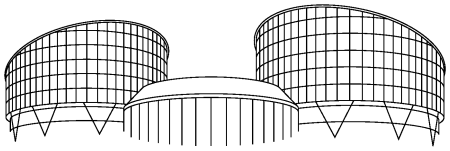

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BRITANIŠKINA v. LITHUANIA

(Application no. 67412/14)

JUDGMENT

STRASBOURG

9 January 2018

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 Britaniškina v. Lithuania,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 5 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 67412/14) 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 a Lithuanian national, Ms Libė Britaniškina ("the applicant"), on 9 October 2014.

2. The applicant was represented by Mr M. Kazlauskas, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. On 13 September 2016 the complaint under Article 1 of Protocol No. 1 to the Convention concerning the fact that the applicant had not been provided with a new plot of land of equal value and the overall delays in finalising the restitution process was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1930 and lives in Vilnius.

5. On 29 December 2001 the applicant's husband asked the national authorities to restore his property rights to a house and a plot of land in Vilnius which had belonged to his grandfather before nationalisation. On 28 February 2002 the applicant's husband specified his initial request and

asked to have the plot of land restored *in natura* to him if possible, or to provide him with another plot of land in Vilnius.

6. The property rights of the applicant's husband were restored to some premises (a storehouse) in Vilnius in 2003 and it was decided to pay him monetary compensation for the other premises that had not been returned to him *in natura*.

7. On 10 April 2003 the Vilnius County Administration informed the Vilnius Municipality that the property rights of the applicant's husband would be restored to 0.1638 hectares of land for residential purposes.

8. On 11 June 2003 the Vilnius Municipality informed the Vilnius County Administration that a plot of land of 0.1007 hectares had been formed near the buildings owned by the applicant's husband.

9. In November 2003 the Vilnius City First District Court established as a legal fact that the grandmother of the applicant's husband had owned a plot of land in Vilnius measuring 362 square "fathoms" (*sieksnis* – 1 fathom equals 1.82 m).

10. On 12 March 2004 the Vilnius County Administration informed the Vilnius Municipality that the property rights of the applicant's husband would be restored and that he was a candidate to receive a plot of land measuring 0.1638 hectares *in natura*. In July 2004 the Vilnius County Administration issued a document stating that the applicant's husband had a right to a plot of land of 0.1638 hectares.

11. In August 2006 the authorities replied to the applicant husband's letter asking why only a plot of land of 0.1007 hectares instead of 0.1638 hectares had been formed near the house, and stated that the plot of land 0.1007 hectares where the premises had been situated, would be divided for several co-owners of the premises and the rest of the land would be returned to the applicant's husband by the means he chose.

12. On 16 May 2007 the applicant's husband died and the applicant became his heir.

13. On 27 March 2009 the applicant's son, as the representative of the applicant, asked the authorities to restore the property rights of his father to the plot of land of 0.1171 hectares by paying compensation in securities.

14. On 9 April 2009 the property rights of the applicant's husband were restored *in natura* to 0.0467 hectares of land and it was provided that compensation of approximately 1,642 euros (EUR) would be paid in securities for the remaining 0.1181 hectares of land. On 24 July 2009 this decision was changed and it was decided to restore the applicant's husband's property rights to a plot of land of 0.0362 hectares *in natura* and to pay compensation in securities for the plot of land of 0.1286 hectares, amounting to approximately EUR 1,788.

15. In October 2009 the applicant lodged a complaint with the Vilnius Regional Administrative Court, claiming that the compensation in securities, established by the national authorities, was unjust, and asking to

have the value of the plot of land measuring 0.1286 hectares recalculated. In February 2010 the applicant applied to have the administrative proceedings suspended and to have the matter of calculation of compensation referred to the Constitutional Court.

16. On 10 February 2010 the Vilnius Regional Administrative Court held that the Vilnius County Administration had calculated the compensation in accordance with the methodology approved by the Government (see paragraph 33 below). However, the calculation of the municipality provided that the market value of the plot was approximately EUR 786,029 and the market value of the plot as calculated by the Centre of Registers was approximately EUR 750,313. The court stated that in comparison with these numbers, the value of the plot of land provided by the Vilnius County Administration (see paragraph 14 above) was 327.5 times lower, and it could not conform to the principle of equal value. Moreover, in accordance with the methodology approved by the Government, the calculation was the same for plots of land in the city centre and outside the city. The court thus decided to suspend the administrative proceedings and to refer the matter to the Constitutional Court.

