[TRANSLATION]

...

THE FACTS

The applicants, Oksana Kozlova and Tatjana Smirnova, are "permanently resident non-citizens" of Latvia, born in 1930 and 1946 respectively and living in Riga (Latvia). They were represented before the Court by Mr G. Kotovs, a lawyer practising in Riga.

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

A. The circumstances of the case

1. Background to the case

In 1931 the Latvian State sold to a certain O.A.R. a plot of land 3,740 sq. m in area with a semi-detached weekend house, located in Vecāķi (in the suburbs of Riga). After O.A.R.'s death in 1939, the property passed to his daughter, M.R.

In 1944 fear of Stalinist persecution forced M.R. to go into exile in the West and abandon her property. The house was also considerably damaged during the 1940s.

In a decision of 9 June 1948 the executive committee of the Mangaļi Municipal Council granted the right to use the above-mentioned land to Colonel S. (the applicants' father) and Lieutenant Colonel B., and calculated the actual value of the building on it. On 27 August 1948 Mr S. and Mr B. purchased the house by paying the tax authorities the sum of 2,080 Soviet roubles. In the following years S. and B. rebuilt the house.

In a decision of 4 February 1952 the municipal authorities granted S. and B. the definitive right to use the land. However, on 1 July 1952 those authorities divided the land into three parts, two of which were allocated to S. and B. and the third of which was placed in public ownership.

On 25 December 1968 the municipality's executive council divided the house into two parts and registered them as two separate properties with different numbers. The title to one of the parts was granted to the heirs of S., who had died that year; title to the other half was granted to B.'s former wife.

In 1969 the applicants were recognised as the heirs to equal portions of their fathers' estate.

On 30 October 1991 after Latvia had regained its independence, the Supreme Council (*Augstākā padome*) enacted the Law on the Return of

Real Estate to the Legitimate Owners (*Likums "Par namīpašumu atdošanu likumīgajiem īpašniekiem"*).

2. Proceedings before the Latvian courts

On 30 May 1995, in response to an application by O.A.R.'s grandson, A.R., Riga Municipal Council restored ownership of the land in issue to A.R. That decision did not, however, cover the buildings erected on the land.

In April 1998 A.R. asked the Riga Regional Court to set aside all the decisions taken in relation to the semi-detached house during the Soviet period and recognise him as the legitimate owner.

In a judgment of 30 June 1998 delivered after adversarial proceedings the Riga Regional Court allowed A.R.'s application. The Court noted first of all that although the house in issue had never been formally expropriated, it was covered by section 7 of the Law on the Return of Real Estate to the Legitimate Owners, which excluded property abandoned for fear of persecution from the category of *res nullius* (the property of nobody). The taking of possession of the property by the Soviet local authorities in 1948 had therefore been arbitrary and illegal, especially as it had not been based on any judicial decision. Furthermore, the Regional Court pointed out that section 6 of the aforementioned law precluded the return of items of property sold to private individuals acting in good faith by means of contracts certified by a notary. However, it noted that there had been no such contract in the instant case. Lastly, the Regional Court rejected the applicants' argument that the disputed house had been completely rebuilt by their father and was in fact a new item of property. In that connection, the Court considered on the basis of the evidence produced that the repairs carried out (the replacement of doors, windows and roofing and repairs to some of the walls) were not sufficient to warrant the assertion that the initial building no longer existed and that S. had built a new house. Consequently, the Regional Court declared the decision of 9 June 1948 and all subsequent measures relating to the building null and void and ordered that it be returned to A.R.

The applicants appealed against that judgment to the Civil Division of the Supreme Court, which, in a judgment delivered on 9 December 1998 following adversarial proceedings, dismissed A.R.'s application on the ground that the documents he had submitted were not sufficient to prove O.A.R.'s title to the disputed house.

In a judgment of 3 March 1999 the Cassation Division of the Supreme Court, ruling on an appeal on points of law lodged by A.R., quashed the aforementioned judgment and remitted the case to the Civil Division. According to the Cassation Division, as a building was in principle an adjunct to the land on which it was built, the house in question should, in

the absence of any evidence to the contrary, have been considered to have belonged to the owner of the land, namely O.A.R.

