

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

FIFTH SECTION

CASE OF DZIRNIS v. LATVIA

(Application no. 25082/05)

JUDGMENT

STRASBOURG

26 January 2017

FINAL

26/04/2017

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



In the case of Dzirnis v. Latvia,

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

Angelika Nußberger, *President,*
Erik Møse,
Khanlar Hajiyev,
Faris Vehabović,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 3 January 2017,

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

PROCEDURE

1. The case originated in an application (no. 25082/05) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Janis Dzirnis ("the applicant"), on 30 March 2005.

2. The applicant was represented by Mr E. Radziņš, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine and later Mrs K. Līce.

3. The applicant mainly complained of an infringement of his right to the peaceful enjoyment of his possessions, as guaranteed under Article 1 of Protocol No. 1 to the Convention.

4. On 4 March 2010 that complaint was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Riga.

A. Background information and the initial civil proceedings regarding restoration of property rights

6. In 1940, in the territory of Latvia the totalitarian communist regime carried out large-scale nationalisation of privately owned property (for more information see *Liepājnieks v. Latvia* (dec.), no. 37586/06, § 49, 2 November 2010 and case-law cited therein), including a property consisting of a plot of land and buildings in Jurmala which had belonged to a private person M.G.

7. After the regaining of independence, in 1991 property reform legislation came into force in Latvia and provided that former owners or their heirs could reclaim nationalised property by submitting a request to the local municipality by 1 June 1994. If such a request was not submitted within the statutory time-limit, a court had to decide on restoring property rights, provided a court claim had been submitted before 1 June 1999.

8. In 1995 V.P.E., acting as a heir of M.G., instituted such proceedings regarding the property in question in the Jurmala City Court. She did not attend the court hearings and in 1997 the court decided to leave her claim without examination.

9. In 1998 the Jurmala Municipality Land Commission divided the property into two plots on the grounds that no one had requested the restoration of property rights to the land previously owned by M.G.

10. On 19 July 2000 the Cabinet of Ministers issued Order No. 349, which retained one of the plots (hereinafter "the contested property") as State property, transferred it to the Ministry of Finance, and obliged the Ministry to register it in the land register (see paragraph 41 below). Two days later the Order was published in the official gazette and in December that year the Ministry of Finance, represented by the State joint-stock company the State Real Estate Agency *(Valsts nekustamā īpašuma aģentūra*), took it over from Jurmala Municipality.

11. On 20 December 2000 V.P.E. instituted proceedings in the Jurmala City Court, with Jurmala Municipality as the defendant. She requested the restoration of her property rights to the whole nationalised real estate.

12. On 2 February 2001 the Jurmala City Court ruled in favour of V.P.E. During the court hearing a representative of Jurmala Municipality supported the claim and confirmed that the property was not the subject of any dispute.

The judgment established that V.P.E. was a legitimate heir of the former owner M.G. The Jurmala City Court further held that V.P.E. had on 10 May 1994 submitted a request to Jurmala Municipality, within the time-limit set down in the law, and had later, on 5 July 1995, turned to the court in an attempt to have her rights to the property restored. However, she had not completed the process owing to ill health. Lastly, the judgment stated that the property in question was not possessed by any physical persons in good faith (*labticīgas fiziskas personas*) and thus there were no obstacles to

returning the real estate to V.P.E. The judgment was not appealed against and became final on 29 February 2001.

13. At the time the judgment was adopted the Ministry of Finance had not been registered as the owner of the contested property (see paragraph 10 above). On the basis of the above judgment, on 14 May and 17 May 2001 V.P.E. was registered in the land register as the owner of both plots of land. On 21 and 22 May 2001 she sold the contested property to the applicant for 39,000 Latvian lati (LVL) (about 56,000 euros (EUR)). On 22 and 24 May 2001 the applicant was registered as the owner of the property in the land register. In 2001 and 2002 the applicant paid real estate tax on the property.

B. Supervisory review proceedings

14. Meanwhile, on 21 March 2001 the State Real Estate Agency informed the Prosecutor General that, in its opinion, the judgment of 2 February 2001 had infringed the interests of the State and was unlawful.

15. On 1 June 2001 the Prosecutor General submitted an appeal ("*protests"*) to the Senate of the Supreme Court, asking for the Jurmala City Court judgment of 2 February 2001 to be quashed. The objection was based on the grounds that the Jurmala City Court had wrongly applied the land reform legislation, that it had not been competent to hear the case and that it had not taken into consideration the important evidence of Order No. 349, by which the State had become entitled to the contested property.

16. On 1 August 2001, the Senate of the Supreme Court upheld the Prosecutor General's objection, quashed the judgment of the Jurmala City Court and ordered a new adjudication of the case. The Senate agreed in substance with the Prosecutor General's assessment that the Jurmala City Court had erred in choosing the applicable substantive law and that it had overstepped the limits of its competence. Most importantly, Jurmala Municipality had failed to inform the Jurmala City Court about evidence that was pertinent to the restoration of V.P.E.'s property rights.

