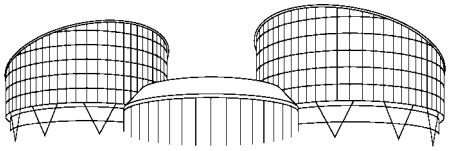

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PAUKŠTIS v. LITHUANIA

(Application no. 17467/07)

JUDGMENT

STRASBOURG

24 November 2015

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 Paukštis v. Lithuania,

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

András Sajó, *President,*
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 3 November 2015,

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

PROCEDURE

1. The case originated in an application (no. 17467/07) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Vytautas Alfonsas Paukštis ("the applicant"), on 16 April 2007.

2. The applicant was represented by Mr J. Jasaitis, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their former Agent, Ms Elvyra Baltutytė.

3. The applicant complained about restitution proceedings and of not being able to obtain adequate compensation for, or restoration of title to, his father's land. He relied on Article 1 of Protocol No. 1 to the Convention.

4. On 17 December 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Vilnius.

6. In the 1930s the applicant's father bought a plot of 1.975 ha of land in territory which is now part of the city of Vilnius. The property was nationalised in the 1940s.

7. In 1991 the applicant asked the Lithuanian authorities to restore his rights to his father's land. In 1992 the Vilnius city authorities restored his property rights by conferring on him a right to obtain a plot no bigger than

0.2 ha to build an individual house (*individualaus namo statybai*); under the Law on Restitution in force at that time, 0.2 ha was the maximum area of land returnable *in natura* within the Vilnius city boundaries.

8. On 16 September 1999, the authorities transferred into the applicant's ownership, without any payment, a plot of 0.18 ha in Vilnius city to build a house.

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

10. Relying on the Constitutional Court's ruling, on 4 May 2001 the applicant asked the Vilnius city authorities to stop distributing or selling the land which he claimed to be that of his father, given that he could now claim a bigger portion of that land. He enclosed land registry maps indicating the 1.975 ha plot of land that had previously belonged to his father.

11. The Vilnius city authorities replied on 25 May 2001 that, taking into account the guidelines set out in the Constitutional Court's ruling, the Law on Restitution had to be amended as regards the restitution of the land within the city limits. Given that the applicant's request related to the return of a plot of land in Vilnius in the actual place where his father had had his land (*perduodant žemės sklypą turėtoje vietoje*), his request could only be examined after the aforementioned legislation had been amended.

12. Following another unrelated request for restitution, by a decision of 30 May 2001 the Vilnius County Administration (*Vilniaus apskrities viršininko administracija*) transferred part of the disputed land, specifically plot no. 171 comprising 0.09 ha, to M.P. to build an individual house. M.P. later resold that plot to third parties.

13. On 2 April 2002, the Law on Restitution was amended to the effect that the maximum area of land returnable in Vilnius city, provided that that land was not State redeemable, was 1 ha.

14. Relying on the amended Law of Restitution, on 21 June 2002 the applicant asked the Vilnius city authorities to return to him the remaining part of the plot, 0.82 ha (that is to say, 1 - 0.18 ha), in his father's land.

15. In their internal correspondence of January and October 2003 the Vilnius city authorities concluded that the land could not be returned to the applicant *in natura* because it had been built upon and it also contained a forest of State importance. The land thus had to be bought by the State and the applicant was to be compensated by other methods as provided for by the Law on Restitution.

16. On 31 July 2003 the National Land Service (*Nacionalinė žemės tarnyba*) informed the applicant that the land formerly owned by his father was State redeemable land. However, having examined the land registry maps of the land owned by the applicant's father, the National Land Service also noted that only part of that land had been divided into plots for the construction of houses. In that case, the unoccupied land could thus be

returned *in natura*. The National Land Service thus notified the applicant that it had requested the Vilnius authorities to re-examine the availability of unbuilt land one more time.

17. In August 2003 the Seimas (parliamentary) Ombudsman, the National Land Service (see paragraph 16 above), and in March 2005 a prosecutor, found that the transfer of plot no. 171 to M.P. by the Vilnius authorities had been negligent and in breach of the law, because this had been done after the Constitutional Court's ruling of 2001; it was the applicant who had priority rights to that plot. However, given that the third parties who had acquired plot no. 171 had done so in good faith, the prosecutor ruled that the plot could not be taken away from them and returned to the applicant.

18. In January 2004 the Vilnius county authorities informed the applicant that his father's land was to be bought by the State. The applicant was also informed that he could receive securities to the value of 9,984 Lithuanian litai (LTL, approximately 3,180 euros (EUR)) for each hectare of his father's land as compensation.

19. In March and July 2004, the National Land Service confirmed the above value for 1 ha of land in Vilnius as had been established by the Methodology set out by the Government (hereinafter – 'the Methodology'). It also underlined that in 1998 the Constitutional Court had upheld that Methodology (see paragraphs 45-47 below). The Methodology set out the average price of the land paid in the course of compulsory purchases by the State for the entire territory of a city, taking into account that city's size and significance. Lastly, the applicant was informed that up to that date 88% of persons had been compensated in accordance with the Methodology set out by the Government. Accordingly, it would be against the principle of equality if others, including the applicant, were to be compensated by changing the Methodology.