In a judgment of 20 May 1999 the Civil Division of the Supreme Court allowed A.R.'s application. Having established that the semi-detached house had indisputably belonged to O.A.R., the Civil Division ruled as follows:

> "... Section 7 of the Law on the Return of Real Estate to the Legitimate Owners provides that an item of property abandoned by its owner following the events of the Second World War, particularly in order to avoid persecution or other adverse consequences, cannot be classed as *res nullius*.
>
> It appears from the documents in the case file that in 1944, after the death of his grandmother, the appellant and his family left Latvia to escape potential oppression.
>
> The case file does not contain any information attesting to the legal basis for the taking of possession of the property by the executive committee ... . No judgment was adopted regarding a *res nullius*. ...
>
> ... [T]he Civil Division considers that by taking possession of the disputed property without paying any compensation and by making use of it subsequently, the municipality infringed the rights of the legitimate owner and adopted a policy of administrative arbitrariness.
>
> Under section 6 of the Law on the Return of Real Estate to the Legitimate Owners, no court order can be made for the return of items of property acquired against payment by natural persons acting in good faith and on the basis of contracts certified by a notary.
>
> The file does not contain any evidence that the property came into the ownership of [S.] and [B.] on the basis of an official conveyance certified by a notary. ...
>
> That being so, the Civil Division considers that [B.] and [S.] cannot be regarded as purchasers acting in good faith within the meaning of section 6 of the Law on the Return of Real Estate to the Legitimate Owners. ...
>
> Since [S.] cannot be deemed to have purchased the house in good faith, the Civil Division considers the certificate of succession to the estate issued to Tatjana Smirnova [and] Oksana Kozlova ... to be null and void ..."

The applicants appealed on points of law against the above judgment cited above to the Cassation Division of the Supreme Court. In a judgment of 6 October 1999 the Cassation Division, ruling as an extended bench of seven judges, rejected that appeal, upholding the reasons given by the Civil Division.

B. Relevant domestic law and practice

The relevant provisions of the Law of 30 October 1991 on the Return of Real Estate to the Legitimate Owners (*Likums "Par namīpašumu atdošanu likumīgajiem īpašniekiem"*) provide as follows:

Section 1

"Title to immovable property of which the State or legal persons took possession without paying compensation during the period between the 1940s and the 1980s, as part of a policy which infringed the rights of owners and was tainted by administrative arbitrariness, shall be restored to the former owners or their heirs irrespective of their present nationality."

Section 2

"The property rights of former owners or their heirs who have lodged an application shall be restored by a court order in accordance with the provisions of the Latvian Code of Civil Procedure. ..."

Section 3

"... [T]he courts may declare null and void measures taken by administrative authorities putting an end to or restricting a lawful right to property."

Section 6

"Immovable property that has come into the ownership of natural persons acting in good faith against payment and on the basis of contracts certified by a notary may not be returned ...

In this case, the former owner (or his heir) has the right to demand from the vendor who acquired the property compensation up to the price laid down in the contract of sale; compensation corresponding to the real value of the property must be paid as provided by law. ..."

Section 7

"Immovable property which had to be abandoned by its owner following the military operations of the Second World War, particularly in order to avoid potential repression or other adverse consequences, may not be regarded as *res nullius*. ..."

Section 9

"Where the immovable property eligible to be claimed by means of a judicial remedy has not survived ..., former owners (or their heirs) are entitled to compensation as provided by law.

Immovable property which, after 30 October 1991, has been rebuilt in such a way that most of it (more than sixty-five percent) amounts to a new building, shall also be considered not to have survived in substance. Where the construction or reconstruction has been carried out in breach of the requirements of a law or regulation or by an occupier acting in bad faith, that fact may not be relied on to dismiss an application for restitution of the property."

In a judgment of 22 October 1997 (case no. SKC-287) the Cassation Division held that a decision taken by the municipal authorities in the 1940s whereby a private individual was granted title to an expropriated house provided that he paid a sum to the tax authorities corresponding to the value of the building was equivalent to a "contract certified by a notary" within the meaning of section 6 of the Law.

The relevant provisions of the Latvian Civil Code (*Latvijas Republikas Civillikums*) read as follows:

Article 1060

"The claimant must prove that he has title. For this purpose, it is sufficient for him to show that he genuinely acquired that title in a legal manner; it is subsequently for the defendant to prove that the claimant is no longer the owner.

Where the claimant maintains that he acquired the property from a third party through delivery or inheritance, he must prove that his predecessor was the owner."

Article 1061

"The defendant may have the application dismissed if he proves that he has title to the property or the right to possess it on the basis of a right *in rem* or a right *in personam* which the claimant must respect."

COMPLAINTS

Relying on Article 1 of Protocol No. 1 to the Convention, the applicants complained that by depriving them of the building which the municipality had lawfully sold to their father and which their family had possessed since 1948, the Latvian authorities had unlawfully and unjustifiably interfered with their right to peaceful enjoyment of their possessions. The applicants pointed out that when depositing its instrument of ratification on 27 June 1997, Latvia had, in accordance with Article 57 of the Convention, made a reservation declaring that Article 1 of Protocol No. 1 did not apply to the Latvian laws on property reform which regulate the restitution to former owners or their legal heirs of immovable property nationalised, confiscated, collectivised or otherwise expropriated by the Soviet authorities, including the law applied by the domestic courts in the instant case. However, the applicants submitted that this reservation was couched in excessively vague and broad terms and therefore amounted to a "reservation of a general character" as prohibited by the second sentence of Article 57 § 1 of the Convention. In that connection, they emphasised in particular that the reservation, which covered all land and property reform in Latvia, affected the interests of the entire Latvian population. On a similar point, the

applicants submitted that Article 57 § 1 referred to "any law" and thus did not authorise reservations relating to several pieces of legislation.

