



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT in the name of the Republic of Latvia

**Riga, April 30, 1998**

**on case No. 09 - 02 (98)**

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, the justices Ilze Skultāne, Andrejs Lepse and the secretary of the Court session Inese Rimdžus

in the presence of the sworn advocate E. Radziņš -the representative of the party that has submitted the application -i.e. twenty deputies of the Saeima , namely , V.Kalnberzs, M.Lujāns, G.Valdmanis, A.Golubovs, M.Bekasovs, J.Strods, V.Stikuts, O.Grīnbergs, A.Saulītis, K.Čerāns, O.Deņisovs, G.Gannusa, E.Zelgalvis, U.Veldre, L.Stašs, A.Rubins, V.Dozorcevs, E.Grinovskis, A.Bartaševičs and J.Urbanovičs

and the leader of the Saeima Legal Bureau Gunārs Kusiņš, the representative of the institution - the Saeima - that had issued the normative act which is disputed

under Article 85 set by the Satversme (Constitution) of the Republic of Latvia, as well as Article 16 paragraph 9 and the seventh part of Article 17 of the Constitutional Court Law

in a public hearing on April 15, 1998 reviewed the case

**”On Conformity of Paragraph 2 of the Supreme Council  
September 15, 1992 Resolution ”On the Procedure by which the**

**Republic of Latvia Law "On Eminent Domain" Takes Effect""  
(wording of the Amendment of December 19, 1996) with Article 1  
First Protocol of the Law of the European Convention of Human  
Rights and Fundamental Freedoms".**

**The Constitutional Court established:**

1. The applicant questions conformity of Paragraph 2, parts 2 and 4, of the Resolution by the Supreme Council of September 15, 1992 "On the Republic of Latvia Law " On Eminent Domain - On Expropriation of Real Estate in the State or Public Interest "" (wording of Amendment of December 19, 1996) with Article 1, First Protocol of November 4, 1950 Law of the European Convention Of Human Rights and Fundamental Freedoms.

2. On September 15, 1992, the Supreme Council passed the law "On Eminent Domain - on Expropriation of Real Estate in the State or Public Interest" (henceforth referred to as the Law on Expropriation), that established the general procedure of expropriation, at the same time determining the procedure of evaluation of the deprived property as well as estimation of the amount of compensation.

On September 15, 1992 the Supreme Council passed also the Resolution " On the Procedure of Taking Effect of the Republic of Latvia Law" On Expropriation of Immovable Property in the State or Public Interest"" (henceforth referred to as the Resolution). It established the date of the Law on Expropriation taking effect as well as several transitional rules.

On December 19, 1996, the Saeima passed the law "Amendment to the Supreme Council September 15, 1992 Resolution "On the Procedure by which the Republic of Latvia Law" On Eminent Domain " Takes Effect """, supplementing Paragraph 2 with the second, third and fourth parts in the following wording:

" When expropriating the real estate necessary for the state or public needs - for maintenance and operation of specially protected nature objects, objects of education, culture and science of state significance, state training farms, national sport centres, as well as objects of engineering and technical, energetic and transportation

infrastructure, according to which the ownership rights are renewed or shall be renewed in accordance with the law to former owners (their heirs), the extent of compensation shall be determined in money in the procedure established by law, but not more than the evaluation of the real estate in the Land Books or cadastral documents drawn up before July 22, 1940 in which the value of real estate is indicated. Coefficients for the recalculation of value of property according to prices in 1938-1940 (in pre-war lats) and present prices (in lats) shall be determined by the State Land Service.

The third part envisages that in case "if the owner has increased the value of the real estate after renewal of the ownership rights to the real estate, also contributions connected with increasing of this value shall be also compensated. Substantiated expenses of the owner (heir) connected with the renewal of the ownership rights (the land surveying, ordering the references from archives and others) shall be compensated in the same way. Expenses for services of the representative shall be reimbursed in the amount of actual expenses, but not more than the rates of compensation for sworn advocates.

