



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

THIRD SECTION

CASE OF VISTINŠ AND PEREPJOLKINS v. LATVIA

(Application no. 71243/01)

JUDGMENT

STRASBOURG

8 March 2011

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
25/10/2012 AND 25/03/2014**

This judgment may be subject to editorial revision.

In the case of Vistiņš and Perepjolkins v. Latvia,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Lech Garlicki,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Registrar*,

Having deliberated in private on 25 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 71243/01) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Latvian nationals, Mr Jānis Vistiņš and Mr Genādijs Perepjolkins (“the applicants”), on 5 June 2001.

2. The applicants were represented by Mr E. Radziņš, a lawyer practising in Riga. The Latvian Government (“the Government”) were represented by their Agent, Ms I. Reine.

3. The applicants alleged that the expropriation of their land on the basis of a law providing for the application to them of a special procedure, and in return for insufficient compensation, constituted a violation of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1. They further complained that they had suffered discrimination in breach of Article 14 of the Convention.

4. Judge Ineta Ziemele, the judge elected in respect of Latvia, withdrew from sitting in the Chamber (Rule 28 § 3 of the Rules of Court) and the Government appointed Lech Garlicki, the judge elected in respect of Poland, to sit in her place (former Article 27 § 2 of the Convention and Rule 29 § 1).

5. In a decision of 30 November 2006 the Chamber declared the application admissible. The applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Acquisition of land by the applicants and its expropriation

6. By contracts signed in 1994, in respect of donations *inter vivos*, the applicants became the owners of a number of plots of land on the island of Kundziņsala. This island, situated close to the mouth of the Daugava River, is part of the city of Riga, to which it is connected by a road-bridge and a railway line. It mainly consists of port facilities, with a small residential area in its southern part.

7. The donors were the heirs of the legitimate owners of the land in question, which had been unlawfully expropriated by the Soviet Union after 1940. They had recovered ownership in the context of the “denationalisation” process in the early 1990s. According to the applicants’ explanations, not contested by the Government, all the donations had been made in return for certain personal services that the applicants had rendered to the donors. Thus, the second applicant became the owner of four plots of land measuring 18,620, 11,000, 10,970 and 7,150 sq.m respectively. The donor of the first plot of land gave it to him by way of remuneration for having helped her to complete the formalities to obtain restitution of her nineteen properties located throughout Latvia. The donor of the second plot had apparently been a longstanding friend of the second applicant, whilst the other two plots were given to him as a token of gratitude because he had covered the cost of expensive heart surgery for the donor. As to the first applicant, he obtained a plot of land measuring 17,998 sq.m. in return for undisclosed services rendered.

8. Each of the above-mentioned contracts stipulated the value of the land in question. The parties agree that the said value was not the cadastral value (that is to say the reference value for the calculation of land tax), but merely an indicative sum solely for the purposes of calculating the registration tax, which at the time represented 10% of the property’s value. The contracting parties thus valued each plot of land at 500 Latvian lati (LVL; about 705 euros (EUR)), except for that of 10,970 sq.m., which was valued at LVL 1,000 (about EUR 1,410). In addition, the applicants paid LVL 0.25 in notary’s tax. However, they were not obliged to pay income tax, as gifts between individuals were not liable for such tax.

9. Shortly afterwards, in 1994, the Land Registry Division of the city of Riga (*Rīgas pilsētas Zemesgrāmatu nodaļa*) entered the applicants in the land register as owners of the plots of land in question. In addition, in accordance with the law applicable at the time (see paragraph 49 below),

they were exempted from the payment of land tax (*zemes nodoklis*) for a period of six months following the acquisition, that is to say until the end of 1994.

10. On 15 August 1995 the Council of Ministers adopted Regulation no. 278 fixing the perimeter of the Port of Riga (*Noteikumi par Rīgas ostas robežu noteikšanu*). In accordance with that Regulation, all the plots of land owned by the applicants were included within the port's perimeter. That inclusion was confirmed by the Free Commercial Port of Riga Act (*Rīgas tirdzniecības brīvostas likums*), enacted on 6 November 1996. Under that Act, all the privately-owned land situated within the port's boundaries became subject to a servitude for the benefit of the public corporation responsible for the port's management. In return, the corporation was to pay the owners an annual compensation of not more than 5% of the cadastral value of the plots of land.

11. In January 1996 the applicants requested the Real Estate Valuation Centre of the State Land Authority (*Valsts Zemes dienesta Nekustamā īpašuma vērtēšanas centrs*) to determine the current cadastral value of their respective plots of land. In five letters of 15 January 1996, the Centre certified that the value amounted to LVL 564,410 (about EUR 900,000) for Mr Vistiņš; as for Mr Perepjolkins, the cadastral value of his plots of land amounted to LVL 285,830, 767,724, 769,824 and 1,303,102 respectively, representing a total of LVL 3,126,480 (about EUR 5,010,000).

12. On 11 June 1997 the administration of the Free Commercial Port of Riga applied, in turn, to the Valuation Centre, requesting it to calculate the amount of compensation that would have to be paid to the applicants in the event of expropriation of their land, in accordance with Article 2 of the Supreme Council's decision on the arrangements for the entry into force of the law on the expropriation of real estate in the public interest (the "General Expropriation Act", enacted in 1923). That Article – which was applicable *inter alia* to the applicants – limited the amount of the compensation to be paid to the owners of certain land that was to be expropriated; the compensation would not exceed the cadastral value of the land as fixed on 22 July 1940, multiplied by a conversion coefficient.

13. On 12 June 1997 the Centre issued two certificates stating that the first applicant would receive LVL 548.26 (about EUR 850) for his 17,998 sq.m. of land, and the second LVL 8,616.87 (about EUR 13,500) for his land, of which the total surface area came to 47,740 sq.m.

14. By Regulation no. 273 of 5 August 1997, which was adopted in the context of delegated legislative authority (see paragraph 31 below) and which entered into force on 9 September 1997, the Council of Ministers ordered the expropriation of all the land in question for the benefit of the State. On 30 October 1997 that measure was confirmed by Parliament, which enacted a special law for that purpose (see paragraph 42 below). Under that law Mr Vistiņš and Mr Perepjolkins were to be paid

compensation for the expropriation, which would be deemed completed once the sums had been paid into their current accounts.

15. On 8 May 1998 the Latvian Land and Mortgage Bank (*Latvijas Hipotēku un zemes banka*) opened current accounts in the names of each of the applicants. On 14 October 1998 that bank officially certified that the above-mentioned sums of LVL 548.26 and LVL 8,616.87, awarded to the applicants by way of compensation, had actually been paid into the two accounts. The applicants, however, refused to make use of those sums in any way. Following the payment, by two orders of 17 and 20 November 1998 the Riga Land Registry Court (*zemesgrāmatu tiesnesis*) ordered that the title to the expropriated land be registered in the name of the State. No tax was levied on the above-mentioned sums.

B. Proceedings for reimbursement of rent arrears

16. In 1998 the second applicant brought two sets of proceedings to obtain rent arrears for the use of his land. In the first proceedings, against the Riga Port Authority and the Free Commercial Port of Riga, he requested the payment of sums due under the lease for the period from 21 April 1994 to 31 March 1996. In a judgment of 15 October 1998, upheld in cassation proceedings on 6 January 1999, the Regional Court of Riga ordered the Free Port to pay the second applicant LVL 278,175 (about EUR 448,150) for the use of his land during the period in question.

17. The second applicant subsequently filed a new claim against the Free Port seeking the payment of rent arrears for the period after 1 April 1996, together with compensation for a servitude imposed on his property. On 18 March 1999 the Civil Division of the Supreme Court partly upheld his claim, awarding the applicant the sum of LVL 90,146.84 (about EUR 145,000) on that basis, as the rent represented 2% of the current cadastral value of the land. In fixing that amount the Civil Division particularly took into account the fact that the second applicant had not invested in any development of the land in question. It further indicated that the applicant's title to the property had ceased on 9 September 1997, when the expropriation had become effective. In a judgment of 12 May 1999 the Senate of the Supreme Court upheld the judgment of the Civil Division.

