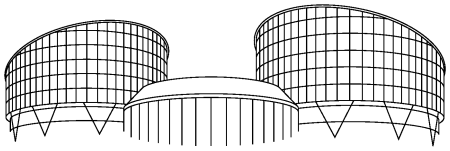

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TUMELIAI v. LITHUANIA

(Application no. 25545/14)

JUDGMENT

STRASBOURG

9 January 2018

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

In the case of Tumeliai v. Lithuania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Marko Bošnjak, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 5 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 25545/14) 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 two Lithuanian nationals, Mr Donatas Tumelis ("the first applicant"), and Mrs Renata Tumelienė ("the second applicant"), on 25 March 2014.

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

3. The applicants alleged, in particular, that the order issued by the domestic courts to demolish their building had interfered with their right to property.

4. On 31 August 2016 the complaints concerning respect for the principle of legal certainty, guaranteed by Article 6 § 1 of the Convention, and the right to peaceful enjoyment of possessions, guaranteed under Article 1 of Protocol No. 1 to the Convention, were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1968 and 1972 respectively and live in Vilnius.

6. On 28 May 2003 L.G. sold a plot of forest land measuring 0.4807 hectares to the applicants. The purchase agreement categorised the land as forest.

7. In February 2005 a registration certificate was issued for the plot of land. It categorised the land as forest and determined special conditions on use of the plot, namely, that restrictions applied to the use of the whole plot and that there were surface water protection zones.

8. On an unspecified date, the first applicant asked the Molėtai District Court to establish as a legal fact that there used to be some buildings on the 0.4807-hectare plot. On 22 September 2005 the Molėtai District Court established as a legal fact that there used to be some buildings (a cattle shed and a storehouse (*galvidė ir klojimas*) there. The court noted that the first applicant was the owner of a plot of forest land on which construction of new buildings was prohibited, unless it was a reconstruction of a former residential property. The court found that a former residential property had been situated outside the boundaries of the first applicant's plot but held that if the requested legal fact was established, he would be able to reconstruct the buildings previously sited there (*nustačius prašomą faktą, pareiškėjas įgis teisę atstatyti jo valdomame žemės sklype buvusius statinius*). A representative from the Utena District environmental protection department of the Ministry of the Environment (hereinafter "the Utena environmental protection department") had no objections to the establishment of the legal fact.

9. In November 2005 the first applicant asked the authorities to issue him with the relevant documents necessary for construction. The Utena environmental protection department stated that the construction of a building had to comply with the Law on Construction; the existing flora had to be preserved and the method of waste collection had to be decided on. The permanent committee on construction of the Molėtai Municipality verified the documents submitted by the first applicant and recommended that he be issued with a building permit.

10. On 22 November 2005 the Molėtai Municipality issued the first applicant with the documents necessary for construction, in accordance with the domestic regulations, in particular with Government Resolution no. 1608 (see paragraph 49 below). It was indicated that anyone intending to carry out construction work was required to preserve existing flora, and was

not allowed to block the shore of the lake or interfere with the existing landscape.

11. On 5 December 2005 the Molėtai Municipality issued the first applicant with a permit to build a summer house (non-residential building). The permit was valid for ten years.

12. In 2007 the plan of the building was specified (the facades were modified) and the amendments were verified by the Utena environmental protection department.

13. In March 2007 the Utena County Administration issued a certificate about the summer house as 97% finished and following that, on 2 April 2007 the house was registered in the Centre of Registers (*Registrų centras*) as 97% finished.

14. On 2 May 2011 the Ministry of the Environment received a report via a hotline for allegedly illegal construction work. On 10 May 2011 the authorities estimated the distance between the house and the lake at 27 metres, and between the terrace of the house and the lake at 24.5 metres.

15. On 5 August 2011 the prosecutor's office started court proceedings and asked the domestic courts to revoke the recommendation to grant the first applicant building permission; to annul the building permit and oblige the applicants to demolish the building at the expense of the established guilty parties, that is the applicants, the Molėtai Municipality, and the Utena environmental protection department. The prosecutor claimed that the building permit could not have been issued in accordance with the relevant provisions of domestic law (see paragraphs 39, 42, 43 and 49 below).

