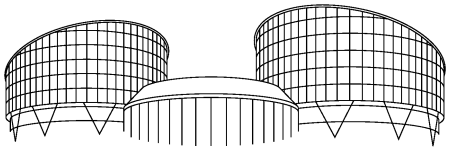

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MISIUKONIS AND OTHERS v. LITHUANIA

(Application no. 49426/09)

JUDGMENT

STRASBOURG

15 November 2016

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

In the case of Misiukonis and Others v. Lithuania,

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

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

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 4 October 2016,

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

PROCEDURE

1. The case originated in an application (no. 49426/09) 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 three Lithuanian nationals, Mr Jurgis Misiukonis ("the first applicant"), Ms Birutė Misiukonienė ("the second applicant"), and Ms Jurgita Visockienė ("the third applicant"), on 11 August 2009.

2. The applicants were represented by Mr G. Bartkus, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicants alleged that the domestic courts had ordered them to return to the State more money than they had received from a cancelled transaction, in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 8 December 2015 the complaint concerning Article 1 of Protocol No. 1 to the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first and second applicants were born in 1940 and 1942 respectively and live in Kaunas. The third applicant was born in 1977 and lives in France. The first and second applicants are husband and wife, and the third applicant is their daughter.

A. Restoration of property rights

6. On 25 January 2001 the Vilnius County Administration (hereinafter "the VCA") acknowledged G.O.'s right to restoration of title in respect of 0.728 hectares of land in the Antaviliai estate in the Vilnius Region. That land had belonged to G.O.'s father and had been nationalised by the Soviet regime.

7. The following day G.O. sold his right to restoration of title in respect of that plot of land in equal parts to four buyers: the three applicants and V.M. (the first and second applicants' son, and the third applicant's brother). The sale agreement was signed by V.M., acting as the applicants' representative. The four buyers paid, in equal parts, a total of 15,000 Lithuanian litai (LTL; approximately 4,344 euros (EUR)) to G.O.

8. On 25 June 2001 the VCA issued documents confirming the applicants' and V.M.'s right to receive 0.182 hectares of land each from the State for free. As the second applicant had been a deportee of the Soviet regime, in line with the domestic law she and her family had priority rights to have their property rights restored. The applicants and V.M. were provided with four plots of land (one plot each) in the city of Vilnius the following month.

9. In August and September 2001 the applicants, represented by V.M., sold their plots to third parties for the price of LTL 25,000 (EUR 7,241) for each plot. The sale agreements indicated that the indexed value of each plot, estimated by the Vilnius Branch of the State Enterprise Registry of Land and Other Immovable Property (*Žemės ir kito nekilnojamojo turto kadastro ir registro valstybės įmonės Vilniaus filialas*), was LTL 25,650 (EUR 7,429).

B. Pre-trial investigation

10. In October 2001 the Vilnius City Police Department opened a pre-trial investigation concerning allegations of fraud in connection with the restoration of property rights in the Vilnius Region. It was suspected that an organised criminal group was forging documents showing deportee status in order to obtain priority rights in the property restoration process. It was also suspected that some officials of regional authorities had unlawfully restored property rights to individuals who did not have such rights.

11. On 26 November 2001 V.M. was interviewed as a witness in the investigation and asked to explain how he and his family (the applicants) had obtained land in Vilnius. V.M. stated that in 1994 he had befriended E.K. who was his wife's stepbrother. V.M. knew that E.K.'s job was related to land measurement. Sometime in 2000 V.M. mentioned to E.K. that his mother (the second applicant) had been a deportee. Then E.K. told him that it was possible to acquire restoration rights from other persons and get certain privileges available to former deportees. After about six months E.K.

informed V.M. that he had found a person who was willing to sell his restoration rights. E.K. advised V.M. that it was better if the contract with that person (G.O.) was signed by four family members and not just one, because that way they could obtain four separate plots of land. E.K. dealt with all the related paperwork and contacted public officials, while V.M. only signed the sale agreements with G.O. After V.M. and his family had received plots of land, E.K. suggested selling them, and found buyers for all the four plots. V.M. submitted that he had not known the buyers previously and had only met them when signing the agreements. He received LTL 25,000 from each buyer. In all their dealings related to the land V.M. and his family trusted E.K. and assumed that he knew all the relevant legal acts, as his work was related to land. Neither V.M. nor the applicants paid any money to E.K. at any point.

12. On 10 January 2002 V.M. was again interviewed as a witness in the investigation. He retracted his previous statement in part and stated that he had not received payment for the four plots of land (LTL 25,000 for each plot) and did not know if the buyers had paid that money to E.K. or to anyone else, or if they had paid anything at all. V.M. also stated that in the autumn of 2001 E.K. had informed him about the pending pre-trial investigation and advised him to tell the authorities, if questioned, that he (V.M.) had received the payment. E.K. had assured V.M. that everything had been done lawfully, but now V.M. considered that he had been misled and deceived by E.K.

