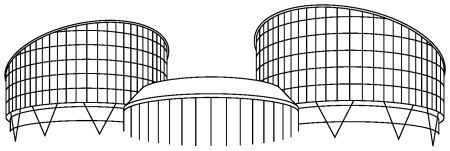

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GAINA v. LITHUANIA

(Application no. 42910/08)

JUDGMENT

STRASBOURG

11 October 2016

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 Gaina v. Lithuania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 20 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 42910/08) 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 Liudmila Gaina ("the applicant"), on 18 July 2008.

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

3. The applicant alleged that public authorities had unjustifiably delayed the cancellation of her debt to the State, causing her to incur significant costs. She relied on Article 1 of Protocol No. 1 to the Convention.

4. On 21 May 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Kaunas.

A. The applicant's debt to the State

6. In 1994 the applicant obtained a loan of 30,100 Lithuanian litai (LTL – approximately 8,718 euros (EUR)) from the State. The purpose of

the loan was to build or buy an apartment. In 2000 the applicant became the owner of an apartment built by a public association, and in exchange she took over the association's loan of LTL 90,036 (EUR 26,076) from the State. The apartment was pledged to the bank as collateral. Both loans were given under preferential conditions – the annual interest rate was lower than the average annual interest rate for loans given by private banks at that time. Both loans were administered by a State bank, the State Commercial Bank of Lithuania (hereinafter "the bank"). In 1998 that bank transferred the claims to some of its loans, including both of the applicant's loans, to another State bank, the Savings Bank of Lithuania. In 2001 the latter bank was privatised and became the private bank *AB Hansabankas*.

7. On 13 August 2001 the applicant concluded an agreement with a third party, A.E., under which the applicant paid LTL 30,870 (EUR 8,940) and bought from A.E. the right to restoration of title in respect of 1.47 hectares of land in Kaunas. That land had belonged to A.E.'s grandfather, S.F., who had died in 1949. It had been determined by a ruling of the Kaunas District Court of 23 May 2001 that S.F. had owned a total of 68.26 hectares of land in Kaunas. Following that ruling, A.E. sold the right to restoration of title in respect of different parts of that land to over a hundred individuals, including the applicant.

8. On 23 October 2001 the Kaunas County Administration (hereinafter "the KCA") restored the applicant's title in respect of 1.47 hectares of land. At the applicant's request, her property rights were restored by cancelling her outstanding debt to the State (see paragraphs 31-33 below). The KCA estimated that the value of that plot of land was LTL 70,560 (EUR 20,435.60), and its indexed value was LTL 112,896 (EUR 32,697), an amount equal to the applicant's outstanding debt under the two loan agreements of 1994 and 2000 (see paragraph 6 above).

9. On 10 November 2001 the KCA forwarded to the Ministry of Finance a list of individuals, including the applicant, whose property rights it had decided to restore by cancelling their debts to the State.

B. Suspension of the cancellation of debt

10. On 16 November 2001 the KCA ordered an internal audit into the restoration of property rights in respect of the land which had belonged to S.F. (see paragraph 7 above). The audit report, delivered on 7 December 2001, found that the documents in the possession of the KCA showed that from 1927 to 1940 S.F. had sold parts of his land to numerous individuals, and that, as a result, at the time of his death he had owned no more than 15.58 hectares. Accordingly, the audit report considered that the size of S.F.'s land, as established by the Kaunas District Court (see paragraph 7 above), had been incorrect, and recommended that the KCA

suspend the restoration of property rights in respect of any land which had previously been considered as belonging to S.F.

11. Following the internal audit, on 14 December 2001 the KCA suspended the restoration of property rights in respect of S.F.'s land. It informed the Ministry of Finance about the suspension, and asked it to suspend the cancellation of debt for all the individuals on the previously submitted list, including the applicant (see paragraph 9 above).