Relying on Article 6 § 1 of the Convention, the applicants complained that the Latvian courts had wrongly applied domestic legislation; they emphasised in particular that, for no apparent reason, the courts had failed to follow the established relevant case-law of the Supreme Court's Cassation Division. They also complained that the Riga Regional Court had refused to order an expert opinion to determine to what extent the disputed house had been rebuilt. They further submitted that the courts had not provided a satisfactory response to each of their arguments, particularly their argument that the municipal authorities' decision in 1948 was equivalent to a contract certified by a notary. Lastly, the applicants maintained that the position adopted by the judges on the matter provided clear evidence of their bias and lack of independence.

In addition, relying on Article 13 of the Convention, the applicants complained that they had had no effective remedy.

THE LAW

1. Complaint under Article 1 of Protocol No. 1

The applicants complained that by declaring their father's acquisition of the house in issue null and void and ordering that it be returned to the former owner's heir, the domestic courts had infringed their rights guaranteed by Article 1 of Protocol No. 1 of the Convention, the relevant part of which provides 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. ..."

Inasmuch as the applicants complained about the application by the national courts of the Law on the Return of Real Estate to the Legitimate Owners, the Court points out that this law is mentioned in the reservation made by the Latvian government in their instrument of ratification, deposited on 27 June 1997. The reservation reads as follows:

> "In accordance with Article 64 *[57]* of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Republic of Latvia declares that the provisions of Article 1 of the First Protocol shall not apply to the laws on property reform which regulate the restoration or compensation to the former owners or their legal heirs of property nationalised, confiscated, collectivised or otherwise unlawfully expropriated during the period of Soviet annexation; and privatisation of collectivised agricultural enterprises, collective fisheries and of State and local self-government owned property.

The reservation concerns the Law On Land Reform in the Republic of Latvia Rural Regions (published in *Ziņotājs [The Bulletin]* 1990, No. 49; 1991, No. 41; 1992, No. 6/7; 1992, No. 11/12; 1993, No. 18/19; *Latvijas Vēstnesis [The Latvian Herald]* 1994, No. 137), Law On Privatisation of Agricultural Enterprises and Collective Fisheries (*Ziņotājs* 1991, No. 31; 1992, No. 40/41; 1993, No. 5/6; *Latvijas Vēstnesis* 1995, No. 90; 1996, No. 177), Law On Land Reform in the Republic of Latvia Cities (*Ziņotājs* 1991, No. 49/50; *Latvijas Vēstnesis* 1994, No. 47; 1994, No. 145; 1995, No. 169; 1997, No. 126/127), Law On Land Privatisation in Rural Regions (*Ziņotājs* 1992, No. 32; 1993, No. 18/19; *Latvijas Vēstnesis* 1993, No. 130; 1994, No. 148; 1995, No. 162; 1996, No. 111; 1996, No. 225), Law On Privatisation of Property in Agroservice Enterprises (*Ziņotājs* 1993, No. 14), Law On Privatisation Certificates (*Latvijas Vēstnesis* 1995, No. 52), Law On the Privatisation of Objects of State and Municipal Property (*Latvijas Vēstnesis* 1994, No. 27; 1994, No. 77; 1996, No. 192; 1997, No. 16/17/18/19/20/21), Law On Privatisation of Co-operative Apartments (*Ziņotājs* 1991, No. 51; *Latvijas Vēstnesis* 1995, No. 135), Law On the Privatisation of State and Local Self-Government Apartment Houses (*Latvijas Vēstnesis* 1995, No. 103; 1996, No. 149; 1996, No. 223), Law On Denationalisation of Real Estate in the Republic of Latvia (1991, No. 46; *Latvijas Vēstnesis* 1994, No. 42; 1994, No. 90; 1995, No. 137; 1996, No. 219/220), Law On the Return of Real Estate to the Legitimate Owners (*Ziņotājs* 1991, No. 46; *Latvijas Vēstnesis* 1994, No. 42; 1996, No. 97) and their wording being in force at the moment the Law On Ratification entered into force."

The Court considers that it must examine whether the reservation cited above is compatible with Article 57 of the Convention, which provides:

"1. Any State may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2. Any reservation made under this article shall contain a brief statement of the law concerned."

