



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

FIFTH SECTION

CASE OF BĒRZIŅŠ AND OTHERS v. LATVIA

(Application no. 73105/12)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Disproportionate denial of access to and use of applicants' plot of land for over a decade • Lack of compensation or other form of redress

STRASBOURG

21 September 2021

FINAL

21/12/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bērziņš and Others v. Latvia,

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

Síofra O’Leary, *President*,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Lado Chanturia,
Mattias Guyomar, *judges*,
Daiga Rezevska, *ad hoc judge*,

and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the application (no. 73105/12) 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 three Latvian nationals on 7 November 2012;

the decision to give notice of the application to the Latvian Government (“the Government”);

the decision to reject the Government’s request to examine the admissibility of the application separately;

the parties’ submissions;

Considering that Mr Mārtiņš Mits, the judge elected in respect of Latvia, was unable to sit in the case (Rule 28 of the Rules of Court) and that the President of the Chamber decided on 7 June 2021 to appoint Ms Daiga Rezevska to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1),

Having deliberated in private on 31 August 2021,

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

INTRODUCTION

1. The case concerns a complaint under Article 1 of Protocol No. 1 to the Convention that the applicants were denied access to and use of their plot of land – included in a protection zone around a water supply source – without any compensation or allocation of another plot of land.

THE FACTS

2. A list of the applicants is set out in the appendix. The applicants were represented by Ms I. Bērziņa until 14 October 2020 when they revoked their authorisation to be represented by her. The applicants did not submit any observations and claims for just satisfaction but provided the requested factual information and documents.

3. The Government were represented by their Agent, Ms K. Līce. The Government did not submit any observations on the merits.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. ACQUISITION OF AND RESTRICTIONS ON THE APPLICANTS' PLOT OF LAND

5. On 28-30 November 2004 the applicants purchased "Liezeri", a plot of land (about 66,760 sq.m.) located in the parish of Garkalne. Regardless of it being located in a forest, the relevant records contained the following permitted use of that land: "designated for the needs of a farm" (*zemnieku saimniecības vajadzībām*). On 6 January 2005 the applicants' registered their property rights in the Land Register. The relevant entry contained no record as regards any water protection zones.

6. In the autumn of 2005 the first applicant discovered that a fence had been built around their plot of land and a "no entry" sign had been placed on it.

7. The applicants approached various domestic authorities to enquire about restrictions on their plot of land.

8. On 17 November 2005 Garkalne Municipal Council (*Garkalnes pagasta padome*, later *Garkalnes novada dome*) ("Municipal Council") informed them that in accordance with the relevant law (see paragraph 50 below), a "strict" protection zone (*stingra režīma aizsargjosla*) had been envisaged (*paredzēta*) around a water supply source (known as "Rembergi"). In 2003 a project to establish that protection zone had been prepared and a fence had to be built around it. The applicants' plot of land had been located in that zone. Lastly, as the State had imposed restrictions on business activity on the applicants' property, the applicants were invited to a meeting to "solve problems arising from the above-mentioned law".

9. On 19 July 2007 the relevant ministry, in a letter sent to the applicants, explained the restrictions imposed on properties located in water protection zones (see Relevant legal framework in paragraphs 50-59 below). The ministry stated that those restrictions derived from the law and had legal effect irrespective of them being registered in the Land Register (see paragraph 60 below). All protection zones had to be marked in the relevant spatial plans (see paragraphs 51 below). At that time, however, spatial plans had not been approved by the Municipal Council.

II. SPATIAL PLANNING

10. In 2002-03 some steps were taken to establish a water protection zone around "Rembergi". On 26 February 2003 the Municipal Council approved its borders (see paragraphs 29 and 31 below). The Court does not

have sufficient information to establish whether the applicants' plot of land was included in that protection zone. While a protection zone around "Rembergi" appears in initial spatial planning documents, there is no indication that it was marked either in writing or in graphic form as extending into or covering the applicants' plot of land. The first spatial plan (adopted in December 2004) was suspended by the relevant ministry for incompliance with a number of legal requirements in November 2006. Subsequently, the Municipal Council revoked that plan. Furthermore, a number of individuals brought proceedings before the Constitutional Court (*Satversmes tiesa*) challenging that spatial plan in so far as it allowed persons to construct buildings in an area subject to flooding around a lake (*Lielsais Baltezers*) (case no. 2006-09-03). On 8 February 2007 the Constitutional Court held that the spatial plan – in so far as it related to the territory around that lake – was incompatible with Article 115 (the right to an adequate environment) of the Constitution (*Satversme*) and void with retrospective effect.

11. On 28 June 2006 the Municipal Council – by amending an earlier decision taken in respect of another property - adopted decision no. 35(2006). Following the amendments to the Protection Zone Law, a "strict" protection zone on the applicants' plot of land had been established. The restrictions applied to the entirety of the applicants' property. The permitted use of the plot of land from then onwards was designated as follows: "a specially protected nature territory where any economic activity shall be prohibited". Those restrictions had to be marked in the relevant plans, the breadth of the area covered had to be calculated and recorded in the Land Register, at the expense of the water supplier for the city of Riga.

12. The protection zone around "Rembergi" was marked in graphic form as extending into and fully covering the applicants' plot of land for the first time on 18 December 2007, when the Municipal Council approved a general spatial plan for the years 2007-2019 by issuing municipal by-law no. 12(2007). There is no indication of the protection zone being marked in writing. The by-law took effect on 29 December 2007.

13. Subsequently, the protection zone was marked in writing and graphic form as extending into and fully covering the applicants' plot of land on 16 December 2009, when the Municipal Council approved a final general spatial plan for years 2009-2021 by issuing municipal by-law no. 23(2009). The by-law took effect on 16 January 2010.

