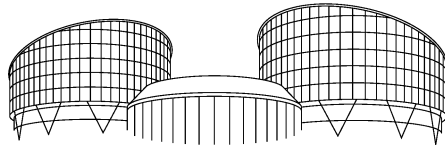

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ČINGA v. LITHUANIA

(Application no. 69419/13)

JUDGMENT
(Merits)

STRASBOURG

31 October 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Činga 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,
Iulia Motoc,
Carlo Ranzoni,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 69419/13) 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, Mr Ramūnas Činga ("the applicant"), on 24 October 2013.

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

3. The applicant alleged that the communications necessary for the normal functioning of the land were in the land he had to return to the State and that the amount awarded to him was too low.

4. On 22 June 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Zujūnai.

6. In 1988 the applicant was provided with a plot of land of 0.15 hectares for residential purposes.

7. In 1992 the authorities allocated him an additional plot of land of 0.05 hectares and similar additional plots were allocated to another twenty-four people.

8. On 15 April 1993 the applicant purchased a total of 0.2 hectares of land from the State. At that time there was no detailed plan of Vilnius County. Nevertheless, the plot of land assigned to the applicant was approved by the county's chief architect.

9. The applicant obtained an official permit for the construction of a house on the land and has been living there since 2004. The house is the permanent residence of the applicant and his family. The plot of land of 0.05 hectares, which has been allocated to the applicant in 1992 (see paragraph 7 above), is where waste water treatment equipment, the gas and water supplies and an electricity meter were installed.

A. Civil proceedings brought by the applicant's neighbours

10. In 2006 two neighbours started court proceedings against the applicant. They claimed that 0.05 hectares of the applicant's land occupied part of a street and that the applicant had built a concrete fence around it, making it impossible to use the street. They asked the court to establish an easement (*servitutas*) for access to it.

11. On 26 September 2006 the Vilnius District Court held that the neighbours' rights had not been breached because they had access to their own land. However, the court ordered the applicant to give one of the neighbours access to an electricity meter.

12. The applicant's neighbours appealed but on 4 January 2007 the Vilnius Regional Court upheld the decision of the court of first instance. The court held that in accordance with the provisions of domestic law, an easement could be established only if it was impossible to use property in any other way (see paragraph 42 below). This meant that an easement could only be established if it was objectively necessary. The fact that the neighbours had to use another road and that entry to their own property was more difficult was not grounds to limit another person's property rights, namely those of the applicant.

13. The applicant's neighbours lodged an appeal on points of law, and on 19 November 2007 the Supreme Court found that there were two civil cases regarding the same situation and suspended the proceedings until the other case had finished (see paragraph 15 below).

14. On 29 May 2009 the Supreme Court upheld the Vilnius Regional Court's decision of 4 January 2007. The court found that the applicant had purchased the plot of land of 0.2 hectares in 1993. The lawfulness of the purchase agreement had been proven by the domestic courts (see paragraph 17 below). The fact that the applicant was a *bona fide* owner of the land had not been denied and could only be so by reopening the proceedings involved. The court thus held that the mere fact that the applicant's neighbours wanted to use his land because it was more convenient was not enough to establish an easement.

B. Civil proceedings brought by the prosecutor

15. In October 2007 the prosecutor's office started court proceedings and asked the domestic courts to annul the decisions of the national authorities and the purchase agreement that had entitled the applicant to 0.05 hectares of land, to apply restitution, to return the plot of land of 0.05 hectares to the State and to pay the applicant 15 Lithuanian litai (LTL, approximately 4.34 euros (EUR)) in compensation. The prosecutor argued that the authorities had breached domestic law by allocating the applicant a plot of land of 0.05 hectares, thus it had to be returned to the State. The prosecutor also noted that the applicant had paid 1,500 roubles for the land, which amounted to approximately LTL 15. The prosecutor also stated that he had only found out about the violation on 30 August 2007, when he had received a report from an expert.

16. On 11 April 2008 the Vilnius District Court held that the land had been sold to the applicant in breach of the provisions of domestic law (see paragraph 65 below). The contested decisions had been related to property rights over the land, which was a legitimate interest of the community as a whole, and thus the prosecutor's claim was related to the public interest. The applicant was ordered to return the plot to the State, with the State having to repay him the LTL 15. The parts of the order allocating the additional plot of 0.05 hectares to the applicant and the relevant part of the purchase agreement were annulled.

