



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT

### IN THE NAME OF THE REPUBLIC OF LATVIA

**Riga, June 10, 1998**

**on case No. 04 - 03(98).**

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, the justices Andrejs Lepse, Romāns Apsītis, Ilma Čepāne, Ilze Skultāne, Anita Ušacka and the secretary of the Court session Inese Rimdžus

in the presence of the deputy of the 6. Saeima Kārlis Čerāns - the representative of the party of the applicant - i.e. twenty two deputies of the Saeima, namely K.Čerāns, O.Kostanda, J.Kazāks, U.Veldre, J.Mauliņš, E.Grīnbergs, I. Liepa, J.Kušnere, E.Zelgalvis, P.Kļaviņš, A.Naglis, E.Grinovskis, A.Saulītis, J.Strods, J.Ādamsons, J.Lagzdiņš, Ģ.V.Kristovskis, A.Krastiņš, J.Kalviņš, M.Vītols, G.Valdmanis and L.Ozoliņš

and the head of the Legal Department of the Ministry of Finance E.Strazdiņa, the representative of the institution that issued the normative acts, which are disputed

under Article 85 set by the Satversme (Constitution) as well as Article 16 paragraph 4 and the second part of Article 17 of the Constitutional Court Law

in a public hearing on May 29, 1998 reviewed the case

**”On Conformity of the Cabinet of Ministers 23.April, 1996 Resolution No.148 ”On the Procedure by which the Property is Restituted or its Value is Compensated to the Persons, whose Administrative Deportation from the Territory of the Latvian SSR or from the Part of the Territory of the Latvian SSR that Has Been Incorporated into the RSFSR is Recognised Unfounded” and the Cabinet of Ministers 4.November, 1997 Resolution No 367 ”Amendments to Regulations No. 148 of April 23, 1996 ”The Procedure by which the Property or its Value is Compensated to the Persons, whose Administrative Deportation from the Latvian SSR is Recognised Unfounded” with the Law ”On the Determination of the Status of Politically Repressed Persons Suffered during the Communist and Nazi Regimes”.**

#### **The Constitutional Court established:**

On the basis of the November 2, 1988 Resolution No. 350 of the Latvian SSR Council of Ministers ”On the Groundless Administrative Deportation of Citizens from the Latvian SSR in 1949”, the March 17,1949 Resolution No. 282 of the Latvian SSR Council of Ministers ” On Deportation of Kulak Families from the Latvian SSR” and the March 24, 1949 Resolution No.297 (on the procedure of confiscation of the property of the deported persons) have been recognised as null and void and deportation, based on the two above resolutions, has been recognised as unfounded and the citizens themselves rehabilitated.

On the basis of the same Resolution, the relevant state institutions were obligated to work out and approve the Resolution

on the procedure by which the property or its value is compensated to the citizens whose administrative deportation from the Latvian SSR is recognised unfounded by November 15, 1988.

By taking effect of the Latvian SSR Council of Ministers December 5, 1988 Resolution No. 396 "Regarding the Rights of Those Citizens whose Administrative Deportation from the Latvian SSR is Recognised Unfounded", the Resolution "On the Procedure by which the Property is Restituted or its Value is Compensated to Citizens, whose Administrative Deportation from the Latvian SSR is Recognised Unfounded" was confirmed.

The first paragraph of the Resolution determined that "upon receiving applications from the citizens, whose deportation is recognised unfounded - or if they have died, from their heirs or family members - the application shall serve as the reason to review the issue on restitution of the property or compensation of its value, if - not later than three years from the date the resolution about unfounded deportation has been passed - applications have been submitted to the State Executive Committee of the particular district or region (city of Republican subordination) of the territory where the citizens have lived before deportation."

In accordance with adoption of the June 8, 1989 Decree of the Latvian SSR Supreme Soviet Presidium "On the Rehabilitation of the Citizens Deported from the Territory of the Latvian SSR in the Forties and Fifties", the Latvian SSR Council of Ministers adopted August 29, 1989 Resolution No. 190, certifying the "Procedure by which the Property is Restituted or its Value is Compensated to Citizens, whose Administrative Deportation from Latvian SSR is Recognised Unfounded."

The first paragraph of the Resolution also envisaged the right of submitting an application on restitution of property or

compensation of its value not later than 3 years from the date the Resolution about unfounded deportation had been passed.

