



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

FOURTH SECTION

DECISION

Applications nos. 17126/02 and 24991/02
LIKVIDĒJAMĀ P/S SELGA against Latvia
and Lūcija VASIĻEVSKA against Latvia

The European Court of Human Rights (Fourth Section), sitting on 1 October 2013 as a Chamber composed of:

David Thór Björgvinsson, *President*,

Ineta Ziemele,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano,

Paul Mahoney, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above applications lodged on 20 April 2002 and 15 May 2002 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicant company in the first application, *Likvidējamā zvejnieku paju sabiedrība Selga* (*Likvidējamā p/s “Selga”*), is a Latvian fishery cooperative (“the applicant company”); its registered office is in Lapmežciems parish. It was represented before the Court by Mr A. Jēkabsons, the chairman of the liquidation commission of the company.

2. The applicant in the second application, Mrs Lūcija Vasiļevska, is a Latvian national who was born in 1933 and lives in Riga (“the second applicant”). She was represented before the Court by Mrs I. Nikolājeva, a lawyer practising in Riga.

3. The Latvian Government (“the Government”) were represented by their Agent at the time, Mrs I. Reine and subsequently by Mrs K. Līce.

A. The circumstances of the case

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

1. Historical background

5. The historical background of the unlawful occupation of the Baltic States in 1940 has been described elsewhere (see *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 12-13, ECHR 2006-IV, and *Kuolelis and Others v. Lithuania*, nos. 74357/01, 26764/02 and 27434/02, § 8, 19 February 2008).

6. On 4 May 1990 the Supreme Council of the “Latvian SSR”, the legislative assembly elected on 18 March in the same year, adopted the Declaration on the Restoration of Independence of the Republic of Latvia, which declared Latvia’s incorporation into the USSR in 1940 unlawful under international law and acknowledged that the fundamental provisions of the 1922 Constitution (*Satversme*) were in force. A transitional period, aimed at restoration of *de facto* sovereignty, was instituted. Negotiations with the USSR were to be initiated in accordance with the 1920 Peace Treaty between Latvia and Russia. During this period, various provisions of the Constitution of the “Latvian SSR” and other applicable legal acts remained in force in so far as they did not contradict the fundamental provisions of the 1922 Constitution (see paragraphs 68 and 69 below).

7. On 21 August 1991 the Supreme Council passed a constitutional law proclaiming full independence with immediate effect (see paragraph 70 below). The transitional period established under the 4 May 1990 Declaration on the Restoration of Independence ended.

8. On 8 December 1991 Belarus, the Russian Federation and Ukraine signed the Minsk Agreement, declaring the end of the Soviet Union’s existence and setting up the Commonwealth of Independent States (CIS).

9. On 21 December 1991 eleven member States of the USSR, but not Latvia, Lithuania or Estonia, signed the Alma-Ata Declaration, which confirmed and extended the Minsk Agreement setting up the CIS. It was noted in the Alma-Ata Declaration that “with the establishment of the CIS, the USSR ceases to exist” and that the CIS was neither a State nor a supra-State entity. A Council of the Heads of State of the CIS was set up. They decided on the same date that (U.N. Doc. A/47/60):

“The States of the Commonwealth support Russia’s continuance of the membership of the USSR in the United Nations, including permanent membership of the Security Council, and [membership of] other international organisations”.

10. On 25 December 1991 the President of the Soviet Union, Mikhail S. Gorbachev, resigned.

2. The establishment of the applicant company and its foreign currency assets

11. The applicant company was established before 1990, when Latvia was under Soviet rule, in the form of a *kolkhoz* (collective farm).

12. It transpires from the account opening form that on 27 November 1990 the applicant company opened a foreign currency account (no. 67080162) “in the balance” of the Bank of Foreign Economic Activities of the USSR (“the *Vneshekonombank*”), a state institution dealing with foreign currency transactions throughout the USSR in accordance with the applicable rules at the time. In the account opening form it was also mentioned that an “off-balance” foreign currency account was registered with the Latvian section of the *Vneshekonombank* (see paragraph 55 below for more details).

13. On 7 January 1991 the applicant company was registered in the Enterprise Register of the Republic of Latvia as a cooperative (*paju sabiedrība*) in the form of a limited liability company.

14. On 31 December 1991 the account balance of the applicant company’s foreign currency assets in the *Vneshekonombank* stood at 99,006.39 United States dollars (USD).

15. In 1997 the applicant company was placed in liquidation.

3. The second applicant’s inheritance

16. In 1986, when Latvia was under Soviet rule, the second applicant inherited some property from her uncle, who had been living in London, the United Kingdom, and died there. On an unspecified date between 1986 and 1990 the property was sold and the second applicant was to receive distribution of the proceeds.

17. On 18 May and 13 July 1990 the administrator of the second applicant’s uncle’s estate remitted two money transfers of 45,000 and 18,000 pounds sterling (GBP) to the *Vneshekonombank* in Moscow. The legal fees and costs of the transaction were deducted from these amounts.

18. On 9 July 1990 and 18 June 1991, on the second applicant’s instructions, the *Vneshekonombank* ordered transfer of two payments in the amount of GBP 39,924.02 and 15,941.44 to the second applicant’s benefit to the regional section of the Bank of Industrial Construction of the USSR (“the *Promstroybank*”) in Riga, where the second applicant opened a “B-type account” on 27 July 1990 (see paragraph 63 below for more details).

19. The parties disagree as to the nature of these transactions and the physical location of the assets. According to the Government, the second applicant’s assets remained in the *Vneshekonombank* in Moscow and the

regional section of the *Promstroybank* in Riga had only recorded them, producing a “mirror image” of the second applicant’s funds located in Moscow. The second applicant disagreed, and considered that her assets had been in reality transferred to her account in the regional section of the *Promstroybank* in Riga, and that the latter had full control over them.

20. On 2 May 1991 the second applicant withdrew GBP 700 from her account.

21. On 30 May 1991 she withdrew USD 3,000 (converted from GBP 1,725.65).

22. On 22 October 1991 the second applicant withdrew USD 2,000 (converted from GBP 1,163.52) from her account.

23. On 1 November 1991 she withdrew USD 2,000 (converted from GBP 1,163.52).

24. On 16 January 1992 she withdrew GBP 100.

25. On 10 March 1992 the second applicant withdrew an unspecified amount of money, which was her last withdrawal.

4. *Establishment of the Latvian banking and monetary system*

26. The Bank of Latvia was first established in 1922, following the proclamation of the establishment of the Republic of Latvia on 18 November 1918. In 1940, after the lawful government of the country was overthrown and Soviet rule was imposed by force, the Bank of Latvia was nationalised on the basis of the decree of 25 July 1940 (see, *mutatis mutandis*, *Liepājnīeks v. Latvia* (dec.), no. 37586/06, §§ 2-4, 35, 2 November 2010, in relation to nationalisation of private property at that time).

27. On 31 July 1990 the Supreme Council re-established the Bank of Latvia. On the same date it adopted transitional rules that would govern its activities until the adoption of legislation.

28. On 24 August 1991 the Supreme Council adopted a decision aimed at establishing an economic base for an independent State. It proclaimed that the State was the owner of all entities and civil assets located in or registered on Latvian territory and which had previously been under the subordination of the USSR, unless otherwise provided in international agreements.

