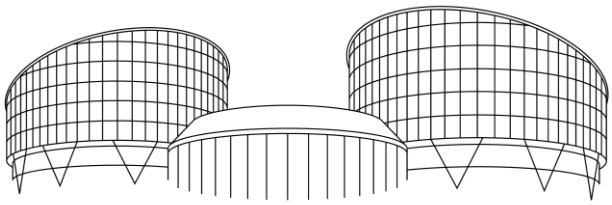

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF VISTIŅŠ AND PEREPJOLKINS v. LATVIA

(Application no. 71243/01)

JUDGMENT
(Merits)

STRASBOURG

25 October 2012

This judgment is final but may be subject to editorial revision.

In the case of Vistiņš and Perepjolkins v. Latvia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,
Françoise Tulkens,
Nina Vajić,
Dean Spielmann,
Lech Garlicki,
Peer Lorenzen,
Karel Jungwiert,
Elisabeth Steiner,
Ján Šikuta,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos,
Angelika Nußberger,
Julia Laffranque,
Linos-Alexandre Sicilianos,
André Potocki, *judges*,

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 11 January 2012 and on 19 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 71243/01) 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 two Latvian nationals, Mr Jānis Vistiņš and Mr Genādijs Perepjolkins ("the applicants"), on 5 June 2001.

2. The applicants were represented by Mr E. Radziņš, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms I. Reine.

3. The applicants alleged that the expropriation of their land on the basis of a law providing for a special procedure applicable only to them, and in return for an insignificant sum in compensation, constituted a violation of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1. They further complained that they had suffered discrimination in breach of Article 14 of the Convention.

4. Judge Ineta Ziemele, the judge elected in respect of Latvia, withdrew from sitting in the Chamber (Rule 28 § 3 of the Rules of Court) and the Government appointed Lech Garlicki, the judge elected in respect of Poland, to sit in her place (former Article 27 § 2 of the Convention and former Rule 29 § 1).

5. In a decision of 30 November 2006 a Chamber of the Third Section declared the application admissible. Subsequently, the applicants and the Government each filed further written observations (Rule 59 § 1).

6. On 8 March 2011 a Chamber of that same Section, consisting of Josep Casadevall, Corneliu Bîrsan, Boštjan M. Zupančič, Lech Garlicki, Alvina Gyulumyan, Egbert Myjer and Luis López Guerra, judges, together with Santiago Quesada, Section Registrar, delivered a judgment finding, by six votes to one, that there had been no violation of Article 1 of Protocol No. 1 and, unanimously, that there had been no violation of Article 14 of the Convention.

7. On 15 September 2011, granting a request made by the applicants on 16 May 2011, the panel of the Grand Chamber decided to refer the case to it pursuant to Article 43 of the Convention. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicants and the Government each filed further written observations (Rule 59 § 1).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 11 January 2012 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms	I. REINE,	*Agent,*
Ms	S. KAULIŅA,	*Counsel,*
Ms	L. PRIEDĪTE-KANCĒVIČA,	
Ms	I. STRAUTMANE,	
Mr	Ģ. BRAMANS,	*Advisers;*

(b) *for the applicants*

Mr	E. RADZIŅŠ,	
Ms	G. KĀRKLIŅA,	*Counsel,*
Mr	J. GROMOVS,	*Adviser,*
Mr	G. PEREPJOLKINS,	*Applicant*.

The Court heard addresses by Mr Radziņš, Mr Gromovs and Ms Reine. It also heard the responses by Mr Radziņš and Ms Reine to questions from judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Acquisition by the applicants of the land at issue

10. By contracts signed in 1994, in respect of donations *inter vivos*, the applicants became the owners of five plots of land on the island of Kundziņsala. This island, situated close to the mouth of the Daugava River, is part of the city of Riga, to which it is connected by a road bridge and a railway line. It mainly consists of port facilities, with a small residential area in its southern part.

11. The first applicant acquired a plot of land of 17,998 sq. m under a contract of donation with Mrs P. dated 21 April 1994. The transfer of title was entered in the land register by the Land Registry Division of the city of Riga (*Rīgas pilsētas Zemesgrāmatu nodaļa*) on 26 July 1994. The second applicant became the owner of:

(a) a plot of land measuring 11,000 sq. m, under a contract of donation with Mrs J. dated 21 April 1994 (entered in the land register on the same day);

(b) a plot of land measuring 7,150 sq. m, under a contract of donation with Mr O. dated 21 April 1994 (entered in the land register on the same day);

(c) a plot of land measuring 10,970 sq. m, under a contract of donation with the same Mr O. dated 12 September 1994 (entered in the land register on the next day, 13 September 1994); and

(d) a plot of land measuring 18,620 sq. m, under a contract of donation with Mrs D. dated 28 June 1994 (entered in the land register on the same day).

12. The clauses of the contracts in question were practically identical. The contract entered into by the first applicant stipulated that the second applicant was acting as the donor's representative. Similarly, it was stated in the first three contracts entered into by the second applicant (see points (a), (b) and (c) of the previous paragraph) that the first applicant was acting on behalf of the donors.

13. The donors were all the heirs of the legitimate owners of the land in question, which had been expropriated by the Soviet Union after 1940. They had recovered ownership in the context of the "denationalisation" process in the early 1990s. According to the applicants' explanations, which were not contested by the Government, the donations had been made in return for certain personal services that the applicants had rendered to the donors. Mrs D. had thus given her land to the second applicant by way of remuneration for having helped her to complete the formalities to obtain

restitution of her nineteen properties located throughout Latvia. Mrs J. had apparently been a longstanding friend of the second applicant, whilst the donor of the other two plots, Mr O., had given them to him as a token of gratitude because he had covered the cost of expensive heart surgery. As to the first applicant, he had become the owner of his land in return for undisclosed services rendered.

14. Each of the above-mentioned contracts stipulated that the value of the plots of land in question was fixed at 500 Latvian lati (LVL; about 705 euros (EUR)), except for the plot of 10,970 sq. m, which was valued at LVL 1,000 (about EUR 1,410). The parties agreed that the said value was not the cadastral value of the land in question (that is to say, the reference value for the calculation of land tax), but an indicative sum solely for the purposes of calculating the registration tax, which at the time represented 10% of the property's value. Indeed, according to the applicants' explanations, which have not been challenged by the Government, cadastral values did not exist at the relevant time and the sole basis of calculation for the tax was the property's sale price, in accordance with the applicable law (see paragraph 64 below).

15. In addition, the applicants paid LVL 0.25 in notary's tax. However, they were not obliged to pay income tax in respect of the transactions, as gifts between individuals were not liable for such tax. Furthermore, in accordance with the law applicable at the time (see paragraph 63 below), they were exempted from the payment of land tax (*zemes nodoklis*) for a period of six months following the acquisition, that is to say, until the end of 1994.

16. The parties disagreed as to the actual value of the plots of land in question at the time of their expropriation. The Government explained that the use of the land had begun during the Soviet era, in 1980, at the time of the construction of the port infrastructure – storage containers and open-air freight platforms – which can be found there today. In their submission, those port facilities are outside the general property market, with the result that an estimation of their possible market value would be impossible and devoid of purpose.

17. In the applicants' submission, the five plots of land contained no infrastructure except for concrete blocks. They explained that the latter enabled the land to be used for the storage of shipping containers, but that no other equipment such as railway lines, cranes or warehouses had been installed there. Inventory records of three of the plots of land, to which the applicants referred, indicate that the value of these concrete blocks is LVL 5.28 per square metre.

18. According to the statistical information supplied by the Government, and accepted as accurate by the applicants, 89% of specialised container traffic in and out of Latvia by sea in 1996 passed through the part of the island where the land at issue is located. Nor have the applicants disputed

the fact that the first decisions concerning the port area of Kundziņsala were taken during the constitutional transition period, between 1990 and 1991, by the Supreme Council of the Republic of Latvia (the then legislative assembly). In 1992 the authorities initiated proceedings for the purpose of fixing the port's boundaries and determining the infrastructure to be transferred from the former Soviet Union to the independent Latvian State.

B. Expropriation of the land at issue

19. On 15 August 1995 the Latvian Cabinet adopted Regulation no. 278 fixing the perimeter of the Port of Riga (*Noteikumi par Rīgas ostas robežu noteikšanu*). In accordance with that Regulation, all the plots of land owned by the applicants were included within the port's perimeter. That inclusion was confirmed by the Free Commercial Port of Riga Act (*Rīgas tirdzniecības brīvostas likums*), enacted on 6 November 1996. Under that Act, all the privately owned land situated within the port's boundaries became subject to a servitude for the benefit of the public corporation responsible for the port's management. In return, the corporation was to pay the owners annual compensation of not more than 5% of the cadastral value of the plots of land in question.

20. In January 1996 the applicants requested the Real Estate Valuation Centre of the State Land Authority (*Valsts Zemes dienesta Nekustamā īpašuma vērtēšanas centrs*) to determine the cadastral value of their respective plots of land for the year 1996. In five letters of 15 January 1996, the Centre certified that the value amounted to LVL 564,410 (about EUR 900,000) for the land belonging to Mr Vistiņš; as to that of Mr Perepjolkins, the cadastral value of the various plots amounted to LVL 285,830, LVL 767,724, LVL 769,824 and LVL 1,303,102 respectively, representing a total of LVL 3,126,480 (about EUR 5,010,000).

21. On 11 June 1997 the administration of the Free Commercial Port of Riga applied, in turn, to the Valuation Centre, requesting it to calculate the amount of compensation that would have to be paid to the applicants in the event of expropriation of their land, in accordance with Article 2 of the Supreme Council's decision on the conditions of entry into force of the Law on the expropriation of real estate in the public interest (the "General Expropriation Act", enacted in 1923). That Article – which was applicable *inter alia* to the applicants – limited the amount of the compensation to be paid to the owners of certain land that was to be expropriated; the compensation could not exceed the cadastral value of the land as fixed on 22 July 1940, multiplied by a conversion coefficient.

22. On 12 June 1997 the Centre issued two certificates stating that the first applicant would receive LVL 548.26 (about EUR 850) for his 17,998 sq. m plot of land, and the second LVL 8,616.87 (about

EUR 13,500) for his plots of land, of which the total surface area came to 47,740 sq. m.

23. By Regulation no. 273 of 5 August 1997, which was adopted in the context of delegated legislative authority (see paragraph 41 below) and which entered into force on 9 September 1997, the Cabinet ordered the expropriation of all the land in question for the benefit of the State. On 30 October 1997 the measure was confirmed by Parliament, which enacted a special law for that purpose (see paragraph 54 below). Under that law Mr Vistiņš and Mr Perepjolkins were to be paid compensation for the expropriation, which would be deemed completed once the sums had been paid into their current accounts.

24. On 8 May 1998 the Latvian Land and Mortgage Bank (*Latvijas Hipotēku un zemes banka*) opened current accounts in the names of each of the applicants. On 14 October 1998 the bank officially certified that the above-mentioned sums of LVL 548.26 and LVL 8,616.87, awarded to the applicants by way of compensation, had actually been paid into the two accounts. The applicants, however, refused to make use of those sums in any way. Following the payments, by two orders of 17 and 20 November 1998 the Riga Land Registry Court (*zemesgrāmatu tiesnesis*) ordered that the title to the expropriated land be registered in the name of the State. No tax was levied on the above-mentioned sums.

C. Proceedings for reimbursement of rent arrears

25. In 1998 the second applicant brought two sets of proceedings to obtain rent arrears for the use of his land. In the first set of proceedings, against the Riga Port Authority and the Free Commercial Port of Riga, he requested the payment of sums due under the lease for the period from 21 April 1994 to 31 March 1996. In a judgment of 15 October 1998, upheld in cassation proceedings on 6 January 1999, the Riga Regional Court ordered the Free Port to pay the second applicant LVL 278,175 (about EUR 448,150) for the use of his land during the period in question.

