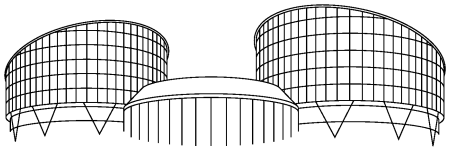

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BARTULIENĖ v. LITHUANIA

(Application no. 67544/13)

JUDGMENT

STRASBOURG

24 April 2018

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

In the case of Bartulienė v. Lithuania,

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

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 10 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 67544/13) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Zuzana Agota Bartulienė ("the applicant"), on 10 October 2013.

2. The applicant, who had been granted legal aid, was represented by Mr A. Danielius, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. On 24 June 2016 the applicant's complaints under Article 1 of Protocol No. 1 to the Convention regarding her property rights to 2.55 hectares of land not being restored and the overall length of the restitution proceedings 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

4. The applicant was born in 1938 and lives in Kaunas.

A. Background of the case

5. In October 1991 the applicant asked the authorities to establish that her father had had 7.06 hectares of land in Kaunas Region before nationalisation. The applicant indicated that she and her sister were their father's heirs. It was indicated in her request that she and her sister would

accept land in another location. A document proving that their father had owned 6.79 hectares of land was also attached to the request.

6. It appears that the applicant and her sister agreed that the applicant had a right to have her property rights to 3.40 hectares of their father's land restored.

7. On 3 March 1993 the authorities issued a document containing a decision to return 0.66 hectares to the applicant *in natura* and to return the remaining 2.74 hectares to her by paying compensation.

8. On 16 March 1993 the Ministry of Agriculture repeated the authorities' decision of 3 March 1993 (see paragraph 7 above).

9. In December 1993 and April 1994 the authorities decided to give the applicant eleven plots, each measuring 0.06 hectares.

10. In February 2003 the Kaunas Land Reform Division informed the applicant that she could, before 1 April 2003, declare or change her intentions regarding the method by which her property rights would be restored. She was informed that property rights to land that had been an urban area were to be restored by: giving plots of land to the citizens who had buildings on those plots – the maximum plot size was limited to a 0.2 hectares; giving plots of land in cities and rural areas where a citizen did not have land, except for the cities of Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Alytus, Marijampolė, Druskininkai, Palanga, Birštonas and Neringa; legally voiding a citizen's liabilities to the State; and paying compensation in securities.

11. In March 2003 the applicant asked the authorities to pay her monetary compensation "in a convertible currency at world market prices" (*konvertuojama valiuta pasaulinėmis kainomis*) for the remaining 2.74 hectares of land.

12. In January 2007 the applicant asked the authorities to pay her monetary compensation for the remaining 2.74 hectares of land or return a part of the land *in natura*. The applicant specified that monetary compensation should be paid in a "convertible currency at market prices".

13. In September 2007 the authorities informed the applicant that they had addressed the Kaunas municipality regarding vacant plots of land in the area where her father had had the land, and had been told that the restitution process had to be carried out in accordance with the detailed plan for restitution approved in 1991.

14. In July 2008 the applicant complained to the authorities that her previous requests (see paragraphs 11 and 12 above) had gone missing.

15. In November 2008 the applicant asked the authorities not to give her any land burdened by any kind of easement.

16. In August 2009 the applicant wrote a letter to the authorities and stated that, in accordance with the Constitution, not only did she have a right to receive fair compensation for the land, but a vacant plot of land situated in the same area where her father's land had been had to be returned to her. She stated that she had to be paid compensation at market prices and

in accordance with the land value map for 2009. She also wrote that if the land returned to her was burdened by any kind of easement, the authorities would have to pay her compensation at full market value for her inability to use it. It appears from the Kaunas Regional Administrative Court's decision that the authorities indicated in August 2009 that compensation at market prices was not possible (see paragraph 33 below). The value of 2.5469 hectares of land was assessed at 20,167 Lithuanian litai (LTL – approximately 5,841 euros (EUR)) if the applicant preferred to acquire land in another area, and at LTL 32,267 (approximately EUR 9,345) if the applicant preferred compensation in securities (see paragraph 36 below).

17. On 21 October 2009 the Kaunas County Administration changed the decision of 16 March 1993 on the restoration of the applicant's property rights (see paragraph 8 above) and decided that her property rights to the remaining 2.74 hectares of land would be restored at a later date. By that order, the applicant's property rights were restored by giving her two plots of land measuring 0.0807 hectares and 0.1124 hectares respectively.

18. It appears from the courts' decisions that in June 2010 the authorities asked the applicant to make a decision regarding the method of restitution in respect of the remaining plot of land (see paragraphs 35 and 36 below).

19. In June 2010 the applicant asked the authorities to pay her monetary compensation for the remaining 2.5469 hectares of land, plus 15% interest because she was the daughter of a military volunteer.

20. In September 2010 the applicant asked the authorities to remove all the underground telecommunications cables that were situated on one of the plots of land that had been returned to her.

21. On 4 October 2010 the authorities informed the applicant that the remaining plot of land of 2.5469 hectares was State redeemable, and she could be compensated for it by receiving securities or by a new plot of land of equal value in a rural area being transferred to her. The applicant was asked to inform the authorities about her decision before 18 October 2010. Should she fail to make a decision, the compensation would be paid in securities.