29. On 3 September 1991 the Supreme Council adopted a decision on bank reorganisation within Latvian territory. It was decided that the Bank of Latvia was to “take over in its possession and structure”, all regional sections of Soviet banking entities in Latvia, including the Latvian sections of the *Vneshekonombank* and the *Promstroybank*. These entities were to continue their work until further instructions from the Bank of Latvia. The Latvian section of the *Vneshekonombank* in Riga was consequently incorporated into the structure of the Bank of Latvia as the Foreign Transactions Section (*Latvijas Bankas Ārējo operāciju nodaļa*).

30. On 6 September 1991 the Council of Ministers issued decree no. 352 to the effect that all entrepreneurs, companies and organisations of the Republic of Latvia could only open foreign currency accounts with banks registered by the Bank of Latvia. They were required to transfer any foreign currency assets deposited with foreign banks to banks registered by the Bank of Latvia by 31 December 1991.

31. On 25 September 1991 the Fisheries Ministry issued an order to the same effect.

32. On an unspecified date in October 1991 the Foreign Transactions Section of the Bank of Latvia opened correspondent account no. 07350020 with the *Vneshekonombank* in Moscow with a view to carrying out foreign currency transactions on behalf of its clients, which was not otherwise possible at the material time. The applicant company's foreign currency assets, which had been recorded in the Latvian section of the *Vneshekonombank*, were held in that correspondent account in Moscow.

33. On 4 March 1992 the Supreme Council officially recognised that the Bank of Latvia as re-established on 31 July 1990 was the only legitimate successor to the Bank of Latvia which had been established in 1922 and had existed until the occupation of 1940.

34. On 19 May 1992 the Supreme Council passed the Bank of Latvia Law.

35. On 14 October 1992 the Supreme Council passed amendments to another law, to the effect that all regulations issued by the former State Bank of the USSR were null and void on the territory of Latvia with effect from 1 January 1993.

36. On 2 December 1992 the Supreme Council adopted a decision on reorganisation of the Bank of Latvia and privatisation of its sections. A commission was established, one of whose tasks was to review and assess the separability of the commercial bank functions of the Bank of Latvia from its primary central bank function and to set up a fund for privatisation of Latvian banks. This fund was to take over the property of the Bank of Latvia which was not related to its primary function as the State bank.

37. On 10 May 1993 the Bank of Latvia transferred its forty-nine sections, together with all of their (movable and real) property, rights and obligations, to that fund. In a memorandum signed on that date the parties (the Bank of Latvia, the Ministry of Finance, the commission and the fund) agreed that the foreign currency "accounts" in the total amount of USD 26,000,000 in the *Vneshekonombank* of the former USSR were to remain on a separate balance sheet of the Foreign Transactions Section and the City Section of the Bank of Latvia until the conclusion of the intergovernmental negotiations between Latvia and Russia or until privatisation.

38. On 18 August 1993 a public commercial bank (*Latvijas Universālā banka*) was established on the basis of twenty-one former sections of the

Bank of Latvia which had not yet been privatised, including the reorganised regional section of the *Promstroybank* in Riga. It was privatised later on and operated as *Latvijas Unibanka*. The latter was the legal successor of the regional section of the *Promstroybank* in Riga.

39. On 8 December 1993 the Foreign Transactions Section of the Bank of Latvia was transformed into a private commercial bank (*Multibanka*). Its privatisation was completed in April 1994. *Multibanka* was the legal successor to the Foreign Transactions Section of the Bank of Latvia and thus also to the Latvian section of the *Vneshekonombank*.

5. Freezing of foreign currency assets

40. On 31 December 1991 the *Vneshekonombank* froze the Foreign Transactions Section correspondent account of the Bank of Latvia (no. 07350020) together with the foreign currency assets of its clients held therein. On 1 January 1992 the Foreign Transactions Section opened a new correspondent account (no. 07352020) in the *Vneshekonombank*, which operated until 1 June 1993.

41. On 13 January 1992 the Presidium of the Supreme Soviet of the Russian Federation declared that the *Vneshekonombank* would continue its activities in the Russian Federation under the Federation's laws. It also appointed the *Vneshekonombank* agent for servicing the external debt and assets of the former USSR. The Russian Federation took over the liabilities of the former USSR with respect to Russian individuals, the government of the Russian Federation, and Russian companies, including banks, in relation to foreign currency assets held in the *Vneshekonombank*. To carry out this task, all foreign currency transactions in the accounts held by companies, organisations and institutions, including banks, had been "stopped" until 31 December 1991. These assets were to be reimbursed under the guarantee of the Government of the Russian Federation.

42. On 11 March 1992 the *Vneshekonombank* issued order no. 16 on termination of operations and winding up of its institutions in the territory of the republics of the former USSR, apart from the territory of the Russian Federation. Banking operations were set to be terminated on 15 March 1992. In respect of the winding up of its regional section in Riga a note was made that the operations had been terminated on 1 January 1992.

43. On 23 July 1993 the *Vneshekonombank*, in response to a letter from the Bank of Latvia, stated that individuals who had opened foreign currency accounts in Moscow could withdraw their funds in cash or make a money transfer to another account. Individuals who had opened accounts with the Latvian section of the *Vneshekonombank* could not withdraw their funds until the Latvian and Russian Governments had settled the issues related to the external foreign currency debt and assets of the former USSR. The issue relating to deposits in foreign currency of companies held in the Bank of

Latvia's correspondent account in Moscow could only be resolved at inter-State level.

6. *Compensation to individuals*

44. On 10 November 1992 the Bank of Latvia adopted decision no. 2/8 on urgent measures to ensure payment of money to individuals from their frozen foreign currency accounts. A commission was established for this purpose. It was tasked with (i) exploring the possibilities and taking further action by 20 December 1992 to recover from accounts in the *Vneshekonombank* the foreign currency funds of individuals in Latvia, (ii) establishing the balance in the accounts held by individuals and companies on 1 October 1992, and (iii) preparing information by 1 January 1993 for intergovernmental negotiations concerning the recovery of funds frozen in foreign currency accounts. Irrespective of the outcome of the commission's work on these issues, the Bank of Latvia committed to pay from 1 December 1992 onwards the equivalent in the national currency of USD 50 per month to individuals who held accounts in the Foreign Transactions Section and the City Section of the Bank of Latvia, from its own budget. The Bank of Latvia took over the debt claims against the *Vneshekonombank* within those limits. Lastly, it was expressly noted that the compensation scheme did not apply to companies.

45. On 15 September 1994 the Bank of Latvia adopted new decision no. 19/8 in this respect. It was to continue payments to individuals from their foreign currency accounts where money had been recorded as having been deposited on behalf of the *Vneshekonombank*. The monthly payment would not exceed the equivalent in the national currency of USD 50. These sums were to be paid by the newly established banks (including *Multibanka*, *Latvijas Universālā banka*, later *Latvijas Unibanka*) and were to be reimbursed to those banks by the Bank of Latvia.

46. In 1995, 2001, 2003, 2006 and 2007 the monthly payment to individuals was increased to the equivalent in the national currency of USD 60, 70, 210, 300 and 400 respectively.