16. On 4 June 2012 the Molėtai District Court dismissed the prosecutor's complaint, holding that the legal facts had been established in September 2005 (see paragraph 8 above). It had not been until 2006 that the Supreme Court had held that the sole fact that the storehouses had been sited on a specific plot of land, without any proof that a residential building had been sited there, did not mean that there had previously been a residential property there (see paragraph 56 below). The District Court further held that in accordance with relevant legislation in force at the time, it was possible to construct new residential buildings in the place of former buildings, as well as to reconstruct existing residential buildings and construct necessary storehouses (see paragraph 49 below). Moreover, it had been established that any construction work in the forest could only be started after having received building permission and in accordance with the relevant plans. That legislation had been repealed after the Constitutional Court had declared that the domestic regulations were in breach of the laws and, by extension, of the Constitution (see paragraph 53 below). The court thus held that the case-law on construction in the forest had been established after the building permit had been issued to the first applicant. The court further held that the applicants had built the building lawfully, there was no evidence as to any negative consequences of the construction for the

environment or the public interest. The court also observed that in the applicants' case it would be unreasonable and unjust to apply the measure established in the Civil Code – to oblige the applicants to demolish the buildings (see paragraph 29 below). Moreover, the court was not convinced that the environment would be restored to its previous state if the buildings were demolished because the demolition would also cause some environmental damage.

17. The prosecutor appealed. On 4 December 2012 the Panevėžys Regional Court allowed the prosecutor's appeal. The court held that the Molėtai District Court had established as a legal fact that there used to be a cattle shed and a storehouse on the applicants' plot of land (see paragraph 8 above). A summer house could not be constructed as it did not fall within the category of buildings that could be constructed in the forest. Even the Molėtai District Court had emphasised that the construction of new buildings was prohibited on that plot. The building permit had obviously been issued to the first applicant unlawfully and, in the appellate court's view, the latter had asked the court to establish a legal fact for the sole purpose of constructing a house. The court also held that neither the Law on Forests nor the Law on Land provided for any exceptions, so the right to construct buildings on the plot of forest land had never existed. The court thus ordered the first applicant to demolish the buildings at the expense of the applicants, the Molėtai Municipality and the Utena environmental protection department. The Court did not explain how the costs of demolition had to be divided between the three parties.

18. The applicants, the Molėtai Municipality and the Utena environmental protection department lodged an appeal on points of law. The applicants claimed that the appellate court had breached the principle of *lex retro non agit* by assessing the documents, issued in 2005, in view of the ruling of the Constitutional Court of 2006. They also claimed that the appellate court had breached their legitimate expectations to execute their proprietary interests in accordance with the domestic regulation in force at the time.

19. On 27 September 2013 the Supreme Court held that relevant laws provided that the only buildings that could be constructed in the forest were timber storehouses and other buildings for forestry equipment. There were no provisions allowing construction of residential or commercial buildings in the forest. It was in certain cases possible to change the purpose of the land, but as the land in question was situated in a surface water protection zone, any such change was prohibited. The court held that although the applicants referred to the Regulation of Construction on Private Land (see paragraph 49 below, hereinafter the "Regulation"), none of the provisions of that Regulation could be interpreted as allowing construction of the buildings in question. There was no argument that the buildings in question had been constructed where farm buildings had previously been sited, thus

the provision of the Regulation allowing construction where residential buildings had previously been sited did not allow the applicants to construct a summer house. The court thus held that the construction had been illegal. As regards the removal of the consequences of illegal construction, the court held that it was crucial to assess the consequences of the illegal construction for the environment and the public interest, the consequences of the demolition of the buildings, the possibility of restoring the environment to its state before the illegal construction, and whether the persons who had acquired property rights had acted in good faith. In cases where the construction was in breach of the territorial planning documents and/or the imperative requirements of environmental protection, heritage protection and protection of protected areas, a decision to legalise the illegal construction could not be taken. The court thus had to assess whether the construction in question should have been carried out at the relevant time. It held that legalisation of the buildings in question was impossible and that demolition had to take place (see paragraphs 46 and 47 below). As to the applicants' argument that the appellate court had breached the principle of legitimate expectations, the court held that the construction in question had been prohibited by the relevant domestic legislation in force at the time. Even if the applicants had misinterpreted the provisions of the Regulation, the Constitutional Court had found the Regulation to be inconsistent with the law, and, by extension, with the Constitution on 14 March 2006, only three months after the building permit had been issued to the first applicant. The applicants should therefore have been able to understand the consequences of constructing illegally and to avoid them. Although the authorities were partly responsible for the illegal construction, that fact *per se* did not mean that all illegal construction had to be legalised in order to protect the legitimate expectations and proprietary interests of the owners. The legal regulation established the responsibility of the authorities for the unlawful issue of the construction permit. As a result, the court upheld the decision of the Panevėžys Regional Court (see paragraph 17 above).

20. On an unspecified date the bailiff asked the Molėtai District Court to explain the order to enforce the Panevėžys Regional Court's decision. On 12 February 2014 the Molėtai District Court dismissed the bailiff's request because she had failed to provide specific details as to what required clarification.

21. It appears that the applicants asked the bailiff to suspend the execution of the judgment and that their request was refused.

