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

FIFTH SECTION

DECISION

Applications nos. 19534/16 and 19653/16
Viktors KRASOVICKIS against Latvia and
Maksims KARGINS against Latvia

The European Court of Human Rights (Fifth Section), sitting as a Committee on 3 February 2022 composed of:

Lətif Hüseynov, *President,*
Mārtiņš Mits,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications (no. 19534/16 and no. 19653/16) 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") on 4 and 7 April 2016 by two Latvian nationals, Mr Viktors Krasovickis, born in 1953 and living in Riga ("the first applicant") and Mr Maksims Kargins, born in 1987 and living in Jūrmala ("the second applicant"), who were represented by Mr U. Grūbe and Mr M. Pētersons, lawyers practising in Riga;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants' complaint under Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention, that since 1 July 2014 they had no longer been able to receive interest payments arising from term deposit agreements signed with Parex Bank ("the Bank").

2. The first applicant and the second applicant's father were majority shareholders of the Bank, which in 2008 was the second largest bank in Latvia. In 2007-08 the first applicant and the second applicant's mother invested approximately 28 million euros (EUR) in the Bank, in return obtaining rights to monthly interest. They agreed that this money would be

invested in the Bank's subordinated capital. Shortly after signing a term deposit agreement, the second applicant's mother transferred all rights arising from that agreement (the rights to the invested capital and the monthly interest) to the second applicant's brother. In 2012 the second applicant acquired the rights to the monthly interest from his brother, who retained the rights to the invested capital. The applicants received monthly interest until 1 July 2014 (see paragraph 4 below).

3. During the 2008 global crisis, the Bank faced a threat of insolvency. In order to maintain economic stability, in autumn 2008 the Latvian government took over the Bank. Over the course of the following years the government adopted several State-aid-related public support measures, of which it notified the European Commission. In 2010 the Bank was restructured; its "good assets" were transferred to a newly created bank – Citadele Bank – and its "bad assets" (including the term deposits described in paragraph 2 above) remained with the Bank. In 2012 the Bank's licence was withdrawn. It was reorganised into a company – Reverta – which provided banking services. In 2014 the European Commission approved a final set of State-aid-related public support measures, even though Latvia had implemented those measures in breach of European Union (EU) law (Commission Decision (EU) 2015/162 of 9 July 2014 on the State aid, "the EC Decision"). The measures were considered compatible with the internal market because the State had undertaken several commitments, one of which indicated that, in essence, it would not pay any interest or outstanding debt to subordinated debtholders until and unless the State aid had been fully repaid.

4. On 19 June 2014 the Latvian Parliament passed a new law providing that commercial companies that had obtained State aid on account of their financial difficulties were prohibited from fulfilling such subordinated liabilities as calculating, accruing and disbursing interest on creditors' investments until the State aid was repaid ("the disputed provision"). On 1 July 2014 the disputed provision took effect and Reverta stopped disbursing interest to the applicants. The applicants lodged complaints with the Constitutional Court, arguing that the disputed provision had breached their right to property, and proceedings were instituted (case no. 2014-36-01). The first applicant did not rely on the principle of non-discrimination. The second applicant relied on the principle of equality; however, the Constitutional Court refused to examine the second applicant's complaint, as he had failed to provide legal reasoning in that connection.

5. On 13 October 2015 the Constitutional Court delivered its judgment, holding that although the applicants would be temporarily deprived of interest while the Bank was repaying the State aid, they would not lose the right to receive that interest, and would regain that right once the State aid had been repaid. Thus, the interference amounted to a control of the use of property.

6. The Constitutional Court concluded that the disputed provision had been adopted in accordance with law. Its aim was to achieve the repayment

by commercial companies of the State aid granted to them. This would not only ensure that the taxpayers' money that had been invested into the State aid measures would be returned to the State budget as soon as possible, but also that individual creditors would not unjustly profit from that aid. Furthermore, the disputed provision offered assurances that Latvia had complied with EU law and policies regarding the internal market and State aid. Accordingly, the disputed provision was aimed at protecting public welfare.

7. As regards proportionality, the Constitutional Court held that the disputed provision followed from the commitments that Latvia had undertaken to comply with the EU rules on State aid, and that it had accordingly examined the EC Decision. Parliament had assessed possible alternative measures and had concluded that the disputed provision constituted the best avenue through which to reach its legitimate aim. Lastly, the applicants did not suffer an excessive individual burden, as they had been aware of the high risks associated with the term deposit agreements from which their rights to receive interest had derived and that they would have been expected to assume liability in the event of a loss of profits arising from unsuccessful business operations, whereas the whole of society had benefitted from the disputed provision, as it had ensured a speedy recovery and the effective management of taxes. Thus, the disputed provision had been necessary in a democratic society.

8. On 2 February 2017 the Latvian Parliament passed further amendments to the previously adopted law (see paragraph 4 above) prohibiting the fulfilment of any subordinated liabilities in the event that a commercial company which had received State aid and had not repaid it underwent liquidation ("the further amendments"). On 2 March 2017 the further amendments took effect. On 6 July 2017 liquidation proceedings in respect of Reverta (formerly the Bank) commenced; those proceedings are still ongoing. After the second applicant's brother lodged a complaint, the Constitutional Court instituted proceedings regarding the further amendments (case no. 2020-49-01). On 27 May 2021 the Constitutional Court delivered a judgment, holding that the further amendments were compatible with the right to property and the principle of equality.

9. The applicants complained under Article 1 of Protocol No. 1 that the disputed provision had breached their right to receive interest deriving from the term deposit agreements with the Bank. They also complained under Article 14 in conjunction with Article 1 of Protocol No. 1 that they had been discriminated against and placed in an unfair position compared to persons whose assets had been transferred to Citadele Bank after the Bank's reorganisation.