17. In April 2013 the National Land Service informed the applicant that the relevant laws had been changed and that she could change the form of restoration of the property rights to 0.1286 hectares of land. Instead of securities she could choose one of the following: to be assigned a new plot of land of equivalent value to the one held previously; to have the liabilities to the State legally voided; to be assigned a new plot of land for individual construction; to receive monetary compensation. It appears that the applicant did not reply to this letter.

18. On 30 September 2013 the applicant was included on the list of persons to receive a plot of land for construction of an individual house.

19. After the matter had been resolved by the Constitutional Court (see paragraph 35 below), the Vilnius Regional Administrative Court rejected the applicant's claim on 4 November 2013. The court analysed the domestic regulation regarding the calculation of the value of the land and observed that this matter had been referred to the Constitutional Court, which held that the methodology approved by the Government setting down the principles of calculation of the value of the land was in accordance with the law. The Vilnius Regional Administrative Court also held that the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property had been changed and persons could, before 1 July 2013, choose other means to restore their property rights than by payment of securities. If no other means were chosen, the property rights had to be restored by paying monetary compensation. The court further observed that the authorities had suggested the applicant choose other means to have her property rights restored (see paragraph 17 above), and that in September 2013 it had been decided to include the applicant on the list of persons to receive a plot of land for

construction of an individual house. The decision the applicant complained of, that is to say the calculation of the compensation to be paid in securities, had not been of legal importance to the applicant because the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property had been changed and it had become impossible to restore the property rights in securities. The decision to restore the applicant's property rights by paying her compensation in securities had to be changed to monetary compensation. Because the applicant had been included on the list of persons to receive a new plot of land for individual construction, she could use another way to restore her property rights.

20. The applicant appealed. On 29 May 2014 the Supreme Administrative Court upheld the first-instance decision. The court also emphasised the argument of the Constitutional Court that, in calculating the compensation, it was justified to pay heed not only to the market value of the property but also to its value at the time of nationalisation and to the changes in the quality and the value of property. The Supreme Administrative Court also held that the applicant had complained about the length of the court proceedings. The court held that the applicant had lodged the complaint on 4 November 2009; it had been accepted by the Vilnius Regional Administrative Court on 17 November 2009. On 10 February 2010 the Vilnius Regional Administrative Court had decided to apply to the Constitutional Court, which had adopted its decision on 11 September 2013. The proceedings in the administrative case had recommenced on 16 September 2013 and the decision had been adopted on 4 November 2013. Given the complexity of the case and referral of the matter to the Constitutional Court, the length of proceedings had not breached the reasonable time requirement.

21. On 11 November 2014 the National Land Service informed the applicant's son, as the applicant's representative, that on 1 November 2014 it had become possible to restore the property rights by receiving a plot of forest of equal value. The applicant was asked to express her wish before 1 March 2015. It appears that she never replied to this letter.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Article 23 of the Constitution reads as follows:

> "Property shall be inviolable.
>
> The rights of ownership shall be protected by law.
>
> Property may be taken over only for the needs of society according to the procedure established by law and shall be justly compensated for."

23. Article 102 of the Constitution reads as follows:

> "The Constitutional Court shall decide whether the laws and other acts of the Seimas are in conflict with the Constitution, and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws.
>
> ..."

24. In accordance with Article 63 § 3 of the Law on the Constitutional Court, the Constitutional Court examines cases concerning compliance of Government acts with the Constitution and laws.

25. Article 98 § 1 (4) of the Law on Administrative Proceedings provides that the administrative case is suspended when the court applies to the Constitutional Court asking to decide whether a law or another legal act, that has to be applied in a specific case is in accordance with the Constitution.