12. Subsequently the Kaunas Regional Prosecutor (hereinafter "the prosecutor"), at the request of the KCA and relying on the findings of the audit report, asked the domestic courts to reopen the civil proceedings concerning the size of S.F.'s land, and to suspend the enforcement of all the KCA's decisions concerning the restoration of property rights in respect of that land. On 21 March 2002 the Kaunas Regional Administrative Court suspended the enforcement of the KCA's decisions. The applicant participated in the court proceedings as a third party and appealed against the suspension, but on 25 April 2002 the Supreme Administrative Court dismissed her appeal. On 23 October 2002 the Supreme Court reopened the civil proceedings concerning the size of S.F.'s land, on the grounds that the audit report had revealed relevant information which had not been known at the time of the adoption of the Kaunas District Court's ruling of 23 May 2001.

13. In the reopened proceedings, on 30 April 2003 the Kaunas District Court determined that S.F. had owned 48.40 hectares of land. On 30 June 2004 the Kaunas Regional Court partly amended that judgment and determined that S.F. had owned 47.91 hectares of land. The latter judgment became final. The KCA and the applicant participated in the reopened proceedings as third parties.

14. On 25 October 2004 the prosecutor asked the Kaunas Regional Administrative Court to revoke the order suspending the enforcement of the KCA's decisions concerning the restoration of property rights in respect of S.F.'s land. The prosecutor submitted that the total amount of land affected by those decisions was less than 47.91 hectares, so there was no risk of restoring property rights in respect of land which had not belonged to S.F. On 26 October 2004 the Kaunas Regional Administrative Court granted the prosecutor's application.

15. On 9 November 2004 the KCA asked the Ministry of Finance to resume the cancellation of debt with regard to the applicant and other individuals (see paragraph 9 above).

16. On 6 December 2004 the Ministry of Finance issued a certificate confirming the cancellation of the applicant's outstanding debt to the State, amounting to LTL 112,896 (EUR 32,697). On that same day the bank received the certificate from the Ministry and cancelled the applicant's debt.

C. Civil proceedings instituted by the bank

17. It appears that from 23 October 2001 to 6 December 2004 the applicant did not make any loan repayments to the bank and the bank did not request any such payments. However, until September 2002 she was paying interest and late payment fines under the two loan agreements, and paid a total of LTL 5,222.26 (EUR 1,512.47).

18. On 26 January 2005 the bank informed the applicant that she owed it LTL 13,140.56 (EUR 3,805.77) in interest and late payment fines under the two loan agreements.

19. On 3 February 2005 the bank lodged a civil claim against the applicant concerning the unpaid interest and late payment fines under the loan agreement of 1994, amounting to LTL 2,909.33 (EUR 842.60). It asked the Kaunas District Court to order interim measures – seizing the applicant's apartment. On the same day the bank unilaterally terminated the loan agreement of 2000 and asked the court to begin the forced recovery of the debt under that agreement, amounting to LTL 10,231.23 (EUR 2,963.17), by seizing the applicant's apartment, which had been pledged to the bank as collateral.

20. On 7 February 2005 the Kaunas District Court seized the applicant's apartment and informed her that, following her failure to repay the debt under the loan agreement of 2000 within one month, the apartment would be sold at auction. The following day the court also granted the bank's application for interim measures concerning the loan agreement of 1994, but having found that the applicant's apartment had already been seized, the court ordered the seizure of the applicant's movable property, financial assets and property rights, amounting to the sum of LTL 2,909.33.

21. On 24 February 2005 the applicant submitted a counterclaim against the bank. She stated that on 23 October 2001 the KCA had restored her property rights by cancelling her debt to the State, but due to circumstances beyond the applicant's control the Ministry of Finance had only informed the bank about the cancellation on 6 December 2004. The applicant submitted that from 23 October 2001 until 6 December 2004 she had repeatedly contacted the bank and asked it to not count the interest and late payment fines. Thus, she considered that the bank had known about the cancellation of her debt, and it was therefore unjust and unfair for it to ask her for any payments for that period, or to unilaterally terminate the loan agreement of 2000. The applicant further asserted that in the period of 2001-2002 she had paid the bank a total of LTL 5,222.26 (EUR 1,512.47) in interest and late payment fines under the two loan agreements; she claimed that there had been no grounds for the bank to accept those payments, and asked the court to order the bank to return them to her.