17. The applicant appealed. On 10 December 2008 the Vilnius Regional Court noted that according to the prosecutor and the court of first instance any breach of legal norms regulating the division of land was a breach of the public interest. However, twenty-five people altogether, including the applicant, had been allocated additional plots at the time (see paragraph 7 above), but the prosecutor had only found a breach of the public interest in the applicant's case. The court also found that when the applicant had been allocated the first plot of land (see paragraph 6 above), there had been no other plots demarcated and the land in front of his had been vacant. He thus could not have anticipated that the additional plot of 0.05 hectares would occupy part of the road because the road had not existed at the time the detailed plan had been drawn up or when the applicant had purchased the land (see paragraph 8 above). The court stated that the mechanism of allocating the additional plot to the applicant had been breached, but that he was a *bona fide* owner. Mistakes had been made by the authorities and taking the land from the applicant would have disproportionate consequences for him. The court observed that the applicant's neighbours could easily access their land using other roads and their rights had not been breached. Consequently, the court overturned the first-instance decision and dismissed the prosecutor's complaints. The case file contains no information of whether there was an appeal on points of law.

C. Reopening of the proceedings

18. The prosecutor applied to reopen the proceedings that had ended on 10 December 2008 (see paragraph 17 above). He argued that the Vilnius Regional Court had made a mistake in its application of the law and submitted that the additional plot of land should only have been allocated to the applicant after land reform plans had been carried out. Moreover, the allocation of 0.05 hectares to the applicant had been against the public interest because he had constructed a concrete fence on the road. The prosecutor added that an appeal on points of law had in fact been submitted after the appeal decision, but had been rejected by the Supreme Court.

19. On 4 December 2009 the Vilnius District Court held that an application to reopen proceedings could only be lodged against a decision that had been appealed against (see paragraph 57 below). The prosecutor had alleged that the Vilnius Regional Court rather than the District Court had made a mistake. If the prosecutor's request were to be satisfied and proceedings reopened, the court of first instance would have to decide on the lawfulness of a decision by a higher court and domestic law did not provide for the possibility of a court of first instance annulling decisions made on appeal. As a result, the prosecutor's application to reopen the proceedings was dismissed.

20. The Prosecutor General lodged a separate complaint. On 25 May 2010 the Vilnius Regional Court held that proceedings concerning a decision by an appellate court could not be reopened. Otherwise, appeals on points of law would be useless and the reopening of proceedings would be used as an opportunity to make proceedings more protracted. Moreover, there was a three-month time-limit to apply to reopen proceedings (see paragraph 58 below). The disputed decision had been adopted on 10 December 2008 and the prosecutor had sought to reopen proceedings on 8 July 2009, therefore the time-limit had been missed. As a result, the court upheld the Vilnius District Court's decision of 4 December 2009.

21. The Prosecutor General lodged an appeal on points of law. On 21 December 2010 the Supreme Court decided that the Prosecutor General could apply to reopen proceedings in all cases that had been terminated by a first-instance or appeal decision (see paragraphs 56 and 57 below). Moreover, the mere fact that a district prosecutor had brought civil proceedings did not mean that the Prosecutor General had to know about it. The court thus held that those processes (see paragraphs 18 above and 24 below) had been different and that the time-limit to apply to reopen proceedings had not been missed. Finally, the Supreme Court observed, without further specifications, that the lower courts had failed to properly assess the circumstances which had led to an alleged violation of the public interest and remitted the application to reopen proceedings for fresh examination by the appellate court.

22. On 14 July 2011 the Vilnius Regional Court held that the first-instance decision (see paragraph 19 above) had lacked reasons for why a clear mistake in the application of the law had been made (see paragraph 57 below) and without them the appellate court could not decide whether the Prosecutor General's request to reopen proceedings had been examined properly. The court thus decided to return the case to the Vilnius District Court.

23. On 25 October 2011 the Vilnius District Court held that an application to reopen proceedings on the grounds of a mistake in the application of the law required not only that the mistake had to be clear, but also be one of substance (see paragraph 57 below). A clear mistake could be a failure to apply a required legal rule, a failure to properly interpret the substance of a legal rule, an obvious misinterpretation of the circumstances and so on. In the case in question, the Prosecutor General's application could not lead to a conclusion that the proceedings had to be reopened. The Vilnius Regional Court's decision (see paragraph 17 above) had been wide-ranging, it had given well-grounded responses to every violation of domestic law alleged by the Prosecutor General and had come to a reasoned conclusion. Reopening proceedings would thus lead to a repeated assessment of the facts and would be contrary to the domestic law and the main purpose of reopening proceedings. There was no information that the Prosecutor General had lodged an appeal on points of law against the Vilnius Regional Court's decision (see paragraph 17 above). Even if an appeal on points of law had been submitted and rejected, that meant that the court of cassation had not considered that there had been grounds to examine the case. As a result, the Prosecutor General's request to reopen the proceedings was dismissed.

24. The Prosecutor General submitted a separate complaint. On 9 March 2012 the Vilnius Regional Court held that the conclusions of the lower court that there was no public interest at stake had been unfounded. Violations of domestic regulations had already been found and those regulations were necessary in the process of the sale or rent of State property. Violations of such regulations were directly related to a breach of the public interest. The court thus decided to reopen the proceedings.

