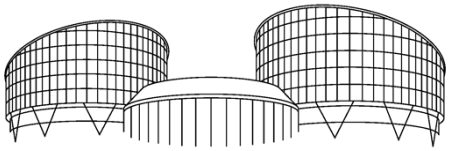

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PUIŠYS v. LITHUANIA

(Application no. 58166/18)

JUDGMENT

STRASBOURG

19 January 2021

This judgment is final but it may be subject to editorial revision.

In the case of Puišys v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Aleš Pejchal, *President,*
Egidijus Kūris,
Carlo Ranzoni, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 58166/18) 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 Tadas Puišys ("the applicant"), on 27 November 2018;

the decision to give notice to the Lithuanian Government ("the Government") of the complaint under Article 1 of Protocol No. 1 to the Convention concerning the applicant's house and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 15 December 2020,

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

INTRODUCTION

1. The application concerns construction of a house which was carried out after obtaining the relevant permits but later declared to be partly unlawful.

THE FACTS

2. The applicant was born in 1968 and lives in Netoniai, in the Kaunas region. He was represented by Mr P. Čerka, a lawyer practising in Kaunas.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

I. CONSTRUCTION OF THE APPLICANT'S HOUSE

4. In 2003 the applicant bought 0.1 hectares of land in Netoniai.

5. On 5 May 2004 the Kaunas Region Municipality (hereinafter "the Municipality") approved a detailed plan of the applicant's plot. According to the detailed plan, any buildings constructed on the plot had to be a minimum distance of 3.5 metres from the neighbouring plots.

6. On 13 May 2004 the Kaunas County Administration (hereinafter "the KCA") defined the geographic coordinates of the plot. They were registered in the Real Estate Register.

7. In December 2004 the applicant prepared a blueprint (*techninis projektas*) for the construction of a house on the plot. That same month the Municipality issued a construction permit, allowing him to build a two-storey residential house in accordance with the blueprint.

8. In January and July 2005, at the applicant's request, the Municipality approved certain amendments (*korektūros*) to the blueprint. The amendment of July 2005 added a covered parking space, the roof of which was held by metal columns on one side and one of the walls of the house on the other side.

9. In March 2006 the KCA inspected the construction site and did not indicate any violations of the planning documents.

10. On 30 October 2007 the KCA amended the geographic coordinates of the plot (see paragraph 6 above). The data of the Real Estate Register was updated accordingly.

11. On 12 February 2008 the KCA inspected the house built by the applicant and concluded that it was "suitable for use" (*pripažintas tinkamu naudoti*). The house was registered in the Real Estate Register.

12. On 2 April 2009 the authorities carried out another inspection of the house. It was found that the columns near the house (see paragraph 8 above) had been built outside of the plot's boundaries.

13. On 7 April 2009 the KCA annulled its earlier decision to amend the geographic coordinates of the plot (see paragraph 10 above), thereby restoring the coordinates which had been defined in 2004 (see paragraph 6 above). The data of the Real Estate Register was updated to reflect that.

14. On 18 November 2009 the KCA inspected the house again and found that the columns had been built 0.58 metres outside of the plot's boundaries, on a planned public road. It informed the Kaunas regional prosecutor's office (hereinafter "the prosecutor") of its findings and asked it to institute proceedings for the elimination of the unlawful construction.

15. In 2010 the applicant's wife instituted civil proceedings in which she claimed that when defining the land coordinates (see paragraph 6 above), the KCA had incorrectly included a planned public road in the planning documents. She asked that the boundaries of her and the applicant's plot be amended and that the territory of the supposed public road be joined to their plot. The claim was dismissed. In a final decision adopted in November 2012, the Supreme Court held that the public road had been included in the planning documents in accordance with the law, and that the applicant and his wife had been informed of its presence when the coordinates of their plot had been defined and that they had not lodged any complaints at the time.

II. PROCEEDINGS CONCERNING THE LAWFULNESS OF THE CONSTRUCTION

A. Claim lodged by the prosecutor

16. In January 2010 the prosecutor lodged a civil claim against the applicant and the State Inspectorate of Territorial Planning and Construction (the institution which had taken over certain functions of the KCA after an administrative reform – hereinafter "the Inspectorate"). The claim was amended in December 2010 and March 2011, and the Municipality was included as a co-defendant.

17. The prosecutor submitted that the applicant's house had been built on a different location than indicated in the planning documents, which constituted a serious breach of the law. He asked the court to order the applicant to alter the house in accordance with the planning documents.

