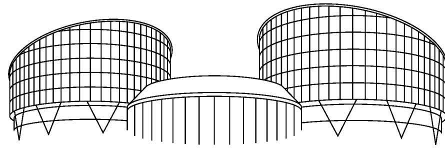

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GRIGOLOVIČ v. LITHUANIA

(Application no. 54882/10)

JUDGMENT
(*Merits*)

STRASBOURG

10 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 Grigolovič v. Lithuania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Georges Ravarani,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 19 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 54882/10) 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 Fabijan Grigolovič ("the applicant"), on 14 September 2010.

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

3. The applicant alleged that his property rights to part of his father's land had not been restored and no compensation for the land had been paid to him, in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 24 June 2016 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in the village of Bajorai in Vilnius Region.

6. On 29 December 1999, 28 March 2000, 2 May 2000, 4 May 2000, 16 August 2000 and 18 September 2000 the national authorities allocated plots of land to S.J., I.T., E.G., A.G., J.T. and A.I. and E.Š. (thus

compensating them for their or their parents' property nationalised by the Soviet regime (see paragraph 25 below)), who later transferred their property rights to Ž.S. in accordance with requests they had lodged on 28 October 1991, 10 October 1991, 22 November 1991, 8 August 1991 and 9 December 1991 respectively. The land allocated to these third parties was located in the same area as where the applicant's father's land was situated before nationalisation following the Soviet occupation of Lithuania in 1940.

7. On 29 July 2000 the applicant asked the Lithuanian authorities to restore his property rights to 9.5705 hectares of his father's land by giving him a new plot of land.

8. On 22 January 2001 the national authorities established that part of the land was unoccupied and could have been returned to the heirs.

9. On 15 March 2002 the Vilnius Regional Administrative Court held that the restoration of property rights of I.T. had been unlawful. As a result, a plot of land of 0.18 hectares was returned to the State.

10. On 30 July 2002 the applicant changed his initial request (see paragraph 7 above) and asked for his property rights to be restored *in natura*. The authorities asked the applicant to provide them with some documents necessary to proceed with the restoration of his property rights. In January 2003 the Vilnius County Administration (hereinafter "the VCA") asked the Vilnius City Municipality (hereinafter "the VCM") to determine whether or not the land in question was State redeemable. In February 2003 the VCM found that the land was State redeemable and that the question of restitution had to be dealt with by the other means provided for by law. Accordingly, the applicant was asked to express his intentions regarding the form in which he wanted his ownership rights to the property to be restored.

11. As the plot of land previously owned by the applicant's father was State redeemable, in March 2003 the applicant asked to be provided with a new plot of land of equal value in Vilnius.

12. In May 2006 the VCA asked the VCM to demarcate a plot of land, previously owned by the applicant's father, for the applicant. However, the VCM confirmed that the land was State redeemable because part of it was already being owned by third parties and was a State forest.

13. In December 2007 the VCA informed the applicant that his father's land was State redeemable and that the question of restitution had to be dealt with by the other means provided for by law. The applicant was also informed that he was included in the list of persons waiting to have their property rights restored, and was 4,055th in line.

14. On 5 February 2009 the authorities adopted a decision restoring the applicant's property rights to 0.18 hectares of his father's land and informed him that his property rights to the remaining 9.3905 hectares would be restored at a later date.

15. The applicant lodged a claim with the Vilnius Regional Administrative Court and asked it to (i) annul the decisions of the

authorities to restore property rights to his father's land to third parties on the grounds that they were unlawful, (ii) award him 1,422,791 Lithuanian litai (LTL, approximately 412,069 euros (EUR)) in compensation in respect of pecuniary damage and (iii) oblige the authorities to restore his property rights to a specific plot of land. The latter request was later withdrawn. The applicant claimed that the decisions to restore property rights to his father's land to third parties were unlawful because he had submitted his request when the land had not yet been State redeemable. His property rights therefore had to be restored.

16. The VCA explained that the applicant had submitted the request to have his property rights restored in 2000, while the third parties had done so in 1991 (see paragraphs 6 and 7 above). The VCA also stated that the applicant had not provided any evidence that the requirements of the domestic law had been breached in restoring property rights to third parties.

17. On 10 April 2009 the Vilnius Regional Administrative Court held that the legislation in force at the time did not allow for the return of the land *in natura* to the applicant because he did not have any buildings on that land as property (see paragraph 24 below). In 2001 the provision in question was declared unconstitutional (see paragraph 23 below). The court also held that the applicant had not lost the opportunity to have his property rights restored. It was also possible that he would be given a more valuable plot of land, therefore it was decided that he had not suffered pecuniary damage.