7. *Intergovernmental talks*

47. On 14 December 1994 the Latvian and Russian authorities agreed to set up an intergovernmental commission.

48. On 28 February 1997 the heads of the intergovernmental commission met in Riga and decided to establish a number of working parties, *inter alia*, on financial and property related issues between the two States.

49. On 9 and 10 October 1997 the first expert working party on financial and property related issues was convened in Riga. The relevant part of the minutes of that meeting read as follows:

“5. The parties have exchanged opinions on the question of the settlement of debt to individuals residing in Latvia regarding foreign currency accounts in the regional sections of the banks of the former USSR (including the *Vneshekonombank* and the *Promstroybank*) on [the balance as of] 1 January 1992. The Russian party has agreed to support the request of the Bank of Latvia to the Bank of Russia and the *Promstroybank* to make comparisons [and establish the true levels of debt to] individuals who had opened accounts with the regional sections of the *Gosbank* and the *Promstroybank* on Latvian territory.

The Russian party asks the Latvian party to assign an authorised bank responsible for settlement of debt to individuals. This bank, together with the *Vneshekonombank* and according to the instructions of the *Gosbank* and the *Promstroybank*, should ascertain the amount of debt to individuals in relation to their foreign currency accounts with the regional sections in the Latvian territory; they should also agree on what technical procedure to use to settle the debt.

The Latvian party considers that the issue of settlement of foreign currency debt to individuals who had accounts in the above-mentioned banks shall be decided without any connection to the issue of external debt of the former USSR, and puts forward a draft settlement agreement for individuals who had accounts with the regional sections of the former *Gosbank*, *Vneshekonombank* and *Promstroybank* in Latvia (annex no.5).

The Russian party notes that this issue may only be resolved after an intergovernmental agreement has been signed on settlement of issues regarding the internal and external debt of the former USSR and division of its assets, which would serve as a basis for settling debts to individuals concerning the above-mentioned accounts (a draft of this Agreement has been provided to the Latvian party) (annex no.6).

6. The Latvian party has raised the issue of unfreezing of multi-currency correspondent accounts [of the Bank of Latvia] opened after 1 January 1992 in the *Vneshekonombank*. The Latvian party considers that the above-mentioned accounts should be unfrozen without any additional conditions being imposed, since these correspondent accounts were opened as accounts of a foreign bank in the *Vneshekonombank*, and encourages the Russian party to take a positive decision on settlement of this question.

The Russian party notes that this issue may only be resolved after settlement of the internal and external debt of the former USSR.”

50. On 28 January 1998 the heads of the intergovernmental commission met in Moscow. They agreed, *inter alia*, that experts of the Central Bank of Russia should be involved in the negotiations.

51. On 27 April 1998 the *Vneshekonombank* informed the Bank of Latvia that the settlement of debts to individuals who had foreign currency accounts in its former regional sections in Latvia could take place only after political agreement between the two States had been reached.

52. It appears that no more expert working parties have taken place. The Russian authorities have declined invitations by the Latvian authorities to resume these meetings on several occasions.

8. *Civil proceedings instituted by the applicants*

(a) **The applicant company**

53. The applicant company lodged a civil claim for damages against the Ministry of Finance, the Bank of Latvia and *Multibanka* with the Riga Regional Court, in an amount equivalent to USD 99,006.39 in the national currency (Latvian *lati*, LVL) in compensation for its frozen foreign currency assets in the Latvian section of the *Vneshekonombank*.

54. On 26 February 2001 the Riga Regional Court dismissed the claim. The court rejected the claim in so far as it was directed against the Bank of Latvia and *Multibanka*, as they had not been mentioned in the concluding part of the statement of claim. As far as the Ministry of Finance was concerned the court found the claim unfounded. The damage had been caused by the *Vneshekonombank's* unilateral decision to freeze correspondent account no. 07350020 of the Bank of Latvia, where the applicant company's foreign currency assets were held. It was not disputed that these assets were located in Moscow.

55. On 3 July 2001, on an appeal by the applicant company, the Civil Cases Chamber of the Supreme Court examined the claim. It was dismissed in the following terms:

"It has been established during the hearing and it follows from the case material that [the applicant company] opened foreign currency account no. 67080162 with the Latvian section of the *Vneshekonombank*, where its foreign currency assets were recorded. The first-instance court has rightly noted that it was not disputed that [the applicant company's] foreign currency assets were actually located in the *Vneshekonombank* in Moscow; this finding has not been contested in the appeal.

The first-instance court has rightly noted that [the applicant company] cannot dispose of its [foreign currency] assets owing to [the fact] that the *Vneshekonombank* unilaterally froze correspondent account no. 07350020 of the Bank of Latvia, where Latvian companies' [foreign currency] assets were held, and that accordingly the damage to [the applicant company] was caused by the actions of the *Vneshekonombank*; this has been confirmed by the case material and [the applicant company] has not contested it in its appeal.

[The applicant company] claimed that the [foreign currency] assets were lost as a result of the actions of the Latvian authorities in adopting [the decision of 3 September 1991] and issuing [the order of 6 September 1991], and that the State had been culpable [in this regard], and [it] requested that damages be paid from the State budget of the Ministry of Finance ... [It was alleged that] damage had been caused by the state authorities' failure to take the necessary measures to recover these assets.

The Civil Cases Chamber considers that this argument is unfounded. Four criteria have to be fulfilled for a claim for damages to be accepted: 1) unlawful action/inactivity of a person, 2) culpability of that person, 3) that damage has been suffered, 4) a causal link between the unlawful action/inactivity and the damage. The Civil Cases Chamber considers that damage has [indeed] been sustained by [the applicant company] in the amount mentioned in the claim, but that there are no grounds to consider that the damage was caused by the actions of the Latvian authorities; there is no such evidence and, as noted above, [the applicant company]

has incurred damage by virtue of [the fact] that a foreign bank, namely the *Vneshekonombank* in Moscow, froze the account where [the applicant company's] [foreign currency] assets were held ... There are no grounds to consider that the [principal] cause of the damage incurred by [the applicant company] was [the decision of 3 September 1991] or [the order of 6 September 1991] since, as rightly noted by the first-instance court, [these] normative acts were adopted on the basis of [the decision of 24 August 1991] and [the constitutional law of 21 August 1991] ...”

56. On 24 October 2001 the Senate of the Supreme Court examined and dismissed the first applicant's appeal on points of law, noting, among other things, that:

“[The appellate court] established that damages were not caused by the actions of the Latvian authorities, but rather by [the actions of] a foreign bank, namely the *Vneshekonombank* in Moscow, which froze the account.”

57. On 16 January 2007, after the communication of the present application to the respondent Government, the applicant company applied to the Senate of the Supreme Court for the proceedings described above to be reopened in the light of newly discovered circumstances. It argued that it was not aware of the decision of 10 November 1992 concerning compensation to individuals by the Bank of Latvia, and considered it unfair that no such compensation was provided for companies.

58. On 28 February 2007 the Senate dismissed the request for the proceedings to be reopened. Reopening was only possible in the light of “significant” circumstances; the circumstances relied on by the first applicant were not significant for the determination of its claim. The Senate noted as follows:

“[The national court] has examined the lawfulness and justification for the applicant company's claim (for damages) on the merits, and has dismissed it. For the purposes of these proceedings the [national] court has established that the damage incurred by [the applicant company] was not caused by actions or omissions on the part of the Latvian authorities, but rather by the freezing of an account by a bank of another State, namely Russia (the *Vneshekonombank* in Moscow).