26. At the material time, Article 5 § 2 (1) of the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property of 1997 (*Piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymas,* hereinafter – the Law on Restitution) provided that property rights to land that until 1 June 1995 had been within the boundaries of a city were to be restored by returning *in natura* the land that was unoccupied to a citizen or citizens by a right of joint property, and by giving the plots of land to the citizens who had buildings on them, except when the land was State redeemable or a citizen did not want to have it returned *in natura*.

27. At the material time, Article 16 § 1 of the Law on Restitution provided that the State had to compensate citizens for titles to existing real property which had been bought by the State, as well as for titles which had existed prior to 1 August 1991 but had been subsequently annulled as a result of decisions adopted by the State or local authorities. Article 16 § 2 provided that when the State had to compensate citizens for real property which, in accordance with this Law, had not been returned *in natura*, the principle of equal value had to be applied to both the property that had not been returned and property which had been given in kind as compensation for property acquired by the State. Article 16 § 3 provided that the value of State redeemable property and property that citizens did not want to receive *in natura* was to be calculated in accordance with the methodology approved by the Government. One of the forms of compensation for land, forest and riparian rights acquired by the State was compensation in the form of securities (Article 16 § 9 (3)).

28. On 1 February 2012, Article 16 § 9 (6) the Law on Restitution was amended by providing, for the first time, for payments in cash as one of the ways of compensating for land compulsorily bought by the State.

29. On 8 November 2012, the Law on Restitution was amended (the amendment entered into force on 22 November 2012) by annulling the compensation in the form of securities and providing that if a citizen asked to restore his or her property rights in the form of securities, he or she could, by 1 July 2013 change his or her wish regarding the form in which the

ownership rights to the real property were restored. If a final decision on restitution in the form of securities had already been taken, the relevant authority could, upon the request of the citizen, change that decision.

30. As from 1 November 2014, Article 21 § 4 of the Law on Restitution provided that a citizen who had already asked for his or her property rights to a plot of land to be restored, could by 1 March 2015 express or change his or her wish regarding the form in which the ownership rights to the real property were restored and choose a plot of forest of equal value, provided that a final decision on restitution had not been taken or, if it had been taken, had not yet been executed or had been executed in part.

31. At the material time, Government Resolution of 29 September 1997, no. 1057, provided that compensation for the property that the citizens did not want to receive *in natura* was to be calculated in accordance with the methodology approved by the Government Resolution on 24 February 1999, No. 205 (hereinafter – "the Methodology"). If the citizens were to be compensated in the form of securities, the value of the securities was to be calculated in accordance with the order approved by the Government on 12 July 2002 by resolution No. 1130.

32. The Methodology was amended on 10 April 2013, removing the option of compensation in the form of securities.

33. The Methodology provided that the value of State redeemable land or forest was calculated by multiplying the area of land by the value of the land. In cities, the value of the land used for other purposes was 6,000 Lithuanian litai (LTL) per hectare (approximately EUR 1,738) (Point 4.2.). If the plot of land was within the territories of Vilnius and Kaunas before 1 June 1995, the value had to be multiplied by eight (Point 6.1.1.).

34. The Civil Code provides that damage caused by unlawful acts of public authorities must be compensated for by the State, irrespective of the fault of a particular public servant or other public-authority employee (Article 6.271).

35. On 11 September 2013 the Constitutional Court examined, whether the Methodology was in accordance with the Constitution and the Law on Restitution. The Constitutional Court referred to its ruling of 30 September 2003, where it held that Lithuania had chosen restricted restitution, not *restitutio in integrum*. The Constitutional Court further held that since the beginning of the restitution process in 1991, the Law on Restitution had established that the provision of restricted restitution meant that compensation for State redeemable property had been calculated having regard to the real value of the property at the time of redemption, with the expenses for amelioration of the property deducted. The Government approving the Methodology thus had had to apply the provisions of existing domestic law. The Constitutional Court referred to its rulings of 2 April 2001 and 4 March 2003 where it had held that the legislature had had wide