18. The prosecutor also asked the court to order the applicant to remove a fence and a paved road which had been built on public land.

19. The applicant contested the prosecutor's claim. He submitted that the impugned columns were not part of the house but actually part of an annex which had been built near the house in order to create a covered parking space. He also submitted that the inspection of 2 April 2009 (see paragraph 12 above) had been carried out in his and his wife's absence and that the measurements taken during that inspection had been inaccurate. However, even assuming that the columns had been built outside of the plot's boundaries, the margin of 0.58 metres was insignificant.

20. The applicant also pointed out that the construction had been carried out with all the relevant permits and the house had been declared suitable for use, so if any mistakes had been committed, the burden of correcting them should be borne by the authorities.

B. Decision of the Kaunas District Court of 19 October 2012

21. On 19 October 2012 the Kaunas District Court allowed the prosecutor's claim (see paragraphs 17 and 18 above).

22. The court rejected the applicant's submissions that the columns were not part of the house (see paragraph 19 above). Moreover, it found that the amendments to the blueprint approved by the Municipality (see paragraph 8 above) had not been in compliance with the detailed plan of the plot and therefore they had to be annulled. The findings of the KCA regarding the unfinished house (see paragraph 9 above) had been based on those unlawful amendments and therefore had to be annulled as well.

23. Relying on the findings of the inspection of 2 April 2009 (see paragraph 12 above), the court held that the columns were located 0.58 metres outside of the plot's boundaries, on a planned public road, and

would preclude the owners of neighbouring plots from using that road. Accordingly, the decision to declare the house suitable for use (see paragraph 11 above), which had been adopted despite that clear deviation from the planning documents, had to be annulled.

24. The court considered that the house could be brought into compliance with the planning documents by removing the columns and altering the house so that it fell within the boundaries of the plot. It ordered the applicant: (1) within six months after the court decision became final, to prepare a new blueprint in accordance with the detailed plan of the plot or with a new territorial planning document; (2) within three months after getting the new blueprint approved by the relevant authorities, to obtain a new construction permit; and (3) within six months after obtaining the new construction permit, to alter the building accordingly.

25. The court also ruled that the applicant had built a fence and a paved road on public land without having obtained relevant permission, and ordered him to demolish them.

C. Adjournment of the civil case pending administrative proceedings

26. The applicant lodged a complaint with the administrative courts, seeking the annulment of the KCA's decision of 7 April 2009 which had amended the geographic coordinates of the plot (see paragraph 13 above).

27. The civil proceedings (see paragraphs 16-25 above) were adjourned while the administrative proceedings were pending.

28. On 12 February 2013 the Kaunas Regional Administrative Court upheld the applicant's complaint. It noted that the coordinates of the plot had been defined on 13 May 2004 (see paragraph 6 above) and amended on 30 October 2007 (see paragraph 10 above). The decision of 7 April 2009 had violated the rights of the owners of the plot because, following that decision, parts of the house which had already been built on it had become situated outside of the plot's boundaries. The court also emphasised that that had been done without informing the applicant and his wife and without indicating any legal grounds for the decision. Therefore, that decision had to be declared unlawful and annulled.

29. On 9 December 2013 the Supreme Administrative Court upheld the decision of the first-instance court.

30. Following the decision of the Supreme Administrative Court, in January 2014 the data of the Real Estate Register was updated to reflect the land coordinates of 30 October 2007 (see paragraph 10 above).

31. The applicant's neighbour, N.P., instituted proceedings before the administrative courts, asking them to change the coordinates of the applicant's plot in the Real Estate Register. He submitted that the coordinates of 30 October 2007 (see paragraph 10 above) had been approved unlawfully and that they hindered his access to his plot. In December 2014 the Kaunas

Regional Administrative Court allowed his claim, but in February 2016 the Supreme Administrative Court quashed that decision. It held that, following the annulment of the decision of 7 April 2009 (see paragraph 29 above), the Real Estate Register had acted lawfully by restoring the coordinates of 30 October 2007.

D. Decision of the Kaunas Regional Court of 21 February 2018

32. The civil proceedings were resumed after the conclusion of the administrative proceedings (see paragraphs 26-29 above).

33. On 20 October 2016 the Kaunas Regional Court upheld the decision of the Kaunas District Court (see paragraphs 21-25 above). However, on 24 May 2017 the Supreme Court quashed that decision and remitted the case to the Kaunas Regional Court for fresh examination. The Supreme Court held, in particular, that even though the amendment to the land coordinates of 7 April 2009 had been annulled by the administrative courts (see paragraphs 28 and 29 above), the Kaunas Regional Court had not explained whether that had affected the lawfulness of the construction of the applicant's house.