Therefore, no significance lies in the circumstances set out in the request for reopening of proceedings, namely that the Bank of Latvia, by decision no. 2/8 of 10 November 1992, disbursed [some money] to individuals from its own resources and took over their claims against the *Vneshekonombank* in Moscow [in that respect].”

(b) The second applicant

59. The second applicant lodged a civil claim against the Bank of Latvia with the Riga Regional Court for recovery of her deposit in foreign currency and default interest. In total the second applicant's claim and interest converted into Latvian lati (LVL) amounted to LVL 68,753.64 (approximately EUR 98,000). The second applicant argued that her deposit had been transferred to her account with the *Promstroybank* in Riga.

60. On 15 September 2000 the Riga Regional Court dismissed the claim. The court found that the second applicant had opened a “B-type” account

with the regional section of the *Promstroybank* in Riga (later *Latvijas Unibanka*) and that the foreign currency assets had merely been “recorded” in that account under the rules applicable at the time. The funds were physically located at the *Vneshekonombank* in Moscow. The court referred to the origins of the Latvian banking system (see paragraphs 29 and 36-38 above) and found that the Bank of Latvia could not recover in its “possession and structure” the foreign currency which had been frozen by the banks of the former USSR. The fact that the Bank of Latvia had made the commitment to offer partial compensation to those individuals whose accounts had been frozen did not signify that it had acquired any liabilities in respect of the second applicant.

61. The second applicant lodged an appeal against the judgment, but did not fully maintain her claim of default interest. The amount of her claim was reduced to LVL 51,385.58 (approximately EUR 73,000).

62. On 7 February 2001 the Civil Cases Chamber of the Supreme Court dismissed her claim. The appellate court found that there was no evidence that the Bank of Latvia was culpable for refusing to disburse the second applicant’s assets. It was established that the applicant’s account was a “book-keeping” account and that its assets were held at the *Vneshekonombank* in Moscow. It did not appear from the facts of the case that these assets were ever transferred to the regional section of the *Promstroybank* in Riga, the legal successor of which was *Latvijas Unibanka*. These assets never came into the possession of the Bank of Latvia, which acquired no liabilities in their respect. The second applicant’s argument, that the Bank of Latvia, by virtue of its decisions (see paragraphs 44 et seq.) had acquired a liability towards her, was dismissed. The court found that the last withdrawal from the second applicant’s account was made on 10 March 1992, that is before the foreign currency assets were frozen. On the basis of these findings, the Civil Cases Chamber considered that the Bank of Latvia had not caused damage to the second applicant. The foreign currency deposits were frozen in Moscow. Their recovery was possible only by means of intergovernmental negotiations.

63. On 14 November 2001 the Senate of the Supreme Court, sitting in an extended composition of seven judges, examined the second applicant’s appeal on points of law. The Senate noted that under the applicable law at the material time claims for damages had to fulfil the following criteria: damage had been suffered, the wrongdoer’s actions/inactivity was unlawful, a causal link had been established, and culpability of the wrongdoer had been established. The second applicant’s appeal on points of law was dismissed in the following terms:

“[The second applicant] based her claim on the argument that the Bank of Latvia was culpable for causing damage to her since it had failed to take sufficiently effective measures to implement the Supreme Council’s decision of 3 September 1991 ... and to “take over in its possession and structure” [the regional section of the *Promstroybank*

in Riga]. Thus its negligence had led to the freezing of foreign currency assets in Moscow.

The appellate court ... concluded that the respondent's culpability in causing damage was not demonstrated, and that the impossibility of obtaining her inheritance resulted from circumstances beyond the control of the Bank of Latvia, the foreign currency assets being located in Moscow and unilaterally frozen by Russia ...

... In 1990 an account was opened with the *Vneshekonombank* ... [and] the inherited money was transferred to the regional section of the *Promstroybank* in Riga for recording in the [applicant's] "B-type" account in foreign roubles. Moreover, the [appellate] court accepted the respondent's argument that ... the assets of the account were located in Moscow ...

Given the fact that interbank transactions ... do not involve cash, that in ... the former USSR foreign-currency transactions were a State monopoly, that foreign currency assets were generally held in Moscow, that opportunities for individuals to dispose of their foreign currency assets (including withdrawal) were strictly limited ... and that the inherited money was recorded in the [second applicant's] "B-type" account in foreign roubles ([that is] in [the rouble] equivalent of pounds sterling, and not in foreign currency), the mere fact that [the second applicant] was able to withdraw money up to 10 March 1992 ... does not lead to a conclusion that all the inheritance money in pounds sterling had come into the hands of [the regional section of the *Promstroybank* in Riga] and that the Bank of Latvia was able to take it into its possession ...

[The appellate court] ... [rightly] recognised that under the rules [applicable in] the former USSR, effective in Latvia until 1 January 1993, disbursement of [the second applicant's] foreign currency was stopped because of the "freezing" of her account no. 701953 in the *Vneshekonombank* in Moscow ...

[The appellate court] rightly concluded that full restitution of [the second applicant's] foreign currency assets depended on inter-State negotiations ... It should be noted that [the second applicant's] assertion that the intergovernmental negotiations between Latvia and Russia did not concern restitution of her foreign currency assets does not correspond to [the minutes of the meeting of the expert working party on 9-10 October 1997] ..."

B. Relevant domestic and international law

1. International law

(a) State responsibility under international law

64. The International Law Commission adopted the Articles on Responsibility of States for Internationally Wrongful Acts (the ILC Articles) at its 53rd session, in 2001 (*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1)*). They were submitted to the General Assembly, who, in its resolution of 12 December 2001 (A/56/83 (2001)), took note of these articles and commended them to the attention of Governments. Article 2 entitled "Elements of an internationally wrongful act of a State" provides:

“There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.”

65. The Commentary, adopted together with the ILC Articles, further explains in relation to Article 2 (footnotes omitted):

“(5) For particular conduct to be characterized as an internationally wrongful act, it must first be attributable to the State. The State is a real organized entity, a legal person with full authority to act under international law. But to recognize this is not to deny the elementary fact that the State cannot act of itself. An “act of the State” must involve some action or omission by a human being or group: “States can act only by and through their agents and representatives.” The question is which persons should be considered as acting on behalf of the State, i.e. what constitutes an “act of the State” for the purposes of State responsibility.

(6) In speaking of attribution to the State what is meant is the State as a subject of international law. Under many legal systems, the State organs consist of different legal persons (ministries or other legal entities), which are regarded as having distinct rights and obligations for which they alone can be sued and are responsible. For the purposes of the international law of State responsibility the position is different. The State is treated as a unity, consistent with its recognition as a single legal person in international law. In this as in other respects the attribution of conduct to the State is necessarily a normative operation. What is crucial is that a given event is sufficiently connected to conduct (whether an act or omission) which is attributable to the State under one or other of the rules set out in chapter II.

(7) The second condition for the existence of an internationally wrongful act of the State is that the conduct attributable to the State should constitute a breach of an international obligation of that State ...