20. On 24 March 2005 the applicant asked the authorities to compensate him for 0.73 ha of land (that is to say, 0.82 - 0.09 ha) by allocating another plot in Vilnius city to him. Relying on information from the Real Estate Registry, the applicant noted that the indexed value (*indeksuota sklypo vertė*) of the 0.09 ha (plot no. 171) sold to M.P. was LTL 22,896 (approximately EUR 7,290). He asserted that the market value of the other plot was even higher. Therefore, it was not fair to conclude that 1 ha of land in Vilnius city could be compensated by a sum of LTL 9,984. The applicant thus asked the authorities to pay him LTL 22,896 for plot no. 171 and "to quickly return him the remaining 0.73 ha of land in another place in Vilnius city or with a decent cash settlement (*grąžinti likusią priklausančią man 0.73 ha žemę kitoje vietoje Vilniaus mieste greitu laiku arba užmokėti pinigais žmogišką kainą*)".

21. In reply to the applicant's complaint, on 3 May 2005 the authorities acknowledged that he was "a candidate (*pretendentas*) for restoration of the property rights to 1.795 ha of his father's land". The authorities underlined

the applicant's preference, as expressed in his request, to obtain compensation in money or to obtain another plot of land in Vilnius [city]. Pursuant to the applicable legislation, the authorities asked the applicant to specify how he wished to proceed with the restitution, given that the land his father had once owned in Vilnius city was to be bought by the State and thus the exact same plot could not be returned to him. According to the domestic law as in force at that time, the applicant could either choose to obtain another plot of land in a rural area or pecuniary compensation (either in securities or by having his liabilities to the State annulled).

22. In reply to another application by the applicant, on 13 October 2005 the Vilnius County Administration reiterated that it was not possible to return the applicant's father's exact same land in Vilnius city. The applicant was requested to choose another method of compensation provided for in Article 16 § 9 of the Law on Restitution. He was also notified that information about available plots of land in Vilnius city could be found on the internet site of the Vilnius County Administration.

23. On 1 February 2006, and in reply to another complaint by the applicant, the National Land Service reiterated that he had to choose how he wished to be compensated for the land bought by the State, as provided for in Article 16 § 9 of the Law on Restitution. The National Land Service noted the Ombudsman's conclusion that land had been transferred to M.P. in breach of the applicant's rights, as well as the prosecutor's conclusion that it was not possible to annul that transfer.

24. The applicant then started court proceedings, claiming that the State should pay him the market value for the 0.09 ha plot of land, that had been transferred to M.P., which the applicant noted to have an average market value (*vidutinė rinkos vertė*) of LTL 162,000 (approximately EUR 46,900) as established in 2001 by the Real Estate Registry (also see paragraph 32 below).

He also claimed that the State should pay market-value compensation for the unreturned 0.73 ha of land in Vilnius, which in his view was worth LTL 1,314,000.

25. By a decision of 15 June 2006 the Vilnius Regional Administrative Court dismissed the claim as unfounded. The court acknowledged that on 30 May 2001 M.P. had been granted a 0.09 ha plot of land on the applicant's father's former holding in contravention of the law, because this was done after the Constitutional Court's ruling of 2 April 2001. That being so, the documents in the court's possession confirmed that the applicant's father's land belonged to land destined to be bought by the State, because it contained privately owned plots of land with houses or forests of State importance as provided for in Articles 12 § 6 and 13 of the Law on Restitution. The court did not specify which part of the applicant's father's plot belonged to either of those categories.

26. The first instance court therefore held that the applicant should be compensated for the remaining part of his father's land according to the

Methodology set out by the Government. That methodology had been upheld by the Constitutional Court in 1998. The domestic law did not provide that the land bought by the State should be compensated by paying Real Estate Registry estimated values.

27. By a ruling of 15 February 2007, the Supreme Administrative Court fully upheld the lower court's decision. It observed that both the 0.09 ha plot and a 0.73 ha plot were part of land due to be bought by the State. Consequently, the applicant was to be compensated for those plots according to the rules set out in Articles 12 and 16 § 9 of the Law on Restitution. The latter provision listed the ways the applicant had at his disposal to obtain restitution; it was up to the applicant which method to choose. The court observed an abundance of documents in the case file which indicated that the applicant wished to be compensated in cash. However, the court stated that the applicant's position was not entirely concrete and clear. Accordingly, and given the principle of inseparableness of rights and obligations, the applicant had to submit a request to the State expressing concretely how he wished to be compensated.

28. Lastly, the Supreme Administrative Court underlined that no market-value compensation for land being compulsorily bought by the State had been provided for in the Methodology.

29. In October 2009 the Vilnius County Administration wrote to the applicant stating that his name on the list of persons awaiting plots for building a house in Vilnius had been moved from 228th to 4,864th because he had already been granted a plot of land to build a house in 1999.

30. On 1 February 2012, Article 16 § 9 (6) the Law on Restitution was amended by providing, for the first time, for payment in cash (*pinigais*) as one of the ways of compensating for land compulsorily bought by the State.

31. Five days later, on 6 February 2012, the National Land Service wrote to the applicant informing him of this new opportunity and asking him to state how he wished to be compensated, until the statutory deadline to express such choice, namely 1 June 2012.

32. On 24 May 2012 the Real Estate Registry issued the applicant with a document to the effect that the average market value (*vidutinė rinkos vertė*) of plot no. 171 was LTL 162,000, according to its 2001 estimate.