34. During the fresh examination of the case by the Kaunas Regional Court, the applicant repeated his previous arguments (see paragraphs 19 and 20 above).

35. In addition, he submitted that the inspection of 2 April 2009 (see paragraph 12 above) had relied not on the coordinates of the plot defined in 2007, which had been registered in the Real Estate Register at the time of the inspection and at the time when the house had been declared suitable for use (see paragraph 11 above), but on the coordinates of 2004, which had been amended and therefore had no longer been correct. As a result, its conclusion that the columns had been outside of the plot's boundaries had been inaccurate.

36. On 21 February 2018 the Kaunas Regional Court upheld the decision of the Kaunas District Court (see paragraphs 21-25 above).

37. It emphasised that in order to determine whether the applicant's house had been built in accordance with the planning documents, it was important to determine the exact boundaries of the plot and the location of the house on it.

38. The court found that, according to the data of the Real Estate Register, the coordinates of the plot were those which had been defined in 2004 (see paragraph 6 above). Although in separate proceedings the applicant's wife had asked the courts to change them, her claim had been dismissed in 2012 (see paragraph 15 above). On those grounds, the Kaunas Regional Court concluded that the land coordinates of 2004 were still valid.

39. It held that, since the inspections of the plot which had been carried out in 2009 (see paragraphs 12 and 14 above) had relied on the same

coordinates as those defined in 2004, their findings had to be considered accurate. Thus, the court found it established that the columns of the house had been built without respecting the required minimum distance of 3.5 metres from the neighbouring plots (see paragraph 5 above).

40. The Kaunas Regional Court also upheld the remaining findings of the Kaunas District Court (see paragraphs 22, 23 and 25 above) and ordered the applicant to prepare a new blueprint, to obtain a new construction permit and to alter the building in line with those documents (see paragraph 24 above).

E. Proceedings before the Supreme Court

41. The applicant lodged two appeals on points of law. He submitted, in particular, that the Kaunas Regional Court had disregarded the fact that, after the amendment to the plot's coordinates adopted in 2009 had been annulled (see paragraphs 26-29 above), the valid coordinates were those which had been approved in 2007 (see paragraph 10 above). They had been registered in the Real Estate Register in 2007 and again in 2014 (see paragraph 30 above). Therefore, the court's conclusion that the columns had been built on public land had relied on incorrect coordinates.

42. On 30 April and 24 May 2018 the Supreme Court refused to accept the appeals on points of law for examination on the grounds that they did not raise important legal issues.

III. OTHER RELEVANT PROCEEDINGS

43. In November 2011 the Kaunas District Court convicted a former official of the Municipality and a former official of the KCA of failure to perform their duties when checking the construction of the applicant's house. The court found that the accused had acted negligently when signing the decision to declare the house suitable for use (see paragraph 11 above) because they had done so without having properly verified the planning documents and without having inspected the construction on the ground. In April 2012 the Kaunas Regional Court upheld that judgment in its entirety. The applicant and his wife were questioned in those proceedings as witnesses.

44. In 2018 the applicant's neighbour, N.P., instituted proceedings before the administrative courts, asking them to change the coordinates of the applicant's plot in the Real Estate Register and to register the coordinates which had been defined in 2004, in line with the latest court decisions (see paragraphs 6 and 38 above). In November 2019 the Kaunas Chamber of the Regional Administrative Court dismissed N.P.'s request. It stated that the land coordinates approved in 2007 had been registered in the Real Estate Register in accordance with the law, following the annulment of the decision of 7 April 2009 (see paragraphs 26-29 above).

45. In June 2018 the applicant asked the NLS to allow him to build a house on his plot without maintaining the minimum distance to the neighbouring plot, thereby legalising the existing house with the columns. The NLS refused on the grounds that the construction did not comply with the detailed plan of the plot (see paragraph 5 above) and that it was necessary to keep sufficient distance from the planned public road so as not to obstruct traffic.

46. In January 2019 the applicant asked the Municipality to amend the detailed plan of the plot in order to allow construction at a minimum distance of three metres from the neighbouring plots (see paragraph 5 above). In March 2019 the Municipality amended the detailed plan in accordance with the applicant's proposal.

47. In September 2019 he asked the Municipality to issue a new construction permit. In October 2019 the Municipality refused his request, finding, in particular, that the location of the house and the number of storeys did not correspond to the detailed plan (see paragraph 5 above).