18. The first applicant, Mr Vistiņš, brought similar proceedings. In a judgment of 9 June 1999 the Civil Division ordered the Free Port to pay him LVL 53,036 (about EUR 85,000) in rent arrears for the period from 1994 to 1997.

C. Proceedings for annulment of the State's title

19. In January 1999 the applicants sued the Transport Ministry (*Satiksmes ministrija*) before the Regional Court of Riga. In their pleadings

they requested the annulment of the cadastral registration of the State's title, and the restoration, in the land registers, of the previous entries attesting to their ownership of the land in question.

20. In support of that claim, the applicants alleged that the General Expropriation Act provided for a uniform procedure: after the enactment of the special law of 30 October 1997, the Transport Ministry was required first to start negotiations with them with a view to reaching a friendly settlement as to the amount of the compensation (section 5 of the General Expropriation Act); if those negotiations failed, the Ministry would have to refer the matter to the court of competent jurisdiction for settlement of the dispute (section 9). That procedure had not been followed in the present case. The applicants particularly emphasised the fact that they were not satisfied about the sums paid by way of compensation and that they were deprived of their right to challenge those sums before a court. In this connection, the applicants pointed out that the orders of the Land Registry Court had been made in the absence of any prior final judgment concerning the amount of the compensation; they thus argued that the orders did not comply with section 18 of the General Expropriation Act. The applicants submitted that the expropriation in general and the transfer of title in particular had been carried out in breach of that Act, thus directly entailing a violation of Article 1 of Protocol No. 1.

21. In a judgment of 29 March 2000 the Regional Court dismissed the applicants' claims. According to the judgment, the expropriation was not based on the General Expropriation Act, as the applicants had claimed: since the measure in question had been decreed in the context of the Latvian land reform, the special law of 30 October 1997 was to be applied. Section 4 of that special law provided for two elements – the law itself and the payment of the compensation – which, taken together, formed a statutory basis for the transfer of title to the State. As the corresponding sums had been paid into the applicants' accounts, both of those elements were present, and by registering the State as the new owner of the land in question, the Land Registry Court had acted in accordance with the law.

22. Moreover, the Regional Court pointed out that section 3(1) of the Law of 30 October 1997 on the calculation of compensation referred to Article 2 of the Supreme Council's decision on the arrangements for the entry into force of the General Expropriation Act; that decision had been declared compliant with Article 1 of Protocol No. 1 by the Constitutional Court.

23. The applicants appealed before the Civil Division of the Supreme Court. In their appeal, they emphasised at the outset that they did not object to the expropriation as such, provided that the statutory formalities were observed and the amount of the compensation was reasonable. This had not been the case, however; in particular, no expert's report had been ordered for the purpose of determining the actual value of the disputed land (section

16 of the General Expropriation Act). The applicants did not challenge the Regional Court's finding that the Law of 30 October 1997 constituted a *lex specialis* in relation to the general law; they argued, however, that the said law could not be interpreted as derogating from the normal expropriation procedure. Consequently, by recognising the State's title without having received a copy of a judgment determining the amount of the compensation, the Land Registry Court had acted illegally.

24. In a judgment of 28 September 2000 the Civil Division dismissed the appeal, essentially endorsing the reasoning and findings of the judgment appealed against. Since the applicants had criticised the compensation awarded, it pointed out that the sums had been determined in accordance with Article 2 of the above-mentioned Supreme Council decision. If the applicants had considered that the calculation by the State's Land Authority had been erroneous and that the relevant coefficients had been incorrectly applied, they could have challenged the calculation in separate proceedings, but had not done so.

25. The applicants lodged a cassation appeal before the Senate of the Supreme Court. In their appeal, they submitted that the direct and immediate object of their claim was not to challenge the calculation of the compensation as such, but rather the fact that they had not been able to have the sum fixed through fair judicial proceedings, as required by the General Expropriation Act. If such proceedings had taken place, they would have been able to provide the court with evidence of their investments in respect of the land in question. Moreover, the applicants pointed out that they were not entitled to initiate such proceedings themselves, as section 9 of that Act reserved that right for the authorities.

26. In a judgment of 20 December 2000 the Senate dismissed the applicant's appeal on the same grounds as the Civil Division.

27. In the meantime, on 17 August 2000, the State had granted the use of all the plots of land in question to a private transport company, B., from which it has been receiving rent to date.

D. Tax re-assessment proceedings

28. On 9 December 1999 the Finance Department of the Municipal Council of Riga notified the first applicant of a tax re-assessment, requesting him to pay the sum of LVL 18,891 in land tax in respect of the land in question, plus penalties, for the period from 1 January 1997 to 30 October 1997, the date of the expropriation. The first applicant challenged this before the Court of First Instance for the district of Ziemeļi, which upheld his claim and annulled the re-assessment. The Municipal Council appealed before the Regional Court of Riga, which, in a judgment of 10 January 2003, upheld the annulment of the re-assessment. According to that judgment, the land tax was attached to a plot of land and not to a

specific individual; therefore, it could be paid by someone other than the owner. In that case, to the extent that it was the first applicant's land, the tax had already been paid by the public corporation that was responsible for the port's management and was using the land on the basis of a servitude. The Municipal Council lodged a cassation appeal with the Senate of the Supreme Court, which dismissed it in a judgment of 19 March 2003.

29. As to the second applicant, on 22 January 1999 the Finance Department of the Municipal Council of Riga notified him of a tax re-assessment for LVL 78,382, penalties included, for the year 1997. The applicant brought annulment proceedings before the court of competent jurisdiction, which upheld his claim. The Municipal Council appealed and on 26 February 2002 the Regional Court of Riga annulled the judgment of the Court of First Instance, finding that the second applicant's land was not part of that for which the public corporation had paid land tax. That judgment was upheld at cassation level. However, in September 2003 the Senate of the Supreme Court re-opened the proceedings on account of newly discovered facts. The case file was sent to the Administrative Court of Appeal, which, in a judgment of 15 July 2005, upheld the second applicant's claim and annulled the disputed re-assessment on the ground that the port management company had already paid land tax for the land in question. On 7 February 2006 the Senate of the Supreme Court, ruling on a cassation appeal, upheld that judgment. The second applicant was therefore not obliged to pay any supplementary tax on his land.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

30. Article 105 of the Latvian Constitution (*Satversme*) provides as follows:

“Everyone has a right of property. Property may not be used for purposes contrary to the interests of society. Property rights may be restricted only as provided by law. Forced deprivation of property for the need of society shall be authorised only in exceptional cases, on the basis of a special law and in return for fair compensation.”

31. Article 81 of the Constitution (repealed in 2007) entrusted the Council of Ministers with delegated and limited legislative power. At the time of the expropriation of the land in question, this provision read as follows:

“Between two legislative sessions, the Council of Ministers shall be entitled, in cases of pressing need, to adopt regulations with statutory force. Such regulations may not amend either the law on parliamentary elections, the laws on judicial organisation and procedure, the Budget Act or budgetary law, or laws enacted by the sitting legislature; nor may they regulate amnesty, the issuance of Treasury bills, taxes levied

by the State, Customs, railway fares and loans, and they lapse if they are not submitted to Parliament no later than three days after the opening of the following legislative session.”

B. Provisions of primary and secondary legislation

1. Restitution of illegally-confiscated land

32. The first paragraph of section 12 of the Law of 20 November 1991 on land reform in the cities of the Republic of Latvia (*Likums “Par zemes reformu Latvijas Republikas pilsētās”*) originally read as follows:

“In all ... cases, where the original owner’s land has [in the meantime] been built upon, or where, in accordance with urban planning and construction projects it is intended to erect thereon constructions necessary to satisfy the needs of society, the former owners of the land or their heirs shall be entitled, as they choose:

- to claim restitution of their property title and to obtain from the owner of the building or construction ... the payment of rent, of which the maximum amount shall be fixed by the Council of Ministers ...; or
- to request that they be granted the right of ownership or use of another plot of land of the same value, situated within the administrative boundaries of the same town, depending on the type of use projected for the said land; or
- to receive compensation in accordance with the statutory conditions.”