(12) In subparagraph (a), the term “attribution” is used to denote the operation of attaching a given action or omission to a State. In international practice and judicial decisions, the term “imputation” is also used. But the term “attribution” avoids any suggestion that the legal process of connecting conduct to the State is a fiction, or that the conduct in question is “really” that of someone else.

(13) In subparagraph (b), reference is made to the breach of an international obligation rather than a rule or a norm of international law. What matters for these purposes is not simply the existence of a rule but its application in the specific case to the responsible State. The term “obligation” is commonly used in international judicial decisions and practice and in the literature to cover all the possibilities. The reference to an “obligation” is limited to an obligation under international law, a matter further clarified in article 3.”

(b) State succession in international law

66. The Court has reiterated some rules pertaining to State succession in international law in *Kurić and Others v. Slovenia* ([GC], no. 26828/06, §§ 216-17, ECHR 2012 (extracts)) and *Kovačić and Others v. Slovenia* ([GC], nos. 44574/98, 45133/98 and 48316/99, §§ 184-87, 3 October 2008).

67. The Conclusions of the International Law Association (ILA) Committee on Aspects of the Law on State Succession

(Resolution No. 3/2008) noted at the 73rd Conference of the ILA, held in Rio de Janeiro, Brazil are as follows:

“PART V. CONCLUSIONS

V. 1. Basic definitions

1. There is a general acceptance of the definition of State succession adopted by the Vienna Conventions of 1978 and 1983.

2. The classification of the different types of State succession adopted by those Conventions does not fully correspond with international practice. In particular, the distinctions between secession and dissolution and that between uniting of States and incorporation have not been drawn, leading to the proposition of the application of the same rules to both couples of situations, in contrast to what happened in recent times.

3. Recent international practice has shown the difficulties of adopting clear-cut criteria for the distinction between secession and dissolution of States, in cases in which there is no agreement amongst the directly concerned States. The existence or not of a continuator State is the key issue at stake. Changes in the structure, name, form of government, territory and population of the State usually does not imply a change of the international personality of the State concerned. Recognition can have a certain bearing but it is not a decisive factor either. Every State evaluates the position towards a new State/new government according to its own political considerations, using an instrument of recognition. Neither the secessionist States nor the international community can impose the dissolution of an existing State. The matter can only be solved through an objective analysis in the light of all the circumstances present on the ground ...

V. 3. Succession in property, debts and archives

14. The 1983 Vienna Convention on Succession of States in respect of State property, archives and debts have generally adopted subsidiary rules, privileging agreement amongst the concerned States. The only exception is the applicable rules regarding the newly independent States, stating that agreements cannot overrule the principle of permanent sovereignty over natural resources. The favorable treatment accorded to these States lead to the rejection of the 1983 Vienna Convention by many States.

15. According to the 1983 Vienna Convention, the transfer of immovable property to the successor State located in its territory is applicable in all types of State succession. If the predecessor State continues to exist, unless otherwise decided based on equitable considerations, there is no compensation. International practice follows these criteria.”

2. Domestic law

68. On 4 May 1990 the Supreme Council of the “Latvian SSR”, the legislative assembly elected on 18 March in the same year, adopted the Declaration on the Restoration of Independence of the Republic of Latvia (*Deklarācija “Par Latvijas Republikas neatkarības atjaunošanu”*). It was noted in its preamble that the establishment of the State of Latvia was proclaimed on 18 November 1918, that in 1920 Latvia was internationally recognised, and that in 1921 Latvia became a member of the League of Nations. It was further noted in the preamble that:

“Hence, according to international law, the incorporation of Latvia into the Soviet Union is invalid. Accordingly, the Republic of Latvia continues to exist *de jure* as a subject of international law and it is recognised as such by more than 50 nations of the world.”

69. The relevant parts of the Declaration read as follows:

“DECIDES:

1. To recognise the supremacy of the fundamental principles of international law over national law and to consider illegal the treaty between the USSR and Germany of 23 August 1939 and the subsequent liquidation of the sovereignty of the Republic of Latvia on 17 June 1940, which was the result Soviet military aggression ...

3. To re-establish the authority of the Constitution of the Republic of Latvia, adopted by the Constituent Assembly on 15 February 1922, in the entire territory of Latvia. The official name of the Latvian State is “the Republic of Latvia”, abbreviated as “Latvia”.

4. Until the adoption of a revised constitution, to suspend the Constitution of the Republic of Latvia, except for the Articles expressing the constitutional and legal foundation of the Latvian State, which, according to Article 77 of the Constitution, can only be changed by popular referendum:

Article 1 - Latvia is an independent democratic republic.

Article 2 - The sovereign power of the Latvian State belongs to the people of Latvia.

Article 3 - The territory of the Latvian State shall consist of Vidzeme, Latgale, Kurzeme and Zemgale, within the boundaries stipulated by international treaties.

Article 6 - The *Saeima* is elected by general, equal and direct elections, and by secret ballot on the basis of proportional representation ...

5. To set a transition period for the re-establishment of the *de facto* independence of the Republic of Latvia, which will conclude with the convening of the Parliament of Latvia. During the transition period, supreme State power in Latvia is held by the Supreme Council of the Republic of Latvia.”

6. During the transition period, to apply those provisions of the Constitution of the “Latvian SSR” and other legislative acts which are in effect in Latvia on the day of the adoption of this Declaration, in so far as they do not contradict Articles 1, 2, 3 and 6 of the Constitution of the Republic of Latvia ...

9. To develop relations between Latvia and the USSR in accordance with the Peace Treaty between Latvia and Russia of 11 August 1920, which is still in force and which recognises the independence of Latvia for all time. To establish a Government commission for conducting negotiations with the USSR.”

70. On 21 August 1991 the Supreme Council of the Republic of Latvia passed a constitutional law “On the Republic of Latvia Status as a State” (*Konstitucionālais likums “Par Latvijas Republikas valstisko statusu”*). Its relevant parts read as follows:

“RESOLVES:

1. To declare Latvia as an independent, democratic republic in which the sovereign power of the Latvian State belongs to the people of Latvia and its sovereign State status is determined by the Republic of Latvia’s Constitution of 15 February 1922.

2. To repeal Article 5 of the Declaration “On the Restoration of the Independence of the Republic of Latvia” defining the transition period for the *de facto* restoration of the Republic of Latvia’s State power.

3. Until the time when occupation and annexation of Latvia is liquidated and the *Saeima* of the Republic of Latvia is convened, supreme power is to be executed exclusively by the Supreme Council of the Republic of Latvia. Only the laws and resolutions of this supreme State power and [State’s] administrative institutions are legally in effect in the territory of the Republic of Latvia.”

COMPLAINTS

71. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they could not freely dispose of their foreign currency assets. They also insisted that the Latvian authorities had failed to comply with their positive obligations in that regard.

72. The second applicant further alleged that the Latvian authorities had failed to offer effective protection of her rights under the Convention.

73. Lastly, the second applicant complained under Article 6 of the Convention. She disagreed with the version of the facts established by the domestic courts in the civil proceedings and with their interpretation of domestic law. She considered that the Riga Regional Court had added materials in Russian to the case file in violation of domestic law. She considered that the hearing of 14 November 2001 had been too brief; the parties had had only some five minutes to present their submissions.