33. On 25 May 2012, the applicant wrote to the Court saying that in April 2012 he was 4,606th on the waiting list of persons whose property rights were to be restored in the city of Vilnius.

34. On 7 June 2012 the Vilnius city authorities informed the applicant that, in accordance with the Methodology approved by the Government, the indexed value (*indeksuota vertė*) of the 1.795 ha of land to be bought by the State was LTL 17,921. The laws did not allow compensation for this land by market-value payment. The authorities also reminded the applicant that, in accordance with Article 21 § 3 of the Law on Restitution, should a citizen fail to make a choice as to how he or she wished to be compensated for the

land bought by the State, or if they favoured a method not provided for by the Law on Restitution, he or she would be compensated in cash (*pinigais*).

35. In reply to the applicant's request, on 3 October 2012 the National Land Service confirmed that the unreturned plot of land to which the applicant could still obtain restitution measured 1.795 ha (*nustatyta, kad žemės plotas, į kurį liko atkurti nuosavybės teisę, sudaro 1,795 ha*). It reiterated to the applicant that his father's land had been assigned to the land which should be bought out by the State. That notwithstanding, the National Land Service asked the Vilnius city municipality to verify whether there was the possibility to constitute a plot of land within the overall parcel that had belonged to the applicant's father. Only if there was an unoccupied plot could the National Land Service restore the applicant's right *in natura*.

36. In reply to the applicant's request to grant him a plot of land, if it was possible to delimit one within the territory that had once belonged to his father, on 5 July 2013 Vilnius municipal authorities informed him that the entire plot was already occupied, namely it contained plots of land registered in private ownership, those plots being necessary to use buildings and houses. It also contained some forest land that was listed as being of State importance. For that reason, it was not possible to form a plot within the applicant's father's land. In accordance with Articles 12 and 13 of the Law on Restitution, this exact land could not be returned as it was due to be bought by the State.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. Article 23 of the Constitution reads as follows:

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

38. The Law on the Procedure and Conditions for the Restoration of Citizens' Ownership Rights to Existing Real Property (*Įstatymas „Dėl piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atstatymo tvarkos ir sąlygų"*), enacted on 18 June 1991 and amended on numerous occasions, provided for two forms of restitution – the return of the property *in natura* or compensation for it if its physical return was not possible.

39. This Law also stipulated that where the property was within the boundaries of a town, a plot of land would be allotted free of charge in the same town for the construction of an individual house. In the case of Vilnius, such a plot could not exceed 0.2 ha (Article 5). Forests of State importance would be compulsorily bought by the State (Article 13). The procedure for the calculation of compensation for real property to be bought by the State was to be established by the Government (Article 17).

40. In the context of restitution, on 27 May 1994 the Constitutional Court held that possessions which had been nationalised by the Soviet authorities after 1940 should be treated as "property under the *de facto* control of the State". The Constitutional Court stated:

> "The rights of a former owner to a particular property have not been restored until the property is returned or appropriate compensation is afforded. The law does not in itself provide any rights while it is not applied to a specific person in respect of a specific property. In such a situation the legal effect of a decision by a competent authority to return the property or to provide compensation is such that only from that moment does the former owner obtain property rights to a specific property."

The Constitutional Court also held that fair compensation for property which could not be returned was compatible with the principle of the protection of property.

41. On 20 June 1995 the Constitutional Court affirmed that the choice by the Parliament of the partial reparation principle was a result of difficult political and social conditions in that "new generations had grown, new proprietary and other socio-economic relations had been formed during the fifty years of occupation, which could not be ignored in deciding the question of restitution of property".

42. On 1 July 1997 the Seimas enacted a new law on the Restoration of Citizens' Ownership Rights to Existing Real Property (*Piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymas*, hereinafter – the Law on Restitution), which repealed the previous Law of 1991.

43. As enacted, Article 5 of the Law on Restitution provided that restoration of property rights in the city of Vilnius were limited to a 0.2 ha maximum plot size.

On 2 April 2001 the Constitutional Court held that the legal limit on the size of an exact parcel of vacant (that is to say not built upon) land to be returned, even though this land did not meet any particular need of society, was in conflict with Article 23 of the Constitution.

As a result, on 2 April 2002 the Seimas amended Article 5 of the Law on Restitution by providing that the maximum area of land returnable *in natura* in the territories of cities, if it were not built upon, was 1 ha.

44. The Law on Restitution also stipulated that the State was to buy land which had been "acquired into private ownership in accordance with the law" (Article 12 § 1 (6)) or land containing forests of State importance (*valstybinės reikšmės miškai*), or forests situated in cities (*miestų miškai*) (Article 13 § 1 (1 and 3)). Lists of such forests were to be approved by the Government.

As regards compensation for rights to real property which are not returned *in natura*, the Law on Restitution provided that the unreturned property and the compensatory property must be of equal value (Article 16 § 2). Equal value of the compensatory land or forest had to be set in accordance with the methodology approved by the Government (Article 16 § 4). The State should compensate the citizens for the land, forest and

riparian rights which are bought by it, in the following forms: 1) by assigning an area of land or forest of equal value to the one held previously; 2) by legally voiding liabilities (of equal value) of a citizen to the State; 3) by securities; 4) by assigning ownership, without payment, of a new plot of land, equal in value to the one held previously, for construction of an individual house, in the city or rural area where the previously held land was situated. As of 1 February 2012, land such as the applicant's father's could also be compensated for by cash (Article 16 § 9 (1, 2, 3, 4 and 6)).