22. On 22 March 2005, at the applicant's request, the Kaunas District Court suspended the forced recovery of the debt by means of seizing the

applicant's apartment, pending the examination of the claim and counterclaim in the civil case. On 18 October 2005 the court lifted the order for seizure of the applicant's apartment because the bank had not requested its sale at auction within the time-limit prescribed by law.

23. On 22 February 2006 the Kaunas District Court granted the bank's civil claim in part. The court found that the applicant's debt had only been cancelled on 6 December 2004, so there were no grounds to find that her obligation to honour the loan agreement with the bank had ended before that date. The court held that the applicant had been using the loan during the period of 2001-2004, and thus she was obliged to pay interest to the bank. Accordingly, it ordered the applicant to pay the bank LTL 2,705.52 (EUR 783.57).

However, the Kaunas District Court also noted that the loan had been given to the applicant by the State and not by the bank, so the latter could not claim to have suffered any losses due to late payments. The court found no bad faith on the part of the applicant – it considered that she had had legitimate grounds to expect that the cancellation of her debt, ordered on 23 October 2001, would be implemented promptly. Accordingly, the court decided that the bank had no grounds to claim late payment fines, and ordered it to return to the applicant LTL 72.25 (EUR 20.93) which she had already paid.

The applicant's counterclaim was dismissed.

24. The applicant appealed against that judgment, but on 1 June 2006 the Kaunas Regional Court dismissed her appeal and upheld the first-instance judgment in its entirety. The court considered that the applicant had to assume the risks resulting from her agreement with A.E., which had enabled her to seek the cancellation of her outstanding debt after paying a sum that was several times lower than that debt (see paragraphs 7-8 above), especially as the bank had not been a party to that agreement. The court also noted that the delay in the cancellation of the applicant's debt had been caused not by the actions of the bank but by those of the KCA and the prosecutor, so the bank had had the right to receive interest payments during the period in question.

25. In those proceedings, the courts did not examine whether the applicant had been under an obligation to pay interest and late payment fines under the loan agreement of 2000, because she had not made such a claim. As submitted by the applicant and not disputed by the Government, on an unspecified date in 2006 the applicant paid LTL 10,231.23 (EUR 2,963.17) in interest and late payment fines requested by the bank under that agreement.

D. Proceedings for damages instituted by the applicant

26. On 3 July 2006 the applicant submitted to the Kaunas Regional Administrative Court a civil claim for damages against the KCA, the Prosecutor General's Office and the Ministry of Finance. She claimed that because of the unnecessary and unjustified delay in the cancellation of her debt from 23 October 2001 until 6 December 2004, caused jointly by those three institutions, she had suffered financial losses of LTL 20,926.73 (EUR 6,060.80), consisting of interest and late payment fines paid under the two loan agreements, as well as legal expenses incurred in the civil proceedings instituted by the bank. She also claimed non-pecuniary damages of LTL 15,000 (EUR 4,344.30) for the stress and frustration caused during that delay.

27. On 13 July 2006 the Kaunas Regional Administrative Court refused to accept the applicant's claim, on the grounds that complaints against the Prosecutor General's Office and the Ministry of Finance – and, as a result, the entire claim – had to be examined by the Vilnius Regional Administrative Court (see paragraph 38 below).

28. On 26 April 2007 the applicant submitted to the Kaunas Regional Administrative Court a civil claim for damages against the KCA only. She again claimed pecuniary damages of LTL 20,926.73 and non-pecuniary damages of LTL 15,000 in respect of damage allegedly caused by the unjustified delay in the cancellation of her debt. The applicant argued that the KCA had acted unlawfully by suspending the restoration of her property rights and asking the prosecutor to apply for the reopening of the civil proceedings concerning the size of S.F.'s land. The Prosecutor General's Office and the Ministry of Finance participated in the proceedings as third parties.