On May 13, 1992 the Supreme Council passed the law "On the Determination of the Status of a Politically Repressed Person" and the Resolution "On the Procedure by Which the Republic of Latvia Law "On the Determination of the Status of a Politically Repressed Person" shall be Applied and Take Effect".

The third paragraph of the Resolution required the Republic of Latvia Council of Ministers to prepare draft laws on amendments to the normative acts in order to ensure for politically repressed persons guarantees for restitution and implementation of their rights in the area of civil, economic and social rights.

In its turn, paragraph 6 obligated the relevant Republic of Latvia institutions and officials, upon receiving applications from politically repressed and indirectly repressed persons, as well as other interested persons, regardless of the time of submitting these applications, to procure elimination of the consequences resulting from restrictions of civil, economic and social rights, caused by the totalitarian regimes, as well as compensation of the material losses, physical and/or material damage caused by these regimes.

On May, 26, 1994 the Council of Ministers adopted Resolution No. 191, expressing in a new wording the Resolution "On the Procedure by which the Property is Restituted or its Value is Compensated to Citizens, whose Administrative Deportation from Latvian SSR is Recognised Unfounded" (henceforth referred to as the Resolution (wording of 1992)), retaining the right of the politically repressed person to submit an application on restitution of property not later than 3 years from the date the resolution about unfounded deportation had been passed.

The March 22, 1994 Resolution No.71; June 14, 1994 Resolution No. 192 and May 23, 1995 Resolution No. 134 of the Cabinet of Ministers on Amendments to the Resolution (wording of 1992) retained the right of the politically repressed persons to submit an application not later than 3 years from the date the Resolution about unfounded deportation had been passed.

On April 12, 1995 the Saeima passed a new law "On the Determination of the Status of Politically Repressed Persons Suffered during the Communist and Nazi Regimes". The very first sentence of Article 9 established that "the state shall ensure restoration of politically repressed persons' rights in the area of civil, economic and social rights according to law."

On February 15, 1996 the law "On the State Budget for 1996" was passed.

The third paragraph of the Transitional Provisions of the Law determines that from March 1, 1996 acceptance of applications on compensation from the persons, residing in the territory of the Republic of Latvia, shall be discontinued.

On April 23, 1996, the Cabinet of Ministers passed Resolution No.148 "On the Procedure by which The Property is Restituted or its Value is Compensated to Persons, whose Administrative Deportation from the Latvian SSR is Recognised Unfounded" (henceforth - Resolution No. 148).

The second paragraph of the Resolution establishes, that the issue on restitution of property or compensation of its value to persons, whose administrative deportation from the Latvian SSR is recognised unfounded and who reside in the territory of the Republic of Latvia shall be reviewed, if the above persons (after their death-the heirs) in the time of three years from the date the Resolution about unfounded deportation has been passed, but not later than

March 1, 1996 in accordance with the third paragraph of Transitional Provisions of the law "On the State Budget for 1996" have submitted an application on restitution of property or compensation of its value to the Dome (Council) of Municipality of the territory where the persons had lived before deportation.

At the same time all the previously passed normative acts on the procedure by which the property is restituted or its value is compensated to persons, whose administrative deportation from the Latvian SSR is recognised unfounded, were declared null and void.

On November 4, 1997, the Cabinet of Ministers introduced amendments to Resolution No.148, passing Resolution No.367 "Amendments to the April 23,1996 Resolution No. 148 "On the Procedure by which Property is Restituted or its Value is Compensated to Persons whose Administrative Deportation from the Latvian SSR is Recognised Unfounded"" (henceforth- Resolution No.367).

The Amendments expressed the title of Resolution No.148 in a new wording - " Procedure by which the Property is Restituted or its Value is Compensated to Persons, whose Administrative Deportation from the Latvian SSR or from the Part of the Territory of the Latvian SSR that has been Incorporated into the RSFSR, is Recognised Unfounded."

At the same time amendments were introduced to the first and the second paragraph of Resolution No.148, expressing the paragraphs in the following wording:

"1) The Resolution establishes the procedure of restitution of property or compensation of its value to the persons, whose administrative deportation from the Latvian SSR or that part of the territory of the Latvian SSR that at the time of the deportation had

been incorporated into the RSFSR (part of the Abrene district) is recognised unfounded.

