had become the advocates of the State by exclusively defending the interests of the public institution and ignoring the legal interests of another party – private persons.

2. The Government

75. The Government submitted that the domestic courts' decision to calculate the statutory limitation period from 3 July 2000 was fully compatible with the Convention in general and with the principle of legal certainty guaranteed by Article 6 in particular. They noted, firstly, that under Lithuanian law the limitation period started to run on the date on which the right to bring a civil action became enforceable, that is, the date when the person became aware of the violation of his right. That reasoning had been confirmed by the Supreme Court on a number of occasions (see paragraph 35 above). Similarly, when a case had been brought before a court in order for a public interest to be protected, the commencement of the limitation period was to be held to be the date when the claimant was provided with sufficient data to prove that a public interest had been violated (see paragraph 34 above).

76. In the instant case there was no indication that the State authority, namely the HVCA, could have become aware of the breach of the State's interests before 3 July 2000, when the SAO established that the disputed plot of land had been acquired unlawfully and prompted the HVCA to take appropriate measures. The Government also considered it important to note that it was not the State institutions which had been behind the initiative to verify the lawfulness of the land purchase agreement of 10 February 1995. It had in fact been the initiative of a private person, R.L., who had written to the SAO expressing his concerns about the applicants' business and the building work they intended to carry out.

77. Lastly, the Government also considered it relevant that in the present case a clear and weighty public interest existed (see paragraph 50 above). They further observed that under the domestic case-law a court, having assessed the balance to be struck between the values to be protected and the need to ensure the stability of legal relations, could refuse to protect the public interest even in those cases where the State institution defending the

public interest had complied with the limitation period for bringing a case before the court, if there had been an unjustifiably long delay between the adoption of certain administrative acts and the lodging of court proceedings (see paragraph 37 above). However, the case at hand was different, because a fairly short time – six years – had passed between the date the legislation on the protection of historical and cultural heritage was breached and the date the transaction was challenged in court. Moreover, the public interest at stake in the instant case was beyond comparison.

B. The Court's assessment

1. Admissibility

78. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

79. The Court reiterates that Article 6 § 1 of the Convention embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect. However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. It is also noteworthy that limitation periods are a common feature of the domestic legal systems of the Contracting States. They serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter, and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time (see, *mutatis mutandis*, *Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 50 and 51, *Reports of Judgments and Decisions* 1996-IV).

80. The Court has held that the observance of admissibility requirements for carrying out procedural acts is an important aspect of the right to a fair trial. The role played by limitation periods is of major importance when interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States (see *Dacia S.R.L. v. Moldova*, no. 3052/04, § 75, 18 March 2008). The Court also reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This applies in particular to the interpretation by courts of rules

of a procedural nature such as the prescribed time for lodging a court action. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, *mutatis mutandis*, *Platakou v. Greece*, no. 38460/97, § 37, ECHR 2001-I; also see *Ghirea v. Moldova*, no. 15778/05, § 30, 26 June 2012).

81. Turning to the circumstances of the instant case, the Court recalls that, pursuant to Article 86 of the old Civil Code, the right to bring an action started from the date on which the person became aware or should have become aware of the violation of his rights (see paragraph 33 above). It has given due consideration to the applicants' argument that calculating the limitation period from the date when the State or municipal authorities were provided with sufficient information to prove the fact of a violation, *vis-à-vis* the rule applied to private entities – that the limitation period started to run from the date when the contract had been concluded – is discriminatory. The Court cannot fail to observe that the applicants did not raise this particular discrimination-related complaint in their appeal on points of law to the Supreme Court, a copy of which it has examined with due attention. Even so, on the basis of the submissions by the Government and, above all, the Court's conclusion in paragraph 67 above, it considers that the effect of such a distinction on the applicants was compatible with their "right to a court" under the Convention.