The fourth part stresses that the procedure for expropriation of the real estate established by this Paragraph shall be applied also to owners who have acquired the real estate from the former land owner (his/her heir) on the basis of the endowment contract."

On June 4, 1997 the Saeima passed the law " On Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols 1., 2., 4., 7. and 11 of November 4,1950 ( henceforth - Law on Convention). In the Republic of Latvia the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth-the Convention) and its Protocols 1.,2.,4.,7.,11 took effect on June 27, 1997.

Article 1, First Protocol establishes:" 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.”

Taking into consideration, that Article 64 of the Convention envisages the possibility of making reservations to any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision, the Saeima included the following reservation in Article 2 of the Law on Convention:

” Demands of Article 1 Protocol 1 shall not be attributed to the property reform, that regulates restitution of property or paying compensation to former owners (their heirs) whose property has been nationalised, confiscated, collectivised or otherwise unlawfully expropriated during the period of the annexation by the USSR as well as to the process of privatisation of agricultural enterprises, fishermen collective bodies and state or municipal property.”

**3.** On January 8, 1998 **twenty deputies of the 6 Saeima** submitted an application to initiate a case at the Constitutional Court, petitioning to review compliance of Paragraph 2 of the Resolution with the Law ” On Eminent Domain” , with the Law ” On Convention” and Article 1, Protocol 1 of the Convention as well as to consider Paragraph 2 of the Resolution as unconfirmable with the legal norms of higher force and null and void from December 19, 1996.

The judge of the Constitutional Court Ilze Skultāne decided to initiate a case only to review compliance of Paragraph 2 of the Resolution with Article 1, Protocol 1 of the Convention, refusing to initiate the case on the other part of application, on the basis of the fact that the second, third and fourth parts of Paragraph 2 of the Resolution are valid, but Article 16 of the Constitutional Court Law does not envisage reviewing cases on mutual conformity of legal norms of the same force.

As concerns the issue on conformity of Paragraph 2 of the Resolution with Article 1, Protocol 1 of the Convention, the applicant points out that the Land Reform as regards a particular land property ends with an issue of a document, acknowledging the rights to the property. Therefore it is not possible to ignore the interest of owners, expropriating their land in the interest of state for

prices of 1940 to the moment when the State declares completion of the Land Reform. Thus, to their mind, the fourth part of Paragraph 2 of the Resolution, envisaging expropriation of real estate in state or municipal interest from owners, who have obtained it from the former owner (his/her heir) on the basis of endowment contract for 1940 prices, is at variance with Article 1, Protocol 1 of the Convention. The applicant stresses the fact, that the above Article, in accordance with the confirmed reference to Article 2 of the Law on Convention, does not refer only to the property reform, therefore it is not possible to attribute the same restrictions to the property that has been presented during the period when the end of the Land Reform has not been declared, as to the property that is still undergoing the process of the property reform.

At the Court session the representative of the applicant specified the petition, pointing out that only parts 2 and 4 of Paragraph 2 of the Resolution were questioned and asked to declare the above two parts null and void from the day the Convention had taken effect, i.e. from June 27, 1997. He stressed the fact that norms, included in parts 2 and 4 of Paragraph 2 of the Resolution did not comply with "the general principles of international law" mentioned in the second sentence of Article 1, Protocol 1 of the Convention, that is with provisions of Article 14 of December 16, 1996 International Pact on Citizen and Political Rights, namely, that all the persons are equal before court or tribunal. The representative explained, that the procedure established by the second and fourth parts of Paragraph 2 of the Resolution, when applied to persons mentioned there, makes them less equal before court than those, whose property is expropriated in the public or state interest under general procedure, as the persons, mentioned in Paragraph 2 of the Resolution have no rights and reason to protect their interests at the court as regards the amount of compensation for the property they own but which is being expropriated. Court - in cases like this and according to the law- can only quite formally approve of the price, determined by the State Land Service.