13. It appears that none of the applicants were interviewed or had any procedural status in the investigation.

14. On 15 June 2007 the Vilnius City District Prosecutor ruled that "the facts of the case confirmed that suspects A.Ž., G.S. and S.Ž. had acted unlawfully" and that "during the investigation it was indisputably established (*neginčytinai nustatyta*) that suspect A.Ž. had unlawfully included relatives of friends or acquaintances of hers on the list of those who had priority right to have their property rights restored". That same ruling discontinued the investigation as time-barred.

C. Proceedings for cancellation of the restoration

15. In January 2002 the prosecutor of the Vilnius Region (hereinafter "the prosecutor") lodged a claim before the Vilnius City First District Court, asking for the administrative decisions which had acknowledged G.O.'s right to restoration of title, the sale of G.O.'s restoration rights to the applicants (and V.M.), and all the administrative decisions which had allocated land to them, to be overturned. That claim was amended in June and September 2002 and June 2005. The prosecutor submitted that the Law on Restitution, in force at the material time, entitled G.O. to receive one plot of up to 0.2 ha, with the remainder of his land being compensated for in

other ways (see "Relevant domestic law" below), so the applicants were not entitled to be allocated a plot of land of that size each. The prosecutor also submitted that the VCA had unlawfully restored the applicants' rights to property in the order of priority: even though the second applicant had been a deportee, G.O. had not, and thus he did not have the right to transfer to the applicants priority rights which he himself did not have.

16. On 20 February 2006 the Vilnius City First District Court allowed the prosecutor's claim in part. The court found that the authorities had lawfully decided to restore G.O.'s property rights and that the latter had lawfully sold those rights to the applicants. However, the court upheld the prosecutor's argument that G.O. did not have the right to sell more rights than he had himself, and that the applicants' property rights could only have been restored under the same conditions as would have been applied had they been restored to G.O. The court observed that although such a rule had not been explicitly stipulated in the Law on Restoration at the time when G.O. sold his rights to the applicants, that rule stemmed from a systemic and logical interpretation of that Law, as well as from legal acts of lower rank (see paragraphs 32 and 34 below). Accordingly, the court held that the applicants had the right to receive one plot of land of up to 0.2 ha, but not three separate plots of that size, and they were not entitled to restoration in the order of priority. It overturned the administrative decisions which had allocated the land to the applicants.

17. As a result, the Vilnius City First District Court ordered the applicants to return to the State the plots of land which they had received from it for free. Since they had sold the land to third parties and restitution *in integrum* was not possible, the court decided that they had to pay the State the market value of that land. In line with Article 6.147 § 2 of the Civil Code (see paragraph 38 below), when property subject to restitution is transferred and the person who transferred it has acted in good faith, he or she has to compensate in the amount of the market value of the property at the time when it was received or transferred, or at the time of restitution, whichever is lowest. The court noted that the prosecutor had not alleged that the unlawful transaction had occurred because of the applicants' fault or that they had acted in bad faith; nor had it been determined, at the time of the proceedings, that any crime had been committed. Accordingly, the court ordered the applicants to return to the State an amount corresponding to the market value of the land at the time they sold it, as that value was the lowest. On the basis of an estimate by the State Enterprise Centre of Registers, each applicant was ordered to pay LTL 216,000 (EUR 62,560).

18. The applicants appealed against that judgment; on 6 June 2006 the Vilnius Regional Court dismissed their appeal. The court considered that obliging the applicants to pay compensation in the amount of the market value of the land was not disproportionate, because they still retained the right to have property rights restored and to obtain new plots.

19. On 5 June 2007 the Supreme Court dismissed a cassation appeal by the applicants. It held that ignorance of the law could not absolve anyone of responsibility, and thus the applicants should have known that property rights had been restored to them in breach of peremptory legal norms, especially as there was information that they had been advised by E.K., who worked in a municipal land reform department (see paragraphs 11-12 above).

D. Proceedings for pecuniary damages

20. On 29 June 2007 the applicants submitted a claim against the State for pecuniary damages before the Vilnius Regional Administrative Court. They contended that each of them had received LTL 25,000 for selling the land but had been ordered to pay LTL 216,000 to the State each, and thus had suffered pecuniary losses of LTL 191,000 (EUR 55,317) each. They also asked for pecuniary damages of LTL 5,230 (EUR 1,514) for the court fees each of them had had to pay in the previous proceedings (see paragraphs 15-19 above).

21. After submitting their claim, the applicants applied for suspension of the execution of the Vilnius City First District Court's judgment of 20 February 2006 (see paragraph 16 above), submitting that they did not have sufficient funds to comply with it. On 7 December 2007 the Vilnius Regional Administrative Court rejected their application on the grounds that the execution of the judgment had not been started yet, and that, in any event, if the applicants did not have sufficient funds nothing would be seized from them.