Accordingly, the Court concludes that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint under Article 1 of Protocol No. 1 to the Convention admissible;

2. *Declares* by a majority the complaint under Article 6 § 1 of the Convention admissible;

3. *Holds* by five votes to two that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* by five votes to two that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Popović and Pinto de Albuquerque is annexed to this judgment.

G.R.A.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES POPOVIĆ AND PINTO DE ALBUQUERQUE

1. Much to our regret we are unable to follow the majority. For the reasons stated below, we think that there was no legal basis for the interference with the applicants' property right, since the proceedings to annul the administrative decisions of 27 July 1994 and 18 January 1995 and the land purchase contract of 10 February 1995 were already time-barred when they were initiated. In addition, even assuming that the interference with the applicants' right to property was lawful, that interference would in any case be disproportionate.

Article 1 of Protocol No. 1

2. The majority held that there had been interference with the applicants' right to the peaceful enjoyment of their property, but that the interference had been lawful and proportionate. The reasons for the majority's holding were that the proceedings to annul the sale agreement for the plot of land in dispute were "used to correct an error on the part of the Trakai municipality and to divest the applicants of their title to that plot, which they had acquired unjustly", and that these proceedings started "within months" after the auditors had in 2001 established breaches of the law as regards the administrative decision of the Trakai District Executive Council of 18 January 1995 to sell the plot of land to Galina Bogdel[1].

3. The majority failed to note that the limitation period for bringing such proceedings had already expired in 1998, and that therefore the interference with the applicants' property right lacked any lawful basis, as will be shown below.

4. The majority also observed that, immediately after the annulment of the land purchase, the administration had granted a long-term lease in favour of the applicants for the same plot. According to the majority, this fact rendered the interference with the applicants' property right proportionate[2]. This reasoning runs counter to the majority's other argument that the aim of the annulment of the contract was to "protect cultural and historical heritage"[3]. In their capacity as lessees, the applicants were entitled to use the plot of land in question in the same way as they would have done had they been its proper owners. In fact, as the majority themselves underlined, since the annulment of the land purchase contract, "the applicants have continuously remained the owners of the café built on the

[1] Paragraphs 59 and 67 of the judgment.
[2] Paragraph 67 of the judgment.
[3] Paragraph 65 of the judgment

plot of land and have continued to be able to use that property"[4]. The Government themselves admitted that "the applicant's property right to the café situated in the land plot at issue remained unchanged" and that "in reality the applicants were never precluded (and are not precluded at present) to continue in exercising their commercial activity in the cafe owned by them, which is constructed in the land plot at issue"[5]. But by renting out the plot of land to the applicants for a period of eighty-seven years after the annulment of the land purchase contract, the administration was implicitly admitting that the use of the plot of land for the commercial exploitation of a café was not in conflict with any public interest. Hence, it is contradictory to maintain at the same time that the annulment of the purchase of the land was necessary to protect the public interest and avoid its use for commercial purposes, but that the public interest is compatible with the lease of that same land and its future commercial use in the exact same way as that in which it had been used in the past.

5. The majority thus failed to explain how the protection of the cultural and historical heritage had been furthered by the annulment of the land purchase contract, since the applicants' commercial activity on the disputed plot of land remained exactly the same as before the annulment of the contract. Moreover, no explanation was given for the fact that the applicants were allowed to continue their commercial activity in spite of the findings of the Trakai District Court and the Municipality's Audit Office that the applicants' business could not even have been built at all on the disputed land plot, and notwithstanding the annulment by the Trakai District Court of the administrative decision of 27 July 1994 to permit Galina Bogdel to lease the plot of land.

In view of the facts presented by the applicants and accepted by the respondent Government, we cannot but conclude that the applicants continued, after the annulment of the purchase contract, to run their business on the leased plot of land exactly as they had done since at least 1993, because the local authorities considered that this exploitation did not conflict with public interest. Therefore, the interference with the applicants' property right was clearly disproportionate, in so far as it did not pursue, in any possible practical way, the alleged public interest of protection of the cultural and historical heritage.