D. Fresh examination of the case

25. On 15 June 2012 the Vilnius District Court ruled that the decision of 11 April 2008 to oblige the applicant to return 0.05 hectares of land to the State and to pay him LTL 15 had been justified. The court held that the additional plot of 0.05 hectares had been allocated to the applicant in breach of the requirements of domestic law and that by holding that the rights of the applicant's neighbours had not been breached and that the applicant had been a *bona fide* party to the purchase agreement, the Vilnius Regional

Court had made a clear mistake in the application of the law. The court thus annulled the Vilnius Regional Court's decision of 10 December 2008 and upheld that of the Vilnius District Court of 11 April 2008 (see paragraph 16 above).

26. The applicant submitted a separate complaint. On 25 January 2013 the Vilnius Regional Court upheld the decision of the court of first instance (see paragraph 25 above). It also held that the applicant's argument that he could not have known that part of his land would block the road was not convincing enough as there had been a plan of the whole of the Zujūnai settlement and it had been obvious that there was a continuing road which was part of the 0.05 hectares of land in question. The court further held that the applicant had not been diligent enough and that ignorance of the law could not absolve someone of responsibility (see paragraph 37 below). The fact that the applicant had to return 0.05 hectares of land to the State did not prevent him from asking for an easement over the part of the State land where his waste water equipment and gas and water supplies were installed. The court thus rejected the applicant's argument that the order to return 0.05 hectares of land to the State prevented him from using his house.

27. The applicant lodged two appeals on points of law. The Supreme Court dismissed the first one as not raising important legal issues but merely disputing the facts established by the lower courts on 22 February 2013. The second appeal on points of law was dismissed on 26 April 2013. The Supreme Court accepted that if a person's appeal was dismissed as not raising important legal issues, he or she could, within the time-limit prescribed by law, submit another appeal on points of law having corrected the deficiencies. However, it found that in the applicant's case, the deficiencies of the first appeal on points of law had not been corrected, although the applicant had modified his arguments; therefore the complaint was repetitive and could not be accepted in accordance with the existing regulations (*šiuo atveju kasacinio skundo trūkumai nepašalinti, skundas pripažintinas pakartotiniu, pagal nustatytą reglamentavimą jis negali būti priimtas*).

E. Civil proceedings brought by the applicant

28. In April 2013 the applicant applied for a suspension of the execution of the decisions of the Vilnius District Court of 15 June 2012 and of Vilnius Regional Court of 25 January 2013 (see paragraphs 25 and 26 above). He also sought to have the proceedings reopened. The applicant submitted that unless the execution of the decisions was suspended, he would have to initiate new proceedings for an easement.

29. On 26 April 2013 the Vilnius District Court rejected the applicant's request to suspend execution, holding that his arguments did not constitute sufficient grounds.

30. On 2 August 2013 the Vilnius District Court rejected the applicant's request to reopen the proceedings. It held that his argument that new circumstances had arisen was unfounded. The allegedly new circumstances were the fact that a general plan of the settlements of 1986 had not been registered in the State Register. The court observed that the applicant had been represented by a professional lawyer and must have been able to familiarise himself with the general plan and information about its registration. Furthermore, the fact that the plan had not been registered was not important to the examination of the case. The register had only been established in 1992 and had started functioning in 1996.

31. The applicant submitted a separate complaint. On 27 February 2014 the Vilnius Regional Court upheld the decisions of the lower courts and decided to terminate the applicant's appellate proceedings.

F. Further developments

32. The plot of land of 0.05 hectares was entered in the State Register as State property in May 2013.

33. In January 2015 the authorities conducted an examination of the use of the 0.05 hectares of land and found that the applicant had not removed the fence, trees, a shed and paving stones from the plot.

34. In September 2015 the authorities examined a March 2015 request from the applicant to purchase the plot of land of 0.05 hectares. The authorities stated that the plot could not be purchased as that would be contrary to domestic law (see paragraph 63 below). The same month the applicant was asked to remove the constructions described in the land examination document. It appears that the removal had to be conducted at the expense of the applicant.

35. In March 2016 the authorities held that the constructions had not been removed.

36. In February 2017 the applicant requested that the authorities rent the plot to him. In March 2017 the authorities replied that State land could be rented out if there were constructions on it that were owned by private individuals or legal entities. Such objects did not include temporary constructions, engineering systems, buildings that did not have a clear functional dependency or use, or other constructions designated as serving as dependencies of a main construction. The authorities held that the waste water treatment equipment was not an independent object and thus the applicant could not rent the plot of land.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

37. Article 7 reads:

"...

Ignorance of the law shall exempt no one from liability.

..."

