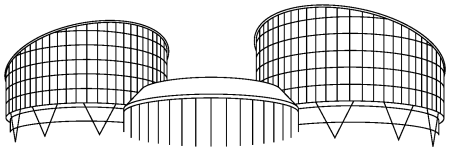

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 57566/12
YELVERTON INVESTMENTS B.V. and others
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 18 November 2014 as a Chamber composed of:

Päivi Hirvelä, *President,*
Ineta Ziemele,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 3 September 2012,

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

The Governments of the Netherlands and Austria, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), did not avail themselves of this right,

Having deliberated, decides as follows:

FACTS

1. The applicants are four companies with registered addresses in the Netherlands, Austria and Latvia (see appendix for details) ("the applicant companies"). They were represented by Mr D. Škutāns and Mr O. Jonāns, lawyers practising in Riga.

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

A. The circumstances of the case

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

1. Civil proceedings

4. At the material time the applicant companies held 71.38% of the shares in a/s "Ventbunkers", a Latvian public limited company (the "Company"). On 13 December 2011 the Ventspils Court (*Ventspils tiesa*) upheld the applicant companies' claim that a meeting of the Company's shareholders on 18 December 2009 had not been conducted legally, and declared void changes made in the course of that meeting concerning the election of members of the supervisory board (*padome*). The court did not provide other reasons or give any analysis in its judgment, since the Company, as the respondent in these civil proceedings, had agreed to the applicant companies' claim.

5. No appeal was lodged against the judgment.

6. On 3 January 2012 the judgment took effect.

2. Supervisory review

7. On 23 March 2012 the Chairman of the Department of Civil Cases of the Senate of the Supreme Court (*Augstākās tiesas Senāta Civillietu departamenta priekšsēdētājs*) submitted a protest against the judgment of 13 December 2011 in accordance with section 483 of the Civil Procedure Law, on the grounds of substantive breaches of the material and procedural legal provisions.

8. On 20 April 2012 the applicant companies filed their opinion.

9. On 26 April 2012 three judges, who had been selected by the Chairman of the Department of Civil Cases, accepted the protest for adjudication and initiated proceedings on points of law in respect of the judgment of 13 December 2011.

10. On 23 May 2012 a hearing took place before the Senate of the Supreme Court. During this hearing the applicant companies requested that the judges who had been selected by the Chairman of the Department of Civil Cases withdraw from examining their case. Their request was rejected.

11. On 23 May 2012 the proceedings were stayed pending the determination of the applicant companies' constitutional complaint (see paragraph 18 below).

12. On 5 February 2013 the applicant companies were informed that a hearing in the case would be held on 27 March 2013.

13. On 26 February 2013 the applicant companies requested that examination of the protest be adjourned pending a decision on their complaint by the Constitutional Court.

14. On 1 March 2013 the applicant companies were informed that no hearing would be held on 27 March 2013, taking into account the applicant companies' request of 26 February 2013 and given that the Constitutional Court's judgment was expected to be ready within one month of 13 March 2013 (see paragraph 20 below).

15. Following the delivery of the Constitutional Court's judgment (see paragraph 24 below) on 15 May 2013, the applicant companies were informed that a hearing would be held on 29 May 2013; they were invited to participate.

16. On 29 May 2013, following a hearing in the presence of the applicant companies, seven judges of the Senate of the Supreme Court examined and dismissed the protest.

17. On 29 June 2013 the full text of that judgment was made available to the applicant companies. In its relevant part it reads as follows:

> "[12] The Senate [of the Supreme Court], having examined the arguments advanced in the protest, considers that [it] should be dismissed.
>
> [12.1] Latvian law provides for [the possibility of] examining anew rulings that have taken effect in accordance with section 484 of the Civil Procedure Law. This possibility is strictly limited ... and shall be considered an exception to [the principle of] "*res judicata*". Such an exception is also provided under the laws of Austria, Germany, France, Sweden and other countries... The Constitutional Court ... has noted that [it] is necessary to exclude any doubts, even if only alleged, as to the impartiality of a court, meanwhile emphasising the need to balance the interests of the parties and to protect the rights to a fair trial and legal certainty of others... For these reasons, the Constitutional Court has not acceded to the [applicant companies'] request to give a ruling with retrospective effect, but has ruled that the protest must be examined in an extended composition of the Senate [of the Supreme Court].
>
> [12.2] The Senate [of the Supreme Court] finds that the protest under examination contains at least one ground mentioned in section [484] of the Civil Procedure Law, which must be examined from the perspective of a possible substantive breach of the material or procedural legal provisions ... by the Ventspils Court. As noted in the protest, section 288 of the Commercial Law provides for a three-month time-limit for lodging a claim against any decision adopted in a shareholder's meeting ... but not later than within one year of the date of the meeting; the claim, however, was lodged more than nine months after the expiry of the one-year time-limit. By accepting and examining the claim, the Ventspils Court may have breached (*varētu būt pārkāpusi*) an obligation laid down in section 131 of the Civil Procedure Law, which could be considered (*varētu tikt vērtēts*) to amount to a substantive breach of the procedural legal provisions.
>
> [12.3] It has been noted in the protest that four private companies ... applied to the Supreme Court with a request to submit a protest against the 13 December 2011 judgment of the Ventspils Court, and pointed out that they are shareholders in a/s "Ventbunkers". Section 484 of the Civil Procedure Law provides that a protest may be submitted in cases where the rights of persons who are not parties to the case are affected...
>
> [12.4] A protest is submitted with a view to quashing a ruling which has taken effect (*res judicata*). In its case-law, the European Court of Human Rights has reiterated on several occasions that the revision of a final judicial decision, if

permitted under national law, should be carried out only when circumstances of substantial character so require and upon application by the private parties affected. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question, except where it is necessary to correct fundamental defects or a miscarriage of justice (see the judgments in the ECHR cases *Bezrukovy v. Russia* [no. 34616/02, 10 May 2012] and *Ryabykh v. Russia* [no. 52854/99, ECHR 2003 IX], etc.).

The Senate [of the Supreme Court] finds that the plaintiff and the respondent [in the civil proceedings] are satisfied with the outcome of the case and have not used their rights of appeal. The Senate [of the Supreme Court] considers that there are no grounds to depart from the established case-law to the effect that there is no need to invite or admit all or some other shareholders in [the proceedings] instituted by one shareholder against a public limited company. The protest contains no specific [evidence] that the companies which made the request to submit a protest are indeed shareholders in a/s "Ventbunkers"; nor has their private-law interest been demonstrated.

[12.5] In the opinion of the Senate [of the Supreme Court] ... it has to be taken into account that the Ventspils Court's judgment did not concern the issue of who were the real shareholders in a/s "Ventbunkers", and how many shares each of them held. These issues are being determined in other proceedings and could have an effect on the further activity of a/s "Ventbunkers", notwithstanding the judgment of the Ventspils Court.

It must also be taken into account that, following complications as to whether or not the shareholders' meeting of 18 December 2009 actually took place and [in relation to] the legal effect of decisions adopted therein, another shareholders' meeting was held on 20 April 2012, [the legality of which] has not been challenged; at that meeting, new supervisory board [members] were elected; they [the supervisory board] made further changes to the board of management.

[12.6] Having examined these circumstances in their entirety, the Senate [of the Supreme Court] finds that preference should be given to the concept that final decisions should not be revised without exceptional necessity. Therefore, the Senate [of the Supreme Court] considers it permissible ... not to examine whether the alleged breach of section 131 of the Civil Procedure Law, as noted in the protest, is substantial, or whether the judgment affects the interests of private persons who are not parties to the case."

3. Proceedings before the Constitutional Court

18. On 15 May 2012 the applicant companies lodged a joint individual constitutional complaint with the Constitutional Court (*Satversmes tiesa*). They alleged that sections 483, 484, 464 (1) and 465 (1) of the Civil Procedure Law were not compatible with Article 92 (right to a fair trial) of the Constitution (*Satversme*).

19. On 8 June 2012 the Constitutional Court initiated proceedings with regard to the compatibility of section 483 with the Constitution, but rejected the remainder of the applicant companies' complaint. This decision was not subject to an appeal.

20. On 16 January 2013 the Constitutional Court held that the case would be decided on 13 March 2013 by means of a written procedure. The applicant companies were informed that they could familiarise themselves with the case materials and submit an opinion. On 5 and 11 February 2013 the applicant companies submitted their opinions.