III. COURT PROCEEDINGS

A. Proceedings against decision no. 35(2006)

1. Institution of the proceedings and initial decisions of the first-instance and appellate courts

14. On 11 June 2007 the first applicant instituted proceedings before the administrative courts with a view to challenging decision no. 35(2006). He also claimed compensation. In 2009 the second and third applicants joined as parties to those proceedings.

15. On 23 November 2009 the first-instance court and on 2 December 2010 the appellate court quashed the impugned decision as unlawful but dismissed the applicants' compensation claim. The applicants lodged an appeal on points of law before the Senate of the Supreme Court ("Senate").

2. Applications to the Constitutional Court lodged by the Senate on the validity of a legal provision

16. While examining the applicants' appeal on points of law, on 10 October 2011, the Senate, sitting in a full composition (eight judges), decided to apply to the Constitutional Court with a view to obtaining assessment whether the first sentence of section 35(9) of the Protection Zone Law was compatible with the fourth sentence of Article 105 of the Constitution. In their view, given the restrictions on the use of the applicants' plot of land, it had amounted to *de facto* expropriation, for which they had not received any compensation by virtue of operation of domestic law (see paragraph 54 below). While this provision did not limit the right to claim compensation for direct pecuniary loss (*tiešie zaudējumi*), in the present case the applicants had not suffered such loss.

17. On 4 November 2011 the Constitutional Court declined to institute proceedings on the grounds that the Senate had failed to provide legal reasoning (see paragraph 62 below). The Senate had referred to the fourth sentence of Article 105 of the Constitution, which laid down conditions for expropriation, but the notion of expropriation implied the change of ownership from a person to the State. In cases concerning restrictions on the right to property, a person retained his or her right to property, but could no longer freely dispose of it. No restrictions on the right to property could amount to its expropriation. This was irrespective of the nature and scope of the restrictions. The statutory provision at issue could not therefore be examined in the context of the fourth sentence of Article 105 of the Constitution.

18. On 19 December 2011 the Senate, sitting in a full composition (eight judges), once again decided to apply to the Constitutional Court, reiterating and supplementing its previous reasoning. Even if the Constitutional Court

were to consider that the situation did not amount to expropriation, the restrictions preventing the applicants from using their property without monetary compensation or any other form of compensation (e.g. compensation following formal expropriation procedure) were disproportionate and therefore in violation of Article 105 of the Constitution and/or Article 1 of Protocol No. 1 to the Convention.

19. On 17 February 2012 the Constitutional Court declined to institute proceedings as the Senate had not showed that section 35(9) of the Protection Zone Law was applicable to the case and thus they were not entitled to lodge an application (see paragraph 63 below). The applicants had not referred to it and the administrative courts had not relied on that provision in the proceedings. The administrative proceedings concerned the applicants' claim against the municipality and the contested provision did not prevent the administrative courts to decide the claim brought by the applicants. The applicants had not claimed compensation from the water supplier who owned the object for which the protection zone had been established and who had only participated in those proceedings as a third party. Furthermore, the applicants were entitled to claim compensation for direct pecuniary loss under the second sentence of section 35(9) of the Protection Zone Law.

3. Judgment by the Senate in the proceedings against decision no. 35(2006)

20. By a judgment of 8 May 2012 the Senate, sitting in a full composition (nine judges), examined the applicants' case and partly upheld their claim.

21. At the outset, the Senate noted that the fence around their property had been constructed prior to the adoption of the impugned decision. The applicants could ask for that fence to be removed within administrative proceedings, but they had not done so. Nevertheless, such a claim would have had little chance of success as long as the property was being used for the supply of water. In the proceedings at issue it was irrelevant whether the fence had been built in compliance with a building permit.

22. As regards the restrictions on the applicants' property rights, the Senate held that those restrictions had arisen owing to their property being used for the supply of water. The restrictions had emanated from a statute (see paragraph 50 below) and pursued a legitimate aim – to protect the rights of others to have access to clean drinking water.

23. As to the lawfulness, the lower courts had established that the impugned decision had not been adopted in accordance with the law. A protection zone had to be established in the spatial plans by issuing a municipal by-law (see paragraphs 46, 48, 51 and 53 below). Local governments had no competence to lay down such restrictions by issuing a decision (an administrative act). Although the Senate upheld the findings

made by the lower courts, they also noted that the irregularities in the decision-making process did not change the fact that the property was being used for the supply of water and that the water source had to be protected.

24. As a consequence, there had been no causal link between damage caused to the applicants and the fact that the Municipal Council had not followed the correct procedure to establish the protection zone. The Senate dismissed the applicants' claim for non-pecuniary damage in that respect.

25. Nevertheless, the Senate also ruled that the restrictions on the applicants' property rights – prohibiting any activity and even accessing the plot of land – without monetary compensation or any other form of compensation (e.g. compensation following formal expropriation procedure) had been serious and impaired the very essence of the right. At the same time, a claim for compensation for damage caused by a statute could not be decided within administrative proceedings. The applicants could lodge such a claim with the courts of general jurisdiction. The applicants could also request a public authority to exchange their plot of land for a different one.

26. Although the Senate dismissed the applicants' claim for non-pecuniary damage (see paragraph 24 above), it held that the administrative courts had to examine the whole procedure whereby the impugned decision had been adopted. Given that the applicants had raised some additional procedural aspects and the courts had not examined them, the Senate sent the case for a fresh examination by the appellate court in that respect.

27. Lastly, the Senate invited the parties to consider other options in resolving their dispute, for example, by concluding a specific public-law agreement (*administratīvais līgums*).

4. Fresh examination of the case against decision no. 35(2006)

28. Following the judgment of 8 May 2012 of the Senate whereby part of the case was referred back to the appellate court for a fresh examination (see paragraphs 20 and 26 above), on 24 April 2013, the appellate court established that the Municipal Council had failed to inform the applicants of the impugned decision and had failed to hear their views, in breach of domestic law (see paragraphs 67-68 below). However, those procedural breaches were not significant as they had not affected the outcome – the applicants could contest the lawfulness of the impugned decision. Hearing the applicants could not have affected the outcome either as the restrictions on the plot of the land “followed from the statutory provisions”, even if a wrong procedure – by issuing a decision and not municipal by-law – had been followed.

