

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

FIFTH SECTION

DECISION

Application no. 32066/06
ZENTAS LOGINAS MUZEJS
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 13 December 2016 as a Chamber composed of:

Angelika Nußberger, *President,*
Erik Møse,
Khanlar Hajiyev,
André Potocki,
Faris Vehabović,
Síofra O'Leary,
Mārtiņš Mits, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 August 2006,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, the Zentas Loginas Muzejs foundation (hereinafter "the applicant organisation") is a non-profit organisation registered in Latvia. It was represented before the Court by the chairperson of the organisation's board, Mr P. Ērglis.

2. The Latvian Government ("the Government") were represented by their Agents, Ms I. Reine and later Ms K. Līce.

A. The circumstances of the case

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

1. The initial allocation of the contested apartment

4. The applicant organisation was created in 1995 with the purpose of preserving and promoting the artistic heritage of two late Latvian artists, Zenta Logina and her sister Elīze Atāre. Their complete body of work comprises over 800 art pieces created using different techniques over a period of fifty years. After the two artists died the entire collection of their art works remained in a six-room apartment located in the centre of Riga where the two sisters had lived ("the contested apartment"). At that time the apartment belonged to the Riga municipality and the applicant organisation's intention was to acquire it in order to create a memorial museum there.

5. On 16 October 1995 the applicant organisation wrote to the Culture, Art and Religious Affairs Committee of Riga City Council outlining its intentions and requesting the committee's support for the creation of the memorial museum in the contested apartment. Between February and September 1996 the State Inspectorate for Heritage Protection, the Minister of Culture, and the Artists' Union of Latvia each wrote to Riga City Council confirming the importance of the collection and expressing their support for the creation of the memorial museum.

6. On 12 December 1995 the Culture, Art and Religious Affairs Committee of Riga City Council invited the Governing Board of the Riga Centre District (hereinafter "the Governing Board") – the local executive body – to investigate and determine ways of supporting the initiative to place the contested apartment at the applicant organisation's disposal (*atstāt rīcībā*) in order for it to create a memorial museum of the two artists' work. On 4 January 1996 the Apartment Committee of Riga City Council (hereinafter "the Apartment Committee") also supported the same proposition.

7. On 29 May 1996 the Cabinet of Ministers issued order no. 198 whereby several apartment houses in Riga were not to be privatised but were to be retained as the property of the State. Possession (*valdījums*) of these apartments was to be transferred to the State Real Estate Agency, which was then to enter them in the land register as State-owned property. The building in which the contested apartment was situated was listed in this order.

8. On 8 July 1996 the manager of the contested apartment-a municipality-owned enterprise that was overseen by the Governing Board-informed the Apartment Administration of the Property Department of Riga City Council (hereinafter "the Apartment Administration) that five

rooms in the contested apartment had become available for rent. On 23 July 1996 the Apartment Administration issued recommendation no. 1202 authorising the manager of the contested apartment to rent the five rooms available to a certain V.B.S. and her family. According to the Government, V.B.S. had been registered to receive housing aid from municipal funds since 21 March 1995. The applicant organisation denied that V.B.S. had ever been registered for housing aid and argued that recommendation no. 1202 had been unlawful.

9. On 5 August 1996, on the basis of recommendation no. 1202, the manager of the contested apartment concluded a rental agreement with V.B.S. for an indefinite period of time.

2. The reaction of the two of Riga City Council committees

10. On 27 August 1996 Culture, Art and Religious Affairs Committee of Riga City Council expressed its dissatisfaction with the fact that the Governing Board had not informed the Apartment Administration of the decisions adopted by the two Riga City Council committees. It decided that the Apartment Administration ought to annul the recommendation that the contested apartment be rented out to V.B.S. and to examine again the possibility of excluding the said apartment from the residential fund and allocating it to the applicant organisation. In addition, it decided that the Apartment Administration should open an inquiry into why the decisions taken by the Riga City Council committees had not been examined.

11. On 5 September 1996 the Apartment Committee declared that recommendation no. 1202 had become invalid and that the declaration of V.B.S.'s and her family's residence in the contested apartment had been annulled.

12. On 24 September 1996 the Audit Commission of Riga City Council, having carried out an examination, concluded that the Governing Board had not responded to numerous letters sent by different persons and institutions (the Ministry of Culture, a member of parliament, the Art Academy of Latvia, the Artists' Union of Latvia, and the applicant organisation) concerning the artistic heritage of the late artists. Despite the fact that the Governing Board had been fully aware of the situation, the manager of the contested apartment had not informed the Apartment Administration about the substantial artistic collection located in that apartment, thereby misleading it. The Audit Commission proposed to annul, under a procedure set out in law, the rental agreement concluded with V.B.S. It also suggested that the issue regarding the housing of the art collection should be resolved by Riga City Council and the State Real Estate Agency, acting together.