22. On 13 October 2010 the applicant repeated her request to be paid monetary compensation plus 15% interest. Her letter also contained some other requests regarding increasing the size of one plot, transferring a pond (*kūdra*) to her, and paying her compensation at market prices for another plot of land.

23. The authorities replied in November 2010 that, when deciding on issues of restitution, they were obliged to follow the requirements of domestic law. The applicant was asked to come to the Kaunas City Land Reform Division on 6 December 2010 to deal with the issue of restoring her rights to the remaining part of her father's land.

24. In December 2010 the Kaunas City Land Reform Division asked the Kaunas Municipal Administration to prepare a plan of vacant land in the

area where the applicant's father's land had previously been situated. The same month, the Kaunas Municipal Administration replied that it was not possible to prepare additional plans of vacant land, because the schemes relating to vacant plots of land had already been approved, and a similar request submitted by the applicant's son had already been examined.

25. In November 2014 the authorities informed the applicant that as of 1 November 2014, Article 21 § 4 of the Law on Restitution provided that a citizen who had already asked for his or her property rights to a plot of land to be restored could, by 1 March 2015, express or change his or her wish regarding the form in which the ownership rights to the real property were to be restored, and choose a plot of forest of equal value, provided that a final decision on restitution had not been taken or, if taken, had not yet been executed or had been executed in part.

B. Administrative proceedings regarding the applicant's alleged inability to use the plot of land

26. The applicant started court proceedings, demanding compensation in respect of pecuniary damage from the Kaunas municipality. She alleged that the plot of land of 0.1124 hectares which had been returned to her (see paragraph 17 above) had electricity and gas equipment installed on it (see paragraph 20 above), and that she was prevented from using it. The applicant also asked the court to oblige the authorities to remove the underground telecommunications cables installed on her plot within two months of the court decision becoming final.

27. On 22 June 2012 the Kaunas Regional Administrative Court held that the applicant had not complained about the decision of the authorities of 21 October 2009 by which her property rights to the specific plots of land had been restored (see paragraph 17 above). Moreover, the applicant had claimed that she was not able to use the land, more specifically, to construct buildings on it, but she needed to have a detailed plan of the land prepared in order to start any construction on the land, which she had not done. The court further held that the applicant's request that the authorities be obliged to remove the underground telecommunications cables was unfounded, because the cables had been installed in accordance with the provisions of domestic law. The applicant's claim was thus dismissed.

28. The applicant appealed, and on 18 December 2012 the Supreme Administrative Court upheld the first-instance decision. The court held that the applicant had signed a document informing her about the borders of the land and restrictions regarding its use. There was no information indicating that either the applicant or her representative had been misled by the authorities regarding the status of the land. Moreover, the State was not obliged to restore her property rights to land with no restrictions regarding its use.

C. Civil proceedings regarding the plot of land of 0.0498 hectares

29. It appears that a plot of land measuring 0.0498 hectares which had been situated in the area where the applicant's father had had his land was sold to R.N. in 1994. In November 2011 the National Land Service informed the applicant's son that the purchase contract regarding the plot of land sold to R.N. in 1994 had been concluded in breach of the requirements of domestic law, and that the issue would be referred to a prosecutor.

30. In January 2012 the Kaunas Division of the National Land Service informed the prosecutor that, in accordance with domestic law, one family could purchase or rent only one plot of land for construction of an individual home in the absence of an auction. If the family was provided with a plot of land before 15 March 1992, no other member of that family could acquire another plot of land for construction of an individual home without participating in an auction. R.N. had been provided with a plot of land of 0.06 hectares for construction of an individual home in 1992. In 1993 she had purchased that plot from the State. Moreover, in 1994 R.N. had been allowed to purchase another plot of land of 0.0498 hectares in the absence of an auction, which had not been allowed. In 2002 R.N. had sold the plot of land to R.Z. The prosecutor was thus asked to start court proceedings on the matter.

31. In February 2012 the prosecutor decided that the National Land Service could start court proceedings, and referred the matter to it. Subsequently, the National Land Service lodged a complaint with the Kaunas District Court, asking it to annul the relevant administrative acts by which the plot of land of 0.0498 hectares had been provided to R.N. and to annul the purchase agreements regarding that plot. The complaint was dismissed by the Kaunas District Court on 8 July 2013 because the limitation period had expired (see paragraphs 49 and 51 below). That conclusion was upheld by the Kaunas Regional Court on 14 October 2013.

D. Administrative proceedings regarding damages

32. On 13 March and 20 June 2013 the applicant brought a claim and an amended claim for LTL 30,000 (approximately EUR 8,688) in respect of non-pecuniary damage relating to the length of the restitution proceedings. She asked the court to oblige the authorities to restore her property rights within one month of the court decision becoming final, or to pay her fair monetary compensation, calculated in accordance with the land value map for 2013. The applicant also stated that she had sustained pecuniary damage in the amount of LTL 3,616,598 (approximately EUR 1,047,439), but she was not asking for any award in this respect.