At the same time, the representative of the applicant stressed, that the second and the fourth parts of Paragraph 2 of the Resolution were not in compliance with provisions of Article 14 of the Convention, i.e., that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without any discrimination, namely, without discrimination on the ground of property status. He

pointed out that the European Court of Human Rights, when reviewing cases of the above category almost always ascertain if Article 1, Protocol 1 of the Convention and Article 14 of the Convention have been considered. From this viewpoint, there is no reason to differently value the expropriated property that has been legally obtained, i.e., during the Land Reform by a decision of the particular municipality, that has not been annulled or on the basis of the endowment contract, if the contract has not been withdrawn. When expropriating the above properties, the same standards and values shall be also applied when expropriating properties obtained by any other legal means.

The representative of the applicant expressed the viewpoint that the second and the fourth parts of Paragraph 2 of the Resolution express the notion that evaluation of the property depends only on what basis or how the property has been obtained and on the fact if the property status of its owner has improved or become worse. The representative of the applicant is of the opinion that compensation for the expropriated property shall be reasonable and shall not be determined just on the basis of the manner of obtaining it. If for one and the same thing two people are paid different sums of money just because they have been obtained differently, then that means discrimination on the ground of property status.

**4. The Saeima** in its written reply to the Constitutional Court points out that the application on initiating a case is unfounded, as provisions of Article 1, Protocol 1 of the Convention have been observed both, when passing the Law on Expropriation and when adopting the second, third and fourth parts of Paragraph 2 of the Resolution, that envisage particular cases of expropriating property. The applicant in point of fact questions the right of the legislator of Latvia to pass the laws it considers being of importance in order to control use of property in general interests. Thus the applicant comes into conflict with the second part of Article 1, Protocol 1 of the Convention that envisages the above right.

At the Court session the Saeima representative explained, that application of norms of the second, third and fourth parts of Paragraph 2 of the Resolution is connected with three precisely defined by the legislator conditions, as, firstly, they can be applied only during the Land Reform, secondly, they are applied only to particular objects, mentioned in the paragraph and, thirdly, these

norms are to be applied only to certain categories of owners. The Saeima representative stressed, that the Land Reform - according to laws, regulating the Land Reform both in the cities and in the rural districts- is a long-standing, complex and embracing the whole Latvian national economy undertaking, or an extensive social and economic reform, the objective of which is to attain (taking into consideration present possibilities) justice with regard to any individual and society as a whole. Besides, in compliance with the above laws, Resolution on completion of the Land Reform in every particular municipal territory is adopted by the Cabinet of Ministers on the basis of a statement, submitted by the municipality. Therefore, the statement of the applicant that the property regained by its former owners (or their heirs) shall not be considered as being connected with the Land Reform.

When analysing Article 1, First Protocol of the Convention, the representative of the Saeima stressed, that in conformity with Article 4 of the Law on Convention, the Republic of Latvia - after 3 years of depositing the ratification paper - acknowledges jurisdiction of the European Court of Human Rights in all issues, referring to interpretation and application of the Convention and its Protocols *ipso facto* as mandatory and without additional agreement. Therefore "the general international principles", incorporated into Article 1, First Protocol, shall be applied only in case if there exist international legal relations between the subjects, in a word, these principles are applicable when expropriating a property of a non-national, that is - a natural or a juridical person who is a foreigner. The European Court of Human Rights has come to the above conclusion in its 21 February 1986 Judgement in Case of James and Others and 8 July 1986 Second Judgement in Case of Lithgow and Others. On the other hand, if expropriation of a property takes place and there are no international legal relations between the subjects, but only administratively legal or civil relations between the state and the citizens or between the citizens of the particular state, then reference to general principles of international law is ungrounded.