21. On 5 March 2013 the applicant companies lodged another individual constitutional complaint, alleging that paragraph 63 of the transitional provisions of the Civil Procedure Law was also incompatible with Article 92 of the Constitution, in that supervisory review proceedings could be continued even after the relevant legal provision had been amended to the effect that the Chairman of the Department of Civil Cases could no longer submit a protest.

22. On 13 March 2013 the Constitutional Court examined the case materials and found that they did not contain sufficient information for the case to be decided by means of a written procedure. It set a hearing date and invited the applicant companies to participate.

23. On 16 April 2013 the Constitutional Court held a hearing and examined on the merits the applicant companies' constitutional complaint.

24. On 14 May 2013 the Constitutional Court delivered its judgment. The relevant part reads as follows:

> "8. The contested legal provision ceased to have effect on 1 January 2013.
>
> Parliament has requested that the proceedings be terminated. The [applicant companies], however, have requested that the proceedings be continued, that the contested legal provision be examined together with paragraph 63 of the transitional provisions and that the judgment be given retrospective effect. ...
>
> In itself, [the fact] that a legal provision has lost effect cannot always constitute a ground for terminating proceedings... The law provides that the Constitutional Court may terminate proceedings, but that it has no obligation to do so. The Constitutional Court must examine whether there are any circumstances which would indicate that it is necessary to continue the proceedings.
>
> Therefore, in examining the issue of whether the proceedings should be terminated, the Constitutional Court must take into account the need to safeguard fundamental rights as enshrined in the Constitution and to cancel out (*novērst*) any negative consequences resulting from the contested legal provision for persons...
>
> 10. ... [T]he protest about the ... judgment ... was submitted on 23 March 2012. On the basis of the protest, proceedings were initiated and [the case] was accepted for adjudication (*nodota iztiesāšanai*); that is, [it] reached another stage of proceedings where the legal provisions [of the Civil Procedure Law] on initiating ... proceedings do not apply. Consequently, paragraph 63 of the transitional provisions does not apply to the [applicant companies].
>
> Thus, paragraph 63 of the transitional provisions does not affect the [applicant companies] and cannot infringe their fundamental rights enshrined in Article 92 of the Constitution... [T]he [applicant companies'] request to expand the scope of their complaint so as to include paragraph 63 of the transitional provisions ... is dismissed...

13.2... In accordance with the ECHR case-law, the requirement of impartiality has two aspects – subjective and objective. Firstly, the court has to be subjectively impartial; in other words, a judge cannot have personal bias. Subjective or personal impartiality is presumed unless there is evidence to the contrary. Secondly, the court must be impartial from an objective viewpoint. This means that sufficient safeguards should be put in place to exclude any legitimate doubt on the part of the parties or society as to its impartiality (for further clarification, see the ECHR judgments in *Fey v. Austria* [24 February 1993], §§ 28-30, [Series A no. 255] and *Academy Trading Ltd and Others v. Greece*, no. 30342/96, § 43, 4 April 2000).

14. In the present case no issue arises concerning impartiality from the subjective aspect. The [applicant companies] allege that submission of the protest by the Chairman of the Civil Cases Department and its examination give raise to doubts about [objective] impartiality...

14.1 Under the objective test, it must be determined whether there are ascertainable facts which may raise doubts as to impartiality of the court. In this respect even appearances may be of a certain importance. Appearances, however, cannot be ascertained only from the perspective of the parties to the proceedings. It must be examined whether the doubts as to impartiality are objectively justified, because [what is at stake is] the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings (see, for example, *Academy Trading Ltd and Others*, [cited above], § 45). In other words, in examining the impartiality of a court, the impressions of society, looking at the courts from the outside, is also important. In order to find a breach of impartiality, it is sufficient to establish circumstances which indicate a potential risk of impartiality (see Grabenwarter C., *Europäische Menschenrechtskonvention*. C. H. Beck, 2005, p.303).

... [I]t can be concluded from the case materials and from the opinions expressed during the hearing [before the Constitutional Court] that the purpose of the legislative amendments to the contested legal provision was to exclude any doubts about the impartiality of the court...

Thus, the contested legal provision, together with the rights of the person submitting the protest to determine which judges would examine it, may raise doubts about the court's impartiality.

14.2 In order to determine whether a person's right to fair trial has been breached, [it is necessary to examine] whether [there exist] legitimate doubts about the impartiality of the court.