26. The second applicant subsequently filed a new claim against the Free Port, seeking the payment of rent arrears for the period after 1 April 1996, together with compensation for the servitude imposed on his property. On 18 March 1999 the Civil Division of the Supreme Court partly upheld his claim, awarding the applicant the sum of LVL 90,146.84 (about EUR 145,000) on that basis, after fixing the amount of the rent at 2% of the cadastral value of the land at the material time. In fixing that amount the Civil Division particularly took into account the fact that the second applicant had not invested in any development of the land in question. It further indicated that the applicant's title to the property had ceased on 9 September 1997, when the expropriation had become effective. In a

judgment of 12 May 1999 the Senate of the Supreme Court upheld the judgment of the Civil Division.

27. The first applicant, Mr Vistiņš, brought similar proceedings. In a judgment of 9 June 1999 the Civil Division ordered the Free Port to pay him LVL 53,036 (about EUR 85,000) in rent arrears for the period from 1994 to 1997.

D. Proceedings for annulment of the State's title

28. In January 1999 the applicants sued the Transport Ministry (*Satiksmes ministrija*) before the Riga Regional Court. In their pleadings they requested the annulment of the cadastral registration of the State's title, and the restoration, in the land registers, of the previous entries attesting to their ownership of the land in question.

29. In support of their claim, the applicants alleged that the General Expropriation Act provided for a uniform procedure which had not been observed in their case. According to that procedure, after the enactment of the special Law of 30 October 1997, the Transport Ministry was required first to start negotiations with them with a view to reaching a friendly settlement as to the amount of the compensation (section 5 of the General Expropriation Act); if those negotiations failed, the Ministry would have to refer the matter to the competent court for settlement of the dispute (section 9). The applicants particularly emphasised that they were not satisfied with the sums paid by way of compensation and that they were deprived of their right to challenge those sums before a court. In this connection, the applicants pointed out that the orders of the Land Registry Court had been made in the absence of any prior final judgment concerning the amount of the compensation; they thus argued that the orders did not comply with section 18 of the General Expropriation Act. The applicants submitted that the expropriation in general and the transfer of title in particular had been carried out in breach of that Act, thus directly entailing a violation of Article 1 of Protocol No. 1.

30. In a judgment of 29 March 2000 the Regional Court dismissed the applicants' claims. According to the judgment, the expropriation was not based on the General Expropriation Act, as the applicants had claimed, since the measure in question had been decreed in the context of the Latvian land reform, and thus the special Law of 30 October 1997 was to be applied. Section 4 of the special Law provided that the mere existence of the law and the payment of compensation for the expropriation sufficed for the statutory transfer of title to the State. Noting in the present case that the corresponding sums had been paid into the applicants' accounts, the Regional Court found that both of those elements were present, and that by registering the State as the new owner of the land in question, the Land Registry Court had acted in accordance with the law.

31. Moreover, the Regional Court pointed out that section 3(1) of the Law of 30 October 1997 (on the calculation of compensation) referred to Article 2 of the Supreme Council's decision on the conditions of entry into force of the General Expropriation Act and that this decision had been declared compliant with Article 1 of Protocol No. 1 by the Constitutional Court.

32. The applicants appealed before the Civil Division of the Supreme Court. They emphasised at the outset that they did not object to the expropriation as such, provided the statutory formalities were observed and the amount of the compensation was reasonable. In their view, this had not been the case, as, in particular, no expert's report had been ordered for the purpose of determining the actual value of the disputed land (section 16 of the General Expropriation Act). The applicants did not challenge the Regional Court's finding that the Law of 30 October 1997 constituted a *lex specialis* in relation to the general law; they argued, however, that the said law could not be construed as derogating from the normal expropriation procedure and that, consequently, by recognising the State's title without having received a copy of a judgment determining the amount of the compensation, the Land Registry Court had acted illegally.

33. In a judgment of 28 September 2000 the Civil Division dismissed the applicants' appeal, essentially endorsing the reasoning and findings of the judgment in question. Addressing the applicants' objection to the compensation awarded, it pointed out that the amounts had been determined in accordance with Article 2 of the above-mentioned Supreme Council decision. If the applicants had considered that the calculation by the State's Land Authority had been erroneous and that the relevant coefficients had been incorrectly applied, they could have challenged the calculation in separate proceedings, but they had not done so.

34. The applicants lodged a cassation appeal with the Senate of the Supreme Court. In their appeal, they submitted that the direct and immediate object of their claim was not to challenge the calculation of the compensation as such, but rather the fact that they had not been able to have the amount fixed through fair judicial proceedings, as required by the General Expropriation Act. If such proceedings had taken place, they would have been able to provide the court with evidence of their investments in respect of the land in question; they pointed out that they were not entitled to initiate such proceedings themselves, as section 9 of the Act reserved that right for the State authorities.

35. In a judgment of 20 December 2000 the Senate dismissed the applicants' appeal on the same grounds as the Civil Division.

36. In the meantime, on 17 August 2000, the State had granted the use of all the plots of land in question to a private transport company, B., from which it has been receiving rent to date.

E. Tax reassessment proceedings

37. On 9 December 1999 the Finance Department of the Riga City Council notified the first applicant of a tax reassessment, requesting him to pay the sum of LVL 18,891 in land tax in respect of the land that had belonged to him, plus penalties, for the period from 1 January 1997 to 30 October 1997, the date of the expropriation. The first applicant challenged this before the Ziemeļu District Court of First Instance, which upheld his claim and annulled the reassessment. The City Council appealed before the Riga Regional Court, which, in a judgment of 10 January 2003, upheld the annulment of the reassessment. In its judgment the court found that, as the land tax was attached to a plot of land and not to a specific individual, it could be paid by someone other than the owner. It noted that the tax had already been paid by the public corporation responsible for the port's management which was using the land on the basis of a servitude. The City Council lodged a cassation appeal with the Senate of the Supreme Court, which dismissed that appeal in a judgment of 19 March 2003.

38. On 22 January 1999 the Finance Department of Riga City Council notified the second applicant of a tax reassessment for LVL 78,382, including penalties, for the year 1997. The applicant brought annulment proceedings before the court of competent jurisdiction, which upheld his claim. The City Council appealed and on 26 February 2002 the Riga Regional Court annulled the judgment of the Court of First Instance, finding that the second applicant's land was not part of that for which the public corporation had paid land tax. That judgment was upheld in cassation proceedings. However, in September 2003 the Senate of the Supreme Court reopened the proceedings on account of newly discovered facts. The case file was sent to the Administrative Court of Appeal, which, in a judgment of 15 July 2005, upheld the second applicant's claim and annulled the disputed reassessment on the ground that the port management company had already paid land tax for the land in question. On 7 February 2006 the Senate of the Supreme Court, ruling on a cassation appeal, upheld that judgment, so the second applicant was not obliged to pay any supplementary tax on the land in question.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions

39. Adopted in 1922, the Latvian Constitution (*Satversme*) became fully applicable again in 1993. In 1997, the year when the impugned expropriations took place, it did not yet include a charter of fundamental rights, which were governed by a separate instrument, the Constitutional Law of 10 December 1991 on the rights and obligations of persons and

citizens (*Konstitucionālais likums "Cilvēka un pilsoņa tiesības un pienākumi"*). Section 21 of that Law read as follows:

> "The State recognises and protects ownership and the right to inheritance.
>
> An individual may be the owner of property of all kinds, except that which is subject to the restrictions laid down in section 9 [pertaining to natural resources].
>
> Property may be expropriated only as provided for by law and pursuant to a judicial decision. Where property is expropriated for the purpose of public projects, the owner shall be entitled to appropriate compensation."

40. By a Law of 15 October 1998, which entered into force on 6 November 1998, the legislature inserted into the Constitution a new Chapter VIII on fundamental rights. In that Chapter, the new Article 105 of the Constitution provides as follows:

> "Everyone has a right of property. Property may not be used for purposes contrary to the interests of society. Property rights may be restricted only as provided by law. Forced deprivation of property for the needs of society shall be authorised only in exceptional cases, on the basis of a special law and in return for fair compensation."

41. Article 81 of the Constitution (repealed in 2007) entrusted the Cabinet with delegated and limited legislative power. At the time of the expropriation of the land in question, this provision read as follows:

> "Between two legislative sessions, the Cabinet shall be entitled, in cases of pressing need, to adopt regulations with statutory force. Such regulations may not amend either the law on parliamentary elections, the laws on judicial organisation and procedure, the Budget Act or budgetary law, or laws enacted by the sitting legislature; nor may they regulate amnesty, the issuance of Treasury bills, taxes levied by the State, customs duties, railway fares and loans, and they will lapse if they are not submitted to Parliament within three days after the opening of the following legislative session."

B. Provisions of primary and secondary legislation

1. Restitution of land illegally confiscated by the Soviet Union

42. The first sub-section of section 12 of the Latvian Cities Land Reform Act of 20 November 1991 (*Likums "Par zemes reformu Latvijas Republikas pilsētās"*) originally read as follows:

> "In all ... cases, where the original owner's land has [in the meantime] been built upon, or where, in accordance with urban planning and construction projects it is intended to erect thereon constructions necessary to satisfy the needs of society, the former owners of the land or their heirs shall be entitled, as they choose:
>
> – to claim restitution of their title to the property and to obtain from the owner of the building or construction ... the payment of rent, of which the maximum amount shall be fixed by the Cabinet ...; or
>
> – to request that they be granted the right of ownership or use of another plot of land of the same value, situated within the administrative boundaries of the same town, depending on the intended use of such land; or

– to receive compensation in accordance with the statutory conditions."

43. A Law of 31 March 1994 imposed restrictions on the restitution of land on which certain constructions or facilities had been erected. It thus amended the above wording as follows:

"Former property owners or their heirs shall recover their title to land that previously belonged to them, except:

...

(3) Where, on the land of the former owners, there can be found ... civil engineering and transport facilities or infrastructure ..., [for example] of ports. The title to the land is then registered in the name of the State or the local authority concerned; as to the former owners and their heirs, they shall be entitled, as they choose, to request that they be granted title to another plot of land of the same value and situated within the administrative boundaries of the same town, or otherwise to receive compensation in accordance with the statutory conditions."

44. A Law of 24 November 1994 amended that provision as follows:

"Former property owners or their heirs shall recover their title to land that previously belonged to them, except:

...

(3) Where, on the land in question, there can be found ... civil engineering and transport facilities or infrastructure ..., [for example] of ports. The title to the land is then registered in the name of the State or the local authority concerned, after the former owners or their heirs have, as they choose, and in accordance with the statutory conditions, received land of the same value situated elsewhere ... or compensation. If it is impossible to reach an agreement with the former owners of the land, or their heirs, as to compensation or the allocation of another plot of land of the same value, the land shall then be expropriated in accordance with the conditions laid down in the law on the expropriation of real estate on public-interest grounds."

45. The Law of 12 October 1995 reformulated the above provision, deleting the last sentence concerning the expropriation of land. The Law of 8 May 1997, which entered into force on 6 June 1997, added to the subsection in question a note that read as follows, having the same statutory force as section 12 itself:

"Note: Where the former owners of the land or their heirs possess dwellings on the territory of a port, they are entitled to recover title to that land to the extent that they have the lawful use thereof; [the surface area of such land] must not, however, exceed 1,200 square metres, unless the land in question is situated within the residential area of Kundziņsala Island, including on the territory of the Free Commercial Port of Riga, where the former owners and their heirs may be granted restitution of their title in respect of the entire surface area of the land that belonged to them."