2) Issue on restitution of property or compensation of its value to persons, whose administrative deportation from the Latvian SSR is recognised unfounded and who reside in the territory of the Republic of Latvia shall be reviewed if the above persons (after their death- the heirs) have received documents, certifying the fact that their administrative deportation has been unfounded, only after March 1, 1996 and have submitted applications on restitution of property or compensation of its value (henceforth - the Application) to the Dome (Council) of Municipality of that territory where the above persons have lived before deportation.

Persons, who have been administratively and groundlessly deported from that part of the territory of the Latvian SSR that on the day of deportation had been incorporated into the RSFSR( part of the Abrene district) or the heirs of the above persons shall submit applications to the Council of Balvi district.”

The applicant questions Resolution No.148 and Resolution No. 367, considering that they are not in compliance with the 1995 law ”On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes”. The first part of Article 10 establishes, that the state and local governments’ institutions and their officials, upon receiving applications from politically repressed persons as well as other interested persons, shall procure anticipated by the law elimination of the consequences resulting from restrictions of civil, economic and social rights, caused by the totalitarian regimes, as well as compensation of the material losses, physical and material damage caused by these regimes.

Nevertheless, the third paragraph of Transitional Provisions of the law ”On the State Budget for 1996” determines, that acceptance

of applications on issues of compensation envisaged by the Resolution (wording of 1992) from persons residing in the territory of the Republic of Latvia shall be discontinued.

The application emphasises that the law " On the State Budget for 1996", that obligates discontinuation of acceptance of applications from March 1, 1996 took effect only on March 7, 1996 and could not have been known to politically repressed persons before March 1, 1996.

The Cabinet of Ministers, when passing Resolution No. 148, has established a new procedure by which property is restituted or its value compensated to persons, whose administrative deportation is recognised ungrounded, at the same time declaring all the previous normative acts in the area by the Council of Ministers and Cabinet of Ministers null and void.

The applicant points out, that with the terms of paragraph 10 of the Resolution No. 148, the Cabinet of Ministers has groundlessly reduced the amount of compensation, that the state had undertaken to cover to the politically repressed persons in case if there was no possibility of restituting the property, establishing the maximum amount of compensation i.e. 2,000 lats for buildings and 500 lats for other property.

At the same time the above Resolutions as if have declared null and void the previous procedure in accordance with which the politically repressed persons had the right of not agreeing with the evaluation of the property by the institutions of the state and receiving greater compensation than initially offered by the state institutions.

Besides, Resolutions No. 148 and No. 367 created the situation, that the politically repressed persons, who had received the certificate of rehabilitation up to March 1, 1996 and had not been

able to submit an application to receive compensation up to that date, had been denied the possibility of receiving compensation at all.

During the Court session the applicant backed the application and additionally pointed out that Resolution No.148 was not in compliance with the law "On Privatisation Vouchers", because, it determined, that compensation could be paid also in restitution vouchers, not taking into consideration the will of the politically repressed person.

The Cabinet of Ministers, in its written reply points out that in total the application is unfounded, at the same time agreeing, that Article 10 of the law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" obliges the state and municipal institutions and their officials to procure, under the procedure anticipated by the law, to eliminate the consequences resulting from restrictions of civil, economic and social rights, caused by the totalitarian regimes, as well as compensation of the material losses, moral and material damage caused by these regimes.

The written reply by the Cabinet of Ministers stresses, that, taking into consideration the third paragraph of Transitional Provisions of the law "On the State Budget for 1996", which provided for discontinuation of acceptance of applications on receiving compensation from March 1, 1996 - envisaged by the Resolution in the wording of 1992 - from the persons, who were residing in the territory of the Republic of Latvia, the Domes (Councils) of Municipalities have stopped accepting applications on restitution of property or compensation of its value, but on April 23, 1996 the Cabinet of Ministers has passed a conformable Resolution No. 148, that took effect on May 1, 1996.

At the same time, the written reply indicates, that the law "On the State Budget for 1996" has not established the procedure by which the property is to be restituted or its value compensated to the administratively deported persons as foreseen by the third paragraph of Transitional Provisions of the law. Therefore, the Cabinet of Ministers - in accordance with Article 14 (its first part, third paragraph) of the law "On the Renewal of the Structure of the Cabinet of Ministers" - has experienced the right of passing corresponding Resolutions.

The written reply by the Cabinet of Ministers expresses the viewpoint, that -in conformity with Article 9 of the law " The Procedure by Which Laws and Other Acts Adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take Effect and Being Valid"- normative acts usually do not have retroactive force, but, as anticipated by law, in specific cases it can be established.