14.2.1. The [applicant companies] argue that the Chairman of the Department of Civil Cases determines alone the manner of examination of submitted protests, in that he is entitled to determine the judge or formation of judges who will examine the respective protest.

[The Constitutional Court] can accept Parliament's argument that examination of protests by the Senate [of the Supreme Court] is no different from examination of appeals on points of law.

[The Constitutional Court refers to the internal legal instrument entitled "The planning of allocation of cases in the Civil Cases Department and concludes that]... the cases ... could not, therefore, be allocated only according to the Chairman's views. Consequently, the [applicant companies'] argument that it is possible for the Chairman to decide which judges would examine the submitted protest, in line with his own views, is not substantiated.

14.2.2. The [applicant companies] note that the Chairman of the Civil Cases Department, by submitting a protest, expresses an opinion concerning the unlawful nature of the first-instance court ruling, and that this might to some extent influence the members of the Senate who subsequently examine the protest. Similar views are expressed by the Ombudsman. In addition, the amendments to the contested legal provision were based on such an argument.

[The Constitutional Court referred to Article 83 of the Constitution, the principle of independence of the courts and the institutional guarantees contained in Articles 83 and 84 of the Constitution]. Therefore, the Constitution and the Law on the Judiciary which set out the various requirements [necessary] for judges, contain certain safeguards so as to ensure their independence.

14.2.3. [The Constitutional Court finds that] Parliament's argument to the effect that the Chairman of the Civil Cases Department carries out only a filtering function ... is not substantiated. The regulation contained in the Civil Procedure Law also allowed the Chairman of the Civil Cases Department [of the Senate of the Supreme Court] to submit protests on his own motion or to supplement the submitted complaint with his own reasons. In such circumstances the Chairman of the Civil Cases Department practically carried out the role of the party (which submitted the cassation complaint), since the arguments set out in the protest became the subject of cassation proceedings, a dispute under examination by the Senate.

Further, the ECHR in a similar case, after having examined the situation in Lithuania, where the President of the Criminal Division of the Supreme Court could submit a protest and determine the manner of its examination, found a violation of Article 6 § 1 of the Convention on account of a lack of impartiality. The ECHR noted that, by submitting the protest, the President practically assumed the function of the prosecution. Although he did not sit as a member of the court which determined the protest, he did choose the judge rapporteur and the members of the Chamber from amongst those judges of the Criminal Division which he headed. Therefore, it could not be said that there were sufficient guarantees to exclude any doubt as to the absence of inappropriate pressure (see *Daktaras v. Lithuania*, no. 42095/98, §§ 35-38, ECHR 2000-X).

The present case is similar in many respects to the above-mentioned case before the ECHR. Having regard to [the conclusions in the *Daktaras* case], the right of the Chairman of the Civil Cases Department to submit a protest could also be in conflict with the right to impartial court.

The contested legal provision allows the Senate to examine cases which have been initiated upon its own motion. Such a regulation runs counter to the principle of a fair trial... Therefore, if the Chairman of the Civil Cases Department is using these rights, doubts may arise in society about the impartiality of the court.

Arguments were raised during the [Constitutional Court's] hearing which could dispel these doubts. For example, although the Chairman of the Civil Cases Department indicates his opinion on the complaint (application) by submitting a protest, this should not be taken to mean that judges are *a priori* required to agree with the reasoning provided in the protest. Also, practice indicates that protests submitted by a chairman may be dismissed... However, as mentioned above, the right to a fair trial requires excluding even alleged impartiality by a court. The contested legal provision creates such an appearance and therefore does not comply with the right to an impartial court.

Therefore, the contested provision does not comply with the first sentence of Article 92 of the Constitution.

15. Taking into account that the contested legal provision has ceased to have effect (*zaudējusi spēku*), it is not necessary for the Constitutional Court to declare it as such. Nevertheless, the [applicant companies] have requested that the contested legal provision be declared void (*spēkā neesoša*) [with retrospective effect] – either from the date of its adoption or from the date of application...

15.2. ... by declaring the contested legal provision void from the date of its adoption, the fundamental rights of other persons would be significantly interfered with.

15.3. The Constitutional Court must ensure that the interference with the [applicant companies'] fundamental rights resulting from application of the impugned unconstitutional legal provision is cancelled out in so far as possible...