C. Property claim (*īpašuma prasība*) brought by the State against the applicant

17. On 11 January 2002 the Ministry of Finance brought a property claim with Riga Regional Court, acting as a first-instance court, against the applicant and V.P.E. as defendants and Jurmala Municipality as a third party. The claimant asked that the purchase agreement signed by the defendants be declared null and void *ab initio*, and that the rights of the State to the contested property be recognised.

18. The claim was based on the sections of the Civil Law regulating property claims.

19. The Riga Regional Court subsequently decided to join to the above civil proceedings V.P.E.'s claim against Jurmala Municipality for the restoration of her rights to the contested property.

1. First-instance court

20. On 16 September 2002 the Riga Regional Court examined the joined claims of V.P.E. and the Ministry of Finance. During the hearing a representative of Jurmala Municipality testified that V.P.E. had failed to request her property rights within the time-limits set by the property reform legislation. The applicant argued that he had been utterly convinced that the property had belonged to V.P.E. when he had purchased it and that he should enjoy protection as a bona fide acquirer of the property.

21. Relying on Order No. 349 (see paragraph 41 below), the Riga Regional Court recognised that the State had acquired the contested property in 2000.

2. First appellate court judgment

22. In an appeal to the Supreme Court, the applicant submitted that the first-instance court ought to have ordered V.P.E. to return him an amount equal to the value of the contested property.

23. During the hearing, a representative of Jurmala Municipality supported V.P.E.'s claim to the land, but not the buildings. They had allegedly already been transferred to the State.

24. The Supreme Court, in a judgment of 9 January 2003, dismissed the appeal, holding, *inter alia*, that it could not be considered that the applicant had acquired the contested land in good faith. In reaching that conclusion the Supreme Court found that the Jurmala City Court's judgment had been declared unlawful and had been quashed and that therefore any deed concluded with respect to unlawfully acquired property could not be lawful. The appellate court otherwise essentially agreed with the conclusions of the first-instance court.

25. On 2 April 2003 the Senate of the Supreme Court adopted a judgment in which it dismissed an appeal on points of law by V.P.E. and so the decision to refuse the restoration of her property rights became final. With the same judgment the Senate allowed an appeal on points of law by the applicant. The Senate agreed that the appellate court had erred in considering that the contracts concluded between the applicant and V.P.E. had been invalid. The Senate further indicated that the appellate court had failed to adequately substantiate its finding that the State rather than the applicant was to be declared the owner of the contested property. The quashed part of the judgment was remitted to the appellate court.

3. Second appellate court judgment

26. On 12 November 2003 the Supreme Court again decided to annul the purchase contracts concluded between V.P.E. and the applicant, to annul the registration of V.P.E.'s and the applicant's property rights in the land register, and to recognise the State's property rights. The court's reasoning was based on section 2006 of the Civil Law, which provides that a purchase contract is to be declared null and void if, *inter alia*, none of the parties was aware that alienation of the property in question was not permitted.

27. On the basis of the above judgment, on 27 January 2004 a judge of the land register recorded changes with regard to the contested property. The Ministry of Finance was registered as its owner and from that date onwards it paid the land tax.

28. After the applicant submitted an appeal on points of law, the Senate of the Supreme Court on 3 March 2004 quashed the Supreme Court's judgment of 12 November 2003 and remitted the case to that court. The Senate noted, *inter alia*, that the appellate court had ignored the applicant's argument that it was necessary to decide on a reversal of the execution of the judgment of the Jurmala City Court.

4. Third appellate court judgment

29. On 1 December 2004 the Supreme Court adopted a new judgment following the remittal. It upheld the Ministry of Finance's application to recognise the State's ownership rights over the contested property and to delete the entry in the Jurmala land register on the applicant's title.

The Supreme Court noted that the applicant had obtained the property unlawfully (*prettiesiski*) because the Jurmala City Court had exceeded the limits of its competence when adopting the judgment of 2 February 2001. The Ministry of Finance, being the lawful owner of the contested property, could file a property claim against any person who had taken possession of its property. However, the claimant could not seek to annul a contract to which it was not a party and therefore the Ministry's claim in relation to that was dismissed. The Supreme Court considered that in those circumstances there was no need to address the applicant's arguments concerning the alleged need to rule on reversing the execution of the Jurmala City Court's judgment.

5. Judgment of the court of cassation

30. In his appeal on points of law, the applicant asked, *inter alia*, to have the deletion of the entries in the land register revoked. In particular, he referred to the fact that he had relied on land register data and had been a bona fide purchaser. Accordingly, he argued that instead of depriving him of the property, the court should have ordered V.P.E. to compensate the Ministry of Finance for the value of the contested property.

