CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF BROKA v. LATVIA

(Application no. 70926/01)

JUDGMENT

STRASBOURG

28 June 2007

FINAL

28/09/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Broka v. Latvia,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mr J.-P. COSTA,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 10 April and 7 June 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 70926/01) 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, Mrs Marina Broka ("the applicant"), on 7 May 2001.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs Inga Reine.

3. On 15 December 2004 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1937 and lives in Riga, Latvia.

5. Before 1940, the applicant's aunt owned a farm in the Jelgava district which comprised a plot of land, a dwelling house and several farm buildings. The land was nationalised by the Soviet Union in 1940 and the buildings were considered as abandoned. In 1956 a third person bought from the local administration a barn and a wood shelter belonging to the estate; he subsequently converted the barn into a dwelling house.

Throughout the Soviet period, most of the estate was kept and operated by a co-operative agricultural society.

6. Following the restoration of Latvia's independence in 1991, the applicant's mother, relying on the new property reform and denationalisation laws, sought the return of both the buildings and the land. In 1993, she got back a residential house, but not the remaining buildings, since they were already owned by other persons. Moreover, in 1995 or 1996 a certain J. privatised another two buildings previously belonging to the estate in accordance with privatisation agreements concluded between him and the co-operative society according to the laws then in force.

7. In 1995 the applicant, acting on behalf of her mother, applied to the Land Commission of the Svēte municipality requesting that the land be restored within its exact historical boundaries, as they stood in 1940. This request was refused.

8. The applicant's mother died on 25 February 1997, leaving the applicant as her sole heir. Later, on 20 May 1998, the Riga City Vidzeme District Court legally declared the applicant her mother's successor.

9. On 14 March 1997 the applicant brought an action before the Zemgale Regional Court against five co-defendants: the district council of Jelgava, the local municipality of Svēte, the land commission of the latter, the co-operative society and the successor of the present owner of the barn and the shelter.

10. The first hearing was held by the Zemgale Regional Court on 27 June 1997. At this hearing, some of the defendants recognised the applicant's claim, and the applicant herself asked the court to conclude the examination of her claim as soon as possible. However, the proceedings were subsequently postponed fifteen times, namely:

(a) on 27 June 1997, until 12 November 1997 – in order for the parties to see the estate by themselves and to clarify certain points in their submissions;

(b) on 12 November 1997, *sine die* (in fact until 26 August 1998) – in order to await an official confirmation of the applicant's inheritance status by the Riga City Vidzeme District Court;

(c) on 26 August 1998, *sine die* (in fact until 30 May 2000) – when the court, *motu proprio*, declared J. the sixth co-defendant in the case since the applicant claimed ownership rights to the buildings privatised by him; however, the court established that J. had died and adjourned the proceedings pending his succession case before another court;

(d) on 30 May 2000, until 12 June 2000 – in order to invite the Zemgale Regional Office of the State Land Service to join the proceedings as one of the co-defendants and to compel J.'s successor to submit the judgment of 11 April 2000 concerning her inheritance rights;

(e) on 12 June 2000, until 24 July 2000 – upon the request of the State Land Service in order for them to prepare all necessary documents;

(f) on 24 July 2000, until 21 August 2000 – after the court had, at the applicant's request, declared J.'s widow – now legally confirmed in her inheritance rights – a defendant and ordered her to join the case;

(g) on 21 August 2000, until 18 October 2000 – upon the request of both parties, in order to submit further evidence;

(h) on 18 October 2000, until 8 November 2000 – upon the applicant's request (she in fact asked for a postponement *sine die* because, according to her, she could not quickly obtain evidence from some state authorities);

(i) on 8 November 2000, until 7 December 2000 – upon the request of the applicant's counsel (who explained that she was unable to attend);

(j) on 6 December 2000, until 26 February 2001 – upon the request of one of the defendants, in order to rectify the boundary of the estate and possibly to seek a friendly settlement;

(k) on 26 February 2001, until 19 April 2001 – because of a repeated absence of the representative of the State Land Service at the hearing (by a letter of 27 February, the court issued a formal warning to this authority and requested it to attend the following hearing);

(l) on 19 April 2001, until 19 July 2001 – one of the defendants being absent for medical reasons (she had previously submitted a medical certificate granting her sick leave from 9 to 17 April 2001);

(m) on 19 July 2001, until 6 August 2001 – upon the request of the State Land Service since it could not provide a proper representation before the court, and because of the absence of counsel of one of the defendants (despite the applicant's objections);

(n) on 6 August 2001, until 26 September 2001 – since the defendants had not received the amendments to the applicant's claim;

(o) on 26 September 2001 until 29 October 2001 – upon the applicant's and J.'s common request, since the State Land Service was absent from the hearing and the applicant deemed it necessary to see the respective land plans owned by this Office (it appears from the case file that this defendant had nevertheless requested the court to hear the case in its absence).