Since the cassation proceedings in the case initiated in connection with the protest submitted by the Chairman of the Civil Cases Department have not yet been examined, the interference with the [applicant companies'] fundamental rights can be cancelled out by applying the legal provisions of the Civil Procedure Law, in compliance with the first sentence of Article 92 of the Constitution. In order to exclude any doubts about the court's impartiality, even if only alleged, [this] case should be examined in an extended composition of members of the Senate, that is, by at least seven of their number. The [applicant companies] also agree that interference with their fundamental rights could be cancelled out [*varētu novērst*] if the case were to be examined by a seven-judge bench."

B. Relevant domestic law

25. The first sentence of Article 92 of the Constitution enshrines every person's rights to defend their rights and lawful interests before a fair tribunal.

26. The relevant parts of the Civil Procedure Law read as follows:

Section 483 - Submitting a Protest

"A protest regarding a ruling that has taken effect may be submitted to the Senate [of the Supreme Court] by the President of the Supreme Court, by the Chairman of the Department of Civil Cases of the Senate of the Supreme Court or by the Prosecutor General, provided that no more than 10 years have passed since the ruling took effect."

Section 484 - Grounds for Submitting a Protest

"The grounds for submitting a protest regarding a ruling that has taken effect are substantive breaches of material or procedural legal provisions in cases which have been adjudicated only by a first-instance court, provided that no appeal has been lodged against the ruling by the parties to the case, in accordance with the law, for reasons beyond their control, or provided that the rights of State or municipal institutions or the rights of persons who were not parties to the case have been affected by the ruling."

Section 485 - Procedures for Adjudicating Protests

"A protest shall be adjudicated by the Senate in accordance with the procedures prescribed in sections 464-477 of this Law."

Section 464 (1) - Preparatory meeting by the Senate

"A three-judge formation determined by the chairman of the relevant department in a preparatory meeting shall determine whether to accept for examination ... protests submitted to the Senate."

Section 465 (1) - Adjudication by the Senate

"[After the case has been accepted for adjudication] the chairman of the relevant department shall determine the time and the formation for its examination and he/she shall appoint the judge rapporteur. The parties shall be informed about the time and place for adjudication."

27. Following the legislative amendments which took effect from 1 January 2013, section 483 of the Civil Procedure Law reads as follows:

"A protest regarding a judgment that has taken effect may be submitted to the Senate [of the Supreme Court] by the Prosecutor General or by the Chief Prosecutor of the Department for the Protection of the Rights of Individual and State of the General Prosecutor's Office, provided that no more than 10 years have passed since the ruling took effect."

28. Alongside these legislative amendments, a new transitional provision was included in the Civil Procedure Law to the effect that any complaints submitted to the relevant authority before the entry into effect of the amendments to section 483 were to be examined in accordance with the rules in force at the time of submission of such a complaint (paragraph 63).

COMPLAINTS

29. The applicant companies complained under Article 6 § 1 of the Convention that there had been a violation of their right to a fair trial because of the protest submitted by the Chairman of the Civil Cases Department of the Senate of the Supreme Court in respect of the Ventspils Court judgment of 13 December 2011. In particular, they argued that through submission of the protest, the principles of legal certainty, impartiality of a court and of equality of arms had been breached.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

1. The parties' submissions

30. The Government raised several preliminary objections. They considered that the applicant companies' complaint was, firstly, incompatible *ratione materiae*, in that there were no civil rights at stake – there was no individual right to submit a protest. There existed no right to request the authorities to withdraw the submitted protest, nor to be exempt from the protest procedure as such. They referred to the text of section 483 and argued that both the Chairman of the Department of Civil Cases and the Prosecutor General had discretionary power to submit protests. Secondly, the applicant companies had failed to exhaust the available domestic remedies, as they did not wait for the Constitutional Court's judgment to be given before applying to the Court; referring to the domestic law and the Court's case-law, the Government considered that the Constitutional Court represented an effective remedy.