29. On 11 June 2007 the Kaunas Regional Administrative Court dismissed the applicant's claim. It held that the principle of the rule of law obliged the KCA to ensure that the restoration of property rights was conducted in accordance with the applicable laws. The court considered that, in the presence of well-founded doubts about the actual size of the land owned by S.F., the KCA had acted lawfully and diligently by suspending the restoration of the property rights and initiating the reopening of the proceedings. The fact that the courts dealing with the reopened proceedings had found that S.F. had owned less land than initially determined (48.40 hectares and 47.91 hectares, as opposed to the initial estimate of 68.26 hectares) showed that the suspension had had a proper basis. Accordingly, the court concluded that the KCA had acted lawfully and there were no grounds to award damages to the applicant.

30. The applicant appealed against that judgment, but on 12 March 2008 the Supreme Administrative Court dismissed her appeal and concluded that the KCA's actions in initiating the suspension of its decisions concerning

the restoration of property rights had been in accordance with domestic law. In addition, the Supreme Administrative Court distinguished between the KCA's competence and that of the Ministry of Finance: while the KCA was responsible for the restoration of property rights, it was the Ministry of Finance which had the authority to cancel the applicant's debt and issue the bank with a certificate confirming such cancellation. The KCA's request of the Ministry of Finance to suspend the cancellation of the applicant's debt (see paragraph 11 above) had not been legally binding on the Ministry, and had had no legal effect on the cancellation of the debt. The court further held that the suspension of restoration of the applicant's property rights had been ordered not by the KCA but by the ruling of the Kaunas Regional Administrative Court of 21 March 2002, and the ruling had been revoked by that same court only on 26 October 2004 (see paragraphs 12 and 14 above). Accordingly, the Supreme Administrative Court concluded that the KCA could not be held responsible for the suspension of the restoration of the applicant's property rights and the cancellation of her debt, and thus there were no grounds to award her damages.

II. RELEVANT DOMESTIC LAW

A. Restoration of property rights and cancellation of debts

31. The Law on the Restoration of Citizens' Ownership Rights to Existing Real Property, in force at the material time, listed the ways in which the State could compensate individuals for the loss of real property which had been nationalised during the Soviet occupation. One such way was the cancellation of their debts to the State, where such debts had been incurred after the nationalisation of the property but prior to the decision on the restoration of their property rights (Article 16 § 9 (2)).

32. At the material time, Article 16 § 1 of the Law on Land Reform established the competence of county administrations to implement land reform and take decisions concerning, *inter alia*, the restoration of property rights.

33. At the material time, Regulation No. 616 on the Approval of the Order for Cancellation of Citizens' Outstanding Debts to the State as Compensation, adopted by the Government on 20 May 1999, provided that individuals who wished to have their debt to the State cancelled as compensation for loss of property had to submit applications to that effect to county administrations (paragraphs 2 and 3 of the Regulation). A county administration had to prepare a list of individuals whose debts could be cancelled and forward it to a competent institution; in cases where the individual in question had obtained a loan from a special fund to buy or build houses or residential apartments, the competent institution was the Ministry of Finance (paragraph 4 of the Regulation). The Ministry had to

verify the list and prepare a certificate for each applicant, confirming the cancellation of his or her debt. The date of that certificate was considered to be the day of the cancellation. A copy of the certificate had to be sent to the relevant bank (paragraphs 5 and 6 of the Regulation).

B. Civil procedure

34. At the material time, the Code of Civil Procedure provided that courts could establish facts of legal significance in respect of the personal or pecuniary rights of individuals or organisations, including facts relating to ownership rights in respect of real property (Article 272 § 2 (6)).