11. On three occasions, on 1 June 2000, 1 December 2000 and 10 October 2001, the applicant extended and modified her claim. In April 2000 and in March 2001, she unsuccessfully tried to accelerate the examination of her case by complaining, respectively, to the president of the Zemgale Regional Court and to the Prosecutor's General Office about the unreasonable length of the proceedings.

12. On 29 October 2001 the Zemgale Regional Court held a hearing and finally gave a judgment, granting the applicant's claim in part. In its judgment, the court ordered the defendants to restore to the applicant a part of the plot of land and six farm buildings, and declared null and void the privatisation agreements concluded between J. and the co-operative society. The remainder of the claim was refused according to the Law on Land

Privatisation in Rural Regions and the Law on the Return of Real Estate to the Legitimate Owners.

13. The applicant appealed. On 21 February 2002 the Civil Chamber of the Supreme Court, after having held a hearing, dismissed the applicant's appeal. The applicant then filed an appeal on points of law. On 22 April 2002 the Senate (Cassation Division) of the Supreme Court, sitting *in camera*, declared the appeal inadmissible for lack of arguable points of law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The period to be taken into consideration

16. The Government first observed that the Convention came into force with regard to Latvia on 27 June 1997; according to them, the period covered by Article 6 § 1 of the Convention started to run on this date. They also reiterated that, from 12 November 1997 to 30 May 2000, the proceedings were adjourned in order to await the official confirmation of the inheritance status first of the applicant herself, and then of one of the defendants, by two other courts where both inheritance cases were pending. The Government noted in particular that, according to Article 216 of the Civil Procedure Code then in force, such suspension was not optional but compulsory. Consequently, they argued that this lapse of time has to be deducted from the overall length of proceedings scrutinised by the Court,

and that the period to be examined under Article 6 § 1 of the Convention lasted only two years and three months.

17. The applicant disagreed with these arguments.

18. The Court recognises that the period to be taken into consideration began only on 27 June 1997, when the Convention came into force with regard to Latvia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. As to the adjournment of proceedings pending the outcome of other cases, the Court reiterates that the "reasonable time" requirement within the meaning of Article 6 § 1 must be assessed according to the Court's own case law and not according to the internal law of the respondent State (see, *mutatis mutandis*, *Wiesinger v. Austria*, judgment of 30 October 1991, Series A no. 213, p. 22, § 60, and *G. v. Italy*, judgment of 27 February 1992, Series A no. 228-F, p. 68, § 17). The Court therefore sees no reason to exclude the lapse of time between 12 November 1997 and 30 May 2000 from the overall length of proceedings covered by Article 6 § 1 of the Convention.

19. In civil proceedings, the "reasonable time" begins at the moment the action was instituted before the tribunal (see, for example, *Erkner and Hofauer v. Austria*, judgment of 23 April 1987, Series A no. 117, § 64). In the present case, this happened on 14 March 1997, when the applicant brought the action before the Zemgale Regional Court. On 29 October 2001, this court gave its judgment in the case. On 22 April 2002, the applicant's appeal on points of law was dismissed by the Senate of the Supreme Court. The impugned proceedings thus lasted slightly over five years for three levels of jurisdiction; this period corresponds to four years and almost ten months after the Convention came into force with regard to the respondent State. Four years and seven months out of this overall period correspond to proceedings before the court of first instance.

2. The reasonableness of the length of proceedings

20. According to the Court's case law, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see *Sürmeli v. Germany* [GC], no. 75529/01, § 128, 8 June 2006; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 177, ECHR 2006-...; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). Only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see, for example, *Humen v. Poland* [GC], no. 26614/95, § 66, 15 October 1999). In this respect, Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision,

including the obligation to hear cases within a reasonable time (see the aforementioned judgments in the cases of *Sürmeli*, § 129, and *Scordino*, §§ 183 and 224). The State remains responsible for the efficiency of its system and the manner in which it provides for mechanisms to comply with the reasonable time requirement – whether by automatic time-limits and directions or some other method – is for it to decide. If a State allows proceedings to continue beyond the "reasonable time" prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Blake v. the United Kingdom*, no. 68890/01, § 45, 26 September 2006).