Article 21 of the Law on Restitution provided that a citizen could, prior 1 April 2003, express or change his or her wish regarding the form in which the ownership rights to the real property were restored, provided that a final decision on the restoration of the ownership rights had not been taken. Should he or she fail to make a choice, it was for the authorities to choose the form of restitution. On 1 February 2012 this provision was amended to allow citizens who filed applications to restore their rights of ownership to land which had formed part of the territory of towns, to change, until 1 June 2012, their preference regarding the form of compensation and request compensation in cash for the State redeemable land. In the event of a citizen not expressing, within the statutory time-limit, how the ownership rights to the real property to be compulsorily bought were to be restored or compensated, or where the requested form of restoration of the rights of ownership had not been provided for by law, or where there was no possibility to restore the rights of ownership and/or to compensate for real property in the form indicated, the rights of ownership were to be restored for such citizens in cash.

45. On 6 December 1993, the Government adopted Resolution no. 909 setting up the "Methodology for Establishing the Nominal Price of Land Being Compulsorily Bought by the State (*Valstybės išperkamos žemės nominalios kainos nustatymo metodika*)".

46. In a ruling of 18 June 1998 as to the constitutional compatibility of the aforementioned Government resolution, the Constitutional Court pointed out that the scale of the restoration of ownership rights, the absence of a settled land market at the beginning of the process of restitution, and the limited material and financial capacities of the State, conditioned the fact that the State itself established the price of land to be compulsorily bought. Accordingly, the Government set up the Methodology for that purpose on the authorisation of the legislature. The Constitutional Court also observed that it was important to pay heed to the requirement of fairness in establishing the land-price calculation criteria. Owing to various reasons, as well as the absence of the possibility of an individual assessment of every plot of land subject to State purchase, the Methodology thus established the average price of land bought by the State for the whole urban territory, taking account of the significance and size of the town.

The constitutionality of provisions of Methodology was further upheld by the Constitutional Court's ruling of 11 September 2013.

47. As to the impossibility to precisely calculate in each particular case the amount of compensation for the land to be compulsorily bought by the State, on 18 June 1998 the Constitutional Court held:

> "As is well known, in this country the implementation of limited restitution was regulated by the Law 'On the Procedure and Conditions for the Restoration of Citizens' Ownership Rights to Existing Real Property'. The Law provided for the restoration of ownership rights neither to all former owners, nor to the whole formerly possessed property. That was a compromise decision which sought to restore justice for the people who had suffered under the occupation government. However, one had also to take account of the existing socio-economic relations and factual possibilities of the accomplishment of the restitution. The establishment of the conditions of the restoration of ownership rights is a prerogative of the legislature ... In parallel, the Constitutional Court notes that the legal regulation of compensation for property compulsorily bought by the State was conditioned by, among other factors, limited material and financial capacities of the State. When the State undertakes a respective liability under the law, it must be grounded in adequate material and financial resources; otherwise the law becomes ineffective. Therefore, taking into consideration the capacities of the State, the respective amounts of compensation for property bought by the State may be established. The amounts of compensation provided for by the Methodology [as confirmed by the Government resolution] do not constitute grounds to assess them as fair or unfair. In addition, in the context of the equality of rights of all members of society, it is an important consideration that the obligation assumed by the Law to pay corresponding compensation to a certain category of persons for property bought by the State in effect falls on all the other members of society."

48. As to the principles guiding the restitution process in Lithuania, by a ruling of 5 July 2007 the Constitutional Court held:

> "[I]n deciding whether the compensation for the existing real property which has not been returned *in natura* is a just one, one has to take account of the fact that it was not the State of Lithuania that unlawfully nationalised or expropriated in other unlawful ways the property of the owner. The State of Lithuania, while striving to restore justice, in part at least, that is to say to restore the violated rights of ownership, chose restricted restitution, not *restitutio in integrum*. This restoration of justice, where the owners are compensated for the existing real property which has not been returned *in natura* has two sides: it is justice for the owner as well as justice for the whole of society; the unlawful actions of the occupation government inflicted enormous damage not only on the owners whose rights of ownership were denied but also on the whole of society and the entire State; while restoring justice to owners, one cannot ignore justice for society as a whole, whose members are also the owners; in the process of restoring the rights of ownership, one must strive for a balance between the persons whose rights are being restored and the interests of society as a whole (the Constitutional Court ruling of 4 March 2003)".

49. By the ruling of 6 September 2007 the Constitutional Court confirmed that town forests had the status of State importance and thus exclusively belonged to the State. This was due to public interest in such forests because of their special ecological, social and economic significance.

50. According to the statistical data regarding land reform up to 1 January 2013, as submitted by the Government, the restitution process was completed in up to 31.55% of urban areas, whereas it was completed in

up to 98.98% of rural areas of Lithuania. The Government also submitted that in total 4,806 citizens were awaiting the restoration of their rights to equivalent plots of land in Vilnius city. Of that number, 4,092 persons were still waiting for the first decision for the restoration of the rights to a new plot of land for individual construction.

THE LAW

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

51. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the State authorities had breached his rights by not restoring his title to his father's land *in natura* or by failing to grant a fair compensation for that land. He was also dissatisfied with the overall length of the restitution process in his case.