Besides - as was pointed out by the representative of the Saeima - the above Judgements by the European Court of Human Rights acknowledge, that even though any state has the right to establish regulations on circumstances of expropriating property, Article 1, First Protocol envisages compensation for expropriation, if it is necessary for retaining fair balance between public interest and

interference with the peaceful enjoyment of possessions. If the state has legal objectives in the public interest, e.g. when carrying out a national economic reform that is connected with redistribution of property to establish higher social justice, then - as has been pointed out by the European Court of Human Rights - compensation could be lower than the market value. The representative of the Saeima stressed that compensation, incorporated into Paragraph 2 of the Resolution- even if it is limited - is envisaged, therefore it is not incompatible with Article 1, First Protocol of the Convention.

As to equality before court, the Saeima representative expressed a viewpoint, that Paragraph 2 of the Resolution does not eliminate competence of court, because part three of the Paragraph envisages owner's right to compensation for contributions if the contributions have increased the value of his/her property, as well as his/her right to receive compensation for substantiated expenses that are determined by court.

Evaluating conformity of the second and the fourth parts of Paragraph 2 of the Resolution to Article 1, First Protocol of the Convention, **the Constitutional Court concluded:**

1. The first sentence of Article 1 Protocol 1 of the Convention guarantees the right of any natural or legal person to peacefully enjoy his possessions, that is, the right to run or administer the possession, use it, procure benefit and handle it. In conformity with the second sentence of the first part of Article 1, Protocol 1 of the Convention and the second part of the Article the state may limit the property rights. Property may be deprived "in the public interest and subject to the conditions provided for by the law and by the general principles of international law" as well as to control the use of property "in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The general principle on peaceful enjoyment of possessions is always to be considered in connection with the right of the state to limit the use of the property and in accordance with conditions envisaged by Article 1 Protocol 1 of the Convention (see D.GOMIEN, D.HARRIS, L.ZWAAK. Law and Practice of the European Convention on Human Rights and the European Social Charter. Council of Europe, 1996, page 312).

2. The right of any natural or legal person to enjoy his possessions also means the right to the value of the property or market price. The right to compensation in a monetary sum in case if the immovable property, in accordance with a special law, is expropriated in the state or public interest in the Republic of Latvia is guaranteed by Articles 1 and 2 of the Law " On Eminent Domain". In conformity with this law, the extent of compensation shall be determined, evaluating the deprived real estate taking into account the local prices and the particular conditions of the property. If the owner so requests, the property must be evaluated, taking into consideration its profitability. Undeserved increase in value, dependent on the objective of expropriation is not taken into consideration. If an agreement with the owner is not reached, the amount of compensation is determined by court, taking into account expert conclusions and the above criteria (Articles 5, 13, 14, 16 of the Law " On Eminent Domain").

In its turn, procedure of evaluation of the immovable property and determination of compensation in the Republic of Latvia, in accordance with Paragraph 2 of the Resolution is to be accomplished under the Land Reform, because:

Firstly, terms of the second part of Paragraph 2 of the Resolution are considered to be effective only during the Land Reform, and when the Land Reform is completed the above legal norm loses validity;

Secondly, terms, expressed in the second part of the Resolution refer only to those immovable properties, to which the ownership rights are renewed or shall be renewed in accordance with the law to former owners or their heirs or which have been obtained from the former landowners (their heirs) on the basis of the endowment contract;

Thirdly, the procedure has been determined, taking into consideration state or public interests, as the terms of the second part of Paragraph 2 of the Resolution refer only to those immovable properties, that are necessary for state or public needs for maintenance and operation of specially protected nature objects, objects of education, culture and science of state significance, state training farms, national sport centres as well as objects of

engineering and technical, energetic and transportation infrastructure.

In accordance with the second part of Paragraph 2 of the Resolution, the amount of compensation is to be determined in a monetary sum, but not more than the evaluation of the real estate in the Land Books or cadastral documents drawn up before July 22, 1940 in which the value of the real estate is indicated. At the same time, the value of the property shall be recalculated from 1938. - 1940. prices (in pre-war lats) to present prices, in accordance with coefficients determined by the State Land Service. Thus, the amount of compensation complies with the value of the immovable property of the moment of its nationalisation or another unlawful expropriation during the period of annexation of Latvia by the USSR.

