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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (29/03/2018)

Communication from Latvia concerning the case of Dzirnis v. Latvia (Application No. 25082/05)

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Réunion : 1318e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la Lettonie concernant l'affaire Dzirnis c. Lettonie (requête n° 25082/05)
(anglais uniquement)

LATVIJAS REPUBLIKAS ĀRLIETU MINISTRIJA

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LATVIA

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Mr Pavlo Pushkar
Head of Division
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of the European Court of Human Rights
DGI – Directorate General of Human Rights and Rule of Law
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F-67075 STRASBOURG CEDEX

No. 03 - 8382 Riga, 29 March 2018

Dear Mr Pushkar,

Please find enclosed the Action report by the Government of the Republic of Latvia concerning the case *Dzirnis v. Latvia* (appl.no.25082/05), judgment of 26 January 2017 (final on 26 April 2017).

Please be informed that this letter and the attachment thereto have been sent by e-mail only.

Yours sincerely,

Kristīne Līce
Agent of the Government of the Republic of Latvia

ACTION REPORT

OF THE GOVERNMENT OF THE REPUBLIC OF LATVIA ON THE EXECUTION OF THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE OF

DZIRNIS

v.

LATVIA

Application no.25082/05

Judgment of 26 January 2017
Final on 26 April 2017

I. INTRODUCTION

1. In the context of the working methods for the supervision of the execution of the Court's judgments and decisions adopted by the Committee of Ministers on 4 December 2010, the Government of the Republic of Latvia presents the Action Report setting out the execution measures taken in the case of *Dzirnis v. Latvia*.

II. CASE DESCRIPTION

2. The applicant, Mr Jānis Dzirnis was born in 1968. The case concerns a plot of land in Jūrmala municipality. In 1998 the Jūrmala Municipality Land Commission divided the property into two plots given that no one had requested the restoration of property rights to the land. On 19 July 2000, the Cabinet of Ministers issued Order No. 349, which retained one of the plots as State property, transferred it to the Ministry of Finance with an obligation to register it in the land register. The Order was published in the official gazette; however the registration of the property in the land register was delayed.

3. On 20 December 2000, Ms.V.P.E. – the heir of the previous owner of the property, instituted proceedings in the Jūrmala City court against Jūrmala municipality and claimed her property rights. During the court hearing a representative of Jūrmala municipality supported the claim and confirmed that the property was not the subject of any dispute. On 2 February 2001, the Jūrmala City court ruled in favour of V.P.E., *inter alia* stating that the property in question was not possessed by any physical persons.

4. In May of 2001, V.P.E. sold the contested property to the applicant and he was registered as the owner of the property in the land register.

5. On 1 June 2001, the Prosecutor General submitted a protest to the Senate of the Supreme Court, asking to quash the Jūrmala City court judgment of 2 February 2001. On 1 August 2001, the Senate of the Supreme Court upheld the protest, quashed the judgment of the Jūrmala City court and ordered a new adjudication of the case. The Senate agreed in substance with the Prosecutor General's assessment that the Jūrmala City court had erred in choosing the applicable substantive law and that it had overstepped the limits of its competence. Most importantly, Jūrmala municipality had failed to inform the Jūrmala City court about evidence that was pertinent to the restoration of V.P.E.'s property rights.

6. On 11 January 2002, the Ministry of Finance brought a property claim with Riga Regional court against the applicant and V.P.E. as defendants and Jūrmala Municipality as a third party. The claimant asked that the purchase agreement signed by the defendants be declared null and void *ab initio*, and that the rights of the State to the contested property be recognised.

7. The Riga Regional court joined the above civil claim to V.P.E.'s claim against Jūrmala municipality for the restoration of her rights to the contested property, and with the judgment of 16 September 2002, recognised that the State had acquired the contested property in 2000. This judgment was supported by the appellate instance.

8. On 2 April 2003, the Senate of the Supreme Court adopted a judgment in which it dismissed an appeal on points of law by V.P.E., and the decision to refuse the restoration of her property rights became final. With the same judgment the Senate allowed an appeal on points of law by the applicant. The Senate agreed that the appellate court had erred in considering that the contracts concluded between the applicant and V.P.E. had been invalid. The Senate further

indicated that the appellate court had failed to adequately substantiate its finding that the State rather than the applicant was to be declared the owner of the contested property. The quashed part of the judgment was remitted to the appellate court.

9. On 12 November 2003, the Supreme Court again decided to annul the purchase contracts concluded between V.P.E. and the applicant, and to recognise the State's property rights. This judgment was quashed on 3 March 2004.