46. At the same time a new subsection was inserted into section 12. It reads as follows:

"Where the former owners of the land or their heirs have recovered title to land on which are erected any facilities referred to in point 3 of the first subsection hereof ...,

the annual amount of rent payable for the land shall not exceed five per cent of its cadastral value."

47. At the material time, section 19(4) of the Ports Act of 22 June 1994 (*Likums par ostām*) read as follows:

"Only the State and local authorities acting through the intermediary of a port authority shall be entitled to purchase land within the territory of a port. It shall be prohibited for a port authority to sell land situated within the territory of a port."

48. Section 19(5) of that Act, as amended by a Law of 24 October 2002, which entered into force on 28 November 2002, reads as follows:

"Former owners (or their heirs) who, as at 21 July 1940, possessed land situated on the current territory of the port, and whose title to the land has been recognised ... but has not been restored on account of the statutory restrictions, shall be entitled to receive land of the same value or to be compensated in the form of compensation certificates, the number of which shall be calculated according to the updated cadastral value of the land in question. If the persons concerned have received compensation certificates corresponding to the cadastral value of the land for 1940, they will granted an additional number of ... certificates corresponding to the difference between the cadastral value of 1940 and the updated cadastral value."

49. Regulation no. 171 of 6 May 1997 on the calculation of compensation to be awarded to former landowners or their heirs, and on the determination of the value of land of which ownership has been transferred in cities (*Noteikumi par kompensācijas aprēķināšanu bijušajiem zemes īpašniekiem vai viņu mantiniekiem un maksas noteikšanu par īpašumā nodoto zemi pilsētās*) was adopted on the basis of the Latvian Cities Land Reform Act. Article 8 of the Regulation reads:

"Where persons claiming compensation are not satisfied with the compensation amount calculated [by the State Land Authority], they shall be entitled to submit their complaint to the courts."

2. Expropriation

(a) General provisions

50. At the material time, and up to 1 January 2011, expropriation was governed by the Expropriation (Public Interest) Act (*Likums "Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām"* – the "General Expropriation Act"), which was first enacted in 1923 and which re-entered into force on 15 September 1992. The relevant sections of that Act read as follows:

Section 1

"Expropriation of real estate in the public interest shall be authorised only in exceptional cases, always with payment of compensation and on the basis of a special law."

Section 3(1)

"The proposal to expropriate ... shall be made by the government on the basis of an opinion by the relevant administrative body or local authority, where the institution in question is unable to acquire the real estate by means of an agreement with the owner. The proposal must include information about the real estate to be expropriated and the justification for the expropriation."

Section 5

"After the [expropriation] law has been enacted, the institution that proposed the expropriation shall approach the owner with a view to reaching a [friendly] agreement for the transfer of the real estate, and, as the institution sees fit, shall either offer compensation or propose to exchange [the real estate] for property of the same value."

Section 6

"Where compensation [for the expropriation] is determined by friendly agreement, or where the value of the expropriated real estate is compensated for by the exchange thereof for other property, the parties shall enter into a contract ..."

Section 9(1) and (2)

"Where [the parties] fail to reach an agreement, the case shall be examined by a court upon an application by the expropriating institution.

After receiving the application, the court shall assign a bailiff to assess the value of the real estate, in the presence of the representative of the expropriating institution, together with the owner and three experts chosen by joint agreement between the parties ..."

Section 10

"The expropriating institution shall submit to the court a statement indicating and justifying its assessment of the value of the real estate to be expropriated. Copies of the statement shall be served on the owner of the real estate and on any mortgage creditors of the owner ..."

Section 13

"The value shall be assessed according to local prices and the state of the relevant property. Should the owner so request, the assessment shall also take into account its profitability.

The profitability of real estate shall be assessed on the basis of information supplied by its owner. When the value of the property is determined in accordance with the income generated by the latter, it shall correspond to the average net income from the real estate over the past five years increased by five per cent, or, where the owner has held it for less than five years, over the entire period of possession, increased by five per cent."

Section 16

"Before examining the case, the court shall summon the owner, the representative of the expropriating authority and any mortgage creditors.

The court shall determine the compensation to be paid on the basis of experts' opinions, either according to local prices or, where the owner so requests and the court finds such request reasonable, according to the profitability [of the property].

The court's decision may be appealed against in accordance with the statutory procedure."

Section 17(1)

"After the court's decision pertaining to the expropriation of the real estate takes effect, the owner shall be paid the compensation determined and any interest at the rate fixed by the court; the interest rate shall not be lower than 6 per cent per annum from the date of transfer of the property until the date of payment."

Section 18

"After the payment of compensation ..., the institution concerned shall transmit to the Land Registry Division a copy of the court's decision together with a description of the real estate, for the purposes of its registration in the name of the State or local authority."

51. A Law of 19 December 1996 inserted certain provisions into Article 2 of the Supreme Council's decision of 15 September 1992 on the conditions of the entry into force[1] of the 1923 General Expropriation Act (*Lēmums "Par Latvijas Republikas likuma 'Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām' spēkā stāšanās kārtību"*); the relevant parts of those provisions read as follows:

"Where, in the course of the land reform, an expropriation ... concerns real estate that is necessary for ... the maintenance or operation of ... transport infrastructure, [and where the object of the expropriation] has been or is to be restored to the former owner (or to the heirs thereof), the amount of the compensation shall be determined as a sum of money, according to the statutory procedure; however, it shall not exceed the value of the said real estate as fixed by the land registers or by cadastral records drawn up before 22 July 1940 and including an indication of the property's value ... The conversion coefficients to be applied to the value of the property, converting the prices from 1938-1940 (in pre-war lati) into current prices ..., shall be determined by the State Land Authority.

Where, after the restitution of title, the owner has increased the value of the real estate, any investments related to the increase in value must also give rise to compensation. Similarly, compensation must be paid for any expenses reasonably incurred by the owner (or heirs) related to the restitution of title (surveying, obtaining of information from records, etc.). Any expenses incurred in respect of the services of a representative must be reimbursed within the limits of the amounts actually paid; however, they must not exceed the scales of lawyers' fees.

The expropriation procedures laid down by the present Article shall apply also to owners who have acquired property from the former owner (or heirs thereof) by way of donation."

52. On 1 January 2011 the 1923 Act was superseded by a new Expropriation (Public Interest) Act (*Sabiedrības vajadzībām nepieciešamā*

[1] Or in reality, the re-entry into force of the law.

nekustamā īpašuma atsavināšanas likums), enacted on 14 October 2010. Under section 4 of that new Act, expropriation of real estate can take the form of a friendly settlement between the State and the owner of the property in question, or of "forced" expropriation ordered on the basis of a special law.

53. The use of the term "special law" in Article 105 of the Constitution and in section 1 of the 1923 Act indicates that each individual expropriation measure falls within the exclusive remit of the legislature, that is to say, Parliament. As the Constitutional Court observed in its judgment of 16 December 2005, this is a specific feature of the Latvian legal system in comparison with that of other countries (see paragraph 62 below). In this system any expropriation is always based on two legislative instruments: the general law, determining the rules of expropriation in general, and a special targeted law by which Parliament orders the expropriation of designated property in a specific case. As to the sum to be paid in compensation, it is fixed by friendly settlement or, failing that, by the courts (section 9 of the 1923 General Expropriation Act).

(b) Specific provisions applicable to the applicants

54. Regulation no. 273 of 5 August 1997 on the expropriation of land for the needs of the State within the Free Commercial Port of Riga was promptly submitted to Parliament, as required by Article 81 of the Constitution (as then in force). On 30 October 1997 Parliament enacted a law on expropriation for the needs of the State of land within the Free Commercial Port of Riga (*Likums "Par zemes īpašuma atsavināšanu valsts vajadzībām Rīgas tirdzniecības brīvostas teritorijā"*), which used almost the exact same wording as the Regulation. The relevant parts of that law read as follows:

Section 1

"The expropriation, for the needs of the State, shall concern land belonging to Mr Genādijs Perepjolkins within the territory of the Free Commercial Port of Riga, on Kundziņsala, along the bank of the Daugava, for respective surface areas of 1.8620 hectares ..., 1.1000 hectares ..., 1.0970 hectares and 0.7150 hectares ..., together with land in the same sector belonging to Mr Jānis Vistiņš for a surface area of 1.7998 hectares ..."

Section 2

"The Transport Ministry shall be responsible for having the land referred to in section 1 hereof ... entered in the land register in the name of the State."

Section 3

"(1) A current account shall be opened with the public corporation Latvijas Hipotēku un zemes banka [Latvian Land and Mortgage Bank] in the name of each of the landowners referred to in section 1 hereof; the compensation shall be paid into such accounts in accordance with Article 2 of the Supreme Council's decision on the conditions of the entry into force of the Expropriation (Public Interest) Act.

(2) The number of the current account shall be notified, by registered letter, to each of the beneficiaries of the compensation payment."

Section 4

"The land referred to herein shall be entered in the land register in the name of the State on the basis of the present Act and following confirmation from the Latvijas Hipotēku un zemes banka that the sums determined as compensation for the value of the properties have [actually] been paid into the accounts of the persons mentioned in section 1 hereof."

55. The Law of 5 February 1997 on the expropriation of land for the needs of the State within the territory of the Riga State Airport Corporation (*Likums "Par zemes īpašumu atsavināšanu valsts vajadzībām valsts lidostu uzņēmuma 'Rīga' teritorijā"*) is almost identical in structure to that of the law mentioned previously. Sections 1 and 2 order the expropriation of the specific plots of land enumerated in the annexes to the law. Section 3 requires the Transport Ministry to have the State's title entered in the land register, while the last two sections concern the conditions of payment of the compensation and the effective transfer of title.

3. Leases and servitudes within the Free Port of Riga

56. To the extent that it is relevant to the present case, section 6 of the Free Commercial Port of Riga Act of 6 November 1996 (*Rīgas tirdzniecības brīvostas likums*) provided as follows:

"(1) There shall be established hereby a personal servitude for the benefit of the public corporation 'Commercial Port of Riga', affecting the land of natural persons or other legal entities ... that is occupied by the Free Port.

...

(6) The user of the land shall pay to its owner compensation for the use of the servitude; the amount of the compensation shall be determined by joint agreement, but it may not exceed five per cent per annum of the cadastral value of the land.

..."

57. On 9 March 2000 Parliament enacted a new Free Port of Riga Act (*Rīgas brīvostas likums*). It entered into force on 11 April 2000, superseding the previous Act. Section 4(8) of this new Act is identical to section 6(6) of the old Act.

4. Provisions of the Civil Code

58. Under Article 994, first paragraph, of the Civil Code (*Civillikums*), "[o]nly the person who is recorded in the land register as owner of real estate may be recognised as such". However, Article 1477, second paragraph, stipulates that "[r]ights *in rem* based on a law shall be effective even in the absence of an entry in the land registers".

59. The relevant provisions of the Civil Code concerning the validity of contracts and other agreements read as follows:

Article 1415

"An unlawful or immoral act whose aim runs counter to religion, statute law or morality, or which is intended to circumvent the law, cannot give rise to an agreement; any such agreement shall be null and void."

Article 1439

"An agreement that expresses a genuine intent but has been concealed by another agreement shall be valid, unless it has been entered into with the aim of misleading a third party or, in general, of conducting an unlawful transaction. The visible agreement shall remain valid solely to the extent that this is necessary for the validity of the concealed agreement."

60. Article 1919 of the Civil Code authorises the revocation of a donation (*dāvinājums*) on grounds of ingratitude on the part of the donee. Apart from an ordinary donation, the Latvian Civil Code provides for three specific categories of donation: a donation of all the donor's present property, a donation subject to a condition or obligation, and a donation in consideration of past services (*dāvinājums atlīdzības nozīmē*), as governed by Article 1933 of the Code, which reads:

"A donation in consideration of past services is a donation agreed in return for services rendered.