33. On 7 October 2013 the Kaunas Regional Administrative Court held that there was no dispute that the applicant's rights to 2.5469 hectares had not been restored. However, it also held that her request for damages could

only be satisfied if the State had acted unlawfully. The court stated that the national authorities had taken various steps: they had provided data about unoccupied land and had asked the applicant to decide how she wished her property rights to be restored. The applicant's requests submitted to the authorities for compensation "in a convertible currency at world market prices" and for compensation at market prices in accordance with the land value map for 2009 (see paragraphs 11, 12, 16, 19 and 22 above) could not constitute a proper way of expressing her decision, because such methods of compensation had not been defined in the domestic law. The court found that her property rights had not been restored because of her inactivity. As regards her request that the authorities be obliged to restore her property rights within one month, the court noted that she had to use an out-of-court procedure, and left that complaint unexamined.

34. The applicant appealed and also asked to be awarded compensation in respect of pecuniary damage amounting to EUR 1,047,439. On 24 July 2014 the Supreme Administrative Court held that the first-instance court had been obliged to examine the applicant's request to have her property rights restored, but it had not examined all the documents submitted. It therefore returned the case to the Kaunas Regional Administrative Court for fresh examination.

35. On 24 February 2015 the Kaunas Regional Administrative Court held that on 9 October 1991 the applicant had submitted a request to have her property rights to 7.06 hectares of her father's land restored (see paragraph 5 above). In 1992 the applicant and her sister had agreed that the applicant had a right to have her property rights to 3.40 hectares of her father's land restored (see paragraph 6 above). The authorities had restored her property rights to 0.66 hectares of land on 16 March 1993 (see paragraphs 7 and 8 above), and on 21 October 2009 her property rights to another 0.1931 hectares of land had been restored (see paragraph 17 above). The latter decision indicated that the applicant's property rights to the remaining plot of 2.5469 hectares would be restored at a later date, when the land reform project had been prepared. No land reform project had been prepared, because the land in question was in an area that had been within city boundaries before 1 June 1995, so the indication in the decision about the land reform project being prepared had been a mistake. In June 2010 the applicant had been asked to choose the form of compensation (see paragraph 18 above), but she had sent several letters submitting requests that were not possible under domestic law.

The court further held that the authorities had examined numerous complaints submitted by the applicant and her son. The court further referred to the administrative proceedings regarding the applicant's alleged inability to use one plot of land that had been returned to her (see paragraphs 26-28 above), and the civil proceedings regarding the sale of the plot of land of 0.0498 hectares to R.N., started by the National Land Service (see paragraphs 29-31 above). The court also noted that the applicant had

been informed about the possibility of receiving a plot of forest of equal value (see paragraph 25 above). The court held that there was no dispute that the applicant's property rights to 2.5469 hectares of land had not been restored. However, the applicant's claims for compensation could only be satisfied if unlawful actions by the authorities had been established. The restitution process was carried out by the National Land Service and its territorial divisions. The court decided that, in the applicant's case, the authorities had carried out their functions by: sending information about the methods by which the applicant's rights could be restored; providing information about vacant land; and asking the applicant to express her choice as to the method of restitution. The relevant domestic law valid at the time the applicant had asked for compensation "in a convertible currency at world market prices" in March 2003 had provided that, before 1 April 2003, a citizen could declare or change the method of restitution. If no method was chosen, the authorities could choose for the citizen. The relevant domestic law valid at the time the applicant had asked for compensation at market prices and in accordance with the land value map for 2009 had provided that, before 31 December 2005, a citizen could change the method of restitution and choose compensation in securities instead of monetary compensation. The relevant domestic law valid at the material time when the case had been examined had provided that, until 1 March 2015, citizens could change the method of restitution and ask to have their property rights restored by being provided with a plot of forest of equal value in a rural area. If no method was chosen, property rights were restored by means of monetary compensation. The court held that the authorities could only choose the method of restitution for a citizen if he or she had not expressed his or her decision before 1 April 2003.

In the applicant's situation, the National Land Service had not issued any decision within the required six-month time-limit, and thus the applicant had a right to receive compensation in respect of non-pecuniary damage. The court held that the applicant's right to have her property rights to 2.5469 hectares restored had not been denied, and decided to award her EUR 600 in respect of non-pecuniary damage. The remaining part of the applicant's complaint was dismissed as unfounded.

36. The applicant, the National Land Service and the State, represented by the National Land Service, appealed. On 10 July 2015 the Supreme Administrative Court held that it was clear from the case material that there was no more vacant land in the area where the applicant's father had had his land. For this reason, the applicant's demand that the authorities be obliged to return her father's land *in natura* within one month of the court's decision becoming final (see paragraph 32 above) was unfounded. As regards the applicant's argument that her father's plot of land of 0.0498 hectares had been sold to R.N. owing to unlawful actions by the National Land Service, the court held that this argument had been rebutted by the decisions issued by the domestic courts in other proceedings (see paragraph 31 above). As