THE LAW

A. Joinder of the applications

74. Given that the applications at hand raise related issues under the Convention, the Court decides to join them in accordance with Rule 42 § 1 of the Rules of Court.

B. In relation to Article 1 of Protocol No. 1 to the Convention

1. Arguments submitted to the Court

(a) The Government

75. The Government contested the applicability of Article 1 of Protocol No. 1 to the Convention with respect to Latvia in the cases at hand on three grounds. First, they considered that the applicants’ complaint did not “lie

within the jurisdiction of the Republic of Latvia within the meaning of Article 1 of the Convention”. Second, they argued that the complaint concerned events that had taken place before Article 1 of Protocol No. 1 to the Convention entered into force in relation to Latvia. Third, in relation to the second applicant the Government submitted that monthly payments by the Bank of Latvia to individuals on the basis of decision no. 2/8 and subsequent decisions did not constitute “possessions” within the meaning of Article 1 of Protocol No. 1 to the Convention.

76. In connection with their first objection, the Government stated that, unlike in banking systems in other countries, foreign currency transactions in the former USSR were a State monopoly. There were restrictions on withdrawals and transfers of foreign currency. All such transactions were carried out through the *Vneshekonombank*. In accordance with the Soviet rules, applicable in Latvia until 1 January 1993, transactions between banks were carried out in roubles. The foreign currency assets in issue had been located in the *Vneshekonombank* in Moscow. The regional sections had only been responsible for record-keeping. In other words, the applicants’ accounts in the Latvian section of the *Vneshekonombank* (for the applicant company) and in the regional section of the *Promstroybank* in Riga (for the second applicant) had been “a mirror image” of the assets located in Moscow; the assets had never been transferred to Latvia, and the Bank of Latvia could not take them over.

77. The Government thus requested the Court to declare the complaint inadmissible as incompatible *ratione personae* with the Convention. They argued that the applicants’ complaint related to actions that could not be attributable to the Republic of Latvia. Taking into account that the applicants’ property was not located “within the jurisdiction” of Latvia, the Government submitted that they had no direct control over this property and that the effects produced on individuals could not be attributed to it.

78. The Government noted that since the opening of the applicant company’s account in November 1990 its assets had been located in a correspondent account in the *Vneshekonombank* in Moscow; the Government pointed out that the first applicant did not contest this before the domestic courts. The Government insisted that the second applicant’s transactions of 9 July 1990 and 18 June 1991 had only involved transferring the records of her account, and not the account as such, from the *Vneshekonombank* to the regional section of the *Promstroybank* in Riga. In support of their argument, they relied on the information contained in the letter sent by the *Vneshekonombank* (see paragraph 43 above) and on the scope of the intergovernmental negotiations (see paragraph 49 above). Finally, the Government noted that the Latvian courts at three levels of jurisdiction had established the fact that the *Vneshekonombank* had frozen the second applicant’s foreign currency assets.

79. The Government asserted that they had had a legitimate right to adopt legislation pursuant to which the applicant company's foreign currency assets had been transferred from the account of the former Latvian section of the *Vneshekonombank* to the correspondent account in the Foreign Transactions Section of the Bank of Latvia.

80. In relation to their second objection, the Government submitted that two preconditions needed to be fulfilled for an application to come within the Court's jurisdiction *ratione temporis*: the events complained of had to be attributable to the respondent State and had to take place after the Convention (and its Protocols) had entered into force in respect of that State, or had to have continued after that date. In the present case, the applicants' funds had been frozen by the *Vneshekonombank*, the bank operating under the jurisdiction of the Russian Federation; this action had taken place in January 1992 (for the applicant company) and spring 1992 (for the second applicant), long before the Convention and Protocol No. 1 had been ratified by Latvia on 27 June 1997.

81. Referring to the case of *Geschäftshaus GmbH v. Germany*, where the former Commission concluded that "the expropriation in 1949 [was] not imputable to the Federal Republic of Germany and the question of its lawfulness is not within the Commission's jurisdiction *ratione personae* and *temporis*" (no. 36713/97, Commission decision of 21 May 1998), the Government invited the Court to adopt a similar approach in the present case. The Government considered that the pending intergovernmental negotiations could not be regarded as a mere extension of an existing situation, as it was beyond its powers to unfreeze the foreign currency accounts in the *Vneshekonombank*. Domestic courts were also unable to solve the problem, as the acts complained of were not attributable to the Bank of Latvia.

82. The Government made a distinction between the present application and the case of *Kovačić and Others v. Slovenia* (dec.) (nos. 44574/98, 45133/98 and 48316/99, 9 October 2003). In the latter case, in its admissibility decision the Court dismissed the respondent Government's objection concerning incompatibility *ratione temporis* due to the subsequent legislation post-dating the ratification of the Convention and its Protocols. It was the Government's view that in the present case no acts, decisions or legislative measures had been taken by the Latvian authorities after 27 June 1997 that could have affected the applicant's situation.

83. Finally, with regard to their third objection, the Government maintained that the monthly payments were neither "existing possessions" nor "arguable claims" in respect of which the second applicant could have "legitimate expectations" for the purposes of Article 1 of Protocol No. 1 to the Convention. These payments were not linked to the foreign currency held at the *Vneshekonombank*. Nor did they constitute evidence that the Bank of Latvia had undertaken any obligation to pay compensation in that

regard. The Bank of Latvia had always insisted that the *Vneshekonombank* and the Russian Federation was liable for settling the debt, and the latter had never denied its responsibility. The Government noted that the Bank of Latvia had made these payments with the aim of reducing social tensions in Latvia, in such a way to some extent compensating, from its own resources, for pecuniary damage sustained by individuals residing in Latvia as a result of the collapse of the USSR, as well as with the aim of taking over the debt claims of these individuals against the *Vneshekonombank*. They concluded that the second applicant's complaint in this regard was incompatible *ratione materiae*.

(b) The applicant company

84. The applicant company, in relation to the Government's first objection, submitted that its account (no. 67080162) had been opened with the Latvian section of the *Vneshekonombank*. In 1990 and 1991 their foreign currency assets had been placed in the *Vneshekonombank* in Moscow. These assets were controlled from the Latvian section of the *Vneshekonombank*, from Riga in the Latvian territory; as a result of "nationalisation" of that section the Bank of Latvia had gained access to the payment system of the *Vneshekonombank*. The latter, not being aware of the complete nationalisation of its regional section, had fulfilled the order to transfer into the corresponding account of the Bank of Latvia (no. 07350020) the account balance of its former Latvian section. Transactions were stopped when the *Vneshekonombank* learned about the nationalisation of its Latvian section. The applicant company considered that its complaint was compatible *ratione personae* with the Convention.

85. Secondly, the alleged violation related to a continuing situation, as the Latvian authorities, including the Bank of Latvia, did not pursue any effective measures to recover these assets. The applicant company pointed out that the *Vneshekonombank* continues to be one of the major Russian banks, with large properties, branches and accounts in other countries, and implied that an action against it would be enforceable. Furthermore, the Latvian authorities had failed to regulate the issue of frozen accounts and to protect the applicant company's property rights. Finally, the applicant company considered that it was being subjected to different treatment by the respondent Government, since no compensatory mechanisms had been put in place for companies, whereas for individuals such mechanisms had been provided.