13. On 10 October 1996 the Apartment Committee (on the grounds that the manager of the contested apartment had provided false information to the Apartment Administration) decided to annul the allocation of the

apartment to V.B.S. and her family and to place it at the applicant organisation's disposal. V.B.S.'s family was to be allocated another apartment. It also invited the director of the Property Department of Riga City Council to hold responsible those who had misinformed the Apartment Administration.

14. The parties disagreed on the nature of the decisions taken by the two Riga City Council committees. The Government contended that these decisions had been of a purely recommendatory nature, as the committees were not competent to vest any rights in the applicant organisation or to adopt legally binding decisions, that being the exclusive competence of Riga City Council. The committees had merely consultative functions and were responsible for preparing issues to be examined and decided upon by Riga City Council. The applicant organisation disagreed. It contended that, under the Rules of the Riga Municipality, the Riga City Council committees had the right to instruct officials of the Riga municipality and its institutions. Hence, the decisions of the two committees had to be complied with.

3. Subsequent correspondence and decisions

15. On 17 October 1996 the State Real Estate Agency informed the applicant organisation that on 1 September 1996 it had taken possession (*pārņēmusi valdījumā*) of the building in which the contested apartment was situated. It drew attention to recommendation no. 1202 and the rental agreement that had been concluded with V.B.S. on 5 August 1996. The Agency noted that it was bound by the rental agreements in force. It advised that with regard to the issue of using the contested apartment for the foundation's needs the applicant organisation would need to address the Apartment Administration, which had issued the recommendation.

16. On 23 December 1996 the State Real Estate Agency invited the applicant organisation to move the art collection from the contested apartment, noting that it had no legal grounds to use it. It also stated that it had not received a response from the applicant organisation concerning the allocation of different premises. Referring to V.B.S., it added that a person who had "all legal rights to said apartment" had declared her address there. The Agency also noted that in the event of the applicant organisation's failure to vacate the contested apartment it would be forced to evict the applicant organisation therefrom. On 7 January 1997 and 22 January 1997 the State Real Estate Agency wrote further letters offering the applicant organisation different premises for the housing of the art collection and warning it that in the event of failure to vacate the apartment the property belonging to the applicant organisation contained therein would be moved to different premises. The letter of 22 January 1997 also noted that the lawful tenant wished to start renovating the apartment. On 31 January 1997 there was further correspondence between the State Real Estate Agency and

the applicant organisation concerning possible rental fees of the different premises already offered to the applicant organisation and additional premises that could be made available to the applicant organisation.

17. In the light of this correspondence the Government contended that offers to move the art collection to different premises had been made to the applicant organisation repeatedly but that the applicant organisation had failed to reply. In response, the applicant organisation asserted that it had visited all the premises offered; however, none of them had been suitable for the needs of the art collection or a museum.

18. On 4 February 1999 the manager of the contested apartment, on the basis of an authorisation issued by the State Real Estate Agency, concluded a new rental agreement with V.B.S.

19. By virtue of amendments dated 8 March 2000 to order no. 198 of the Cabinet of Ministers (see paragraph 7 above) the building in which the contested apartment was located was excluded from the list of properties that were not subject to privatisation.

20. On 25 July 2000, the Central Privatisation Commission of Residential Buildings transferred the ownership rights to the contested apartment to V.B.S. prior to the privatisation of the residential building (*nodot īpašumā līdz dzīvojamās mājas privatizācijai*). On 4 February 2002 the Central Privatisation Commission of Residential Buildings, on the basis of the Law on the Privatisation of State and Local Self-Government Apartment Houses (*Par valsts un pašvaldību dzīvojamo māju privatizāciju*), sold the apartment to V.B.S.

4. Civil proceedings brought by the artists' heir

21. By a judgment of 2 October 1998 A.N. was recognised as the inheritor of the collection of art works of Zenta Logina and Elīze Atāre.

22. On 26 October 1998 A.N. instituted civil proceedings challenging the rental agreement of 5 August 1996 that had been concluded with V.S.B and requesting that the privatisation of the contested apartment be discontinued.

23. On 20 July 1999 the Riga City Centre District Court terminated those civil proceedings on the grounds that they had been brought by a person who had had no standing. In particular, the court noted that it had received no evidence that A.N.'s civil rights had been infringed.

24. On 13 April 2000 the Riga Regional Court upheld this decision. It established that prior to her death Elīze Atāre had rented the contested apartment, which had not been privatised. The apartment had been in the possession of the Riga municipality. The rental agreement concluded with V.B.S. had not affected A.N.'s rights to her inheritance. The court considered that the arguments raised concerning the rights of other persons (including the rights of the applicant organisation) were not relevant as the civil claim had only been brought in the name of A.N. Further, the court

noted that under domestic law rental agreements could only be challenged by landlords, tenants or members of a tenant's family. Neither the State Real Estate Agency, nor V.B.S. or members of her family were contesting the tenancy agreement. Besides, no competent institution of the Riga municipality had ever concluded a rental agreement with A.N. Hence, the appeal court agreed with the conclusion that the proceedings had been brought by a person who had had no standing.