33. A law of 31 March 1994 imposed restrictions on the restitution of land on which certain constructions or facilities have been erected. It thus amended the above-mentioned wording as follows:

“Former property owners or their heirs shall recover their title to land that previously belonged to them, except:

...

(3) Where, on the land of the former owners, there can be found ... facilities or infrastructures of civil engineering and transport ..., [for example] of ports. The title to the land is then registered in the name of the State or the local authority concerned; as to the former owners and their heirs, they shall be entitled, as they choose, to request that they be granted title to another plot of land of the same value and situated within the administrative boundaries of the same town, or otherwise to receive compensation in accordance with the statutory conditions.”

34. A law of 24 November 1994 amended that provision as follows:

“Former property owners or their heirs shall recover their title to land that previously belonged to them, except:

...

(3) Where, on the land of the former owners, there can be found ... facilities or infrastructures of civil engineering and transport ..., [for example] of ports. The title to the land is then registered in the name of the State or the local authority concerned, after the former owners or their heirs have, as they choose, and in accordance with the statutory conditions, received land of the same value situated elsewhere ... or [monetary] compensation. If it is impossible to reach an agreement with the former owner of the land, or his or her heir, as to the compensation or to the allocation of another plot of land of the same value, the land shall then be expropriated in accordance with the conditions laid down in the law on the expropriation of real estate on public interest grounds.”

35. The law of 12 October 1995 reformulated the above-mentioned provision, deleting the last sentence concerning the expropriation of land. The next law, which was enacted on 8 May 1997 and which entered into force on 6 June 1997, added to the said paragraph a note that read as follows (having the same statutory force as the provision itself):

“Note: Where the former owners of the land or their heirs possess dwellings on the territory of a port, they are entitled to recovery title to that land to the extent that they have the lawful use thereof; [the surface area of such land] must not, however, exceed 1,200 square metres, except for the residential area of Kundziņsala Island which forms part of the territory of the Free Commercial Port of Riga and where the former owners and their heirs are granted restitution of their title in respect of the entire surface area of the land that belonged to them in the past.”

36. At the same time a new paragraph was inserted into section 12. It reads as follows:

“Where the former owners of the land or their heirs have recovered title to land on which are erected any facilities referred to in point 3 of the first paragraph of the [present] section ..., the annual amount of the rent for the land shall not exceed five per cent of the land’s cadastral value”.

37. Section 19(5) of the Ports Act of 22 June 1994 (*Likums par ostām*) reads as follows:

“Restrictions on the restitution of property title, as established by section 12 of the law on land reform in the cities of the Republic of Latvia, shall not apply to land incorporated within the territory of the Port de Riga after 20 April 1994 ... Former owners (or their heirs) who, as at 21 July 1940, possessed a plot of land situated on the current territory of the port, and whose title to the land has been recognised ... but has not been restituted on account of the statutory restrictions, shall be entitled to receive a plot of land of the same value or to be compensated in the form of property compensation certificates, in accordance with the legal instruments governing land reform.”

38. Regulation no. 171 of 6 May 1997 on the calculation of compensation to be awarded to former landowners and their heirs, and on the fixing of payments in respect of land of which ownership has been transferred in cities (*Noteikumi par kompensācijas aprēķināšanu bijušajiem zemes īpašniekiem vai viņu mantiniekiem un maksas noteikšanu par īpašumā nodoto zemi pilsētās*) was adopted on the basis of the law on land

reform in the cities of the Republic of Latvia. Article 8 of the Regulation reads:

“Where persons claiming compensation are not satisfied with the compensation amount calculated [by the State Land Authority], they shall be entitled to submit their complaint to the courts”.

2. Expropriation

(a) General provisions

39. At the material time, and up to 1 January 2011, measures of expropriation were governed by the Expropriation (Public Interest) Act (*Likums “Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām”*), which was first enacted in 1923 and which re-entered into force on 15 September 1992. The relevant sections of that Act read as follows:

Section 1

“Expropriation of real estate in the public interest shall be authorised only in exceptional cases, always with payment of compensation and on the basis of a special law.”

Section 3, first paragraph

“The proposal to expropriate ... shall be made by the government on the basis of an opinion by the relevant administrative body or local authority, where the institution in question is unable to acquire the real estate by means of an agreement with the owner. The proposal must include information about the real estate to be expropriated and the justification for the expropriation.”

Section 5

“After the [expropriation] law has been enacted, the institution that proposed the expropriation shall approach the owner with a view to entering into a [friendly] agreement for the transfer of the real estate, and, as the institution sees fit, shall either offer compensation or propose to exchange [the real estate] for property of the same value.”

Section 6

“Where compensation is determined by friendly agreement, or where the value of the expropriated real estate is compensated for by exchanging it for other property, the parties shall enter into a contract ...”

Section 9, first and second paragraphs

“Where [the parties] fail to reach an agreement, the case shall be examined by a court upon an application by the institution concerned.

After receiving the application, the court shall assign a bailiff to assess the value of the real estate, in the presence of the representative of the institution for whose needs the property is to be expropriated, together with the owner and three experts chosen by joint agreement between the parties ...”

Section 10

“The institution by which the expropriation has been proposed shall submit to the court a statement indicating and justifying its assessment of the value of the real estate to be expropriated. Copies of the statement shall be served on the owner of the real estate and to any mortgage creditors of the owner ...”

Section 13

“The value shall be assessed according to local prices and the specific circumstances of the relevant property. Should the owner so request, the assessment shall also take into account its profitability.

The profitability of real estate shall be assessed on the basis of information supplied by its owner. In such cases, the price of the real estate is determined by adding five per cent to the average net income from the real estate over the past five years, or, where the owner has held it for less than five years, over the entire period of possession.”

Section 16

“Before examining the case, the court shall summon the owner, the representative of the authority having proposed the expropriation and any mortgage creditors.

The court shall determine the compensation to be paid on the basis of experts’ opinions, either according to local prices or, where the owner so requests and the court finds such request reasonable, according to the profitability [of the property].

The court’s decision may be appealed against in accordance with the statutory procedure.”

Section 17, first paragraph

“After the court’s decision pertaining to the expropriation of the real estate takes effect, the owner shall be paid the compensation determined and any interest at the rate fixed by the court; the interest rate shall not be lower than 6% per annum from the date of transfer of the property until the date of payment.”

Section 18

“After the payment of compensation ..., the institution concerned shall transmit to the Land Registry Division a copy of the court’s decision together with a description of the real estate, for the purposes of its registration in the name of the State or local authority.”

40. The use of the term “a special law” in Article 105 of the Constitution and in section 1 of the 1923 Act indicates that each individual expropriation measure falls within the exclusive remit of the legislature, that is to say Parliament. As the Constitutional Court observed in its judgment of 16 December 2005, this is a specific feature of the Latvian legal system in comparison with that of other countries (see paragraph 48 below). In other words, there are always two legislative instruments: the general law, determining the rules of expropriation in general, and a special targeted law by which Parliament orders the expropriation of designated property in a specific case. As to the sum to be paid in compensation, it is fixed by friendly agreement or, failing that, by the courts (section 9 of the General Expropriation Act of 1923).

41. The relevant parts of Article 2 of the Supreme Council’s decision of 15 September 1992 on the conditions of the entry (or in reality, the re-entry) into force of the above-mentioned Act (*Lēmums “Par Latvijas Republikas likuma ‘Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām’ spēkā stāšanās kārtību”*), as inserted by the law of 19 December 1996, read as follows:

“Where, in the course of the land reform, an expropriation ... concerns real estate that is necessary for ... the maintenance and operation of ... transport infrastructures, [and where the object of the expropriation] is or must be subject to restitution to the former owner (or to the heirs thereof), the amount of the compensation shall be

determined as a sum of money, according to the statutory procedure; however, it shall not exceed the value of the said real estate as fixed by the land registers or by cadastral records drawn up before 22 July 1940 and including an indication of the property's value. The conversion coefficients to be applied to the value of the property, [converting] the prices from 1938-1940 (in pre-war lati) into current prices ..., shall be determined by the State Land Authority.