Such donations may not be revoked on grounds of ingratitude."

C. Case-law of the Constitutional Court

61. In a judgment of 30 April 1998 given in case no. 09-02(98), the Constitutional Court declared Article 2 of the Supreme Council's decision on the conditions of entry into force of the General Expropriation Act (see paragraph 51 above) compliant with Article 1 of Protocol No. 1. It observed as follows:

"...

5. Land reform is a continuous and complex process which does not end with the return of the real property concerned to the former owners or their heirs, but with the completion of the restructuring of legal, social and economic relations ...

...

7. The second and fourth paragraphs of Article 2 of the decision do not deprive owners whose property has been expropriated in the public interest of their right to apply to the courts for the determination of compensation. The second paragraph of Article 2 of the decision establishes only the upper limit of such compensation. Therefore, the argument ... that such persons are deprived of their right to judicial protection and to equality before the courts is unfounded. ...”

62. In a judgment of 16 December 2005, given in case no. 2005-12-0103, the Constitutional Court declared unconstitutional, and null and void, the amendments made to the General Expropriation Act in 2005. The relevant parts of that judgment read as follow:

“...

(22) ...

(22-2) The fourth sentence of Article 105 of the Constitution provides that forced deprivation of property is allowed only on the basis of a ‘special law’ enacted in exceptional cases.

The fact that expropriation must be carried out not only on the basis of a law but ‘on the basis of a special law’ is to a certain extent a specific feature of the Latvian Constitution. Most constitutions of European States envisage only that expropriation must be carried out on the basis of a law or in accordance with a procedure established by law.

The aim of Article 105 of the Constitution, pertaining to expropriation on the basis of a special law, is to protect the fundamental rights of the individual against any arbitrariness on the part of the administrative authorities. The word ‘specific’ here must not only be interpreted literally and grammatically, but must primarily be given a substantive meaning. When enacting such a ‘specific’ law, the legislature must pay attention to all the circumstances of the case; it must establish whether the expropriation is really ‘exceptional’ in nature and whether it serves the needs of State or society; it must also ensure that the expropriation gives rise to fair compensation.

...”

D. Tax provisions

63. Under section 9(1) of the Land Tax Act of 20 December 1990 (*Likums “Par zemes nodokli”*), as in force at the material time, a person acquiring land was exempt from the payment of land tax in respect thereof for six months from the date of its acquisition.

64. In its version in force in 1994, section 17 of the Law on the reform and the conditions of entry into force of the Land Registry Act of 22 December 1937 read as follows:

“In order to determine the value of property that is liable for tax in respect of the registration of ownership following a contractual transfer of title, the highest of the following amounts shall be used:

(1) the sale price indicated in the contract;

(2) the amount resulting from the land tax assessment;

(3) the amount resulting from the assessment for the purposes of obtaining a mortgage from a lending institution."

THE LAW

I. APPLICABILITY OF ARTICLE 35 § 3 (b) OF THE CONVENTION

65. Before the Grand Chamber the Government argued that the applicants had not suffered any significant disadvantage, as the alleged violation had not, in their opinion, attained the requisite threshold of seriousness to justify examination by the Court. Consequently, the Government requested the Court to reject the application pursuant to the new admissibility criterion introduced by Protocol No. 14 (new Article 35 § 3 (b) of the Convention). The relevant parts of Article 35 read as follows:

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings."

66. The Court notes at the outset that the Government did not raise this objection during the proceedings before the Chamber, which delivered its judgment after 1 June 2010, the date on which Protocol No. 14 entered into force. In any event, it reiterates that under Article 20 § 2 of that Protocol, "[t]he new admissibility criterion inserted by ... this Protocol in Article 35, paragraph 3.b of the Convention, [does] not apply to applications declared admissible before the entry into force of the Protocol". As the present application was declared admissible in 2006 (see paragraph 5 above), it clearly falls outside the scope of the new criterion. Consequently, the Government's objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

67. The applicants alleged that there had been a violation of Article 1 of Protocol No. 1, 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."

A. The Chamber judgment

68. In its judgment, the Chamber analysed the case in the light of the three conditions that must traditionally be fulfilled, according to the Court's case-law, for an expropriation to be compatible with the Convention. As regards the first condition, namely that the expropriation must be carried out "subject to the conditions provided for by law", the Chamber observed, like the Latvian courts, that the ordinary expropriation procedure in Latvia at the material time was governed by a general law, but that a special law enacted in 1997, providing for a derogation from the ordinary procedure, had been applied in the applicants' case. Whilst recognising that, before the enactment of the special law, the applicants could have expected that any expropriation would be carried out in the conditions provided for in the general law, the Chamber was of the view that this fact in itself was not sufficient to call into question the lawfulness of the special provisions that were applicable to them. Accepting the Government's argument that the impugned expropriation had been part of the denationalisation process following Latvia's restoration of independence, the Chamber accepted that, in this type of situation, a special law could lay down specific conditions for one or more individuals without infringing the requirement of lawfulness, and that the legislature should be afforded particularly broad discretion, in particular to rectify, on grounds of fairness and social justice, any loopholes or injustices created by the denationalisation. The Chamber did not find anything unreasonable or manifestly in breach of the fundamental objectives of Article 1 of Protocol No. 1 in the special Law of 30 October 1997.

69. As to the second condition, namely that the expropriation must have been "in the public interest", the Chamber accepted that it had been fulfilled, since the aim of the impugned measure had been to optimise the management of infrastructure in the Free Port of Riga, a question that fell within the domain of transport policy and, more generally, the State's economic policy.

70. Lastly, as to the third condition, requiring a "fair balance", the Chamber noted an extreme disproportion between the current cadastral value of the properties and their 1940 value, on the basis of which the compensation had been calculated, being some 350 times lower than the cadastral value. However, it analysed this disproportion in the light of a certain number of considerations, noting firstly that the very significant increase in the value of the properties concerned reflected the development of the port facilities and the complete evolution of the land's strategic importance between 1940 and 1990, these being objective factors to which

the applicants had not contributed in any way; secondly, that the applicants had acquired the properties free of charge and had possessed them for only three years without investing in them or paying taxes in respect of the land; thirdly, that the applicants had benefited from a "windfall", receiving rent arrears of about EUR 85,000 and about EUR 593,150 respectively; and fourthly and lastly, they had been afforded appropriate procedural guarantees. Taking into account these facts as a whole and the above-mentioned considerations relating to the need to rectify any injustices created by the denationalisation process, the Chamber accepted that, in the very specific circumstances of the case, the compensation received by the applicants had not been disproportionate. It accordingly found that there had been no violation of Article 1 of Protocol No. 1.

B. The parties' arguments

1. The applicants

71. The applicants began by challenging any attempt to call into question the manner in which they had acquired the properties at issue. In their submission, the reason why the contracts of donation had been signed almost simultaneously was because the operation of the land registry had been resumed only at the end of 1993 and until that time it had been impossible to register any transfers of title. They further recognised that they had themselves initially decided to indicate minimal values for the properties in question, but pointed out that cadastral values did not exist at that time and that, under the legislative provision then in force (see paragraph 64 above), the sole basis for the calculation of the registration tax was the sale price, which in this particular case could not be determined objectively. They explained that in those circumstances, which were outside their control, they had paid the minimum fee necessary for the registration of their title in the land register and that purely for the sake of form had they indicated the relevant sums in the contracts of donation. Alleging that they could not have known that in future the compensation due to them for the expropriation of their land might depend on the amount of the fee paid for the registration of their title, they argued that it would be unfair to use this against them.

72. As to compliance with the requirements of Article 1 of Protocol No. 1, the applicants first argued that their case could not be examined in the context of the restitution laws, because they did not belong to the category of former property owners to whom the State had returned property confiscated by the USSR. They contended that the reservation made by Latvia when ratifying Protocol No. 1, to the effect that Article 1 thereof did not apply to "the laws ... 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", could not be invoked against them because they had acquired the land in question under ordinary civil contracts entered into with individuals who were already registered as owners of the land, thus indicating in their view that the land reform had already been finalised in respect of the properties in question. In this connection they referred to a judgment of the Administrative Division of the Supreme Court Senate in which it was stated that "the property reform is a single measure that is completed with the transfer of the real estate concerned to private ownership". They inferred from this that, at the time when they acquired the land in question, it had become as freely disposable as any other private property and that it would be erroneous to regard their case as falling within the context of the land reform.

73. The applicants took the view that the impugned measure had not been taken "subject to the conditions provided for by law". They observed that, within the meaning of the Court's settled case-law, the notion of "lawfulness" necessarily implied the foreseeability of the legal consequences of the provision in question and that such foreseeability had been lacking in the present case. In this connection they first asserted that the Latvian authorities had not applied the ordinary procedure provided for by the General Expropriation Act, under which compensation had to be determined by agreement and to correspond to the value of the expropriated property, and, secondly, that the final sum had not been decided by the competent court but by the State Land Authority.

74. Moreover, they argued that the 1996 law amending Article 2 of the Supreme Council's decision of 1992 had to be regarded as an *ad personam* measure specially intended by the legislature to apply to their specific situation. In support of this argument they pointed out that the law had not been enacted until December 1996, at a time when they had already owned their land for two years, that they alone fell within the scope of the new wording of the last paragraph of Article 2 and that they had effectively been the only ones to have been affected by that provision. In this connection they referred to the wording of section 19(5) of the Ports Act, as amended in 2002, which entitled owners of land situated on the territory of ports to compensation calculated on the basis of the current value of their land and not the 1940 value (see paragraph 48 above), and observed that this amendment had been made after the impugned expropriation, with the result that nobody else could have been subjected to the same treatment as themselves. In their view this showed that the measure in question was unjustified.

75. In addition, they denied that the expropriation had been carried out on "public interest" grounds. Whilst recognising that the national legislature had a wide margin of appreciation in matters of economic and social policy, they found that it was manifestly unreasonable in the present case to invoke

a "public interest" when the measure had an exclusively commercial purpose. In this connection they observed that ultimately only the public domain had benefited from the transaction because it was the State, not themselves, that was now receiving rent in return for the use of the land by the company currently operating thereon – a situation that was of no benefit to any social group or society in general.

76. Moreover, they challenged the relevance of the example, given by the Government and referred to in the Chamber judgment, of the land expropriated for Riga's international airport, observing that the situation in question was by no means comparable to their own. In this connection they argued that an airport fulfilled a public-service function that was clearly intended to satisfy the interests of various social groups, whereas the Free Port of Riga was akin to a large private corporation pursuing commercial aims. In addition, they argued that the land occupied by Riga Airport had in 1940 been exclusively agricultural and that its significant increase in value could be explained solely by the development of the airport infrastructure, whereas that of the expropriated land at issue was related more to its location and natural qualities. They observed that, unlike historical monuments, religious buildings or other real estate of similar kinds, their land did not form part of any cultural heritage in respect of which the State would be justified in arguing that there was a "public interest".

77. Lastly, as regards the "fair balance" required by the Court's case-law, the applicants argued that their interests had sustained very serious damage. In their submission, the sums that they had received in compensation, respectively over 1,000 and 350 times lower than the cadastral value of the expropriated land at the time the expropriation procedure was initiated, were manifestly inadequate in relation to the actual value of the land in question. They compared their case to that of *Pincová and Pinc v. the Czech Republic* (no. 36548/97, ECHR 2002-VIII), where compensation amounting to one-fifth of the expropriated property's market value had been considered unacceptable.