22. On 13 March 2008 the Vilnius Regional Administrative Court dismissed the applicants' claim for damages. The court acknowledged that the VCA had acted unlawfully when allocating land to the applicants; however, it considered that the applicants had not proven that they had suffered any pecuniary damage. The court noted that the applicants still had the right to restoration of title to G.O.'s land, because their agreement had not been cancelled, and that they were on the list of candidates to be given new plots of land. Accordingly, until such plots were given to them it was not possible to assess whether the applicants had suffered pecuniary damage or not.

23. The Vilnius Regional Administrative Court also noted that there had been a criminal investigation concerning the VCA's unlawful decisions restoring property rights. Although the investigation was eventually discontinued, it had nonetheless "indisputably established" that certain employees of the VCA had unlawfully issued documents recognising restoration rights (see paragraph 14 above). The court noted that one of those employees was E.K., whom the applicants had consulted. Accordingly, the court held that the applicants should have known that they

had received the land unlawfully and that they had themselves contributed to the pecuniary damage "by acting carelessly and negligently" (*veikdami nerūpestingai ir neatsargiai*).

24. The applicants appealed against that judgment. They submitted, *inter alia*, that even if they had contributed to the pecuniary damage, the main agent who had caused those damages had been the VCA. Therefore, they argued that, in line with the provisions of the Civil Code (see paragraphs 39-40 below), the liability should have been distributed proportionately between the VCA and the applicants and not placed solely on them. The applicants also submitted that the fact that V.M. had consulted E.K. did not prove that the applicants had conspired with E.K. or other unlawfully acting officials, or that the applicants had pressured any officials to act unlawfully to their benefit. The applicants contended that after their restoration rights had been cancelled the original state of affairs should have been restored, and they should not have been obliged to pay more than they had received.

25. On 2 March 2009 the Supreme Administrative Court dismissed the applicants' appeal and upheld the judgment of the lower court. It underlined that the applicants had received the land from the State for free, and that they had immediately sold it to third parties who had to be considered bona fide acquirers. The court held that by selling their plots for a price that was significantly lower than their market value the applicants had acted at their own risk, and thus the difference between what they had received (LTL 25,000 each) and what they were obliged to pay to the State (LTL 216,000 each) could not be regarded as pecuniary damage. The Supreme Administrative Court further held that even if the applicants had suffered pecuniary damage, they could not be awarded damages because they themselves had acted unlawfully. Relying on the Supreme Court's judgment of 5 June 2007 (see paragraph 19 above), the Supreme Administrative Court considered that the applicants had abused their rights by attempting to get from the State more land than G.O. had been entitled to receive. Accordingly, having concluded that both the applicants and the VCA had acted unlawfully, the court relied on Article 6.282 § 1 of the Civil Code (see paragraph 40 below) and held that there were no grounds to award them pecuniary damages.

26. Subsequently the applicants applied for reopening of the proceedings, but on 31 December 2009 the Supreme Administrative Court dismissed their application.

E. Execution of the judgment against the applicants

27. In March 2013 a bailiff began executing the Vilnius City First District Court's judgment of 20 February 2006 (see paragraph 16 above). According to the documents in the Court's possession, from that date until

June 2015 the first and second applicants each paid LTL 2,445 (EUR 708) in monthly payments ranging from LTL 69 (EUR 20) to LTL 200 (EUR 58). The third applicant paid LTL 3,249 (EUR 941) in monthly payments ranging from LTL 69 (EUR 20) to LTL 300 (EUR 87). At the time of the parties' observations to the Court, the execution was ongoing. The Government submitted that in the future, when the applicants were provided with new plots of land (see paragraphs 28-30 below), the remaining amount could be recovered from those plots.

F. Continuing restoration process

28. On 19 July 2007 the VCA included the applicants (and V.M.) on the list of individuals who had the right to have title to property restored in the area around Vilnius. Their number in the list was 1417 B.

29. On 14 March 2016 the applicants (and V.M.) were informed by the National Land Service that they were number 185 in the above-mentioned list. They were invited to a meeting of candidates during which they would be able to choose one plot of land of up to 0.12 hectares in joint ownership.

30. As submitted by the Government, that meeting took place on 5 April 2016 and the first and second applicants, as well as V.M., were present but the third applicant was not. Since the four of them were entitled to receive one plot of land in joint ownership, the first and second applicants (and V.M.) were not allowed to choose a plot in the absence of the third applicant. The Government further submitted that there was still land available in the area around Vilnius and that the applicants would be invited to another meeting, planned to take place in the autumn of 2016. At the time of the parties' observations to the Court, the applicants' property rights had not yet been restored.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional and statutory provisions

1. Constitution of the Republic of Lithuania

31. The relevant provisions of the Constitution of the Republic of Lithuania read:

Article 7

"...