regards the length of the restitution process, the court decided that there was no information indicating that the authorities had acted unlawfully, and thus the first-instance decision to award the applicant compensation of EUR 600 had been unfounded. In 1991 the applicant had expressed her wish to have her father's land returned to her *in natura* (see paragraph 5 above). In 2003 she had asked for compensation "in a convertible currency at world market prices" (see paragraph 11 above); in 2009 she had asked for compensation at market prices in accordance with the land value map for 2009 (see paragraph 16 above); in 2010 she had asked for compensation at market prices plus 15% interest (see paragraphs 19 and 22 above); and in 2015 she had stated that her choice as to the method of restitution had been expressed in 1991, and she was not going to change her mind (see paragraph 37 below). The authorities had informed the applicant several times that her requested methods of compensation were not possible under domestic law. In 2003 the applicant had been informed that if a citizen did not express a decision as to a method of restitution before 1 April 2003, the authorities had to issue decisions taking into account the method indicated in the citizen's last request (see paragraph 10 above). In June 2009 the authorities had indicated the method by which the compensation would be calculated and had stated that the value of the 2.5469 hectares of land which had to be restored to the applicant would be LTL 20,167 (approximately EUR 5,841) if the applicant preferred to acquire the land in another area, and LTL 32,267 (approximately EUR 9,345) if she preferred compensation in securities (see paragraph 16 above). In June 2010 the authorities had asked the applicant to choose the method of restitution: receiving either an area of land, forest or water of equal value (see paragraph 18 above). In October 2010 the authorities had repeatedly explained that the applicant could receive either a plot of land of equal value or compensation in securities, and should she fail to make a decision then she would be paid compensation in securities (see paragraph 21 above). In November 2010 the applicant had been asked to come to the Kaunas Division of the National Land Service to discuss the issue of restitution (see paragraph 23 above). In November 2014 the authorities had informed the applicant that it had become possible to have a plot of forest of equal value in a rural area (see paragraph 25 above). The court further held that the actions of the National Land Service had been lawful, considering that the applicant's requests had not been possible under domestic law. Moreover, the authorities had stated that a decision to pay the applicant monetary compensation would be issued. The court therefore decided to change the first-instance decision and not award the applicant any compensation in respect of non-pecuniary damage.

E. Decision of the National Land Service to pay the applicant monetary compensation

37. In February 2015 the applicant sent a letter to the authorities stating that she had expressed her decision on the method of restitution in 1991 when she had asked for the return of her father's land *in natura*. She also stated that she was not going to change her mind and would require her father's land to be returned to her. In March 2015 the authorities replied that the remaining part of the land to which the applicant's property rights had to be restored was State redeemable and could not be returned *in natura*. The authorities further stated that the applicant would be paid monetary compensation. The applicant replied to this letter in April 2015 and accused the authorities of unlawfully expropriating property. The authorities replied in May 2015 and repeated that it was not possible to return the applicant's father's land *in natura*. The applicant replied, stating that the authorities' letter contained no substantive reasons and could not be taken into account. The applicant stated that the issue of restitution in her case would be considered in the courts, and asked the authorities not to bother her with letters containing no substantive reasons.

38. In November 2016 the authorities asked the applicant to come to a meeting on 5 December and familiarise herself with the draft decision restoring her property rights.

39. On 6 December 2016 the National Land Service issued a decision to restore the applicant's property rights to 2.5469 hectares of land by paying her monetary compensation of EUR 9,359.

40. In March 2017 the applicant asked the authorities to provide her with copies of plans of vacant land plots situated in the area in which her father had had his land, and to explain how and when her father's land had been used. The authorities replied in April 2017 that the Kaunas Municipal Administration provided information in map form about vacant land that was not State redeemable. The relevant Kaunas division had to mark the borders of land which an owner had owned before 1940 in accordance with the information received from the Kaunas Municipal Administration. In the applicant's case, the Kaunas Municipal Administration had provided the relevant Kaunas division with information about vacant land plots. The Kaunas land reform division had then asked the Kaunas Municipal Administration to prepare land plans. Two plots of land had been returned to the applicant *in natura* in 2009. In 2010 the Kaunas land reform division had asked the Kaunas Municipal Administration to additionally examine whether there was vacant land in the area where the applicant's father had owned land before 1940, but it had been established that there was no more vacant land.

F. Administrative proceedings regarding the decision of the authorities to pay the applicant monetary compensation

41. The applicant lodged a claim with the domestic court, asking it to annul the decision of the National Land Service of 6 December 2016 by which her property rights to 2.5469 hectares of land had been restored and it had been decided that she would receive monetary compensation of EUR 9,359 (see paragraph 39 above). The applicant thought that the land that had not been returned to her had not been used for public use, and that the National Land Service had not provided any information as to why all of her father's land had not been returned *in natura*.

