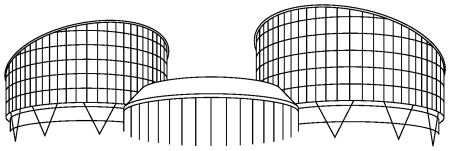

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KRISTIANA LTD. v. LITHUANIA

(Application no. 36184/13)

JUDGMENT

STRASBOURG

6 February 2018

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

In the case of Kristiana Ltd. v. Lithuania,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Georges Ravarani,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 16 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 36184/13) 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 legal entity registered under Lithuanian law, Kristiana Ltd. ("the applicant company"), on 27 May 2013.

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

3. The applicant company alleged, in particular, that it had been precluded from using its property, which had been earmarked for demolition, and that no compensation mechanism or time-limits for demolition had been fixed, contrary to Article 1 of Protocol No. 1 to the Convention.

4. On 24 June 2016 the complaints concerning the alleged inability of the applicant company to use its property, the fairness of the proceedings and the existence of an effective remedy 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 company is a legal entity registered in Vilnius.

6. In 1994 the Government adopted a resolution establishing the Development Plan for the Curonian Spit National Park (hereafter "the development plan"). The main objectives of the development plan were published in the Official Gazette (*Valstybės žinios*) (see paragraph 53 below). The development plan explicitly indicated that the buildings with a former military objective, situated in the adjacent dunes, had to be removed (*nukeliami*) and the natural environment fully restored.

7. In 1998 the Government decided to privatise the former Soviet (later the – Russian Federation) military buildings, without the land, in Juodkrantė, the Neringa Municipality, within the Curonian Spit National Park. There were two military barracks, a canteen, a store house and two sheds.

8. In 1999 the State Property Fund carried out a public auction, at which the applicant company was the only participant and purchased the buildings for 226,000 Lithuanian litai (LTL, approximately 65,454 euros (EUR)). The purchase agreement, which was concluded in February 2000, indicated that the applicant company had to lease the land assigned to the buildings (*įsipareigoja išsinuomoti šiam objektui priskirtą žemės sklypą*).

A. Circumstances surrounding the detailed plan of the area

9. In September 2001 the Neringa Municipality decided to prepare a detailed plan of the area where the buildings were sited. The purpose of the plan was to designate a plot of land near the existing buildings, providing an opportunity to renovate the buildings or to build new recreational buildings.

10. In August 2002 the authorities in charge of the Curonian Spit National Park decided that renovation of the buildings had to meet the requirements applicable to the whole area. The buildings had to be integrated in the landscape; as they were sited in the forest, the purpose of the use of the land had to be changed.

11. In September 2002 the Klaipėda Region department of environmental protection decided that the purpose of the use of the land, on account of its specific location, could only be changed if the projects were approved by those managing protected areas or with the approval of the Ministry of Environment. In August 2003 the same department rejected a detailed plan submitted by the applicant company, seeking to amend the purpose of the land so that it became a recreational area.

12. The applicant company instituted court proceedings, urging the court to declare unlawful the authorities' rejection of the detailed plan proposed by the applicant company (see paragraph 11 above) and to oblige them to accept it.

13. The applicant company's claim was dismissed on 23 October 2003 by the Klaipėda Regional Administrative Court and on 27 January 2004 by

the Supreme Administrative Court. The courts held that in accordance with domestic law there was no possibility to build new recreational buildings in the Curonian Spit National Park (see paragraph 53 below). The courts thus held that the applicant company's detailed plan was contrary to the development plan.

B. Circumstances surrounding the land assigned to the buildings

14. In January 2004 the applicant company asked the authorities to conclude a lease agreement in respect of the land assigned to the buildings. The authorities replied that the applicant company had to provide a plan of the land. However, as there was no detailed plan of the area, the land could not be leased. The applicant company was also obliged to pay the land tax.

15. The applicant company instituted court proceedings and complained that it had to pay the land tax but the Vilnius Regional Administrative Court on 30 April 2004 and the Supreme Administrative Court on 17 September 2004 held that it had to pay the land tax because it had been using the land in question.

C. The procedure to include the land assigned to the applicant company's buildings in the recreational zone

16. In February 2006 the applicant company asked the authorities to include the land in question in the landscape management recreational zone. In March, the Protected Areas Service replied that the development plan of 1994 indicated that the buildings had to be demolished. It said that it would formulate provisions in the explanatory report regarding the possibility to compensate the applicant company for the buildings. In this case, the applicant company would be able to acquire other buildings owned by the authorities.

17. In November 2011 the applicant company proposed that the land under its buildings be included in the recreational zone and that a compensation mechanism be determined for the buildings if the area had to be redeveloped. In December 2011 the authorities replied that the redevelopment of the area had been determined in 1994 and that they could not agree with the applicant company's proposals. The authorities indicated that any decision regarding the applicant company's buildings had to be taken by the Government.

18. In January 2012 the applicant company complained about the refusal of its proposal (see paragraph 17 above) to the State Territorial Planning and Construction Inspectorate. It claimed that it had legitimate expectations that it would be able to use its possessions in an appropriate manner, namely that it would be allowed to reconstruct the buildings without increasing their

height. In February 2012 the Inspectorate replied that when approving the Curonian Spit National Park Management Plan (hereafter "the Management Plan"), a decision on a compensation mechanism and time-limits would also have to be taken.

19. In April 2012 the applicant company examined a draft of the Management Plan and found that its buildings were indicated as objects to be redeveloped (*rekultivuojami objektai*) but that that decision had not been explained. The applicant company asked the authorities to amend the draft so that it included the issue of compensation for the buildings or included the buildings in the landscape management recreational zone.

20. In May 2012 the Ministry of Environment and the Protected Areas Service replied that they had set up a working group to determine a compensation mechanism for the property that had to be expropriated.

21. In May 2012 the applicant company asked the authorities to inform it about the conclusions of the working group. In June 2012 the authorities replied that the working group had to be set up before 29 June 2012.

22. The working group was set on 20 July 2012 and had to provide its proposals before 19 November 2012.

D. The procedure regarding planning permission for major repair work of the canteen and subsequent court proceedings

23. In February 2010 the applicant company asked the authorities for planning permission to carry out major renovation work on one of the buildings, namely the canteen. The authorities replied that they could not issue planning permission and that the applicant company had to provide them with the lease agreement in respect of the land assigned to the buildings. Only after such agreement was provided, the authorities would examine the applicant company's request.

24. The applicant company lodged a complaint with the domestic courts against the authorities' refusal to issue planning permission for renovation of the canteen. On 30 August 2010 the Klaipėda Regional Administrative Court allowed the claim, holding that the applicant company had been paying the land tax, which was evidence that it had been using the plot of land.