(c) The second applicant

86. The second applicant argued, in relation to the Government's first objection, that her foreign currency had not remained in Moscow. It had been transferred to the regional section of the *Promstroybank* in Riga pursuant to her instructions, following her visit in person to the

Vneshekonombank in Moscow. The applicant did not dispute that the Soviet rules cited by the Government were applicable, but she considered that, according to them, accounts could also be opened and payments made in foreign currency, in her case GBP. It was her submission that if payments could be made, there had to be funds to cover such payments. In the applicant's view, people in the USSR could transfer foreign currency across borders, leaving the State for personal business or as a payment for a trip as a tourist. She herself had gone to the United Kingdom to visit her uncle's grave and had also made a tourist trip.

87. The second applicant took issue with the Government's submission that the applicable Soviet rules had been effective in Latvia until 1 January 1993. Referring to two resolutions adopted before the restoration of independence and to the Constitutional Law on the Republic of Latvia Status as a State, she considered that the Government's submission was false.

88. The second applicant therefore considered that her complaint was compatible *ratione personae* with the Convention. She argued that her foreign currency had been transferred to the regional section in Latvia. She disagreed with the Government that the domestic courts had established that the *Vneshekonombank* had frozen the second applicant's foreign currency assets, as this had not been the subject matter of the proceedings in Latvia. She also pointed out that the intergovernmental negotiations had not yielded positive results in connection with those assets.

89. Secondly, she considered that her complaint was also compatible *ratione temporis* with the Convention. Although the events complained of had taken place prior to 27 June 1997, the second applicant lodged her application with the Court after the completion of the domestic proceedings in Latvia. In addition, the alleged violation was a continuing one, since the Latvian authorities had not been able to find an appropriate solution for her situation for the whole of the last decade.

90. Thirdly, the second applicant disagreed with the Government and considered that the monthly payments constituted a "possession". In her opinion her "situation" had been within the "competence" of the respondent Government, and the Bank of Latvia's alleged lack of control over the foreign currency funds was irrelevant. The applicant argued that upon restoring the legal system of independent Latvia in accordance with the principle of rule of law, the respondent State was under an obligation to take measures with a view to compensating, inasmuch as that was possible, for the damage caused by the previous regime, and to restoring justice.

2. The Court's assessment

91. Article 1 of the Convention reads as follows:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

92. The Court has established a number of clear principles in its case-law under Article 1. Thus, as provided by Article 1 of the Convention, the engagement undertaken by a Contracting State is confined to “securing” (“*reconnaître*” in the French text) or in other words guaranteeing the listed rights and freedoms to persons within its own “jurisdiction”. “Jurisdiction” under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of infringement of the rights and freedoms set forth in the Convention (see, as recent authorities, *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, § 103, ECHR 2012 (extracts); *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 70, ECHR 2012; and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 130, ECHR 2011).

93. The Court notes that there were a number of legislative acts adopted and administrative steps taken by the Latvian authorities in the early 1990s with a view to creating its own, independent banking system and dealing with the consequences of the total collapse of the Soviet economy. These acts clearly fall within the jurisdiction of Latvia. The applicants in the present case allege that their inability to use their foreign currency deposited with the former USSR banks lies within the jurisdiction of Latvia and is attributable to it. The Court has to establish whether any action or omission falling within the jurisdiction of Latvia is responsible for the applicants’ inability to access that currency.

94. In that respect, the Court considers that the applicants’ complaint is twofold. It relates both to their allegation that Latvia is responsible for the fact that they cannot dispose of their foreign currency assets (see analysis under subsection (a) below) and that the Latvian authorities have not taken effective measures to enable the applicants to obtain access to these assets (see analysis under subsection (b) below).

(a) Disposal of foreign currency assets

95. In order to establish whether Latvia bears responsibility under the Convention for the applicants’ lack of access to their foreign currency assets, the Court has to examine the following. First, it needs to be determined whether the freezing of the applicants’ foreign currency assets could be attributed to the respondent State; this means ascertaining whether it was committed by persons or organs whose conduct is attributable to Latvia. Second, the Court will need to ascertain whether the freezing of the applicants’ foreign currency assets constitutes a violation of the Convention. These two conditions form a cornerstone of State responsibility under international law (see paragraphs 64-65 above) and the Convention case-law. It is clear from the above that there can be no question of the State’s responsibility under the Convention if the conduct giving rise to an

allegation of infringement of the rights and freedoms set forth in the Convention is not attributable to the respondent State.

96. Turning to the present case, the Court notes that at the material time Latvia had just regained its independence. The fundamental reforms of the country's political, legal and economic system from a totalitarian regime to a democratic State had barely started, and the first steps were being taken towards a transition from a wholly State-owned and centrally planned economy to private property and a market economy. The applicants did not dispute that the Soviet rules on foreign currency transactions continued to be applicable in Latvia at that time, which according to the Government, effectively limited the free flow of foreign currency in the territory of the former USSR. The second applicant merely contested the Government's argument that these rules had been effective in Latvia until 1 January 1993. The Court, however, takes note of the Government's factual submission that this critical date was laid down in the Latvian law (see paragraph 35 above) and refers to the factual finding of the Senate in the civil proceedings instituted by the second applicant in this regard (see paragraph 63 above). The Court sees no reason to disagree with the Government on this point.

97. On the one hand, the Court notes that the applicant company did not contest either before the domestic courts (see paragraph 55 above) or before the Court in Strasbourg the finding that its foreign currency assets were held by the *Vneshekonombank* in Moscow in the correspondent account of the Bank of Latvia and had been frozen by the former.

98. On the other hand, the Court notes that the second applicant did raise an argument to the effect that her foreign currency assets were actually located in the regional section of the *Promstroybank* in Riga before the national courts, which examined and dismissed this argument at three levels of jurisdiction. As a general rule, where domestic proceedings have taken place it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and it is for the latter to establish the facts on the basis of the evidence before them. Though the Court is not bound by the findings of domestic courts, and remains free to make its own assessment in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see, among many other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 180, ECHR 2011 (extracts)).

99. The Court cannot discern, and the second applicant has not put forward, any convincing argument allowing it to disregard the findings of the domestic courts. She did not contest that transactions between banks in the former USSR had been carried out in roubles at the material time. The Senate's finding that the second applicant's assets in the regional section of the *Promstroybank* in Riga had been recorded in "the rouble equivalent of pounds sterling and not in foreign currency" (see paragraph 63 above) only further supports the Government's argument that the free flow of foreign

currency was limited at the material time. The fact that the second applicant had been able to withdraw small amounts of foreign currency from her account between 2 May 1991 and 10 March 1992, at the time of great uncertainty and change, cannot be considered evidence that actual foreign currency transfers took place between the banks in Moscow and Riga. In any event, it appears that the second applicant made those withdrawals before her foreign currency assets were frozen (see paragraph 42 above). Finally, the Court cannot but note that the second applicant eventually agreed in the domestic proceedings that her foreign currency assets had been frozen in Moscow, as established by the Senate (see paragraph 63 above). In view of these circumstances, the Court sees no reason to depart from the findings of the domestic courts that the second applicant's foreign currency assets were frozen by the *Vneshekonombank* in Moscow.