31. Lastly, the Government invited the Court to strike the application out of its list of cases as "the matter has been resolved" in all three aspects of the case. As concerns the principle of legal certainty, they noted that the Senate of the Supreme Court had dismissed the protest and, accordingly, the Ventspils Court's judgment remained effective. Consequently, the circumstances complained of by the applicant companies no longer obtained, in view of the beneficial outcome of the supervisory review proceedings. The complaint was duly remedied, since the protest had been examined by seven judges. As concerns the principles of impartiality and equality of arms, the Chairman's right to submit the protest had been declared void and, in so far as it related to the applicant companies, section 483 of the Civil Procedure Law no longer had effect. Thus, the impugned circumstances no longer obtained and, in view of the fact that the protest had been examined by seven judges, sufficient redress had been provided.

32. The applicant companies disagreed. First, their complaint concerned the protest submitted by the Chairman of the Department of Civil Cases of the Senate of the Supreme Court, which, in their view, had infringed the principle of legal certainty; they did not claim that there was a civil right to submit a protest. In their view, the very fact that the final and binding ruling was called into question constituted a violation. They had had to make considerable efforts to prevent the violation from escalating. Secondly, the Constitutional Court was not an effective remedy, since it could not stop the supervisory review proceedings.

33. Lastly, the applicant companies were of the opinion that Article 6 § 1 had been breached by virtue of the fact that the Chairman of the Department of Civil Cases of the Senate of the Supreme Court had filed the protest and that the applicant companies had been obliged to undergo legal proceedings. The fact that the Senate of the Supreme Court did not quash the judgment only made the violation less serious. They disagreed with the Government's position that protests filed by public officials as such were permissible under the Convention. Their constitutional complaint was helpful in that the proceedings before the Senate of the Supreme Court had been stayed and, eventually, examined by seven judges rather than three. As a result, the level of impartiality was increased, but nevertheless the filed protest in itself had forced the applicant companies to undergo legal proceedings. The Constitutional Court's ruling was an ineffective remedy, but – since it improved the impartiality level before the Senate of Supreme Court – it had had to be exhausted.

2. The Court's assessment

34. The Court must ascertain whether the new facts brought to its attention, namely the legislative amendments which took effect on 1 January 2013 (see paragraph 27 above), the fact that the constitutional complaint brought by the applicant companies had been examined on the merits by the Constitutional Court (see paragraph 24 above) and that the protest had been examined by a seven-judge bench of the Supreme Court on 29 May 2013 (see paragraph 16 above), may lead it to conclude that the matter has now been resolved or whether, for any other reason, it is no longer justified to continue the examination of the application, and that the application may consequently be struck out of its list of cases in accordance with Article 37 § 1 of the Convention, which provides:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.
>
> 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

35. In order to ascertain whether Article 37 § 1 (b) of the Convention applies to the present case, the Court must answer two questions in turn: firstly, whether the circumstances complained of directly by the applicant companies still obtain and, secondly, whether the effects of a possible

violation of the Convention on account of those circumstances have been redressed (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I). This approach reflects the structure of the Convention's supervisory machinery, which provides both for a reasoned decision or judgment as to whether the facts in issue are compatible with the requirements of the Convention (Article 45), and, if they are not, for an award of just satisfaction if necessary (Article 41) (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 42, 24 October 2002).

36. As regards the first question, it is clear that the situation complained of no longer obtains, since on 29 May 2013 a hearing was held in the presence of the applicant companies, and the protest submitted by the Chairman of the Department of Civil Cases of the Senate of the Supreme Court was examined by a composition of seven judges of the Senate of the Supreme Court and dismissed.

37. As regards the second question, the Court must determine if the domestic authorities have adequately and sufficiently redressed the situation complained of (see *Sisojeva and Others*, cited above, § 102).

38. First of all, the Court notes that the relevant legal provision has been amended with effect from 1 January 2013, discontinuing the right of the Chairman of the Department of Civil Cases of the Senate of the Supreme Court to submit a protest against a court ruling which has taken effect (see paragraph 27 above). The Court has held, in the context of the execution of judgments in accordance with Article 46 of the Convention, that it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake to ensure that their domestic legislation is compatible with it. Consequently, it is for the respondent State to remove any obstacles in its domestic legal system that might prevent the applicant's situation from being adequately redressed (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I). The Contracting State's duty in international law to comply with the requirements of the Convention may require action to be taken by any State authority, including the legislature (see, by way of example, *Viaşu v. Romania*, no. 75951/01, §§ 75-83, 9 December 2008). In the instant case, the supervisory review proceedings were instituted under the previous legislation, which allowed the Chairman to submit a protest. The subsequent legislative amendments did not, as such, have an impact on the supervisory proceedings, which had already been instituted. Thus, further steps were needed to redress the situation complained of by the applicant companies.