35. At the material time, the Code of Civil Procedure permitted the reopening of court proceedings concluded by a final decision, where essential information relating to a case was discovered, and the person applying to reopen the proceedings had not known about that information and could not have known about it earlier (Articles 371^{17} and 371^{18} § 2). Persons authorised to apply for the reopening of proceedings included parties and their representatives, as well as public authorities – including prosecutors – acting to protect the rights and interests of the State or other persons (Articles 55 and 371^{17}). An application to reopen proceedings could be submitted within three months of the date on which the person lodging the application discovered, or should have discovered, the information constituting the grounds for reopening the proceedings (Article 371^{21} § 1).

C. Laws relating to the decisions of public administration entities

36. At the material time, the Law on Public Administration provided that a public administration entity, upon receiving information on factual or legal errors in a decision which it had taken, had to suspend the validity of that decision and initiate the procedure for rectification of the relevant errors (Article 32 § 1).

37. At the material time, the Law on Administrative Proceedings provided that an administrative court could, at the request of parties or participants in court proceedings, or on its own initiative, order a temporary suspension of a disputed administrative act if the continued application of that act could render the implementation of a subsequent court decision difficult or impossible (Article 71 §§ 1 and 2 (3)).

D. Territorial jurisdiction of administrative courts

38. At the material time, the Law on Administrative Proceedings provided that, in cases where defendants were several public administration entities falling within the territorial jurisdiction of different courts, territorial jurisdiction would be determined by the seat of the superior entity

(Article 17 § 4). Cases in which the claimant or defendant was a central entity of public administration were assigned, with limited exceptions, to the Vilnius Regional Administrative Court (Article 19 § 1).

THE LAW

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

39. The applicant complained that public authorities had unjustifiably delayed the restoration of her property rights and the cancellation of her debt to the State, thereby causing her to incur substantial costs. She relied on Article 1 of Protocol No. 1 to the Convention, which reads:

> "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

1. Non-exhaustion of domestic remedies

40. The Government submitted that the applicant had failed to exhaust effective domestic remedies, and asked the Court to reject the application in line with Article 35 §§ 1 and 4 of the Convention. They firstly argued that the applicant should have lodged a civil claim for damages against the KCA for its failure to provide the domestic courts with all available documents concerning the size of S.F.'s land – had the KCA acted properly and in a timely manner, there would have been no subsequent need to reopen the civil proceedings and revisit the ruling of 23 May 2001.

41. The Government also submitted that the applicant had not availed herself of her right to claim damages from the Ministry of Finance and the Prosecutor General's Office, because her complaint against those institutions had not been submitted in line with the domestic procedural requirements (see paragraphs 27 and 38 above).

42. Lastly, the Government argued that the applicant should have lodged a civil claim for damages against the Kaunas Regional Prosecutor for asking the domestic courts to suspend the validity of the KCA's decisions concerning the restoration of property rights in respect of S.F.'s land. They

provided examples of domestic case-law where courts had awarded damages for damage caused by the application of interim measures on the grounds that those measures had been ordered to secure unfounded claims.

43. The applicant did not comment on those submissions.

44. The Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 222, ECHR 2014 (extracts), and the cases cited therein). It also reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 109, ECHR 2014 (extracts), and the cases cited therein).

45. As to the Government's first submission, the Court notes that the Kaunas District Court adopted its ruling of 23 May 2001 on the basis of the information available to it, which it considered sufficient for the purpose of determining the size of S.F.'s land. Those civil proceedings were later reopened on the grounds that new information had been revealed by the KCA's internal audit. Neither the prosecutor who applied for the reopening of the proceedings, nor the court which granted the prosecutor's application mentioned anything about the KCA's failure to provide documents in 2001 (see paragraph 12 above). Therefore, taking into account the information available to the applicant, the Court considers that it could not have been reasonably expected of her to submit that specific claim against the KCA.