25. On 28 June 2000 the Senate of the Supreme Court upheld this decision on the same grounds. It also noted that the question of the protection of the artistic heritage of the late artists did not fall to be decided in judicial institutions.

26. In October 2000 A.N. donated the art collection to the applicant organisation.

5. Application with the Prosecutor's Office

27. In November 2001 the applicant organisation addressed the Prosecutor General's office requesting it to examine whether V.B.S. had acquired the right to rent the contested apartment lawfully. According to the Government, on 19 November 2001 the prosecutor's office attached to the Riga Regional Court ("the Prosecutor's Office") refused to lodge a civil claim contesting the rental agreement because it had concluded that there was no dispute about the applicant organisation's title to the collection of art works and that the fact the collection was stored in the contested apartment did not vest any right to the mentioned premises in the applicant organisation. Subsequent appeals to the Prosecutor General's Office and the Prosecutor General were dismissed on 11 January and 3 April 2002 respectively.

28. In relation to this point the applicant organisation submitted to the Court two letters prepared by the Prosecutor's Office. One letter, dated 19 November 2001, stated that the Prosecutor's Office had examined the applicant organisation's request and had concluded that there had been no breaches of law meriting the bringing of a civil claim. However, the other letter, dated 12 November 2001, bearing the same number and the signature of the same official, stated that the Prosecutor's Office had examined the applicant organisation's request and had prepared a civil claim, to be brought before the Riga Regional Court. It also noted that on 18 October 2001 this claim had been submitted to the relevant department of the Prosecutor General's Office for its approval. According to the applicant organisation, the existence of the two contradictory letters and the fact that the claim was never brought proved that the Prosecutor's Office had not acted independently and impartially and that its decision-making had been influenced by other persons with an interest in the outcome of this case. In particular, the applicant organisation noted the political influence of

V.B.S.'s son-in-law, who had been a member of parliament at the time in question.

6. Civil proceedings brought by the applicant organisation

29. On 21 August 2004 V.B.S. died.

30. On 5 January 2005 the applicant organisation lodged a claim requesting the annulment of the following: the rental agreement that had been concluded with V.B.S. on 5 August 1996; the decision of 25 July 2000 by the Central Privatisation Commission of Residential Buildings transferring the ownership rights to the contested apartment prior to the privatisation of the residential building in which it was located, to V.B.S.; the purchase agreement concluded with V.B.S. on 4 February 2002; and the entry in the land register concerning V.B.S.'s property rights over the contested apartment. The applicant organisation also requested the recognition of its right to use the contested apartment. In subsequent submissions the applicant organisation clarified that it did not request the recognition of its own property rights over the contested apartment and indicated that V.B.S.'s heir, J.L., should be one of the defendants in these proceedings.

31. On 20 April 2005 the Riga Regional Court opened proceedings. On 7 October 2005 it decided to terminate the proceedings on the grounds, *inter alia*, that the applicant organisation had had no standing to bring the above–mentioned claims. In particular, the applicant organisation had contested a rental agreement and a purchase agreement to which it was not a party.

32. The applicant organisation lodged an ancillary complaint with the Civil Cases Chamber of the Supreme Court. On 16 December 2006 the Civil Cases Chamber upheld the decision of the Riga Regional Court. It noted that the applicant organisation had never been a party to the rental agreement in question or a beneficiary of the privatisation proceedings concerning the contested apartment.

33. On 27 December 2005 the applicant organisation lodged a further ancillary complaint with the Senate of the Supreme Court. The applicant organisation reiterated that the privatisation of the contested apartment had been unlawful and had been carried out in bad faith. It also argued that there had been no legal grounds for the termination of the proceedings. The courts had indicated no legal basis for their conclusion that a person who was not a party to a rental agreement but whose rights to use the rented premises in question had been affected had no right to bring a claim to protect its rights. The applicant organisation, insofar as relevant, relied on sections 1, 1403, 1415, 2004 and 2006 of the Civil Law; sections 1 and 127 of the Civil Procedure Law; and sections 13, 72 and 73 of the Law on the Privatisation of State and Local Self-Government Apartment Houses. The applicant organisation contended that none of these provisions prevented it from bringing its claims.

34. On 8 February 2006 the Senate of the Supreme Court upheld the decision to terminate the proceedings. It noted that section 127 of the Civil Procedure Law defined the right to bring a claim as the possibility for an interested person to bring proceedings in order to protect his or her infringed or contested rights. Accordingly, a person could benefit from court protection if his or her claim was connected with an interference with that person's rights. Moreover, when deciding on a person's right to bring proceedings, a court had to take into account the fact that nobody had the right to interfere in another person's civil-law relationships if those relationships did not affect them (either legally or in practice). The court continued:

> "The Senate considers that the [appeal] court has justly found that because the Zentas Loginas Muzejs foundation is not a party to the rental agreement, it cannot contest it. To consider that the interest of a third party – which the applicant is with regard to the rental agreement – in the annulment of a contract (and hence the restoration of the previous situation) is justified, it is necessary to establish that as a result of the annulment of that agreement an interference with that person's rights would be eliminated. However, in the present case, given that the contested apartment has never been in the possession (*valdījums*) of the Zentas Loginas Muzejs foundation one cannot speak of an interference with the plaintiff's rights. The fact that the collection of art works is situated in the disputed premises, which have the legal status of residential premises, contrary to the opinion expressed in the ancillary complaint, does not grant the Zentas Loginas Muzejs foundation the right to acquire possession of the apartment.
>
> As correctly indicated by the [appeal] court, the plaintiff's right to contest the privatisation and J.L.'s property rights should be assessed within the same context. An object such as the apartment owned by J.L. can only be claimed from his [that is to say J.L.'s] possession by its owner [by lodging] a property claim (section 1041 of the Civil Law), which serves as an owner's protection against the illegal holding of a possession (*valdījuma prettiesīgu aizturējumu*) of its immovable property. In the present case the aforementioned ground for contesting the defendant's property rights cannot be established because the plaintiff's right to possess the contested object has not been established in a procedure set by law, which, in turn, precludes the reason to talk about interference with rights, as they have not been acquired."

B. Relevant domestic law

1. Law on the Privatisation of State and Local Self-Government Apartment Houses

35. Sections 13, 14, 19, and 20 with regard to different types of situations provide that all rented apartments shall be offered for privatisation to their tenants and their family members. Such persons can acquire title to a rented apartment if no proceedings have been brought requesting the termination of the rental agreement in question and the eviction of the tenants. Under section 40(1), the relevant privatisation commission decides on whether to conclude a purchase agreement with a person who has applied

for privatisation. On the basis of this decision, the privatisation commission then concludes a purchase agreement. Section 48(1) provides that only the person who is registered in the land register in respect of a particular property can be recognised as the owner of the privatised object.

36. Under section 29(1), rented apartments are offered for privatisation after the privatisation of the residential building in which they are situated has commenced. Nonetheless, the Law also sets out the procedure whereby the ownership rights to an apartment can be transferred to tenants prior to the privatisation of the residential building. The decision on whether to transfer the ownership rights to an apartment prior to the privatisation of the residential building is taken by a privatisation commission upon a request of a tenant (section 73^3). The name of the person who has acquired ownership rights to an apartment prior to the privatisation of the relevant residential building shall be registered in the cadastral register and from the moment of this registration that person shall be recognised as the owner of the apartment (sections 73^8(1) and 73^9(1)). However, under section 73^9(8), after the privatisation of a residential building has commenced, the person who acquired the ownership rights to an apartment prior to the privatisation of the relevant residential building still has to conclude a purchase agreement, as mentioned in section 40.

37. Section 72(1) provides that a court is competent to examine disputes, *inter alia*, concerning the rights of a beneficiary of privatisation to privatise an apartment, the registration of the privatised object in the land register, and other disputes which may arise in the course of the privatisation of residential buildings and which do not fall to be examined by local municipalities. Under section 73, the privatisation of an apartment shall be declared unlawful in the following circumstances: the apartment has been privatised in a manner disregarding the sequence of steps set out in this Law; the person concerned has privatised a previously rented apartment without having first informed his or her family members thereof; or other requirements set out in this Law or rules of the Cabinet of Ministers adopted on the basis of this Law have been disregarded.

2. Civil Law

38. Section 1 states that rights shall be used and obligations shall be fulfilled in good faith.

39. Section 876 provides that possession of property is actual control over property conforming to ownership rights. It exists where tangible property is in actual fact under the total control of a person and, in addition, that person demonstrates the intention to act with the property in a similar manner as that of an owner.

40. Under section 911, from possession arises the right to protect the existing possession and to renew a possession that has been taken away. These rights apply in respect of every possession, regardless of whether

such possession is legal or illegal or is based on good faith or bad faith. Section 912 expressly stipulates that every possession is protected by law.

41. Section 1041 provides that an owner may reclaim his or her property from any third person that holds possession thereof by bringing an ownership claim.

42. Section 1403 defines a legal transaction as an action, carried out in a permitted manner, which establishes, alters or terminates lawful relationships. Section 1415 further states that an illicit or indecent action, the purpose of which is contrary to religion, laws or moral principles, or which is intended to circumvent the law, may not be the subject matter of a legal transaction; such a transaction shall be void.

43. Section 1537, as worded at the relevant time, provided that if a contract was entered into between absent parties, it should be regarded as definitively concluded from the moment at which the party to whom the offer was made announced to the offering party his or her unconditional acceptance.

44. Section 2004 stipulates that a purchase agreement shall be considered to have been entered into when both parties have agreed on the subject of the purchase and the purchase price. Under section 2006, if both parties, neither of the parties, or only the purchaser knew that it was not permitted to alienate (*atsavināt*) the object that was being sold, then the contract shall be void. However, if only the seller had that knowledge, then the contract shall remain in effect and the seller must compensate the purchaser for any losses [incurred as a result of the sale].