38. Article 23 of the Constitution reads:

"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."

B. Civil Code

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

40. Article 4.37 § 1 provides that a property right is a right to manage and use an object without breaching the law and other people's rights and interests.

41. Article 4.47 § 1 (1) provides that property rights can be created by purchase agreements.

42. Article 4.111 § 1 defines an easement as a right to another person's immovable property, providing someone with a right to use that property, or a restriction of a right to use property in order to ensure its proper use.

43. Article 4.112 § 1 provides that an easement grants its holder specific rights over property belonging to another person or takes rights away from the owner of a property.

44. Article 4.117 provides that an easement relating to a road can establish a right to use a pedestrian path, a road for driving or a road to walk animals.

45. Article 4.123 provides that other easements can also be established, including a right to install underground and overground communications and to service and use them.

46. Article 4.124 § 1 provides that easements can be created by laws, agreements and court decisions and, as provided for by law, by

administrative acts. Article 4.124 § 3 provides that the wishes of the owner of a property must always be considered, except when an easement is created by law or by a court decision.

47. Article 4.126 § 1 provides that an easement is created by a court decision if there is a dispute between the owners and it would be impossible to use the property otherwise. Article 4.126 § 2 provides that the owner of a property can bring a claim in court in order to create an easement by a court decision.

48. Article 6.145 § 2 provides that courts may in exceptional cases change the form of restitution or decide not to apply if it would place an excessive burden on one of the parties.

49. Article 6.146 provides that after a transaction has been cancelled, restitution is to be made in kind, except where that is impossible or would cause serious difficulties for the parties. In the latter case, restitution must be made by the payment of an equivalent sum of money.

50. Article 6.551 § 2 provides that State land can be rented out without an auction if constructions owned by private or legal persons have been built on it and in other cases provided for by law.

51. Article 6.271 § 1 of the Civil Code provides that damage resulting from unlawful acts of institutions of public authority must be compensated for by the State from the State budget, irrespective of the responsibility of a particular public servant or other employee of public authority institutions. Damage resulting from unlawful actions of municipal authority bodies must be redressed by the municipality from its own budget, irrespective of whether an employee is at fault. Article 6.271 § 2 provides that for the purposes of the Article, the notion "an institution of public authority" means any public-law body (a State or municipal institution, official, public servant or any other employee of those institutions, and so forth), as well as a private person executing the functions of a public authority. Article 6.271 § 3 provides that for the purposes of the Article, the notion "act" means any act (active or passive) by an institution of public authority or its employees, that directly affects people's rights, liberties and interests (legal acts or individual acts enacted by the institutions of state and municipal authority, administrative acts, physical acts, and so forth, with the exception of court judgments – verdicts in criminal cases, decisions in civil and administrative cases and orders). Article 6.271 § 4 provides that civil liability on the part of the State or a municipality subject to the Article arises when the employees of public authority institutions fail to act in the manner prescribed by law for those institutions and their employees.

52. Article 6.272 § 1 provides that damage resulting either from unlawful conviction, unlawful arrest as a suppressive measure, unlawful detention, application of unlawful procedural measures in enforcement proceedings, or unlawful imposition of an administrative penalty (arrest) shall give rise to full compensation by the State irrespective of the fault of

the preliminary investigation officials, prosecution officials or courts. Article 6.272 § 2 provides that the State shall be liable for full compensation in respect of the damage caused by the unlawful actions of a judge or a court trying a civil case, where the damage is caused through the fault of the judge himself or of any other court official. Article 6.272 § 3 provides that in addition to pecuniary damage, the aggrieved person shall be entitled to non-pecuniary damage. Article 6.272 § 4 provides that where the damage arises from an intentional fault on the part of preliminary investigation, prosecution or court officials or judges, the State, after compensation has been provided, shall have the right to take action against the officials concerned for recovery, under the procedure established by law, of the sums in question in the amount provided for by the law.

C. Code of Civil Procedure

53. Article 49 § 1 provides that prosecutors can bring a claim in order to protect the public interest in the cases established by law.

54. Article 50 § 1 provides that when a prosecutor brings a claim in order to protect the public interest, he has the same procedural rights and obligations as any applicant, unless provided differently by law.

55. Article 315 § 2 (3) provides that appellate proceedings can be terminated if there is no possibility to appeal against the disputed decision in accordance with the law.

56. Article 365 § 2 provides that the Prosecutor General can ask the court to reopen the proceedings in order to protect the public interest.

57. Article 366 § 1 (2) provides that proceedings can be reopened if important new circumstances emerge, which the claimant did not know or could not have been aware of during the proceedings. Article 366 § 1 (9) provides that proceedings can be reopened if the court of first instance made a clear mistake in its application of the law and the decision was not reviewed on appeal. The Prosecutor General can also ask the court to reopen the proceedings even if the decision was reviewed on appeal.