42. On 21 August 2017 the Kaunas Regional Administrative Court rejected the applicant's complaints. The court held that her father's land was not vacant, as it was occupied by cadastral areas with or without buildings, areas containing infrastructure that was relevant for roads, side roads, underground infrastructure and the protective zones surrounding them, and recreational areas. There was a public interest in using that land, thus the land was State redeemable and compensation had to be paid for it. The court further assessed the actions of the National Land Service and held that the authorities' actions had been lawful. This was because the applicant had not agreed with the information indicating that her father's land was not vacant, and because on one hand she had asked for her property rights to be restored *in natura*, and on the other hand had asked for compensation at "market" and "world market" prices, although there was no such possibility under domestic law. Fair compensation was also a way to restore property rights, as confirmed by the Constitutional Court (see paragraph 53 below). The value of the land had been calculated in accordance with the method approved by the Government (see paragraph 52 below), and the amount calculated for the applicant had been in accordance with that method. Moreover, the court referred to the case-law of the Court, where it had been established that no right to receive a higher amount of compensation was guaranteed under the applicable domestic law or by a decision of the domestic court (see paragraph 54 below). The compensation calculated for the applicant was in line with domestic law and the practice of the Court.

G. Further developments

43. In October 2017 the authorities asked the applicant to provide them with her account number so they could pay her the monetary compensation of EUR 9,359. In the event that the applicant failed to do that, the monetary compensation would be transferred to a notary's deposit account.

44. In November 2017 the applicant sent a letter to the National Land Service stating that she would not give the authorities her account number. Should the compensation be transferred to her or the notary's account nevertheless, it would be transferred back to the authorities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

45. Article 23 of the Constitution reads as follows:

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

B. The law on Restitution

46. Article 16 § 3 of the Law on the Restoration of Citizens' Ownership Rights to Existing Real Property (*Piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atkūrimo įstatymas*, hereafter "the Law on Restitution") provides that compensation is calculated in accordance with a Government-approved method, taking into account the actual value of the property at the time of compensation. Article 16 § 9 of the Law on Restitution provided that the State had to compensate citizens for any land, forest and riparian rights bought by it by: (i) assigning an area of land or forest equal in value to the land held previously; (ii) legally voiding a citizen's liabilities to the State (liabilities of an equal value); (iii) providing securities; (iv) transferring free of charge ownership of a new plot of land equal in value to the land held previously for the construction of an individual home, in the city or rural area where the land held previously was situated; (v) providing monetary compensation by redeeming land or forest in rural areas; (vi) providing monetary compensation by redeeming land that was within an urban area between 1 August 1991 and 1 June 1995; (vii) providing monetary compensation to political prisoners and exiled individuals who had returned from exile after the Law on Restitution had entered into force and who did not want to receive the land *in natura*; (viii) providing monetary compensation to citizens who had refused a new plot of land for construction of an individual home; and (ix) transferring to the individual concerned an area of water of equal value. On 8 November 2012 the Law on Restitution was amended (the amendment entered into force on 22 November 2012) and compensation in the form of securities was cancelled.

47. Article 21 of the Law on Restitution provided that, prior 1 April 2003, a citizen could express or change his or her wish regarding the form in which his or her ownership rights to real property were to be restored, provided that a final decision on the restoration of the ownership rights had not been taken. Should he or she fail to make a choice, it was for the authorities to choose the form of restitution. On 1 February 2012 this provision was amended to allow citizens who filed applications for

restoration of their rights of ownership to land which had formed part of an urban area to change their preference regarding the form of compensation and request compensation in cash for the State redeemable land. This was possible until 1 June 2012. In the event that a citizen did not express, within the statutory time-limit, how the ownership rights to the real property were to be restored or compensated for, or where the requested form of restoration was not provided for by law, or where there was no possibility of restoring the rights of ownership and/or compensating for the real property in the form indicated, the rights of ownership were to be restored in cash. As of 1 November 2014 it was also possible to restore property rights by giving citizens a plot of forest of equal value in a rural area.

48. Article 7 § 4 of the Law on Sizes, Sources, Time-Limits and the Order of Paying Compensation for State Redeemable Immovable Property and State Guarantees and Privileges Established in the Law on Restitution provides that if a citizen is avoiding accepting compensation, the relevant authority shall transfer that compensation to the deposit account of a notary.

C. The Civil Code

49. Article 84 § 1 of the Civil Code of 1964 provided that the general limitation period for bringing claims was three years.

50. Article 6.271 of the Civil Code provides that the State is liable for any damage caused by the unlawful actions of a public authority, irrespective of any fault on the part of a particular public servant or other employee of the public authority.

D. The Law on Administrative proceedings

51. At the material time, Article 33 § 1 of the Law on Administrative Proceedings provided that a complaint had to be lodged with an administrative court within a month of an impugned act being completed or served on an interested party.

E. The Government's Resolution No. 205

52. On 24 February 1999 the Government passed Resolution No. 205, which approved the Rules of Land Valuation. The latter document set out the rules for assessing the nominal indexed value of land on the basis of its location, purpose, fertility, applicable restrictions, and so forth. At the material time, the Resolution provided that the initial information about the value of a plot of land was the size of that plot and its assessment according to types. If there was not enough information, the plot of land had to be assessed as type IV (Point 3). The value was calculated by multiplying the size of the plot by the value of the land (Point 4):

(1) agricultural land:
(a) type I – 1,700 LTL/ha (492.35 EUR/ha);
(b) type II – 1,450 LTL/ha (419.95 EUR/ha);
(c) type III – 1,050 LTL/ha (304.1 EUR/ha);
(d) type IV – 650 LTL/ha (188.25 EUR/ha);
(2) land used for other purposes in cities – 6,000 LTL/ha (1737.72 EUR/ha);
(3) land used for other purposes in rural areas – 3,000 LTL/ha (868.86 EUR/ha).