22. On an unspecified date the applicants applied to the Utena District Court to overrule the bailiff's refusal to suspend the execution of the judgment and to suspend it until the case had been examined at the European Court of Human Rights. On 23 December 2015 the Utena District Court held that domestic law did not oblige the bailiff to suspend the execution of judgments if the applicants had lodged an application with the

European Court of Human Rights. However, the Code of Civil Procedure provided that there would be grounds for reopening the proceedings if the European Court of Human Rights found that a domestic court decision had breached an applicant's rights under the Convention or one of its Protocols (see paragraph 32 below). The court held that if the national court's order to demolish the building was executed, the possibility of reopening the proceedings after a positive outcome for the applicants in the European Court of Human Rights would become complicated. On the other hand, if the European Court of Human Rights adopted a different decision, the demolition of the buildings would still be possible. The court observed that the applicants' building did not infringe the rights of third persons as it was sited on a plot of forest land that belonged to the applicants. As a result, the Utena District Court suspended the execution of the judgment pending a decision by the European Court of Human Rights.

23. The State Territorial Planning and Construction Inspectorate lodged a separate complaint, but on 15 March 2016 the Panevėžys Regional Court upheld the first-instance decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

24. Article 23 reads:

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

25. Article 47 reads:

> "The underground, internal waters, forests, parks, roads, historical, archaeological and cultural objects of State importance shall belong by the right of exclusive ownership to the Republic of Lithuania.
>
> ..."

26. Article 54 reads:

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

27. Article 107 reads:

> "A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act (or part thereof) of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official

publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

..."

B. Civil Code

28. Article 1.6 establishes the presumption of knowledge of the law and provides that ignorance or insufficient understanding of laws does not absolve anyone of application of sanctions and does not justify the failure to comply with requirements of the law or inadequate compliance with them. This was confirmed by the Supreme Court (for example, decisions of 16 October 2006 (no. 3K-3-558/2006); 30 March 2007 (no. 3K-3-126/2007) (see also paragraph 57 below).

29. Article 4.103 § 1 provides that if a building (or its part) is or has been constructed arbitrarily, or not arbitrarily but in breach of the building plans or legal requirements, the person that constructed the buildings cannot use such building himself or sell it, gift it, rent it, and so on.

30. Article 6.271 § 1 provides that damage caused by unlawful acts of institutions of public authority must be compensated by the State from the means of the State budget, irrespective of the fault of a concrete public servant or other employee of public authority institutions. Damage caused by unlawful actions of municipal authority institutions must be redressed by the municipality from its own budget, irrespective of its employee's fault.

C. Code of Civil Procedure

31. In accordance with Article 49, prosecutors can bring a claim in order to protect the public interest in cases established by law.

32. Article 366 § 1 (1) provides that a civil case may be reopened if the European Court of Human Rights finds that a domestic court decision has breached an applicant's rights under the Convention or one of its Protocols.

33. Article 445 provides that the court establishes legal facts only if the applicant cannot acquire the documents proving those facts in any other way or if the documents have been destroyed and cannot be recovered.

34. Article 589 § 1 provides that if the order to enforce a judgment is not clear, a bailiff may ask the court that adopted the judgment to clarify it.

D. Law on Forests

35. Article 2 § 3 defined "forest land" as a plot of land covered by trees or not covered by trees (cleared spaces, fallen trees, forest fields, arboretums, seed-plots, forest seed plantations, bushes and plantations). Forest roads, areas, technological and fire-resistant borders, timber

storehouses and other equipment related to forestry, leisure areas, animal-feeding areas and land designated for the planting of trees was also classified as forest land.

36. Article 2 § 1 (16) defined "forestry" as an activity covering the restoration of forests, the maintenance and protection of forests, rational use of forest resources and sale of timber and forest resources.

37. Article 11 § 1 provided that forest land could be converted into land for other purposes only in exceptional cases in compliance with an order issued by the Government, striking a fair balance between the interests of the State, the owner of the forest and society.

38. As from 1 January 2013, Article 11 § 1 (7) provided that forest land could be converted into other land for the purpose of reconstructing previous residential property in accordance with an order issued by the Government. The right to reconstruct a residential property, the existence of which was determined by archive documents or, in the event that such documents were unavailable – by establishing a legal fact, was only granted to former owners of the residential property or their first, second and third-generation heirs, inheriting by law.

E. Law on Land

39. At the material time, Article 24 § 2 provided that owners of land could only use their land for purposes other than those established at the time of acquiring property rights if the district authority agreed to change the main purpose of the land. The Lithuanian Land Fund included plots of land, plots of forest land, areas of water, plots of land designated for conservation purposes and land designated for other purposes.

40. Article 26 § 1 used the same definition of "forest land" as that provided in Article 2 § 3 of the Law on Forests (see paragraph 35 above).

41. At the material time, Article 29 § 1 (4) provided that land on which commercial objects had been sited were considered plots of land for other purposes.

