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The rights of former owners of land expropriated to allow for extension of the Port of Riga were not violated

In today's Chamber judgment in the case Vistiņš and Perepjolkins v. Latvia (application no. 71243/01), which is not final[1], the European Court of Human Rights found:

By a majority, **no violation of Article 1 of Protocol 1 (protection of property)** to the European Convention on Human Rights;

Unanimously, **no violation of Article 14 (prohibition of discrimination)** of the Convention taken together with Article 1 of Protocol No. 1.

The case concerned the expropriation of large plots of land in the middle of the 1990s as part of the enlargement of the Autonomous Commercial Port of Riga. This expropriation was based on a special law creating an exception to the ordinary rules governing expropriation.

Principal facts

The applicants, Jānis Vistiņš and Genādijs Perepjolkins, are two Latvian nationals. By deeds of gift inter vivos signed in 1994 they became the owners of land amounting to several tens of thousands of square metres on the island of Kundziņsala. This island is part of Riga and mainly consists of port facilities. The land had been unlawfully expropriated by the Soviet Union after 1940 and those who had offered it to Mr Vistiņš and Mr Perepjolkins (in consideration for services rendered) had recovered its ownership in the context of "denationalisation" at the beginning of the 1990s. The purely indicative value of the land, cited on the deeds of gift for calculation of the property tax, was 500 or 1,000 Latvian lati (LVL) per plot of land (about 705 and 1410 euros (EUR)).

In July 1994 Mr Vistiņš and Mr Perepjolkins were entered in the land register as owners of the plots of land. Apart from the notary's tax of LVL 0.25, they were not required to pay any tax in respect of the gifts described above.

On 15 August 1995 the Council of Ministers adopted Regulations on establishing the limits of the Port of Riga, which included the land belonging to Mr Vistiņš and Mr Perepjolkins within the perimeter of the Port. That This inclusion was confirmed by the Law of 6 November 1996 on the Autonomous Commercial Port of Riga. That law also subjected all of the private land situated within the port's boundaries to an easement, in exchange for compensation.

In January 1996 the Centre for Property Valuation at the State Lands Authority, to which Mr Vistiņš and Mr Perepjolkins had applied, assessed the value ("cadastral value") of Mr

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Vistiņš's land at LVL 564,410 (about EUR 900,000) and that of Mr Perepjolkins at more than LVL 3.12 million in total (about EUR 5.01 million). In 1997 the Port Authority applied in turn to the Property Valuation Centre, asking it to calculate the amount of compensation that would be due in the event of expropriation of the land. That assessment was carried out following the Supreme Council's decision on the arrangements for the entry into force of the General Expropriation Act of 1923, which imposed a ceiling on expropriation compensation for plots of land such as those concerned by this case, based on their cadastral value on 22 July 1940 multiplied by a conversion coefficient. Accordingly, on 12 June 1997 the expropriation compensation that would theoretically be due to Mr Vistiņš and Mr Perepjolkins was assessed at LVL 548.26 (about EUR 850) and LVL 8,616.87 (about EUR 13,500) respectively.

By a regulation of 5 August 1997, the Council of Ministers ordered the expropriation of the land in question. By a special law of 30 October 1997 Parliament confirmed the expropriation and ordered that Mr Vistiņš and Mr Perepjolkins be paid compensation equal to the amounts indicated by the Valuation Centre (about EUR 850 and EUR 13,500). Those amounts were paid into accounts that had been opened in each of the applicants' names at the Latvian Land and Mortgage Bank. However, Mr Vistiņš and Mr Perepjolkins did not withdraw those amounts.

At the end of 1998 the Riga land registers court ordered that the ownership rights to the expropriated land be transferred to the State and the relevant entry made in the land register.

Mr Vistiņš and Mr Perepjolkins brought actions in the courts seeking to obtain arrears of rent payments for use of their land by the Riga Autonomous Port since 1994. At the close of those proceedings in 1999 they were awarded the equivalent of about EUR 85,000 and EUR 593,150 respectively.

In January 1999 Mr Vistiņš and Mr Perepjolkins issued a writ against the Ministry of Transport, requesting that the registration of the State's ownership in the land registers be cancelled, and that they be re-entered in the land registers as the owners of the land. They alleged that the expropriation proceedings provided for in the General Expropriation Act, which laid down, among other things, negotiation of the amount of compensation and the possibility of judicial review in the event of a dispute as to that amount, had not been complied with. On 29 March 2000 the Riga Regional Court dismissed their request on the ground that the expropriation of their land had not been based on the General Expropriation Act but on the special law of 30 October 1997. On 28 September 2000 the Civil Division of the Supreme Court upheld that decision on appeal, as did the Cassation Division of the Supreme Court on 20 December 2000, ruling on an appeal on points of law.