25. On 9 May 2011 the Supreme Administrative Court allowed an appeal lodged by the authorities. It held that the applicant company had not provided any information proving that it was the owner of the plot of land, so the authorities had not been obliged to issue planning permission for renovation of the canteen. The applicant company applied for the reopening of the proceedings. Its request was refused by the Supreme Administrative Court in January 2012.

E. Approval of the Management Plan and court proceedings regarding the Management Plan

26. On 6 June 2012 the Government approved the Management Plan by Resolution No. 702 (see paragraph 54 below) and asked the Ministry of Environment to set up a working group to assess the legal grounds for expropriating property for public needs (*dėl darbo grupės teisinėms prielaidoms paimti turtą visuomenės poreikiams sudarymo*). The working group was set up on 20 July 2012 and its proposals were to be submitted by 19 November 2012. The Management Plan included the reserve land in Juodkrantė, indicating that its purpose was to compensate for the possible losses incurred by lawful owners of buildings that had been earmarked for demolition.

27. On 4 July 2012 the applicant company lodged a complaint with the Vilnius Regional Administrative Court, urging it to revoke the part of the Government Resolution where it had been decided that the buildings at 21 Miško street (the location of the applicant company's buildings) would be demolished and to order the authorities to amend the Management Plan. The applicant company argued that the issue of compensation and the time-limits for the demolition of property had not even been mentioned in the Management Plan. It also argued that clear indications on compensation for the buildings and for the land tax were needed.

28. On 23 July 2012 the Vilnius Regional Administrative Court refused to examine the claim. The reasons were provided in two short paragraphs, which mainly reiterated the provisions of domestic law (see paragraph 62 below). The applicant company had complained about the lawfulness of the Government Resolution. The court considered that issues as to whether acts adopted by the Government were in accordance with the Constitution or laws fell within the jurisdiction of the Constitutional Court. It stated that it was not within the area of competence of the administrative courts to examine the lawfulness of the activities of, *inter alia*, the Government (as a collegial institution). As regards an amendment to the Management Plan, the court stated that that was linked to the first part of the claim and thus would not have any legal consequences on the applicant company.

29. In August 2012 the applicant company lodged a separate complaint and asked the Supreme Administrative Court to examine the case on the merits. It claimed that the first-instance court had misinterpreted the provisions of the Law on Administrative Proceedings, and thus limited the applicant company's right of access to a court. The applicant company thought that when the Government had approved the Management Plan, it had been implementing the function of public administration, and that that document had had a direct influence on the applicant company's rights and obligations, and was thus an individual legal act that had to be examined before the administrative courts. On 28 November 2012 the Supreme

Administrative Court upheld the decision of the Vilnius Regional Administrative Court of 23 July 2012. It held that the applicant company had questioned the lawfulness of both the Management Plan and the development plan. The Supreme Administrative Court held that when the Government had approved the Management Plan, it had been carrying out the function of State power. Moreover, the court had already ruled on the issue of the attribution of the Management Plan to the jurisdiction of the administrative courts and had decided that it had not been attributable to those courts (see paragraph 79 below). The court indicated that a legal act could consist of textual and graphic information (tables, drawings, schemes, plans, symbols, emblems). The Constitutional Court had already held that all parts of a legal act were interrelated and were of equal legal effect (see paragraph 77 below). The court further held that the present case was in substance identical to cases already examined by it, and that there were no grounds to reach a different conclusion on the nature of the Management Plan. The court explained that the applicant company could only raise the issue of the lawfulness of the Government Resolution in the context of an individual case regarding violation of its specific rights (by complaining against an individual legal act, by which the Government Resolution and the decisions of the Management Plan would be implemented). It could then ask the court examining that case to refer the issue to the Constitutional Court. The applicant company's request to organise the procedure to amend the Management Plan so that it included the land in question in the landscape management recreational zone was dismissed because the applicant company had failed to address the authorities or the courts after the approval of the Management Plan.

30. The applicant company then applied for the reopening of the proceedings. On 3 April 2013 the Supreme Administrative Court rejected its application on the grounds that the applicant company's claims had been dismissed for being outside the administrative court's jurisdiction and the proceedings could only be reopened if an administrative case had been examined on the merits.

F. The procedure regarding planning permission for major repair work of the applicant company's buildings and subsequent court proceedings

31. In October 2011 the applicant company asked the authorities which documents were necessary for the proposed renovation work. In November 2011 the authorities replied that it was not clear from the applicant company's request which building ("specific, not complex or non-specific" (*ypatingas, nesudėtingas ar neypatingas*), as defined in the domestic law) it was aiming to renovate. The applicant company had

indicated major repair work. The authorities stated that a detailed plan was not necessary, the location of the building to be renovated was not important and a document proving ownership of the land (see paragraph 25 above) was not necessary either.

32. In May 2013 the Neringa Municipality inspected the applicant company's buildings and held that they were in a state of disrepair. It requested that the applicant company appoint a person responsible for the maintenance of the buildings before 3 June 2013, remove the damaged parts of the buildings before 1 July 2013 and renovate the buildings before 31 May 2014.

33. On 30 December 2013 the applicant company asked the authority in charge of the Curonian Spit National Park to issue planning permission to carry out major repair work in order to renovate the buildings. The same month the applicant company received a response that permission could not be issued because it would be contrary to the Management Plan of 6 June 2012 (see paragraph 26 above).

34. The applicant company instituted court proceedings before the Vilnius Regional Administrative Court against the decision of the authority in charge of the Curonian Spit National Park of 30 December 2013 (see paragraph 33 above). It urged the court to order the authority to issue the planning permission required for it to carry out major repair work and to award it EUR 48,489 in respect of pecuniary damage for the land tax and property tax it had paid between 2000 and 2014.

35. In the course of proceedings the applicant company submitted a draft friendly settlement agreement to be concluded by the State, proposing that the State compensate it for the removal of the buildings by providing the applicant company with lease rights to State-owned land measuring 0.7685 hectares in Neringa with construction rights. The State representative refused to agree to the proposal because it was in breach of domestic law (see paragraph 63 below).

36. On 14 November 2016 the Vilnius Regional Administrative Court held that the refusal of the authority in charge of the Curonian Spit National Park to issue the planning permission required to carry out major repair work was in accordance with the relevant domestic law. The applicant company also asked the court to refer the question of whether the Management Plan was in accordance with the Constitution to the Constitutional Court. The court acknowledged that the authority's decision had lacked a seal of approval but held that that shortcoming could not be regarded as grounds to overrule the decision. The court also held that the authority had not acted unlawfully, so there were no grounds for awarding the applicant company pecuniary damages. Moreover, domestic law did not require that the Management Plan contain a compensation mechanism for the buildings to be "removed". However, the Management Plan in question indicated that an area in Juodkrantė had been designated to compensate for

the losses incurred by the lawful owners of the buildings to be removed. Thus the Management Plan provided for the opportunity to compensate for possible losses. As regards the referral to the Constitutional Court, the court held that the applicant company had mistakenly stated that the decision to remove the buildings had only been indicated in the Management Plan. The court stated that it was a commonly known fact that the applicant company's buildings had been earmarked for removal at the time the purchase agreement had been concluded, and the applicant company, as a diligent legal entity, should have assessed the legal status of the buildings and the restrictions on their use. The legitimate expectations of the applicant company had not been breached as it had not proved the need to refer the issue to the Constitutional Court. The court also pointed out that the buildings had not been taken from the applicant company for the needs of society (see paragraph 45 below). However, when using them the applicant company had to follow the legal regulations, which established that construction in the area in question was not allowed and that it was attempting to protect its rights in the wrong way. The decision that had had legal consequences for the applicant company had been the decision to privatise the buildings and to sell them to the applicant company.