F. Law on Protected Areas

42. Article 20 § 3 (4) proscribed any change in the existing building line in surface water protection zones when buildings were reconstructed or built on the site of existing and former residential properties (when there were remains of former buildings or when the residential properties were marked on the plans of an area, also when establishing a legal fact), except for cases determined in area planning documents.

43. Article 31 § 8 proscribed any change in the main use of conservation and forest land in protected areas, except if it was done in the public interest or in order to preserve objects of cultural heritage.

G. Law on Construction

44. Article 23 § 5 (2) provided that building permission was granted by the director of the relevant municipal authority or an authorised employee of the municipal authority.

45. Article 23 § 29 provided that building permission could be revoked by a court if it had been granted unlawfully or if a person who had been granted building permission no longer satisfied the relevant requirements.

46. Article 28^1 § 3 provided that the court, deciding on whether or not the person who had constructed the building or another person had to demolish the building, had to take into account the consequences for the environment and the public interests of any construction carried out on the basis of an illegally issued permit; the consequences of removing such buildings and the possibilities of restoring the forest to its previous state, as well as whether the persons who had acquired the property rights had acted in good faith and in accordance with the relevant regulations.

47. As from 2 July 2010, Article 28^1 § 2 provided that if the court decided that building permission had to be revoked, it could apply one of the following measures: (1) order the person who constructed the building or a third person, within the time-limit set by the court and at the expense of the guilty parties established by the court, to demolish the building and to tidy the construction site; (2) order the person who constructed the building or a third person, within the time-limit set by the court and at the expense of the guilty parties established by the court, to take down the reconstructed parts of the building or to return to its previous state the building of cultural heritage (or part thereof) or a building (or part thereof), the demolition of which had not been in the public interest; (3) allow the land owner, within a certain time-limit, in accordance with new documents and after new building permission had been received, to reconstruct the building or part thereof if such reconstruction was possible with valid area planning documents or general or special area planning documents, and if such reconstruction was in accordance with the requirements of the environmental, heritage and protected-areas regulations. If those actions had not been performed within the time-limit set by the court, the requirements set out in subparagraphs (1) and (2) of the Article had to be met; (4) oblige the relevant authorities, within the time-limit set by the court at the request of the person who constructed the building or a third person, in accordance with the newly obtained documents, if such reconstruction was possible with valid area planning documents, or with general or special-area

planning documents and in accordance with the requirements of the environmental, heritage and protected-areas regulations, issue a new building permit, but only in cases where the initial building permission had been granted illegally owing to the procedures followed by the authorities.

H. Other legal acts

48. Article 72 § 1 of the Law on the Constitutional Court provides that the application of a law (or part thereof) of the Republic of Lithuania or another legal act (or part thereof) of the Seimas, a decree of the President of the Republic, or a Government decree (or part thereof) may be terminated as from the date on which the Constitutional Court officially publishes its ruling that the legal instrument in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania. The same consequences arise when the Constitutional Court rules that a decree of the President of the Republic or a Government decree (or part thereof) is in conflict with the law. Article 72 § 2 provides that rulings issued by the Constitutional Court are binding on all State institutions, the courts, all enterprises, establishments and organisations, as well as on officials and citizens. Article 72 § 3 provides that all State institutions, as well as their officials, must revoke the statutory instruments or provisions thereof which they have adopted and which are based on a legal act which has been ruled to be unconstitutional. Article 72 § 4 provides that decisions based on legal acts which have been ruled to be in conflict with the Constitution or the law must not be executed after the entry into force of the relevant ruling of the Constitutional Court.

49. On 22 December 1995, the Government approved Resolution no. 1608 on the Regulation of Construction on Private Land (*Dėl statybų privačioje žemėje reglamento patvirtinimo*) ("the Regulation"). The Regulation allowed the construction of new buildings (where buildings had previously been sited), the reconstruction of existing residential buildings and the construction of storehouses on plots of land and forest land (Point 3). It also provided for construction on forest land by the owners of the forest in accordance with detailed plans and if such construction was necessary for the purpose of forestry (Point 2).

50. On 12 May 1992, the Government approved Resolution no. 343 on Special Conditions for the Use of Land and Forest (*Dėl specialiųjų žemės ir miško naudojimo sąlygų patvirtinimo*), which at the material time proscribed the construction of new residential buildings, summer houses, storehouses and other buildings outside the boundaries of cities, towns and villages closer than 100 metres to the edge of a lake or closer than 50 metres to a slope. In cases of existing residential properties, new residential buildings and interrelated buildings could be constructed or reconstructed, if

the building plans included measures to avoid any negative impact on the environment and were approved by the Ministry of the Environment (Point 127.9.1.).