100. In the light of the above-mentioned, the Court considers that the applicants' foreign currency assets were frozen by the *Vneshekonombank*, an entity operating in another country, and that its actions cannot be attributed to Latvia. The Court notes, in this respect, the Government's submission that the *Vneshekonombank* was operating under the jurisdiction of the Russian Federation at the time, and not under the jurisdiction of Latvia.

101. Turning to the second point in its analysis, the Court considers at the outset that the sums of money deposited by the applicants with the *Vneshekonombank* constitute "possessions" within the meaning of Article 1 of Protocol No. 1 of the Convention (see *Boyajyan v. Armenia*, no. 38003/04, § 54, 22 March 2011). However, having found that the applicants' foreign currency was frozen by the *Vneshekonombank* and that its conduct is not attributable to Latvia, the Court is precluded from examining whether this was done in accordance with the Convention in the cases at hand.

102. The Court concludes that the respondent State cannot incur responsibility under the Convention in relation to actions undertaken by an entity operating in another country in the circumstances of the cases at hand. The applicants' complaint in this respect is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and must be dismissed in accordance with Article 35 § 4 of the Convention.

(b) Positive obligations

103. The applicants also alleged that the Latvian authorities had failed to comply with their positive obligations (see paragraphs 71, 72, 85 and 90 above), which they considered were incumbent on the respondent State under the Convention and international law.

104. The issue to be determined for the purposes of this part of the applicants' complaint is whether the Latvian authorities had an obligation to

take any measures with a view to striving to achieve the release of the accounts applicants' foreign currency assets, which would allow them to obtain access to their assets held in Moscow. Therefore, no concerns over the attribution of conduct arise (contrast with the analysis under subsection (a) above). Rather, the Court has been called upon to determine whether a substantive (positive) obligation exists, either under the Convention or indeed under general international law.

105. The Court notes that the applicants' argument in this respect is twofold. The applicant company argued that the Latvian authorities had an obligation to take effective measures to recover the frozen foreign currency assets. They also referred in this respect to the fact that in effect the Latvian authorities had in effect "nationalised" the Latvian section of the *Vneshekonombank*. The second applicant invoked the principle of the rule of law, and argued that the respondent State had to take measures with a view to compensating for losses inflicted by the previous regime and restoring justice.

106. To begin with, the Court considers that nationalisation of a bank or its branches located in the State's own territory can be deemed as an acceptable economic measure for the purpose of establishing or re-creating that State's banking system. Domestic decisions in relation to nationalisation will commonly involve consideration of various issues on which opinions within a democratic society may reasonably differ widely. Because of their direct knowledge of their society and its needs and resources, the national authorities are in principle better placed than the international judge to appreciate what measures are appropriate in this area and consequently the margin of appreciation available to them should be a wide one (see *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 102, Series A no. 102). After the demise of the USSR and the collapse of the Soviet economy, the States which fully restored their own independence were faced with immense difficulties at that time in establishing their own banking system and in separating from such a centralised economy as the Soviet one. However, the Convention does not provide through which economic policy or other measures should the State build its new economy.

107. The Court understands the applicant company's argument as suggesting that certain principles established by the Court in some cases involving, for example Moldova and Russia, could also be applicable in the cases at hand against Latvia. The Court cannot subscribe to such a view. It points out that the case of *Ilașcu and Others* concerned applicants in the Transdniestrian region, which is recognised under public international law as part of Moldovan territory, although Moldova has no effective control over that region. Because it is a part of its territory, Moldova has "a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights

guaranteed by the Convention (see *Ilașcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 331, ECHR 2004-VII, and also *Ivanțoc and Others v. Moldova and Russia*, no. 23687/05, § 105, 15 November 2011). The Court's Grand Chamber recently confirmed that Moldova is under a positive obligation to "use all legal and diplomatic means available to it to continue to guarantee enjoyment of the rights and freedoms defined in the Convention to those living there" (see *Catan and Others*, cited above, § 110). By contrast, the cases at hand do not concern the lack of effective control over a region within the internationally recognised borders of a State. They concern an entity operating under the laws of another jurisdiction and decisions taken by her which are not attributable to Latvia. Therefore, Latvia cannot be said to have a positive obligation under the Convention to take any measures that would enable the applicants to have access to their foreign currency assets located in the territory of another State.

108. The Court understands the second applicant's argument as implying that there is a substantive (positive) obligation under international law to take specific measures to compensate for losses inflicted by the previous regime and to restore justice.

109. The Court notes that it has had the opportunity to examine certain issues related to State succession in the context of "old" foreign-currency savings following the dissolution of the Socialist Federal Republic of Yugoslavia ("the SFRY"). In these cases the Court has found that the successor States of the former SFRY had converted applicants' foreign-currency savings into public debts and examined the various aspects of settling such debts under Article 6 of the Convention and Article 1 of Protocol No. 1 (see, for example, *Trajkovski v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 53320/99, ECHR 2002-IV, and *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, 3 November 2009).

110. There is no suggestion, however, that the Latvian authorities have ever accepted any liability for public debt incurred during the period when its territory was under Soviet rule. It is sufficient for the Court to note that in the case of the demise of the USSR, questions relating to the Soviet debt and assets were dealt with in an entirely different manner from that regarding the former SFRY in view, in particular, of a special status attributed to the Russian Federation.

111. In contrast with the successor States of the former SFRY, which have been able to negotiate and eventually to sign the Agreement on Succession Issues (including its Annex C – Financial Assets and Liabilities), the Republic of Latvia and the Russian Federation have not been able to reach any agreement in so far as the frozen foreign currency assets of Latvian residents are concerned. Although an intergovernmental commission has been set up and several meetings have been convened, it

appears that the two parties hold diverging views on this matter, as is evident from the minutes of the meeting (see paragraph 49 above).

112. Moreover, the Court notes that the respondent State has never demonstrated any sign of acceptance or acknowledgement of claims such as those made by the applicants. While the Bank of Latvia has undertaken to pay some money to (private) individuals whose foreign currency assets have been frozen by the *Vneshekonombank*, within certain approved monthly limits, the Government have pointed out that these payments were made with an aim of reducing social tensions in Latvia, in such a way to some extent compensating, from its own resources, for damage sustained by individuals residing in Latvia as a result of the collapse of the USSR. The Court reiterates, in this respect that the Convention imposes no specific obligation on States to right injustices or harm caused before they ratified the Convention (see *Păduraru v. Romania*, no. 63252/00, § 89, ECHR 2005-XII (extracts)). The Court considers that the decisions taken by the Bank of Latvia cannot be interpreted as implying that there is a substantive (positive) obligation under international law incumbent on the respondent State to make any payments at all, let alone to make payments, which, according to the applicants, should equal the total amount of their frozen foreign currency assets in another State.

113. It follows that the respondent State cannot be said to have an obligation under the Convention to take any particular measures to achieve the release of the applicants' foreign currency assets, which are located in another country. The applicants' complaint in this respect is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be dismissed in accordance with Article 35 § 4 of the Convention.

C. Remainder of the complaints

114. The second applicant raised further complaints under Article 6 of the Convention.

115. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

116. It follows that this complaint is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President