37. In December 2016 the applicant company appealed and asked the Supreme Administrative Court to refer the matter to the Constitutional Court; to overrule the decision of the authority in charge of the Curonian Spit National Park of 30 December 2013; to order the authority to issue the applicant company with the planning permission required to carry out major repair work and to award it EUR 48,489 in respect of pecuniary damage. The proceedings are still ongoing.

G. Amendment of the Management Plan and related court proceedings

38. On 15 April 2015 the Government adopted Resolution No. 389 approving the start of the amendment of the Management Plan. One of the purposes set out in the resolution was to combine the interests of the State and municipalities with those of the relevant natural and legal persons.

39. In June 2016 the applicant company submitted its proposals, namely that the area in which its buildings were located be included in the landscape management zone and that the buildings there should not exceed one storey with an attic. If the proposal to redevelop the land were maintained, the applicant company wanted a clear decision on time-limits for redevelopment and a compensation mechanism.

40. On 20 June 2016 the Protected Areas Service indicated that the land on which the applicant company's buildings were sited was not affected by the amendment of the Management Plan. It also indicated that the reply

could be appealed against to the Supreme Administrative Disputes Commission ("the commission") or to the Vilnius Regional Administrative Court in one month from its reception.

41. In July 2016 the applicant company lodged a complaint with the commission about the reply of the Protected Areas Service (see paragraph 40 above). The applicant company stated that it had paid EUR 41,887 in land tax and EUR 22,795 in property tax between 2000 and 2014. It also stated that although the Management Plan had entered into force in 2012, it had not been proven that removing the buildings was necessary in the interests of society. There had also been no indications about the exact time-limits and procedure for the removal of the buildings. The applicant company thus asked the commission to overrule the decision of the Protected Areas Service of 20 June 2016 and to order it to amend the Management Plan in accordance with the applicant company's proposals.

42. In August 2016 the commission closed the case, stating that the issue was not within its competence. The applicant company appealed against that decision, claiming that it had been formal and lacked reasoning, and that the commission had ignored the fact that the Protected Areas Service's reply of 20 June 2016 had indicated that it was amenable to appeal before the administrative courts or the commission (see paragraph 40 above).

43. On 15 December 2016 the Vilnius Regional Administrative Court dismissed the applicant company's appeal. It held that the applicant company had been represented by professional lawyers and the mere fact that the Protected Areas Service had erroneously indicated that its decisions were amenable to appeal did not discharge the applicant company of the obligation to follow the appeal procedure as laid down in domestic law (see paragraph 50 below). The court held that the applicant company had to address the State Territorial Planning and Construction Inspectorate with its complaint.

44. In January 2017 the applicant company appealed before the Supreme Administrative Court. The proceedings are still ongoing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional, statutory and substatutory provisions

1. Constitutional provisions

45. Article 23 reads:

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

46. Relevant part of Article 30 reads:

"A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.

[...]"

47. Relevant part of Article 47 reads:

"The subsurface, as well as the internal waters, forests, parks, roads, and historical, archaeological, and cultural objects of state importance, shall belong by right of exclusive ownership to the Republic of Lithuania.

[...]"

48. Article 54 reads:

"The State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and shall supervise the sustainable use of natural resources, as well as their restoration and increase.

The destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, shall be prohibited by law."

2. Territorial Planning legislation, in particular on Curonian Spit

49. On 23 April 1991 the Supreme Council adopted resolution no. I-1244, establishing the Curonian Spit National Park, designated to protect the most valuable landscape and ethno-cultural heritage.

50. Article 3 § 2 of the Law on Territorial Planning provides that when identifying the specific purposes of land, the rights and interests of owners of land and other immovable property have to be taken into account. Article 37 § 2 of the Law on Territorial Planning provides that decisions of a planning authority are amenable to appeal within ten working days to the relevant supervisory territorial planning authority.

51. Article 13 § 2 of the Law on Protected Areas proscribes the carrying out of any activity that could harm the protected areas and buildings sited thereon, as well as the recreational resources in the State parks. It also proscribes the carrying out of construction work in areas that are not indicated in the development plans, except in areas where there are remains of former farmsteads. Article 28 § 6 of the Law on Protected Areas provides that the Government will approve the demarcation plans of regional parks and State reserves and/or their zones; the management plans of the protected areas are approved by the Government or by bodies authorised to do so by the Government.

52. Article 6 § 1 (2) of the Law on Land provides that the coastal zone (including the Curonian Spit National Park) is exclusively owned by the State.

53. Government Resolution No. 1269 of 19 December 1994 established the Development Plan for the Curonian Spit National Park (*Dėl Kuršių*

nerijos nacionalinio parko planavimo schemos (generalinio plano)) and provided that decisions as to ownership and use of former military buildings of the Russian Federation in Juodkrantė would be made by the Government (Point 12). The main statements of the development plan were published in the Official Gazette. The whole development plan was not published as it consisted of 1,400 pages and it was technically impossible to publish it in the Official Gazette (see paragraph 69 below). The development plan indicated that former military buildings situated in the dunes had to be removed (*nukeliami*) and the natural environment had to be fully restored.

54. Government Resolution No. 702 of 6 June 2012 on the Curonian Spit National Park Management Plan (*Dėl Kuršių nerijos nationalinio parko tvarkymo plano patvirtinimo)*, which revoked the Government Resolution No. 1269 of 1994, provided that an area of land in Juodkrantė would be designated as a "reserve territory". The purpose of that area would be to compensate for possible losses by lawful owners of buildings that had to be demolished in order to protect public interest and to arrange damaged areas (Point 9.4.2.17). The applicant company's buildings remained indicated as to be demolished in the graphic scheme of the Resolution.

3. Law on Construction

55. At the material time, Article 2 § 20 provided that major repair work to a building was a form of construction, since it was aimed at renovating the main structure without changing its external measurements.

56. At the material time, Article 6 § 1 (2) provided that when constructing or maintaining a building, other legislation had to be taken into account, including laws regulating the use of protected areas.