58. Article 368 § 1 provides that a claim to reopen proceedings must be brought within three months of the day the person found out or should have been aware of the circumstances that constitute grounds to reopen proceedings.

59. Article 370 § 3 provides that a decision to refuse an application to reopen proceedings can be appealed against by lodging a separate complaint. An appeal court decision to refuse an application to reopen proceedings can be appealed against on points of law.

D. Other legislation

60. Article 8 § 1 (7) of the Law on the Prosecution Service states that protecting the public interest is a part of a prosecutor's general duties.

61. Article 4 § 1 of the Law on Land Reform provides that land reform is executed in accordance with projects for such purposes.

62. Article 9 § 6 (1) of the Law on Land Reform provides that State land can be rented out if built upon by constructions owned by private or legal persons (except for temporary constructions, engineering systems and buildings that do not have a clear functional dependency or use, or other constructions designated as dependencies of the main construction).

63. At the material time, Article 13 § 1 of the Law on Land Reform prohibited the sale to private parties of land necessary for the protection of roads.

64. At the material time, Article 11 of the Law on the Grounds of Local Self-Governance provided that decisions to allocate land to private and legal persons could only be taken by the council of a district, settlement, region or city.

65. At the material time, Point 10 of Government Resolution No. 89, adopted on 7 February 1992 (*Dėl žemės sklypų ne žemės ūkio veiklai bei sodininkų bendrijų narių sodų sklypų pardavimo ir nuomos tvarkos)* obliged cities and regions to terminate the allocation of land without competitive offers from the date of adoption of the Resolution.

66. On 19 June 1996 the Government approved rules for the Register of Territorial Planning Documents (*Lietuvos Respublikos teritorijų planavimo dokumentų registro nuostatai).*

67. Point 2.15 of Government Resolution No. 692 of 2 June 1999 (*Dėl naujų kitos paskirties valstybinės žemės sklypų pardavimo ir nuomos*) states that State land which is to be sold or rented without auction as an intervening plot must be between two private or rented plots; it must not be larger than 0.04 hectares in residential areas and 0.5 hectares in other areas. It must not be possible to demarcate it as a separate plot.

E. Case-law

68. The Supreme Court has held that other avenues to protect civil rights can be applied if restitution is not sufficient for the proper protection of a person's rights or the public interest. One of those avenues is compensation for damage (decision of 26 November 2009, no. 3K-3-532/2009).

69. The Supreme Court has noted that if an agreement has been declared null and void, the court involved has to rule on the question of restitution *ex officio* (decision of 3 January 2006, no. 3K-7-4/2006).

70. In a case unrelated to the applicant, the Supreme Court examined a claim for pecuniary damages lodged by G. A.V., who had purchased a plot

of land from the State. It was later held that the land had been given to him in breach of the domestic law in force at the time. The purchase agreement was annulled, the land was returned to the State and G.A.V. was paid EUR 1,604. G.A.V. complained that since he had lost his property, he should be repaid in accordance with its market value. The court of first instance awarded G.A.V. EUR 66,682 in respect of pecuniary damage and EUR 2,317 in respect of non-pecuniary damage. The appellate court subsequently annulled the award of pecuniary damages. The Supreme Court examined only the applicant's complaint regarding the annulment of the award for pecuniary damage, as a complaint regarding the award for non-pecuniary damage had not been lodged. The court held that an application for restitution did not deprive an applicant of the right to lodge a claim for damages. However, in the present case, G.A.V. had never been a lawful owner of the plot of land at issue, thus his argument that he had suffered pecuniary damage because he had lost that plot was unfounded. G.A.V. had failed to prove that he had a real opportunity to lawfully acquire the plot of land in question. The Supreme Court thus upheld the appellate court's decision not to award G.A.V. pecuniary damages (decision of 27 April 2010, no. 3K-3-189/2010).

71. In another case unrelated to the applicant, A.S. applied to the courts claiming EUR 74,902 in respect of pecuniary damage and EUR 28,962 in respect of non-pecuniary damage. The authorities had provided A.S. and B.R. with two plots of land, which they later sold for EUR 7,241 each. The authorities' decisions to provide A.S. and B.R. with the plots of land were subsequently annulled and they were ordered to pay EUR 41,705 each. The court of first instance dismissed the applicant's claim. The Supreme Administrative Court held that the decision not to award A.S. pecuniary damages was well-founded because the restitution proceedings were still ongoing and it was impossible to establish the value of the plot of land that would be provided to A.S. Nevertheless, the court awarded the applicant EUR 2,896 in respect of non-pecuniary damage for the suffering caused to her as a result of the unlawful actions of the authorities (decision of 13 January 2011, no. A-502-99-11).