29. The appellate court noted the following sequence of the events: (i) in 2003 the Municipal Council had approved the borders in relation to the water protection zone, (ii) in 2004 the applicants had purchased the plot of land, and (iii) in 2005 the water supplier for the city of Riga had built the fence restricting the access to it. The appellate court further held that – in its

letters to the applicants concerning a possible exchange of land and removal of the fence – the Municipal Council had not undertaken to reach a decision favourable to them, but merely to further examine the situation and contact the water supplier for the city of Riga. The municipal authority's failure to take any further steps had breached the principle of good governance but had no connection with the above-mentioned procedural breaches (the failure to inform the applicants and hear their views). The applicants could have brought proceedings seeking the exchange of land or removal of the fence but had failed to do so.

30. The appellate court dismissed the applicants' claim for compensation for non-pecuniary damage as the procedural breaches had not been significant.

31. On 11 December 2013 the Senate, by a final decision, dismissed an appeal on points of law lodged by the applicants. The Senate upheld the appellate court's judgment. The Senate explained that the appellate court had not examined the lawfulness of the 26 February 2003 decision as it had not been the subject-matter of the case. The appellate court had merely relied on information provided by the municipal authority to the applicants in 2005.

B. Information from the Senate recommending a change of legislation

32. Meanwhile, on 8 May 2012 the Senate, sitting in a full composition (nine judges), decided to draw the attention of the Cabinet of Ministers (*Ministru kabinets*) to the lack of statutory provisions concerning compensation in the case of a *de facto* expropriation of property and to the possible incompatibility of the first sentence of section 35(9) of the Protection Zone Law (*Aizsargjoslu likums*) (see paragraph 54 below) with Article 105 of the Constitution (see paragraph 43 below) and Article 1 of Protocol No. 1 to the Convention. They considered that changes in domestic law were necessary to address that issue.

C. Complaint to the Constitutional Court lodged by the applicants

33. While their case was pending before the Senate, on 1 June 2011, the applicants lodged an individual constitutional complaint with the Constitutional Court. They argued that the relevant provisions of the domestic law – in so far as they provided for the protection zone on their property – were incompatible, *inter alia*, with Article 105 of the Constitution.

34. On 13 June 2011 the Constitutional Court refused to institute proceedings. In so far as the applicants challenged the provisions of the Protection Zone Law (see paragraphs 52 and 55 below) and

Regulation no. 43(2004) by the Cabinet of Ministers (see paragraphs 58-59 below), they had failed to provide legal reasoning (see paragraph 62 below). In so far as they challenged by-law no. 23(2009), their complaint had not been lodged within six months following their entry into force and was submitted out of time (see paragraph 64 below).

IV. SUBSEQUENT DEVELOPMENTS

A. Applicants' correspondence with the city of Riga and the water supplier in 2012

35. On 15 May 2012 the applicants requested the city of Riga and the water supplier to exchange their plot of land for a different one.

36. On 4 July 2012 the city of Riga replied to the applicants. It indicated that the relevant ministry had been tasked to draw up amendments to the Protection Zone Law on compensation in the case of a *de facto* expropriation of property. While the city of Riga agreed with the Senate (see paragraph 32 above) and the Cabinet of Ministers (see paragraph 37 below) that a person should receive compensation in the case of a *de facto* expropriation of property, it could not examine the matter until such time as amendments to the Protection Zone Law in that regard would be adopted.

B. Views expressed by the Government in 2012

37. On 25 June 2012 the Cabinet of Ministers, having analysed the applicable legal regulation in Latvia, issued their reply to the Senate (see paragraph 32 above). They noted that Article 92 of the Constitution provided for the right to a fair compensation, but they agreed with the Senate that specific legal regulation would be required to establish a mechanism to provide compensation. The Civil Law (*Civillikums*) did not provide grounds to claim compensation for damage caused by a statute. Another special law (*Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums*) was not applicable in such situation. Although some other extra-judicial mechanisms were available (they referred to the possibility to conclude a public-law agreement or start expropriation procedure by the relevant municipality), in their view the Protection Zone Law should be amended to include provisions on compensation in the case of a *de facto* expropriation of property. In their reply, they noted, by contrast, that the Energy Law (*Enerģētikas likums*) contained specific provisions on compensation.

C. Parliamentary discussions in 2013

38. Draft amendments to the Protection Zone Law were prepared and put before Parliament for discussion on 28 November 2013. In so far as

relevant to the case before the Court, while maintaining the principle that no compensation was to be paid in situations where inclusion in a protection zone limited enjoyment of the property rights, the amendments provided that with respect to the protection zones around the water supply sources in case of a lack of an agreement from the land owner the municipality had to proceed with formal expropriation of the property (a procedure that entails a determination of compensation). Parliament did not adopt those amendments (35 MPs had voted for, 28 – against, 18 - abstained) owing to other changes proposed in the same legislative packet.

39. No amendments in the legal framework on compensation in relation to protection zones have been made since then. There is no information about any such provisions being included in the Law on Water Management Services (*Ūdenssaimniecības pakalpojumu likums*) (see paragraph 41 below), which has been in force since 1 January 2016.

D. Applicants' correspondence with the city of Riga and the water supplier in 2015

40. On 12 February 2015 the applicants wrote to the city of Riga and the water supplier asking them to expropriate their plot of land in accordance with the domestic law on expropriation (*Sabiedrības vajadzībām nepieciešamā nekustamā īpašuma atsavināšanas likums*) (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 52-53, 25 October 2012) or to exchange their land for a different one by concluding a public-law agreement as suggested by the Senate (see paragraph 27 above). If this request were to be refused, the applicants would submit a claim to the courts of general jurisdiction for the expropriation or exchange of the land the grounds of Article 92 of the Constitution and the domestic law on expropriation. They would also claim compensation for *de facto* expropriation on the grounds of Article 105 of the Constitution.