I. Case-law

51. On 13 December 2004 the Constitutional Court held:

> "It should be stressed that there may be factual situations where a person who meets the conditions set out in legal acts has acquired particular rights under the said legal acts and, therefore, gained expectations. The person could consider those expectations to be reasonably legitimate during the period of validity of the relevant legal acts. Therefore, he or she could reasonably expect that if he or she obeys the law and fulfils the requirements of the law, his or her expectations would be deemed legitimate by the State and would be defended and protected. Even legal acts which, on the basis of and in accordance with the procedure established in the Constitution and the law, are later ruled to be in conflict with the Constitution (statutory instruments in conflict with the Constitution and/or the law), may give rise to such expectations. It is worth noting in this context that there may also be factual situations where a person has already fulfilled his or her rights and obligations arising from the legal act which was later ruled to be in conflict with the Constitution (statutory instruments in conflict with the Constitution and/or the law) in respect of other persons and where, as a result, those other persons subsequently gained particular expectations. In such cases, those other persons could reasonably also expect the State to defend and protect their expectations.
>
> ...
>
> When deciding whether the rights acquired by a person during the period of the validity of a legal act which was later ruled to be in conflict with the Constitution (statutory instruments in conflict with the Constitution and/or the law) should be protected and defended (and if so, to what extent), in each case it is necessary to ascertain whether, if such acquired rights were not protected and defended, other values protected by the Constitution would be violated, and whether the balance between the values entrenched in and protected and defended by the Constitution would be disturbed. In cases where legal acts are ruled to be in conflict with the Constitution (statutory instruments in conflict with the Constitution and/or the law) and where, as a result, certain persons who have obeyed the law and respected the State and its laws before the said ruling, could suffer negative consequences, the legislature has the constitutional duty to evaluate all the related circumstances and, if necessary, to put in place the necessary legal regulations. This would provide an opportunity, in the aforementioned extraordinary cases, to fully or partially protect and defend the acquired rights of such persons, so that the principle of justice enshrined in the Constitution would not be deviated from."

52. On 13 May 2005 the Constitutional Court held that the natural environment, flora and fauna, individual natural objects as well as areas of significant value were of national importance; their protection and the safeguarding of rational use, and development of natural resources was in the public interest and had to be guaranteed by the State, as set out under the Constitution. Every owner or user of a plot of land, forest land or lake had

to respect the constitutional imperative of protecting the natural environment.

53. In a ruling of 14 March 2006, which came into force on 16 March 2006, the Constitutional Court held that the provision of the Regulation stating that construction on forest land was possible if the buildings were necessary for the purpose of forestry, in the sense that it allowed the construction not only of timber storehouses but also of other buildings, was contrary to the Law on Forests and the Law on Land (and, by extension, to the Constitution). The Constitutional Court held that the Regulation contained a broader definition of what construction was possible on forest land than the Law on Forests and the Law on Land. The Government were therefore under an obligation to amend and supplement their previously adopted regulations in order to make them consistent with the subsequent legislation containing a narrower definition of buildings that could be constructed on forest land, or to annul the regulations if their provisions were in breach of the law.

54. On 30 October 2008 the Constitutional Court held that, under the Constitution, individuals were under an obligation not to breach the rights of property owners and the State was obliged to defend and protect property against unlawful actions in respect of it. Property could be seized only on a legal basis. Only if a person had taken possession in the belief that no one else had more rights to it than he had, could he be considered to have acquired the property in good faith.

55. On 31 January 2011 the Constitutional Court held that various measures could be taken to eliminate the consequences of unlawful construction in order to protect the public interest established in the Constitution, that is the protection of the natural environment, individual natural objects, protected and valuable areas, and the proper and rational use of land, forests and lakes. The measures could be, *inter alia*, an obligation to demolish or properly reconstruct the impugned building. Implementation of such measures had to comply with the principle of proportionality. In the case examined by the Constitutional Court, it held that the public interest in preserving the natural environment could be ensured by limiting construction on forest land.

56. The Supreme Court interpreted the Law on Protected Areas as allowing the reconstruction of former residential property only when it had been held that there had previously been a residential building on the applicant's plot of land. The mere existence of storehouses was not enough to establish as a legal fact that there had been a residential property on the applicant's plot (decisions of 11 December 2006, no. 3K-3-656/2006; 5 January 2007, no. 3K-3-373/2007; 19 September 2008, no. 3K-3-419/2008).

57. The Supreme Court has held that laws are public and every responsible person can find out about his or her rights and obligations.

Ignorance of laws and failure to show interest in one's rights and obligations is unreasonable, and such person cannot justify him or herself that he or she does not know the law (for example, decisions of 22 October 2007 (no. 3K-3-384/2007); 14 March 2013 (no. 3K-3-146/2013); 19 March 2013 (no. 3K-3-174/2013) (see also paragraph 28 above).