57. Article 40 §§ 4 and 5 and Article 41 § 1 require users of a building to organise and/or conduct technical maintenance of that building; to repair, or demolish the building if it is dangerous to people's lives or health or to the environment; and to appoint a person responsible for the maintenance of the building.

4. Legislation on referral of the issue to the Constitutional Court

58. According to Article 102 § 1 of the Constitution and Article 63 § 3 of the Law on the Constitutional Court, the Constitutional Court shall decide whether the laws and other acts of the Seimas are in conflict with the Constitution, and whether acts adopted by the Government are in conflict with the Constitution or laws (also Article 105 §§ 1 and 2 of the Constitution).

59. Article 107 § 1 of the Constitution provides that a law (or part thereof) or another act (or part thereof) of the Seimas, an act (or part thereof) of the Government may not be applied as from the day of the

official publication of the decision of the Constitutional Court that the legislation in question (or part thereof) is in conflict with the Constitution.

60. The courts have the right to apply to the Constitutional Court concerning the conformity of acts of the Government with the Constitution and laws (Article 106 § 3 of the Constitution and Article 65 § 3 of the Constitutional Court). Judges may not apply any laws that are in conflict with the Constitution. If there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend consideration of the case and apply to the Constitutional Court, requesting that it decide whether the law or legal act in question is in compliance with the Constitution (Article 110 §§ 1 and 2 of the Constitution and Article 67 § 1 of the Law on the Constitutional Court).

61. Article 4 § 2 of the Law on Administrative Proceedings provides that if there are grounds to believe that a certain law or other applicable legislation might be contrary to the Constitution, the court must suspend the proceedings and refer the matter to the Constitutional Court.

62. At the material time, Article 16 § 1 of the Law on Administrative Proceedings provided that the administrative courts were not competent to hear cases that concerned the area of competence of the Constitutional Court, the civil courts or other specialised courts. Article 16 § 2 provided that it was not within the area of competence of the administrative courts to examine the activities of, among other institutions, the Government (as a collegial institution) (see also paragraph 75 below).

5. Civil Code

63. The parties cannot, by their agreement, change, restrict or annul the validity and application of the imperative legal norms, despite the law – national or international – that sets those norms (Article 6.157 § 1).

64. Damage caused by unlawful acts of institutions of public authority must be compensated by the State from the means of the State budget, irrespective of the fault of a concrete public servant or other employee of public authority institutions. Damage caused by unlawful actions of municipal authority institutions must be redressed by the municipality from its own budget, irrespective of its employee's fault. Civil liability of the state or municipality, subject to this Article, shall arise where employees of public authority institutions fail to act in the manner prescribed by law for these institutions and their employees (Article 6.271 §§ 1 and 4).

6. Other pertinent legislation

65. Article 9 § 5 of the Law on Land provides that State land may be leased by public auction to the person who offers the largest lease payment.

66. Article 37 § 2(1) of the Law on Administrative Proceedings provides that a claim will not be accepted unless it is subject to examination before the administrative courts.

67. Article 52^1 § 1 of the Law on Administrative Proceedings provides that a friendly settlement agreement has to be in accordance with the law, in the interests of the public, and in compliance with the rights and interests of third parties. Article 52^1 § 3 provides that the court will not approve a friendly settlement agreement if it is contrary to the requirements set out in Article 52^1 § 1.

B. Relevant domestic case-law

1. Case-law of the Constitutional Court

(a) On the Curonian Spit National Park, protected areas and property

68. On 14 March 2006 the Constitutional Court held that taking into account the importance of internal waters, forests, parks of national significance and the obligation to preserve them for future generations, the State was obliged by the Constitution to take care of such objects and to preserve them.

69. On 27 June 2007 the Constitutional Court gave a ruling on publishing the development plan for the Curonian Spit National Park, adopted by the Government Resolution No. 1269 of 19 December 1994. The Constitutional Court held:

> "By a letter of 21 June 1999 the President and the Secretary General of the Lithuanian National Commission for UNESCO proposed to include the Curonian Spit on the World Heritage List (up to then, it had been included on the Tentative World Heritage List). On 29 November 2000 the Curonian Spit was included on the UNESCO World Heritage List, subject to the following criterion: "The Curonian Spit is an outstanding example of a landscape of sand dunes that is under constant threat from natural forces (wind and tide). After disastrous human interventions that menaced its survival the Spit was reclaimed by massive protection and stabilization works begun in the 19th century and still continuing to the present day."
>
> ...
>
> ...[T]he State of Lithuania has always treated and treats the Curonian Spit as a unique landscape created by nature and man – an area which should be protected and in respect of which specific legal protection has to be put in place; this is a universally known fact.
>
> ...The formation of the landscape in the Curonian Spit is still taking place; the social role of modern society, which is related to the traditional lifestyle and in which the evolutionary process is still in progress, is still active. The Curonian Spit reflects the material changes which have been taking place over the course of many decades and which are closely related to the interaction of natural forces and human beings. In the Curonian Spit, one can still see the remains of landscape where evolutionary processes have ended. There is the ethnographic heritage of the Curonian tribe, which

lived in the Curonian Spit for a long time (and which is now extinct). In the relevant documents, the following examples of cultural heritage in the Curonian Spit have been noted: fishermen's settlements where the interaction of man and nature is, from an ethno-cultural, historical and aesthetic point of view, of exceptional universal value; a wealth of unique works of architecture which, from an artistic and scientific point of view, were of exceptional value; and archaeological sites which are especially significant, owing to villages being swallowed up by moving sand. The particular importance of the Curonian Spit is also reflected by natural and cultural heritage, which is woven together in a picturesque manner and which is related not only to material or spiritual aspects, but also to the experience gained by every generation of the local people. This helps to rebuild the lost natural ecosystems of the Curonian Spit.

...

...The legal instruments of the Republic of Lithuania... enshrine the fundamental provision that the Curonian Spit National Park will be managed in accordance with the development plan... for the Curonian Spit National Park, approved by the Government.

Thus, no decisions relating to the management of the territory of the Curonian Spit National Park... can be adopted without taking account of the scheme approved by the Government, and decisions cannot be in conflict with the provisions of the scheme...

Otherwise, not only would the identity and integrity of the Curonian Spit as a unique landscape created by nature and man be violated, whereas it should be protected, but one would also violate... *inter alia*, paragraph 1 of Article 54 of the Constitution providing that the State must take care of the protection of the natural environment, wildlife and plants, individual natural objects and areas of particular value, and must supervise the sustainable use of natural resources, their restoration and development; and paragraph 3 of Article 53 providing that the State and each person must protect the environment from harmful influences. The international obligations of the Republic of Lithuania would also clearly be violated.

The technical possibilities of preparing digital versions of the drawings provided in the development plan of 19 December 1994 only appeared in 1996-98...