10. On 1 December 2004, the Supreme Court adopted a new judgment. It upheld the Ministry of Finance's ownership rights over the contested property. The applicant submitted an appeal on points of law, but it was dismissed on 23 March 2005.

11. On 30 March 2005, the applicant lodged an application with the Court under Article 34 of the Convention and complained of infringement of his right to the peaceful enjoyment of his possessions, as guaranteed under Article 1 of Protocol No.1 to the Convention.

12. In the judgment of 26 January 2017, the Court noted that the applicant was registered in an official register as the owner of the disputed property. He paid taxes on the property and was also considered as a *de facto* possessor by the State when it brought a property claim against him. Turning to the question of interference, the Court took into account the legal and factual complexity of the situation that prevented the issue of interference being placed in a precise category. Therefore, the Court proceeded with the examination of the case in the light of the general rule contained in Article 1 of Protocol No.1.

13. The Court observed that interference with the applicants rights had been in accordance with the domestic law which was sufficiently detailed and clear. However, the Court highlighted the question on provision of adequate protection of rights of *bona fide* acquirers. The Court considered that prompt and adequate compensation or another type of appropriate reparation for *bona fide* acquirers is important, and examined the adequacy of the remedies in the circumstances of the present case.

14. As regards the existence of legitimate aim, the Court accepted that the interference with the applicant's rights served a public interest and public authorities must correct their mistakes. However, the principle of good governance imposes on the authorities an obligation not only to act promptly in correcting their mistakes, but may also necessitate the payment of adequate compensation.

15. By carrying out examination of various interests at stake, the Court stressed that the domestic authorities did not establish a lack of good faith on the part of either V.P.E. or the applicant, but noted the series of flaws attributable to various authorities. The Court noted the inconsistency in the way the Jūrmala municipality dealt with the property at issue. In addition, the judges in the land register were unaware of the Government's Order on transferring the property to the State, therefore the land register failed to ensure that the entries it made were precise, reliable and trustworthy.

16. The Court took into account the applicant's submission on the protection of *bona fide* acquirers, namely, that at the material time the domestic courts did not provide any protection to buyers who had genuinely relied on land register data, but since then there had been positive developments in the case-law of the Supreme Court.

17. The Court concluded that in the particular circumstances, where the applicant as a *bona fide* acquirer had lost his possession as a result of a combination of mistakes attributable to the

State authorities, adequate protection should involve a compensatory mechanism that does not place a disproportionate burden on such a *bona fide* acquirer. Therefore, separate claims for compensation of damage against V.P.E., Jūrmala municipality or Ministry of Finance, in the Court's view, would place a disproportionate burden on the applicant. Accordingly, the Court found that the interference with the applicant's rights was disproportionate to the aim pursued and that that there had been a violation of Article 1 of Protocol No.1 to the Convention.

18. Under Article 41 of the Convention, the Court ordered the Government to pay the applicant within three months from the date on which the judgment became final in accordance with Article 44, paragraph 2 of the Convention, EUR 88,283.50, corresponding to the value of the property on the date the applicant's ownership was lost, and EUR 5,000 in respect of non-pecuniary damage. The judgment became final on 26 April 2017.

III. INDIVIDUAL MEASURES

19. The just satisfaction awarded by the Court in the total amount of EUR 93,284 was paid to the applicant on 9 June 2017. The Government has notified the Execution Department and submitted evidence concerning the payment of just satisfaction by e-mail.

20. The Government considers that no further individual measures are required in the present case.

IV. GENERAL MEASURES

16. First of all, it should be noted that the Convention has direct effect in the Latvian legal system.

17. The violation of Article 1 of Protocol No.1 of the Convention in the present case constitutes an isolated incident, which resulted from mistakes of several national authorities and interpretation of applicable Civil Law norms at the material time. In this regard, the Government notes the specific nature of civil proceedings, namely the essentially passive role of the court and the right of the participants to choose the most efficient strategy and to present the observations they regard as relevant to their case. Accordingly, the task for the national courts is to assess the arguments as put forward by the parties in the light of the applicable Civil Law principles, developed through case law.