6. The majority also argued that after the Supreme Court's ruling of 8 November 2005 the applicants were refunded the exact amount of money that they had paid for the plot of land ten years earlier.

7. The majority failed to realise that the applicants had been deprived of ten years of interest on that amount of money, which the administration had used for its own benefit. In fact, the respondent Government themselves

[4] Paragraph 67 of the judgment.
[5] Page 21 of the Government's observations.

admitted that the refunded amount might be too low, and argued that the applicants could still seek damages from the State under Article 6.271 of the Civil Code, although they did not provide relevant case-law examples supporting that assumption[6].

8. Furthermore, in the context of revoking ownership of a property transferred erroneously, it is often necessary to provide for the payment of adequate compensation or another type of appropriate reparation to the former *bona fide* holder of the property title[7]. That was the case with Galina Bogdel, the applicants' mother and spouse, who was an honest purchaser. Neither she nor the applicants committed any breach of the law. On the contrary, they relied on the administrative decisions of the competent administrative entity, namely the Trakai District Executive Council, approving the sale of the plot of land and the land purchase agreement, which was also lawfully registered. In fact, the applicants built a kiosk on the plot of land after having obtained the lease for a five-year term in February 1993 and only transformed the kiosk into a café after obtaining the necessary permission by the local authorities[8]. Thus, the applicants' property title, effective land possession and legitimate expectations were repeatedly confirmed by the administration. It is thus evident that both Galina Bogdel and the applicants always acted in good faith and in accordance with the administrative authorities' decisions.

9. Taking into account the facts referred to above, the interference with the applicants' property right fails the proportionality test. If a mistake is made by the public authorities themselves, without any fault on the part of the private party, a rigorous proportionality approach must be taken in determining whether the burden borne by the private party was excessive[9]. The risk of any mistake made by the public authorities must be assumed by them and the errors must not be remedied at the expense of the private party concerned[10], particularly when a new right has been acquired by the private party relying in good faith on the legitimacy of the public authorities' action[11]. In the instant case, the burden of correction of an alleged mistake by the Trakai District Executive Council was placed entirely on the shoulders of the applicants, without any consideration for their good faith.

10. Hence, we conclude that the interference with the applicants' property right was neither lawful, nor proportionate.

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[6] See page 22 of the Government's observations.
[7] See *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 53, ECHR 2002-VIII, and *Toşcuţă and Others v. Romania*, no. 36900/03, § 38, 25 November 2008.
[8] Paragraph 11 of the judgment.
[9] See *Moskal v. Poland*, no. 10373/05, § 73, 15 September 2009.
[10] See *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007.
[11] See *Pincová and Pinc*, cited above, § 58.

Article 6

11. With regard to the Article 6 claim, the majority endorsed the Supreme Court's interpretation of the applicable rules on the limitation period within which to bring an action for the annulment of an administrative decision and the sale agreement based thereon in order to defend the public interest, and more specifically its interpretation of the date on which the period started running[12]. In fact, the majority did not dispute, and even accepted, the Supreme Court's argument that the administrative reorganisation of the State and the creation of new territorial entities were sufficient grounds on which to justify the restarting of the statutory limitation period for the benefit of the administration[13].

Under Lithuanian law, the limitation period for claiming a breach of a right resulting from the invalidity of a contract commences when the parties become or should have become aware of the fact that the contract was entered into[14]. This is the common rule established by law and any exception to this rule must be provided for by statute (see Article 1127 of the Civil Code and Article 86 of the previous Civil Code of 1964). Nonetheless, the Supreme Court has made a different interpretation of the domestic legal norms as to the calculation of the limitation period when applied to actions brought by the administration. According to this interpretation, the limitation period only starts running at the time when the administration is "provided with sufficient data to prove that the public interest was breached". Applying this interpretation to the present case, the Supreme Court concluded that the limitation period started running neither from the date of signature of the land purchase agreement by the applicants (10 February 1995), nor from the time of the creation of new administrative entities (an undetermined date in 1995), but from the moment when the authorities of those new administrative entities were provided with evidence about the unlawfulness of the land purchase agreement, that is, 3 July 2000, the date when the National Audit Office allegedly found out about the breach of the legislation.