78. They acknowledged that, according to the Court's settled case-law, Article 1 of Protocol No. 1 did not in all cases afford a right to full compensation and that there might sometimes be legitimate reasons for reimbursement below the full market value. They argued, however, that the amount of the compensation awarded by the State always had to remain reasonably related to the value of the expropriated land and that this had manifestly not been the case. In their submission, the State could not infringe this principle solely on the ground that the property had been acquired by donation. Moreover, it was incomprehensible that the 1940 cadastral value had been taken into account in the present case, and all the more illogical as the rent ceiling for land situated within the Free Port of Riga was based on the current cadastral value.

79. Furthermore, they argued that it would be totally unjustified to describe as a "windfall" their collection of rent arrears in respect of their land. In their capacity as legitimate owners of the land in question, the applicants were entitled, as expressly guaranteed by national law, to profit from its use. Lastly, the fact that the applicants had sources of income other than the land in question was irrelevant to the substance of the case.

2. The Government

80. The Government agreed with the findings and reasoning of the Chamber judgment (see paragraphs 68-70 above). In their opinion the expropriation of the applicants' land had been carried out "in the public interest" and "subject to the conditions provided for by law", and a fair balance had been struck between the requirements of the general interest of the community and the demands of the protection of the individual's fundamental rights.

81. The Government began with two preliminary comments. Firstly, disagreeing with the applicants' view, they asserted that the impugned measure had to be assessed in the general context of the land-reform legislation and the restitution of property illegally nationalised by the Soviet regime. In this connection, they referred to the Constitutional Court's judgment of 30 April 1998 finding that "[l]and reform is a continuous and complex process which does not end with the return of the real property concerned to the former owners or their heirs, but with the completion of the restructuring of legal, social and economic relations" (see paragraph 61 above), and to the Court's settled case-law affording the State a particularly broad margin of appreciation in such contexts.

82. Secondly, they argued that in assessing the compliance of the impugned measure with the requirements of Article 1 of Protocol No. 1 it was necessary to take into account Latvia's economic situation during the first half of the 1990s, characterised as it was by a lack of sufficient budgetary resources following the radical change of political regime that the country had undergone. Like other central and eastern European States, during this transition period Latvia had initiated a real social and economic restructuring process that had led to a struggle with inflation, rising unemployment, poverty, general economic stagnation and an extremely serious banking crisis.

83. As regards the lawfulness of the impugned expropriation, it was first necessary to look back at the history of land reform and denationalisation in Latvia. The initial wording of the Latvian Cities Land Reform Act had contained an anomaly, as it had allowed the restitution to former owners or their heirs of land occupied by infrastructure of strategic importance for the State that had been built over a half-century of Soviet administration. In order to resolve that problem the legislature had subsequently amended the initial wording of the Act such that former owners or their heirs who had

not yet recovered their property were no longer able to have that type of land returned to them but would, however, be able to claim an equivalent plot of land or compensation.

84. Shortly afterwards, the legislature had been obliged to revise the legislation concerning the expropriation of real estate and the compensation mechanism applicable thereto, in order to eliminate discrepancies. Accordingly, on 19 December 1996 Parliament had amended Article 2 of the Supreme Council's decision of 15 September 1992 by stipulating that compensation in cases of expropriation would not exceed the 1940 value of the expropriated property. In this connection, the Government pointed out that the State was free to amend existing legislation or to enact new laws in order to prevent any contradiction with other existing laws or to fill in any legal gaps in the latter, especially where the requisite amendments were made within the context of a complex and comprehensive land reform.

85. The Government then referred to the findings of the domestic courts to the effect that the Law of 30 October 1997, which had been applicable in the present case, could be regarded as a *lex specialis* derogating from the provisions of the General Expropriation Act. The law in question, which had been accessible to the applicants and perfectly foreseeable as to its effects, contained an express reference to Article 2 of the Supreme Council's decision, as amended by the Law of 19 December 1996 and approved by the Constitutional Court. According to the Government, it was quite clear from that Article that land occupied by transport infrastructure, and, *a fortiori*, land acquired by way of donation, was subject to a specific expropriation procedure. Consequently, the applicants could reasonably have expected this specific procedure to be applied to them. Moreover, the provisions of the Law of 30 October 1997 had been rigorously adhered to by the authorities responsible for implementing them.

86. In the Government's submission, the Law of 19 December 1996, amending Article 2 of the Supreme Council's decision of 15 September 1992, had not been enacted *ad personam* for the sole purpose of limiting the amount of the compensation to which the applicants were entitled. The aim of the law's drafters had been to create a legal environment that ensured social justice, in particular for persons falling under the denationalisation scheme, without creating a disproportionate financial burden for the struggling State budget. Moreover, the legislation in question had remained in force well after the expropriation of the applicants' land, such that they were not justified in claiming that the relevant measure was specifically directed against them.

87. In addition, the Government argued that the impugned expropriation had been "in the public interest". Its main aim had been to ensure the operation and upkeep of energy and transport infrastructure of strategic importance for the State, which had required the expropriated land in order

to develop Riga's Free Port, by extending, renovating and rebuilding it in accordance with official plans approved by the Latvian Government.

88. The Latvian authorities had struck a "fair balance" between the requirements of the general interest of the community and the applicants' fundamental rights in fixing the amount of compensation for the expropriation. The legislature had legitimately considered it necessary, in certain very specific cases, to limit the amount of compensation to the cadastral value of the relevant land at 22 July 1940. Such limitation had been applied on two occasions, first to the former owners of the twenty-three plots of land occupied by Riga Airport, then to Mr Vistiņš and Mr Perepjolkins. In 1940 the cadastral value of all the land in question had been minimal. It had only subsequently gained in value as a result of major investments to which its lawful owners had not contributed in any way, and after independence that value had been multiplied several times over. In those circumstances, the use of the 1940 cadastral value for the determination of compensation was not as such open to criticism as it corresponded to the general principle of public international law *restitutio in integrum* and was the result of careful consideration by the legislature.

89. As regards the applicants, the Government first observed that they had acquired the land at issue by donation, that is to say, free of charge, and that for this reason their situation was not objectively comparable to that of the purchasers of similar plots of land, if only because a contract of sale reflected the actual value of the property being sold. Moreover, the applicants themselves had decided to indicate a minimal value for the land in the contracts of donation. Secondly, the applicants had not invested in the development of the land, and there was nothing to indicate that they had any plans for investment or property development that might increase its value. In those circumstances it had to be concluded that the applicants' sole intention was to enrich themselves at the expense of the State and society, with their sole "economic" activity consisting in receiving substantial rent arrears. Thirdly and lastly, the applicants had not paid any taxes in respect of the land. Accordingly, their situation was not comparable to that of the applicants in *Pincová and Pinc* (cited above), to which the applicants had referred. Instead, the Government were of the view that the present case was objectively on a par with that of *Jahn and Others v. Germany* ([GC], nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-VI), where, in the unique context of German reunification, the Court had accepted, on an exceptional basis, that the deprivation of property without compensation had been justified.

90. The Government observed that, in cases where the former or new owners of land had incurred expenses for the purposes of maintaining the property prior to expropriation, those owners were entitled to rely on Article 2 of the Supreme Council's decision of 15 September 1992, a provision which guaranteed them the reimbursement of such expenses. If

the applicants had invested in the development of the land at issue – which was not the case – they could have sought reimbursement by challenging the amount of the compensation due to them in separate proceedings before the courts.

91. Furthermore, the Government referred to the finding in the Chamber judgment to the effect that the applicants had enjoyed a "windfall" as, despite the fact that they had not paid anything for their land and had not invested in its development, they had managed to make a considerable profit from it by obtaining the payment of rent arrears. In the Government's view it was necessary to take these factors into account in assessing the proportionality of the impugned measure.

92. In sum, in the Government's submission, the measure complained of had struck a fair balance between the legitimate interests of the community and those of the applicants, without imposing an "excessive burden" on the latter, and the Latvian authorities had not overstepped the broad margin of appreciation afforded to them in such matters.

C. The Court's assessment

93. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not, however, unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 78, ECHR 2006-V, and *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 48, 19 February 2009).

94. In the present case, it is not in dispute that there has been a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. The Court must therefore ascertain whether the impugned deprivation was justified under that provision. To be compatible with Article 1 of Protocol No. 1 an expropriation measure must fulfil three conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities, must be "in the public interest", and must strike a fair balance between the owner's rights and the interests of the community. The Court will examine whether each of those three conditions has been fulfilled in the present case.

1. "Subject to the conditions provided for by law"

(a) General principles

95. The Court reiterates that Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph of that Article authorises the deprivation of possessions "subject to the conditions provided for by law". Moreover, the rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC] (merits), no. 25701/94, § 79, ECHR 2000-XII, and *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V).

96. However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness. In this connection it should be pointed out that when speaking of "law", Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term (see, for example, *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999).

97. It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution (see *Former King of Greece and Others* (merits), cited above, §§ 79 and 82, and *Jahn and Others*, cited above, § 81), the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application (see *Guiso-Gallisay v. Italy*, no. 58858/00, §§ 82-83, 8 December 2005). As to the notion of "foreseeability", its scope depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (see, *mutatis mutandis*, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 109, 20 January 2009). In particular, a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (see *Centro Europa 7 S.r.1. and Di Stefano v. Italy* [GC], no. 38433/09, § 143, 7 June 2012). Similarly, the applicable law must provide minimum procedural safeguards commensurate with the importance of the principle at stake (see, *mutatis mutandis*, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 88, 14 September 2010).

98. The Court would, moreover, reiterate the finding in its settled case-law that the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In matters of general social and economic policy, on which opinions within a democratic society may reasonably differ widely, the domestic policy-maker should be afforded a particularly broad margin of appreciation (see, for example, *Stec*

and Others v. the United Kingdom [GC], no. 65731/01, § 52, ECHR 2006-VI). This also holds true in respect of urban and regional planning policies (see, under Article 6 § 1, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 70, ECHR 2004-III).

99. Generally speaking, the principle of the rule of law requires that any interference be based on an instrument of general application. However, in certain exceptional situations the Court has been prepared to accept, albeit implicitly, the existence of special laws laying down specific conditions that apply to one or more named individuals (see *Former King of Greece and Others* (merits), cited above, §§ 80-82; *The Holy Monasteries v. Greece*, 9 December 1994, Series A no. 301-A; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, Series A no. 301-B; and, under Article 6 § 1, *Ruiz-Mateos v. Spain*, 23 June 1993, Series A no. 262). Similarly, as regards the assessment of the precision of terms in the applicable law, the Court has recognised, in relation to reforms carried out in a State after its transition from a totalitarian regime to a democracy, that in the particular context of central and eastern European States it had to take into account the consequences of the transition to democracy and the specific circumstances of each case (see *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, § 166, 15 March 2007).

(b) Application of the above-mentioned principles in the present case

100. In the present case it is not in dispute that the impugned expropriation was carried out on the basis of the Law of 30 October 1997 on expropriation for the needs of the State of land within the Free Commercial Port of Riga (see paragraph 54 above). The Court must therefore ascertain whether that law met the requirement of "lawfulness" as defined in its case-law.

101. In this connection the Court notes that in Latvian law the formal decision on expropriation is taken not by the executive but by Parliament in the form of a special law. The General Expropriation Act, enacted in 1923 and as applicable at the material time, subjected any expropriation of real estate to the following procedure: first the Government submitted to Parliament an expropriation proposal that had to satisfy certain criteria; then, on the basis of that proposal, Parliament enacted a special law ordering the expropriation of the property concerned; lastly, it was for the expropriating public authority to enter into negotiations with the owner for the purpose of reaching a friendly agreement as to the amount of the compensation, failing which the authority would refer the matter to the competent court for settlement of the dispute and determination of the final sum to be paid in compensation. The Court notes that the law which superseded the General Expropriation Act of 1923 retained the mechanism

that applied where the State and the owner could not reach a friendly settlement (see paragraph 52 above).