72. In another case unrelated to the applicant, company E. sought compensation for the allegedly unlawful actions of the authorities in the area of territory planning. The company claimed compensation for the expenses it had incurred when preparing a detailed plan, archaeological research in the area and a plan of the building complex. The Supreme Administrative Court held that EUR 83,782 of the expenses incurred by the company were justified; however, it held that the company had not been diligent enough and decided to award it EUR 41,891 in respect of pecuniary damage (decision of 15 December 2011, no. A-62-1119-11).

THE LAW

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

73. Relying on Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained of a breach to his right to his home because the communications necessary for the use of his house were on land that he had had to return to the State and that the amount of EUR 4.34 had been inadequate. The Court considers that the complaint falls to be examined solely 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. Admissibility

74. The Government submitted that the applicant had failed to exhaust domestic remedies by not initiating separate judicial proceedings against the State under Article 6.271 of the Civil Code to claim compensation for pecuniary and/or non-pecuniary damage. They referred to the "well-established case-law" of the domestic courts where applicants had been awarded compensation (see paragraphs 70-72 above).

75. The applicant argued that such a remedy would not have been effective.

76. The Court refers to its findings in the case of *Tunaitis v. Lithuania* (no. 42927/08, § 19, 24 November 2015; and the cases cited therein), where it was not demonstrated that at the time the application was lodged with the Court, a claim under Article 6.271 of the Civil Code would have been an effective remedy with any prospect of success. Moreover, the Court is not convinced that three examples of the practice of the Supreme Court and the Supreme Administrative Court, referred to by the Government, are sufficient to constitute well-established case-law. In only one of those three examples was the applicant awarded compensation in respect of pecuniary damage, while in the other two the claims were dismissed. The Court therefore does not see how new proceedings under Article 6.271 of the Civil Code would have offered a more favourable outcome to the applicant than the numerous court proceedings to which he had already been a party.

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

78. The Court further notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

79. The applicant submitted that he had acquired the plot of land in good faith, on the basis of decisions by the authorities to allocate him several plots of land and on the basis of a purchase agreement (see paragraphs 6-8 above). He submitted that he had installed waste water treatment equipment and gas and water supplies on the plot of land of 0.05 hectares, but because of the proceedings he could not use his property without interference, which had seriously affected his and his family's well-being.

80. The applicant further submitted that the market value of the plot he had had to return to the State was much higher than the LTL 15 he had received, which meant that he had not received adequate compensation for the loss of his property.

81. The Government admitted that the order to return the 0.05 hectares to the State had constituted an interference with the applicant's right to the peaceful enjoyment of his possessions, but argued that the interference had been in compliance with Article 1 of Protocol No. 1 to the Convention. They submitted that the land had been assigned and sold to the applicant in breach of "imperative legal norms" (see paragraphs 16, 25, 61, 64 and 65 above), so the decision to apply restitution had been taken in accordance with the relevant domestic law. They also maintained that the interference with the applicant's property rights had been justified as being "in the public interest", namely to protect the lawful sale of State land and the structure of the street.

82. The Government noted further that the applicant could have avoided any negative consequences if he had asked the domestic authorities to establish an easement or conclude a long-term lease agreement for the land. However, he had been unwilling to cooperate with the domestic authorities. Moreover, the situation had remained *de facto* unchanged because the applicant was still using the State's land and had not removed any of his constructions.

2. *The Court's assessment*

(a) General principles

83. The relevant general principles on Article 1 of Protocol No. 1 are set out in *Pyrantienė v. Lithuania* (no. 45092/07, §§ 37-40, 12 November 2013).

(b) Application of the general principles in the present case

84. There is no dispute between the parties in the present case that there has been a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. The Court must therefore ascertain whether the deprivation in question was justified under that provision.

(i) Lawfulness of the interference

85. The Court notes that the domestic courts' decisions to order the applicant to return 0.05 hectares of land to the State and to annul the orders by which that plot was allocated to him and part of the land purchase agreement signed in 1993 was based on the provisions of domestic law (see paragraphs 39, 49, 64 and 65 above).

(ii) Legitimate aim

86. The Court must now determine whether the deprivation of property pursued a legitimate aim, that is, whether it was "in the public interest".

87. The Court has held that because of their direct knowledge of local society and its needs, the national authorities are in principle better placed than international judges to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make an initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation (see *Moskal v. Poland*, no. 10373/05, § 61, 15 September 2009; *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 47, ECHR 2002-VIII; and *Pyrantienė*, cited above, § 45).