All those who wanted to familiarise themselves with the development plan could do so, in fact many people had applied to the Protected Areas Service and copies of the development plan had been prepared free of charge...

Moreover, when issuing the conditions of the detailed plan, references had always been made to the development plan, and there was no information that there had been any legal disputes regarding the accessibility of the plan.

...

If a certain part of a legal act is not published in an official journal, it has to be clear from the part that had been published that other parts have not been published; it also has to be clear when people can familiarise themselves with the unpublished part; the accessibility of the unpublished part has to be ensured.

...

The fact that the development plan has not been published as a whole in the official journal does not give grounds to assert that it has not been published at all or that it has been published unofficially, and that access to it has not been ensured (*Vien tai, kad Vyriausybės 1994 m. gruodžio 19 d. nutarimu Nr. 1269 „Dėl Kuršių nerijos*

nacionalinio parko planavimo schemos (generalinio plano)“ patvirtinta Kuršių nerijos nacionalinio parko planavimo schema (generalinis planas) nebuvo visa paskelbta „Valstybės žiniose“, savaime neduoda pagrindo teigti, kad Schema buvo „nepaskelbta“ arba „paskelbta“ neviešai, neoficialiai, kad jos prieinamumas teisės subjektams nebuvo užtikrintas).”

70. On 5 July 2007 the Constitutional Court held that the notion of areas of particular value, established in Article 54 § 1 of the Constitution, presupposed that certain areas of the territory of Lithuania not only could but also had to be treated as areas of particular value. In the context of the case at issue, the Constitutional Court held that certain areas were referred to as protected areas in domestic law, including national parks and reserves. The national parks and reserves thus were territories of utmost importance, and the legislative power could decide on specific regime of protection and use of such areas.

71. The Constitutional Court stated that Article 23 of the Constitution set out the essence of the right of protection of property (rulings of 27 May 2002, 30 October 2008 and 10 April 2009). Under the Constitution an owner had the right to carry out any actions in his property except for those prohibited by law (rulings of 20 May 2008, 30 October 2008, 31 January 2011 and 14 March 2014).

(b) On access to a court

72. The Constitutional Court has ruled numerous times on the right of access to a court. It has stated that access to a court was the most reliable way to defend one’s rights (ruling of 14 February 1994). The implementation of the said right was preconditioned by the person’s perception that his or her rights had been breached (ruling of 1 October 1997). Denial of possibilities to challenge a certain decision before a court was incompatible with the concept of the rule of law and the constitutional doctrine of protection of one’s rights (rulings of 4 March 1999, 2 July 2002, 4 March 2003, 17 August 2004, 7 February 2005 and 16 April 2014); in this sense, under the Constitution, the right of access to a court was absolute (ruling of 30 June 2000); it could not be artificially limited or made extremely difficult to implement (ruling of 13 December 2004). If this constitutional right was not ensured, the general principle of *ubi ius, ibi remedium* would be breached (decision of 8 August 2006). Violated constitutional rights could be defended in court regardless of whether they were mentioned in a statute or substatutory legislation (ruling of 23 June 1999). Individuals’ rights had to be protected in a practical and effective manner from unlawful actions on the part of private individuals as well as State authorities (rulings of 8 May 2000, 29 December 2004).

73. The Constitutional Court held that the constitutional right of access to a court could not be interpreted as allowing a person to defend his or her rights in court only directly (ruling of 16 January 2006).

74. In its ruling of 13 May 2010, the Constitutional Court held that legal regulation on access to a court had to comply with the constitutional requirement of legal certainty; the legislature had to clearly establish which court a person had to apply to and how, in order to implement his or her right of access to a court (rulings of 13 May 2010 and 28 June 2016).

(c) On referral of matters to the Constitutional Court

75. The Constitutional Court held that if there were doubts as to whether the law applicable to a specific case was in compliance with the Constitution, the examination of the case had to be suspended and the court had to refer the matter to the Constitutional Court, otherwise it would risk adopting an unjust decision (rulings of 16 January 2006 and 24 October 2007). Administrative courts must not examine cases that were within the competence of the Constitutional Court. The subject of the argument before the administrative courts thus could not be an activity of the Government by which State power was implemented. However, administrative courts could investigate the activities of the Government if such investigation was necessary to confirm doubts about compliance of the above-mentioned acts with the Constitution and laws (ruling of 13 May 2010).

76. The Constitutional Court held that the requirement to justify decisions was also applicable to the courts' decisions on whether to refer an issue to the Constitutional Court (rulings of 28 March 2006, 21 September 2006, 5 July 2007 and 28 June 2016).

(d) On legal acts and their constituent parts

77. In its rulings of 9 July 1999 and 29 October 2003 the Constitutional Court held that all parts of a legal normative act (including its appendices) constituted a single legal act and had equal legal consequences. Appendices could not be separated from a legal act because if they were changed, the contents of the legal act also changed. The graphic part of a legal act has legal consequences equal to those of the textual part, with which it constitutes a single legal act (ruling of 27 June 2007).

2. Other pertinent case-law

78. In a case concerning holidays and working time of medical workers, the Supreme Administrative Court held that administrative courts could examine cases concerning damages caused by the result of an activity (omission) of the Government, which had resulted or could result into violation of a person's rights or freedoms. Article 16 § 2 of the Law on Administrative Proceedings had not prevented a person from lodging a complaint before the court if he or she had thought that his or her rights had been breached by the activity of the Government (decision of 20 July 2012, no. AS-444-486-12).

79. In two cases concerning a refusal to examine the complaint about the annulment of part of the Management Plan about the legalisation of boatel buildings, the Supreme Administrative Court held that one of the Government's functions was the approval of borders of regional parks and State reserves, as well as approval of management plans of protected areas. Approving the Management Plan the Government implemented the State power, and the lawfulness of such act had to be decided by the Constitutional Court. Although the applicant claimed that the Management Plan was an individual act, the court held that management plans of protected areas were normative and not individual legal acts (decisions of 28 September 2012, nos. AS-822-630/2012 and AS-552-631/2012).

THE LAW

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

80. The applicant company complained of an unlawful and unreasonable restriction of its property rights as a result of the authorities' refusal to issue documents allowing it to reconstruct or carry out major repair work in respect of its buildings and their refusal to adopt a clear decision on the time-limits and compensation for the buildings that were to be demolished. The applicant company relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

(a) As to the exhaustion of domestic remedies in accordance with the Civil Code

(i) The parties' submissions

81. The Government argued that the applicant company had failed to exhaust effective domestic remedies. The applicant company could have lodged a claim with the domestic courts under Article 6.271 of the Civil Code, claiming damages for the allegedly unlawful actions by the authorities, namely by including the buildings in the list of objects to be privatised. They could also have asked the courts to rescind the purchase agreement in respect of the buildings. The Government referred to the decision of the Vilnius Regional Administrative Court, indicating that the applicant company had chosen the wrong remedy to protect its rights (see paragraph 36 above). The actions of the applicant company, namely its efforts to acquire planning permission for reconstruction of or major repair work on the buildings, to get the authorities to agree to its proposed changes to the detailed plan and to include the area in the landscape management recreational zone had been inappropriate as they had not been in compliance with domestic law.