18. The applicant appealed. On 15 March 2010 the Supreme Administrative Court upheld the decision of the Vilnius Regional Administrative Court. It held that the applicant had not asked for the land to be returned *in natura* until after the property rights to it had already been restored to third parties (see paragraphs 6 and 7 above). The court also held that 29 October 2002 was the date when the specific location and borders of the land which the applicant asked to have returned *in natura* had been established. Furthermore, it did not consider that the domestic authorities had acted unlawfully, which was a precondition for compensation in respect of pecuniary damage.

19. In February 2012 the National Land Service informed the applicant that in order to accelerate the process of restoring property rights to citizens, the domestic law had been amended and it had become possible for him to receive monetary compensation for the land. He was also informed that if he wished to use that opportunity, he had until 1 June 2012 to provide the authorities with a written request (see paragraph 25 below). The applicant replied in May 2012 that he had not changed his mind and still wanted to receive the land *in natura* or, if that was not possible, a plot of land of equal value in Vilnius.

20. In August 2014 the National Land Service asked the VCM whether it was possible to demarcate any vacant land that was not State redeemable and could have been returned to the heirs of the applicant's father.

21. In November 2014 the applicant was informed that he could change his mind about the form of restitution and receive a plot of forest of equal value. He was asked by letter to make a decision by 1 March 2015, but it appears that he did not respond.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. 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."

23. Article 5 § 2 (1) of the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property (*Piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymas* – hereinafter "the Law on Restitution") of 1997 provided that property rights to land that until 1 June 1995 had been an area of the city were to be restored by giving the plots of land to the citizens who had buildings on them. As enacted, the Law on Restitution provided that the restoration of property rights in the city of Vilnius were limited to a 0.2 ha maximum plot size.

On 2 April 2001 the Constitutional Court held that limiting the return of land *in natura*, if it was vacant and consequently of no particular value to society, was in breach of Article 23 of Constitution, which protects the right to property.

On 2 April 2002 the Seimas amended Article 5 to read that the maximum area of land returnable *in natura* within city boundaries, if it was not built upon, was 1 ha.

24. Article 12 § 1 (3) of the Law on Restitution provided that land that until 1 June 1995 had been an area of the city was State redeemable unless it had buildings on it.

25. Article 16 § 9 of the Law on Restitution provided that the State had to compensate citizens for any land, forest and riparian rights bought by it by: (i) assigning an area of land or forest equal in value to the land held previously; (ii) legally voiding liabilities (of equal value) of a citizen to a State; (iii) securities; or (iv) transferring ownership free of charge of a new plot of land equal in value to the land held previously for the construction of an individual house, in the city or rural area where the land held previously was situated. As from 1 February 2012 it became possible to receive monetary compensation for the land that until 1 June 1995 had been an area of the town. As from 1 November 2014 it also became possible to restore property rights by giving citizens a plot of forest of equal value in a rural area.

26. Article 21 of the Law on Restitution provided that a citizen could, by 1 April 2003, express or change his or her wish regarding the form in which the ownership rights to the real property were restored, provided that a final decision on restitution had not been taken. Should he or she fail to make a choice, it was for the authorities to choose the form of restitution.

27. On 29 September 1997 the Government adopted Resolution no. 1057 setting out the "Order for Execution of the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property" (*Lietuvos Respublikos piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymo įgyvendinimo tvarka*), which provided that documents proving the citizenship, property rights and blood ties with the former owner had to be submitted with the request to have property rights restored (Point 11). It also provided that property rights to land which prior to 1 June 1995 had been situated within city boundaries had to be restored by returning *in natura* vacant land to citizens, except for land which had to be bought out by the State and which citizens did not want to have returned *in natura.*

28. Article 6.271 of the Civil Code provides that the State is liable for any damage caused by the unlawful actions of a public authority, irrespective of any fault on the part of a particular public servant or other employee of the public authority.

THE LAW

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

29. The applicant complained that the State authorities had breached his rights by not restoring his property rights to part of his father's land *in natura* and failing to grant him a plot of equal value or fair compensation for the land. He relied on Article 1 of Protocol No. 1 to the Convention, which provides:

> "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. The parties' submissions

30. The Government submitted that the applicant had no "possessions" within the meaning of Article 1 of Protocol No. 1. His property rights to the 9.5705 hectares of his father's land had never been fully restored by the authorities. Nor could he have a legitimate expectation that a particular plot of land would be returned to him. The Government also observed that the proprietary interest, which is in the nature of a claim, could be regarded as an "asset" only where it had sufficient basis in national law and that in the applicant's case there was no such basis. More specifically, when the applicant had submitted his request to have his property rights restored *in natura*, the domestic law had not provided for such a possibility. Moreover, the applicant had been aware of the fact that the land was already being used by third parties, and would have only been able to receive that land if there were breaches of the domestic law in allocating the land to those third parties. However, this could not have created any claim in respect of which he would have had a legitimate expectation to have it realised. The Government therefore considered this complaint to be inadmissible *ratione materiae*.