41. On 12 March 2015 the city of Riga replied that the Civil Law did not provide grounds to claim compensation for damage caused by a statute. Another special law was not applicable (see paragraph 37 above). Subsequent to Parliament having dismissed the proposed amendments to the Protection Zone Law (see paragraph 38 above), in 2014 another proposal had been made to include the legal regulation in a draft law on water management services (see paragraph 39 above). Taking into account that there had been no changes in the legal regulation concerning expropriation of property located in protection zones, the city of Riga could not examine the matter until such time as that law or any other law would enter into force in this regard.

RELEVANT LEGAL FRAMEWORK

I. CONSTITUTION

42. Article 92 of the Constitution provides, *inter alia*, that “any person whose rights are violated without justification has a right to commensurate compensation”.

43. Article 105 provides as follows:

“Everyone has the 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 in the interests of society shall be authorised only in exceptional cases, on the basis of a special law and in return for fair compensation.”

II. PRINCIPLE OF GOOD GOVERNANCE

44. The principle of good governance (*labas pārvaldības princips*) is a general principle of law in Latvia. The Constitutional Court has recognised that it falls within the scope of Articles 1 and 89 of the Constitution, which stipulate that Latvia is an independent and democratic republic and that the State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding on Latvia (case no. 2002-12-01 and no. 2004-21-01).

III. LEGISLATION CONCERNING SPATIAL PLANNING

A. Old Spatial Planning Law (*Teritorijas plānošanas likums*)

45. This law, which was effective from 26 June 2002 to 30 November 2011, laid down the legal framework for spatial planning in Latvia.

46. A spatial plan had to contain the present and planned (permitted) use of an area and any restrictions on its use; such information was to be indicated both in writing and graphic form (section 1).

47. Natural and legal persons had the right to express their opinion and submit their proposals regarding the spatial plan (section 9).

48. Since 2 March 2005 a local government was required to approve a spatial plan by issuing a municipal by-law (section 7(6)(2)). Prior to that date there appear to be no explicit provisions to that effect.

B. New Spatial Development Planning Law (*Teritorijas attīstības plānošanas likums*)

49. This law took effect on 1 December 2011. General spatial plans remain to be examined by the Constitutional Court (see paragraph 64 below). Prior to lodging an individual constitutional complaint (an

application), a person must lodge an application with the relevant ministry (section 27).

IV. LEGISLATION CONCERNING PROTECTION ZONES

A. Protection Zone Law

50. Section 9(1) of this law provides, in general terms, that protection zones must be established around water supply sources in order to ensure the preservation and renewal of water resources to reduce the negative effects of pollution on the quality of water resources. Section 9(2) (in force from 26 March 2002 until the present) provides three specific protection zones around water supply sources: a “strict”, bacteriological and chemical protection zone.

51. Protection zones must be marked in spatial plans in accordance with the law (section 33(1)).

52. Borders of a protection zone had to be marked in the relevant plan for the plot of land (*zemes gabala plāns*) and had to be recorded in the Land Register in accordance with the law. If there were no spatial plans, the local municipality had to ensure that the borders of the protection zone were approved. They also had to submit this information to the State Land Authority (*Valsts Zemes dienests*) with a view to marking those protection zones in the relevant border plans (*zemes robežu plāns*) (section 33(2), in force until 14 July 2005). When initiating the construction of an object used for water supply the creation of the relevant protection zone had to be coordinated with the owners of the properties concerned (section 33(2), in force from 15 July 2005 to 9 June 2009).

53. General restrictions in protection zones must be determined by statutes and by regulations issued by the Cabinet of Ministers. They may also be determined by municipal by-laws issued within their competence (section 35(1)).

54. Section 35(9) of this law (in force from 1 July 2009 until the present), reads as follows:

“The owner ... of an object for which a protection zone has been established may use that protection zone without paying any compensation for restrictions on the right to use the respective property. This provision does not limit the right of the property owner ... to claim compensation for direct pecuniary loss caused to him or her.”

Under the transitional provisions, the first sentence of section 35(9) applies to those legal relations which were established subsequent to 1 July 2009.

55. Section 39 provides for restrictions in respect of protection zones around water supply sources. Prior to 25 March 2002 those restrictions related only to certain kind of activities (such as storage of chemical substances, fuel, waste and extraction of any mineral resources). Since

26 March 2002 any business activities are prohibited, except for those related to water extraction (section 39(1)(1)).

56. If a protection zone is established on a plot of land, any restrictions on the related property rights must be recorded in the Land Register (section 60(1)).

57. Civil disputes concerning protection zones and restrictions on the use of or encumbrances on a property caused by protection zones must be examined by courts (section 65(3)). As of 1 July 2020, section 65 has been repealed and new legal provisions have been adopted. Those provisions no longer indicate that civil disputes must be examined by courts. However, this principle derives from the Civil Procedure Law (*Civilprocesa likums*).

B. Regulation no. 43(2004) by the Cabinet of Ministers

58. This regulation (*Aizsargjoslu ap ūdens ņemšanas vietām noteikšanas metodika*), in force since 24 January 2004 until the present, lays down the methodology for the establishment of protection zones for water supply sources. It is prohibited to carry out the activities listed in 39(1) of the Protection Zone Law (see paragraph 55 above) in a “strict” protection zone established for a water supply source. It is also prohibited to construct new residential buildings in such a zone, and persons not engaged in activities related to water extraction are prohibited from entering (paragraph 9).

59. A water protection zone must be enclosed by a fence, which may not be lower than 1.5 meters and a “no entry” sign must be placed on it (paragraph 11).

V. CIVIL LAW

60. Registration in the Land Register is required in cases when the right to an immovable property and related rights (*lietu tiesības*) are acquired by way of a transaction. Those property and related rights which derive directly from the law have legal effect irrespective of their registration in the Land Register (section 1477).