18. As regards the development of the case law concerning the *bona fide* acquirers, the Government recalls paragraph 89 of the Court's judgment and submits that the principle of protection of rights of *bona fide* owner is ensured through individual assessment of each deal starting with the first transfer of the property in question. If the first transfer of property is declared null and void, all sequential changes in title of property need to be examined in order to establish whether the participants have acted in good or bad faith. Protection of *bona fide* owner excludes depriving the *bona fide* owner of the contested property, as opposed to situations where the property is in a possession of a person who has not acted in good faith and that fact is established. The said principle is reflected in numerous judgments of the Supreme Court, including very recently.[1]

[1] Similar findings have been reflected also in cases No/SKC-52/2010, judgment of 10 March 2010, No.SKC-105/2010, judgment of 21 April 2010, No. SKC-11/2010, judgment of 12 May 2010; No. SKC-189/2011, judgment

19. Further, the Government notes that in the judgment the Court examined the availability of a compensatory mechanism that does not place a disproportionate burden on the *bona fide* acquirer, in particular in cases where a *bona fide* acquirer had lost his or her possession because of a combination of flaws attributable to various authorities[2]. The Government submits that the considering the specific nature of the civil proceedings (see paragraph 17 above), this issue has been resolved with the development of the national case law[3]. For example, the case No.SKC-402/2017[4] concerned claim for damages that had resulted from the non-payment of a loan guaranteed by an immovable property, which was divided after the conclusion of the loan deal. The claimant submitted that the responsible land register judge failed to register the mortgage on all parts of the divided property, and the claimant could no longer cover the losses with the part of the defendant's property on which the mortgage was still registered. The claimant therefore submitted the claim against the private person, but also against the State, if the first defendant was not able to cover the losses. According to the Supreme Court, the claim was brought against two defendants about different subjects and on different grounds, so there was a main claim against the debtor and the subsidiary claim against State in case it was found that recovery of debt from the debtor was not possible. The Supreme Court noted that the liability of the State to compensate the damage was not explicitly provided for in any law, but such a liability followed directly from the Article 92 and Article 105 of the Constitution. The claim for State liability was dismissed as premature, but at the same time the Supreme Court stated that such a claim may be validly brought at a later stage, when all preconditions for State liability as to the occurrence of the damage would be met. The above judgment is included in the leading case-law database of the Supreme Court. The Government concludes that it is possible to bring a civil claim for damages against the State as one of the defendants, and the national courts can determine modalities and amount of damages to be paid by each of the defendants.

20. Further, in order to avoid similar violations in the future, the most appropriate general measures are the publication and dissemination of the Court's judgment, as well as training of the judiciary.

21. In this context it should be noted that following the delivery of the judgment, a press release on the Court's judgment was issued, summarising the facts of the case, the Court's conclusions and explaining reasoning thereof, including the reference to the judgment and a web link to the website of the Court's case law.[5]

22. The Court's judgment in case of *Dzirnis v. Latvia* has been translated into Latvian and published in the official website of domestic courts of the Republic of Latvia at www.tiesas.lv, and the summary has been published on the official website of the Supreme Court of the Republic of Latvia[7]. The Court's conclusions in the present case were discussed

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of 11 May 2011, No.SKC-412/2011, judgment of 23 November 2011 and No.SKC-210/2017 judgment of 21 June 2017.

[2] *Dzirnis v. Latvia* (application no.25082/05), judgment of 27 January 2017, paragraph 91.

[3] See also Court's conclusions in the case *Osipkovs and Others v. Latvia* (application no.03/39210/07), judgment of 4 May 2017, paragraphs 85-90.

[4] Case No.SKC-402/2017, The Supreme Court judgment of 29 September 2017.

[5] The press release and description of the relevant facts in the case of *Dzirnis v. Latvia*. Available at: http://www.mfa.gov.lv/aktualitates/zinas/55911-eiropas-cilvektiesibu-tiesa-pasludina-spriedumu-lieta-dzirnis-pret-latviju .

[6] The translation of the Court's judgment in the case of *Dzirnis v. Latvia* in Latvian. Available at: http://tiesas.lv/eiropas-cilvektiesibu-tiesas-ect-spriedumi-un-lemumi.

[7] http://www.at.gov.lv/lv/judikatura/ect-nolemumu-arhivs/cilvektiesibu-un-pamatbrivibu-aizsardzibas-konvencijas-1-protokols/pec-pantiem?list=1731&etclaw=true.

on a number of occasions during the seminars and lectures at the Latvian Judicial Training Centre.

23. The Government believes that no further general measures appear to be necessary in respect to the afore-mentioned violation of Article 1 of Protocol No.1 in the present case.

V. CONCLUSIONS OF THE MEMBER STATE

24. The Government believes that no further individual measures, in addition to the payment of just satisfaction already made, are necessary or required in the case of *Dzirnis v. Latvia*. The development of the national case-law and general measures undertaken, in particular the translation and dissemination of the Court's judgment, fulfil the requirements arising from the Court's judgment and will prevent similar violations in the future. Accordingly, it is sufficient to conclude that Latvia has complied with its obligations under Article 46, paragraph 1, of the Convention concerning the violation of Article 1 of Protocol No.1, and the examination of the case should be closed.

Kristīne Līce
Agent of the Government of the Republic of Latvia
Riga, 29 March 2018