48. At the time of the latest information submitted to the Court (7 July 2020), the applicant had demolished the fence and torn up the paved road (see paragraph 25 above) but had not executed the remaining court orders (see paragraph 42 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

49. At the material time, Article 23 § 1 of the Law on Territorial Planning provided that a detailed plan established the mandatory conditions for the use and management of a plot of land, such as its purpose, the height of buildings which may be built on it, the density of construction, the boundaries of the construction site, among others.

50. In its decision of 15 June 2009 in civil case no. 3K-3-240/2009 the Supreme Court stated that, in cases of unlawful construction, the appropriate sanction had to be determined in the light of the particular circumstances in which the impugned violation had been committed, its seriousness, the importance of the rights which were being defended, and other relevant circumstances. The chosen measure had to be proportionate to the aim pursued. The principle of proportionality required that a fair balance be struck not only between private interests and the public interest, but also between conflicting private interests. Therefore, when deciding on the legal consequences of unlawful construction, the court needed to find such a balance between the interests of the parties.

51. For other relevant domestic law and practice, see *Tumeliai v. Lithuania* (no. 25545/14, §§ 29-32 and 54-55, 9 January 2018).

THE LAW

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

52. The applicant complained that the decisions to declare the construction of his house partly unlawful restricted his property rights. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

A. Admissibility

1. Abuse of the right of application

(a) The parties' submissions

53. The Government submitted that the applicant had abused the right of individual application because he had failed to disclose all the relevant information and had attempted to mislead the Court. In particular, in his application he had not mentioned the civil proceedings instituted by his wife in an attempt to "seize State-owned land" (see paragraph 15 above) or the criminal proceedings against several former officials (see paragraph 43 above). Furthermore, he had attempted to mislead the domestic courts that he had built a road on public land for the convenience of the neighbourhood, while in reality his neighbours had complained that that road had hindered their access to their plots. He had also attempted to mislead the Court that he had had the required permits for building such a road, which was not true.

54. The applicant disputed the Government's submissions.

(b) The Court's assessment

55. The Court reiterates that an application may be rejected as an abuse under Article 35 § 3 of the Convention if it was knowingly based on untrue facts or if incomplete and therefore misleading information was submitted to the Court (see *Gogitidze and Others v. Georgia*, no. 36862/05, § 76, 12 May 2015, and the cases cited therein). However, not every omission of information will amount to an abuse; the information in question must concern the very core of the case (see *Gross v. Switzerland* [GC],

no. 67810/10, §§ 35-36, ECHR 2014, and *Mitrović v. Serbia*, no. 52142/12, § 33, 21 March 2017).

56. In the present case, the applicant complained about the court proceedings in which the construction of his house had been declared partly unlawful. While in his application he did not mention the proceedings indicated by the Government (see paragraph 53 above), the Court does not consider that they concerned "the very core of the case".

57. Furthermore, in the Court's view, the Government's submissions concerning the allegedly false and misleading arguments which the applicant had made before the domestic courts and before this Court form part of the dispute between the parties as to whether or not there has been a violation of the applicant's property rights (see *S.L. and J.L. v. Croatia*, no. 13712/11, § 49, 7 May 2015). The Court is unable to find anything in the contents of the applicant's submissions which might be regarded as an abuse of the right of individual application.

58. Therefore, the Government's objection regarding abuse of the right of individual application must be dismissed.

2. Exhaustion of domestic remedies

(a) The parties' submissions

59. The Government submitted that the applicant had failed to exhaust effective domestic remedies. Firstly, they submitted that following the Court's judgment in *Tumeliai v. Lithuania* (no. 25545/14, 9 January 2018), there had been a development in domestic-court case-law concerning the elimination of unlawful construction. In particular, courts now sought to determine who had been responsible for issuing a construction permit in violation of the law, and the person or entity held to be responsible had to bear the costs of the elimination of unlawful building. Therefore, the applicant could have asked the courts to reopen the proceedings in his case and to examine it in accordance with the Court's findings in *Tumeliai*.

60. Secondly, the Government submitted that the applicant could have lodged a civil claim for damages against the State or against the officials who had been convicted of carrying out their duties negligently (see paragraph 43 above).