31. On 23 March 2005 the Senate of the Supreme Court adopted a final judgment in which it dismissed the applicant's appeal on points of law.

D. Further information

32. On 25 August 2005 a land register judge rectified the data and entered the judgment of 23 March 2005 as the basis of the Ministry of Finance's title to the contested property.

33. The land register shows that the contested property is leased under an agreement dated 24 August 2005 by a private company which provides restaurant and catering services there. On 29 September 2006 the lease rights were entered in the land register. The long-term lease is valid until 31 August 2030.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil Procedure Law

34. Under sections 483 and 484 of the Civil Procedure Law, an objection to a final court decision may be lodged within ten years of it becoming final by the chairman of the Supreme Court, the chairman of the Civil Department of the Senate of the Supreme Court or the Prosecutor General in cases of serious violations of substantive or procedural law. An objection may only be lodged in cases that were heard by a first-instance court and where no appeal was made because of circumstances outside the parties' control, or in which the judgment in question infringed the interests of State or municipal bodies or of third persons who were not parties to the original case.

35. Sections 634 and 635 of the Civil Procedure Law describe the course of action to be followed if a judgment that has already been executed is later quashed and when after fresh examination the initial claim is dismissed or the proceedings are terminated. In such cases, the court reconsidering the case will, on its own initiative or at the request of the respondent, consider the question of a reversal of execution. If such a reversal is ordered, the plaintiff has to return the goods obtained in the course of execution or repay a sum equal to their value if returning the goods proves to be impossible.

B. Civil Law provisions regulating possession and ownership rights

36. Sections 910-918 set out the types of possession and their protection. Section 910 provides that a possession can be obtained either in good faith or bad faith. A good faith possessor is one who is sure that no one is more entitled to possess the property. A bad faith possessor is aware that he or she

does not have the right to possess the property in question, or is aware of someone else having more rights to the property. Each type of possession is protected by law (section 912) and every possession is considered as being in good faith, unless proved otherwise (section 918).

37. Section 993 of the Civil Law provides that property rights over real estate are only established after their registration in the land register. A mere transfer of property does not establish property rights. The same point is made by section 994, which states that only persons registered in the land register ought to be considered owners of a piece of real estate.

38. Owners may claim property from any possessor by way of a property claim (section 1041). Owners may bring such a claim against any person who has illegally retained their property with a view to recognising their property rights and regaining possession (section 1044).

39. Sub-chapter 5 of the Civil Law regulates the law on obligations (*saistību tiesības*), including the manner in which a transaction should be concluded. Under section 1477, registration in the land register is required in cases where the right to an immovable property and related rights *(lietu tiesības*) are acquired by way of a transaction. Those property and related rights which derive directly from the law have legal effect irrespective of registration in the land register.

C. Law on the Land Register

40. Section 1 provides that real estate must be entered in the land register, along with related rights. The land register must be accessible to everyone and its entries are an official record.

D. Orders of the Cabinet of Ministers

41. Order No. 349 of the Cabinet of Ministers, issued on 19 July 2000 (hereinafter "the Order"), provides as follows:

> "1. The following real estate shall be retained as State property and transferred to the possession of the Ministry of Finance
>
> ...
>
> 1.3. [address of the contested property].
>
> 2. The Ministry of Finance shall in accordance with the relevant procedures register the real estate listed in point 1 of this Order in the land register."

42. Order No. 541 of the Cabinet of Ministers, issued on 13 September 2010, launched a modernisation of the part of the Civil Law dealing with property. The desire to modernise the law arose because, among other issues, there was a need to provide protection for bona fide acquirers of real estate and to guarantee the reliability of the data in the land register. The necessity of such a decision was illustrated by the fact that a bona fide

acquirer who relied on a valid land register entry about the owner of an immovable property at the time of purchase would be deprived of that property if it turned out that the seller had no legal title.

E. Relevant Supreme Court case-law

43. The Senate of the Supreme Court stated in case no. SKC-74/2010 of 7 April 2010 that in order to ensure the stable transmission of property rights under the civil law, a court should examine on a case-by-case basis the interaction of such factors as the reliability of entries in the land register, the protection of property rights and the protection of bona fide acquirers.