12. We see absolutely no grounds for such a holding, and we submit that it breaches the right to legal certainty enshrined in Article 6 of the Convention.

Firstly, we note that this interpretation has no express legal basis. It results from creative case-law of the Supreme Court, reflected in its ruling of 28 April 2010[15]. Since this interpretation creates an exception to the general rule established in Article 1127 of the Civil Code and Article 86 of

[12] Paragraphs 79-80 of the judgment.
[13] Paragraph 51 of the judgment.
[14] See for example the decisions of the Supreme Court of 24 April 2006 and 3 January 2006.
[15] Paragraph 34 of the judgment.

the previous Civil Code of 1964, it should have an express basis in law, but that is not the case. Secondly, this interpretation is at odds with the Supreme Court's own interpretation of the subjective and objective requirements of statutory limitation, because it does not apply the objective criterion for the calculation of such periods ("should have become aware") to the administration and its officials and representatives. The administration is bound to act according to the law and refrain from committing any unlawful acts. Administrative entities and their officials and representatives are obliged to verify, in the performance of their functions, whether their acts are in accordance with the law, on pain of disciplinary, civil and possibly criminal liability. If the limitation period did not start running for the administration when its officials and representatives should have become aware of the unlawfulness of their acts, this would promote negligence and disrespect for the rule of law among administrative officials and representatives. Thirdly, the Supreme Court's interpretation referred to above creates an unjustified benefit for the administration which can prolong indefinitely any time bar, allowing the courts to proceed with an annulment claim by the administration even though a private party's claim would have been left without examination in similar circumstances. In other words, the pure inertia of the administration, even in cases where it is aware or should have been aware of the unlawfulness of administrative acts and contracts, does not trigger the starting date for the limitation period, as long as no evidence ("sufficient data") of the said unlawfulness is presented to it. That interpretation of domestic law, allowing the administration to challenge a contract between the administration and a private party despite the expiry of the general limitation period, albeit valid for the private party, is clearly contrary to the principle of legal certainty protected by Article 6 of the Convention[16].

In the present case, the Trakai District Board was vested with authority to dispose of public property and also had the duty to ensure the lawfulness of the decisions taken regarding such public property, including the plot of land at issue. Municipal officials, to whom the District Board had delegated the right to dispose of public property, were obliged to know the applicable laws at the time the contract was signed. Thus, the Trakai municipal officials and representative should have become aware of the alleged legal flaws in the land purchase contract at least from the date of the transaction in question.

13. The aforementioned obligation of the Trakai municipal officials and representative has consequences for the mode of calculation of the limitation period for bringing annulment proceedings in respect of the contract between the administration and Galina Bogdel. The contract of land purchase by virtue of which Galina Bogdel became the owner of the plot in

[16] *Dacia SRL v. Moldova*, no. 3052/04, § 58, 18 March 2008.

question was entered into on 18 January 1995. The limitation period for an action seeking to have that contract annulled was three years under Article 84 of the 1964 Civil Code then in force, as the Supreme Court itself affirmed, bearing in mind that the rules which were in force at the time when the period started running are applicable[17]. This leads to the conclusion that as of 18 January 1998 there was no legal basis whatsoever on which to file for the annulment of the contract of purchase and therefore the interference with the applicants' property right was unlawful.