THE LAW

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

58. The applicants complained that they had been deprived of their right to peaceful enjoyment of their possessions when they had been ordered to demolish a summer house. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

59. The Government submitted that the applicants had failed to exhaust domestic remedies by not initiating separate judicial proceedings against the State under Article 6.271 of the Civil Code to claim compensation for pecuniary and/or non-pecuniary damage. The Government found it of utmost importance that the Supreme Court had noted that the law provided for a mechanism of compensation for damage sustained by persons who had constructed a building (see paragraphs 19 and 30 above). It was the Government's view that the applicants had been urged *expressis verbis* to apply to the national courts and to claim compensation.

60. The applicants claimed that they had exhausted all possible effective domestic remedies and that an obligation to exhaust an additional remedy would have placed an excessive burden on them. Moreover, the house had not yet been demolished and it would therefore be unrealistic to submit a claim for damages.

61. The Court notes that the applicants submitted an appeal on points of law, thereby completing the procedure open to them under domestic law (see paragraph 18 above). It is not persuaded by the Government's argument that the applicants should have started new court proceedings for damages, which, in the Court's view, would only have delayed the outcome of the main proceedings without necessarily bringing any tangible result (see *Paukštis v. Lithuania*, no. 17467/07, § 56, 24 November 2015, *Kavaliauskas and Others v. Lithuania*, no. 51752/10, § 46, 14 March 2017, *Valančienė v. Lithuania*, no. 2657/10, § 49, 18 April 2017).

62. Accordingly, the Court dismisses the Government's objection that the applicants failed to exhaust domestic remedies.

2. Incompatibility ratione materiae

63. The Government submitted that the applicants had no "possessions" within the meaning of Article 1 of Protocol No. 1. Nor could they have had a legitimate expectation that they would be able to construct a summer house on a plot of forest land. They referred to the case-law of the Constitutional Court where it had been held that property acquired unlawfully did not become the property of the acquirer (see paragraph 54 above).

64. The applicants stated that they had obtained the necessary permits from the authorities and had a legitimate expectation that their house, which had been built in accordance with the requirements in force at the material time, would not be taken away or demolished.

65. The Court observes that the applicants bought the plot of forest land in 2003, obtained building permission in 2005, the house was registered at the Centre of Registers in 2007 as 97% finished and the proceedings concerning illegal construction were instituted in 2011 (see paragraphs 6, 9-11 and 13 above). It further observes that under domestic law, illegally constructed buildings could be the subject of the right to property (see paragraph 47 above) and that the applicants were the owners of both the plot and the summer house built on it. Since the Constitutional Court has held that if a person had acquired certain rights in accordance with a legal act which had later been ruled to be unconstitutional, he or she could reasonably expect that the State would deem his or her expectations to be legitimate and that those expectations would be protected (see paragraph 51 above), the Court finds that at least from 2005, the applicants had a "possession" and that Article 1 of Protocol No. 1 is applicable. The Government's objection as to the complaint being inadmissible *ratione materiae* must therefore be dismissed.

3. Conclusion

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

B. Merits

1. The parties' submissions

67. The applicants claimed that the forest plot purchase agreement indicated no special conditions for the use of the land. Moreover, the registration document issued by the Centre of Registers indicated no special requirements as to the use of the land. As the applicants had received the building permission from the authorities, it had not been manifestly unreasonable for them to believe that the construction would be lawful and in line with the requirements of domestic law. The applicants referred to a decision of the Molėtai District Court, by which it had established as a legal fact that there used to be some buildings on the applicants' land, which constituted grounds to issue a building permit (see paragraph 8 above).

68. The applicants further complained that the most extreme measure had been imposed on them, that is the requirement to demolish the building, and no alternative measure had been sought.

69. The Government stated that the applicants could not have expected to build a house on forest land and that the administrative acts of the relevant authorities by which building permission had been granted to the applicants had been found unlawful by the domestic courts. The building permission had thus had to be revoked and the house demolished, and that decision was in accordance with the law. The Government stated that the decision of the Molėtai District Court (see paragraph 8 above) had not allowed the applicants to construct a house but had merely indicated that a cattle shed and a storehouse had previously been sited on their land and indicated that the applicants were the owners of the plot of forest land, where the construction of new buildings was prohibited.

70. The Government also argued that the authorities had to ensure, in the general interest, protection of the forest, which was one of the "national values", from illegal construction.

71. Lastly, the Government maintained that regional planning and environmental protection policies, where the community's general interests were pre-eminent, conferred on the State a wider margin of discretion than where exclusively civil rights were at stake. The applicants had been or should have been aware of limitations on construction on forest land. It was the Government's view that the applicants should have suspected that the

building permission had been "precarious", but they nevertheless chose to make use of it. Although the Supreme Court had considered legalising the construction, it had finally decided that it was not possible to do so and that the order to demolish the house was justifiable. The Government conceded that the applicants had sustained some inconvenience but submitted that it did not amount to an excessive burden, as the house at issue was not the only family house, the applicants had used it for only four summers (from 2007 until 2011 when the prosecutor lodged a claim with the court) and that they still could use the plot of forest land.