82. The applicant company maintained that in order to contest the purchase agreement, it would have had to also complain about the Government Resolution, by which it had been decided to include the buildings in question in the list of objects to be privatised, which was within the jurisdiction of the Constitutional Court. Moreover, by contesting the purchase agreement, the applicant company would be forced to admit that the privatisation of the buildings had been unlawful, thus it claimed that that remedy would be ineffective.

(ii) The Court's assessment

83. The Court reiterates that the rule on exhaustion of domestic remedies under Article 35 § 1 of the Convention requires that complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

84. With regard to the case in issue, the Court notes that the central tenet of the applicant company's complaint is the allegedly unlawful and unjustified interference with its property rights on account of the authorities' refusal to allow it to reconstruct or carry out major repair work on its

buildings and their failure to set time-limits and establish a compensation mechanism for the demolition of the buildings. In respect of that complaint, the applicant company pursued a number of available legal remedies before the administrative and judicial authorities (see paragraphs 12, 16-19, 23-24, 31, 33-34, 27, 39 and 41 above). It also applied for compensation for the pecuniary damage it had sustained as a result of the fact that it had been unable to do anything with the buildings (see paragraph 34 above). The domestic courts never stated that the authorities had acted unlawfully by including the buildings in the list of objects to be privatised and the Court is not convinced that the remedy under Article 6.271 of the Civil Code, referred to by the Government, would have been effective. The Court further observes that the Government refers in this respect to a decision by the Vilnius Regional Administrative Court from 2016 while the application was lodged by the applicant company before the Court in 2014. The Court does not see how the remedy under Article 6.271 of the Civil Code would have been effective at the material time. The Court thus dismisses the Government's objection in this respect.

(b) As to the exhaustion of domestic remedies in accordance with the Management Plan

(i) The parties' submissions

85. The Government argued that as the Management Plan had indicated a reserve area designated to compensate for possible losses incurred by the lawful owners of the buildings that had to be demolished, the applicant company could have asked to participate in a public auction in order to lease the reserve land for the construction work it sought to carry out (see paragraphs 55, 57 and 65 above).

86. The applicant company claimed that a request to participate in a public auction in order to lease the land in a reserve area would not have been an effective remedy because the reserve area had not been demarcated and the detailed plan necessary to complete the procedure had not been drafted. Moreover, even if the applicant company had been successful in the public auction, it would still not have been compensated for the demolition of its buildings.

(ii) The Court's assessment

87. The Court firstly observes that the reserve area referred to by the Government as a possible remedy for the applicant company, has not yet been demarcated and it is very unlikely that it could be included in a public auction. Secondly, the Government has not provided any information to the Court that the public auction has been organised. It is up to the State, and not to the applicant company, to initiate the public auction and the Court does not see how that specific measure could be effective for the purposes

of Article 35 § 1 of the Convention. The Court thus dismisses the Government's objection in this respect.

2. Existence of "possessions"

(a) The parties' submissions

88. The Government maintained that the applicant company did not have a legitimate expectation to use the property within the meaning of Article 1 of Protocol No. 1, as it could not have expected to be able to use the buildings in issue in the way it had chosen. The applicant company's property rights were limited by the applicable provisions of domestic law, which only allowed it to demolish or resell the buildings in question.

89. The applicant company argued that it had had a legitimate expectation to reconstruct or repair its buildings, as the authorities had started to prepare a detailed plan in order to allow it to renovate the buildings or to build new recreational buildings (see paragraph 9 above).

(b) The Court's assessment

90. The concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Depalle v. France* [GC], no. 34044/02, § 62, ECHR 2010).

91. The Court observes that there was a legitimate expectation on the part of the applicant company to be able to use the buildings in question (see paragraphs 9 and 10 above) until the demolition took place. It considers that the circumstances of the present case conferred on the applicant company a title to a substantive interest protected by Article 1 of Protocol No. 1. This provision is thus applicable and the Government's objection has to be dismissed.

3. Conclusion on admissibility

92. The Court further notes that this part of the applicant company's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

93. The applicant company submitted that the decision to demolish its buildings had been established in the Management Plan of 2012. Had the buildings been earmarked for demolition since 1994, they would have never been included in the list of objects to be privatised and sold in 2000. In 2001-02 the authorities had confirmed that the buildings in question could be reconstructed and the issue of demolition had not been raised. The applicant company claimed that the exact procedure for demolition, the time-limits and the issue of compensation had not been established, which was against the principles of legitimate expectations and proportionality.

94. The applicant company further stated that its situation amounted to *de facto* expropriation, because its right to use its property had been completely restricted by the Management Plan. The applicant company could not sell the buildings because no one would buy them, and it was forced to bear responsibility for the buildings and pay taxes on them.

95. The applicant company also complained that there had never been a prohibition from carrying out major repair work in the area in question. In fact, the Neringa Municipality had inspected the buildings and stated that they had to be repaired. The applicant company claimed that failure to comply with that order would result in administrative or even criminal liability.

96. The Government argued that the decisions of the authorities (the refusal to grant planning permission for major repair work, refusal to accept the applicant company's proposal to change the detailed plan, and imposing the land tax) had been based on the provisions of domestic law related to the protection of the Curonian Spit National Park, which was subject to particular legal treatment.

97. The Government also claimed that the decision to demolish the buildings had been taken in 1994, when the development plan had been adopted. The applicant company must therefore have been fully aware that it would have to comply with the development plan and demolish the buildings. Moreover, the Management Plan had not contained any new restrictions with regard to the applicant company's buildings and there had been no uncertainty regarding the legal status of the buildings. The inclusion of the buildings in the list of objects to be privatised had not deprived them of their status as buildings to be demolished.

98. Lastly, after having purchased the buildings, the applicant company had not maintained and occupied them. The inspection report drawn up by the representative of the Neringa Municipality had merely confirmed that fact. Moreover, the applicant company had never been prohibited from repairing the buildings. That was significantly different from carrying out

major repair work, which would have allowed the applicant company to reconstruct them. In fact, the applicant company had paid land tax and property tax which it would not have had to pay if it had demolished the buildings.

2. The Court's assessment

(a) General principles

99. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to have a measure of control over the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property, and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I, and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 217, ECHR 2015).