88. As stated above, the measure complained of was designed to correct mistakes by the authorities and to protect the process of the sale of State land by ensuring that individuals were not given more property than they were entitled to at the expense of the State (see, *mutatis mutandis*, *Misiukonis and Others v. Lithuania*, no. 49426/09, § 57, 15 November 2016). In those circumstances, and having regard to the State's margin of appreciation, the Court accepts that the deprivation of property experienced by the applicant not only served his neighbours' interests, but also the general interests of society as a whole (see, *mutatis*

mutandis, *Bečvář and Bečvářová v. the Czech Republic*, no. 58358/00, § 67, 14 December 2004).

(iii) Proportionality

89. The Court reiterates that any interference with property must, in addition to being lawful and having a legitimate aim, also satisfy the requirement of proportionality. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52; *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII; and *Anthony Aquilina v. Malta*, no. 3851/12, §§ 58-59, 11 December 2014, and the cases cited therein).

90. There is no dispute in the present case that the national authorities' decisions to allocate and later sell to the applicant the impugned 0.05 hectares of land had breached substantive provisions of the relevant legislation (see paragraphs 17, 25 and 26 above). At this point, the Court reiterates that the principles of good governance should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence. However, the risk arising from any mistake made by a State authority must be borne by the State itself, and errors must not be remedied at the expense of the individuals concerned (see *Romankevič v. Lithuania*, no. 25747/07, §§ 38-39, 2 December 2014; *Albergas and Arlauskas v. Lithuania*, no. 17978/05, § 59, 27 May 2014 and the cases cited therein).

91. In that connection, the Court notes that the procedures for the sale of the land to the applicant were conducted by official bodies exercising the authority of the State. There are no indications that the applicant had somehow contributed to the adoption of the unlawful decisions. The Court considers that the applicant did not have sufficient reasons to doubt the validity of those decisions and was entitled to rely on the fact that they would not be retrospectively declared invalid to his detriment (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, §§ 79-80, 6 December 2011; *Tunaitis,* cited above, § 39; and *Misiukonis and Others*, cited above, § 59).

92. The domestic courts in the present case held that the applicant should have known that the disputed part of the land would block the road and that the applicant had not been diligent enough (see paragraph 26 above). The Court finds that conclusion difficult to accept. The Court takes note of the domestic court's conclusion that ignorance of the law does not absolve anyone of responsibility and that the Zujūnai settlement plans had shown that there was a continuing passage which was part of the applicant's 0.05 hectares of land (see paragraph 26 above). However, the Court

observes that there was no detailed plan of Vilnius County at the time of purchase of the land (see paragraph 8 above) and that the rules for the Register of Territorial Planning Documents were only approved in 1996 (see paragraph 66 above). The Court thus does not see convincing reasons to find that the applicant should have questioned the actions of the competent public authorities rather than expecting them to take all the necessary measures to avoid mistakes in applying legislation (see, *mutatis mutandis*, *Misiukonis and Others*, cited above, § 60). In particular, the Court takes into account the fact that the domestic courts had already adopted decisions favourable to the applicant (see paragraphs 11-14 and 17 above), where they indicated that the applicant's neighbours could access their own land (compare and contrast *Răchită v. Romania*, no. 15987/09, §§ 69-70, 17 May 2016) and these findings had acquired *res judicata* effect and could not have been called into question (see, *mutatis mutandis*, *Brumărescu*, cited above, § 61; *Esertas v. Lithuania*, no. 50208/06, §§ 20-21, 31 May 2012; and *Nekvedavičius v. Lithuania*, no. 1471/05, § 74, 10 December 2013).

93. The Court further observes that the Supreme Court held that the applicant was a *bona fide* owner of the land (see paragraph 14 above). The Court sees no reason to question those findings (see, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 120, 25 October 2012, and *Žilinskienė v. Lithuania*, no. 57675/09, § 51, 1 December 2015).

94. Moreover, the Court considers that the applicant had no reasons to fear that he would lose his land or to anticipate that the prosecutor and later the Prosecutor General would persevere to such an extent (see paragraphs 15, 18, 21 and 24 above).

95. Moreover, the Court notes that after losing his title to the land, the applicant was paid LTL 15, the nominal equivalent of the price he had paid in 1993. According to an assessment submitted by the applicant, the market value of the improvements he had made to the disputed plot was LTL 74,972 (EUR 21,713) in October 2008. While no estimates were provided by the domestic authorities, the Court finds it reasonable to conclude that the market value of the land in 2008, when the first judgment in favour of the prosecutor was adopted, and in 2014, when the applicant's request to reopen proceedings was dismissed, was higher than the nominal price he had paid in 1993. It should also be noted that the LTL 15 returned to the applicant had obviously suffered considerable depreciation and could not reasonably be related to the value of the land fifteen or, even more so, twenty-one years later. Accordingly, the Court finds that the amount of as little as LTL 15 paid to the applicant in 2008 was clearly insufficient for the purchase of a comparable plot of land (see, *mutatis mutandis, Velikovi and Others v. Bulgaria*, nos. 43278/98 and 8 others, § 207, 15 March 2007; and *Padalevičius v. Lithuania*, no. 12278/03, § 69, 7 July 2009).