102. The Court observes that this is a feature of the Latvian legal system, dating back to 1923, and enshrined in Article 105 of the Constitution in 1998 (see paragraph 40 above). Far from being specific to Latvia, the practice of expropriation by means of *ad hominem* laws (see, in particular, *Ruiz-Mateos*, cited above, together with, *mutatis mutandis*, *Gorraiz Lizarraga*, cited above, § 58) is part of a nineteenth-century liberal tradition with the aim of ensuring the protection of ownership against abuse by the executive by subjecting any expropriation to parliamentary approval on a case-by-case basis. Illustrations of this can be found in section 3 of the French Public Interest Expropriation Act of 3 May 1841, which obliged the legislature to record in a special legislative instrument the public interest of any major public works, and in the Belgian laws of 17 April 1835 and 27 May 1870, under which the public interest of major public works had in some cases to be established by Parliament in the form of a statute. In its judgment of 16 December 2005 the Latvian Constitutional Court emphasised that this feature of Latvian expropriation law was protective of the right of ownership (see paragraph 62 above). In any event, the Court reiterates that it is in the first place for the domestic courts to rule on the constitutionality of domestic law (see *Jahn and Others*, cited above, § 86). For its part, it finds that the general principles and objectives of the expropriation system set up by Latvian law do not, as such, raise any issue of "lawfulness" within the meaning of Article 1 of Protocol No. 1.

103. In the present case, however, the Court notes that on 5 August 1997 the Cabinet, acting by virtue of its delegated legislative power, adopted Regulation no. 273 ordering the expropriation of all the properties at issue in the present case. That Regulation, together with the Law of 30 October 1997 by which it was confirmed, was interpreted by the domestic courts as providing for a derogation from the General Expropriation Act of 1923, making it possible to disregard the usual expropriation procedure in the case of the applicants and to limit the amount of the compensation by reference to Article 2 of the Supreme Council's decision of 1992. Prior to the adoption of Regulation no. 273 and the enactment of the Law confirming it, the applicants could have expected that any expropriation of their property would be carried out in accordance with the 1923 General Expropriation Act. Admittedly, the special Law of 30 October 1997 was on a par with the 1923 Act in the legislative hierarchy and the applicants have never argued that, in Latvian constitutional law, Parliament cannot derogate from an ordinary law by a subsequent law of equal rank. For their part, the domestic courts found that the legal basis for the impugned expropriation was compliant with Latvian law.

104. As regards the limitation of the compensation paid to the applicants – the subject of their complaint – the Court notes that it was apparent from

Article 2 of the Supreme Council's decision of 1992, as amended by the Law of 19 December 1996, that this provision was one of general application, that it had entered into force before the impugned expropriation and that, in view of its wording, the applicants could expect it to be applied to them. In addition, this provision was declared by the Latvian Constitutional Court to be compliant with Article 1 of Protocol No. 1 (see paragraph 61 above).

105. The Court nevertheless remains doubtful as to whether the impugned expropriation may be regarded as having been carried out "subject to the conditions provided for by law", having regard in particular to the derogation applied to the applicants and to the procedural safeguards that were – or were not – attached to it (see paragraphs 23 *in fine*, 30-35 and 103 above). The Court does not, however, find it necessary to settle that question, as the impugned expropriation breaches Article 1 of Protocol No. 1 for other reasons (see paragraph 131 below).

2. "In the public interest"

106. The applicants challenged the legitimacy of the aim pursued by the impugned expropriation. In this connection, the Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Former King of Greece and Others* (merits), cited above, § 87; *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98; and *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I).

107. In the present case, the Government argued that the State needed the expropriated land, situated near the Free Port of Riga, to extend, renovate and rebuild the port. The Court has no convincing evidence on which to conclude that these reasons were manifestly devoid of any reasonable basis (contrast *Tkachevy v. Russia*, no. 35430/05, § 50, 14 February 2012).

3. Proportionality of the impugned measure

(a) General principles

108. Even if it has taken place "subject to the conditions provided for by law" – implying the absence of arbitrariness – and in the public interest, an interference with the right to the peaceful enjoyment of possessions must always strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Scordino*, cited above, § 93).

109. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III, and *Herrmann v. Germany* [GC], no. 9300/07, § 74, 26 June 2012). Nevertheless, the Court cannot abdicate its power of review and must therefore determine whether the requisite balance was maintained in a manner consonant with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Jahn and Others*, cited above, § 93).

110. Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. The Court has already held that the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference. In many cases of lawful expropriation, such as a distinct taking of land for road construction or other "public interest" purposes, only full compensation may be regarded as reasonably related to the value of the property (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 78, 28 November 2002; see also, *mutatis mutandis*, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II; and *Efstathiou and Michailidis & Co. Motel Amerika v. Greece*, no. 55794/00, § 26, ECHR 2003-IX). On this point, the Court cannot equate a lawful expropriation, complying with domestic law requirements, with a constructive expropriation that seeks to confirm a factual situation arising from unlawful acts committed by the authorities (see *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, §§ 94-95, 22 December 2009).

111. Moreover, the Court reiterates that, where an individual's property has been expropriated, there should be a procedure ensuring an overall

assessment of the consequences of the expropriation, including the award of an amount of compensation in line with the value of the expropriated property, the determination of the persons entitled to compensation and the settlement of any other issues relating to the expropriation (see *Efstathiou and Michailidis & Co. Motel Amerika*, cited above, § 29). As to the amount of the compensation, it must normally be calculated based on the value of the property at the date on which ownership thereof was lost. Any other approach could open the door to a degree of uncertainty or even arbitrariness (see *Guiso-Gallisay* (just satisfaction) [GC], cited above, § 103).

112. However, Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances (see *Broniowski*, cited above, § 182). Admittedly, a total lack of compensation can be considered justifiable only in exceptional circumstances (see *Former King of Greece and Others* (merits), cited above, § 89). Legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *James and Others*, cited above, § 54); in such cases, the compensation does not necessarily have to reflect the full value of the property in question.

113. This principle applies all the more forcefully when laws are enacted in the context of a change of political and economic regime, especially during the initial transition period, which is necessarily marked by upheavals and uncertainties; in such cases the State has a particularly wide margin of appreciation (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX; *Jahn and Others*, cited above, § 116 (a); and *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 42, 3 November 2009). Thus, for example, the Court has held that less than full compensation may also be necessary *a fortiori* where property is taken for the purposes of "such fundamental changes of a country's constitutional system as the transition from a monarchy to a republic" (*see Former King of Greece and Others* (merits), cited above, § 87). The Court reaffirmed that principle in *Broniowski* (cited above, § 182), in the context of a property restitution and compensation policy, specifying that a scheme to regulate property, being "wide-reaching but controversial ... with significant economic impact for the country as a whole", could involve decisions restricting compensation for the taking or restitution of property to a level below its market value. The Court has also reiterated these principles regarding the enactment of laws in "the exceptional context of German reunification" (see *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 77 and 111-112, ECHR 2005-V, and *Jahn and Others*, cited above).

114. Lastly, in order to assess the conformity of the State's conduct with the requirements of Article 1 of Protocol No. 1, the Court must conduct an

overall examination of the various interests in issue, having regard to the fact that the Convention is intended to guarantee rights that are "practical and effective", not theoretical or illusory. It must go beneath appearances and look into the reality of the situation at issue, taking account of all the relevant circumstances, including the conduct of the parties to the proceedings, the means employed by the State and the implementation of those means. Where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Fener Rum Erkek Lisesi Vakfi v. Turkey*, no. 34478/97, § 46, 9 January 2007, and *Bistrović v. Croatia*, no. 25774/05, § 35, 31 May 2007).

(b) Application of the above-mentioned principles in the present case

115. The Court observes at the outset that the value of the impugned properties was assessed on three separate occasions. The first estimation was made in 1994 when the land was acquired by the applicants in the form of a donation; the value indicated by the parties in the contracts of donation was LVL 500 or LVL 1,000 for each plot of land. The Court thus notes that the applicants themselves initially decided to assess their properties at an exceptionally low value and the parties agreed that this assessment was to be used solely for the calculation of the registration tax. Leaving aside the question of the parties' good faith as regards their tax obligations, it should be noted that this calculation was never relied on in the subsequent expropriation and compensation procedure.

116. In 1996 the second evaluation of the properties in issue, carried out by the Real Estate Valuation Centre of the State Land Authority, was based on their cadastral value. Following that evaluation, their value was fixed at approximately EUR 900,000 for the first applicant's property and over EUR 5 million for the second applicant's property. The Court would point out that the cadastral value of a property, far from being a theoretical or fanciful sum, is the value that is used as the basis for calculating the land tax to be levied thereon.

117. The third and last evaluation, carried out in 1997, was intended to determine the compensation to be awarded to the applicants in the event of expropriation. The compensation, calculated on the basis of the value of the properties in 1940, was fixed at about EUR 850 for the first applicant and about EUR 13,500 for the second applicant. These were indeed the sums that the applicants received by way of compensation under the Law of 19 December 1996, which was enacted after the applicants had acquired the land at issue (see paragraph 53 above).

118. The Court takes the view that the Latvian authorities were justified in deciding not to compensate the applicants for the full market value of the expropriated property and that much lower amounts could suffice to fulfil the requirements of Article 1 of Protocol No. 1 for three reasons: firstly,

because the actual market value of the land could not objectively be determined, in particular because of the exclusive right of purchase introduced for the benefit of the State and local authorities by the Ports Act (see paragraph 47 above); secondly, because the land at issue was subject to a statutory servitude for the benefit of the port (see paragraph 56 above); and lastly, because the applicants had not invested in the development of their land and had not paid any land tax, the tax reassessment procedure subsequently initiated against them by Riga City Council having been unsuccessful.

119. Nevertheless, the Court observes an extreme disproportion between the official cadastral value of the land and the compensation received by the applicants: that received by the first applicant constituted less than one thousandth of the cadastral value of his land, and the compensation awarded to the second applicant was some 350 times lower than the total cadastral value of all his properties (see, *mutatis mutandis*, *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, §§ 123-124, 27 November 2007). In the Court's view, such disproportionate awards are almost tantamount to a complete lack of compensation. As the Court has already indicated above, only very exceptional circumstances may justify such a situation. It is accordingly for the Court to ascertain whether such circumstances existed in the present case, by examining in turn the two points raised by the Government in this connection, namely the applicants' personal situations and conduct, together with the general historical and political background to the impugned measure.

120. As regards, first, the personal situations of the applicants, the Court notes that their good faith as to the acquisition of the property in question has never been disputed at national level (see, *mutatis mutandis*, *N.A. and Others v. Turkey*, no. 37451/97, § 39, ECHR 2005-X). Whilst the Government have appeared to call into question before the Court the circumstances in which the applicants became the owners of the land at issue, the Court finds that the Latvian authorities never took legal action to challenge the validity of the 1994 contracts of donation, whereas they could have done so based on the relevant provisions of the Civil Code (see paragraph 59 above). On the contrary, they formally recognised the applicants' right of ownership by registering the land in their names and by paying them rent. In those circumstances the Court does not find any reason to question the conformity of the donations with the requirements of Latvian law or the validity of the applicants' right of ownership.

121. The Court notes that whilst the applicants acquired the land at issue by way of donation, the parties agreed that this had taken place in return for certain services rendered by the applicants to the donors (see the specific provision of the Civil Code cited in paragraph 60 above). It would therefore be incorrect, strictly speaking, to assert that the property in question was acquired "free of charge". In any event, a donation being definable as a

transaction entered into with an *animus donandi*, the manner in which the applicants acquired their property cannot be held against them (see paragraph 115 above). Similarly, whilst it is true that the applicants possessed their land for only about three years, that fact does not affect the value of the property and does not by itself justify a significant reduction in compensation. Consequently, the Court concludes that the applicants' personal circumstances and conduct did not in themselves justify the award of such minimal sums.