(b) Whether there was an interference

100. The Court notes that the applicant company was banned from developing its property, situated in the Curonian Spit National Park, which was subject to a specific legal regime and designated for demolition, by virtue of the development plan, which was in force when it acquired the buildings. Subsequently, the Management Plan (see paragraphs 26 and 53 above) and relevant domestic regulations proscribed any construction in the area where the applicant company's buildings were located. In fact, the only legal action the applicant company could take with regard to the buildings was to demolish or resell them. The inability to develop his or her own property constitutes a limitation of the rights normally enjoyed by a property owner (see *Matczyński v. Poland*, no. 32794/07, § 96, 15 December 2015). The Court is therefore of the view that there has been an interference with the peaceful enjoyment of the applicant company's possessions.

101. The Court observes that the development plan, the Management Plan and relevant domestic law did not deprive the applicant company of its possessions but rather imposed certain restrictions on the use of those possessions. The applicant company's buildings were designated for

demolition in 1994. It cannot be said that the applicant company was deprived of its possessions. Moreover, contrary to its statements, it did not look after the buildings as required by domestic law, which resulted in an inspection (see paragraphs 32 and 57 above) and the requirement to repair the buildings and to remove the parts that were falling down. That cannot be regarded as equivalent to carrying out major repair work (see paragraph 55 above). The Court therefore considers that the applicant company's ownership right with respect to the buildings did not disappear. The restrictions thus may be regarded as measures to control the use of property (see *Potomska and Potomski v. Poland*, no. 33949/05, § 63, 29 March 2011). However, the applicant company's complaint also relates to the authorities' alleged failure to take relevant decisions as regards compensation, time-limits for demolition and refusal to allow the applicant company to develop the property. Having regard to the different facets of the applicant company's complaint, the Court considers that it should examine the situation complained of under the general rule established in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (ibid.).

(c) Whether the interference complied with the conditions set out in Article 1 of Protocol No. 1

102. In order to comply with Article 1 of Protocol No. 1 to the Convention, it must be shown that the measure constituting the interference was lawful, that it was "in accordance with the general interest", and that there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 163-168, ECHR 2006-VIII).

(i) Lawfulness

103. The interference with the applicant company's possession was a result of the rules of domestic law (see paragraphs 26 and 53 above), which form a sufficient legal basis for the impugned restrictive measures. In this connection, the Court further observes that the domestic rules were sufficiently clear and foreseeable (see also paragraph 69 above). The interference was thus "prescribed by law".

(ii) Legitimate aim

104. The Court reiterates that the conservation of cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants. As such, they are an essential value, the protection and promotion of which are incumbent on

the public authorities (see *Potomska and Potomski*, cited above, § 64, and *Bogdel v. Lithuania*, no. 41248/06, § 60, 26 November 2013).

105. The Court is thus satisfied that the interference pursued a legitimate aim, namely the protection of the country's cultural heritage and the need to ensure the compliance of Lithuania with the international obligations to UNESCO (see paragraph 69 above).

(iii) Proportionality

106. Any interference with the right to the peaceful enjoyment of possessions must achieve a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52). In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought. In each case involving the alleged violation of this right the Court must, therefore, ascertain whether by reason of the State's action or inaction, the person concerned had to bear a disproportionate and excessive burden (see, *Potomska and Potomski*, cited above, § 65 and the cases cited therein).

107. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". The Court has often reiterated that regional planning and environmental conservation policies, where the community's general interest is pre-eminent, confer on the State a margin of appreciation that is greater than when exclusively civil rights are at stake (see *Depalle*, cited above, § 84 and the cases cited therein). Nevertheless, in exercising its power of review, the Court must determine whether the requisite balance was maintained in a manner consonant with the applicant's right to property (see *Matczyński*, cited above, § 105).

108. Consideration must be given in particular to the question of whether the applicant, on acquiring the property, knew – or should have reasonably known – about the restrictions on the property, or possible future restrictions (see *Matczyński*, cited above, § 106), the existence of legitimate expectations with respect to the use of the property or acceptance of the risk on purchase, the extent to which the restriction prevented use of the property and the possibility of challenging the necessity of the restriction (see *Potomska and Potomski*, cited above, § 67 and the cases cited therein).

109. Turning to the circumstances of the present case, the Court observes that the applicant company bought the buildings in question in 2000. The buildings were situated in the Curonian Spit National Park, which was established in 1991 and included on the UNESCO World Heritage List in 2000 (until then it was included on the UNESCO World

Heritage Tentative List) (see paragraph 69 above). This fact means that the State's margin of discretion depended on its obligations to UNESCO and there are no doubts that the measures that have to be taken in respect of the UNESCO territory could be rigorous.

110. The applicant company's buildings were designated for demolition in the development plan of 1994, six years prior to the purchase and the restrictions preventing the development of the property were already in existence when the applicant company acquired it (see paragraphs 8, 51-53 above). Although a number of provisions of the development plan have been changed by the Management Plan in 2012, the provisions concerning the applicant company's buildings remained unchanged since 1994 (see paragraph 40 above). The Court thus considers that the applicant company knew, or should reasonably have known, that under the domestic law in force at the time when it bought the buildings in question, the property was designated for demolition and although the date of the demolition had not been set, it had to take place at some point in time. The whole text and schemes of the development plan were accessible to all those who wanted to access them (see paragraph 69 above). The applicant company thus could not reasonably have expected to obtain planning permission to redevelop the buildings, in particular to reconstruct them by changing their designation, function or size, even if such possibility might have been considered at some point in time (see paragraphs 9 and 10 above) and must already have accepted the risk at the time of purchase because the demolition had to take place at some point in time. Contrary to the applicant company's arguments, as is apparent from the documents submitted by the parties, the Management Plan of 2012 did not change the designation of the property, and its classification has not changed since. The applicant company thus was never entitled to any compensation for demolition of the buildings, irrespective of when such demolition had to take place.

111. Lastly, the Court notes that the applicant company was not prevented from challenging the authorities' decisions as regards construction in the park before the domestic courts. In fact, the applicant company has actively exercised that right and has been involved in that procedure (see paragraphs 12, 16-19, 23-24, 31, 33-34, 27, 39, 41 and 43 above). The Court thus considers that the interference with the applicant company's peaceful enjoyment of its property was accompanied in the present case by sufficient procedural guarantees affording to it a reasonable opportunity of presenting its case to the relevant judicial authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see *Sourlas v. Greece* (dec.), no. 46745/07, 17 February 2011).

112. Having regard to all the foregoing factors, the Court finds that a fair balance was struck between the protection of the applicant company's

possessions and the requirements of the general interest. The applicant company did not, therefore, have to bear an individual or excessive burden.