III. RESERVATION SUBMITTED BY THE GOVERNMENT

44. The instrument of ratification of the Convention and its Protocols deposited by the Government on 27 June 1997 contains the following reservation:

> "In accordance with Article 64 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 Zinotajs [The Bulletin] 1990, No. 49; 1991, No. 41; 1992, No. 6/7; 1992, No. 11/12; 1993, No. 18/19; Latvijas Vestnesis [The Latvian Herald] 1994, No. 137), Law On Privatisation of Agricultural Enterprises and Collective Fisheries (Zinotajs 1991, No. 31; 1992, No. 40/41; 1993, No. 5/6; Latvijas Vestnesis 1995, No. 90; 1996, No. 177), Law On Land Reform in the Republic of Latvia Cities (Zinotajs 1991, No. 49/50; Latvijas Vestnesis 1994, No. 47; 1994, No. 145; 1995, No. 169; 1997, No. 126/127), Law On Land Privatisation in Rural Regions (Zinotajs 1992, No. 32; 1993, No. 18/19; Latvijas Vestnesis 1993, No. 130; 1994, No. 148; 1995, No. 162; 1996, No. 111; 1996, No. 225), Law On Privatisation of Property in Agroservice Enterprises (Zinotajs 1993, No. 14), Law On Privatisation Certificates (Latvijas Vestnesis 1995, No. 52), Law On the Privatisation of Objects of State and Municipal Property (Latvijas Vestnesis 1994, No. 27; 1994, No. 77; 1996, No. 192; 1997, No. 16/17/18/19/20/21), Law On Privatisation of Co-operative Apartments (Zinotajs 1991, No. 51; Latvijas Vestnesis 1995, No. 135), Law On the Privatisation of State and Local Self-Government Apartment Houses (Latvijas Vestnesis 1995, No. 103; 1996, No. 149; 1996, No. 223), Law On Denationalisation of Real Estate in the Republic of Latvia (1991, No. 46; Latvijas Vestnesis 1994, No. 42; 1994, No. 90; 1995, No. 137; 1996, No. 219/220), Law On the Return of Real Estate to the Legitimate Owners (Zinotajs 1991, No. 46; Latvijas Vestnesis 1994, No. 42; 1996, No. 97) and their wording being in force at the moment the Law On Ratification entered into force."

45. Annex to instrument of ratification provides a brief summary of the laws concerned. The summary of the laws relevant to the present cases are as follows:

> "The aim of the Law On Land Reform in the Republic of Latvia Cities, during the gradual process of State property denationalisation, conversion, privatisation and the return of unlawfully expropriated land, is to restructure the legal, social and economic relations between city land owners and users in order to promote the respective city's construction, land protection and its rational utilisation in accordance with the interests of society.
>
> The Law On Denationalisation of Real Estate defines the real estate which can be denationalised, fixes the terms and procedure of denationalisation, the form of compensation and social guarantees of present tenants.
>
> The Law On the Return of Real Estate to the Legitimate Owners guarantees that the real estate which has been expropriated by the State in the 1940s-1980s without compensation will be returned to the former owners or their legal heirs.
>
> Period covered: 27/06/1997 - ."

THE LAW

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

46. The applicant complained of an infringement of his right to the peaceful enjoyment of his possessions, a plot of land which he had purchased in good faith but of which he had been deprived by the domestic court decisions to recognise the State's title to it, without compensating him for any loss sustained. He alleged a violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

47. The Government contested that argument.

A. Admissibility

1. Compatibility ratione materiae

48. The Government argued that the Court was precluded from examining the case by virtue of the reservation submitted by the Latvian Government in their instrument of ratification. That reservation, which concerned an ongoing property reform which had commenced in 1990, had been declared valid by the Court (see *Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, ECHR 2001-XI). In the Government's view, the establishment and restoration of the title to the disputed property in the present case was governed by the provisions of the legislation covered by the above reservation.

49. The applicant argued that issues related to the property reform were not part of the subject matter of the disputed civil proceedings.

50. In order for the Court to conclude that it does not have jurisdiction to decide on a complaint under Article 1 of Protocol No. 1 by virtue of the reservation, the Court has to be satisfied that the following conditions have been fulfilled: the laws on property reform mentioned in the reservation were applied in the domestic proceedings; the subject matter of the proceedings was the restoration of property rights or compensation; and former owners or their legal heirs were involved in those proceedings (see *Liepājnieks v. Latvia*, cited above, § 49).

51. In the case at hand the Court finds that at least two of the preceding conditions have not been met. At the outset the Court observes that the joint civil proceedings concerned two related claims – the restoration of V.P.E's title to the impugned property under the property reform legislation, and the property claim brought by the Ministry of Finance against the applicant and V.P.E. As far as the first condition was concerned, the interpretation and application of legislation related to property reforms in Latvia, the last decision on that issue became final on 2 April 2003 (see paragraph 25 above) and that part of the civil proceedings falls outside the scope of the present complaint. In relation to the subject matter in the remaining part of the proceedings, the Court observes that the subject matter was the recognition of the State's title to the impugned property under the general provisions of the Civil Law (see paragraphs 17 and 18 above). It therefore did not concern the restoration of property rights under the legislation covered by the reservation.

52. Having regard to the above, the Court finds that the applicant's complaint falls outside the scope of the reservation, and the Court is therefore not precluded from examining it. Consequently, the Court dismisses the objection raised by the Government in this regard.