3. Civil Procedure Law

45. Section 1 grants every natural and legal person the right to protect in court their infringed or contested civil rights and those of their interests that are protected by law. A person who has brought a case to court has the right to have his or her case examined in accordance with the procedures laid down by law.

46. Section 127(1) provides that any person, natural or legal, who has reached the age of majority and has capacity to act may bring a claim in court in order to protect any of their civil rights that have been infringed or contested. Section 127(3) states that a prosecutor may bring a claim in order to protect the infringed or contested civil rights of other persons.

47. Pursuant to section 132(1)(2), a judge shall refuse to entertain a claim if it has been brought by a person who does not have standing. Pursuant to section 223(1)(2), a court shall terminate proceedings if the claim in question has been lodged by a person who has no standing.

4. The Law on Municipalities

48. Section 22 states that the work of the city council takes place in meetings and in the permanent committees.

49. Section 33 provides that during its meetings the city council examines the draft decisions, which have been proposed by the chairperson, the permanent committees or the members of the city council. The draft decisions shall be submitted to the chairperson, who shall decide which permanent committee will assess the draft.

50. Under section 50, the permanent committees have the following functions: 1) to prepare questions for examination in the city council meetings; 2) to give their opinion concerning matters that are within its competence; 3) in the procedure set out in the rules of the municipality, to oversee the work of municipality institutions and enterprises; 4) to examine the budget proposals of the municipality institutions and enterprises and to submit them to the finance committee; 5) to approve and control the expenditure estimates of the municipality institutions and enterprises; 6) to carry out other obligations in accordance with the rules of the municipality.

5. The Rules of the Riga Municipality

51. In accordance with Rules 2, 3 and 7 of the Rules of the Riga Municipality, as in force from 13 December 1994 until 20 August 1997, the Riga City Council was to create permanent committees from amongst its members. The permanent committees were to prepare issues for examination in the Riga City Council meetings and their work was to be coordinated by the Presidium of the City Council.

52. Rule 28 stated that the Riga City Council committees should: 1) prepare questions for examination in City Council meetings; 2) give opinions regarding questions falling within its competence; 3) oversee the relevant municipal institutions and enterprises; 4) examine the budget proposals of the municipal institutions and enterprises that were under its supervision and oversee the implementation of the budget; 5) carry out other tasks in accordance with these Rules and the decisions of the City Council.

53. Rule 36 stipulated that the Culture, Art and Religious Affairs Committee was to oversee the Culture Administration.

54. Rule 38 stated that the Apartment Committee was to participate in the development of the programme for the construction of new apartments and oversee the distribution and exchange of apartments. It was to oversee the apartment divisions of the city districts and suburbs, as well as the Apartment Division and the Construction Division of the Immovable Property Administration.

55. Rule 41 detailed the rights of the permanent committees when carrying out their supervision tasks. In particular, they had a right to:

1) check the paperwork of the municipality officials, institutions and enterprises and receive copies of such paperwork that were necessary for deciding on issues raised in the committee meetings; 2) receive the necessary documents and explanations from the City Council officials, municipal institutions and enterprises with regard to questions that were within the committee's competence; 3) charge the officials of those institutions with carrying out preparatory tasks necessary for submitting draft decisions to the City Council; 4) involve in its work, in a consultative function, experts from the relevant fields.

56. Under Rule 42, decisions as to how to resolve disputes between the permanent committees and the municipality officials, institutions and enterprises were to be taken by the chairperson of the City Council or the Presidium of the City Council.

57. In accordance with Rules 52 and 53, following examination by the committees each draft decision was to be examined by the Presidium of the City Council. If the Presidium had objections to the draft decision, it could return it to the committees for another examination. The draft decisions that had been accepted by the Presidium were to be included in the agenda of the next City Council meeting for their adoption.

6. The Law on Residential Tenancies

58. Section 4(2) determines who can be a tenant or a subtenant under a rental agreement concerning residential premises. It provides that any natural person who lives in Latvia permanently or who has received a residence permit in a procedure set out in law may be a tenant or a subtenant in such agreements.

COMPLAINT

59. The applicant organisation complained under Article 6 of the Convention that it had been deprived of its right of access to court.

THE LAW

60. The applicant organisation complained that its right of access to court had been breached, in violation of Article 6 of the Convention, which, insofar as relevant, reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

(a) The Government

61. The Government argued that the applicant organisation had not enjoyed a right that had, at least on arguable grounds, been recognised under domestic law. Hence, the applicant organisation's complaint under Article 6 of the Convention had been incompatible *ratione materiae*.

62. In particular, the applicant organisation had not had standing within the meaning of section 127 of the Civil Procedure Law. Under that provision, any person was entitled to bring proceedings before a court in order to protect its infringed or contested civil rights. However, the said provision ensured merely procedural, not substantive rights. It did not guarantee that a civil claim that had been lodged before a court would be examined on its merits. Whether a person was entitled to such an examination on the merits was to be determined on the basis of the provisions of substantive law.