96. The Court takes note of the Government's argument that the applicant has not yet removed his constructions from the disputed plot. However, it cannot ignore the fact that the land has been entered in the State Register as property of the State, and that the applicant has been refused permission to rent it (see paragraph 36 above), which means that the constructions will be removed in connection with the binding domestic court decisions in the case (see paragraph 26 above).

97. The Court reiterates that the taking of property without the payment of an amount reasonably related to its value will normally fail to respect the requisite fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights and will constitute a disproportionate burden on the applicant (see *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A; *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII; *Padalevičius*, cited above, § 66; and *Albergas and Arlauskas*, cited above, § 73). In line with the Court's case-law in similar cases concerning expropriation of property, the balance mentioned above is generally achieved where compensation paid to the person whose property has been taken reasonably relates to its "market" value as determined at the time of the expropriation (see *Pincová and Pinc*, cited above, § 53; *Vistiņš and Perepjolkins*, cited above, § 111; and *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 103, 22 December 2009). It follows that the amount of money for the applicant's loss of title to the land must be calculated using the value of the property on the date ownership was lost.

98. In the present case, the Court considers that awarding the applicant the amount of LTL 15 did not sufficiently mitigate the negative consequences of losing his title to the property in question. The lack of proportion between the land's market value and the amount awarded is too significant for the Court to find that a "fair balance" was struck between the interests of the community and the applicant's fundamental rights (see, *mutatis mutandis*, *Pyrantienė*, cited above, § 71, and *Vistiņš and Perepjolkins*, cited above, § 130).

99. The foregoing considerations are sufficient to enable the Court to conclude that the conditions under which the applicant had his title to the land removed imposed an individual and excessive burden on him, and that the authorities failed to strike a fair balance between the demands of the public interest on the one hand and the applicant's right to peaceful enjoyment of his possessions on the other. There has, accordingly, been a violation of Article 1 of Protocol No. 1 to the Convention.

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

100. The applicant also complained, under Article 6 § 1 of the Convention, that the length of the court proceedings had been excessive.

101. The Government argued that the complaint was inadmissible because the applicant had failed to use the civil law remedy and to claim damages against the State on account of the length of the court proceedings. The Government relied on Article 6.272 of the Civil Code and the case of *Savickas and Others v. Lithuania* ((dec.), no. 66365/09, §§ 86-88, 15 October 2013) in which the Court concluded that an effective domestic remedy capable of providing adequate redress for a violation of the right to a hearing within a reasonable time had existed in Lithuania since 6 August 2007. Accordingly, as concerns the applications lodged after that date, the applicants should have first made claims for damages against the State before the Lithuanian courts on the basis of Article 6.272 of the Civil Code (ibid., §§ 86-88).

102. The Court has previously found that Lithuanian law provides an effective domestic remedy in cases of excessively long proceedings – a civil claim for damages against the State under Article 6.272 of the Civil Code – and that as of 6 August 2007 this remedy must be used before lodging an application with the Court (ibid., §§ 86-88). The applicant lodged his application on 24 October 2013 without having brought a claim for damages before the domestic courts. Accordingly, the Court holds that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

104. The applicant claimed 41,722 euros (EUR) in respect of pecuniary damage, representing the market value of the plot of land of 0.05 hectares together with the improvements he had made. He also claimed EUR 30,000 in respect of non-pecuniary damage, and EUR 9,464 for legal costs and expenses incurred before the domestic courts and the Court, as well as EUR 341 for translation expenses for the translation of the application form and the applicant's observations to the Court.

105. The Government argued that the applicant had failed to substantiate his claim in respect of pecuniary damage. They submitted that the sum was questionable as a road had already been marked on local plans when he had purchased the land and it was doubtful whether the plot could be sold on the

market at all. As for the improvements, the Government stated that the applicant could still use the underground communications so he had not sustained any pecuniary damage.

106. The Government argued that the applicant had failed to prove a direct causal link between the non-pecuniary damage allegedly sustained and the alleged violation of his right to the peaceful enjoyment of his possessions. Furthermore, the Government submitted that the applicant had failed to substantiate that the costs and expenses, including the translation costs, had actually been incurred, or were necessary and reasonable. Accordingly, they requested that the Court dismiss the applicant's claims concerning just satisfaction as excessive and unsubstantiated.

107. The Court considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

108. Accordingly, the Court reserves this question and invites the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the amount of damages, costs and expenses to be awarded to the applicant and, in particular, to notify the Court of any agreement that they may reach.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that the question of the application of Article 41 is not ready for decision, and accordingly:
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 31 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ganna Yudkivska
Registrar	President