Ignorance of the law shall exempt no one from liability.

..."

Article 23

"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."

2. Restoration of property rights

32. Article 2 § 3 of the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property, which entered into force on 9 July 1997 and was subsequently amended on numerous occasions, provided that persons had the right to transfer their property rights to other persons by a notarised agreement. An amendment which entered into force on 17 August 2001 added to that provision that where property rights had been transferred to other persons, those persons would be entitled to restoration under the same conditions and procedure as the original holder of the restoration rights.

33. At the material time, Article 5 of that Law provided that restoration of property rights in the city of Vilnius were limited to a 0.2 hectares maximum plot size, whereas the remainder of the land would be compensated for in accordance with a procedure established by the Government (see also *Paukštis v. Lithuania*, no. 17467/07, §§ 38-48, 24 November 2015).

34. At the material time, the Regulation No. 1057 on the Procedure and Conditions of Implementing the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property, adopted by the Government on 29 September 1997, provided that where property rights had been transferred to other persons, those persons would be entitled to restoration under the same conditions and procedure as the original holder of the restoration rights (point 3). It also established the order of priority for categories of persons to have their property rights restored, giving a higher priority to, *inter alia*, former fighters for independence, political prisoners, deportees, as well as their families (point 37).

3. Cancellation of transactions and restitution

35. Article 1.80 §§ 1 and 2 of the Civil Code, in force since 1 July 2001, provides that any transaction which fails to comply with the mandatory statutory provisions shall be null and void, and each party to such a transaction shall be bound to return to the other party everything they have received from the transaction.

36. Article 4.96 § 2 of the Civil Code provides that the State may confiscate immovable property from a person who acquired such property in good faith only if the rightful owner lost such property as a result of a crime. Article 4.96 § 3 provides that where ownership of property has been acquired for free from a person who had no right to transfer the ownership of that property, the property may be confiscated from the person who acquired it, irrespective of whether he or she acquired it in good faith.

37. Article 6.146 of the Civil Code provides that, following a cancelled transaction, restitution shall be made in kind, except where this is impossible or would cause serious difficulty for the parties. In the latter cases restitution must be effectuated by payment of a monetary equivalent.

38. Article 6.147 § 2 of the Civil Code provides that when property subject to restitution has been destroyed or transferred the person shall be bound to compensate for the property's value at the time when he or she received that property, or when it was destroyed or transferred, or at the time of the restitution, whichever is the lowest. If the person liable to make restitution has acted in bad faith or if the restitution is due to his or her fault, he or she shall be bound to return the highest value of the property.

4. Allocation of civil liability

39. Article 6.248 § 1 of the Civil Code provides that civil liability arises only from a person's fault, and that a debtor is presumed to be at fault, except where laws or contracts provide otherwise. Article 6.248 § 2 provides that fault can be expressed by intent or negligence. Article 6.248 § 3 provides that a person shall be deemed to have been at fault where, taking into account the nature of the obligation and other relevant circumstances, he or she has failed to act with the required care and caution. Article 6.248 § 4 provides that where a creditor has contributed to damage by his or her actions at fault, the damages due from the debtor shall be reduced in proportion to the creditor's fault, or the debtor may be released from civil liability.

40. Article 6.282 § 1 of the Civil Code provides that where damage has been increased or contributed to by an aggrieved person's gross negligence (*didelis neatsargumas*), the amount of the damages may be reduced or the claim for damages dismissed entirely, depending on the degree of the aggrieved person's fault, as well as on the degree of the fault of the person who caused the damage, unless otherwise provided by law.

B. The domestic courts' practice

41. In its ruling of 30 October 2008 the Constitutional Court examined whether Article 4.96 § 2 of the Civil Code (see paragraph 36 above) was compatible with the Constitution, and held as follows:

> "Unlawfully acquired property does not become the property of the person who has [thus] acquired it. That person does not obtain rights of ownership which are protected by the Constitution (a ruling of the Constitutional Court of 5 July 2000).
>
> ...
>
> A situation may arise in which a person seeking to acquire property lawfully acquires property which has been lost by its owner on account of a crime committed by other persons, and the person acquiring it does not and could not have known that. In this regard it must be noted that even where a person acquires property without

knowing or being [in a position] to know that the owner lost it on account of a crime, the acquisition of such property shall not be regarded as creating rights of ownership in respect of the person acquiring the property. As the Constitutional Court has held more than once, no right can result from unlawfulness.

...