Such a procedure of determination of the extent of compensation is envisaged not only for immovable property mentioned in the second part of Paragraph 2 of the Resolution, but also for denationalisation of state and municipal property and renewal of property rights to former owners in cases, when compensation for immovable property - that is not restituted to its former owner - is determined.

Initially, the second part of Paragraph 5, Subparagraph 3 of the March 20, 1991 Resolution by the Supreme Council " On State Property and Fundamental Principles of its Conversion" determined that "the property shall be restituted to the former owners or their legal heirs or compensated in state securities (with an exception of money) in the amount in which the real estate value has been maintained up to the post-war period and indicated in inventory acts of basic funds after the second world war. Later it was defined more exactly, that:

First of all, in rural districts the extent of compensation for the immovable property that has not been restituted, shall be determined taking into account " evaluation of the property during nationalisation" (Article 14 of the Law " On Land Privatisation in Rural Districts").

Secondly, amount of compensation in the cities is to be determined " in accordance with the objective of use of the land on

July 21, 1940 (see Article 2 of the Resolution Nr.171 by the Cabinet of Ministers of May 6, 1997 " On Calculation of Compensation to Former Landowners or their Heirs and Determination of Payment when Obtaining Land Property in the Cities" and Regulations by the Cabinet of Ministers Nr. 94 of April 12, 1994 "On City Land Evaluation ", page 37).

Thirdly, compensation for dwelling houses or other buildings that have not been returned to the former owner is determined on the basis of the " initial value of the particular property indicated during nationalisation" (see Regulations by the Cabinet of Ministers Nr. 197 of July 11,1995 "On Determination of Compensation to Former Owners for their Property and Comparison with the Present Value of the Object (Property) to be Privatised", page 3).

Thus, the procedure of evaluation and determination of compensation for the immovable property, envisaged by the second part of Paragraph 2 of the Resolution is in conformity with the fundamental principle of denationalisation of property in the Republic of Latvia - " to denationalise the property or to compensate its value in the extent that has been indicated during nationalisation" - and it has the objective - in the context of consequences of the policy of annexation by the USSR - to renew social justice and to fairly balance interests of the individual and the society after completion of the property reform ( conversion).

**3.**Although the amount of compensation is to be reasonably related to the value of the property to be expropriated, still - as has repeatedly been proved in the practice of the European Court of Human Rights - Article 1 Protocol 1 of the Convention does not envisage full compensation for the expropriated property, especially in cases, when expropriation of property takes place in really important public interests. Fair balance between the public interests, mentioned in Article 1, Protocol 1 of the Convention and the necessity to protect the interests of the owner, guaranteed by the above Article, is unequivocally considered by the European Court of Human Rights to be the basic criterion of determining compensation for property to be expropriated. When specifying the notion of fair balance, the European Court of Human Rights has come to the conclusion, that 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 Judgement of 21 February, 1986, Paragraph 54 and Case of Lithgow and Others Judgement of July 8, 1986, Paragraph 121). Thus, the principle of fair balance not only establishes a certain boundary between an admissible and inadmissible expropriation of property but also endows the government with extensive rights when evaluating the property to be expropriated and determining the amount of compensation ( See D.J.Harris, M.O'Boyle, C.Warbrick. Law of the European Convention on Human Rights. London, Dublin, Edinburgh, 1995, pages 532-534)

4. The reservation, included in Article 2 of the Law on Convention, stressing that the demands of Article 1, Protocol 1 shall not be attributed "to the property reform regulating restitution of property or compensating former owners or their heirs, whose property has been nationalised, confiscated, collectivised or otherwise unlawfully expropriated during the period of annexation by the USSR" points out that, when implementing the property reform, limitation of the rights of the former owners or the rights of other subjects in the public interest is admissible. The notion "property reform" includes the notion "land reform" as well, because in accordance with the first Paragraph of the Resolution by the Supreme Council of March 20, 1991 "On State Property and the Fundamental Principles of its Conversion", the "property reform means assigning state enterprises to the authority of the municipality, denationalisation of the state and municipal property, as well as privatisation of the state and municipal property.