2. The Court's assessment

(a) General principles

72. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not distinct in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property. They should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, *Fábián v. Hungary* [GC], no. 78117/13, § 60, 5 September 2017, and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 217, ECHR 2015). They must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, *Béláné Nagy v. Hungary* [GC], no. 53080/13, §§ 112-113 and 115, ECHR 2016). The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII). Environmental conservation, which in today's society is an increasingly important consideration (see *Depalle v. France* [GC], no. 34044/02, § 81, ECHR 2010), has become a cause the defence of which arouses the constant and sustained interest of the public, and consequently the public authorities. The Court has stressed this point a number of times with regard to the protection of the countryside and forests (see *Turgut and Others v. Turkey*, no. 1411/03, § 90, 8 July 2008; *Köktepe v. Turkey*, no. 35785/03, § 87, 22 July 2008; and *Şatır v. Turkey*, no. 36192/03, § 33, 10 March 2009). In such complex and difficult area, the States should enjoy a wide margin of appreciation in order to implement their forest-protection policies. Nevertheless, the Court cannot fail to exercise its power of review and must

determine whether the requisite balance was maintained in a manner consonant with the applicants' right of property (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 109, 25 October 2012).

(b) Application to the present case

73. The Court is of the opinion that the intended demolition of the house will in turn amount to an interference with the applicants' possessions and, being meant to ensure compliance with the general rules concerning the prohibitions on construction, this interference amounts to a control of the use of property (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 69, 21 April 2016). It therefore falls to be examined under the second paragraph of Article 1 of Protocol No. 1.

74. The demolition order had a legal basis in domestic law (see paragraphs 45-47 above) and it was upheld, following fully adversarial proceedings, at two levels of jurisdiction (see paragraphs 17 and 19 above). Nothing shows that the provisions of domestic law were interpreted or applied by the domestic courts in an arbitrary manner. The interference was therefore lawful for the purposes of Article 1 of Protocol No. 1 to the Convention.

75. The Court also accepts that the interference pursued a legitimate aim that was in the general interest: to protect the environment, namely the forests, the importance of which has been clearly established (see paragraphs 25, 26, 43, 49, 52 and 55 above).

76. It therefore remains to be determined whether, having regard to the applicants' interest in keeping the house, the order to demolish it is a means proportionate to the aim pursued.

77. The Court notes that the domestic courts found that the applicants' building had been erected in breach of the requirements of domestic construction regulations (see paragraphs 17 and 19 above). In the Court's opinion, the effect of ordering the demolition of an illegal construction was to return the land to the state it would have been in, had the requirements of the law not been disregarded. In that connection, the Court reiterates that the principles of good governance should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence; however, the risk arising from any mistake made by a State authority must be borne by the State itself, and errors must not be remedied at the expense of the individuals concerned (see *Romankevič v. Lithuania*, no. 25747/07, §§ 38-39, 2 December 2014, and *Albergas and Arlauskas v. Lithuania*, no. 17978/05, § 59, 27 May 2014).

78. In the present case, the public authorities granted the applicants building permission in 2005, with the approval of the Molėtai Municipality (see paragraph 11 above). The Court does not share the Government's argument that the applicants should have suspected that the building

permission had been "precarious". The relevant procedures were conducted by official bodies exercising the authority of the State. The authorities that issued the applicants with the building permission and the authorities that registered the building did not refer to the ruling of the Constitutional Court where it held that the construction on forest land of buildings not related to forestry had not been allowed. The authorities did not take any action to annul the building permit. To the contrary, the applicants' summer house was registered as 97% finished in 2007 (see paragraph 13 above), more than a year after the Constitutional Court's ruling had been adopted (see paragraph 53 above). There are no indications in the file that the applicants somehow contributed to the adoption of the unlawful decisions. Although the Panevėžys Regional Court held that the first applicant had asked the Molėtai District Court to determine as a legal fact that some buildings had previously been sited on his plot of land solely because he wanted the authorities to grant building permission, that conclusion was not confirmed by the Supreme Court (see paragraph 19 above). The Court thus cannot see that the house was knowingly built in flagrant breach by the applicants of the domestic building regulations (compare and contrast *Ivanova and Cherkezov*, cited above, § 75, and *Saliba v. Malta*, no. 4251/02, § 46, 8 November 2005) and considers that because the authorities had confirmed that the house could be constructed, the applicants did not have sufficient reasons to doubt the validity of such a decision and were entitled to rely on the expectation that it would not be retrospectively declared invalid to their detriment (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, §§ 79-80, 6 December 2011; *Tunaitis v. Lithuania*, no. 42927/08, § 39, 24 November 2015; and *Misiukonis and Others v. Lithuania*, no. 49426/09, §§ 59-60, 15 November 2016).