VI. LAW ON THE CONSTITUTIONAL COURT

A. Jurisdiction

61. The Law on the Constitutional Court (*Satversmes tiesas likums*) provides that the Constitutional Court is competent to examine cases concerning compliance of other legal instruments with legal norms (instruments) of superior legal force (section 16(1)(3)).

B. Procedure

62. An application lodged with the Constitutional Court must contain legal reasoning (section 18(1)(4)). The Constitutional Court may decline to institute proceedings if the application does not comply with the procedural requirements laid down in sections 18 or 19-19³ of this law (section 20(5)(3)).

63. Section 19¹, in so far as relevant, provides as follows:

Section 19¹ – Application by a court ...

“(1) An application shall be submitted, if:

...

(ii) the court, on adjudicating an administrative case in the first-instance, on appeal or appeal on points of law, considers that a legal provision that has been applied by a public authority or [if the court considers that a legal provision shall be applied in the administrative proceedings], is not compatible with the Constitution or international legal provisions (acts).”

The Constitutional Court may decline to institute proceedings if the application has been submitted by an authority not entitled to do so (section 20(5)(2)).

64. With effect from 1 January 2010 a new provision was inserted in that law clarifying that an application to institute constitutional proceedings may be lodged in relation to spatial planning at the municipal level within six months of the day on which the relevant municipal by-law came into force (section 19³(2)). On 1 January 2012 it was clarified that the proceedings should be brought in accordance with the new Spatial Development Planning Law (see paragraph 49 above). Those rules do not apply to the applications brought by domestic courts (section 19³(3)).

VII. ADMINISTRATIVE PROCEDURE LAW

A. Compensation

65. The Administrative Procedure Law (*Administratīvā procesa likums*) provides that everyone has the right to receive commensurate compensation for pecuniary and non-pecuniary damage caused by an administrative act or action of a public authority (section 92).

66. A claim for compensation can be submitted either together with an application to the administrative courts to declare an administrative act or action of a public authority unlawful, or to the public authority concerned following a judgment adopted in such proceedings (section 93).

B. Procedure

67. An administrative act takes effect at the time the addressee in question is notified of it, unless otherwise provided by law or by the administrative act itself (section 70(1)).

68. When a public authority decides on an administrative act which may be unfavourable to the addressee or a third person it must hear their opinion and arguments in the case (section 62(1)).

THE LAW

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

69. The applicants complained that they had not been able to access and use their plot of land since 2005 and that they had not received any compensation or a comparable plot of land. They alleged a violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

70. The Government contested that argument.

A. Admissibility

1. Submissions by the parties

71. The Government raised objections on the grounds of non-exhaustion of domestic remedies, invoking two remedies which the applicants could have used.

72. Firstly, they argued that the applicants should have lodged a civil claim against the water supplier before the courts of general jurisdiction on the grounds of Article 92 of the Constitution. They admitted that the situation complained of stemmed from the domestic law and that the administrative courts did not have competence to award compensation in such cases as ruled by the Senate. The Government submitted that such a claim could be lodged with the courts of general jurisdiction (see paragraph 25 above). In such proceedings, damages could be awarded, a compulsory lease could be established or their plot of land could be subject to an expropriation measure in return for compensation. In their view, the

applicants were aware of this remedy as they had referred to it in their letter of 12 February 2015 (see paragraph 40 above).

73. The Government provided three examples of domestic case-law, where the courts of general jurisdiction had examined claims arising from restrictions on private property. The first case concerned a protection zone around an electrical power network (no. C32112908). The second case concerned a claim to expropriate a plot of land, on which the city of Riga had built a road (no. C04309509). While the city of Riga had at some point withdrawn its offer to buy that plot of land, both parties had been negotiating the possibility to have it expropriated but could not agree on the amount of compensation to be paid. Thus, a court determined the amount to be paid. The third case concerned compulsory lease of a plot of land used as an aerodrome by the Ministry of Defence (no. C30232107).

74. Secondly, in so far as the restrictions were laid down in municipal by-law no. 23(2009), the applicants should have properly substantiated their complaint before the Constitutional Court and should have lodged it on time. As they had failed to do so, they had failed to exhaust an effective domestic remedy (they referred to *Gubenko v. Latvia* (dec.), no. 6674/06, §§ 18-26, 3 November 2015). The Government provided two examples of domestic case-law, where the Constitutional Court had examined complaints regarding spatial plans (they referred to cases no. 2006-09-03 and no. 2010-62-03).

75. The applicants did not provide any comment.

2. *Assessment by the Court*

76. The Court considers that the Government's preliminary objections in relation to exhaustion of domestic remedies, in the particular circumstances of the present case – where the crux of the matter before the Court concerns the scope of the regulatory framework, its interpretation and application by the domestic courts and other authorities in the applicants' case as well as the alleged lack of statutory provisions on compensation indicating systemic deficiencies – are closely linked to the substance of their complaint under Article 1 of Protocol No. 1 to the Convention. They should, therefore, be joined to the merits.

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

B. Merits

1. *Submissions by the parties*

78. In their initial submissions to the Court the applicants argued that the interference with their property rights had amounted to a “deprivation” of property within the meaning of Article 1 of Protocol No. 1 to the Convention, for which they should receive a fair compensation. It was disproportionate in that an excessive burden had been imposed on them.

79. The Government did not submit any observations on the merits.

2. *Assessment by the Court*

(a) **Applicable rule contained in Article 1 of Protocol No. 1**

80. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest ... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule” (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, which reproduces in part the analysis given by the Court in *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *the Holy Monasteries v. Greece*, 9 December 1994, § 56, Series A no. 301-A; and *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

81. The Court observes that the situation complained of by the applicants in the present case stemmed from the fact that their property was included in the protection zone around an important water supply source for the city of Riga. While the applicants remained the legal owners of that plot of land, they have been unable to use or access their property since late 2005. The establishment of the protection zone significantly reduced the effective exercise of the applicants’ property rights as they were not allowed to undertake any business activity and construct new buildings on their plot of land. Nor were they allowed to access it (see paragraphs 6, 8, 25, 55, 58-59 above).