During 1999 supplementary tax assessment proceedings were brought against Mr Vistiņš and Mr Perepjolkins in respect of the property tax for the plots of land in question, but they were ultimately not required to pay anything in this respect.

Since 2000 the State has rented the land in question to a private transport company.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, Mr Vistiņš and Mr Genādijs Perepjolkins complained about the conditions in which their land had been expropriated, arguing, in particular, that they had been deprived of their property in breach of national law. Relying also on Article 14 of the Convention, (prohibition of discrimination), they complained that they had been discriminated against on the ground of their "property".

The application was lodged with the European Court of Human Rights on 5 June 2001 and declared admissible by a decision of 30 November 2006.

Judgment was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Lech **Garlicki** (Poland),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Luis **López Guerra** (Spain), *Judges*,

and also Santiago **Quesada**, *Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1 (protection of property)

The Court had to satisfy itself that the expropriation met three essential requirements.

In the first place, the expropriation had to have been conducted "subject to the conditions provided for by law". As the Latvian courts had noted, the normal expropriation procedure in Latvia at the material time had been fixed by the 1923 General Act, but the case of Mr Vistiņš and Mr Perepjolkins had been governed by the special law of 1997, which created an exception to the standard expropriation procedure. Admittedly, prior to the enactment of the special law, Mr Vistiņš and Mr Perepjolkins could have expected that any expropriation would take place in accordance with the criteria laid down by the 1923 Act, but that was not in itself sufficient to challenge the lawfulness of the special provisions enacted in their case. In addition, the Court accepted the Latvian Government's argument that the expropriation of land in the applicants' case was part of the process of denationalisation following the restoration of Latvia's independence (the Legislature itself had noted this point). It was precisely in that sphere that an extraordinary law could set out special rules for one or several individuals without necessarily infringing the requirement of lawfulness: Parliament must in effect enjoy a particularly wide margin of appreciation in order to correct, on the grounds of equity and social justice, shortcomings or injustices created during denationalisation. The Court saw nothing unreasonable or manifestly contrary to the fundamental objectives of Article 1 of Protocol No. 1 in the special law of 30 October 1997, and the expropriation of the land belonging to Mr Vistiņš and Mr Genāijs Perepjolkins had therefore been conducted "subject to the conditions provided for by law".

Secondly, the expropriation must have been "in the public interest". The Court also found that this was the case here, in so far as the measure imposed on Mr Vistiņš and Mr Genāijs Perepjolkins had sought to optimise management of the facilities of the Autonomous Port of Riga, a question of transport policy and, more generally, of the country's economic policy.

Thirdly and lastly, a "fair balance" must have been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights – which in the applicants' case concerned the amount of expropriation compensation. In that respect, the Court reiterated that it could not substitute itself for the Latvian courts in determining the basis on which they were to decide the amount of compensation. Admittedly, it found that there was an extremely large disproportion between the current cadastral value of the land and that – taken into account in determining the amount of expropriation – of the land in 1940, the first being about 350 times greater than the second. It was evident, however, that that considerable increase in the value of the land had resulted from development of the port facilities located on it and a total change in the strategic importance of the land over several decades, objective factors to which neither Mr Vistiņš, Mr Perepjolkins nor the former owners had contributed. The Court further noted that Mr Vistiņš and Mr Perepjolkins had acquired the land in question free of charge and had owned it for only three years, without making any investments or paying any related taxes. The Latvian authorities had therefore been justified in not reimbursing Mr Vistiņš and Mr Perepjolkins for the full market value of the expropriated assets. The Court also noted that Mr Vistiņš and Mr Perepjolkins had received about EUR 85,000 and EUR 593,150 in respect of rent arrears for their land. Although those sums had been paid on a legal basis that was completely distinct from the expropriation, it remained the case that they had profited from a "windfall effect" and, if the situation was considered as a whole, the amounts paid in respect of compensation (about EUR 850 and EUR 13,500) did not appear disproportionate. The Court further noted that Mr Vistiņš and Mr Perepjolkins had enjoyed sufficient procedural guarantees and that this case was comparable to that of 23 plots of land occupied by Riga airport, which had been previously been expropriated in the same way.

The Court concluded, by six votes to one, that there had been no violation of Article 1 of Protocol No. 1.

Article 14 (prohibition of discrimination)

Discrimination is treating differently, without an objective and reasonable justification, people in relevantly similar situations.

The Court entertained serious doubts that the situation in which Mr Vistiņš and Mr Perepjolkins found themselves was comparable to that of other owners of immovable property. Even had it been, given the public interest pursued by the expropriation and the margin of appreciation enjoyed by Latvia on account of the denationalisation process, the Court considered that the difference in the way Mr Vistiņš and Mr Perepjolkins had been treated had had an objective and reasonable justification (see the developments concerning Article 1 of Protocol No. 1).

The Court therefore concluded, unanimously, that there had been no violation of Article 14.

Separate opinion

Judge Casadevall expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.