Article 1 of Protocol No. 1 provides:

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

A. Admissibility

1. The parties' submissions

52. The Government firstly noted that in 1999 the authorities had granted partial restitution of the applicant's rights to his father's land, and he had thus obtained a plot of 0.18 ha. Even so, as regards the rest of the land, the applicant was a mere candidate to have it returned to him. Accordingly, he had no "possessions" within the meaning of Article 1 of Protocol No. 1. Neither could he have a legitimate expectation that a particular plot of land would be returned to him. The complaint was thus inadmissible *ratione materiae*.

53. Referring to the fact that certain unlawful actions by the authorities had been acknowledged by the Ombudsman, the prosecutor and the administrative court, the Government admitted that the process of restoration of the applicant's ownership rights indeed had not been without flaws. In this connection the Government submitted that the applicant could

have claimed damages by starting court proceedings if he had been dissatisfied with the actions, or inaction, of the relevant authorities during the restitution proceedings, or with their outcome. However, he had failed to do so.

54. Lastly, to this day the applicant had not been granted any compensation for the State redeemable land. He was still on the list of the candidates to be granted a plot in Vilnius city and he had not chosen any of the ways to be compensated, as provided for by the Law on Restitution. Therefore, it would be premature for the Court to assess whether the compensation methodology in Lithuania or any sum of money that would hypothetically be granted to the applicant upon his choice of method of compensation for State redeemable land was compatible with Article 1 of Protocol No. 1.

55. The applicant considered his complaints to be admissible.

2. The Court's assessment

56. The Court firstly is unable to share the Government's view that the applicant should have started new court proceedings for damages if he considered the restitution process flawed on account of the authorities' actions. It is the Court's view that a new set of court proceedings would only have delayed the outcome of the restitution process without bringing any tangible result. Moreover, the circumstances in which a plot of land had been granted to M.P. had already been examined in the administrative court proceedings (see paragraphs 24 and 25 above).

57. The Court further considers that the Government's objections about the applicant's complaints being inadmissible *ratione materiae* and being premature are intrinsically linked to the merits of the applicant's complaints that he could not obtain fair compensation for his father's land and that the restitution process in his case had been unjustifiably long. They should therefore be joined to the merits.

58. The Court lastly notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

59. The applicant firstly argued that the Lithuanian authorities had failed to act diligently and as a consequence he had been precluded from restoring his rights to part of his father's plot *in natura*. In particular, even though on 4 May 2001 he had asked the Vilnius city authorities not to distribute any of that land, a plot of 0.09 ha had soon thereafter been granted to M.P., who later resold it to third parties. Despite the Ombudsman's and the

prosecutor's acknowledgement that this type of redistribution had been unlawful, the applicant had had to bear the costs of the authorities' mistake given that no market-value compensation for that unreturned plot had been obtainable. On this last point the applicant acknowledged that market-value compensation for the unreturned land in Vilnius city had never been an option under the Law on Restitution. That notwithstanding, the value of the land calculated by the Government Methodology had plainly differed from the market value established by the data from the Real Estate Registry. As a result, if the applicant had agreed to compensation for the land according to the valid legal regulation and refused to wait for an equivalent plot of land in another place in Vilnius city, such a decision would evidently have been unjust because the State could have profited at the applicant's expense by later selling or leasing that land to another party at market prices.

60. The applicant also argued that the restitution proceedings in his case had been unjustifiably long. Even though he had lodged a request for restitution as early as 1991, he had received title to part of that land only in 1999. Furthermore, no decision relating to the remaining portion of the land had been taken. Thus, the process of restitution in his case had continued for over twenty years and the applicant's advanced age did not give him much hope of seeing its end.

61. The Government noted at the outset that in the 1990's Lithuania had striven to re-establish justice and to reinstate the violated property rights of citizens whose property had been nationalised during Soviet times. It had chosen restricted restitution, however, not *restitutio in integrum*. Therefore, restitution process had sought to balance the interests of those whose rights were being remedied and the interests of society as a whole. This has been emphasised by the Constitutional Court a number of times (see paragraph 48 above).

62. The Government submitted that throughout the restitution process the applicant had always insisted on one of two ways of restoring his property rights. Firstly, he had wished to regain his father's exact plot; this had not been a feasible option because that land had been built upon and contained a forest of State importance. There was therefore a public interest in the compulsory purchase of that plot by the State, and the States enjoyed a wide margin of appreciation in the area of restitution (the Government relied on *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). Secondly, the applicant had insisted on obtaining market-value compensation for his father's land; this too had never been an option under the domestic law. Even though this had been explained to the applicant by the authorities a number of times, he had failed to choose any of the other methods of compensation provided for by the Law on Restitution. It followed that the process of restitution was partly complicated and further delayed by the applicant's own conduct.

63. The Government acknowledged that in 2001 a plot of 0.09 ha of the applicant's father's land had been transferred to another person and that

they regretted that episode. Even so, that plot was quite insignificant in comparison to the entire plot of 1.795 ha to which the applicant could still regain his property rights. Even after that episode the authorities, having taken into consideration the applicant's wishes, had put the applicant's name on a waiting list to obtain another plot for the construction of a house in Vilnius, where the demand for land was highest. On this last point the Government underlined that as in 1999 the applicant's property rights had been partly restored by granting him a plot of land for the construction of a house, he no longer had priority over persons whose property rights had not been restored at all and thus were implicitly in a worse situation (see paragraphs 29 and 50 above).