It must be noted that State institutions, when adopting decisions concerning State property, must follow the norms and principles of the Constitution and under no circumstances may they act *ultra vires* – that is to say, exceed their powers. *Ultra vires* acts on the part of State institutions or officials shall not be deemed to constitute acts of the State itself ... [I]t must be noted that if State officials, when acting *ultra vires*, commit a crime, this does not mean that that crime can be identified as an action or omission on the part of the State itself, and that the State, as the owner, cannot retrieve property which has been lost on account of a crime committed by a State official.

...

[I]t must be concluded that ... a person who has acquired property in good faith, where such property has been lost by the owner on account of a crime committed by other persons, is not held to be the owner of that property. Thus, under the Civil Code, the legal status of the owner and that of the person acquiring the property in good faith is not the same."

42. For other relevant domestic courts' practice, see *Albergas and Arlauskas v. Lithuania*, no. 17978/05, §§ 32-33, 27 May 2014.

THE LAW

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

43. The applicants complained that after the domestic courts cancelled the restoration of their property rights they were ordered to pay the State more money than they had received from selling that property. They relied on Article 1 of Protocol No. 1 to the Convention, which reads:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

44. The Government submitted that the applicants had not exhausted effective domestic remedies. They firstly argued that the applicants should have lodged a civil claim against the VCA for non-pecuniary damages. They provided examples of domestic case-law in which courts had awarded non-pecuniary damages for distress caused by unlawful actions of public authorities. One of those examples concerned A.R., who had acquired the right to restoration of title from G.O.'s brother and who, like the applicants, was obliged to pay the State a sum equivalent to the monetary value of the land restored to her – in its judgment of 13 January 2011 the Supreme Administrative Court awarded her non-pecuniary damages of LTL 10,000 (EUR 2,896).

45. The Government further submitted that the applicants should have sought a peaceful settlement with the relevant State authorities in order to obtain concessions in the execution proceedings.

46. The applicants contended that they had exhausted effective domestic remedies by lodging a claim for pecuniary damages.

47. The Court observes that the essence of the applicants' complaint is that they should not have been required to pay to the State more money than they had received from selling their land – they considered this requirement to be unfair and to be causing them disproportionate pecuniary damage. In such circumstances, the Court is not persuaded that either of the domestic remedies indicated by the Government could have provided the applicants with redress in respect of their complaint. The Court also notes that the domestic court judgments provided by the Government, including the case of A.R., were either adopted at a later date than that on which the applicants lodged their application with the Court (11 August 2009), or concerned non-pecuniary damage caused by unjustified delays in the restoration process, but not by conditions of restitution after restoration of title had been cancelled, and thus differed from the applicants' situation. Accordingly, the Court dismisses the Government's submission as to non-exhaustion of domestic remedies.

48. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

49. The applicants submitted that they had had to bear an individual and excessive burden, because the amount of money they had to return to the State (LTL 216,000 each) was significantly higher than the amount they had received from selling the land (LTL 25,000 each). They argued that the unlawful allocation of land had resulted from errors on the part of public authorities, and thus the applicants, who had limited knowledge of the legal norms governing property restoration and no ability to influence the authorities' decisions, should not have had to bear the burden of those errors. They also contended that the domestic courts had not had any grounds to find that the applicants had contributed to the pecuniary damage by acting unlawfully, because the pre-trial investigation had been discontinued without establishing that they were guilty of any criminal offences, or that any such offences had been committed at all.

(b) The Government

50. The Government firstly argued that there had not been an interference with the applicants' peaceful enjoyment of their property, because they still had the right to receive a new plot of land and that process was ongoing (see paragraphs 28-30 above). The Government also submitted that the applicants had been obliged to pay the State the lowest market value of the land, and that to date they had paid only a small part of that amount (see paragraph 27 above). The Government stressed that the applicants had received their land from the State for free and that they had themselves decided to sell it "at a meagre price" to other individuals, who, to the Government's knowledge, very soon re-sold that land for approximately EUR 48,600 for each plot.

51. The Government further submitted that, should the Court find that there had been an interference with the applicants' peaceful enjoyment of their property, that interference was in line with Article 1 of Protocol No. 1 to the Convention. The cancellation of the property restoration and the ordering of restitution by payment of monetary equivalent were in accordance with domestic law, and they were applied in order to protect the public interest – to ensure that title to land was not restored to persons who did not have a right to have land restored to them.

52. As to the proportionality of the interference, the Government submitted that the applicants had not suffered any actual damage, because they retained the right to receive a new plot of land and because, in any event, they had not paid the full amount which the domestic courts had ordered them to return to the State. Furthermore, the Government contended

that any hardship suffered by the applicants had resulted from their own actions. The applicants obtained rights to property restoration not because their or their relatives' property had been nationalised by the Soviet regime, but because they had bought those rights from G.O., after a consultation with E.K., with the purpose of immediately selling the land. The land was given to them by the State for free, and, as established by domestic courts, the applicants acted in violation of peremptory legal norms because they received more plots than they had bought from G.O. and because their property rights were restored in an order of priority to which G.O. was not entitled. The Government further submitted that the applicants had themselves freely decided to sell their land at a price which was significantly lower than the market value, and that in doing so they had acted at their own risk. As a result, the applicants should have lodged a claim against the buyers of their land, who had benefited from that transaction, in order to oblige the buyers to return the difference between the land's market value and the price for which it was sold to them. The Government underlined that the State should not be expected to cover losses resulting from private contractual transactions.