The coefficient in Vilnius and Kaunas was 8 (Point 6). If the land was situated in an area that until 1 June 1995 had been an urban area, the coefficient had to be multiplied by 0.8.

F. The domestic courts' case-law and practice

53. On 27 May 1994 the Constitutional Court held that fair compensation for property which could not be returned was compatible with the principle of the protection of property.

54. For relevant domestic practice as to the principles of restitution in Lithuania and fair compensation, see the cases quoted in *Valančienė v. Lithuania* (no. 2657/10, § 40, 18 April 2017).

THE LAW

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

55. The applicant complained that her property rights to 2.5469 hectares of land had not been restored, that she had not received any compensation, and that the restitution proceedings had been lengthy. She 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. Application of Article 37 § 1 (b) of the Convention

56. The Government invited the Court to strike the application out of its list of cases, as the "matter [had] been resolved" in relation to the complaint regarding the alleged failure to restore the applicant's property rights to 2.5469 hectares of land and the alleged failure to grant her compensation. The Government underlined that the decision on compensation had already been issued on 5 December 2016 (see paragraph 39 above), and the applicant was responsible for the fact that the compensation had not been transferred, because she had not given her bank account details to the authorities (see paragraph 44 above).

57. The applicant did not comment on this matter.

58. The Court considers that, although the authorities issued a decision to restore the applicant's property rights to 2.5469 hectares of land by paying her monetary compensation of EUR 9,359, the applicant was dissatisfied with that amount and the compensation has still not been transferred to her account. The Court thus considers that the matter has not been resolved within the meaning of Article 37, and dismisses the Government's objection.

B. Admissibility

59. The Court notes that the application 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.

C. Merits

1. The parties' submissions

(a) The applicant

60. The applicant complained that she had expressed her choice as to the method of restitution in 1991, and that she had chosen to have her father's land returned to her *in natura*. She claimed that, although the authorities stated that there had been no vacant land in the area where her father had had his land before 1940, they had not provided any reliable evidence as to where the land had gone and why it had been illegally sold to other people. The applicant further stated that the authorities had failed to act diligently, and as a consequence she had been precluded from having her property rights to 2.5469 hectares of land restored *in natura* as early as 1993. Lastly, the applicant thought that the compensation of EUR 9,359 calculated in respect of the plot of land of 2.5469 hectares had been too low.

(b) The Government

61. The Government submitted that after the applicant's request for restoration of her property rights had been satisfied in part by some of her father's land being returned to her (see paragraphs 8 and 17 above), she should have understood that it was not possible to restore her property rights to all the land which her father had owned *in natura*, and that she had to express her choice as to the method of restitution in respect of the remaining plot of land. Moreover, although the applicant's initial request to have her property rights restored had been filed in 1991, this date was irrelevant, because after that date individuals had had to submit specified requests satisfying the requirements of domestic law. In this context, the Government found it relevant that Protocol No. 1 to the Convention had entered into force on 24 May 1996 in respect of Lithuania. The Government also argued that only after the authorities had approached the applicant had she asked for monetary compensation "in a convertible currency at world market prices", in "convertible currency at market prices", at market prices and in accordance with the land value map for 2009, and compensation plus 15% interest (see paragraphs 11, 12, 16, 19 and 22 above). None of the applicant's requests had complied with the requirements of domestic law, and the authorities had asked her to submit a proper request. Irrespective of the lack of a proper request by the applicant, the authorities had put all efforts into considering her initial request to have her property rights restored by having the land returned *in natura* (see paragraphs 13, 23 and 24 above), which had proved to be impossible.

62. The Government further claimed that the applicant's letters to the Lithuanian authorities showed her unwillingness to cooperate, and thus the authorities had decided to restore her property rights to 2.5469 hectares of land by paying her EUR 9,359 (see paragraph 39 above).

2. The Court's assessment

63. The Court firstly takes into account the Government's observation that Protocol No. 1 to the Convention entered into force on 24 May 1996 in respect of Lithuania (see paragraph 61 above). The Court observes that, even though the applicant's initial request to have her property rights restored was submitted in 1991 and her property rights to several plots of land were restored in 1993 and 1994 respectively (see paragraphs 7-9 above), the main communication between the applicant and the authorities regarding the remaining land started in 2003 (see paragraph 10 above), her property rights to some land were restored in 2009 (see paragraph 17 above), and the decision to pay her compensation was issued in 2016 (see paragraph 39 above). The Court notes that it may take account of facts existing prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland*

[GC], no. 31443/96, § 122, ECHR 2004-V), which is exactly what it will do in the present case. The Court is thus satisfied that it has temporal jurisdiction to examine the present case.

64. The Court further notes that the applicant complained regarding several different aspects of the domestic proceedings. Firstly, she complained of her inability to have her property rights to 2.5469 hectares of land restored *in natura* or to have a fair compensation for failing to do so. Secondly, she complained regarding overall delays in the restitution process. The Court will examine each of those aspects separately.