79. The Court further observes that the Constitutional Court has confirmed in 2004 that expectations, arising from legal acts that had later been declared unconstitutional, which could be considered by this person to be reasonably legitimate during the period of validity of the said legal acts, could be defended and protected (see paragraph 51 above). Even if the building permission, issued by the authorities, had to be annulled by the authorities as a result of the fact that the Regulation was subsequently declared contrary to the laws and the Constitution, the Court considers that the applicants had legitimate expectations that they would not be ordered to demolish their summer house, the construction of which was started in accordance with the required building permission issued by the authorities, at their sole or partial expense. Even if the presumption of knowledge of the law, as interpreted and applied in domestic case-law, puts an obligation on the applicants to act in accordance with the law (see paragraphs 28 and 57 above), it does not in any way absolve the authorities of their obligation of bringing their legal acts in line with the requirements of law and of acting diligently and in due time. The Court reiterates that the authorities took no

actions to annul the building permission after the ruling of the Constitutional Court of 2006 came into force. Moreover, the proceedings for demolition were not started until 2011 and the order that the house be demolished was issued in 2013 (see paragraphs 15 and 19 above). Enforcement of that order has been suspended but it is clear not only that the applicants have had their "possession" for quite a long period of time (see also paragraph 65 above) but also that that the demolition would amount to a radical interference with it.

80. The Court notes that the authorities did not consider minimising the burden the decision to demolish the buildings imposed on the applicants. The domestic courts did not explain how the costs of demolition had to be divided between the applicants, the Molėtai Municipality and the Utena environmental protection department (see paragraph 17 above). The domestic court rejected the bailiff's request to explain the order to enforce the Panevėžys Regional Court's decision to demolish the buildings (see paragraph 20 above). When examining the case, the domestic courts did not look into the degree of responsibility of the applicants as opposed to that of several public authorities, including the Centre of Registers which registered the summer house as 97 % finished, and this registration was not challenged for four years by any authority (see paragraphs 13 and 15 above). The Court thus considers that the actions of public authorities significantly contributed to the applicants' situation and that the applicants had to bear the same, if not stricter burden as the authorities.

81. The foregoing considerations are sufficient to enable the Court to conclude that the measure complained of was disproportionate to the legitimate aim pursued.

82. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

83. The applicants further claimed that the principle of legal certainty has not been respected with regard to the order of the domestic courts to demolish their house. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

84. The Government claimed that there has never been any uncertainty in the domestic law as to the possibility to build houses on forest land, i. e. no construction of new houses was possible. The applicants could not expect to have their unlawful constructions legalised.

85. Having regard to its above finding that the order to demolish the applicants' house has breached Article 1 of Protocol No. 1 to the

Convention, the Court considers that while the instant complaint is also admissible, there is no cause for a separate examination of the same facts under the standpoint of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicants claimed 255,572 euros (EUR) in respect of pecuniary damage, covering EUR 150,000 for the construction of the house and EUR 105,572 for additional construction works and equipment for the house, and EUR 10,000 in respect of non-pecuniary damage.

88. The Government submitted that the applicants had failed to present relevant supporting documents proving that they had actually paid the sums they had requested in respect of pecuniary damage. They also submitted that the applicants' house had not yet been demolished. The applicants had undoubtedly paid only the sum of EUR 439, which consisted of registration fees for the house and some of the payments for the contractor.

89. The Government further submitted that the amount requested by the applicants in respect of non-pecuniary damage was excessive, unreasoned and unsubstantiated.

2. The Court's assessment

90. The Court notes that the applicants' building has not yet been demolished and observes that the domestic courts suspended the execution of the decision ordering the demolition of the building until the case had been examined by the Court. The Court thus considers that the applicants have not established that they have actually sustained any pecuniary damage. It therefore rejects the applicants' claim in this respect.

91. As to non-pecuniary damage, the Court considers that the applicants have undoubtedly suffered distress and frustration resulting from the violation of Article 1 of Protocol No. 1 to the Convention. However, it finds the amount claimed by them excessive. Making its assessment on an equitable basis, the Court awards the applicants EUR 2,000 jointly in respect of non-pecuniary damage.

B. Costs and expenses

92. The applicants also claimed EUR 1,070 for the costs and expenses incurred before the domestic courts and EUR 1,000 for those incurred before the Court.

93. The Government submitted that the applicants had not provided any documented agreement in respect of the provision of legal services or proof that the amounts had actually been paid.

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 them jointly the sum of EUR 1,000 covering costs under all heads.

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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that no separate issue arises under Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicants jointly, 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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, 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;

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

Done in English, and notified in writing on 9 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President