82. Since the applicants remained the legal owners of their plot of land and no expropriation orders were issued in respect of their land, it cannot be said that the applicants were deprived of their possessions (contrast with

Vistiņš and Perepjolkins v. Latvia [GC], no. 71243/01, §§ 19-24, 25 October 2012). Nor did the State bring any proceedings against the applicants to seek title over the plot of land at issue (contrast with *Dzirnis v. Latvia*, no. 25082/05, §§ 17-31, 26 January 2017; *Osipkovs and Others v. Latvia*, no. 39210/07, §§ 23-33, 4 May 2017; and *Nešić v. Montenegro*, no. 12131/18, §§ 7-11, 9 June 2020).

83. The restrictions on the applicants' property rights in the present case may be regarded as measures to control the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention. However, the applicants' complaint to the Court also relates to the authorities' refusal to pay any compensation or allocate another plot of land (see paragraph 69 above). Having regard to the different facets of the applicants' complaint, the Court considers that it should examine the situation complained of under the general rule established in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (see *Potomska and Potomski v. Poland*, no. 33949/05, § 63, 29 March 2011; *Barcza and Others v. Hungary*, no. 50811/10, § 44, 11 October 2016; and *Kristiana Ltd. v. Lithuania*, no. 36184/13, § 101, 6 February 2018).

(b) Compliance with Article 1 of Protocol No. 1

(i) Interference

84. The Court considers that the situation complained of, that is, the establishment of the protection zone on the applicants' plot of land, their inability to use or even access it – in the absence of any compensation or allocation of another plot of land – undoubtedly amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions. In order to be compatible with the general rule set forth in the first sentence of the first paragraph of Article 1, such an interference must 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 (see *Sporrong and Lönnroth*, cited above, § 69).

(ii) Lawfulness

85. The interference with the applicants' property rights stemmed from the domestic law (see paragraphs 8-9, 12-13, 22-23, 50-51, 53 and 55). Although the municipal authorities considered that they had imposed restrictions on the applicants' property rights by adopting the 28 June 2006 decision, the administrative courts held that local governments had no competence to lay down such restrictions by issuing a decision; a protection zone had to be established in the spatial plans. Hence, the impugned decision had not been adopted in accordance with the law and the administrative courts quashed it (see paragraphs 15 and 23 above). As noted

above, the restrictions on the applicants' property rights did not emanate only from the impugned decision but also from other provisions of the domestic law. However, in view of the shortcomings in the process leading to the adoption of the spatial plans (see paragraphs 95-97 below) it is unclear whether the restrictions on the applicants' property rights were established in full compliance with all the domestic legal requirements.

86. In their application to the Court, however, the applicants have not contested the lawfulness of the interference with their property rights as established by the spatial plans. In essence, they have not disputed the validity of spatial plans or necessity to protect the water supply source. Nor have they argued that the domestic law requirements in relation to spatial planning had been disregarded. The Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and it is not its function to take the place of the national courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable. This is particularly true when, as in this instance, the case turns upon difficult questions of interpretation of domestic law (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

87. Accordingly, the Court does not find it necessary at this stage to settle the issue of whether the interference complained of was in accordance with domestic law, as it considers, for the reasons set out below (see paragraphs 92-107), that the interference with the applicants' property rights breaches Article 1 of Protocol No. 1 on other grounds (see a similar approach in *Vistiņš and Perepjolkins*, cited above, § 105).

(iii) Public interest

88. The interference with the applicants' property rights arose because their property was included in the water protection zone. The Court can accept that the protection of that zone was in public interest as it guaranteed access to clean drinking water for others (see paragraph 22 above). The Court would further add that the protection zone was established in order to ensure the preservation and renewal of water resources (see paragraph 50 above), and, more generally, the environment conservation, which in today's society is an increasingly important consideration (see *Depalle v. France* [GC], no. 34044/02, § 81, ECHR 2010).

(iv) Proportionality

89. The Court notes at the outset that the present case touches upon intertwined issues concerning the scope and clarity of the regulatory framework for protection zones in Latvia, its practical implementation in the applicants' case, both administratively and in the ensuing judicial proceedings, and the question of compensation (see paragraph 76 above).

This necessitates an analysis of the interference's proportionality that takes account of the general context and the effect as a whole, on the applicants' rights, of the manner in which the authorities acted to achieve the legitimate aim they pursued. The principle of good governance (see paragraph 44 above), recognised under Latvian law, is relevant in this regard. Therefore, the Court is called upon to examine in context the interpretation and application by the domestic courts and other authorities of the applicable regulatory framework and the alleged lack of statutory provisions on compensation in this respect.

90. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. The assessment may involve not only the relevant compensations terms – if the situation is akin to the taking of property – but also the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 110, *in fine*, 114 and 120, *in fine*, ECHR 2000-I, and *Broniowski v. Poland* [GC], no. 31443/96, § 151, ECHR 2004-V) in accordance with the principle of good governance. The requisite balance will not be achieved if the person concerned has had to bear an individual and excessive burden. In determining whether this requirement has been met, the Court recognises that regional planning and environmental conservation policies, where the community's general interest is pre-eminent, confer on the State a margin of appreciation that is greater than when exclusively civil rights are at stake (see *Depalle*, cited above, §§ 83-84).