2. The Court's assessment

(a) Existence of an interference with the right to peaceful enjoyment of possessions

53. At the outset the Court observes that the applicants did not dispute that the cancellation of the restoration of their property rights had in principle been justified, especially since they remained entitled to receive a new plot of land and the restoration process is ongoing (see paragraphs 28-30 above). Nor did the applicants dispute that, following that cancellation, the State was justified to require them to return the amount which they had received from selling their land to third parties (LTL 25,000 each). What the applicants complained about was that they had been ordered to pay the State more money than they had actually received (LTL 216,000 each), and had thereby incurred financial loss.

54. The Court notes that even though it appears that to date the applicants have not paid the full amount required from them, they have paid part of it (see paragraph 27 above), and are under an obligation to pay the rest, so it cannot be disputed that they have incurred actual expenses and are facing future losses. The Government argued that there had not been an interference with the applicants' property rights because they remained entitled to receive a new plot (see paragraph 50 above). However, the Court observes that no such land has been given to them to date, and thus they have not been compensated for their expenses and prospective losses. The Court also considers that the question as to whether the allocation of a new plot would offset the applicants' losses is relevant for the assessment of the proportionality of the interference with their property rights, and will

examine it in due course (see paragraph 64 below). While the Government also submitted that the applicants had received the land from the State for free, the Court observes that it was the original beneficiary, G.O., who had acquired the right to restoration of title to that land for free, whereas the applicants acquired it for a payment of LTL 15,000 (see paragraphs 6-7 above).

55. Accordingly, the Court is of the view that there has been an interference with the applicants' property rights. In the circumstances of the present case it considers that the applicants' complaint falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1, namely the right to the peaceful enjoyment of property. The Court will now assess whether that interference was prescribed by law, whether it pursued a legitimate aim, and whether there was a reasonable relationship of proportionality between the means employed and the aim pursued (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 147-151, ECHR 2004-V).

(b) Lawfulness and legitimate aim of the interference

56. As to the lawfulness of the interference, the Court is satisfied that the cancellation of the allocation of land to the applicants was in line with the relevant domestic law (see paragraphs 32-36 and 40-42 above). It is also satisfied that ordering the applicants to return to the State the market value of the land was based on domestic law (see paragraphs 37-38 above).

57. As to the legitimate aim pursued by the interference, the Court considers that the measures in question were necessary to correct errors in the process of restoration of property rights, and to ensure that individuals were not given more property than they were entitled to at the expense of the State, and were thus in the public interest (see, *mutatis mutandis*, *Pyrantienė v. Lithuania*, no. 45092/07, §§ 44-48, 12 November 2013, and the cases cited therein).

(c) Proportionality of the interference

58. In the present case it is not disputed that the VCA breached applicable domestic legal requirements by allocating the applicants more land than they were entitled to and by restoring their property rights in the order of priority. In this connection the Court reiterates that the good governance principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence; however, the risk arising from any mistake made by a State authority must be borne by the State itself, and the errors must not be remedied at the expense of individuals concerned (see *Romankevič v. Lithuania*, no. 25747/07, §§ 38-39, 2 December 2014, and the cases cited therein).

59. In this connection, the Court notes that the applicants obtained the right to restoration of title to property from a third party whose restoration

rights had been recognised by public authorities (see paragraph 6 above), and those same authorities later adopted decisions to allocate plots of land to the applicants (see paragraph 8 above). The Court considers that the applicants did not have sufficient reasons to doubt the validity of those decisions, and were entitled to rely on the fact that the latter would not be retrospectively invalidated to their detriment (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, §§ 79-80, 6 December 2011, and *Tunaitis v. Lithuania*, no. 42927/08, § 39, 24 November 2015).