113. There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention.

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

114. The applicant company complained that it had been deprived of a fair hearing and had not had an effective remedy because the domestic courts refused to accept its complaint in 2012, stating that it was under the jurisdiction of the Constitutional Court (see paragraphs 28 and 29 above) while it was impossible under domestic law to address the Constitutional Court with an individual constitutional complaint. The applicant company relied on Article 6 § 1 and Article 13 of the Convention. The Court considers that this complaint falls to be examined solely under Article 6 § 1 of the Convention, which in the present case should be viewed as *lex specialis* in relation to Article 13. The relevant part of Article 6 § 1 reads as follows:

Article 6 § 1

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

A. Admissibility

115. The Court notes that these 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

116. The applicant company pointed out that the domestic courts had refused to accept its complaint regarding the Management Plan as being outside the scope of jurisdiction of the administrative courts, and added that under domestic law it could not apply directly to the Constitutional Court (see paragraph 60 above). It further complained that the Supreme Administrative Court disregarded its own interpretation of domestic law in another case, where it held that Article 16 § 2 of the Law on Administrative Proceedings merely separated the competence of the Constitutional Court and the administrative court but did not prevent a person from applying to

the administrative court if his or her rights had been violated by certain legal act (see paragraph 78 above).

117. The applicant company also argued that the provisions of the Management Plan were not general but rather individual in nature, as they determined an individual legal regime of the specific territory. The applicant company's buildings, being within that territory, were directly affected by the provisions established in the Management Plan, and thus the administrative courts had to consider its complaint regarding the Management Plan.

118. The Government submitted that the administrative courts had established that the Government Resolution by which the Management Plan had been approved was a normative legal act, and was thus outside the jurisdiction of the administrative courts. The applicant company would be able to contest an individual act, by which the Management Plan was implemented. The administrative courts had also clearly reasoned their position, explaining why the applicant company's complaint was not within their jurisdiction (see paragraph 29 above).

119. The Government also claimed that the administrative courts had some discretion, whether to apply to the Constitutional Court, and that in the applicant company's case the administrative courts had clearly reasoned their position why there was no need to apply to the Constitutional Court. Moreover, in 2016, when the applicant referred to an individual legal act, the domestic courts did analyse, whether they had to apply to the Constitutional Court, and decided that there was no need to do that.

120. Finally, the Government stated that the refusal of the domestic court to accept the applicant company's claim did not deprive it of its right to contest the lawfulness of the act of the Government. The applicant company had to apply to the court in an individual case by contesting specific actions performed on the basis of the Government act and asking the court to refer the issue to the Constitutional Court.

2. The Court's assessment

121. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. This "right to a court", of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his or her civil rights is unlawful and complains that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6 § 1 (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 229, ECHR 2012 and the cases cited therein).

122. Furthermore, the Court reiterates that the right of access to a court does not only include the right to institute proceedings, but also the right to

obtain a "determination" of the dispute by a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, ECHR 2016 (extracts), and *Fălie v. Romania*, no. 23257/04, § 22, 19 May 2015). That right would be illusory if a Contracting State's domestic legal system allowed an individual to bring a civil action before a court without ensuring that the case was determined by a final decision in the judicial proceedings. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without securing to the parties the right to have their civil disputes finally determined (see *Fălie*, cited above, § 22, and *Multiplex v. Croatia*, no. 58112/00, § 45, 10 July 2003).

123. The Court also notes that Article 6 § 1 of the Convention does not guarantee a right of access to a court with competence to invalidate or override a law (see *S.B. and others v. Finland* (dec.), no. 30289/96, 16 March 2004; *Biziuk and Biziuk v. Poland* (dec.), no. 12413/03, 12 December 2006; and *Furdik v. Slovakia* (dec.), no. 42994/05, 2 December 2008). Nevertheless, the Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (see *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see *Deryan v. Turkey*, no. 41721/04, § 33, 21 July 2015).

124. Turning to the present case, the Court observes that the domestic law and case-law clearly establish both the right of access to a court and the possibility to challenge the legality of acts, as well as the right of *a posteriori* review of legal acts by the Constitutional Court (see paragraphs 46, 58, 60 and 76 above). In the absence of an individual constitutional complaint, the latter right can be implemented through the domestic courts (see paragraph 60 above), which have discretion to decide whether to refer an issue to the Constitutional Court. However, their refusal to do so has to be explicitly reasoned, as repeated by the Constitutional Court on a number of occasions (see paragraph 76 above).

125. The Court further notes that the applicant company had the opportunity of bringing legal proceedings before the domestic courts; it availed itself of that opportunity by bringing a complaint about the Management Plan before the administrative courts (see paragraph 27 above). This in itself, however, does not satisfy all the requirements of Article 6 § 1. In the instant case, the Court notes that the domestic administrative courts at two levels of jurisdiction did not allow the applicant company's complaint on the grounds that it was outside their jurisdiction,

and the applicant company's request for reopening of the proceedings was rejected as the case had not been examined on the merits (see paragraphs 28-30 above). Indeed, the first-instance court provided rather succinct reasoning when dismissing the applicant company's claim, limiting itself to re-citing statutory provisions (see paragraph 28 above). However, after the applicant company had lodged a separate complaint, the Supreme Administrative Court addressed the essential issues which had been submitted to it. It did not merely endorse, without further ado, the findings of the lower court, but thoroughly explained why it could not hear a case involving the lawfulness of the Government Resolution, which concerned State power issues (see paragraph 29 above).

126. The Court notes that one of the applicant company's arguments was that the Government Resolution at issue was an individual legal act and that, as such, it could be challenged before the administrative courts. However, the Court also observes that as early as 2007 the Constitutional Court had examined the lawfulness of the development plan and held that although it consisted of several parts, some of which consisted of graphic schemes, this did not deprive it of the character of a normative legal act (see paragraph 69 above). Moreover, in several other cases the Supreme Administrative Court had already ruled that the administrative courts could not examine the lawfulness of the Management Plan (see paragraph 79 above). Given the nature of the applicant company's complaint, the Court considers it sufficiently proved that the domestic courts had ruled out the individual nature of the Management Plan. The Court sees no reason why the Supreme Administrative Court should have reached a different conclusion in the applicant company's case, especially given that in the domestic proceedings, the applicant company limited its complaint to this exact issue, which had already been decided upon by the domestic courts (see paragraph 29 above).

127. The Court also observes that the applicant company's request to refer the issue on the Management Plan to the Constitutional Court was examined on the merits in 2016 and dismissed by the court of first instance (see paragraphs 36 and 125 above). However, the case concerned a different subject matter and the situation could not be compared to the applicant company's situation in 2012.

128. The Court thus considers that, having regard to the nature of the applicant company's claim concerning the revocation of part of the Management Plan and the amendment of it, the applicant company may not validly argue that the decisions of the domestic courts deprived it of the right to a court. Even though in the present case a more substantial statement of reasons by the first-instance court might have been desirable, this shortcoming was later rectified (see paragraphs 36 and 125 above). The Court is satisfied that the degree of access afforded to the applicant company was sufficient to secure it the "right to a court" and to obtain a

determination of the dispute by a court, given that the domestic courts duly reasoned their decisions as required by domestic law.

129. There has accordingly been no violation of Article 6 § 1 of 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;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 6 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President