Where, after the restitution of title the owner has increased the value of the real estate, any investments related to the increase in value must also give rise to compensation. Similarly, compensation must be paid for any expenses reasonably incurred by the owner (heir) related to the restitution of the title (surveying, obtaining of information from records, etc.). Any expenses incurred in respect of the services of a representative must be restituted within the limits of the amounts actually paid; however, they must not exceed the scales of lawyers' fees.

The expropriation procedures laid down by the present Article shall apply also to owners who have acquired property from the former owner (or heirs thereof) by way of donation."

(b) Specific provisions applicable to the applicants

42. Regulation no. 273 of 5 August 1997 on the expropriation of land for the needs of the State within the Free Commercial Port of Riga was promptly submitted to Parliament, as required by Article 81 of the Constitution as then in force. On 30 October 1997 Parliament enacted the law on expropriation for the needs of the State of land within the Free Commercial Port of Riga (*Likums "Par zemes īpašuma atsavināšanu valsts vajadzībām Rīgas tirdzniecības brīvostas teritorijā"*), which used almost the exact wording of the Regulation. The law reads as follows:

Section 1

"The expropriation, for the needs of the State, shall concern land within the territory of the Free Commercial Port of Riga, on Kundziņsala, along the bank of the Daugava, belonging to:

(1) Mr Genādijs Perepjolkins:

- (a) for a surface area of 1.8620 hectares ...,
- (b) for a surface area of 1.1000 hectares ...,
- (c) for a surface area of 1.0970 hectares ...,
- (d) for a surface area of 0.7150 hectares ...;

(2) Mr Jānis Vistiņš – for a surface area of 1.7998 hectares ..."

Section 2

“The Transport Ministry shall be responsible for having the land referred to in section 1 hereof ... entered in the land register in the name of the State, represented by the Transport Ministry.”

Section 3

“1° A current account shall be opened with the public corporation *Latvijas Hipotēku un zemes banka* [Latvian Land and Mortgage Bank] in the name of each of the landowners referred to in section 1 hereof; the compensation sums shall be paid into such accounts in accordance with Article 2 of the Supreme Council’s decision on the conditions of the entry into force of the Expropriation (Public Interest) Act.

2° The number of the current account shall be notified, by registered letter, to each of the beneficiaries of the compensation payment.”

Section 4

“The land referred to herein shall be entered in the land register in the name of the State on the basis of the present Act and having regard to the confirmation from the *Latvijas Hipotēku un zemes banka* that the sums determined as compensation for the value of the properties have [effectively] been paid into the accounts of the persons mentioned in section 1 hereof.”

43. The law of 5 February 1997 on the expropriation of land for the needs of the State within the territory of the “Rīga” State airport corporation (*Likums “Par zemes īpašumu atsavināšanu valsts vajadzībām valsts lidostu uzņēmuma ‘Rīga’ teritorijā’*) is almost identical in structure to that of the law mentioned previously. Sections 1 and 2 order the expropriation of the specific plots of land enumerated in the annexes to the law. Section 3 requires the Transport Ministry to have the State’s title entered in the land register, while the last two sections concern the conditions of payment of the compensation and the effective transfer of title.

3. Leases and servitudes within the Free Port of Riga

44. To the extent that it is relevant to the present case, section 6 of the law of 6 November 1996 on the Free Commercial Port of Riga (*Rīgas tirdzniecības brīvostas likums*) provided as follows:

“(1) There shall be established hereby a personal servitude for the benefit of the public corporation ‘Commercial Port of Riga’, affecting the land of natural and legal persons ... that is occupied by the Free Port.

...

(6) The user of the land shall pay to its owner compensation for the use of the servitude; the amount of that compensation shall be determined by joint agreement, but it may not exceed five per cent per annum of the cadastral value of the land.”

...”

45. On 9 March 2000 Parliament enacted a new law pertaining to the Free Port of Riga (*Rīgas brīvostas likums*). It entered into force on 11 April 2000, superseding the previous one. Section 4(8) of this new law is identical to section 6(6) of the previous law.

4. General provisions

46. Under Article 994, first paragraph, of the Civil Code (*Civillikums*), “[o]nly the person who is recorded in the land register as owner of real estate shall be recognised as such”. However, Article 1477, second paragraph, stipulates that “[r]ights *in rem* based on a law shall be effective even in the absence of an entry in the land registers”.

C. Case-law of the Constitutional Court

47. In a judgment of 30 April 1998 given in case no. 09-02(98), the Constitutional Court declared Article 2 of the Supreme Court’s decision on the conditions of entry into force of the General Expropriation Act (paragraph 41 above) compliant with Article 1 of Protocol No. 1. It observed, in particular, as follows:

“... 7. The second and fourth paragraphs of Article 2 of the decision do not deprive owners whose property has been expropriated in the public interest of their right to apply to the courts for a review of the determination of compensation. The second paragraph of Article 2 of the decision only establishes the upper limit of such compensation. Therefore, the argument ... that such persons are deprived of their right to judicial protection and to equality before the courts is unfounded. ...”

48. In a judgment of 16 December 2005, given in case no. 2005-12-0103, the Constitutional Court declared unconstitutional, null and void, the amendments to the General Expropriation Act in 2005. The relevant parts of that judgment read as follow:

“... (22) ...

(22-2) The fourth sentence of Article 105 of the Constitution provides that forced deprivation of property shall be allowed only in exceptional cases on the basis of a ‘special law’.

Expropriation not only on the basis of a law but ‘on the basis of a special law’ is to a certain extent a specific feature of the Latvian Constitution. Most Constitutions of European States envisage only that expropriation must be carried out on the basis of a law or in accordance with a procedure established by law.

The aim of Article 105 of the Constitution, pertaining to expropriation on the basis of a special law, is to protect the fundamental rights of the individual against any arbitrariness on the part of the administrative authorities. The word ‘specific’ here must not only be interpreted literally and grammatically, but must primarily be given a substantive meaning. When enacting such a ‘specific’ law, the legislature shall pay attention to all the circumstances of the case; it must establish whether the

expropriation is really being carried out in an ‘exceptional case’ and whether it serves the needs of State or society; it must also ensure that the expropriation gives rise to fair compensation.

...”

D. Fiscal provisions

49. Under section 9, first paragraph, of the law of 20 December 1990 on land tax (*Likums “Par zemes nodokli”*), as in force at the material time, a person acquiring land was exempt from the payment of land tax for six months from the date of acquisition.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

50. The applicant alleged that there had been a violation of Article 1 of Protocol No. 1, 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. The parties’ submissions

1. The Government

51. In the Government’s submission, the disputed expropriation had been carried out in accordance with the requirements of Article 1 of Protocol No. 1, as defined by the Court’s case-law. Firstly, the applicants had been deprived of their property “in the public interest”. The main aim of the measure had been to ensure the operation and maintenance of energy and transport infrastructures of strategic importance for the State. That aim was part of the broader context of the overall land and property reform carried out after the restoration of Latvia’s independence, following fifty years of the Soviet communist regime, and it could not in any way be

dissociated from that context. This was true even though the applicants themselves had not been beneficiaries of the denationalisation and had acquired their land through the general procedure laid down in the Civil Code.

52. The land reform was far from being limited to the restitution of property unlawfully confiscated by the Soviet administration after 1940; on the contrary, it had various aspects, and its guiding principle was the balancing of the owner's personal interests and those of society as a whole. Thus, for example, property had not been returned to its legitimate owner in cases where the public interest required it to be left in the hands of the State. In certain other cases, the legislature had found it necessary to limit the amount of the compensation to be paid to the former owners by fixing as the ceiling the cadastral value of the land in question at 22 July 1940. More precisely, that ceiling had been applied twice: first in respect of the former owners of twenty-three plots of land occupied by Riga airport, and later in respect of Mr Vistiņš and Mr Perepjolkins. The Government explained that in 1940 the cadastral value of all the plots of land concerned had been very low; after Soviet annexation, strategically significant technical infrastructures had been built on them, such that after the restoration of independence the said value had increased considerably, without any investments having been made by the lawful owners. This had been the case for the applicants in particular. The Government provided statistics showing that in the course of 1996, 89% of all the containers shipped from and arriving in Latvia by sea had been processed on the land owned by Mr Vistiņš and Mr Perepjolkins. Furthermore, the State needed that land in order to implement the government-approved development plans for the Free Port of Riga, providing for its enlargement, renovation and reconstruction.