The Court reiterates that by "reservation of a general character" in Article 57 § 1 is meant a reservation which does not refer to a specific provision of the Convention or is couched in terms that are too vague or broad for it to be possible to determine their exact meaning and scope (see *Belilos v. Switzerland*, judgment of 29 April 1988, Series A no. 132, p. 26, § 55; and *Chorherr v. Austria*, judgment of 25 August 1993, Series A no. 266-B, p. 35, § 18). However, the Court notes that Latvia's reservation covers a strictly limited number of laws which, taken together, institute a coherent body of statutory provisions regulating property reform. In addition, the aims and substance of the laws listed reflect the concern expressed by the Government in the introduction to the reservation, namely their desire to remove from the scope of Article 1 of Protocol No. 1 the pre-existing legislation on denationalisation and privatisation. The Court considers the applicants' argument that a reservation made under Article 57 of the Convention must relate to a single piece of legislation to be ill-founded. In view of the fact that many similar reservations have been made

by various States and recognised as valid by the Convention institutions, this interpretation cannot be correct (see, for example, application no. 34476/97, Commission decision of 1 July 1998, Decisions and Reports (DR) 94, p. 99). Consequently, the wording of Latvia's reservation does not attain the degree of generality prohibited by Article 57 § 1 of the Convention.

As to the "brief statement of the law concerned", the Court notes that the title of each law cited in the reservation is followed by a reference to the Official Gazette, so that anyone can identify precisely which laws are concerned and obtain information about them. Moreover, the annex to the reservation briefly outlines the main aim and scope of each law. The Court considers this sufficient to ensure that the requirements of Article 57 § 2 of the Convention are satisfied (see *Chorherr*, cited above, § 20, and application no. 31506/96, Commission decision of 25 November 1996, DR 87, p. 164).

Moreover, the Court notes that a similarly worded reservation made by Estonia in respect of Article 1 of Protocol No. 1 has been declared valid by the Convention institutions on two occasions (see application no. 34476/97, decision cited above, and *Shestjorkin v. Estonia* (dec.), no. 49450/99, 15 June 2000). The Court has not discerned any distinguishing feature in the instant case that would warrant a different conclusion with regard to Latvia's reservation.

Having regard to all of the above considerations, the Court considers that Latvia's reservation in respect of Article 1 of Protocol No. 1 complies with Article 57 of the Convention.

In the instant case, the Court notes that the national courts based their decisions on the relevant provisions of the Law on the Return of Real Estate to the Legitimate Owners. The reservation in question therefore applies in the instant case.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

2. Complaints under Articles 6 § 1 and 13 of the Convention

The applicants considered themselves the victims of an infringement of the rights guaranteed by Articles 6 § 1 and 13 of the Convention, the relevant parts of which provide as follows:

Article 6

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal..."

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court reiterates that, according to Article 19 of the Convention, its sole duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court or substitute its own assessment for that of the national courts unless and in so far as these errors may have infringed rights and freedoms protected by the Convention (see, for example, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

In the instant case, the Court notes that the applicants had the benefit of adversarial proceedings at first instance and on appeal. They were also able to submit to the courts the arguments they considered relevant to their case, and those arguments were indeed examined by the judges. Inasmuch as the applicants complained of an alleged reversal of the case-law, the Court considers that at issue here are the methods of implementation of domestic law, and in the absence of any arbitrariness in the instant case that is a matter which lies outside its jurisdiction. The Court also notes that the impugned decisions were motivated as much by considerations of fact as by considerations of law. In that connection, it points out that the mere fact that the judge did not give a separate detailed answer to each of the arguments submitted by the parties was not sufficient to render the proceedings unfair (see, among many other authorities, *García Ruiz*, cited above, § 26; and *Driemond Bouw BV v. the Netherlands* (dec.), no. 31908/96, 2 February 1999). Consequently, the applicants are not justified in maintaining that they were denied a fair hearing by the courts. Lastly, the Court considers that doubts as to the merits of a court's interpretation of domestic law do not in themselves amount to an indication that judges are biased or lack independence.

Having regard to the above considerations, the Court considers that, taken as a whole, the proceedings in issue were fair for the purposes of Article 6 § 1 of the Convention. It follows that this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

Inasmuch as the applicants also rely on Article 13 of the Convention, the Court points out that in civil proceedings the guarantees of Article 13 give way in principle to the stricter requirements of Article 6 § 1 of the Convention. As it has examined the applicants' complaints under Article 6 § 1, it does not consider it necessary to examine the case under Article 13 also (see, among many other authorities, *British-American Tobacco Company Ltd v. the Netherlands*, judgment of 20 November 1995, Series A

no. 331, p. 29, § 89; *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports* 1997-VIII, p. 2956, § 41; and *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI).

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.