2. Compatibility ratione personae

53. The Government further contended that the alleged interference with the applicant's right to the peaceful enjoyment of his property could not be impugned to the State. According to the Government, the primary responsibility for all the losses caused to the applicant was to be borne by V.P.E., the previous owner of the property, whose title had been revoked by the domestic court's judgment.

54. The applicant disagreed with the Government's assertion.

55. The Court observes that the applicant lost his title to the property after the State, represented by the Ministry of Finance, brought a property claim against the former owner and the applicant which was upheld by the domestic courts. Accordingly, the impugned proceedings did not concern the resolution of a dispute between private parties. Even if in certain situations the Court has accepted that the State has acted as a private party in a civil-law dispute (see, for example *S.Ö., A.K. and Ar.K. v. Turkey* (dec.), no. 31138/96, 13 September 1999), the Government do not advance such argument. In any case, such a conclusion could only affect the scope of the Court's review but does not exclude the applicability of Article 1 of Protocol No. 1 (see *Vukušić v. Croatia*, no. 69735/11, § 39, 31 May 2016).

56. Accordingly, this objection by the Government is also dismissed.

3. Other inadmissibility grounds

(a) Six-month rule

57. The Government further contended that the running of the six-month time-limit had started on 27 January 2004 when the land register had deleted the entry on the applicant's title to the contested property (see paragraph 27 above). In their view, even though the civil proceedings had still been pending, the applicant's title to the contested property had no longer constituted "possessions" within the meaning of Article 1 of Protocol No. 1.

58. The applicant disagreed and argued that the final decision in the civil proceedings had been adopted only on 23 March 2005, when the Senate of the Supreme Court had dismissed his appeal on points of law.

59. The parties do not disagree that the crux of the applicant's Convention complaint, a violation of his property rights, was examined at the domestic level in the civil proceedings initiated by the Ministry of Finance (see paragraph 17 above). Pending the outcome of those proceedings, the State was registered as owner of the contested property in the land register (see paragraph 27 above). However, the property dispute between the applicant and the State was finally settled only a year later (see paragraph 31 above). As a result, it cannot be concluded that the running of the six-month time-limit started before 23 March 2005, when the final judgment in the civil case was adopted.

60. Given that the applicant lodged his application on 30 March 2005, which is less than six months after the final judicial decision in his civil case, the Court dismisses the Government's objection.

(b) Non-exhaustion of domestic remedies

61. The Government raised objections on the grounds of non-exhaustion of domestic remedies, invoking several remedies which the applicant could have used. Firstly, they argued that the applicant should have appealed against the land register's decision (see paragraph 27 above). Secondly, the Government argued that if the applicant had believed that the protest submitted by the Prosecutor General had infringed the principle of legal certainty, he should have contested the constitutionality of sections 483 and 484 of the Civil Procedure Law (see paragraph 34 above). Lastly, they argued that the applicant should have pursued damages proceedings.

62. The applicant disagreed with the Government's assertions.

63. With regard to the Government's first argument, the Court reiterates that there is no requirement to use a remedy which has essentially the same objective as one that has already been pursued (see, for example, *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010). The Court refers to its earlier finding that the dispute over the property in issue ended by the final judgment adopted on 23 March 2005 (see paragraph 59 above). The Government did not allege that the applicant had had no prospect of success by using that remedy. Even assuming that an appeal against the decision of the land register had the same objective as the remedy already used by the applicant, it is not argued that it served as a further recourse against the final judgment in the civil proceedings.

64. In relation to the Government's second argument, the Court observes that the applicant was not a party to the property restoration proceedings which were subjected to the supervisory review (see paragraphs 11-12 above). That circumstance was likely to undermine any real possibility for the applicant to institute constitutional proceedings and rely on an alleged infringement of the principle of legal certainty. In any event, the Government do not argue that such a remedy could potentially have led to the reinstatement of the applicant's title to the contested property.

65. In response to the Government's third argument that the applicant failed to institute compensation proceedings, the Court reiterates that the existence of a possibility to seek damages cannot deprive the applicant of victim status for the purposes of his complaint under Article 1 of Protocol No. 1 to the Convention; neither may it be regarded as necessary for compliance with the rule of exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. Any damages received by the applicant may only be taken into account for the purposes of assessing the complaint of Article 1 of Protocol No. 1 on the merits (see *Gladysheva v. Russia*, no. 7097/10, § 62, 6 December 2011).

66. Observing that the above principle is applicable to the circumstances of the present case, the Court dismisses the Government's objection.

4. Conclusion

67. The Court considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an interference with the applicant's possessions

(a) Possessions

68. The applicant emphasised that he had bought the contested land in good faith and had been registered as its owner in the land register.

69. The Government argued that the applicant could not claim to have possessed the impugned land within the meaning of Article 1 of Protocol No. 1 because his title had been acquired unlawfully (*prettiesiski*). It had been the State which had, by virtue of Order No. 349, acquired title to the contested property. Such property rights, obtained by law, entered into force whether or not they had been registered in the land register (see paragraph 39 above).