53. The Government were convinced that the disputed expropriation had been carried out "subject to the conditions provided for by law". In this connection they referred to the findings of the domestic courts to the effect that the law of 30 October 1997, which had been applicable in the present case, could be regarded as a *lex specialis* derogating from the provisions of the General Expropriation Act. That law had been accessible to the applicants and perfectly foreseeable as to its effects. Moreover, the above-mentioned special law contained an express reference to Article 2 of the Supreme Council's decision, as amended by the law of 19 December 1996 and confirmed by the Constitutional Court (see paragraphs 41 and 47 above). According to the Government, it was quite clear from that Article that the land occupied by transport infrastructures and, *a fortiori*, land acquired by way of donation, were subject to a specific expropriation procedure. Consequently, the applicants could reasonably have expected that this specific procedure would be applied to them.

54. The Government emphasised that the law of 19 December 1996, amending Article 2 of the Supreme Council's decision of 15 September 1992, had not been enacted *ad personam* for the sole purpose of limiting the amount of the compensation to which the applicants were entitled. In this connection, the Government pointed out that the same law had also been applied to the owners of the twenty-three plots of land occupied by Riga airport. Moreover, it could hardly be regarded as unreasonable for the legislature to depart from the ordinary procedure for a number of practical reasons, in particular the lack of budgetary resources that made it impossible for the State to award the owners compensation at the level of the land's current cadastral value. Lastly, the Government pointed out that the provisions of the special law of 30 October 1997 had been strictly observed by the authorities responsible for its enforcement.

55. The Government claimed that the impugned interference had struck a "fair balance" between the requirements of the general interest of the community and those of the protection of the applicants' fundamental rights. In this connection, the Government pointed out, at the outset, that the applicants had acquired the land at issue by way of donation – that is to say free of charge –, that they had not paid any tax on that land and that they had not invested in its development. Furthermore, under the donation contracts, they had themselves agreed to apportion rather low values to the land (see paragraph 8 above).

56. The Government further emphasised that the expropriation at issue had taken place in the specific context of the land reform following the restoration of the country's independence, an area in which the State had a particularly wide margin of appreciation. Referring in particular to the *Jantner v. Slovakia* judgment (no. 39050/97, § 34, 4 March 2003), the Government pointed out that Article 1 of Protocol No. 1 could not be interpreted as imposing any restrictions on the Contracting States' freedom to choose the conditions under which they agreed to restore property which had been transferred to them before they ratified the Convention. As Latvia was not the legal successor to the former USSR, it had neither a legal obligation nor sufficient resources to provide full reparation for the damage caused by the Soviet regime. In this connection, the Government cited a number of judgments of the Lithuanian and Czech Constitutional Courts that had reached the same conclusion.

57. In particular, in the cases where nationalised property had not been returned to its legitimate owners, the State had chosen to compensate them, not at its current value but according to the cadastral value of the real estate at the time of Latvia's annexation by the USSR, in 1940. That choice could not be criticised *per se* as it corresponded to the general principle of international law *restitutio ad integrum*; moreover, the interests had been duly balanced by the legislature before its adoption. It was true that the applicants themselves did not belong to the category of compensated lawful

owners; they had acquired the land only “in the second degree”. However, in the Government’s submission, especially in the case of denationalised land holding a strategically significant installation, it was not unreasonable to presume that neither the legitimate owner who had recovered the land, nor the person to whom that owner had immediately transferred it by way of donation, had made any investments for the development of the real estate over the past fifty years. It was thus fair not to make any distinction between these two categories of owner and to compensate them all on the basis of the 1940 value, because, in substance, their situations were practically identical.

58. Admittedly, there might have been cases where the former or new owners had, in the meantime, incurred expenses for the purposes of maintaining the land in question. In such cases, Article 2 of the Supreme Council’s decision of 15 September 1992 guaranteed them the reimbursement of such expenses. In this connection, the Government indicated that, even if the applicants had invested in the development of the land at issue – which was not the case here – they could have sought reimbursement by challenging the amount of the compensation payable to them in separate proceedings before the courts.

59. Furthermore, the Government pointed out that, despite the fact that they had not paid anything for their land and had not invested in its development, the applicants had managed to make a considerable profit from it, by obtaining the payment of rent arrears for LVL 53,036 and LVL 368,312 respectively. In those circumstances, it had not been disproportionate to grant them rather low sums by way of compensation for expropriation.

60. In sum, according to the Government, the measure complained of by the applicants had struck a fair balance between their legitimate interests and those of the community, and they had not had to bear any “excessive burden”. There was therefore no appearance of a violation of Article 1 of Protocol No. 1 in the present case.

2. The applicants

61. The applicants stated at the outset that the Government had been wrong to place their reasoning on the terrain of the restitution laws, because they did not belong to the category of former owners to which the State had had to return land confiscated by the Soviet Union. On the contrary, they had obtained the land at issue under ordinary civil contracts entered into with owners who, for their part, were already recorded in the land register as having title to the land; the land reform had thus already been completed in respect of that land. In other words, at the time the applicants had acquired the land it was already disposable on the free market like any other private property. Consequently, the applicants’ economic rights had to be protected by the provisions of the Civil Code governing the acquisition of property.

62. The applicants expressed their doubts as to the Government's explanations on the "public interest aim" pursued by the impugned expropriation. Unlike an airport, whose location was determined by a large number of technical factors, the strategic importance of a plot of land along a major waterway was always practically the same. It was not true that only the construction of a port would add value to that land: in reality, at the present time, most of the plots of land in Riga on the banks of the Daugava were included within the port's territory, but were nevertheless still owned by private individuals. In the applicants' submission, the restrictions imposed on those owners by the Free Port Act sufficed to ensure the proper functioning of the port's facilities, without requiring expropriation. In their opinion, the authorities' wish to expropriate their land was directly related to the fact that they had succeeded in suing the Free Port of Riga for significant sums in rent arrears. In other words, the real aim pursued by the State was to ensure that the port no longer had to pay rent to the applicants, by taking possession of the land at issue in return for a paltry sum.

63. In any event, the applicants took the view that the impugned measure had not been applied in "conditions provided for by law" and that a "fair balance" had not been struck between their interests and those of the State. As regards the first of those two criteria, the applicants pointed out that within the meaning of the Court's well-established case-law, the notion of "legality" necessarily implied the foreseeability of the legal consequences of the provision in question; however, that foreseeability was lacking in the present case. In the first place, the Latvian authorities had not applied the ordinary procedure laid down by the General Expropriation Act. Secondly, it was the State Land Authority, and not the competent court, that had finally fixed the amount of the compensation to be paid. Thirdly, the amendments to Article 2 of the Supreme Council's decision of 15 September 1992, reducing the amounts of the compensation that they were entitled to receive, had not been adopted until December 1996, that is to say at a time when they had already been owners of their land for two years.

64. Moreover, the applicants maintained their argument that the amendments to the Supreme Council's decision of 15 September 1992 had been adopted *ad personam*, with the precise aim of depriving them of appropriate compensation, even if they had not been the only ones to suffer from the effects of that decision. This could be seen from the fact that the legislature had referred to donation contracts, which corresponded to their very specific situation but concerned only three other owners, whose land was situated within the boundaries of Riga airport.

65. As regards the "fair balance" required by the Court's case-law, the applicants argued that the only gain that had been made following the expropriation was the enrichment of the public domain: it was now the State rather than the applicants which received rent for the occupation of the land in question by the company that currently used it. For their part, they had

sustained considerable damage to their interests. In their view, the payment that they had received by way of compensation had been manifestly inadequate in relation to the actual value of the land expropriated: the sum was more than 350 times lower than the current cadastral value of that land.

66. The applicants recognised that, according to the Court's well-established case-law, Article 1 of Protocol No. 1 did not guarantee in all cases the right to full compensation and that legitimate "public interest" aims might sometimes justify a sum lower than the market value. However, the amount of the compensation awarded by the State always had to remain reasonably related to the value of the expropriated property, which had clearly not been the case here. The State was not entitled to disregard this principle simply because the property in question had been acquired by way of donation. Moreover, in their case the reference to the cadastral value in 1940 was incomprehensible; it was all the more illogical as the maximum rent for plots of land within the boundaries of the Free Port of Riga was calculated according to the current cadastral value.