61. The applicant did not comment on this point.

(b) The Court's assessment

62. The Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (see, among many other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). It also calls attention to its extensive case-law to the effect that an application for a retrial

or the reopening of appeal proceedings or for a similar extraordinary remedy cannot, as a general rule, be taken into account for the purposes of applying Article 35 § 1 of the Convention (see *Nicholas v. Cyprus*, no. 63246/10, § 37, 9 January 2018, and the cases cited therein). The Court does not see any grounds to reach a different conclusion in the present case and finds that the applicant was not required to request the reopening of the domestic proceedings.

63. It furthermore reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 109, ECHR 2014 (extracts), and the cases cited therein). It notes that in the civil proceedings concerning the lawfulness of the construction of his house, the applicant raised, at least in substance, all the main arguments which he subsequently raised before the Court (see paragraphs 19, 20, 35 and 41 above), thereby giving the domestic courts an opportunity to address them. Therefore, the Court is of the view that he was not required to institute any further proceedings.

64. Accordingly, it dismisses the Government's objection of non-exhaustion of domestic remedies.

3. Conclusion on admissibility

65. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

66. The applicant firstly submitted that the court decisions in which his house had been declared partly unlawfully built had been based on inaccurate data. When deciding that the columns had been built outside of the plot's boundaries, the courts had relied on the land coordinates approved on 7 April 2009, which had been annulled by the administrative courts (see paragraphs 26-29 above). They had completely disregarded the coordinates of 30 October 2007 (see paragraph 10 above) which had been valid at the time of the decision to declare the house suitable for use (see paragraph 11 above). Their validity had been restored in 2014 (see paragraph 30 above). The applicant contended that the columns of the house had been built within the boundaries approved on 30 October 2007.

67. He further submitted that the house had been built after having obtained the relevant permission – the authorities had granted him a construction permit, had approved the blueprint and its amendments, and had declared the house suitable for use (see paragraphs 7-9 and 11 above). However, he alone had been made to bear the burden of their mistakes. He also observed that the final decision to declare the house partly unlawful had been adopted ten years after it had been declared suitable for use.

68. Lastly, the applicant submitted that even though he had not been ordered to demolish the house, legalising it in its existing form had become impossible because of new legal developments. Following the final court decisions, he had made several attempts to obtain new planning documents but the authorities had refused to issue them, finding, among other circumstances, that the house had to be considered as a three-storey building, whereas the applicant had been authorised to build a two-storey building (see paragraphs 7 and 47 above). Furthermore, the courts had annulled the amendment to the blueprint which had authorised the construction of the impugned columns (see paragraph 8 above), thereby *de facto* declaring them to be unlawful. In such circumstances, the applicant argued that he might need to demolish parts of the house in order to comply with the court decisions, but under domestic law he would not be able to claim any compensation from the State.

(b) The Government

69. The Government acknowledged that there had been an interference with the applicant's property rights. However, they submitted that that interference had complied with the requirements of Article 1 of Protocol No. 1 to the Convention.

70. In particular, the Government submitted that the construction of the applicant's house had not at any point complied with the planning documents – from the very beginning the house had been built outside of the construction area indicated in the detailed plan of the plot. They also contended that the land coordinates approved in 2004, 2007 and 2009 (see paragraphs 6, 10 and 13 above) had differed insignificantly and were irrelevant to the issue of the elimination of the unlawful construction. Furthermore, even if the impugned columns had been found to be within the plot's boundaries, they still would not have complied with the requirement to keep a minimum distance of 3.5 metres from the boundaries of the neighbouring plots (see paragraph 5 above).

71. Accordingly, the Government argued that the measures imposed on the applicant had resulted not solely from the authorities' mistakes but also from his own unlawful actions.

72. Furthermore, they submitted that the applicant had not been ordered to demolish the house but had been given an opportunity to modify it. However, he had failed to comply with the court orders. He should have asked

the authorities to amend the detailed plan of the plot as concerns the maximum allowed height of the house, the construction area and other details (see paragraph 49 above), and that the limited amendments which he had proposed to date were insufficient to legalise the house (see paragraph 46 above). After the required amendments to the detailed plan, the applicant would be able to prepare a new blueprint in accordance with that detailed plan and to obtain a new construction permit.

73. Lastly, the Government contended that, contrary to the applicant's submissions (see paragraph 68 above), there was no danger that the house, other than the columns with the roof on them, would need to be demolished. They submitted that the legal definition of a storey had not been changed and that the applicant had, in fact, built a three-storey house instead of a two-storey house, contrary to the construction permit (see paragraph 7 above). In any event, that issue could be resolved by amending the detailed plan, which the applicant had failed to do (see paragraph 72 above). The Government submitted that there was no possibility under domestic law to keep the columns in their present state.