In their view, the only protected interest the applicant had was an entitlement to compensation, which he had not claimed. In the alternative, the Government contended that any effective enjoyment of the applicant's possession of the land had ceased to exist on the date the State had been registered as its owner (see paragraph 27 above).

70. The Court considers that the applicant owned a possession for the purposes of Article 1 of Protocol No. 1. The applicant's title to the impugned property was registered in an official register, and he was considered as its owner. He also paid taxes on the property (see paragraph 13 above). He was also considered as a *de facto* possessor by the State when it brought a property claim against him, and under the domestic law any type of possession was protected (see paragraph 36 above).

71. Accordingly, for the purposes of Article 1 of Protocol No. 1 to the Convention, the applicant held a "possession" in the form of a plot of land.

(b) Interference

72. The applicant submitted that his right to the peaceful enjoyment of his possessions had been infringed by the domestic court's decision, which had not protected a bona fide buyer who had relied on the land register.

73. The Government contended that any alleged interference with the applicant's right to the peaceful enjoyment of his possessions had been the

result of unlawful or irresponsible activities by private parties. It therefore could not engage the State's responsibility, apart from the positive obligation to protect the applicant's property interests by ensuring adequate remedies in its domestic legal system. They strongly opposed any recognition that the applicant had been deprived of his property and believed that any interference should be examined under the general rule of Article 1 of Protocol No. 1.

74. On the question of interference, the Court considers that the legal and factual complexity of the situation prevents it from being placed in a precise category. On the one hand the applicant was regarded as the lawful owner of the contested property (see paragraph 13 above). However, the State, represented by the Ministry of Finance, was also entitled to the same property (see paragraphs 10 and 69 above). The Court considers that the interference complained of should be examined in the light of the general rule contained in Article 1 of Protocol No. 1 (for a similar approach see the case of *Broniowski v. Poland* [GC], no. 31443/96, § 136, ECHR 2004-V).

2. Whether the interference complied with the conditions set out in Article 1 of Protocol No. 1

75. In order to comply with Article 1 of Protocol No. 1 to the Convention, it must be shown that the measure constituting the interference was lawful, that it was "in accordance with the general interest", and that there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 106 and 108, 25 October 2012).

(a) Lawfulness

76. The parties agree in substance that the interference was prescribed by law. The Court observes that while the domestic law was sufficiently detailed and clear on the question of establishing ownership and on invalidating it, the authorities have at the same time acknowledged that there are some issues with regard to providing adequate protection for bona fide acquirers. In particular, a bona fide acquirer who relied on a valid land register entry about the owner of an immovable property at the time of purchase would be deprived of that property if it turned out that the seller had no legal title (see paragraph 42 above). The Court considers that prompt and adequate compensation, or another type of appropriate reparation, becomes especially important in such circumstances (see paragraph 80 below). Given that the Government has invoked a list of possible remedies in that regard, and reiterating that it is for the domestic courts to interpret domestic legislation and to apply it, the Court will examine the adequacy of the remedies in the circumstances of the present case in the proportionality analysis below.

(b) Legitimate aim

77. The Government argued that the compulsory transfer of a property title to a legitimate owner was primarily intended to ensure compliance with domestic law and therefore served a public interest.

78. To the extent that the Government considers that the interference was necessary in order to undo a miscarriage of justice, the Court has held that, as a general principle, public authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence; holding otherwise would be contrary to the doctrine of unjust enrichment. Nonetheless, the above general principle cannot prevail in a situation where the individual concerned is required to bear an excessive burden (see, *mutatis mutandis*, *Moskal v. Poland*, no. 10373/05, § 73, 15 September 2009). The Court accepts the existence of a legitimate aim and proceeds by examining the latter element.

(c) Proportionality

79. The Court reiterates that in the context of the general rule enunciated in the first sentence of the first paragraph of Article 1 of Protocol No. 1, the proportionality test requires an overall examination of the various interests at stake, which may call for an analysis of such elements as the terms of compensation and the conduct of the parties to the dispute, including the means employed by the State and their implementation (see, *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, § 114, ECHR 2000-I).

80. In cases where the correction of errors caused by State authorities results in an interference with the right to the peaceful enjoyment of the property of a bona fide holder, the principles of good governance impose on the authorities an obligation not only to act promptly in correcting their mistake (see *Moskal*, cited above, § 73), but may also necessitate the payment of adequate compensation or another type of appropriate reparation to the former bona fide holder (see *Maksymenko and Gerasymenko v. Ukraine*, no. 49317/07, § 64, 16 May 2013 with case-law cited therein) so that the risk of any mistake made by the State authority must be borne by the State and the errors are not remedied at the expense of the individual concerned (see *Gladysheva,* cited above, § 80, and the case-law cited therein).