46. As to the Government's other submissions, the Court notes that the applicant submitted a claim against the KCA, alleging that it had acted unlawfully by suspending the restoration of her property rights and asking the prosecutor to apply for the reopening of the civil proceedings. The domestic courts dismissed the applicant's claim and held that, in the presence of well-founded doubts that the size of S.F.'s land had not been established correctly, the reopening of the proceedings and the suspension of the restoration of property rights in respect of S.F.'s land had been lawful (see paragraphs 29-30 above). In such circumstances, the Court is of the view that submitting the same claim against any other defendants would essentially have had the same effect, and was therefore not an effective remedy which the applicant was obliged to use.

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

2. Incompatibility ratione materiae

48. The Government further submitted that the applicant could not claim to have had "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention, and thus that provision was inapplicable *ratione materiae*. They asserted that the restoration of property rights – carried out by the KCA – and the cancellation of debt – carried out by the Ministry of Finance – were two separate, albeit interrelated, procedures. Therefore, while the Government acknowledged that the KCA's decision of 23 October 2001 had given the applicant a "legitimate expectation" to have her rights in respect of 1.47 hectares of land restored, she could not have had such an expectation with regard to the cancellation of her debt to the State until 6 December 2004, when the Ministry of Finance had adopted a certificate in line with domestic law (see paragraph 33 above).

49. The applicant did not comment on those submissions.

50. The Court firstly underlines that it is not in dispute that the KCA's decision of 23 October 2001 entitled the applicant to the restoration of her property rights, and thus created a proprietary interest falling within the scope of Article 1 of Protocol No. 1 to the Convention. While the Contracting States have a wide discretion in regulating the restitution process (see *Paukštis v. Lithuania*, no. 17467/07, § 74, 24 November 2015, and the cases cited therein), the Court observes that the domestic law in force at the material time provided that the cancellation of debts to the State was one of the ways to restore property rights (see paragraph 31 above), and it was not disputed at any stage of the domestic proceedings that the applicant had fulfilled the relevant criteria to have her debt cancelled as compensation for property rights (see paragraphs 31 and 33 above). Accordingly, the Court considers that the applicant had a legitimate expectation to have her property rights restored by way of the cancellation of her outstanding debt to the State, as provided for in domestic law and confirmed by the KCA's decision of 23 October 2001. The Government's objection as to incompatibility *ratione materiae* is therefore dismissed.

3. Conclusion on admissibility

51. Having dismissed the Government's objections, the Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

52. The applicant submitted that the decisions of the relevant public authorities to reopen the proceedings concerning the size of S.F.'s land and suspend the restoration of her property rights and the cancellation of her debt had been unlawful and unfounded. She argued that the doubts as to the exact size of S.F.'s land had not affected the 1.47 hectares which had to be returned to her, because there had been no claims that S.F. had owned less than 1.47 hectares of land. Accordingly, the authorities had had no grounds to suspend the restoration of her property rights without verifying whether there were any concerns about the 1.47 hectares specifically. The applicant complained that, as a result of the delay in the cancellation of her debt, she had sustained pecuniary losses of LTL 20,926.73 (see paragraph 26 above). She considered it unfair that she alone had had to bear the cost of the errors committed by public authorities.

(b) The Government

53. The Government acknowledged that there had been an interference with the applicant's peaceful enjoyment of her possessions, but argued that that interference had been in line with the requirements of Article 1 of Protocol No. 1 to the Convention. In the Government's view, the interference fell to be examined under the second paragraph of that provision – control of the use of property.

54. The Government submitted that all the relevant State institutions had acted in line with domestic law when initiating the reopening of the civil proceedings and the suspension of the KCA's decisions. The Government also drew the Court's attention to the fact that the applicant had continued paying interest to the bank until September 2002. They argued that she herself had thereby accepted the lawfulness of such payments after the cancellation of her debt had been suspended.

55. The Government also submitted that the interference in question had sought a legitimate aim, in that that the reopening of the proceedings concerning the size of S.F.'s land had been necessary to ensure that property rights were not restored to undeserving claimants, and to prevent unjust enrichment at public expense. They argued that rights to restoration of title in respect of S.F.'s land had been transferred to over a hundred individuals, and the total value of their claims had amounted to approximately LTL 1,908,000 (EUR 552,600), and thus the State had been justified in seeking to prevent such a considerable loss from its budget.