B. The Court's assessment

67. The Court reiterates that Article 1 of Protocol No. 1 contains 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 first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not, however, unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 78, ECHR 2006-V, and *Kozacioğlu v. Turkey* [GC], no. 2334/03, § 48, ECHR 2009-...).

68. In the present case, it is not in dispute that there has been a "deprivation of property" within the meaning of the second sentence of Article 1 of Protocol No. 1. It must therefore be ascertained whether the impugned interference is justified under that provision. To be compatible with Article 1 of Protocol No. 1 an expropriation measure must fulfil three basic conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities, must be "in the public interest", and must strike a fair balance between the owner's rights and the interests of the community. The Court will thus examine, in turn, whether those three conditions have been fulfilled in the present case.

I. “Subject to the conditions provided for by law”

(a) General principles

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

70. However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness; it is rather the quality of the applicable provisions that matters. In this connection it should be pointed out that when speaking of “law”, Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term (see, for example, *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999). The legal norms upon which the deprivation of property is based should therefore be in accordance with the domestic law of the Contracting State, including the relevant provisions of the Constitution (see *Former King of Greece and Others* (merits), cited above, §§ 79 and 82, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 81, ECHR 2005-VI). Secondly, the provisions of domestic law must be sufficiently accessible, precise and foreseeable in their application (see *Guiso-Gallisay v. Italy*, no. 58858/00, §§ 82-83, 8 December 2005).

71. As to the notion of “foreseeability”, its scope depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (see, *mutatis mutandis*, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 109, 20 January 2009). On this particular point, the Court would strongly emphasise the fundamentally subsidiary role of the Convention mechanism. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general social and economic policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 97, ECHR 2003-VIII). This principle also applies in terms of the “lawfulness” of an interference: in certain circumstances relating to a general policy of the State for which a large number of specific problems and situations have to be taken into account and to which the policy has to

be adapted in order to be implemented successfully, the level of normative precision required in other cases will not have to be attained. For example, in the context of reforms carried out in a State after its transition from a totalitarian regime to a democracy – especially in the particular case of States of central and eastern Europe – the Court has accepted that the criterion of lawfulness may be much more flexible than in ordinary circumstances (see *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, § 166, 15 March 2007).

(b) Application to the present case

72. In the present case it is not in dispute that the impugned expropriation was carried out on the basis of the law of 30 October 1997 on expropriation for the needs of the State of land within the Free Commercial Port of Riga (see paragraph 42 above). The Court must therefore ascertain whether that law met the requirement of “lawfulness” as defined in its case-law.

73. In this connection the Court notes that in Latvian law the formal decision on expropriation is taken not by the executive but by Parliament in the form of a law. The General Expropriation Act, as applicable at the material time, originally enacted in 1923, subjected any expropriation of real estate to the following procedure. First the Government submitted to Parliament an expropriation proposal that had to satisfy certain criteria. On the basis of that proposal, Parliament enacted a special law ordering the expropriation of the property or properties concerned. Then the public authority for whose benefit the expropriation had been decided would enter into negotiations with the owner for the purpose of reaching a friendly agreement as to the amount of the compensation; if those negotiations failed, the authority would refer the matter to the court of competent jurisdiction, which would settle the dispute and fix the final sum to be paid in compensation.

74. On 5 August 1997 the Council of Ministers, acting in the context of its delegated legislative power, adopted Regulation no. 273 ordering the expropriation of all the properties at issue in the present case. That Regulation, together with the law of 30 October 1997 by which it was confirmed, was interpreted as derogating from the General Act of 1923, making it possible not to apply the usual expropriation procedure in the case of the applicants. The Court thus accepts that, until those instruments were adopted, the applicants could have expected that any expropriation of their property would be carried out in accordance with the 1923 Act.

75. However, the Court does not find this fact sufficient to call into question the “lawfulness” of the special provisions concerning the applicants. It notes firstly that the special expropriation law is on a par with the General Act of 1923 in the hierarchy of legislative norms, and the

applicants have never argued that, in Latvian constitutional law, Parliament is bound by a simple law and in principle cannot derogate from it by a norm of equal rank.

76. Secondly, unlike the applicants, the Court accepts the Government's position that the impugned measure was taken within the broader context of the denationalisation process after Latvia's restoration of independence. Admittedly, at the time of their expropriation, all the disputed properties had already been finally denationalised and allocated to individual owners; the properties were thus disposable on the open market like any other real estate. However, on this point the Court cannot adopt a purely formalistic approach and ignore the general context of the case. Such an approach would have the effect of depriving the domestic legislature of any possibility of rectifying *ex post facto* manifestly unfair situations created by the property restitution process (see, *mutatis mutandis*, *Jahn and Others*, cited above, §§ 84 and 92). In the present case it should first be observed that the restitution of the properties at issue to the heirs of the former owners, followed by their donation to the applicants and then their expropriation, all took place within no more than a few years, the period in issue thus being relatively short and condensed. Secondly, the Court notes that Article 2 of the Supreme Council's decision of 1992 fixing the method for calculation of compensation expressly referred to the case of denationalised property; and since section 3 of the 1997 expropriation law refers to it, the two provisions must be read in conjunction (see paragraphs 41-42 above). In other words, as the national legislature itself linked the deprivation of the property in issue to the general legal framework of property restitution, the Court has no reason to call that link into question.

77. The Court takes the view that, in certain situations, a special law laying down specific conditions for one or more individuals may meet the requirement of lawfulness (see, for example, *Former King of Greece and Others* (merits), cited above, §§ 80-82). The Court does not rule out the possibility for the legislature to have recourse to such specific and targeted laws in situations which, in the broader context, fall within the domain of general social and economic policy-making, provided, however, that such action is justified and that the fundamental principles of Article 1 of Protocol No. 1 are upheld. In the field at issue, the process of denationalisation frequently leads to a large number of related problems, often of a complex and sensitive nature, that the authorities are called upon to resolve, such, as for example, cases of fraudulent or unjust enrichment, or the restitution of property on which, in the meantime, costly and strategically important infrastructures have been built. In particular, restitution laws may often contain hidden legal loopholes capable of creating situations of flagrant injustice and enabling certain persons to derive an undue advantage from them. The legislature, in rectifying such injustices on grounds of fairness and social justice, must therefore be

afforded particularly broad discretion (see, *mutatis mutandis*, *Jahn and Others*, cited above, §§ 113-116). The Court thus recognises that the adoption of specific and targeted laws in this kind of situation may be justified under Article 1 of Protocol No. 1. In the present case, it does not find anything in the law of 30 October 1997 that is unreasonable or manifestly in breach of the fundamental principles of that provision.

78. In those conditions, and in the light of the particular circumstances of the case, the Court is unable to conclude that the measure complained of fell short of the foreseeability requirement. It thus recognises that the deprivation of the applicants' possessions was carried out "subject to the conditions provided for by law".

2. "In the public interest"

79. In the present case the applicants challenged the legitimacy of the aim pursued by the impugned expropriation. In this connection, the Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Former King of Greece and Others* (merits), cited above, § 87; *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98; and *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I).

80. In the light of the facts of the case and the parties' arguments, the Court admits that the expropriation in question pursued a legitimate aim in the public interest, namely the optimisation of the management of infrastructures of the Free Port of Riga, that question falling within the domain of transport policy and, more generally, the State's economic policy.

3. Proportionality of the impugned measure

(a) General principles

81. Even if it is lawful, devoid of any appearance of arbitrariness and carried out in the public interest, a measure of interference with the right to the peaceful enjoyment of possessions, must always strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Scordino*, cited above, § 93).

82. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III). Nevertheless, the Court cannot abdicate its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants’ right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Jahn and Others*, cited above, § 93).

83. Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this connection, the Court has already held that, a taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference. In many cases of lawful expropriation, such as a distinct taking of land for road construction or other public purposes, only full compensation may be regarded as reasonably related to the value of the property (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 78, 28 November 2002).