91. Consideration must be given, in particular, to whether the applicant, on acquiring the property, knew or should have reasonably known about the restrictions on the property or about possible future restrictions (see *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, §§ 60-61, Series A no. 163, and *Łącz v. Poland* (dec.), no. 22665/02, 23 June 2009), the existence of legitimate expectations with respect to the use of the property or acceptance of the risk on purchase (see *Fredin v. Sweden (no. 1)*, 18 February 1991, § 54, Series A no. 192), the extent to which the restriction prevented use of the property (see *Katte Klitsche de la Grange v. Italy*, 27 October 1994, § 46, Series A no. 293-B, and *SCEA Ferme de Fresnoy v. France* (dec.), no. 61093/00, ECHR 2005-XIII (extracts)), and the possibility of challenging the necessity of the restriction (see *Phocas v. France*, 23 April

1996, § 60, *Reports of Judgments and Decisions* 1996-II, and *Papastavrou and Others v. Greece*, no. 46372/99, § 37, ECHR 2003-IV).

92. Turning to the circumstances of the present case, the Court observes that the applicants purchased the plot of land in November 2004 and duly registered their property rights in January 2005. No restrictions emanating from water protection zones were recorded in the Land Register at that time (see paragraph 5 above). Whilst the permitted use of that land was noted as farmland, spatial plans were not yet adopted and conditions for the use of that land were not determined at the municipal level. Nonetheless, seeing that a protection zone had been approved in the vicinity more than a year and a half before the applicants purchased the property at issue (see paragraph 10 above), it cannot be excluded that the applicants could have become aware, from the relevant domestic authorities, of the possible restriction on the use of the land they were about to purchase. The Court considers that in such circumstances the applicants could not have reasonably expected that their property would remain designated as farmland indefinitely.

93. There is no indication that the applicants planned to carry out any particular activity on their property. Nor is there any indication that they had taken any steps to develop a farm on the property, which would have, in any event, required them to obtain a building permit if they wished to construct any buildings (see, *mutatis mutandis*, *Kraujas HES v. Latvia* (dec.) [Committee], no. 55854/10, § 46, 10 October 2020, where no building permit for a hydroelectric power station had been issued, and contrast with *Tumeliai v. Lithuania*, no. 25545/14, § 78, 9 January 2018, where a building permission for a summer house in the forest had been issued). As soon as the applicants approached the municipal authority to enquire about the restrictions on their property, they were informed that their plot of land had been included in the protection zone (see paragraph 8 above).

94. However, the Court considers that the applicants could not have been fully aware of the situation in which they remained since the purchase of their property in 2004. The applicants' inability to fully apprehend the legal status of the property and any restrictions attached to it emanated, at least partly, from several flaws attributable to the domestic authorities (contrast with *Łącz*, cited above, where a local development plan had clearly designated planned restrictions).

95. As to the conduct of the domestic authorities the Court notes that it took a number of years for the municipal authority to properly establish the water protection zone on the applicants' plot of land. Some steps were taken with a view to establishing the protection zone in 2003, when the municipal authority approved its borders (see paragraph 10 above). However, as a matter of domestic law, the municipal authority had to establish and mark the protection zone in the spatial plans (see paragraphs 46 and 51 above). While the first spatial plan, adopted by the municipal authority in 2004,

provided for the water protection zone around “Rembergi”, there is no indication that it was marked either in writing or in graphic form as extending into or covering the applicants’ plot of land. That plan, in any event, was later suspended and revoked for incompliance with domestic requirements (see paragraph 10 above). Instead, in 2006 the municipal authority adopted decision no. 35(2006) purporting to establish the protection zone on the applicants’ plot of land (see paragraph 11 above). However, that decision was later quashed as it had not been adopted in accordance with law – the inclusion of a particular property in the protection zone had to be determined by issuing a municipal by-law and not by adopting a decision (see paragraph 23 above).

96. It was only in 2007 – which is more than five years later – that the municipal authority established the water protection zone on the applicants’ plot of land by adopting a spatial plan and by issuing a municipal by-law. And even then, those restrictions were marked in graphic form and not in writing. It took additional two years for the municipal authority to adopt another spatial plan by issuing municipal by-law no. 23(2009), in compliance with the domestic requirement to mark that protection zone in graphic form and also in writing (see paragraphs 12-13 above).

97. In this connection, the Court cannot agree with the Government that the applicants should have brought proceedings before the Constitutional Court to challenge municipal by-law no. 23(2009) (see paragraph 74 above). While the applicants complained about the establishment of the protection zone, they did not argue – in the proceedings before the Court – that the protection zone as laid down in municipal by-law no. 23(2009) was unconstitutional or that it differed in its breadth to the protection zone established in previous plans (see paragraph 69 above). It is important to note that the protection zone was not newly established by municipal by-law no. 23(2009) – it had been planned at least since 2002 and was established, albeit with certain deficiencies, in two previous spatial plans in 2004 and 2007 (contrast with *Vecbaštika and Others v. Latvia* (dec.) [Committee], no. 52499/11, §§ 7-9, 19-38, 19 November 2019, where the proceedings before the Constitutional Court concerned newly established wind protection zones). The Government have not suggested that the applicants should have contested municipal by-laws issued in 2004 and 2007, which had certain deficiencies (see paragraphs 10, 95-96 above). In the most recent by-law no. 23(2009), some of those shortcomings were finally remedied. In the absence of further explanation as to the prospects of success in such circumstances, the Court dismisses the Government’s objection in relation to non-exhaustion of domestic remedies as regards the spatial plan.

98. As to the conduct of the applicants, the Court notes that they tried various administrative and judicial avenues to obtain redress for the situation in which they remained since the purchase of their property

in 2004. They contacted various municipal and State authorities but were offered little, if any, practical solutions. The applicants brought domestic proceedings to challenge decision no. 35(2006). They were successful as the impugned decision was held to be unlawful but that finding had no practical effects on the effective enjoyment of the applicants' property rights as they remained significantly reduced. The applicants could not receive compensation because those restrictions derived from statutory provisions and a claim for compensation for damage caused by a statute could not be decided within the administrative proceedings (see paragraphs 22-25 above).