31. The applicant submitted that the case-law of the domestic courts provided that if a person submitted a request to have his or her property rights restored to a particular plot of land, the plot could not have been considered as vacant and allocated to the third parties. The applicant thus considered that he had a legitimate expectation to have his property rights restored.

2. The Court's assessment

32. The Court notes that the applicant complained about two different aspects of the domestic proceedings. Firstly, he complained about his inability to receive the plot of land *in natura*. Secondly, he complained about the inability to receive a plot of equal value or fair compensation for the land. The Court will address each of these complaints separately.

(a) As regards restitution *in natura*

33. As concerns the applicant's complaint that he was unable to recover the original plot *in natura*, the Court reiterates that the Convention does not guarantee, as such, the right to restitution of property. "Possessions" within the meaning of Article 1 of Protocol No. 1 can either be "existing possessions" or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realised. The hope that a long-extinguished property right may be revived cannot be regarded as a "possession" within the meaning of Article 1 of

Protocol No. 1, nor can a conditional claim which has lapsed as a result of failure to fulfil the condition (see *Polacek and Polackova v. the Czech Republic* [GC] (dec.), no. 38645/97, § 62, 10 July 2002, and *Nekvedavičius v. Lithuania*, no. 1471/05, § 73, 10 December 2013).

34. It follows that the applicant has no “possessions” with regard to his claim to recover the original plot *in natura*, and this complaint is incompatible *ratione materiae* with the provisions of Article 1 of Protocol No. 1 within the meaning of Article 35 § 3 of the Convention.

(b) As regards restoration of the applicant’s property rights by means other than *in natura*

35. As regards the applicant’s complaint about his inability to receive a plot of equal value or fair compensation for his father’s land, the Court notes that the authorities continually highlighted the fact that the applicant could have his property rights restored to his father’s land, and that his right of restitution was never contested by the authorities (see paragraphs 9, 12-14, 17 and 18 above). In 2009 he was granted a plot of land, which confirms that he satisfied the criteria for restitution of the land that his father had, totaling 9.5705 hectares, in whatever form that restitution might take (see paragraph 14 above, see also, *mutatis mutandis, Paukštis v. Lithuania*, no. 17467/07, § 68, 24 November 2015). More specifically, the domestic courts observed that the process of restoring the applicant’s property rights had not been completed and that he could still have his rights restored (see paragraphs 17 and 18 above). In view of those judgments, the applicant’s claim to have his property rights restored by means other than *in natura* constituted a “proprietary interest” which has sufficient basis in domestic law and is covered by the notion of a “possession” under Article 1 of Protocol No. 1 to the Convention (see *Nekvedavičius*, cited above, § 76). The Court thus finds that the Government’s objection as to this complaint being inadmissible *ratione materiae* must be dismissed.

36. The Court lastly notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

37. The applicant argued that the Lithuanian authorities had failed to act diligently and as a consequence his property rights to his father’s plot of land had not been restored and no compensation had been paid to him.

38. The Government submitted that the national authorities had acted in accordance with the provisions of domestic law and that the applicant had been informed several times that the land in question was State redeemable. The Government also stated that on the one hand there was a need to protect the rights of *bona fide* owners of the land, who had had their property rights restored where the applicant's father's land was and, on the other hand, to protect nature and the rule of law as part of the land was covered by State forests. In this connection, the Government argued that the applicant had not started the restitution process until 2000, almost ten years after the beginning of the general restitution process. After the amendments to the domestic law, the applicant had not taken the opportunity to accelerate the restitution process and had not chosen a plot of forest of equal value (see paragraph 21 above). His inaction had therefore contributed to the fact that his property rights to part of his father's land had not yet been restored.

39. The Government lastly submitted that the national authorities had a wide margin of appreciation in this area and that as soon as one of the plots of land had been returned to the State (see paragraph 9 above), the authorities had immediately returned it to the applicant (see paragraph 14 above).