14. The administrative reform of 1995 and the creation of the new counties do not change this conclusion, contrary to the Supreme Court's assumption. Firstly, Lithuanian law did not provide at the relevant time, and still does not, for any cause of suspension or interruption of the limitation period for the annulment of administrative contracts by virtue of any succession of the parties to the contract. Secondly, the counties were created by legislation of 1995 prior to the time when it became impossible to annul the purchase contract on any grounds, that is, 18 January 1998. The new administrative entities had the duty to review the pending contracts since they succeeded the former administrative entities and therefore inherited their contractual position and obligations in respect of all contracts entered into by the former administrative entities. Hence, the new administrative entities, through their competent institutions and officials, should have acted promptly and instituted court proceedings in order to quash the alleged unlawful municipal decisions and land purchase contract in good time[18]. Thirdly, the change in the law on the powers of review and inspection of administrative decisions and contracts between the administration and private parties is an internal matter of the State as a single entity, and therefore cannot in any way change the mode of calculation of the limitation period. Public authorities which fail to abide by their own rules of internal organisation and procedures should not be allowed to profit from their wrongdoing or to escape their obligations[19].

Having said that, the Vilnius County Administration, as well as the Trakai District Municipality and specifically their Audit Offices, should have checked whether administrative decisions adopted and contracts entered into prior to the administrative reform were valid and should have challenged in court those which were in breach of the law, failing which they had to assume the legal consequences of the acts of the entities to which they had succeeded.

15. Furthermore, no plausible justification was provided for the discrepancy between the above-mentioned case-law of the Supreme Court

[17] Paragraph 28 of the judgment.
[18] See *Moskal*, cited above, § 69; *Beyeler v. Italy (GC)*, no. 33202796, § 120, ECHR 2000-I; *Megadat.com SRL v. Moldova*, no. 21151/04, § 72, 8 April 2008; and *Rysovskyy v. Ukraine*, no. 29979/04, §§ 70-71, 20 October 2011.
[19] See *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010.

and the case-law of the Supreme Administrative Court, according to which in order to ensure the stability of legal relations, the courts should refuse to protect the public interest even in those cases where the State institution defending the public interest had complied with the limitation period for bringing a case before the court, if there had been an unjustifiably long delay between the adoption of certain administrative acts and the lodging of court proceedings[20]. A period of six years of inertia on the part of the administration is clearly excessive. That was so in the present case, since the land purchase contract was signed in 1995 and the proceedings for its annulment only started in 2001, well beyond the statutory three-year deadline established for that purpose.

16. To sum up, it was the complacency of the Trakai District Executive Council and its officials and representative in 1994 and 1995 and the pure inertia of the Vilnius County Administration and the Trakai District Municipality, its officials and audit offices in the subsequent years that caused the annulment action to become time-barred on 18 January 1998. In other words, it was the total lack of diligence on the part of the administration on 18 January 1995 and 10 February 1995, and in the consecutive years, that allowed for the consolidation of an alleged unlawful transaction between the administration and a *bona fide* private party. In fact, it was only on the initiative of some private persons that the administration started to investigate the said transaction many years after it was agreed. To count the starting date of the limitation period as 3 July 2000, when allegedly the National Audit Office found out about the breach of the legislation, or as 6 October 2000, when allegedly the Trakai District Municipality Audit Office reached that same conclusion in another autonomous investigation, would be tantamount to rewarding the negligence and inertia of the administration and punishing a *bona fide* private party. Having ignored the statutory limitation period of three years, and remedied an allegedly unlawful administrative decision and contract at the expense of the individuals concerned, the national authorities breached the principle of legal certainty enshrined in Article 6 of the Convention[21].

Conclusion

17. The limitation period for claims raised against contracts between the administration and a private party serves the interest of the aggrieved party in having the alleged violation of its right adjudicated without any unreasonable delay, and conversely guarantees the right of the other party to be certain that after the period has expired its acquired rights will no longer

[20] Paragraph 37 of the judgment.

[21] See *Pincová and Pinc*, cited above, § 58; *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007; and *Trgo v. Croatia*, no. 35298/04, § 67, 11 June 2009.

be at risk. The miscalculation of the limitation period by the public authorities of the respondent State not only infringed the principle of legal certainty, but also negated the applicants' property right. For these reasons, we are of the opinion that there has been a violation of both Article 1 of Protocol No. 1 and Article 6 of the Convention in the present case.