60. The domestic courts in the present case held that the applicants should have known that property rights had been restored to them in violation of peremptory legal norms, irrespective of the fact that it was public authorities who restored them (see paragraphs 19, 23 and 25 above). The Court finds this conclusion difficult to accept. While taking note of the domestic courts' conclusions that ignorance of the law does not absolve anyone of responsibility (see Article 7 of the Constitution, quoted in paragraph 31 above), and that in the restoration process the applicants had consulted a land specialist E.K., the Court nonetheless does not see sufficiently strong reasons to find that the applicants should have questioned the actions of competent public authorities instead of expecting the latter to take all measures to avoid mistakes in application of legislation – especially taking into account the complexity and technical nature of legal acts governing the process of restoration of land titles (see, *mutatis mutandis*, *Gladysheva*, cited above, §§ 79-80, and *Albergas and Arlauskas v. Lithuania*, no. 17978/05, §§ 62 and 67-68, 27 May 2014). The Court also considers that the applicants' belief that as the family of a former deportee they were entitled to have their property rights restored in the order of priority, albeit incorrect, does not appear to be manifestly unreasonable in the light of the domestic legal acts which were applicable at the time when those rights were restored to them (see paragraphs 16 and 32 above).

61. The Court further observes that the first-instance court which annulled the allocation of land to the applicants explicitly held that they had acted in good faith, a conclusion that the higher courts in the same proceedings did not dispute (see paragraphs 16-19 above). The Court sees no reasons to question those findings (see, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 120, 25 October 2012, and *Žilinskienė v. Lithuania*, no. 57675/09, § 51, 1 December 2015). When challenging the applicants' good faith, the Government emphasised the fact that their representative V.M. (who was the first and second applicants' son and the third applicant's brother) consulted his distant relative, land specialist E.K., who was one of the officials investigated on suspicion of fraud (see paragraphs 11-12 above). While the Court is sympathetic to the Lithuanian Government's efforts to ensure that individuals are not allowed to profit from criminal schemes designed to obtain property in violation of domestic law, it notes that in the present case the pre-trial investigation was discontinued as time-barred, without establishing whether any crime had

been committed in the allocation of land to the applicants. Accordingly, a statement by the prosecutor that it had been "indisputably established" that some public officials had acted unlawfully (see paragraphs 14 and 23 above) could not be relied on to conclude that the applicants had abused their rights, especially since neither the applicants nor their representative V.M. were ever officially suspected or accused in that investigation.

62. When domestic courts cancelled the allocation of land to the applicants, that land had already been sold to third parties. The applicants were ordered to return to the State not what they had actually received from selling the land but what they would have received had they sold it in accordance with market prices. The Court takes note of the Government's submission that by selling their land for a price which was significantly below the market value the applicants acted at their own risk (see paragraph 52 above). However, it reiterates that the applicants had a legitimate expectation that the land which had been allocated to them by public authorities would not be subsequently taken away (see paragraph 60 above). The Court further notes that the applicants, who at that time had been recognised as the legitimate owners of the land, were not under an obligation to sell it at market value or for any other specific price. In this connection the Court observes that the price which they received from the buyers corresponded to the indexed value of the land, which had been estimated by a relevant State enterprise (see paragraph 9 above). It notes that the indexed value is often used by the relevant Lithuanian authorities to determine, *inter alia*, the amount of compensation to be awarded to individuals for property which had been nationalised (see *Nekvedavičius v. Lithuania* (just satisfaction), no. 1471/05, § 22, 17 November 2015, and *Paukštis v. Lithuania*, no. 17467/07, § 34, 24 November 2015), and thus the applicants' choice to sell their land at its indexed value cannot be considered manifestly unreasonable. Therefore, while the applicants must have decided, for whatever reason, to make only a small profit from selling the land, it cannot be reasonably assumed that by doing so they accepted the risk of a possible future cancellation of the allocation of land to them, accompanied by an obligation to return to the State an amount not corresponding to what they had actually earned. In the Court's view, to hold otherwise would have required the applicants to repeatedly question the validity of the decisions taken by the public authorities and would be contrary to the principle of legal certainty (see, *mutatis mutandis*, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 56-57, 20 October 2011).

63. The Court is mindful that it is not its role to determine the best way for States to correct errors made by public authorities in the process of restoring property rights. However, it reiterates that the correction of those errors should not create disproportionate new wrongs (see *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, § 178, 15 March 2007; *Maria Atanasiu and Others v. Romania*, nos. 30767/05

and 33800/06, § 177, 12 October 2010; and *Noreikienė and Noreika v. Lithuania*, no. 17285/08, § 29, 24 November 2015). In the present case the Court is particularly concerned about the fact that the applicants asked domestic courts to allocate civil liability proportionately between them and the VCA, but domestic courts dismissed that request without providing any justification and thereby absolved the VCA of any liability despite the undisputed conclusion that the latter had acted unlawfully (see paragraphs 24-25 above).

64. The Government also argued that any losses sustained by the applicants would be offset by the allocation of a new plot of land to them − in particular, that the remainder of the amount which they are obliged to pay to the State could be recovered from that new land (see paragraph 52 above). In this connection the Court firstly notes that the applicants were put on the list to receive a new plot in 2007 but no land has been given to them to date (see paragraphs 28-30 above). In any event, the Court is of the view that recovery from the new plot would nonetheless continue placing the sole burden of remedying the authorities' mistakes on the applicants, whereas the State would not suffer any losses at all even though its own institutions acted in breach of domestic law.