Consequently, the rights of any natural or legal person, guaranteed by Article 1, Protocol 1 of the Convention, to peacefully enjoy his possessions in conformity with the reservation included in Article 2 of the Law on Convention shall be analysed both - in connection with the admissible limitations of property rights, envisaged by Article 1, Protocol 1 of the Convention - and the whole property reform, taking place in the Republic of Latvia and under it the expropriation of immovable property in the public and state interest.

Only from this viewpoint one shall estimate the procedure of evaluation of the property to be expropriated and determination of compensation, expressed in the second part of Paragraph 2 of the Resolution, that, in accordance with the above fundamental principle

of denationalisation of property in the public interest to a certain extent limits the rights of persons, mentioned in the second and fourth parts of Paragraph 2 of the Resolution, to full compensation of the returned (or received on the basis of the endowment contract) property, which - when compared to the value of the same property indicated during nationalisation - could have increased.

**5.** Validity (in terms of time) of the second and the fourth part of Paragraph 2 of the Resolution is limited with the notion "period of the Land Reform". Completion of the Land Reform, and together with it invalidity of the second and the fourth part of Paragraph 2 of the Resolution, is possible only if the objective of the Land Reform, defined both in Article 2 of the law "On Land Reform in the Cities of the Republic of Latvia" and Article 1 of the law "On Land Privatisation in Rural Districts" which stresses that the Land Reform- i.e. gradual denationalisation of the state and municipal property and privatisation- is meant to rearrange social, economic and legal relations in the cities and in rural districts connected with land property and its use, is completely accomplished. Thus, the Land Reform is a lasting and complex undertaking, and with regard to the former owners or their heirs is not completed at the moment of regaining the immovable property, as was declared by the applicant, but only at the instant when the above legal, social and economic relations have been rearranged and when the Cabinet of Ministers has adopted Resolution on completion of the Land Reform in the territory of the particular municipality (see page 34 of the Law "On Land Reform in the Cities of the Republic of Latvia", page 35 of the Law "On Privatisation of Land in Rural Districts" and pages 3-5 of the Law "On Completion of the Land Reform in Rural Districts").

**6.** Force of the second and the fourth parts of Paragraph 2 of the Resolution with regard to persons, has been limited by the reference to former owners or their heirs as well as to any natural or legal person, who has acquired the immovable property from its former owner (his/her heirs) on the basis of the endowment contract after the above have renewed their property rights. As the conditions of the second and fourth parts of paragraph 2 of the Resolution are to be applied to persons regardless of their citizenship, one and the same criterion to determine compensation for property to be expropriated is established, thus the objection of the applicant about violation of the general principles of international rights, mentioned in the first part of Article 1, Protocol 1 of the Convention is

groundless. As has been acknowledged in the practice of the European Court of Human Rights, the general principles of international rights in the conception of Article 1, Protocol 1 of the Convention makes the state responsible for appropriate compensation in cases, when a property of non-citizens is being expropriated in the public interest, in a word, the principles protect the above persons from expropriation of their property without any compensation (see Paragraph 64 of James and Others Judgement of 21. February, 1986 and Paragraph 117 of the Judgement in Case of Lithgow and Others, as well as D.J.Harris, M.O'Boyle, C.Warbrick. Law of the European Convention on Human Rights. London, Dublin, Edinburgh, 1995, page 530).