discretion to establish the conditions and order of restoration of property rights and this discretion had been objectively preconditioned by the fact that the system of property relationship had changed over time. The Constitutional Court also referred to its rulings of 23 August 2005, 5 July and 6 September 2007, 9 March 2010 and 30 May 2013 where it had held that payment of compensation had not been contrary to the principle of inviolability of property because just compensation had also ensured the restoration of property rights. When restoring justice in respect of property owners, the State could not ignore its duty to ensure that justice was done *vis-à-vis* society as a whole. Thus in the process of restoration of property rights, it had to strike a balance between the persons whose rights had to be restored and the interests of the entire society. The State could not establish a method of compensation that would be a financial burden on society and the State. When deciding whether compensation for property that had not been returned *in natura* was adequate, account had to be taken not only of the market value of that property, but also of the value of the property at the moment of nationalisation, as well as of changes in the quality and value of the property. It was clear from the material available in the constitutional-justice case at issue that the Government had linked the amount of compensation for State redeemable land in urban areas to the average price of the land at the time of nationalisation or unlawful expropriation by other means. This had not breached the Constitution and the Law on Restitution.

THE LAW

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

36. The applicant complained that the State authorities had breached her rights by failing to restore her property rights by providing her with a new plot of land. She was also dissatisfied with the overall length of the restitution process in her case. The applicant relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

A. Admissibility

37. The Government argued that the applicant had failed to exhaust the domestic remedies with regard to her complaint about the overall delay in finalising the restitution process. The Government stated that the applicant could have started court proceedings, claiming non-pecuniary damages for the alleged delay in finalising the restitution process and she could have lodged a claim with the domestic courts, asking them to oblige the authorities to act in due time.

38. The applicant did not comment on this issue.

39. The Court is unable to share the Government's view that the applicant should have started new court proceedings for damages if she had considered the restitution process flawed on account of the authorities' actions. It is the Court's view that a new set of court proceedings would only have delayed the outcome of the restitution process without necessarily bringing a tangible result (see *Paukštis v. Lithuania*, no. 17467/07, § 56, 24 November 2015, *Kavaliauskas and Others v. Lithuania*, no. 51752/10, § 46, 14 March 2017, *Valančienė v. Lithuania*, no. 2657/10, § 49, 18 April 2017).

40. Accordingly, the Court dismisses the Government's objection that the applicant failed to exhaust domestic remedies.

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

B. Merits

1. The parties' submissions

42. The applicant firstly argued that the Lithuanian authorities had failed to act diligently, had included her without her having requested on the list of persons to receive a plot of land for construction of an individual house, and as a consequence she had been precluded from restoring her rights to 0.1286 hectares of land. Furthermore, the process of restitution in her case had not come to an end and it was still not clear when, where and what plot of land would be offered to the applicant for construction of an individual house.

43. The Government noted at the outset that in the 1990's Lithuania had striven to re-establish justice and to reinstate the violated property rights of citizens whose property had been nationalised during Soviet times. It had chosen restricted restitution, however, not *restitutio in integrum*. The restitution process had thus sought to balance the interests of those whose rights were being remedied and the interests of society as a whole.

44. The Government further submitted that the applicant's husband had only started restitution proceedings at the end of 2001, ten years after the process of restitution had begun in Lithuania. Moreover, the entitlement to restore the applicant's husband's property rights had been confirmed by the authorities in 2004, but up to 2009, when a decision to restore the property rights to the applicant's husband had been taken, the applicant had merely been a candidate to have her property rights restored in a certain way (see paragraphs 10 and 14 above). Also, the restoration of the property rights by way of securities had been chosen upon the explicit request of the applicant (see paragraph 13 above). However, afterwards she had decided to start court proceedings because she had thought that the compensation calculated in the form of securities had been too low. This, and the fact that the applicant's request to refer the issue to the Constitutional Court had been satisfied, had protracted the restitution process. The Government explained that during the court proceedings the possibility to have one's property rights restored in the form of securities had been annulled because there had been no securities left, and the applicant had been informed of her right to have her property rights restored by another method. As she had failed to do so, the authorities had included her on the list of persons to receive a plot of land for individual construction. This list had been prepared taking into account the date of the initial request – in the applicant's case it was 2001 – and it was constantly updated. In September 2016 the applicant had been 3,046th in line, and in October 2016 the first 1,000 claimants were invited to choose a plot of land for construction of an individual house. Moreover, after the change in the Law on Restitution in 2014, the applicant had been informed of the possibility to restore her property rights through receipt of a plot of forest of equal value, but she had not availed herself of this possibility (see paragraph 21 above). Lastly, the applicant was still able to receive monetary compensation, but she had never expressed a wish to do so. It was clear that the process of restitution had been partly complicated and further delayed by the applicant's own conduct.