2. The Court's assessment

(a) General principles

64. The Court reiterates that the essential object of Article 1 of Protocol No. 1 is to protect a person from unjustified interference by the State with the peaceful enjoyment of his or her possessions.

However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take the measures necessary to protect the right of property (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII, with further references; *mutatis mutandis*, *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290; *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C; and *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V).

65. Whether the case is analysed in terms of a positive duty of the State or in terms of an interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. It also holds true that the aims mentioned in that provision may be of some relevance in assessing whether a balance between the demands of the public interest involved and the applicant's fundamental right of property has been struck. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (see *Broniowski*, cited above, § 144, and the case-law cited therein).

66. In the context of restitution, the Court has also had occasion to hold that the facts of the case may be examined in terms of a potential hindrance to the effective exercise of the rights protected by Article 1 of Protocol No. 1 or in terms of a failure to secure the implementation of that right (see

Broniowski, cited above, § 146). Having regard to the particular circumstances of the present case, the Court considers it unnecessary to strictly categorise its examination of the case as being under the head of the State's positive obligations or under the head of the State's negative duty to refrain from an unjustified interference with the peaceful enjoyment of property.

The Court will thus determine whether the conduct of the Lithuanian authorities – regardless of whether that conduct may be characterised as an interference or as a failure to act, or a combination of both – was justifiable in the light of the applicable principles.

(b) Whether there has been an interference with the applicant's possessions

67. The Court has consistently held that the Convention does not guarantee, as such, the right to restitution of property. "Possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or legal situations where an applicant can argue that he or she has at least a legitimate expectation that a specific action will be undertaken in his or her favor. The hope that a long-extinguished right to a property may be revived cannot be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1; nor can a conditional claim which has lapsed as a result of the failure to fulfil the condition (see, *mutatis mutandis*, *Jasiūnienė v. Lithuania*, no. 41510/98, § 40, 6 March 2003).

68. In the present case the Court observes that in 1991 the applicant started restitution proceedings and in 1999 he was granted a plot of land for construction of a home, which confirms that he satisfied the criteria for restitution of the land that his father had, totaling 1.975 ha, in whatever form that restitution might take (see paragraphs 6-8 above above). The recognition of his entitlement was repeated in January 2004, May 2005, and June and October 2012 (see paragraphs 18, 21, 34 and 35 above). The Court thus finds that the applicant's right to restitution, as such, was not contested by the authorities.

On 4 May 2001, that is to say immediately after the Constitutional Court's ruling annulling the prior legal limit of a maximum 0.2 ha on land returnable in Vilnius city *in natura* as restitution, the applicant requested the Vilnius authorities not to distribute his father's land until the Law on Restitution had been amended to comply with the Constitutional Court's ruling (see paragraph 10 above). The Vilnius city authorities confirmed the applicant's interpretation of the legal situation, by informing him that as his request was related to the possibility of returning the exact plot of land in Vilnius city his father had owned, his request could be examined only after the aforementioned legislation had been amended (see paragraph 11 above). In the light of the above, the Court accepts that on the basis of the clear message from the Constitutional Court and the Vilnius authorities' response, and since the applicant had already obtained a 0.18 ha plot *in*

natura, the increase of the maximum size implied that he had at least a "legitimate expectation" of recovering some other part of his father's land *in natura*, subject to its availability, once the Law on Restitution was amended. The Government's objection as to the complaint being inadmissible *ratione materiae* (see paragraph 52 above) must therefore be dismissed.

69. In the present case, the applicant's submission under Article 1 of Protocol No. 1 is that the Lithuanian State, having conferred on him an entitlement to have his title to his father's land restored, subsequently made it impossible for him – firstly, by the administration's failure to act diligently, and then by delaying the overall resolution of restitution proceedings – to benefit from that entitlement. The Court will address these issues in turn.

(c) As to the plot no. 171

70. The Court has held that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII).

71. Turning to the facts of this case the Court observes that on 30 May 2001 the Vilnius city authorities granted a plot of land to M.P. for construction of a house. This plot lay within the land which had previously belonged to the applicant's father. The Court notes in particular that this decision was taken only five days after the same institution had responded to the applicant regarding his plea not to distribute his father's land (see paragraphs 10 and 11 above). As acknowledged by the Ombudsman, the National Land Service, the prosecutor, as well as by the administrative court, the plot of land was granted to M.P. in breach of the relevant legislation (see paragraphs 17 and 25 above), and to the detriment of the applicant, who had priority rights to that plot. For the Court, this acknowledgment of breach of the applicant's rights further confirms that the applicant had at least a legitimate expectation to obtain the plot no. 171 by restitution, and thus to have his property right restored.

72. The Court does not fail to note that during the restitution proceedings, including the proceedings in the administrative courts, the applicant consistently complained about that decision by the Vilnius authorities. The replies to his complaints stated that the restrictions in obtaining the restitution of the exact area of his father's land were based on

domestic legislation and on the authorities' finding that the remainder of the land had either been built on or contained forests of State importance and for those reasons had to be compulsorily bought by the State. On the first point, the Court observes that, pursuant to Article 12 § 1 (6) of the Law on Restitution, the State indeed had to order the purchase of the land that had been taken into private ownership in accordance with the law (see paragraph 44 above). That notwithstanding, given the conclusions by the Ombudsman, the National Land Service, the prosecutor and the administrative court, the Court cannot but find that this last requirement of lawfulness was absent, thus depriving the State of the legal basis to compulsorily purchase the land from the applicant. Indeed, it has not been argued by the Government that the land "built upon" was not related to M.P.'s land.