THE COURT'S ASSESSMENT

10. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

A. Alleged violation of Article 1 of Protocol No. 1 taken alone

11. The Court can accept that the measure complained of, which resulted in the applicants' inability to receive interest in respect of money invested in the Bank's subordinated capital, amounted to an interference with their property rights. The Court endorses the Constitutional Court's reasoning (see paragraph 6 above) and agrees that no issues arise in respect of the lawfulness of or the public interest in that measure. The only salient point is its proportionality.

12. The applicants argued that the interference had not been proportionate, as it had failed to strike a "fair balance" between the demands of the general interest of the community and their property rights. They contended that the overall amount of approximately EUR 2.1 million in interest owed to them was not crucial to the public welfare but constituted an important source of income for them.

13. The Court emphasises that the context of this case is important. The measure complained of was directly related to the rescuing of a strategically important bank, which, following the 2008 crisis, would have faced the threat of insolvency had the State not intervened. The applicants were not ordinary citizens who had deposited money with the Bank; rather, they were closely connected to the Bank – the first applicant and the second applicant's father were majority shareholders in the Bank prior to the State's involvement.

14. In respect of such a sensitive economic area as the stability of the banking system, the Contracting States enjoy a wide margin of appreciation (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 136, ECHR 2005-XII (extracts)). In that context, where, as in the present case, a State is faced with a challenge of such a scale that it raises economic, social and indeed political questions, the national authorities are in principle better placed than an international judge to choose the most appropriate means of achieving the required fair balance, and the Court will respect their judgment unless it is manifestly without reasonable foundation (see *Mamatas and Others v. Greece*, nos. 63066/14 and 2 others, §§ 88-89, 21 July 2016).

15. The analysis made by the Constitutional Court as to the proportionality of the measure complained of was thorough. It gave relevant and sufficient reasons, including references to EU law and policies. The Constitutional Court held that the necessity to adopt the disputed provision followed from the commitments undertaken by Latvia to comply with the EU rules on State aid. It followed from the EC Decision that compensatory measures mitigating distortions of competition and strengthening burden

sharing were necessary. The Latvian government had to ensure that third parties would not benefit from the additional aid received by Reverta. It was precisely because Reverta had continued to disburse interest to subordinated debtholders (including the applicants) that it had exceeded the previously authorised liquidity amounts. Such a state of affairs ran counter to the principle of burden sharing. The Court sees nothing manifestly unfair or unreasonable in the findings of the Constitutional Court in that regard.

16. The Court considers ill-founded the second applicant's assertion that EU law did not require Latvia to stop disbursing interest. Even if EU law did not require compliance with any particular form or procedure in respect of the adoption of the burden-sharing measures, shareholders must still bear any risks inherent in their investment (see the CJEU judgment in *Kotnik and Others*, C-526/14, cited in *Skoczylas and Scotchstone Capital Fund Ltd v. Ireland* [Committee], no. 43209/19, § 23, 2 September 2021). In the present case it is clear that, without the State's intervention in 2008, the Bank's assets would have been insufficient to cover its liabilities; the Bank would therefore have faced insolvency, and the subordinated debtholders' ability to recover their investments would have been significantly reduced.

17. The Constitutional Court also examined possible alternative measures which would have restricted the applicants' rights even more. Parliament had assessed two alternatives – the unilateral withdrawal from any subordinated liabilities and the institution of insolvency proceedings. However, such measures would have threatened the business of the company (and thus the whole of society) and would have led to further adverse consequences for the applicants and other subordinated debtholders. As regards the balancing of the competing interests, the Constitutional Court examined the very nature of the subordinated liabilities and held that the resumption of interest payments arising from those liabilities was dependent on successful business operations. The applicants undertook the significant risk that business operations might fail, which would also entail the loss of their property. Accordingly, they were obliged to share responsibility when the company was facing financial difficulties. Although the Court does not doubt that they lost an important source of income, they agreed to undertake the risk of such a loss when they invested in the Bank's subordinated capital.

18. It follows that, taking into account the wide margin of appreciation afforded to the Contracting States in the area of the stability of the banking system, and in the absence of any manifest unreasonableness, the applicants' complaint as to the lawfulness and proportionality of the measure in question is manifestly ill-founded and must be dismissed under Article 35 §§ 3 (a) and 4 of the Convention.

19. As to the second applicant's argument that the further amendments of 2017 had irretrievably and permanently deprived him of his right to receive interest, the Court notes that he did not lodge a complaint with the Constitutional Court in that regard (see, by contrast, the complaint lodged by

his brother concerning the latter's rights to the invested capital, paragraph 8 above). Accordingly, this part of the second applicant's complaint is inadmissible for non-exhaustion of domestic remedies and must be dismissed under Article 35 § 1 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention

20. The Court notes that the first applicant did not raise any complaints before the Constitutional Court in relation to discrimination. The Constitutional Court refused to examine the second applicant's complaint concerning the principle of equality, given his failure to comply with the procedural requirement to provide legal reasoning. The Court notes that at a later date the Constitutional Court accepted a properly drafted complaint lodged by the second applicant's brother raising the issue of discrimination. Given the circumstances, the Court considers that by failing to lodge a proper constitutional complaint through means complying with the requirements set out by the domestic law, the applicants failed to exhaust the available domestic remedies (see *Gubenko v. Latvia* (dec.), no. 6674/06, § 25, 3 November 2015; compare and contrast *Ēcis v. Latvia*, no. 12879/09, § 51, 10 January 2019).

21. It follows that this part of the application must be dismissed under Article 35 § 1 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 3 March 2022.

Martina Keller Deputy Registrar	Lətif Hüseynov President