2. The Court's assessment

45. The Court notes that the applicant's husband applied to have his property rights restored in 2001. His entitlement to have his property rights restored was confirmed in 2004 and the decision to restore part of his property rights *in natura* and part in the form of securities was taken in 2009 (see paragraphs 10 and 14 above). Since the applicant was included on the list of persons to receive a plot of land for construction of an individual house in 2013 but she has not yet received it, the Court holds that there was an interference with her right to peaceful enjoyment of her possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention. It remains to be ascertained, whether or not that interference was justified.

46. For the purposes of the above-mentioned provision, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52, and *Nekvedavičius v. Lithuania*, no. 1471/05, § 86, 10 December 2013). The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Străin and Others v. Romania*, no. 57001/00, § 44, ECHR 2005-VII, and *Tunaitis v. Lithuania*, no. 42927/08, § 31, 24 November 2015).

47. In the context of property rights, particular importance must be attached to the principle of good governance (see *Nekvedavičius*, cited above, § 87). In that connection it should be stressed that where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I, see also *Berger-Krall and Others v. Slovenia*, no. 14717/04, § 198, 12 June 2014, *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 72, 8 April 2008, *Moskal v. Poland*, no. 10373/05, § 51, 15 September 2009).

48. The Court takes cognisance of the fact that the present case concerns the restitution of property and is not unmindful of the complexity of the legal and factual issues that a State faces when resolving such questions. It follows that certain impediments to the realisation of an applicant's right to the peaceful enjoyment of his or her possessions are not in themselves open to criticism (see *Aleksa v. Lithuania*, no. 27576/05, § 86, 21 July 2009; *Igarienė and Petrauskienė v. Lithuania*, no. 26892/05, § 58, 21 July 2009; *Paukštis*, cited above, § 84; and *Šimaitienė v. Lithuania,* no. 55056/10, § 45, 21 February 2017).

49. Even so, the state of uncertainty in which an applicant might find her or himself as a result of delays attributable to the authorities is a factor to be taken into account in assessing a State's conduct (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 151 and 185, ECHR 2004-V, and *Igarienė and Petrauskienė*, cited above, § 58).

50. In the circumstances of the present case, the Court notes that the applicant's property rights were restored by the decision of the authorities of 2009 (see paragraph 14 above). However, after six months, the applicant started court proceedings as she felt that the compensation calculated in the form of securities had been too low (see paragraph 15 above). During the court proceedings, the relevant provisions of the Law on Restitution were changed and the restitution of the property rights in the form of securities was annulled (see paragraph 29 above). The applicant was subsequently informed about the forms of restitution available to her by the authorities, she was asked to express her preference regarding the forms of restitution in 2013 (see paragraph 17 above). As no response had been received from her, the authorities decided to include her on the list of persons to receive a plot

of land for construction of an individual house, because as one of the options in his initial request to restore his property rights, her husband had indicated that he would like to receive a plot of land in Vilnius (see paragraph 5 above). After the relevant provisions of the Law on Restitution were changed and it became possible to receive a plot of forest of equivalent value as a form of restitution, the applicant was informed of this fact but no response was received from her (see paragraphs 21 and 30 above). Moreover, the right to receive monetary compensation was not annulled but the applicant's written request was needed in order to pay it (see paragraphs 28 and 29 above). Although the Court does not lose sight that there were some delays on the part of the authorities, in particular that the proceedings before the Constitutional Court lasted for more than three years, it observes that the applicant herself decisively contributed to the fact that her property rights had not yet been restored and to the lengthy restitution process.

51. The Court notes that the national authorities acted within the margin of appreciation afforded to the respondent State when striking a fair balance between the general interest and the applicant's rights. Having regard to the applicant's own complaints to the domestic courts and later her own inactivity, the Court considers that the fact that the applicant's property rights have not yet been restored and the delays in the restitution process were not such as to amount to a violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 9 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President