84. That rule is not without exceptions, however, as Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances (*Broniowski v. Poland* [GC], no. 31443/96, § 182, ECHR 2004-V). Admittedly, a total lack of compensation can be considered justifiable only in exceptional circumstances (see *Former King of Greece and Others* (merits), cited above, § 89). Legitimate objectives of “public interest”, such as pursued in measures of economic reform or measures designed to achieve greater social justice, may often call for less than reimbursement of the full market value (see *James and Others*, cited above, § 54); in such cases, the

compensation does not necessarily have to reflect the full value of the property in question.

85. This principle applies all the more forcefully when laws are enacted in the context of a change of political and economic regime, especially during the initial transition period, which is necessarily marked by upheavals and uncertainties; in such cases the State has a particularly wide margin of appreciation (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX; *Jahn and Others*, cited above, § 116 (a); and *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 42, 3 November 2009). Thus, for example, the Court has held that less than full compensation may also be necessary *a fortiori* where property is taken for the purposes of “such fundamental changes of a country’s constitutional system as the transition from a monarchy to a republic” (see *Former King of Greece and Others* (merits), cited above, § 87). The Court reaffirmed that principle in *Broniowski* (cited above, § 182), in the context of the country’s transition towards a democratic regime, specifying that a scheme to regulate property within the country, being “wide-reaching but controversial ... with significant economic impact for the country as a whole”, could involve decisions restricting compensation for the taking or restitution of property to a level below its market value. The Court has also reiterated these principles regarding the enactment of laws in “the exceptional context of German reunification” (see *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 77 and 111-112, ECHR 2005-V, and *Jahn and Others*, cited above).

86. In addition, the Court would refer back to its findings on the subject of the “lawfulness” of the interference (see paragraphs 76-77 above). It takes the view that all these principles are all the more applicable where the expropriation of recently denationalised property is carried out in order to implement policies adopted in the interest of the community. The Court has had occasion to note that town and country planning schemes involve the exercise of discretionary judgment and that it is not for the Court to substitute its own view of what would be the best policy in the planning sphere. By reason of their direct and continuous contact with the vital forces of their countries, the national authorities are in principle better placed than an international court to evaluate, on the one hand, local needs and conditions, and, on the other, the individual implication of the deprivation of property for the persons concerned (see, *mutatis mutandis*, in respect of Article 8 of the Convention, *Hatton and Others*, cited above, § 101).

87. Moreover, the Court has held that where an individual’s property has been expropriated, there should be a procedure ensuring an overall assessment of the consequences of the expropriation, including the award of an amount of compensation in line with the value of the expropriated property, the determination of the persons entitled to compensation and the settlement of any other issues relating to the expropriation (see *Efstathiou*

and Michailidis & Co. Motel Amerika v. Greece, no. 55794/00, § 29, ECHR 2003-IX).

88. In order to assess the conformity of the State's conduct with the requirements of Article 1 of Protocol No. 1, the Court must conduct an overall examination of the various interests in issue, having regard to the fact that the Convention is intended to guarantee rights that are "practical and effective", not theoretical or illusory. It must go beneath appearances and look into the reality of the situation at issue, taking account of all the relevant circumstances, including the conduct of the parties to the proceedings, the means employed by the State and the implementation of those means. Where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Fener Rum Erkek Lisesi Vakfı v. Turkey*, no. 34478/97, § 46, 9 January 2007, and *Bistrović v. Croatia*, no. 25774/05, § 35, 31 May 2007).

(b) Application to the present case

89. In the present case the Court finds that the value of the impugned properties underwent three successive assessments. The first estimation was made in 1994 when the land was acquired by the applicants in the form of a donation; the value indicated by the parties in the donation contracts was then LVL 500 or LVL 1,000 for each plot of land (see paragraph 8 above). The Court thus notes that the applicants themselves initially agreed to assess their properties at a fairly low value. The parties agreed that this assessment had by no means corresponded to the actual value of the property and that its sole purpose had been to establish a basis for the calculation of the registration tax. For its part, the Court notes that the applicants' good faith as to the acquisition of the property in question was not called into question at domestic level (see, *mutatis mutandis*, *N.A. and Others v. Turkey*, no. 37451/97, § 39, ECHR 2005-X). However, even though that initial assessment was never invoked against the applicants by the Latvian authorities, and without wishing to speculate as to their reasons, the Court notes that they themselves, on their own initiative, apportioned that value to the properties in issue.

90. The second valuation of the properties in issue concerned their cadastral value, and that was carried out in 1996 by the Real Estate Valuation Centre of the State Land Authority. Following that calculation, the total value of the properties was fixed at EUR 900,000 for the first applicant and over EUR 5 million for the second. In this connection the Court would point out that the cadastral value of a property is the value that is used as the basis of calculation for the land tax to be levied on it; it is therefore certainly not a theoretical or fanciful sum.

91. Lastly, the third valuation of 1997 concerned the compensation to be awarded to the applicants in the event of expropriation. That compensation,

calculated on the basis of the value of the properties in 1940, was fixed at about EUR 850 and about EUR 13,500 for each applicant, respectively. These were precisely the sums that the applicants received by way of compensation.

92. The Court considers that it is not required to decide on what basis the domestic courts should have assessed the amount of compensation payable; it cannot take the place of the Latvian courts in determining the reference period that should have been taken into consideration for that calculation (see *Malama v. Greece*, no. 43622/98, § 51, ECHR 2001-II). The Court can only note an extreme disproportion between the two property values: the current cadastral value and the 1940 value, which corresponded to the compensation received by the applicants. The compensation received by the first applicant constituted less than one thousandth of the cadastral value of his land, whereas the total sum of the compensation awarded to the second is some 350 times lower than the total cadastral value of all his properties (see, *mutatis mutandis*, *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, §§ 123-124, ECHR 2007-XIII (extracts)). In the Court's view it is clear that this very significant increase in the value of the properties concerned reflected the development of the port facilities now to be found on the land and the complete change in its strategic importance over the past few decades, these being objective factors to which neither the applicants nor the former owners have contributed in any way.

93. The Court further notes that the applicants had acquired the land in issue by way of donation – that is to say, free of charge – and that they owned it only for about three years without investing in its development. Moreover, over that three-year period they did not pay any tax in respect of the land, and tax re-assessment proceedings subsequently brought against them by the Riga Municipal Council were unsuccessful (see paragraphs 28-29 above). In these circumstances, and having regard to considerations of equity and general policy, the Court finds that the Latvian authorities were justified in not reimbursing the applicants for the full cadastral or market value of the expropriated property, and that much lower sums were sufficient to satisfy the requirements of Article 1 of Protocol No. 1.

94. Moreover, the Court notes that around the same time as the expropriation, the applicants received from the Free Port of Riga significant amounts for rent arrears and servitudes in respect of the same properties. Those amounts – calculated this time from the current value, and not that of 1940 – were high: about EUR 85,000 and about EUR 593,150 respectively (see paragraphs 16-18 above). Even though those sums were granted on a totally different legal basis, the Court must consider the situation as a whole: given the “windfall” from which the applicants undeniably benefited – first in acquiring the land free of charge and then in obtaining significant rent arrears –, the sums they received by way of compensation do not really

appear disproportionate (see, *mutatis mutandis*, *Jahn and Others*, cited above, § 116 (c)).

95. The Court recognises that the procedure followed in the applicants' case was less advantageous to them than the usual procedure laid down by the 1923 Act, because they were unable to fix the compensation by friendly agreement or, failing that, discuss the sums in proceedings before a court. However, in the present case, it was a legislative provision – namely Article 2 of the Supreme Council's decision of 15 September 1992 – that limited the compensation for expropriation to the cadastral value of 1940. Since the applicants have never argued that the compensation they received was any lower than that value, the Court cannot but observe that the situation of which they complained before the Court stemmed directly from a legislative instrument. In any event, as the applicants were able to challenge before the courts the formal lawfulness of the registration of the land at issue in the name of the State, the Court acknowledges that they were afforded appropriate procedural guarantees.