2. *The Court's assessment*

40. The Court notes that the applicant applied to have his property rights restored in 2000. And although the opportunity to recover the whole plot of land *in natura* never existed, his right to have his property rights restored in the form of land of equal value or money was never contested by the authorities (see paragraph 35 above). This was also confirmed by the decisions of the domestic courts. Even though that right was created in an inchoate form, it clearly constituted a legal basis for the State's obligation to implement it. The Court thus holds that the applicant had an enforceable right and legitimate expectation to have his property rights restored in some form. However, the procedure seemed to be at a standstill, as no particular decision had been adopted since 5 February 2009, when the authorities decided to restore the applicant's property rights to 0.18 hectares of his father's land (see paragraph 14 above). In particular, it had not been determined whether and when the applicant would receive a new plot of land or compensation, and for what value.

41. It follows that there was an interference with the applicant's right to peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention. It remains to be ascertained whether or not that interference was justified.

42. For the purposes of the above-mentioned provision, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September

1982, § 68, Series A no. 52, and *Nekvedavičius*, cited above, § 86). The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Străin and Others v. Romania*, no. 57001/00, § 44, ECHR 2005-VII, and *Tunaitis v. Lithuania*, no. 42927/08, § 31, 24 November 2015).

43. In the context of property rights, particular importance must be attached to the principle of good governance (see *Nekvedavičius*, cited above, § 87). It requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as those involving property, the public authorities must act in good time and in an appropriate and, above all, consistent manner (see *Bogdel v. Lithuania*, no. 41248/06, § 65, 26 November 2013).

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

45. Even so, the state of uncertainty in which an applicant might find himself as a result of delays attributable to the authorities is a factor to be taken into account in assessing a State's conduct (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 151 and 185, ECHR 2004-V, and *Igarienė and Petrauskienė*, cited above, § 58). The Court notes that in 2007 the applicant was 4,055th on a list of people waiting to have their property rights restored, and that it is still not certain when that will happen.

46. As to the Government's argument that the applicant himself contributed to the fact that his property rights to the remaining plot of land had not yet been restored by failing to change his mind as to the form of restitution, the Court notes that he was not under any obligation to do so under domestic law (see paragraphs 25-26 above). The applicant did not respond to the authorities' letter of November 2014 (see paragraph 21 above), but that did not absolve the Government from their duty to complete the restitution process in the applicant's case, since the applicant had clearly expressed his wish to restore his property rights by obtaining a plot of land of equal value (see paragraphs 11 and 19 above). In these circumstances the Court does not see any grounds for finding that the applicant was responsible, in whole or in part, for the fact that his property rights to the remaining plot had not yet been restored.

47. Even though the domestic authorities were not completely inactive, the Court considers that they did not display due diligence in their attempts to restore the applicant's property rights to the remaining plot of land. More

specifically, although the Government stated that the law had been amended in order to accelerate the restitution process, the Court notes that no effective action to accelerate the restitution process had been taken since November 2014, when the applicant was asked to change his mind as to the form of restitution (see paragraph 21 above).

48. Having regard to the circumstances of the case, the Court concludes that the domestic authorities did not act in line with the principle of good governance to ensure that the applicant's property rights were protected. Moreover, the applicant's legitimate expectation to have his property rights restored to the remaining plot of land was unjustifiably affected by failure of the authorities to act. As a result, the balance which had to be struck between the general interest and the applicant's personal interest was upset, and he has had to bear an individual and excessive burden, which is incompatible with Article 1 of Protocol No. 1 to the Convention.

49. Accordingly, there has been a violation of that provision in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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."

A. Damage

51. The applicant claimed 585,072 euros (EUR) in respect of pecuniary damage, representing the market value of the property that had not been returned to him.

52. He also claimed EUR 16,000 in respect of non-pecuniary damage.

53. The Government argued that the applicant had failed to substantiate his claim in respect of pecuniary damage, and that it was premature because he was still on the list of people waiting to have their property rights restored.

54. The Government also considered 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 peaceful enjoyment of his possessions.

55. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision. Seeing that the Government did not contest, in principle, its obligation to restore the applicant's property rights to the remaining plot of his father's land, the

Court takes note that an agreement may be reached between the respondent State and the applicant (Rule 75 § 1 of the Rules of Court).

56. Accordingly, the Court reserves this question and invites the Government and the applicant to submit, within six months of 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 to be awarded to the applicant and, in particular, to notify the Court of any agreement that they may reach.

B. Costs and expenses

57. The applicant did not submit a claim for costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning restoration of the applicant's property rights by means other than *in natura* 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 in so far as damages resulting from the violation found in the present case are concerned is not ready for decision, and accordingly:
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicant to notify the Court, within six 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 to be awarded to the applicant and in particular 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 10 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ganna Yudkivska
Registrar	President