(i) The conduct of the applicant

81. The applicant stressed that both himself as a buyer and V.P.E. as a former owner had acted in good faith and therefore he expected to enjoy the protection of the domestic courts. The Government did not argue that the applicant had acted in bad faith.

82. The Court reiterates that it is for the domestic authorities to establish that an applicant has not acted in good faith (see *Albergas and Arlauskas*

v. Lithuania, no. 17978/05, § 67, 27 May 2014). It observes that the applicant bought the property from an owner whose title had been registered in the land register on the basis of a final court judgment (see paragraphs 12 and 13 above). Even after the quashing of that judgment the domestic courts recognised that V.P.E. was an heir of the former owner, and that the only obstacle to returning the contested property to V.P.E. was the fact that the State had decided to keep it. In addition, the Court notes that the domestic authorities did not establish a lack of good faith on the part of either V.P.E. or the applicant as the higher court later overruled the judgment in which that aspect had initially been brought up by the domestic court (see paragraphs 24 and 25 above).

(ii) The conduct of the authorities

83. In relation to the conduct of the authorities, the case-file shows that there had been series of flaws attributable to various authorities. Firstly, the Court takes note of the inconsistency in the way Jurmala Municipality dealt with the property at issue, which is also indirectly confirmed by the Government (see paragraph 93 below). After the municipality had transferred the property to the State, it did not object to the same property being returned to another person (see paragraph 12 above). In addition, it was also recognised that the municipality did not furnish pertinent evidence, which contributed to the adoption of an unlawful court decision (see paragraph 16 above).

84. Secondly, the land register failed to ensure that the entries it made were precise, reliable and trustworthy. On that point, the Government contended that under domestic law the property rights established by the Order No. 349 had come into force without entry in the land register (see paragraph 39 above), and that the applicant should have been aware of that through the publication of the Order in the official gazette (see paragraph 10 above).

85. The Court takes note of the role of land registers (see paragraph 40 above), and reiterates that the authorities have to put in place an effective exchange of information in order to ensure the reliability of public data. A failure to do so weighs in favour of individuals who became victims of such an omission, after acting in good faith (see, *mutatis mutandis*, *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010).

86. As regards the present case, the general obligation established under the civil law provided that a property title had to be entered in the land register (see paragraph 37 above) and it is not argued that that provision was not applicable to State property. Moreover, in relation to the contested property that obligation was set down by the Cabinet of Ministers in the Order No. 349 (see paragraph 41 above). However, the Order had not been communicated to the land register at the time V.P.E., and subsequently the applicant, registered their title. The fact that judges at the land register were

unaware that the contested land had been transferred to the State confirms the Court's previous findings about the limited effectiveness of using the official gazette as a means of communication (see, in the context of a fair trial, the case of *Miholapa v. Latvia*, no. 61655/00, § 29, 31 May 2007).

87. The Government further argued that the State had an interest in retaining its title to the contested property owing to its valuable location and historical importance. The Court in this case does not discern any of the competing private interests which usually arise in the course of complicated property reforms (see *Gashi v. Croatia*, no. 32457/05, § 34, 13 December 2007, and contrast to, for example, *Velikovi and Others,* cited above) or any other important public interest (see, for example, *Turgut and Others v. Turkey*, no. 1411/03, § 90, 8 July 2008). Between nationalisation in 1940 and its return to V.P.E., the property did not belong to a private party. Moreover, neither the Order No. 349 nor any other documents show that the property was needed for carrying out state functions. As the case-file shows, the property has been leased to a private company for commercial activities (see paragraph 33 above).

88. Lastly, in reply to the Government's argument that the applicant could have contested before the Constitutional Court the provision which regulated the supervisory review mechanism (see paragraph 34 above), the Court, given its earlier findings (see paragraph 64 above), cannot see how in the given circumstances a fair balance could be achieved by triggering that mechanism.

(iii) Compensation

89. The applicant submitted that at the material time the domestic courts did not provide any protection to buyers who had genuinely relied on land register data. In that connection, he pointed to positive developments in the recent case-law of the Supreme Court.

90. The Government stated that under domestic case-law at the material time, once a court had established that an owner had had no right to acquire a certain property, the title of subsequent acquirers was considered void *ab initio*, regardless of any entries in the land register. Nevertheless, they contended that the State had put in place an effective mechanism allowing the applicant to claim damages in respect of any loss.

91. At the outset, the Court refers to its earlier observations with regard to the protection of bona fide acquirers under Latvian law (see paragraph 76 above). In the particular circumstances, where the applicant as a bona fide acquirer had lost his possession as a result of a combination of flaws attributable to various authorities, such as the Jurmala Municipality, the Ministry of Finance and the land register (see paragraphs 83-86 above), which all contributed to a miscarriage of justice, adequate protection should involve a compensatory mechanism which does not place a disproportionate burden on such a bona fide acquirer. The Court will proceed further by

examining in turn whether the possible remedies proposed by the Government were adequate in the present case.