73. Lastly, the Court has held that both an interference with the peaceful enjoyment of possessions and an abstention from action must strike 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 each case involving an alleged violation of Article 1 of Protocol No. 1 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 *Aleksa v. Lithuania*, no. 27576/05, § 85, 21 July 2009, with further references).

74. In the applicant's case the Court notes that plot no. 171 was granted to M.P. in the context of restitution proceedings, which the Court can accept as a legitimate aim. Nothing in the case-file indicates that either the municipal authorities or M.P. acted in bad faith by, respectively, transferring or acquiring that plot (see *Padalevičius v. Lithuania*, no. 12278/03, § 68, 7 July 2009). The Court is also cautious to note that in regulating the restitution process the Contracting States have a wide discretion, including over the rules of how compensation for long-extinguished property rights should be assessed (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003, and *Bergauer and Others v. the Czech Republic* (dec.), no. 17120/04, 13 December 2005). Even so, on numerous occasions in the context of revocation of property titles granted erroneously, the Court has emphasised that the principle of good governance may not only impose on the authorities an obligation to act promptly to correct their mistake (see *Moskal v. Poland*, no. 10373/05, § 69, 15 September 2009), but may also necessitate the payment of adequate compensation or another type of appropriate reparation to a *bona fide* former holder (see *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 53, ECHR 2002-VIII, and *Toşcuţă and Others v. Romania*, no. 36900/03, § 38, 25 November 2008). In other words, the terms of compensation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably,

whether it imposes a disproportionate burden on the applicant (see *Albergas and Arlauskas v. Lithuania*, no. 17978/05, § 73, 27 May 2014).

75. In the applicant's case, the Court cannot turn a blind eye to the fact that the 2003 market value of plot no. 171, which measures 0.09 ha, was LTL 162,000 (see paragraph 32 above). The land reform authorities, in turn, proposed that the applicant take compensation of LTL 17,971 for a plot of land of 1.795 ha (see paragraph 34 above), a sum which is plainly incommensurable. The applicant's argument that the authorities had thus put him in a disadvantageous situation as regards the terms of compensation and in a situation akin to the taking of property (see, *mutatis mutandis*, *Broniowski*, cited above, § 151) appears to be valid.

76. In the light of the foregoing, the Court finds that by granting plot no. 171 to M.P. and by later refusing market-value compensation for that particular plot, the authorities breached the applicant's rights under Article 1 of Protocol No. 1 to the Convention.

(d) As to the applicant's inability to recover the remaining part of his father's land *in natura*

77. To the extent that the applicant complained about his inability to recover the remaining part of his father's land *in natura*, or to obtain market-value compensation for it following the re-establishment of the Lithuanian State, the Court reiterates that Article 1 of Protocol No. 1 to the Convention does not guarantee, as such, the right to restitution of property. Nor can it be interpreted as creating any general obligation on the Contracting States to restore rights to property which had been expropriated before they ratified the Convention, or as imposing any restrictions on their freedom to determine the scope and conditions of any property restitution to former owners (see *Igarienė and Petrauskienė v. Lithuania*, no. 26892/05, § 53, 21 July 2009, and the case-law cited therein).

78. To be compatible with Article 1 of Protocol No. 1, an interference must fulfil three basic conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities; it must be "in the public interest"; and it must strike a fair balance between the owner's rights and the interests of the community (see, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012).

79. The Lithuanian authorities' decision to compulsorily purchase the remaining parts of the applicant's father's land were based on Articles 12 § 1 (6) and 13 § 1 (1 and 3) of the Law on Restitution, as well as in line with the jurisprudence of the Constitutional Court (see paragraphs 44 and 49 above), thus being in accordance with the law, as required by Article 1 of Protocol No. 1.

80. Furthermore, as illuminated by the statements of the Constitutional Court (see paragraphs 41 and 46-48 above), those decisions were based on the "public interest", a notion which is necessarily extensive, and which the

national authorities are in principle better placed than the international judge to assess. Indeed, the Court has repeatedly held that the decision to enact laws affording publicly funded compensation for expropriated property will commonly involve consideration of political, economic and social issues. The Court has declared that, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, it will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation. This logic applies to such fundamental changes of a country's system as the transition from a totalitarian regime to a democratic form of government and the reform of the State's political, legal and economic structure, phenomena which inevitably involve the enactment of large-scale economic and social legislation (see *Broniowski*, cited above, § 149). For the Court, barring the authorities' mistakes, the two grounds invoked by the authorities to refuse restitution of the exact piece of land – the rights of those who were owners of that land, and the need to protect forests of State importance, have already been upheld by the Court in, respectively, *Pincová and Pinc* (cited above, § 58) and in *Turgut and Others v. Turkey* (no. 1411/03, § 90, 8 July 2008, with further references).