2. The Court's assessment

(a) Scope of the case

74. At the outset, the Court notes that the domestic proceedings which are at the core of the present case concerned the lawfulness of the construction of the applicant's house (see paragraphs 17 and 21-24 above), as well as of a fence and a paved road (see paragraphs 18 and 25 above). In his application form and in his observations, the applicant raised complaints concerning all these elements. However, on 26 August 2019 the Court gave notice to the Government solely of the complaint regarding the lawfulness of the house. The parties were notified that the remainder of the application had been declared inadmissible by the President of the Section sitting in a single-judge formation, in accordance with the Rules of Court.

75. Therefore, the Court's examination in the present case will be limited to determining whether the decisions by which the construction of the applicant's house – but not the fence or the road – was declared partly unlawful were in accordance with Article 1 of Protocol No. 1 to the Convention.

(b) Existence of an interference

76. The Court sees no reason to doubt that the decisions of the domestic courts declaring the applicant's house partly unlawful and ordering him to obtain new planning documents and to alter the building constituted an interference with his right to the peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention.

77. In the Court's view, the interference in question was aimed at ensuring compliance with the general rules concerning the restrictions on construction and amounted to a control of the use of property (see *Tumeliai v. Lithuania*, no. 25545/14, § 73, 9 January 2018, and the case-law cited therein). It therefore falls to be examined under the second paragraph of Article 1 of Protocol No. 1.

(c) Lawfulness and legitimate aim of the interference

78. The Court is satisfied that there was sufficient basis in domestic law for annulling decisions which had been taken by the authorities supervising the construction of the applicant's house, on the grounds that those decisions had not complied with the detailed plan of the plot or other relevant legal instruments (see paragraphs 49 and 51 above).

79. It is also satisfied that the impugned interference pursued a legitimate aim of ensuring compliance with the building regulations, which is in accordance with the general interest (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 71, 21 April 2016, and the case-law cited therein).

(d) Proportionality of the interference

80. The relevant general principles concerning the proportionality of interference with property rights have been summarised in *Beinarovič and Others v. Lithuania* (nos. 70520/10 and 2 others, §§ 138-42, 12 June 2018, and the cases cited therein).

81. Turning to the circumstances of the present case, the Court notes that in 2004 the applicant prepared a blueprint for the construction of a house and obtained a construction permit in accordance with the relevant domestic law (see paragraph 7 above). The relevant authorities also approved amendments to the blueprint, which included a covered parking space near the house, supported by columns (see paragraph 8 above). Afterwards they inspected the construction site and eventually declared the finished house to be suitable for use (see paragraphs 9 and 11 above).

82. The Government argued that from the very beginning the house had been constructed in violation of the detailed plan of the plot (see paragraph 70 above). Be that as it may, the Court considers that it was the responsibility of the authorities to verify whether the construction was being carried out in accordance with the law (see, *mutatis mutandis*, *Romankevič v. Lithuania*, no. 25747/07, § 41, 2 December 2014). However, there is no indication that during the entire period of the construction of the house, from December 2004 to February 2008, the authorities notified the applicant of any possible violations of the relevant legal instruments.

83. Furthermore, it has not been alleged at any point, either during the domestic proceedings or during the proceedings before the Court, that the applicant acted unlawfully when obtaining the relevant permits or that he in

any other way contributed to the adoption of the decisions which were subsequently annulled for being unlawful (see *Albergas and Arlauskas v. Lithuania*, no. 17978/05, § 68, 27 May 2014).

84. Accordingly, the Court is satisfied that during the entire period of the construction of his house the applicant did not have any reason to doubt that the construction was being carried out in accordance with all the relevant requirements and that he was entitled to rely on the expectation that the authorities' decisions would not be subsequently annulled to his detriment (see *Činga v. Lithuania*, no. 69419/13, § 91, 31 October 2017, and the cases cited therein).

85. The domestic courts found that the applicant's house had been built in violation to the detailed plan of the plot because its columns did not respect the required minimum distance from the neighbouring plots and interfered into a planned public road (see paragraphs 22, 23 and 39 above).

86. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, it sees no grounds to question the findings of the domestic courts that the impugned columns were part of the applicant's house (see paragraph 22 above) and that there was a planned public road near the plot (see paragraphs 15 and 23 above). It is also mindful of the fact that the courts needed to strike a balance between the applicant's property rights and the legitimate interest of the owners of the neighbouring plots to use the road.

87. However, in the circumstances of the present case, the Court is not convinced that the required fair balance was achieved, for the reasons provided below.

