

CASE OF NEKVEDAVI IUS v. LITHUANIA - Application no. 1471/05 (2013)

In the Chamber's judgment in the **CASE OF NEKVEDAVI IUS v. LITHUANIA** the European Court of Human Rights held, unanimously, that there had been:

- a violation of the article 6 § 1 of the Convention (Right to a fair trial);
- a violation of article 1 of Protocol No. 1 to the Convention (Protection of property)

I. Principal Facts

The applicant, Christian Nekvedavi ius, is a Lithuanian and German national. The case Concerns the ownership of a plot of land in the city center of Kaunas, Lithuania.

The plot was nationalised following the Soviet occupation in the 1940s. Ownership of the houses was attributed to Mr Nekvedavi ius' father's former wife, who continued living there until ownership was transferred to third persons in the 1960s. After Lithuania regained independence in 1990, Mr Nekvedavi ius started proceedings to regain ownership.

The administrative and civil suits he brought attempting to repossess the buildings were unsuccessful, but he did obtain a judgment in his favour in relation to ownership of the plot of land in November 2001. However, the Lithuanian courts held that it was not possible to return the original land to him because it was being used by other people.

Since then there have been a number of investigations and court hearings but Mr Nekvedavi ius has not been compensated for the loss of the land.

II. Complaints and procedure

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 1 of Protocol No. 1 (protection of property) to the Convention, Mr Nekvedavi ius complains that the court judgment of November 2001 ordering the authorities to restore his ownership rights to the land has not been enforced, and the Lithuanian authorities have failed to provide him with either the plot of land in its original form or equivalent compensation.

III. Decision of the Court

The Court noticed that the judgment of 27 November 2001 guaranteed the applicant the restoration of his property rights. Although it did not specify the form of restitution, it

was the duty of the administrative authorities to determine the form and amount of the compensation. As the applicant's complaint under article 6 § 1 concerns non-enforcement of the court decision, the question is whether the administrative authorities took speedy and necessary measures in diligent manner to comply with the binding final judgment.

The Court stated that a significant part of the actions taken by the authorities may be considered ineffective, repetitive and not aimed at restoring the applicant's property rights. In view of those circumstances, the Court concludes that the domestic authorities failed to respect the obligations placed on them by the judgment of 27 November 2001 and the principle of the proper administration of justice. Accordingly Lithuanian authorities deprived the applicant of protection under article 6 § 1.

The Court noticed that the applicant's inability to have the judgment enforced constituted an interference with his right to peaceful enjoyment of his possessions, however it remains to be ascertained whether or not that interference was justified. It found that the Government did not demonstrate the existence of any exceptional circumstance capable of justifying the delay in enforcing the said judgment and in the present case the obstruction to the peaceful enjoyment of the property is mainly attributable to the state.

The Court 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 and by failing to execute the judgment of 27 November, the respondent State prevented the applicant from having his property rights restored for a prolonged period of time. Thus the applicant's legitimate expectation to receive compensation, was unjustifiably affected.

IV. Just satisfaction

The court held that Lithuania was to pay the applicant:

- 7,800 euros (EUR) in respect of non-pecuniary damage.
- 8,770 euros (EUR) in respect of cost and expenses.