63. There was no dispute about the applicant organisation's title to the collection of the art works of the two late Latvian artists that was stored in the contested apartment. However, the title to the art collection in itself did not create, under domestic law, any rights to the contested apartment. The applicant organisation's right to use, rent or possess the residential premises in respect of which the claim had been lodged had never been recognised under domestic law. Likewise, domestic law had never recognised the applicant organisation's right to contest the validity of contractual relations to which it was not a party or to challenge the property title of a third person.

64. Furthermore, the applicant organisation had never been vested with any rights to the contested apartment by virtue of a legally binding decision. The decisions of the two Riga City Council committees to place the apartment at the applicant organisation's disposal had been merely recommendatory, and no decision granting the applicant organisation any rights with regard to the contested apartment had ever been taken by Riga City Council. Furthermore, under section 4(2) of the Law on Residential Tenancies only an individual could rent residential premises. Accordingly, prior to the possible placement of the contested apartment at the applicant organisation's disposal, the municipal authorities should have altered the status of the contested apartment to that of non-residential premises. Given that no such measure had ever been undertaken, the applicant organisation could not arguably claim that it had ever been vested with a rental or any other right with respect to the contested apartment or that it had had any legitimate expectation that it could acquire such a right.

65. Accordingly, the Government maintained that the domestic courts' refusal to examine the applicant organisation's civil claim on the grounds of lack of legal standing was well justified. By concluding the contrary the

Court would take on the role of a fourth-instance court and would, moreover, attempt to create a new substantive right that did not exist under the Latvian domestic law.

(b) The applicant organisation

66. In substantiation of its civil rights the applicant organisation invoked sections 1 and 127 of the Civil Procedure Law, which set out everyone's right to bring a claim to protect those of their rights that have been infringed. Further, the applicant organisation noted the decision of the Apartment Committee granting it the right to use the contested premises. Relying on section 1537 of the Civil Law, the applicant organisation argued that through this decision the Riga municipality had entered in a contractual relationship, the terms of which it had later failed to comply with. In addition, the applicant organisation contended that its substantive right was also based on the fact that it had possessed the contested apartment. Invoking section 876 of the Civil Law the applicant organisation submitted that it had actually possessed the contested apartment, as it had had access to it and the artworks belonging to it had been stored there. Under sections 911 and 912 of the Civil Law it had had a right to defend its possession.

67. Further, the applicant organisation contended that its substantive rights also emanated from the decisions taken by the two Riga City Council committees. The contested apartment had been allocated to the applicant organisation, and V.B.S.'s right to rent it, as well as her declaration of residence there, had been annulled. Thus, the applicant organisation had had a right to invoke the decisions of the committees in order to acquire the civil right to contest the validity of the rental agreement and the title of V.B.S.

68. The applicant organisation contested the Government's argument that the decisions of the Riga City Council committees had been merely recommendatory. Under Rule 41 of the Rules of the Riga Municipality, the Riga City Council committees had had the right to instruct officials and institutions of the Riga City Municipality. Further, Rule 38 stipulated that the Apartment Committee was to supervise the allocation of apartments and that the Apartment Administration was under its supervision. Referring to other legislative instruments governing the Government structure, the applicant organisation argued that "supervision" meant that a supervising institution could annul unlawful decisions taken by an institution under its supervision. Thus, the two committees had acted within the scope of their authority and all the decisions taken by them had been valid and binding. Moreover, as these decisions had not been annulled, they were still enforceable. With regard to these decisions the applicant organisation also referred to the principle arising from administrative procedure law that provided that an individual could have confidence that the actions of the State institutions would be lawful and that an individual should not suffer

from a mistake made by the State institutions in the event that that individual had not been at fault.

69. In relation to its ability to contest agreements to which it had not been a party, the applicant organisation submitted that the case-law of the Latvian courts showed that in several cases third parties could contest the validity of agreements to which they were not a party. In particular, the applicant organisation referred to marriage agreements, which initially could not be contested by third parties; subsequently the case-law had changed to allow such challenges. Thus, the applicant organisation contended that, even if the Government was correct in saying that the applicant organisation had lacked standing, the case-law of the domestic courts did, from time to time, change.

2. The Court's assessment

(a) General principles

70. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention (see, among many other authorities, *Baka v. Hungary* [GC], no. 20261/12, § 100, 23 June 2016, and *Berger-Krall and Others v. Slovenia*, no. 14717/04, § 313, 12 June 2014).

71. Article 6 § 1 does not, however, itself guarantee any particular content for civil "rights and obligations" in the substantive law of the Contracting States. The Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see *Markovic and Others v. Italy* [GC], no. 1398/03, § 93, ECHR 2006-XIV, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 88, 29 November 2016). The distinction between substantive limitations and procedural bars, fine as it may be, remains determinative of the applicability and, as appropriate, the scope of the guarantees of Article 6 of the Convention (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 119, ECHR 2005-X). Article 6 of the Convention can, in principle, have no application to substantive limitations on the right existing under domestic law (see *Markovic and Others v. Italy*, cited above, § 94).