122. As to the general historical and political background to the case, the Government argued that the impugned measure fell into the broader framework of the denationalisation process following Latvia's restoration of independence and that the present case had to be examined in that context. Even though the measure was not formally taken under the legislation on denationalisation or land and real-estate reform – which was removed from the scope of Article 1 of Protocol No. 1 as a result of the reservation made by Latvia (see *Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, ECHR 2001-XI, and *Liepājnieks v. Latvia* (dec.), no. 37586/06, § 49, 2 November 2010) – the Court finds it appropriate to go beyond a formalistic approach and to consider the land reform in its broader sense. However, it finds that by the time of their expropriation, all the disputed plots of land had already, with final effect, been denationalised and allotted to individuals. In this connection, the Court cannot equate individuals who had not yet recovered their property with those who were already in possession of a valid title deed (see, in this connection, *Kopecký*, cited above, §§ 53-61).

123. The Court observes that the Government relied on its judgment in the case of *Jahn and Others* (cited above), but would point out that the latter concerned the rectification *ex post facto*, by legislation, of manifestly unfair situations that had been created by the property restitution process. The Court recognises that in that case it found, in view of the convincing social-justice reasons put forward by the national authorities in the exceptional context of German reunification, that the absence of compensation did not upset the "fair balance" to be struck between the protection of property and the requirements of the general interest (ibid., § 117), but it would emphasise that it was the unique nature of the general political and legal context – and not simply the exceptional nature of the circumstances – that secured its acceptance of expropriation without compensation. In the Court's view the background to the two cases is fundamentally different, in particular as regards the three points that led it to find that the *Jahn and Others* case was exceptional in nature (ibid., § 116).

124. First, the circumstances of the enactment of the relevant legislation in the present case and in *Jahn and Others* are not really comparable. The Modrow Law at issue in *Jahn and Others* had been enacted by a parliament that had not been democratically elected, during a transitional period between two regimes that was inevitably marked by upheavals and

uncertainties. In those circumstances, even if the applicants had acquired formal title, they could not be sure that their legal position would be maintained (ibid., § 116 (a)). However, in the present case the laws were enacted by a democratically elected parliament and there was no reason why the applicants could not maintain their rights, except in the event of fraudulent enrichment to the detriment of the former owners, but, as the Court has already noted, neither the validity of the contracts of donation nor the good faith of the applicants has been called into question by the Latvian authorities. In addition, unlike that of the applicants in the *Jahn and Others* case, the status of Mr Vistiņš and Mr Perepjolkins as property owners was unquestionably sound and the claims deriving from the enjoyment of their possessions had been further strengthened by the Free Commercial Port of Riga Act, which had subjected their land to profitable servitudes (see paragraph 56 above).

125. Secondly, the time taken by the legislature is a factor to be taken into consideration in assessing proportionality (see *Althoff and Others v. Germany*, no. 5631/05, § 71, 8 December 2011). In the case of *Jahn and Others* a fairly short period of time (two years) had elapsed between German reunification and the enactment of the second Property Rights Amendment Act. Having regard to the huge task facing the German legislature when dealing with, among other things, all the complex issues relating to property rights raised by the transition to a democratic, market-economy regime, the Court acknowledged that it had intervened within a reasonable time to correct the – in its view, unjust – effects of the Modrow Law and that it could not be criticised for failing to realise the full effect of that Law on the very day on which German reunification had taken effect (ibid., § 116 (b)). In the present case, however, all the events at issue took place more than three years after the final re-entry into force of the democratic Constitution of 1922 and more than five years after the restoration of independence of Latvia, that is to say, well after the end of the period of historic upheaval (see, in this respect, *Žd*anoka v. Latvia* [GC], no. 58278/00, §§ 18-27, ECHR 2006-IV). It follows that, whilst it was still open to the Latvian legislature, in 1997, to correct any errors that may have been committed during the land reform, it could nevertheless be expected to uphold the principle of legal certainty and to refrain from imposing excessive burdens on individuals.

126. Thirdly and lastly, in the case of *Jahn and Others* the objectives of the second Property Rights Amendment Act were legitimate, and the Court therefore recognised that the Federal Republic of Germany's parliament could not be deemed to have been manifestly unreasonable in considering that it had a duty to correct the effects of the Modrow Law for reasons of social justice. Likewise, the balancing of the relevant interests carried out by the German Federal Constitutional Court, in examining the compatibility of that amending Law with the Basic Law, had not been arbitrary. Given the

"windfall" from which the applicants had benefited as a result of the Modrow Law, the fact that the relevant correction had been made without paying any compensation was not disproportionate. In particular, the second Property Rights Amendment Act did not benefit the State alone, but in some cases also provided for the redistribution of land to farmers (ibid., § 116 (c)). By contrast, the Court questions whether "social justice" may be invoked in the present case, where the expropriation at issue was of benefit solely to the State, which did not redistribute any of the property to individuals.

127. In sum, unlike the case of *Jahn and Others*, the present case is not one where a manifestly unjust situation that emerged in the process of denationalisation had to be remedied by the legislature *ex post facto* within a relatively short time in order to restore social justice. As the general context and the specific circumstances of the two cases are fundamentally different, the *Jahn and Others* judgment cannot usefully be relied upon to justify the lack of sufficient compensation observed in the present case.

128. Moreover, the Court notes that shortly after being deprived of their property, the applicants received significant amounts from the Free Commercial Port of Riga for the rent arrears due to them and the servitudes to which their land was subjected. Those amounts – calculated this time on the basis of the current value, and not that of 1940 – were respectively 95 times higher than the compensation granted to the first applicant and 40 times higher than that granted to the second applicant. The Court, noting that the rent arrears due to the applicants derived from a separate legal basis from that of the compensation awarded to them, is unable to agree with the Government's argument that the former sufficed to make up for the insignificance of the latter. In any event, the disproportion between the rent arrears and the compensation awarded confirms that the compensation was unreasonably low.

129. Lastly, the Government failed to show that the legitimate aim relied on, namely that of optimising the management of the infrastructure of the Free Port of Riga in the general context of the State's economic policy, could not be fulfilled by less drastic measures than expropriation compensated for by purely symbolic sums. Whilst the Court recognises that the Government are entitled to invoke the State's budgetary difficulties, these do not, however, constitute an imperative capable of justifying the adoption of such exceptional measures. In principle, it is not for the Court to indicate to the Contracting Parties what concrete legislative or regulatory measures should be taken in order to comply with their obligations. That being said, an exchange of land or a reduction in the rent due to the applicants – for as long as the State did not have the requisite budgetary resources to expropriate their land in return for fair compensation – are readily conceivable examples of such measures. Furthermore, the authorities could have calculated the compensation on the basis of the cadastral value

of the land at the date on which the applicants had actually lost their title instead of using the cadastral value from 1940 (see *Guiso-Gallisay* (just satisfaction) [GC], cited above, § 103). However, there is no evidence in the file that such measures were discussed or even envisaged at national level.

130. In those circumstances, even though Article 1 of Protocol No. 1 did not, in the present case, require the reimbursement of the full cadastral or market value of the expropriated properties, the Court finds that the disproportion between their current cadastral value and the compensation awarded – resulting, moreover, from a retrospective legislative amendment which created an inequality to the State's advantage and to the applicants' disadvantage – is too significant for it to find that a "fair balance" was struck between the interests of the community and the applicants' fundamental rights (see, *mutatis mutandis*, *Urbárska Obec Trenčianske Biskupice*, cited above, § 126, and *Althoff*, cited above, § 73).

131. Having regard to all the relevant circumstances of the present case, the Court finds that the State overstepped the margin of appreciation afforded to it and that the expropriation complained of by the applicants imposed on them a disproportionate and excessive burden, upsetting the "fair balance" to be struck between the protection of property and the requirements of the general interest.

Accordingly, there has been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL No. 1

132. The applicants argued that the impugned expropriation constituted discrimination on grounds of property. In this connection they relied on Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... property ... or other status."

133. The Government took the view that there could not be any discrimination in the present case, as the applicants and all the other individuals who had acquired land by way of donation *inter vivos* were in an objectively different situation from that of owners who had purchased their land. The donees had obtained their land free of charge and had not invested in its development, whereas the purchasers had acquired theirs at considerable expense. The Government thus concluded that the respective situations of the two categories of owner were not similar, or even comparable. Even if the contrary were true, they argued that the alleged difference in treatment was justified by objective and reasonable considerations.

134. The Court observes that in its judgment the Chamber found that, assuming that the applicants' situation was comparable to that of other

owners of real estate and having regard to the broad margin of appreciation enjoyed by Latvia in matters of denationalisation, the situation at issue was based on objective and reasonable justification, and that for this reason there had been no violation of Article 14 of the Convention.

135. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see, for example, *Chassagnou and Others*, cited above, § 89).

136. In the circumstances of the present case the Court is of the view that the inequality of treatment of which the applicants claimed to be victims has been sufficiently taken into account in the above assessment that has led to the finding of a violation of Article 1 of Protocol No. 1 taken separately. Accordingly, it finds that there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see, *mutatis mutandis*, *Church of Scientology Moscow v. Russia*, no. 18147/02, § 101, 5 April 2007).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. 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."

138. Under this provision the applicants claimed as follows:

(a) reimbursement of the full cadastral value of the land in question at the time of its expropriation, namely 564,140 Latvian lati (LVL; 802,698.90 euros (EUR)) for the first applicant, and LVL 3,126,480 (EUR 4,448,580.26) for the second applicant;

(b) reimbursement of the loss of income corresponding to the rent in respect of the land in question that had not been paid to them in the period from 1998 to 2006, namely LVL 152,317.80 (EUR 216,728.70) for the first applicant and LVL 844,149.60 (EUR 1,201,116.67) for the second applicant; and

(c) reimbursement of procedural costs at LVL 3,500 (EUR 4,980.05) for each of the applicants.

139. The Government challenged the applicants' claims.

140. Having regard to the circumstances of the case, the Court finds that the question of the application of Article 41 of the Convention is not ready for decision. Consequently, the question should be reserved in whole and the further procedure fixed, taking into account the possibility of an agreement being reached between the respondent State and the applicants (see Rule 75 § 1 of the Rules of Court) and the Court's findings in paragraph 118 above. For this purpose the Court grants the parties three months from the date of the present judgment.

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government's preliminary objection under Article 35 § 3 (b) of the Convention;

2. *Holds*, by twelve votes to five, that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds*, unanimously, that no separate issue arises under Article 14 of the Convention taken together with Article 1 of Protocol No. 1;

4. *Holds*, unanimously, that the question of the application of Article 41 of the Convention is not ready for decision;

accordingly,

(a) *reserves* the said question in whole;

(b) *invites* the Government and the applicants to submit, within three months from the date of notification of this judgment, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Court the power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 October 2012.

Michael O'Boyle	Nicolas Bratza
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Bratza, Garlicki, Lorenzen, Tsotsoria and Pardalos is annexed to this judgment.

N.B.
M.O'B.

JOINT PARTLY DISSENTING OPINION OF JUDGES BRATZA, GARLICKI, LORENZEN, TSOTSORIA AND PARDALOS

I.

1. It is with regret that we cannot agree with the majority's conclusion that there has been a violation of Article 1 of Protocol No. 1. In our opinion, the approach adopted in the Chamber judgment should have been confirmed.

We are ready to accept that the taking of the applicants' land constituted an expropriation measure.

It seems that the preference of the Grand Chamber was to avoid answering the question whether the requirement of legality had been met in the present case (see paragraph 105). It seems also that, taking into account the strategic nature of the Riga Port, the expropriation measure was found to have a sufficient link to the "public interest" (see paragraph 107).