39. Secondly, it is important to note that the Constitutional Court, when asked to review the constitutionality of a legal provision which, in the meantime, had ceased to have effect, considered that it was necessary to continue the constitutional proceedings instituted by the applicant companies and to examine their constitutional complaint on the merits. On 14 May 2013 the Constitutional Court, *inter alia* referring to the Court's

case-law, found that the Chairman's right to submit a protest run counter to the right to a fair trial enshrined in Article 92 of the Latvian Constitution, which is a corollary to Article 6 of the Convention in the Latvian domestic system. The Constitutional Court also held that the purpose of the legislative amendments which had taken effect on 1 January 2013 had been to exclude any doubts as to the impartiality of the Supreme Court. The Constitutional Court examined the applicant companies' request to declare the relevant legal provision void with retrospective effect and dismissed it, finding that it was possible to ensure respect for their rights by other means, and, specifically, by ensuring that the submitted protest was examined by an extended composition of at least seven judges in the Senate of the Supreme Court, as opposed to the ordinary three-judge composition (see paragraph 24 above). In this connection, the Court notes the applicant companies' submission to the Constitutional Court to the effect that, were the protest to be examined by an extended composition, the infringement of their fundamental rights would be cancelled out (ibid.).

40. Thirdly, as noted above, on 29 May 2013 the protest was eventually examined and dismissed by seven judges of the Senate of the Supreme Court. The Senate referred to the findings of the Constitutional Court and the Court's case-law, and dismissed the protest, giving preference to the principle of legal certainty. This decision was made following a hearing attended by the applicant companies and at which they had the opportunity to express their arguments (see paragraphs 16 and 17 above).

41. Having regard to all of the above, the Court finds that both of the conditions for the application of Article 37 § 1 (b) of the Convention are met. The matter giving rise to this complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

42. Accordingly, the application should be struck out of the Court's list of cases.

B. Application of Article 43 § 4 of the Rules of Court

43. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court."

44. The Court considers it necessary to rule on the application of Rule 43 § 4, which allows the Court to make an award solely for costs and expenses (see *Sisojeva and Others*, cited above, § 132).

45. The applicant companies claimed EUR 75,710.91 for the costs and expenses incurred in the supervisory review proceedings and the

proceedings before the Constitutional Court and the Strasbourg Court. They submitted an invoice, issued on 19 June 2013, in respect of the costs and expenses for legal services received from 22 January to 19 June 2013; a detailed specification was attached to the invoice, totalling 302.5 billable hours with rates ranging from EUR 80 to EUR 220 per hour. This invoice was paid by the third applicant in accordance with a previous agreement among the applicant companies.

46. The Government argued that these costs and expenses were unfounded and exorbitant. They pointed out that, of 52 itemised entries on the invoice, around 20 referred to the proceedings before the Constitutional Court, which contradicted the applicant companies' position before this Court that this had not been an effective remedy in their case. They argued that these costs were not to be taken into account. Lastly, the Government submitted that the legal costs were not reasonable as to quantum as regards the hourly rates applied, and were excessive and unreasonably high.

47. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention. In other words, in order to be reimbursed, the costs and expenses must relate to the alleged violation or violations and be reasonable as to quantum. Furthermore, under Rule 60 § 2, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see *Sisojeva and Others*, cited above, § 133).

48. In the instant case, regard being had to the information in its possession and to its case-law, the Court considers it reasonable to award the third applicant the sum of EUR 5,000 covering costs under all heads.

For these reasons, the Court, unanimously,

1. *Decides* to strike the application out of its list of cases.

2. *Holds*

(a) that the respondent State is to pay the third applicant, within three months, EUR 5,000 (five thousand euros) plus any tax that may be chargeable in respect of costs and expenses;

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

Françoise Elens-Passos
Registrar

Päivi Hirvelä
President

APPENDIX

1. YELVERTON INVESTMENTS B.V. registered in the Netherlands
2. IAG INDUSTRIEANLAGEN GMBH registered in Austria
3. SIA IAG registered in Latvia
4. YELVERTON INVESTMENT B.V. registered in the Netherlands