(a) Restoration of the applicant's property rights to 2.5469 hectares of land and compensation

65. The Court notes that the applicant's right to have her property rights to 2.5469 hectares of land restored was never disputed. She therefore had a "possession" within the meaning of Article 1 of Protocol No. 1 and the Court is ready to proceed on the assumption that the way in which the restoration at issue was implemented amounted to an interference with her right to the peaceful enjoyment of her possessions.

66. The Court recalls that the right to recover a plot of land *in natura* is not, as such, guaranteed by Article 1 of Protocol No. 1 (see *Grigolovič v. Lithuania*, no. 54882/10, § 33, 10 October 2017; *Paukštis v. Lithuania*, no. 17467/07, § 77, 24 November 2015; *Nekvedavičius v. Lithuania*, no. 1471/05, § 73, 10 December 2013; *Aleksa v. Lithuania*, no. 27576/05, § 72, 21 July 2009; *Igarienė and Petrauskienė v. Lithuania*, no. 26892/05, § 53, 21 July 2009; and *Jasiūnienė v. Lithuania*, no. 41510/98, § 40, 6 March 2003). In the present case, it was highlighted by the authorities several times that there was no possibility to recover the disputed plot of land *in natura*, as it was State redeemable (see paragraphs 21 and 37 above). The Court considers that this approach is not unreasonable.

67. There was, however, a possibility for the applicant to receive monetary compensation, compensation in securities, a plot of land of equal value, or a plot of forest of equal value (see paragraphs 10, 18, 21 and 25 above). Each of those options was suggested to the applicant, however, she failed to choose a method of restitution based on the provisions of domestic law (see paragraphs 11, 12, 16, 19, 22 and 37 above). Finally, in 2016 the authorities decided to restore the applicant's property rights to the 2.5469 hectares of land by paying her monetary compensation of EUR 9,359 (see paragraph 39 above). That decision was based on Article 21 of the Law on Restitution (see paragraph 47 above), thus it was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

68. Moreover, the decision to restore the applicant's property rights by paying her monetary compensation was based on the "public interest" in protecting the rights of others, a ground which has already been upheld by the Court (see *Valančienė v. Lithuania*, no. 2657/10, § 62, 18 April 2017, and the references therein).

69. The Court notes that although the applicant submitted several requests for monetary compensation, she added her own rules and requirements to that form of restitution, which was not provided for by domestic law (see paragraphs 46, 47 and 52 above). Indeed, the applicant insisted on compensation "in a convertible currency at world market prices", in "convertible currency at market prices", at market prices and in accordance with the land value map for 2009, and on compensation plus 15% interest (see paragraphs 11, 12, 16, 19, 22 and 37 above). Under these circumstances, it was not unreasonable for the authorities to fix the amount of compensation in accordance to the domestic rules, disregarding the applicant's wishes.

70. In the end, the applicant was dissatisfied with the amount of compensation calculated and refused to give her bank account number so that the compensation could be transferred (see paragraphs 43 and 44 above). The Court will therefore also address the issue of the amount of compensation calculated.

71. The Court notes the general principles relating to the amount of compensation granted for property (see *Kavaliauskas and Others v. Lithuania*, no. 51752/10, § 53, 14 March 2017, and the references therein) and reiterates that, in numerous rulings that have already been analysed and accepted by the Court, the Constitutional Court has held that fair compensation for property which cannot be returned is compatible with the principle of the protection of property (see paragraph 53 above), and that the notion of the restoration of property rights in Lithuania essentially denotes partial reparation (see *Valančienė*, cited above, §§ 40 and 66). The Court has also already accepted that Lithuania has chosen the principle of partial restitution to rectify old wrongs, and has found it pertinent that a similar methodology adopted by the Lithuanian Government on land-price calculation was used in a high percentage of cases in Lithuania (see *Paukštis*, cited above, § 81). The Court thus finds that no right to receive a higher amount of compensation was guaranteed under the applicable domestic law (see paragraph 52 above). The Court has regard to the margin of appreciation that Article 1 of Protocol No. 1 affords national authorities, the extensive jurisprudence of the domestic courts (see paragraph 54 above), and the line of reasoning that the Court has already adopted regarding the restitution of property in Lithuania (see *Kavaliauskas and Others*, cited above, § 55; *Valančienė*, cited above, § 67; and *Šimaitienė v. Lithuania*, no. 55056/10, § 54, 21 February 2017), from which it sees no reason to depart. Accordingly, the Court considers that the amount of compensation calculated was reasonably proportionate to the property in question and that the applicant did not have to bear a special and excessive burden.

72. It follows that the authorities struck a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the applicant's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52).

73. The Court therefore concludes that there has been no violation of Article 1 of Protocol No. 1 to the Convention in respect of the applicant's complaint that she was not able to have her property rights to 2.5469 hectares of land restored *in natura* and that she did not receive sufficient compensation.