88. Firstly, it finds that the domestic courts did not adequately address one of the main arguments presented by the applicant, namely that the prosecutor's claim had been based on incorrect land coordinates (see paragraphs 35 and 41 above). The Kaunas Regional Court stated that, in accordance with the Real Estate Register, the valid coordinates of the plot were those which had been adopted in 2004 (see paragraph 38 above). However, several documents in the Court's possession indicate that the land coordinates which were valid in accordance with the Real Estate Register were in fact those adopted in 2007 (see paragraphs 30, 31 and 44 above). It therefore appears that some of the evidence in the case was contradictory.

89. The Court reiterates that the rules on the admissibility of evidence and the way it should be assessed are primarily matters for regulation by national law and the national courts (ibid.). It is therefore not its role to determine which coordinates the domestic courts should have relied on.

90. Nonetheless, the importance of determining the exact boundaries of the applicant's plot was acknowledged by the Kaunas Regional Court (see

paragraph 37 above) and the Court shares that view. It cannot accept the Government's argument that the differences between the various coordinates had been insignificant (see paragraph 70 above), because their significance had not been properly addressed by the domestic courts. Therefore, in view of the importance of that question to the case and the existence of apparently contradictory evidence, the Court considers that it was especially important for the domestic courts to carefully examine the applicant's arguments and dispel any doubts regarding the accuracy of the data on which they relied (see *Bistrović v. Croatia*, no. 25774/05, § 37, 31 May 2007, and *Megadat.com SRL v. Moldova*, no. 21151/04, § 74, ECHR 2008).

91. In addition, the applicant was subjected to a lengthy period of uncertainty as to the lawfulness of his house. The prosecutor's claim was lodged in January 2010 and the final court decision was taken only in May 2018 – that is to say the court proceedings lasted more than eight years and the final decision was taken more than ten years after the house had been declared suitable for use (see paragraphs 11, 16 and 42 above). The Court acknowledges that the case was rather complex due to its technical nature. It is also aware of the fact that during certain periods the proceedings had to be suspended while other relevant proceedings were pending (see paragraph 27 above). At the same time, it is not persuaded that the domestic authorities acted with sufficient promptness and due diligence. It notes, in particular, that it took more than a year for the prosecutor to finally lodge a proper claim after several corrections (see paragraph 16 above), and that the case had to be remitted by the Supreme Court for a fresh examination because of the appellate court's failure to address all the relevant circumstances (see paragraph 33 above). By contrast, there is no indication that the applicant contributed to the protraction of the proceedings. Therefore, even taking all the aforementioned circumstances into account, the Court considers that the length of the proceedings could not be justified in view of what was at stake for the applicant.

92. Lastly, the Court will address the proportionality of the measures which the applicant was ordered to take by the domestic courts. He was not ordered to demolish the house but to obtain new planning documents and to restructure the house in accordance with them (see paragraph 24 above and contrast *Tumeliai*, cited above, § 79). According to the latest information available to the Court, he has not yet complied with those orders (see paragraph 48 above).

93. The Court takes note of the Government's submissions regarding the steps which the applicant should take in order to comply with the orders of the domestic courts (see paragraph 72 above). It does not consider the requirement to take such actions to be, in and of itself, disproportionate (see, *mutatis mutandis*, *Beinarovič and Others*, cited above, § 162, on the requirement for individuals to cooperate with the authorities). At the same time, the Court emphasises that the applicant had already obtained all the

relevant documents once and had built a house which, at the time, the authorities considered to have been lawfully built. Therefore, he was made to undergo an additional process through no fault of his own and it was essential that, during this additional process, due regard be taken of his particular situation (ibid., § 145).

94. In the domestic court proceedings, the only aspect of the house which was found to not be in compliance with the detailed plan was the location of the columns (see paragraphs 22, 23 and 39 above). The courts did not question the lawfulness of any other aspects of the house, such as the location of its other parts or the number of its storeys. The Court takes note of some of the decisions taken by the authorities following the conclusion of the domestic court proceedings, which seemed to imply that certain other aspects of the applicant's house, which had not been identified as problematic before, were not in line with the detailed plan (see paragraphs 47, 68 and 73 above). It considers that requesting the applicant to make any other changes to the house, unrelated to the impugned columns, would not be justified in the circumstances of the present case.