21. The Government considered that the present case was complex both as to its subject-matter (restitution of property rights to former owners illegally expropriated by the Soviet authorities) and as to the number of persons involved as co-defendants. As concerns the conduct of the Latvian authorities, the Government emphasised that they have always acted with due diligence; whenever the proceedings were suspended, it was either directly prescribed by law or requested by at least one of the parties. In other terms, there was no period of inactivity that would be attributable to the court. On the other hand, most of the adjournments were due to the applicant's own conduct. From 12 November 1997 to 26 August 1998, the court had to await the outcome of her inheritance case. On all other occasions the postponement was either requested by the applicant herself or agreed to by her.

22. The applicant disagreed with the Government. In her view, her right to a "hearing within a reasonable time" has been infringed.

23. The Court leaves to one side the question of the substantial complexity of the subject-matter of the case. It is enough for it to note that the overall number of defendants was seven, and that this fact made the litigation sufficiently complex.

24. Concerning the conduct of the parties, the Court notes that the longest period of inactivity took place from 12 November 1997 until 30 May 2000 (paragraph 10 (b) and (c) above), while the Zemgale Regional Court waited for the confirmation of the applicant's own inheritance status and the inheritance status of one of the defendants. This lapse of time lasted two and a half years. Even if it seems in itself rather long, the Court reiterates that a legal provision providing for the dependence of one set of civil proceedings on another, when they concern the same or related facts, is not *per se* contrary the requirements of Article 6 § 1 of the Convention (see *Kiurkchian v. Bulgaria*, no. 44626/98, § 68, 24 March 2005). When assessing the relevance and reasonableness of the adjournment of a case pending the outcome of another case, it must be taken into account what is at stake for the persons involved (see *Tibbling v. Sweden*, no. 59129/00, § 32, 11 October 2005). In the present case, the Court accepts that the postponement of the proceedings between 12 November 1997 and 30 May

2000 served to ensure legal certainty and to protect the rights of other people, such as potential heirs and creditors. In any case, it is not the Court's task to determine whether there existed a sufficient link between the two sets of proceedings and whether the proceedings at issue were thus properly stayed, because, as a general rule, it is for the domestic courts to establish the facts and to interpret and apply national law. The Court will not interfere with their rulings, unless the applicants succeed in demonstrating that they acted arbitrarily; however, this is manifestly not the case as concerns the impugned litigation. The Court thus admits that this long adjournment was an objectively necessary measure which cannot be imputed to the Government as an element weighing in favour of finding a violation of Article 6 § 1.

25. In the instant case, the Court notes that, on three occasions in 2001, the hearing was adjourned because of the unexplained absence of one of the defendants, namely the Zemgale Regional Office of the State Land Service (paragraph 10 (k), (m) and (o) above). The total duration of these three periods of inactivity amounted to three and a half months. Similarly, the hearing was adjourned for three months between 19 April and 19 July 2001, one of the defendants being absent for medical reasons. Leaving to one side the question whether these delays could really be imputable to the conduct of the Zemgale Regional Court, they do not appear to be disproportionate against the background of the overall length of proceedings before that court. Finally, the Court acknowledges that the proceedings before the appeal and cassation courts were of exemplary speed, lasting only about six months for these two levels of jurisdiction taken together.

26. In sum, having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was compatible with the "reasonable time" requirement. There has accordingly been no breach of Article 6 § 1.

II. OTHER COMPLAINTS

27. The applicant raises complaints under Article 1 of Protocol No. 1, taken alone and in conjunction with Articles 13 and 14 of the Convention. She alleges that she was unable to recover all the real estate she claimed, that she had no effective domestic remedy to restore her property rights, and that she is discriminated against in the enjoyment of her property rights. She also alleges, under Article 3 of the Convention, that she was subjected to degrading treatment in view of the manner in which her numerous applications concerning the return of the property at issue were dealt with by the Latvian authorities.

28. Inasmuch as the applicant invokes Article 1 of Protocol No. 1, the Court points out that her claims to the disputed parts of the estate were

rejected according to the Law on Land Privatisation in Rural Regions and to the Law on the Return of Real Estate to the Legitimate Owners (paragraph 12 above). Both laws are covered by the reservation made by the Latvian government in their instrument of ratification, and this reservation has been declared valid by the Court (see *Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, ECHR 2001-XI). The reservation in question therefore applies in the instant case, and this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of its Article 35 § 3.

29. As to Articles 13 and 14 of the Convention, the Court recalls that they have no independent existence, since they have effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. Since the applicant's complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention, these two complaints must suffer the same fate.

30. Finally, as far as Article 3 of the Convention is concerned, the case file does not disclose any appearance of a violation of this provision as it is construed by the Court's case law.

31. It follows that these complaints must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 28 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President