The Saeima, on February 15, 1996 when passing the law " On the State Budget for 1996" and the State President on March 6, 1996, when promulgating the law, with the paragraph 3 of the Transitional Provisions of the law as if had established retroactive force to the paragraph. Therefore the Cabinet expressed the opinion that the date for submitting applications - March 1, 1996 - fixed by Resolution No. 148, was in compliance with the terms of paragraph 3 of the Transitional Provisions of the law "On the State Budget for 1996".

In contrast to the statement expressed in the application, Resolution No. 148 - to their mind - envisages compensation of the value of the confiscated property in the full amount, constricting only the sum of money to be paid in cash.

Paragraph 11 of the above Resolution, according to them, determines that in case if the sum of compensation to be paid to the applicant does not cover the real value of the property or is paid only

for part of the property, then compensation for the remainder shall be calculated and granted in compensation vouchers as has been also envisaged by the second part of Article 10 and Article 15 of the law "On Privatisation Vouchers".

At the same time, paragraph 16 of Resolution No. 148 envisages the possibility of solving the argument on restitution of the property or compensation of its value at court.

Besides, Resolution No. 367, according to them, envisages review of applications on restitution of property or compensation of its value to the persons, whose administrative deportation is recognised unfounded, submitted even after March 1, 1996, if the above persons have received documents, certifying the fact of unfoundedness of the administrative deportation, only after March 1, 1996.

At the Court Session the representative of the Cabinet of Ministers upheld the viewpoint, expressed in the written reply and additionally explained, that Resolution 148 had been passed to balance the budget of the year.

The representative of the Cabinet of Ministers pointed out that it had been possible to clear up the objections of the applicant without the help of the Constitutional Court.

**The Constitutional Court**, evaluating conformity of Resolutions No. 148 and 367 with the law "On the Determination of the Status of Politically Repressed Persons During the Communist and Nazi Regimes" and other laws, acknowledged the claim of the applicant as well-founded and

**concluded:**

Article 1 of the Satversme (Constitution) of the Republic of Latvia establishes that Latvia shall be an independent democratic Republic.

In a democratic state the legislative power belongs to the nation and the legislator - the Saeima. The executive power - the Cabinet of Ministers - has the right to pass resolutions only in cases anticipated by the law, resolutions are to be law-abiding and shall not be at variance with the Satversme (Constitution) and other laws. The above follows from the principles of rule of law and separation of power, that are considered to be the basis of the existence of a law-based state.

Any law-based state acknowledges the principle of trust in law. The principle determines, that state institutions shall be consistent in their activities as regards normative acts passed by them, they shall take into account trust in law, that could arise on the basis of a specific normative act (see Hartley T.C. The Foundations of European Community Law. An Introduction to the Constitutional and Administrative Law of the European Community. Oxford, Clarendon Press, 1994).

The politically repressed persons trusted the procedure established already in 1988 by which property was restituted or its value compensated. These persons planned their future, being aware of the rights, endowed by certain normative acts, the fundamental statements of which up to April 23, 1996 were as follows:

- 1) the application shall be submitted not later than 3 years after the Resolution to consider deportation as unfounded was adopted;
- 2) the application shall be reviewed even after that time, if the time limit has been exceeded because of justified reasons;

- 3) buildings and other property shall be restituted, but if it is not possible - their value shall be compensated in cash.

Because of Resolutions No. 148 and 367, passed by the Cabinet of Ministers, part of the politically repressed persons were denied the right of retrieving illegally confiscated property or receive compensation for it as anticipated by law. Thus, the principles of justice and trust in law have been violated.

Besides, Resolutions No.148 and 367 are not in conformity with the norm of Article 14 (the second part, the first sentence) of the law "On the Structure of the Republic of Latvia Council of Ministers", which determines that resolutions by the Cabinet of Ministers shall not be at variance with the Satversme (Constitution) and other laws.

By establishing the date of discontinuation of acceptance of applications, Resolutions No. 148 and 367 are at variance with the law " On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes " which does not establish time limit of granting the status of a politically repressed person and restoration of the rights of the above persons, but determines, that the state and local governments' institutions and their officials shall procure, under the procedure anticipated by the law, elimination of the consequences resulting from restrictions of civil, economic and social rights, caused by the totalitarian regimes, as well as compensation of the material losses, physical and material damage caused by these regimes.