65. In the light of the above, the Court is of the view that by requiring the applicants to pay to the State more money than they had actually received from selling their land to third parties the authorities placed an individual and excessive burden on the applicants and failed to strike a fair balance between the general interest of the community and the protection of the applicants' fundamental rights.

66. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

1. The parties' submissions

68. The applicants claimed 196,320 Lithuanian litai (LTL; 56,832 euros (EUR)) each in respect of pecuniary damage, corresponding to the amount they had been ordered to pay to the State (the market value of the land and the court fees incurred in the domestic proceedings), after subtracting the amount they had received from selling their land (see paragraphs 17 and 20

above). They submitted supporting documents showing that the first and second applicants had each paid LTL 2,445 (EUR 708) to the State and the third applicant had paid LTL 3,249 (EUR 941 – see paragraph 27 above).

69. The applicants also claimed EUR 3,000 each in respect of non-pecuniary damage for the distress caused by the violations of their rights.

70. The Government submitted that, having regard to the fact that the applicants themselves had breached peremptory legal norms, the finding of a violation would constitute in itself sufficient just satisfaction. They further submitted that the applicants had not paid the full amount they were claiming in respect of pecuniary damage, and that they had not claimed any non-pecuniary damages before domestic courts.

2. The Court's assessment

71. The Court has already addressed the Government's submissions concerning the alleged breaches of peremptory norms by the applicants (see paragraphs 60-61 above). Accordingly, it rejects the Government's submission that in the present case the finding of a violation would constitute in itself sufficient just satisfaction.

72. As to pecuniary damage, the Court reiterates that it may make an award under this head only in so far as the applicants have provided sufficient supporting documents showing the existence of such damage. Taking into account the fact that the parties did not dispute that the obligation for the applicants to pay the State LTL 25,000 (EUR 7,241) each was justified (see paragraph 53 above), as well as the fact that the amounts which the applicants have paid to date are below that amount (see paragraph 68 above), the Court rejects the applicants' claims for pecuniary damages. Nonetheless, the Court underlines that, in order for the State to comply with the present judgment, at the domestic level the applicants should not be required to pay more money than they had obtained from the sale of their land (see, *mutatis mutandis*, *Trévalec v. Belgium* (just satisfaction), no. 30812/07, § 27, 25 June 2013).

73. As to non-pecuniary damage, the Court considers that in the circumstances of the present case the finding of a violation constitutes in itself sufficient just satisfaction and accordingly makes no award under this head.

B. Costs and expenses

74. The applicants did not submit any claim in respect of costs and expenses. The Court therefore makes no award under this head.

C. Default interest

75. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the fact that the applicants had to pay the State more money than they had received from selling the land they had bought from a third party;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	András Sajó
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

A.S.
A.N.T.

CONCURRING OPINION OF JUDGE WOJTYCZEK

1. I have voted for finding a violation in the instant case because I agree that an excessive burden has been placed on the applicants. This burden, stemming from the overturning of the administrative decisions (see paragraph 16 of the reasoning), should have been divided more equitably between the applicants and the State. However, I do not agree with the view that there is a violation on account of the fact that the applicants had to pay the State more money than they had received from selling the land they had bought from a third party. The State may still require that applicants pay more than they have received from selling their land, but not as much as decided by the domestic authorities in the instant case.

2. The intensity of protection of rights acquired by the way of an administrative act may vary. Administrative acts in certain fields require more stability than in others. In establishing the required level of protection regard must be had, in particular, to the nature of the acquired right, the specificities of the sphere of life concerned, the nature and weight of legally protected values at stake and the social context in which the relevant legislation was adopted and is applied. It is also important to take into account whether a right was acquired free of charge or against payment of a certain amount of money.

It appears that the process of land restitution to former owners in Lithuania was flawed by irregularities (see paragraphs 10 to 14). This was public knowledge. The applicants should have been aware that the problems arising in the restitution process may affect the stability of administrative acts issued therein. This consideration has to be taken account for the purpose of balancing the conflicting values. Obviously, it does not justify placing all the risk of annulment of illegal administrative acts on the citizens but is an argument in favour of an equitable repartition of the risk between them and the national community.

The applicants seem to be fully aware of this consideration because they proposed to share the burden stemming from the annulment of administrative decisions between the State and themselves (par. 24). The judgment of the Court goes beyond the claim of the applicants raised in the domestic proceedings.

3. The applicants decided to sell their plots at a price below the market value, sacrificing a part of a potential gain. They could have sold the plots at a different price. In any event, the price they actually obtained should not be determinative for the appreciation of the damage they have suffered because of the decision ordering them to return the market value of the land.