96. Lastly, the Court takes the view that the applicants cannot criticise the Latvian authorities for any incoherence in the measures taken in terms of the general policy in the relevant domain. The applicants did not dispute the point that their case was essentially comparable to that of the twenty-three plots of land occupied by Riga airport and expropriated in the same manner a few months before theirs (see paragraphs 43 and 54 above).

97. In the light of the foregoing and in view of the very specific circumstances of the present case, the Court finds that the national authorities did not overstep the margin of appreciation afforded to them, that the burden they imposed on the applicants was not disproportionate or excessive, and that they did not upset the "fair balance" that had to be struck between the protection of property and the requirements of the general interest. Accordingly, there has been no violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL NO. 1

98. The applicants argued that the impugned expropriation could be regarded as discrimination based on "wealth". They relied on Article 14 of the Convention, which reads as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... property ... or other status."

99. The Government took the view that there could be no discrimination in the present case, as the applicants and all the other individuals who had acquired land by way of donation *inter vivos* were in an objectively different situation from that of owners who had purchased their land. The donees had

obtained their land free of charge and had not invested in its development, whereas the purchasers had acquired theirs at considerable expense. The situations of the two categories of owner were thus not similar, or even comparable. Even assuming the contrary, the Government argued that the alleged difference in treatment was justified by objective and reasonable considerations.

100. According to the Court's settled case-law, discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. A difference in treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, Article 14 of the Convention does not prevent, in principle, Contracting States from introducing general policy schemes by way of legislative measures whereby a certain category or group of individuals is treated differently from others, provided that the difference in treatment which results for the statutory category or group as a whole can be justified under the Convention and its Protocols (see, as a recent authority, *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 67, ECHR 2010-...).

101. In the present case, the Court finds it highly doubtful that the applicants' situation could be considered comparable to that of other property owners. Even assuming the contrary, having regard to the legitimate aim pursued in the public interest and to the margin of appreciation afforded to the State in the sphere of denationalisation, the Court is of the view that the particular treatment applied to the applicants was based on an objective and reasonable justification (see, *mutatis mutandis*, *Jahn and Others*, cited above, § 125). In this connection, it would simply refer back to its findings under Article 1 of Protocol No. 1 taken separately (see paragraphs 76-77 and 92-96 above).

102. Accordingly, the Court finds that Article 14 of the Convention has not been breached in the present case.

FOR THESE REASONS, THE COURT

1. *Holds*, by six votes to one, that there has been no violation of Article 1 of Protocol No. 1;

2. *Holds*, unanimously, that there has been no violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

Done in French, and notified in writing on 8 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Casadevall is annexed to this judgment.

J.C.M.
S.Q.

DISSENTING OPINION OF JUDGE CASADEVALL

(Translation)

1. I am unable to agree with the finding that there has been no violation of Article 1 of Protocol No. 1, unlike the majority of the Chamber in the present case. I find this case somewhat odd and confused, when one attempts to follow the logic of the various events in question. Perhaps there was some information missing from the file, perhaps I did not properly understand the sequence of events, perhaps I failed to understand how domestic law was to be applied; or perhaps all three.

2. There are five findings of fact that strike me as noteworthy.

- For the expropriation of 17,998 sq.m. of land, the first applicant received compensation equivalent to 850 euros, which represents less than one thousandth of the cadastral value; the second applicant received about 13,500 euros for an area of 47,740 sq.m., some 350 times lower than the cadastral value (see paragraph 92 of the judgment). Those sums were calculated according to the cadastral values of **1940** pursuant to Article 2 of the Supreme Council's decision of 15 September 1992 (see paragraphs 7, 12 and 13 of the judgment).

- By way of reimbursement of rent arrears, and in accordance with **judicial decisions** against the Free Port, the second applicant received compensation of about 448,150 and 145,000 euros and the first applicant about 85,000 euros. Those sums corresponded to a percentage applied to the cadastral value (of **1996**) of the land occupied, in accordance with the law enacted by Parliament on 6 November 1996 (paragraphs 16, 17 and 18 of the judgment).

- After the expropriation of the land pursuant to the law of 30 October 1997, and the payment of the said sums of 850 and 13,500 euros to the applicants, the State became the owner of the properties and now, in turn, receives high rents from the Free Port for the use of the land (see paragraph 65 of the judgment; the applicants' claim not having been contested by the Government).

- The said decision of the Supreme Council dated 15 September 1992 governs the arrangements for the re-entry into force of the 1923 Expropriation (Public Interest) Act. Section 1 of that Act provides that expropriation is authorised only **in exceptional cases, always with payment of compensation and on the basis of a special law**; and Article 9 stipulates that **the amount of the compensation is to be fixed**

by friendly agreement or, failing that, by a court (see paragraphs 39 and 40 of the judgment).

- Lastly, in my opinion, the **special law** (of 30 October 1997, concerning the applicants) **supplements** the General Act, but does not derogate from it, unless otherwise indicated expressly, and therefore section 9 of that Act remains applicable. In addition, the fact that the Supreme Council's decision of 15 September 1992 limited the expropriation compensation to the cadastral value of 1940 did not preclude, in respect of the sum payable, **negotiation to reach a friendly agreement between the parties, or failing that, examination by a court** (see paragraphs 41 and 90 of the judgment). Moreover, the judgment points out the need for "a procedure ensuring an overall assessment of the consequences of the expropriation, including the award of an amount of compensation in line with the value of the expropriated property ... and the settlement of any other issues relating to the expropriation" (paragraph 87).

3. From these five findings, taken together, it should be possible to derive a slightly better understanding of the case, in terms of the political and economic reasoning underlying the entire process from the denationalisation of the property (early 1990s) to the expropriation or renationalisation (late 1997). I am not questioning the public-interest grounds for the expropriation, although I do have some doubts about the "conditions provided for by law". However, for me, the real problem is the question of "proportionality" and "fair balance".

4. I fully agree with the case-law principle that legitimate objectives of public interest may call for less than reimbursement of the full value of the property, and that measures of economic reform or measures designed to achieve greater social justice may justify compensation that does not reflect that full value (see paragraph 84 of the judgment). However, the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference and runs counter to the fundamental principles of Article 1 of Protocol No. 1 (this is in fact pointed out in paragraph 83 of the judgment).

5. I also find it difficult to accept some of the arguments on which the majority have based their conclusions in this case. The land in question had been finally denationalised in favour of the heirs of the lawful owners in the early 1990s; subsequently (in 1994) it was allocated to the applicants under contracts of donation. Therefore, at the time the special expropriation law of 30 October 1997 was enacted the property had already been, for several years, completely in the private domain, regardless of the legal instruments giving rise to that situation (provided, of course, that those instruments were

legal). Thus, the majority's argument to the effect that "the restitution of the properties at issue to the heirs of the former owners, followed by their donation to the applicants and then their expropriation, all took place within no more than a few years, the period in issue thus being relatively short and condensed" (paragraph 76 of the judgment), apart from being devoid of legal relevance, does not serve to justify the very small sums awarded to the applicants by way of compensation (sums representing less than 5%, not even of the actual value of the property in question, but of the value of the rent received by the new owner of the property, namely the Government).

6. The applicants' good faith as to the acquisition of the property concerned has never been called into question or contested at domestic level, and the first assessment proposed (in fact an indicative value for the sole purpose of calculating the registration tax, see paragraph 8 of the judgment) was never invoked against the applicants by the national authorities (paragraph 89). No problem ever arose in relation to either of these aspects. Similarly, I find it inappropriate to emphasise that the property had been acquired by donation, "that is to say free of charge" (paragraph 93) and to refer to a "windfall" (paragraph 94). Lastly, whilst agreeing with the idea that the State has a duty to resolve related problems, which are often complex and sensitive, arising from a denationalisation process, I find that to cite the example of "fraudulent enrichment" is inappropriate in the present case (paragraph 77).

7. Without wishing to adopt any position as regards the actual value of the expropriated land or the amount that could reasonably have been awarded in compensation, I take the view that the applicants, in the circumstances of the present case, were obliged to bear a disproportionate and excessive burden and that the impugned measure upset the "fair balance" to be struck between the protection of property rights and the requirements of the general interest.