95. Moreover, it is apparent from the Government's submissions that, in order to comply with the domestic court decisions, the applicant is required to demolish the columns, as there is no possibility under the relevant legal instruments to legalise them in their current state (see paragraph 73 above). The Court is mindful that it is not its role to determine the best way for States to correct errors made by public authorities (see, *mutatis mutandis*, *Misiukonis and Others v. Lithuania*, no. 49426/09, § 63, 15 November 2016). However, it emphasises that the authorities gave the applicant permission to build those columns (see paragraph 8 above) and reiterates that the individual should not be made to bear the burden of correcting the authorities' mistakes (see *Beinarovič and Others*, cited above, § 140, and the cases cited therein). The Court takes note of the applicant's submission, which was not contested by the Government, that, under domestic law, he would not be able to claim any compensation if the columns had to be demolished (see paragraph 68 above). It considers that requiring the applicant to demolish the columns at his own expense, without dividing the costs between the authorities, who contributed to the situation (see *Tumeliai*, cited above, § 80), amounts to an individual and excessive burden.

96. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to strike a fair balance between the applicant's property rights and the general interest and that, as a result of their mistakes, the applicant has had to bear an individual and excessive burden.

97. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

(a) The applicant

99. The applicant asked the Court to oblige the respondent State to declare that his house was suitable for use in accordance with the existing detailed plan, blueprint and construction permit (see paragraphs 5 and 7 above), either in its current state or without the impugned columns.

100. In addition, he claimed 9,000 euros (EUR) in respect of pecuniary damage. He submitted that he had paid that amount to have the paved road removed (see paragraphs 25 and 48 above) but that he had not retained the supporting documents.

101. Lastly, he claimed EUR 1,000 in respect of non-pecuniary damage for the uncertainty and stress caused by the domestic decisions.

(b) The Government

102. The Government firstly submitted that the applicant's request that the Court oblige the State to declare his house suitable for use was not in line with the principle of subsidiarity, which was at the very core of the Convention system, and should therefore be dismissed.

103. They further submitted that the applicant had built the paved road on public land without having obtained the required permits and thus he should not be compensated for the cost of the demolition. In addition, his claim in respect of pecuniary damage was not substantiated by any supporting documents.

104. Lastly, the Government submitted that in the present case there were no grounds to award the applicant any compensation in respect of non-pecuniary damage.

2. The Court's assessment

105. The Court reiterates that within the scheme of the Convention it is intended to be subsidiary to the national systems safeguarding human rights (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008; *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 61, ECHR 2012; and *Sargsyan v. Azerbaijan* (just satisfaction) [GC],

no. 40167/06, §§ 29-32, 12 December 2017). It considers that it is the role of the domestic authorities to determine the most appropriate way of correcting their mistakes, in accordance with the Court's findings made in the present case (see paragraphs 93-95 above). It therefore dismisses the applicant's request to oblige the Lithuanian Government to declare his house suitable for use.

106. Furthermore, the Court points out that in the present case it found a violation of the applicant's rights in view of the decisions concerning the lawfulness of his house and that the complaints about the paved road fell outside the scope of the case (see paragraphs 74 and 75 above). Accordingly, it dismisses the applicant's claim in respect of pecuniary damage related to the demolition of that road.

107. Lastly, the Court considers that the violation of the applicant's rights found in the present case must have caused him distress and inconvenience. It grants the applicant's claim in respect of non-pecuniary damage in full and awards him EUR 1,000 under this head.

B. Costs and expenses

108. The applicant claimed EUR 16,943 in respect of costs and expenses incurred in the domestic proceedings before civil and administrative courts. He provided copies of his lawyer's bank statements showing that he had paid that amount to the lawyer.

109. The Government submitted that it was unclear from the documents provided by the applicant what legal services had been provided and whether they had been linked to the proceedings examined by the Court in the present case.

110. 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.

111. The Court observes that the domestic proceedings concerned not only the lawfulness of the applicant's house, but also the lawfulness of a fence and a paved road, which fell outside of the scope of the present case (see paragraphs 74 and 75 above). Therefore, it is unable to find that the entire amount of costs and expenses claimed by the applicant was incurred in an attempt to remedy the violation of his rights found in the present case.

112. Regard being had to the documents in its position and the above criteria, the Court considers it reasonable to award the sum of EUR 8,500 for costs and expenses incurred in the proceedings before the domestic courts.

C. Default interest

113. 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;

3. Holds

(a) that the respondent State is to pay the applicant, within three months, the following amounts:
   (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 8,500 (eight thousand five hundred 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;

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

Done in English, and notified in writing on 19 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Aleš Pejchal
Deputy Registrar	President