2. What remains, therefore, is the assessment of proportionality. In the circumstances of the case, there is no alternative but to focus this assessment on the compensation issue: although it seems that the Grand Chamber might have accepted much lower compensation than the full market value of the expropriated land (see paragraph 118), the violation is said to result from the "extreme disproportion" between the official cadastral values and the amount of compensation paid to the applicants (see paragraph 119).

However, since any discussion of the question of "fair balance" involves value-oriented elements, it also seems necessary to address the question of the legal and economic nature of the property rights in question.

II.

3. The Chamber judgment was, to a considerable extent, based on the assumption that the expropriation measure had to be regarded as taken within the first period of economic transition and, therefore, the State's margin of appreciation was particularly wide, in line with the Court's findings in *Jahn and Others v. Germany* ([GC], nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-VI). The Grand Chamber decided not to follow *Jahn* and has gone to great lengths to distinguish it from the present case (see paragraphs 123-127).

We are ready to agree that there are differences between *Jahn* and the present case. We are not ready, however, to conclude that the approach in *Jahn* is simply not applicable here.

4. The transition process in post-communist countries was a complicated and complex one.

First of all, it was a long-lasting process which, at best, could be regarded as concluded many years after it began. While it may be accepted that the margin for error has gradually decreased, it would be a naïve interpretation of the process to assume that, in Latvia as in many other countries, the transformation was already over in 1996/1997. It should be remembered that the Convention entered into effect in respect of Latvia only in 1997 and that in other "transition cases" (such as *Žd*anoka *v. Latvia* [GC], no. 58278/00, ECHR 2006-IV, or *Ādamsons v. Latvia*, no. 3669/03, 24 June 2008) the Court has not been as restrictive in calculating the transition period.

Secondly, it would be an oversimplification to perceive the process of transformation as a "one way street" of – at first – denationalisations and later reprivatisations and/or privatisations. In reality, this was a process of trial and error, in the course of which, quite often, measures taken one day had to be corrected or annulled the day after. This was sometimes due to a lack of experience and imagination (and, in particular, miscalculation of the economic effects of the early "restitutionary enthusiasm") and sometimes due to the bitter realisation that economic transformation generated a considerable amount of corruption and abuse. In consequence, some "steps back" have on occasion been not only economically justified, but also politically (morally) correct. Renationalisation measures could well enter into that category.

In brief, although it is true that the reacquisition of the harbour area and the Port of Riga were matters not directly related to restitution or denationalisation, it does not mean that those decisions fell outside the general realm of the transformation process. It would appear that, as in *Jahn*, the harbour expropriations in the present case constituted a correction of a previous error. No economic or political logic can justify a situation in which, by a combination of restitution and donation transactions, the State (i.e. the taxpayer) gives away a 1,500-euro plot in 1994 and is required to buy it back for 5 million only two years later. That is why the Chamber was correct in accepting that the expropriation at issue was in substance part of the land and property reform carried out after the restoration of independence (see paragraph 76 of the Chamber judgment).

5. If the present case thus belongs to the category of "transformation cases", it would be difficult not to rely upon *Jahn*.

The case of *James and Others v. the United Kingdom* (21 February 1986, Series A no. 98) is, of course, relevant in that it provides the general conceptual framework, but *James* dealt with measures adopted in a well-established democracy, that is to say, in a clearly non-transition context. Therefore, at best, it applies but *mutatis mutandis* to the present situation.

The case of the *Former King of Greece and Others v. Greece* ([GC] (merits), no. 25701/94, ECHR 2000-XII), while more closely related to a democratic transition, did not involve the process of economic transformation and should be read rather as falling within the category of "post-revolutionary justice".

The cases of *Broniowski v. Poland* ([GC], no. 31443/96, ECHR 2004-V) and, to some extent, *Suljagić v. Bosnia and Herzegovina* (no. 27912/02, 3 November 2009) dealt with specific legislative entitlements which had not been correctly implemented by the authorities. In neither of these cases did the State claim that its action had been aimed at the correction of earlier mistakes.

For corrective actions, *Jahn* remains the most relevant precedent[1] and the only one adopted at Grand Chamber level. It is true that the holding in *Jahn* was limited to the particular context of the reunification of Germany. This approach distinguishes *Jahn* from other situations in which German authorities have interfered with property rights. But the logic of *Jahn* cannot be confined exclusively to the German context. The transformation process in other post-communist countries was more complex, required more sacrifices and witnessed more cases of error, deception or abuse than German reunification, which was implemented within the existing economic and legal framework of the Federal Republic of Germany.

6. Therefore, even making the bold assumption that no deception or abuse had taken place in the present case, the logic of *Jahn* can and should also apply to the situation in Latvia, as well as that in other transition countries.

This logic is composed of three elements: (a) in the transition process, a State may inevitably make mistakes and has a right to take corrective action; (b) in such a context the State's margin of appreciation becomes wider and the corrective action may interfere with acquired rights and expectations; and (c) the width of the margin of appreciation narrows with the passage of time. The same approach, albeit in a different context, was later confirmed in *Suljagić* (cited above – where no violation was found) as well as in *Althoff and Others v. Germany* (no. 5631/05, 8 December 2011 – where a violation was found).

It cannot be denied that there are many differences between the factual situation in *Jahn* and that in the present case. However, *Jahn* remains

[1] The recent judgment in *Althoff and Others v. Germany* also seems to confirm the general applicability of *Jahn* to the post-reunification property regulations in Germany. The finding of a violation was based rather on the "very particular circumstances" of the case (see *Althoff and Others v. Germany*, no. 5631/05, § 74, 8 December 2011), in particular on the retrospectivity of the State action, the legislative intervention in a pending procedure and, last but not least, the very long delay (eight years after German reunification and six years after the expiry of the statutory time-limit for restitution claims based on the Property Act) in the State's action.

applicable as a general framework which may and should be used when expropriations are closely connected to the process of transition. In any event, *Jahn* cannot be read in an *a contrario* manner, at least in a situation where some compensation has been offered to the "victims" of such expropriation. The Grand Chamber seems to have overlooked the fact that, while the Chamber judgment followed the logic of the *Jahn* approach, it did not duplicate the solution in that case.

7. The present case arises from corrective action taken by the State and that is why there is no alternative but to follow the *Jahn* approach. In other words, it should be recognised not only that the State has a very wide margin of appreciation in taking back what was erroneously given away, but also that it has the right to take into account the financial dimension of the evolving situation.

III.

8. This is the context in which the compensation issue has to be addressed. While a total lack of compensation can be considered justifiable only in exceptional circumstances, legitimate "public interest" objectives, may often call for less than reimbursement of the full market value (see *James*, cited above, § 54). This principle applies all the more forcefully when laws are enacted in the context of a change of political and economic regime, especially during the initial transition period, which is necessarily marked by upheavals and uncertainties; in such cases the State has a particularly wide margin of appreciation (see paragraphs 81-82 of the Chamber judgment).

In consequence the Court, in assessing the proportionality of financial arrangements, is not absolutely bound by the market value of the expropriated property. If there are valid arguments to depart from an evaluation based on the market value, a lesser award of compensation (or – exceptionally – even a total lack of compensation) may be accepted. The ultimate criterion is always the same: whether the amount of compensation imposes an excessive individual burden on the applicant(s), in violation of the "fair balance" requirement.

9. We believe that, in the present case, the amount of compensation did not impose an excessive burden on the applicants. Three groups of arguments support that position.

10. In the mathematical perspective, it should firstly be taken into account that the applicants had received the disputed plots as gifts in consideration of some personal services rendered to the previous owners. The pecuniary value of those services has never been established, but their description indicates that it could not have been very high. Therefore, the applicants' original investment had a limited pecuniary aspect.

Secondly, the applicants themselves declared, in the process of calculation of the registration tax, that the indicative value of the acquired plots was about EUR 705 and EUR 1,410 respectively. This valuation has never been contested by the authorities.

Thirdly, as a result of legal actions concerning the payment of rent arrears for 1994-1996, the applicants were awarded about EUR 85,000 and EUR 593,150 respectively.

Finally, the amount of compensation for expropriation of the land was assessed at about EUR 850 and EUR 13,500 respectively. This shows that the payment actually awarded to the applicants was related neither to their original investment nor to their initial declarations as to the value of their plots. Within two years, the applicants were able to generate a considerable profit from their opportunistic action. While it is undisputed that, in 1997, the cadastral value of the plots was counted in millions, the question is whether the payment of the whole cadastral (market) value would not have imposed an excessive burden on the State. In our opinion, the Chamber was correct in adopting a balanced mathematical approach in which all payments were taken together and assessed as sufficiently addressing the interests of both parties.

11. In a perspective of "historical justice", it should be taken into account that the applicants were not the "historical owners". It can be accepted that, in the process of democratic transition, historical owners not only may have a (moral) claim to the restitution of the once-confiscated property but also a claim to compensation for moral suffering and other difficulties in surviving under the communist regime. In other words, the State may owe to them more than just a mathematically corrected amount of compensation. Additional and unexpected profit (even of a windfall nature) may be justified in those historical categories. However, the applicants have never had any historical claim to the land in question. They managed to acquire this land without any substantial investment and now claim an exclusive entitlement to all profits resulting from the transaction. Since no "historical-justice" argument can support their position, the present case is closer to the situation in *Jahn* than to the situations in *Althoff*, *Suljagić* or *Broniowski* (all cited above).

12. Finally, in a perspective of "social justice", the question arises as to what extent the applicants' claim to receive the actual market value of their land could be regarded as legitimate.

Firstly, the whole story belongs to the transformation period, that is to say, a period in which the State had not only more opportunities to make mistakes but also more powers to take corrective action.

Secondly, it seems, at best, mysterious how the market value of the same land could have risen from about EUR 1,000 in 1994 to millions in 1996-1997. We agree that no direct proof of any illicit or criminal action has been forthcoming. Therefore, the only plausible explanation is that of error

on the part of the authorities. Either the value of the land had been much higher already in 1994, and the authorities erred in accepting a much lower value, as declared by the applicants to the tax office; or, the value of land soared within the two-year period, and the authorities erred in not predicting this development before the original restitution had taken place. The former explanation seems to correspond better to the facts of the case; it should be taken into account that the disputed plots have always formed part of the Riga Port and already contained a developed technical infrastructure. In any event, once a mistake has been made, the authorities should not be deprived of any possibility of correcting it.

Thirdly, while the Court may not be in a position to pass judgment on the moral quality of the transactions, this cannot mean that the Court is not allowed to take into account the context of the claim. A situation in which a gift for unexplained services later gives rise to a multi-million claim may be regarded as a typical illustration of the dark side of the transformation processes in the post-communist countries. And the general knowledge of the complicated picture of that process should dictate some caution in distributing good and bad faith between the parties. The assessment of proportionality cannot be morally sterile, particularly when the category of "social justice" is brought into play.

Fourthly, it is exactly the "social justice" consideration that militates against accepting the applicants' claim to astronomical profits. The prohibition on imposing an excessive burden applies to both sides and requires the Court to mitigate the protection afforded in cases of abuse. There seems to be something inherently wrong in a situation in which an individual is allowed to squeeze millions from the State in consequence of a not-fully-transparent sequence of transactions and valuations relating to the same plot of land. While the State should pay for its mistakes, there must be some reasonable limit to the making of profit at the taxpayer's expense.

13. In conclusion, whilst it is undisputed that that the compensation paid to the applicants represented only a fraction of the market value of their land, this does not mean that – in the particular circumstances of this case – no fair balance was struck between the owners' rights and the interests of the community.

Accordingly, there has not been a violation of Article 1 of Protocol No. 1. As to the applicants' claim under Article 14 of the Convention, we consider that it is subsumed by the complaint made under the substantive Article and therefore that no separate issue arises.