Article 9 of the law " The Procedure by Which Laws and Other Acts Adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take Effect and Being Valid" stresses that normative acts do not have retroactive force, with an exception of specific cases anticipated by the law. When establishing retroactive

force to Resolutions No. 148 and 367, the Cabinet of Ministers has violated the above norm.

The statement, expressed in the written reply, that the law "On the State Budget for 1996" has endowed the Cabinet with the above right, does not correspond to the notion and objective of the law. The law "On the State Budget for 1996" is a specific law, force of which has the time limit of the particular financial year.

In compliance with paragraph 12 of the Transitional Provisions, the law shall be in force only to ensure implementation of the 1996 financial budget.

Paragraph 3 of the Transitional Provisions of the law "On the State Budget for 1996" only for some time held up the acceptance of applications mentioned in the Resolution, and even then only on issues of compensation and not establishing restrictions to accept those applications, when there was a possibility to return the property.

Paragraph 3 of Transitional Provisions of the law "On the State Budget for 1996" did not especially envisage that the norm should refer to time before and after 1996 .

Thus, the Cabinet of Ministers was not authorised to determine terms, not anticipated by the law, as the legislator had clearly pointed out that restrictions should be applied only to the period from March 1, 1996 to December 31, 1996.

Contrary to the law "On the Determination of the Status of Politically Repressed Persons Suffered During the Communist and Nazi Regimes" and the law "On the State Budget for 1996", the second paragraph of Resolutions No. 148 and 367 did not suspend acceptance of applications on issues of compensation for some time, but stopped it in general.

Article 15 of the law "On Privatisation Vouchers" establishes in what cases (under what conditions) compensation for property, confiscated to the politically repressed persons, shall be compensated in privatisation vouchers.

Condition of paragraph 11 of the Resolution No. 148 that, "if the amount of compensation to be paid to the applicant in cash, does not cover the real value of the property or has been granted only for part of the property, then compensation for the other part shall be calculated and granted in privatisation vouchers" is at variance with the first part of Article 15 of the Law " On Privatisation Vouchers" which establishes that " the politically repressed persons or their heirs may receive compensation for the confiscated property in state securities if they wish so."

Thus, paragraph 11 of the Resolution No. 148 is at variance with the requirements of the law, that the politically repressed persons or their heirs shall indicate their wish of receiving compensation in state securities and not in cash.

Because of the above contradictions between the law and Resolutions 148 and 367 and taking into consideration Article 9 of the law " The Procedure by Which Laws and Other Acts Adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take Effect and Being Valid", the Resolutions shall be acknowledged null and void.

Evaluating the principles of justice, rule of law, separation of power and trust in law and taking into consideration the fact, that the questioned normative acts worsened the situation of the politically repressed persons and unlawfully denied them of their rights, the above Resolutions are to be declared null and void from the moment of their adoption.

**Under Articles 30 - 32 set by the Constitutional Court Law****the Constitutional Court****DECIDED:**

**to declare** the Cabinet of Ministers 23 April, 1996 Resolution No. 148 "On the Procedure by which the Property is Restituted or its Value is Compensated to the Persons, whose Administrative Deportation from the Territory of the Latvian SSR or from the Part of the Territory of the Latvian SSR that has Been Incorporated into the RSFSR is Recognised Unfounded" and the Cabinet of Ministers 4 November, 1997 Resolution No. 367 " Amendments to Resolution No. 148 of April 23, 1996 " The Procedure by which the Property is Restituted or its Value is Compensated to the Persons, whose Administrative Deportation from the Latvian SSR is Recognised Unfounded" **as not being in compliance** with the second part of Article 14 of the law " On the Structure of the Cabinet of Ministers", with Article 9 of the law "On the Procedure by which Laws and Other Acts Adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take Effect and Being Valid", with the first part of Article 10 of the law "On the Determination of the Status of Politically Repressed Persons Suffered during the Communist and Nazi Regimes" and the first part of Article 15 of the law "On Privatisation Certificates" **and null and void from the moment of their adoption.**

The Judgment takes effect from the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga on June 10, 1998.

The Chairman of the Court session

A.Endziņš

Justice of the Constitutional Court

A.Lepse

Justice of the Constitutional Court

R.Apsītis

Justice of the Constitutional Court

I.Čepāne

Justice of the Constitutional Court

I.Skultāne

Justice of the Constitutional Court

A.Ušacka