81. The Court lastly turns to the question of whether a fair balance was reached in how the applicant was to be compensated for his father's land. Although the applicant insisted that market-value compensation should be paid to him for the remaining part of his father's land, the Court does not share this view. As the applicant himself admitted, market-value compensation had never been an option under Lithuanian law (see paragraph 59 above), because of the principle of partial restitution chosen by Lithuania to rectify the old wrongs, as was explained by the Constitutional Court (see paragraphs 41, 46-48 above). On this point the Court also finds it pertinent that by 2004 the Methodology set out by the Government had been used in 88% of cases where compensation was given (see paragraph 19 above). It is also noteworthy that as early as in 1999 the applicant was given a plot for building a house while in 2013 over 4,000 persons were still awaiting the first legal decision to allot them a plot of land in Vilnius city (see paragraphs 8 and 50 above). Lastly, even though compensation for the remaining part of his father's land had been proposed to the applicant, he himself failed to choose the means of restitution (see paragraphs 85 and 86 below).

82. In the light of the above the Court concludes that there has been no violation of the Convention on account of the fact that the applicant was not given back the remaining part of his father's land *in natura* or market-value compensation for it.

(e) As to overall length of restitution proceedings

83. The applicant lastly complained that even though he had submitted a restitution request in 1991, the restitution process was still ongoing without any tangible result except for the 0.18 ha plot returned to him in 1999.

84. The Court takes cognisance of the fact that the present case concerns restitution of property and is not unmindful of the complexity of the legal and factual issues a State faces when resolving such questions (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, § 166, 15 March 2007). It follows that certain impediments to the realisation of the applicants' right to the peaceful enjoyment of their possessions are not in themselves open to criticism (see *Igarienė and Petrauskienė*, cited above, § 58). Even so, it has emphasised that that uncertainty – be it legislative, administrative or arising from the practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time and in an appropriate and consistent manner (see *Vasilescu v. Romania*, 22 May 1998, § 51, *Reports of Judgments and Decisions* 1998-III; *Beyeler v. Italy* [GC], no. 33202/96, §§ 110 *in fine*, 114 and 120 *in fine*, ECHR 2000-I; and *Sovtransavto Holding*, cited above, §§ 97-98).

85. In the applicant's case the Court finds it established that at least as early as 2004 the authorities notified the applicant that his father's land was to be compulsorily bought by the State (see paragraph 18 above). The applicant was then duly informed about the forms of compensation available to him for this under the Law on Restitution, but he refused to avail himself of any of these (see paragraphs 22, 23, 26-28 and 34 above). Furthermore, once the Law on Restitution was amended in 2012, the authorities informed the applicant about it without delay, asking him to express his preference regarding the forms of compensation available (see paragraphs 30-32 above). To accommodate the applicant's tenacious demands, in 2013 the authorities also verified once again whether there was any land which could be returned to him *in natura*, again with no positive result for the applicant (see paragraphs 35 and 36 above).

86. That being so, the Court finds that the overall delay in finalising the restitution process was mainly imputable to the applicant. There has accordingly been no violation of Article 1 of Protocol No. 1 on this account.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant claimed 648,000 Lithuanian litai (LTL, approximately 187,660 euros (EUR)) in respect of pecuniary damage, which was based on how he assessed the market value of the unreturned land. In his calculations the applicant specifically relied on the market value of plot no. 171, which was LTL 162,000 according to the data from the Real Estate Registry.

The applicant also claimed LTL 200,000 (approximately EUR 57,000) in respect of non-pecuniary damage he had suffered on account of unlawful actions of the authorities and the length of the restitution proceedings.

89. The Government argued that the applicant's claims in respect of pecuniary damage were based on assumptions and involved a significant degree of speculation. They disagreed with the applicant's claims based on the market value of the unreturned land, arguing that pecuniary damage, if any, could be determined only upon finalisation of the restitution process. The Government pointed out that the applicant had not yet changed his wishes as to compensation for State redeemable land as provided by the Law on Restitution. He was still a candidate to receive a plot of land in Vilnius city.

As to non-pecuniary damage, they argued that the claim was excessive.

90. The Court notes that it has found a violation of Article 1 of Protocol No. 1 in this case, and considers that the applicant suffered pecuniary damage in connection with the violation found. Having taken into account the extract from the Real Estate Registry, which is a State enterprise, establishing the market value of plot no. 171 in 2001 as LTL 162,000 (EUR 46,900), that sum not being disputed by the Government, the Court considers it appropriate to award the applicant EUR 46,900 in respect of pecuniary damage.

91. The Court further considers that the applicant undoubtedly suffered distress and frustration resulting from the violation of his property rights by the authorities. However, it finds the amount claimed by him excessive. Making its assessment on an equitable basis the Court awards the applicant EUR 6,500 in respect of non-pecuniary damage.

B. Costs and expenses

92. The applicant also claimed LTL 893 (EUR 255) for translation costs and LTL 1,500 (EUR 430) for the legal fees paid for his representation before the Court.

93. The Government disputed part of the translation costs as incurred unnecessarily.

94. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 575 for the proceedings before the Court.

C. Default interest

95. 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. *Joins to the merits* the Government's objections that the applicant's complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention and premature, and dismisses them;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 on account of the authorities' decision to grant plot no. 171 to M.P. and the failure to provide adequate compensation therefore;

4. *Holds* that there has been no violation of Article 1 of Protocol No. 1 as regards the applicant's remaining complaints;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 46,900 (forty six thousand nine hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 575 (five hundred and seventy five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 24 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	András Sajó
Registrar	President