72. In order to decide whether the "right" in question really has a basis in domestic law, the starting point must be the provisions of the relevant domestic law and their interpretation by the domestic courts. This Court would need strong reasons to differ from the conclusions reached by the superior national courts by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Boulois v. Luxembourg*

[GC], no. 37575/04, § 91, ECHR 2012, and *Yanakiev v. Bulgaria*, no. 40476/98, § 58, 10 August 2006).

73. Where at the outset of proceedings there is a serious and genuine dispute about the existence of the right asserted by the applicant under domestic law, a subsequent decision by a domestic court that there is no such right does not remove, retrospectively, the arguability of the applicant's claims (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 89, ECHR 2001-V, and *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, § 256, 15 March 2007).

(b) Application to the present case

74. The present case concerns the proceedings the applicant organisation brought in order to challenge the decisions taken and the agreements concluded in the course of privatisation proceedings through which a third person had acquired title to an apartment. In addition, the applicant organisation requested recognition of its own right to use the contested apartment. It relied on several provisions of the Civil Law, the Civil Procedure Law and the Law on the Privatisation of State and Local Self-Government Apartment Houses (see paragraph 33 above). In order to determine whether Article 6 of the Convention is applicable to these proceedings, the Court has to examine whether the applicant organisation's claims concerned a "right" which can be said, at least on arguable grounds, to have been recognised under domestic law

75. It is important to emphasise here that the Court is not called upon to assess whether the renting of the contested apartment to V.B.S. and her subsequent acquisition of title to it through privatisation proceedings was lawful. Neither is it called upon to assess whether there were any other remedies or tools available to the applicant organisation by which to protect its interests. The Court's assessment in the present case is strictly limited to the question of whether the particular proceedings the applicant organisation brought before the domestic courts concerned a civil right that at the time of its bringing the claims had had at least an arguable basis under domestic law.

76. The Court observes that the ruling of the Senate of the Supreme Court that the applicant organisation lacked legal standing was primarily based on the argument that the applicant organisation had attempted to contest contractual relationships to which it was not a party and which did not interfere in its rights. The applicant organisation argued that in some cases third parties could contest the validity of agreements of which they were not a party, referring, in particular, to marriage agreements. The Court notes that the applicant organisation has provided no further information as to the conditions that would give a third party the right to challenge such agreements, nor has it provided any case-law examples in that regard.

Accordingly, the Court can draw no inferences from this allegation. Furthermore, the applicant organisation's contention that the case-law of the domestic courts did, from time to time, change is not sufficient to conclude that at the moment at which the civil proceedings were brought the applicant organisation's claim concerned a right which can be said, at least on arguable grounds, to have been recognised under domestic law (contrast *Velted-98 AD v. Bulgaria*, no. 15239/02, § 41, 11 December 2008, where the civil right emanated from the case-law).

77. The Senate of the Supreme Court noted that a third party could contest agreements to which it is not a party, if such proceedings are brought with the purpose of eliminating interference with that third party's rights. However, with regard to the possibility of challenging the rental agreement concluded with V.B.S. the Senate of the Supreme Court considered the pre-existing possession of the contested apartment as a precondition for establishing such a right. In turn, in relation to the right to challenge the ownership rights of J.L., which according to the Senate could only be done by lodging a property claim, the Senate considered an already established right to possess the contested apartment, determined in a procedure set by law, as a precondition for making such a challenge (see paragraph 34 above). The Court notes that in coming to these conclusions the Senate of the Supreme Court did not indicate specific legal provisions on which these findings were based.

78. Nonetheless, this in itself is insufficient to conclude that the applicant organisation had a civil right, unless a sufficient basis for establishing an arguable claim under domestic law can be identified. Accordingly, the Court will proceed to assess the legal grounds the applicant organisation invoked in asserting its rights.

79. In its submissions before this Court the applicant organisation referred to several domestic law provisions that it had not raised before the domestic courts (in particular, sections 876, 911, 912, and 1537 of the Civil Law). The Court reiterates that it is the right as asserted by the claimant in the domestic proceedings that must be taken into account in order to assess whether Article 6 § 1 is applicable (see, for example, *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, § 120, ECHR 2013 (extracts)). Hence, the aforementioned provisions cannot be taken into account in determining whether there was a right recognised under domestic law.

80. The applicant organisation also invoked sections 1 and 127 of the Civil Procedure Law, which guaranteed everyone the right to bring a claim to protect their infringed or contested rights. The Government, in turn, contended that these provisions merely ensured the procedural right to bring a claim but did not negate the requirement of the existence of a substantive civil right. The same interpretation was also adopted by the Senate of the Supreme Court, which concluded that these provisions allowed a person to

benefit from the protection of a court if its claim was connected with interference with that person's rights. In view of the wording of the invoked provisions, which directly refer to an infringed or contested right or an interest protected by law, the Court sees no reason to depart from the domestic courts' interpretation. Thus, the Court considers that the lack of procedural bars in the applicant's case cannot be taken to mean that there were also no substantive limitations in respect of it bringing its claims (compare *Roche v. the United Kingdom*, cited above §§ 119-120).