56. The Government further argued that there was a reasonable relationship of proportionality between the means employed and the aim

pursued. They submitted that the proceedings concerning the size of S.F.'s land had been reopened owing to well-founded doubts as to the accuracy of the Kaunas District Court's ruling of 23 May 2001; those doubts had eventually been proved to be correct, as the courts dealing with the reopened proceedings had established that the land was almost twenty hectares smaller than the initial estimate. The Government also argued that the reopening of the proceedings and the suspension of all the relevant decisions by the KCA had been the only available means to rectify the errors made by the Kaunas District Court after its ruling of 23 May 2001 had become final. They contended that the reopened proceedings and the consequent suspension had lasted a reasonable period of time – slightly over three years. The applicant had been sufficiently involved in all related court proceedings and had exercised her procedural rights.

57. Lastly, the Government submitted that the applicant had entered into the two loan agreements voluntarily; she had obtained the loans under preferential conditions, and the rates of interest and late payment fines had been lower than the corresponding average rates set by banks at the material time. The Government also submitted that the total value of the two loans had been LTL 120,136 (EUR 34,794) and the applicant had obtained the right to have LTL 112,896 (EUR 32,697) of the debt cancelled, even though the sum which she had paid to A.E. in exchange (LTL 30,870 (EUR 8,940)) had been more than three times lower than the cancelled part of the debt. The Government argued that, in such circumstances, even though the applicant had sustained certain losses because of the delay in the cancellation, she had nonetheless not had to bear "an individual and excessive burden".

2. The Court's assessment

58. The Court notes that the applicant complained that from 23 October 2001 until 6 December 2004 she had not been able to have her property rights restored and her debt to the State cancelled, and as a result she had sustained pecuniary losses. The Court has already found that the KCA's decision of 23 October 2001 created a legitimate expectation for the applicant to have her property rights restored by way of cancellation of her debt, and thus created a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention (see paragraph 50 above). The parties have not disputed that the delay in restoring her rights constituted an interference with the applicant's property rights. In the circumstances of the present case, the Court considers that the applicant's complaint falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1, namely the right to the peaceful enjoyment of property. It will now assess whether the interference with the applicant's peaceful enjoyment of her property was prescribed by law, whether it pursued a legitimate aim, and whether there was a reasonable relationship of

proportionality between the means employed and the aim pursued (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 147-151, ECHR 2004-V).

(a) Lawfulness and legitimate aim

59. As to the lawfulness of the interference, the Court is convinced that the civil proceedings concerning the size of S.F.'s land were reopened in line with the relevant provisions of the Code of Civil Procedure (see paragraphs 34-35 above), and that the validity of the KCA's decisions concerning the restoration of property rights in respect of that land was suspended in line with the Law on Administrative Proceedings and the Law on Public Administration (see paragraphs 36-37 above). The Court sees no reason to disagree with the domestic courts that there was new information raising well-founded doubts as to the size of S.F.'s land, which justified the reopening of the proceedings in accordance with the domestic law (see paragraph 29 above).

60. As to the legitimate aim pursued by the interference, the Court considers that the measures in question were necessary to prevent errors in the process of restoring the property rights, and to ensure that such rights were restored only to people who were entitled to claim them, and were thus in the public interest (see, *mutatis mutandis*, *Pyrantienė v. Lithuania*, no. 45092/07, §§ 44-48, 12 November 2013, and the cases cited therein).