7. The second and fourth parts of Paragraph 2 of the Resolution do not forbid the owner, whose property is being expropriated in the public or state interests, to plead the court to review the extent of compensation. The second part of Paragraph 2 of the Resolution only establishes the maximum extent of compensation. Therefore the viewpoint of the applicant, expressed during the Court session, that the above persons have been denied the right to protection by court and equality before court, is unfounded.

8. In the same way, reference by the applicant to the fact, that conditions of the second and the fourth parts of Paragraph 2 of the Resolution are not in compliance with Article 14 of the Convention, that together with Article 1, Protocol 1 of the Convention makes the state responsible for securing the right of any natural or legal person to peacefully enjoy his possessions as well as the right - without any discrimination, including property status of the owner - to a certain compensation in case of expropriation of property is groundless. Evaluation of the property and determination of compensation according to the Resolution (paragraph 2, part 2) are in no way connected with prosperity or wealth of one or the other owner.

However, Article 14 of the Convention does not give extensive enumeration of principles of discrimination. That has been expressed by the words "...or other circumstances". As the Resolution in the second and the fourth parts of Paragraph 2 envisages different terms for different categories of owners as regards the rights of the above owners, guaranteed by the first part of Article 1, Protocol 1 of the Convention, in the context of Article 14 it is very important to

consider the motivation of these differences (see Paragraph 74 of the Judgement in Case of James and Others of 21 February 1986).

9. Article 14 of the Convention does not forbid difference in treatment, in the exercise of the rights and freedoms recognised by Article 1, Protocol 1 of the Convention (see Paragraph 10 of the Judgement by the European Court of Human Rights of July 23, 1968 in Belgian Linguistics case). As has been repeatedly stressed in the practice of the European Court of Human Rights, Article 14 of the Convention protects persons - in analogous and comparable circumstances - from discriminatory and different treatment.

Difference in treatment - according to Article 14 of the Convention - shall be considered discriminatory if it has no objective and reasonable justification, in a word, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the legal aim sought to be realised. Besides, the state to a certain extent enjoys a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law; the scope of this margin will vary according to the circumstances, the subject-matter and its background (see Paragraphs 35,38, and 40 of the Judgement of November 28, 1984 in Rasmussen Case by European Court of Human Rights and the Judgement by the same above Court in Case of Abdulaziz, Cabales and Balkandali of May, 28, 1985, Paragraph 72).

There is an objective difference between persons mentioned in the second and the fourth parts of Paragraph 2 of the Resolution and the other legal and natural persons to whom the Law on Eminent Domain shall be applied , but only concerning the amount of compensation for the immovable property to be expropriated. The second part of Paragraph 2 of the Resolution does not derange the fair balance between the public interest, protected by this part of the Paragraph, and the private interests of the particular owners as it envisages the procedure by which compensation is determined on basis of the value of the particular immovable property during nationalisation.

Besides, when determining the maximum extent of compensation in the second part of Paragraph 2 of the Resolution, the legislator has not violated the principle of fair balance, either when referring to

interconnection of the exception in public interests - to protect which the exception is envisaged - or referring to legality of the above public interests. The different treatment, established by the second and the fourth parts of Paragraph 2 of the Resolution has been reasonably and objectively justified by the process of the Land Reform and thus the legislator has acted within the jurisdiction as regards determining permissibility of different treatment, established by the second and fourth parts of Paragraph 2 of the Resolution.

**On the basis of Articles 30 to 32 of the Constitutional Court Law**

**the Constitutional Court**

**DECIDED:**

to declare the second and the fourth part of Paragraph 2 of the Supreme Council 15 September, 1992 Resolution "On the Procedure by which the Republic of Latvia Law "On Eminent Domain " Takes Effect"" **as being in compliance** with Article 1 Protocol 1 of the November 4, 1950 European Convention of Human Rights and Fundamental Freedoms.

The Judgment becomes effective from the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga, on April 30, 1998.

Chairman of the Court session

A. Endziņš

Justice of the Constitutional Court  
Skultāne

I.

Justice of the Constitutional Court

A. Lepse