(b) Overall length of the restitution proceedings

74. The Court has already recognised the complexity of the legal and factual issues that a State faces when resolving questions concerning the restitution of property, and that certain impediments to the realisation of an applicant's right to the peaceful enjoyment of his or her possessions are not in themselves open to criticism. The Court has also reiterated the principle of good governance, which requires public authorities to act in good time and in an appropriate and consistent manner (see *Grigolovič*, §§ 43-44; *Kavaliauskas and Others*, § 61; *Valančienė*, § 70; and *Šimaitienė*, § 45, all cited above; see also *Beyeler v. Italy* [GC], no. 33202/96, §§ 110 *in fine*, and 120 *in fine*, ECHR 2000-I).

75. In the applicant's case, the Court finds it established that the decision to restore her property rights was taken by the relevant authorities on 3 March 1993 and 16 March 1993 (see paragraphs 7 and 8 above). In December 1993 and April 1994, 0.66 hectares were returned to her *in natura* (see paragraph 9 above), and the remaining land in respect of which her rights were to be restored measured 2.74 hectares. On 21 October 2009 the authorities restored the applicant's property rights by giving her two plots of land measuring 0.0807 and 0.1124 hectares, and the remaining land in respect of which her rights were to be restored measured 2.5469 hectares (see paragraph 17 above).

76. That being so, although the Court agrees with the Government that the applicant had failed to properly express her choice as to the method of restitution (see paragraphs 11, 12, 16, 19, 22 and 37 above), the Court takes note of periods of inactivity on the part of the State authorities from April 1994 to February 2003, from March 2003 to January 2007, and from December 2010 to November 2014 with regard to taking decisions to restore the applicant's property rights in some way (see paragraphs 9-12 and 24-25 above). The Court also notes that the final decision to restore the applicant's property rights was taken in December 2016 (see paragraph 39 above).

77. The Court does not overlook the fact that the applicant's proposed conditions and requirements were not possible under domestic law, and that various sets of court proceedings started by her might have protracted the restitution process. However, it notes that two sets of court proceedings did not directly concern the restoration of the applicant's property rights to the remaining 2.5469 hectares. One set of court proceedings concerned her alleged inability to use the land that had already been returned to her (see

paragraphs 26-28 above), and the other set concerned land that had allegedly been unlawfully sold to a third party (see paragraphs 29-31 above). Moreover, the court proceedings lodged by the applicant in 2013 concerned the length of the restitution process, but the courts found that the authorities had acted lawfully and found against the applicant (see paragraphs 32-36 above). Even after those proceedings were over in July 2015, it still took the authorities almost one year and five months to issue the decision on monetary compensation (see paragraph 39 above). While the Court accepts that the applicant is responsible for the fact that the compensation has not been transferred, it cannot accept that the Lithuanian authorities took the necessary actions in order to finalise the process of restitution for the applicant without undue delay. On the contrary, although responsibility for part of the overall delay in the restitution process falls on the applicant, the Court does not see why the authorities could not take the decision to pay her compensation if it was obvious that her requirements were not based on any provisions of domestic law, and that eventually they would take the decision to pay her monetary compensation anyway (see paragraph 47 above).

78. The Court thus finds that the whole length of the process cannot be justified, and concludes that the domestic authorities did not act in line with the principle of good governance to ensure that the applicant's property rights were protected. Moreover, the applicant's legitimate expectation to have her property rights in respect of the remaining plot of land restored was unjustifiably affected by the authorities' failure to act. As a result of the lengthy proceedings, the balance which had to be struck between the general interest and the applicant's personal interest was upset, and she had to bear an individual and excessive burden, which is incompatible with Article 1 of Protocol No. 1 to the Convention.

79. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention in this regard.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 1,233,562.50 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

82. The Government submitted that no documents substantiating the applicant's claims had been provided.

83. The Court did not find a violation of Article 1 of Protocol No. 1 to the Convention in respect of the applicant's complaint that her property rights to 2.5469 hectares of land had not been restored *in natura* and that she had not received sufficient compensation. It therefore rejects her claim in respect of pecuniary damage.

84. As to non-pecuniary damage, the Court considers that the applicant suffered some distress and frustration resulting from the delays in the restitution process. However, it finds the amount claimed by her excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

85. The applicant also claimed EUR 413.13 for costs and expenses, which included EUR 113.13 for the cost of obtaining documents from the Centre of Registers.

86. The Government submitted that the documents from the Centre of Registers had not been necessary, as the data on other persons' properties had been irrelevant to the present case. As to the remaining amount, the Government submitted that the applicant had been granted legal aid and her legal expenses had to be covered by it.

87. The Court notes that the applicant had the benefit of legal aid from the Council of Europe for her representation (see paragraph 2 above), totalling EUR 850 paid to her representative Mr A. Danielius.

88. 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 rejects the claims for costs and expenses for the proceedings before the Court.

C. Default interest

89. 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. *Dismisses* the Government's invitation to strike the application out of the list of cases in relation to the complaint under Article 1 of Protocol

No. 1 to the Convention regarding the alleged failure to restore the applicant's property rights to 2.5469 hectares;

2. *Declares* the application admissible;

3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention as regards the restoration of the applicant's property rights to 2.5469 hectares of land;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention as regards the overall delays in the restitution process;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President