(b) Proportionality

61. In assessing whether a fair balance was struck between the demands of the general interest of the community and the requirement of protecting the individual's fundamental rights, the Court firstly notes that the restoration of the applicant's property rights was suspended in order to correct errors committed by State authorities, and the applicant did not contribute to that situation in any way. The Court underlines that when the applicant obtained from A.E. the right to have her property rights restored, she had no reason to doubt that the Kaunas District Court's ruling of 23 May 2001 was accurate and would remain final. The Court has previously held that the principle of good governance requires that any errors made by State authorities should not be remedied at the expense of individuals who have acquired property rights in good faith (see, among other authorities, *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 58, ECHR 2002-VIII; *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007; *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007; *Gladysheva v. Russia*, no. 7097/10, § 80, 6 December 2011; and *Vukušić v. Croatia*, no. 69735/11, § 64, 31 May 2016).

62. The Court further observes that the applicant's situation with regard to her obligations to the bank remained uncertain during the period from 23 October 2001 until 6 December 2004. The bank did not require the applicant to repay the loan, but continued calculating interest, which she

paid until September 2002. After the applicant stopped paying interest, it appears that the bank did not contact her about the unpaid interest and the pending late payment fines until January 2005, after her debt had already been cancelled (see paragraphs 17-18 above). While the domestic courts found the payment of interest justified, they did not examine whether the applicant's legal obligations during the period in question had been clarified to her by either the bank or the State authorities involved in the debt cancellation process (see paragraphs 23-24 above).

63. At the same time, the Court observes that the domestic authorities noticed the possible mistake in the calculation of the size of S.F.'s land promptly – about six months after the Kaunas District Court's ruling of 23 May 2001 and less than two months after the KCA's decision to restore the applicant's property rights (compare with *Moskal v. Poland*, no. 10373/05, § 69, 15 September 2009). It also considers that the length of the delay in cancelling the applicant's debt (three years and almost two months) in the circumstances of the present case cannot be considered excessive. That period included several different sets of court proceedings (an application to reopen the civil proceedings, an application to suspend the KCA's decisions, an examination of the merits in the reopened proceedings, and revocation of the order suspending the KCA's decisions), as well as the exchange of information between the KCA, the prosecutor and the Ministry of Finance. There do not appear to have been any significant periods of inactivity on the part of the authorities (see, *mutatis mutandis*, *Romankevič v. Lithuania*, no. 25747/07, §§ 43-44, 2 December 2014). The Court also notes that the applicant was included in all the relevant court proceedings as a third party and exercised her procedural rights (see *Gladysheva*, cited above, § 68).

64. Furthermore, assessing the circumstances of this case as a whole, the Court is not convinced that the applicant had to bear an excessive burden. While her expenses during the period of delay were not insignificant, eventually more than ninety percent of the total value of her debt was cancelled (see paragraph 57 above). All the expenses which the applicant sustained in relation to the two loans (consisting of the parts of the loans which she had repaid, the sum which she paid to A.E., and the interest, late payment fines and legal expenses) together amounted to less than half of the total value of the loans. Moreover, during the period when the debt cancellation was delayed, the applicant retained the use of the apartment which she had acquired with the help of those loans, that is she continued to enjoy the benefits derived from the loans (compare with *Bogdel v. Lithuania*, no. 41248/06, § 67, 26 November 2013, and contrast with *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, §§ 143-144, 5 November 2013). In this connection, the Court also notes that the applicant was entitled to the cancellation of her debt, not because she or her ancestors had had property nationalised by the Soviet regime, but because

she had bought the right to restoration from a third party, and at the time when she received the two loans, given to her by the State under preferential conditions (see paragraph 6 above), she could not have reasonably expected that her debt under those loan agreements would subsequently be cancelled. Accordingly, the Court considers that the delay in the cancellation of the applicant's debt and her losses resulting from that delay did not disproportionately affect the benefits which she derived from the two loans and the eventual cancellation of her outstanding debt.

65. In the light of the foregoing considerations, the Court concludes that the interference with the applicant's right to peaceful enjoyment of her property achieved a fair balance between the demands of the general interest of the community and the requirement of protecting the fundamental rights of the individual.

66. Accordingly, there has been no 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 11 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	András Sajó
Deputy Registrar	President