92. Firstly, the Government submitted that the applicant could have sued V.P.E., the previous owner, for damages. The Court has held that in the context of correcting errors attributable to State authorities, an obligation for a victim to sue another bona fide individual might impose a disproportionate burden (see *Gladysheva,* cited above, § 81). In this case it is not contested that the applicant and V.P.E. were bona fide holders of the contested property. The Court further refers to the applicant's persistent but unsuccessful attempt to obtain the recovery of the sum paid to V.P.E. within the property proceedings (see paragraphs 22 and 30 above) and considers that an obligation for him to initiate a further set of proceedings against a bona fide private person would have upset the balance which had to be struck between the general interest and the applicant's interest in the peaceful enjoyment of his possessions (ibid.).

93. Secondly, the Government argued that the applicant could have sued the Jurmala Municipality for the damage caused by the conclusion of an unlawful contract of sale. The Court has stated that when a public entity is liable for damages, the State's positive obligation to facilitate identification of the correct defendant is all the more important (see *Plechanow v. Poland*, no. 22279/04, § 109, 7 July 2009). It is true that Jurmala Municipality contributed to the interference with the applicant's peaceful enjoyment of his possessions (see paragraph 83 above). However, as stated above, it was not the only authority involved and therefore could not be held solely responsible for the interference (see paragraph 42 above).

94. To the extent that the applicant could sue the Ministry of Finance for the reimbursement of costs related to the management of the real estate, the Court notes that any such compensation would be relevant for the evaluation of his losses under Article 41 of the Convention.

95. The Court observes that the Government has not indicated any other compensatory mechanism which the applicant could have used within the framework of the ongoing civil proceedings. In the light of the above, the Court concludes that the remedies invoked by the Government in the particular circumstances of the case could not have provided compensation without placing a disproportionate burden on the applicant. It finds therefore that the interference with the applicant's rights was disproportionate to the aim pursued.

96. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

97. The applicant made other complaints under Article 6 of the Convention. Those complaints were not communicated to the Government.

98. 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 considers that the remaining complaints do not disclose any appearance of a violation of Article 6 of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

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

A. Damage

1. Pecuniary damage

100. The applicant sought restitution in full of the contested property. Should restitution not be granted, he claimed 632,523.6 euros (EUR) which corresponded to the current value of the property. He relied on a report drawn up by a certified real estate expert who estimated the market value of the contested property at 900,000 Latvian lati (LVL), or about EUR 1,285,700.

101. The Government considered that sum to be exorbitant and unfounded and argued that the applicant could have brought a claim for the recovery of the money in damages.

102. In the alternative, the Government contended that the applicant could claim only what he had paid under the purchase contract, that is LVL 39,000 (EUR 55,492), and the property tax payments of LVL 1,821.37 (EUR 2,591.58).

103. An award by the Court of any other sum should not, in the Government's view, exceed a maximum of LVL 62,046 (EUR 88,283.50), which corresponded to the value of the contested property on the date ownership had been lost. According to the Government, which relied on the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 258, ECHR 2006-V), calculating compensation in that way would eliminate all the consequences of the interference in question.

104. In reply to the Government's argument that the applicant could recover damages from V.P.E., the Court notes that in any future claims before the domestic courts those courts will be entitled to take into account the award made by the Court in this judgment (see for a similar approach

Gladysheva, cited above, § 104). The Court will therefore proceed to examine the issue of just satisfaction.

105. Having regard to the circumstances of the case and given that there is no information on the "economically based average cadastral value" of the contested property (see to this effect the judgment in *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, §§ 28 and 38, ECHR 2014), the Court finds it reasonable to award the applicant LVL 62,046 (EUR 88,283.50), which, according to the Government, corresponded to the value of the contested property on the date ownership was lost.

2. Non-pecuniary damage

106. The applicant also claimed EUR 20,000 in respect of non-pecuniary damage.

107. The Government argued that the finding of a violation alone would constitute adequate and sufficient compensation. In the alternative, any compensation should not exceed the sums awarded by the Court in comparable cases, where the amount of non-pecuniary damages had been from EUR 3,000 (see *Maria Violeta Lăzărescu v. Romania*, no. 10636/06, § 35, 23 February 201037) to USD 15,000 (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 27, ECHR 2001-I).

108. The Court acknowledges that the applicant sustained non-pecuniary damage on account of the violation found. Ruling on an equitable basis, as required by Article 41 of the Convention, it decides to award EUR 5,000 under this head.

B. Default interest

109. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the alleged violation of Article 1 of Protocol No. 1 to the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 88,283.50 (eighty eight thousand two hundred and eighty three euros and fifty cents), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President