99. The Court will now examine the Government's objection that the applicants should have brought another set of proceedings before the courts of general jurisdiction against the water supplier for the city of Riga to claim compensation (see paragraph 72 above). The Court observes that the Senate – in the proceedings at issue – noted the lack of statutory provisions in Latvia concerning compensation in such cases as the present one. They spared no effort to bring this matter to the attention of other domestic authorities – they lodged two applications with the Constitutional Court and also informed the Government that changes in domestic law were necessary. Whilst the Constitutional Court refused to institute proceedings on procedural grounds, the Government in principle agreed that specific legal regulation was necessary to establish a mechanism to provide compensation (see paragraphs 16-19, 32 above). Legislative amendments were prepared and put before Parliament in 2013 but they were not adopted for reasons unrelated to the issue of compensation (see paragraph 38 above). Similar views were also expressed by the relevant municipal authorities (see paragraphs 36 and 41 above).

100. In the proceedings before the Court, the Government provided several examples of domestic case-law (see paragraph 73 above) in support of their argument that a claim before the courts of general jurisdiction was an effective remedy. However, those cases related to different factual circumstances and other legal regulation. The first of those cases related to another type of protection zone in respect of which the relevant law – as noted by the Government – contained specific provisions on compensation (see paragraph 37 above).

101. As regards the second case relied on by the Government, the Court notes that the parties to that case had entered into negotiations to have the plot of land expropriated but had different views about the amount of compensation (see paragraph 73 above). That situation is different from the present case as there is no information that the public authorities had envisaged expropriating the property from the applicants at any stage or had offered any compensation.

102. In the context of restrictions on the development of land resulting from a development plan, the availability of a claim to have the property

purchased by the authorities is a relevant factor to consider (see *Phocas*, cited above, § 60). It is true that the applicants in the present case requested that their property be expropriated, however, their request was not entertained (see paragraphs 40-41 above). The Court does not agree with the Government that such a request had reasonable prospects of success given that the domestic law did not provide a procedure by which the applicants could assert before a judicial body their claim for expropriation and require the authorities to purchase their property (see, *mutatis mutandis*, *Skibiński v. Poland*, no. 52589/99, §§ 34-39, 94-95, 14 November 2006, concerning owners who were threatened with expropriation of their property at an undetermined point in the future). Consequently, the Court finds that the applicants were deprived of any means of compelling the State authorities to expropriate their property. In the assessment of the proportionality of the measures complained of, the lack of such a procedure weighs considerably against the authorities.

103. As regards the third example of domestic case-law provided by the Government (see paragraph 73 above), there was no dispute that the parties to that case had entered into compulsory lease relations but they could not agree on the amount of rent to be paid; it had to be established by a court. By contrast, there is no indication that the applicants had entered into compulsory lease agreement with the water supplier for the city of Riga in the present case.

104. The Court concludes that – having regard to the views held by the domestic courts, the lack of specific legal regulation on compensation at the domestic level and in the absence of relevant domestic case-law – a claim before the courts of general jurisdiction against the water supplier for the city of Riga did not have reasonable prospects of success in the circumstances of the present case. Accordingly, the Government's objection in this regard is dismissed.

105. The Court will now examine whether the applicants could have applied to have another plot of land allocated to them. Whilst the domestic courts held that they had not applied for such a procedure (see paragraph 29 above), the Court does not see any legal grounds on which they could have relied to do so (contrast with *Kraujas HES*, cited above, § 25, where such an option was provided for in a special law). Hence, such a claim did not have reasonable prospects of success. This is further corroborated by the fact that their request to exchange their plot of land was dismissed by the municipality (see paragraphs 35-36 above).

106. Furthermore, the domestic authorities have not taken any steps to resolve the serious interference at issue which has been ongoing for over a decade: such as instituting formal expropriation procedure (as it was only at a discretion of the authorities to commence such procedure and they have failed to take any steps in that regard), concluding a specific public-law agreement, entering into compulsory lease relations, offering the applicants

another plot of land or, indeed, paying them compensation. The considerable length of time for which the applicants have had to put up with the interference at issue without any compensation whatsoever is another element in the Court's assessment of the proportionality of the measures complained of. In addition, the applicants' situation was compounded by the state of uncertainty in which they found themselves, in view of the continued impossibility to use or access their property for more than a decade and given the absence of any steps taken by the authorities to resolve that situation.

107. Having regard to all the foregoing factors, in particular, the lack of domestic law provisions on compensation in the regulatory framework concerning the protection zones and the manner in which their case was handled by the authorities in general, the Court finds that the domestic authorities have not ensured a fair balance between the demands of the general interest of the community and the requirements for the protection of the applicants' property rights as the applicants have had to put up with significant interference for more than a decade without being offered any compensation or other redress. Therefore, the interference complained of was disproportionate to the aim pursued.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

110. The Court notes that the applicants stated in the application form that they wished to obtain monetary compensation in respect of the non-pecuniary damage they had sustained through the violation of their right to property. They also asked that the protection zone be removed or, if that was not possible, to obtain monetary compensation or a forest land of equivalent value from the State.

111. However, the applicants failed to submit any claims for just satisfaction within the time-limit fixed thereof as required under Rule 60 of the Rules of Court. The fact that they claimed just satisfaction in the application form lodged with the Court does not alter that conclusion (see *Nagmetov v. Russia* [GC], no. 35589/08, § 61, 30 March 2017). In the circumstances of the present case, the Court considers that there is no exceptional situation, within the meaning of its case-law (*ibid.*, §§ 78-82), warranting the making of an award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objections on exhaustion of domestic remedies and *dismisses* them;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 21 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President

APPENDIX

No.	Applicant's Name	Year of birth	Nationality	Place of residence	Share in property "Liezeri"
1.	J. BĒRZIŅŠ	1971	Latvian	Katlakalns	50%
2.	M. BOLĒVICS	1968	Latvian	Riga	25%
3.	A. NOVIKOVŠ	1965	Latvian	Riga	25%