81. Further, given the substantive provisions that the applicant organisation invoked before the domestic courts (in particular, sections 1, 1403, 1415, 2004 and 2006 of the Civil Law; sections 1 and 127 of the Civil Procedure Law; and sections 13, 72 and 73 of the Law on the Privatisation of State and Local Self-Government Apartment Houses) the Court cannot conclude that either of them granted the applicant organisation at least an arguable right to use, rent, possess or acquire ownership of the contested apartment (compare and contrast *Melikyan v. Armenia*, no. 9737/06, §§ 37-38, 19 February 2013, where the civil right in question emanated from domestic law, and *Yanakiev v. Bulgaria*, cited above, §§ 58-62, where the wording of domestic law was considered sufficient for the claim to be considered arguable at the time it was brought).

82. Similarly, it does not transpire that any of those provisions granted the applicant organisation standing to challenge the decisions taken and contracts concluded within the privatisation proceedings through which V.B.S. had acquired title to the contested apartment (which had, moreover, already been inherited by J.L.). The Court has observed that sections 72 and 73 of the Law on the Privatisation of State and Local Self-Government Apartment Houses grant the domestic courts competence to examine disputes about the rights of a beneficiary of privatisation to acquire a particular apartment; however, these provisions do not indicate the persons who could institute such proceedings. In the absence of any case-law examples showing how these provisions have been interpreted and applied in practice, the Court cannot conclude that they grant this right to everyone who considers that certain privatisation proceedings have been unlawful.

83. The Court also notes that instead of asserting that domestic law had granted it an arguable civil right, the applicant organisation's ancillary complaint before the Senate of the Supreme Court was based on the argument that none of the provisions it had invoked prevented it from bringing its claims. Such a lack of an explicit procedural or substantive bar is insufficient to conclude that there was an arguable civil right (compare *Berger-Krall and Others v. Slovenia*, cited above, §§ 316-318, where grounds for a civil right were also not established).

84. Before both this Court and domestic courts the applicant organisation referred to the decisions of the Riga City Council committees

as the source of its substantive rights. It regarded them as legally binding decisions conferring on it civil rights. The domestic courts did not address this argument. The Government, however, argued that the decisions of the two committees were not legally binding and that their function had merely been to provide support to Riga City Council in its decision-making process.

85. Having examined the Law on the Municipalities and the Rules of the Riga Municipality, as in force at the relevant time, the Court cannot find support for the applicant organisation's assertions. As can be seen from these legal instruments, the role of the committees was to assist Riga City Council by proposing and assessing draft decisions and by carrying out general supervision of the relevant fields and of the institutions working in those fields. It does not transpire from those documents that the committees had the authority to take either normative or administrative decisions that could bind private persons.

86. The Court also finds no support for the applicant organisation's submission that the Apartment Committee directly supervised and could annul the decisions of the Apartment Administration. First, the wording of Rule 38 of the Rules of the Riga Municipality does not allow the Court to conclude that the Apartment Administration was one of the institutions overseen by the Apartment Committee. Moreover, even if it had been, Rule 41, which specifies the content of such oversight, lists powers that are necessary for the acquisition of the information required for the assessment of draft decisions and have not been shown as including the right to directly order the taking of certain decisions or the right to annul decisions taken by the executive institutions.

87. Furthermore, as noted by the Government, no potential decisions concerning the allocation of the contested apartment to the applicant organisation were ever proposed to Riga City Council. Accordingly, the executive institutions of the Riga municipality proceeded to rent and privatise the contested apartment. Although the Riga City Council committees expressed their dissatisfaction with those decisions, under Rule 42 of the Rules of the Riga Municipality, disputes between the permanent committees and the municipality institutions were to be resolved by the chairperson of Riga City Council or the Presidium of Riga City Council. The Court has no information that this procedure was ever followed with regard to the decisions taken in the present case.

88. Accordingly, even though some of the committees' decisions directly stipulated that the contested apartment should be left at the applicant organisation's disposal, the Court cannot conclude that they created any legal consequences and thereby could be regarded as the source of an arguable civil right (compare and contrast *Kačmár v. Slovakia*, no. 40290/98, § 58, 9 March 2004, where the civil right in question was found to emanate from a decision by the arbitration court). Rather, they

appear to have been a manifestation of the political will of certain members of Riga City Council which was, however, not acted upon by the competent organs and institutions of the Riga municipality.

89. In the light of the above, despite the importance of the protection and promotion of the artistic heritage of the two late Latvian artists, as acknowledged and emphasised by several State institutions and private organisations, the Court is unable to conclude that the proceedings brought by the applicant organisation concerned a civil right which could be said, at least on arguable grounds, to have been recognised under domestic law.

90. Consequently, in the absence of such a civil right, Article 6 is not applicable to the proceedings brought by the applicant organisation (see, *a contrario*, *Lupeni Greek Catholic Parish and Others*, cited above, §§ 72-73).

91. For the above reasons this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2017.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President