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

FIRST SECTION

CASE OF SHEVANOVA v. LATVIA

(Application no. 58822/00)

JUDGMENT

STRASBOURG

15 June 2006

THIS CASE WAS REFERRED TO THE GRAND CHAMBER, WHICH DELIVERED JUDGMENT IN THE CASE ON 7 DECEMBER 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shevanova v. Latvia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*
Mrs J. BRIEDE, ad hoc *judge,*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 19 May 2005 and on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 58822/00) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mrs Nina Shevanova (“the applicant”), on 28 June 2000.

2. The applicant was represented before the Court by Mr G. Kotovs, a lawyer and member of Riga Municipal Council. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that the decision of the Latvian authorities to deport her from Latvia violated her right to respect for her private and family life guaranteed by Article 8 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a partial decision of 15 February 2001 the Court declared the application inadmissible with regard to the complaints of the applicant’s son, Mr Jevgeņijs Ševanovs.

6. By a decision of 28 February 2002 the Chamber declared the application partly admissible.

7. The applicant and the Government each filed written observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations. On 12 May 2002 the applicant filed a claim for just satisfaction (Article 41 of the Convention).

On 19 June 2002 the Government submitted their observations on that claim.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

9. As the seat of the judge in respect of Latvia was vacant, the Latvian Government, in a letter of 20 December 2004, appointed Mrs J. Briede as *ad hoc* judge in the present case (Article 27 § 2 of the Convention and Rule 29 § 1).

10. By letter of 3 February 2005 the Government informed the Court of further developments in the case and requested that the application be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention. On 25 April 2005 the applicant submitted her observations on that letter. On 13 May 2005 the Government submitted their observations in reply.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicant is a Russian national who was born in Russia in 1948 and lives in Riga (Latvia).

A. Background to the case and proceedings concerning the applicant's deportation

12. In 1970, at the age of twenty-two, the applicant settled in Latvian territory for work-related reasons. Between 1973 and 1980, the year of her divorce, she was married to a man resident in Latvia. In 1973 she gave birth to a son, Jevgeņijs Ševanovs, who has lived with her until the present day.

In 1981, having lost the Soviet passport issued to her in 1978, the applicant obtained a new passport. In 1989 she found the lost passport, but did not return it to the relevant authorities.

13. In August 1991 Latvia regained full independence. In December 1991 the Soviet Union, the State of which the applicant had hitherto been a national, broke up. The applicant therefore became stateless. In August 1992 her name was entered in the register of residents (*Iedzīvotāju reģistrs*) as a permanent resident. Her son was subsequently granted the status of "permanently resident non-citizen" of Latvia.

14. In 1994 a Latvian bridge-building firm offered the applicant a job as a crane operator in Dagestan and Ingushetia, regions of the Caucasus

bordering on Chechnya and belonging to the Russian Federation. In view of the difficulties caused by tighter supervision in these regions by the Russian authorities on account of the troubles in Chechnya, the firm advised her to obtain Russian nationality and a formal registration of residence in Russia before signing the employment contract. In May 1994 the applicant consulted a broker who put a false stamp in her first Soviet passport, the one which had been found but not disclosed to the authorities, stating that the registration of her residence in Latvia had been cancelled (*pieraksts*, or *dzīvesvietas reģistrācija* in Latvian).

15. In June 1994 the applicant was registered as being resident in Shumanovo in the Kursk region of Russia, at her brother's address. In August 1994 she obtained Russian nationality. In 1995 and 1996 she travelled to Russia, working there for two periods of 100 and 120 days respectively.

16. In March 1998 the applicant applied to the Interior Ministry's Nationality and Migration Directorate (*Iekšlietu ministrijas Pilsonības un migrācijas lietu pārvalde* – "the Directorate") for a passport based on the status of "permanently resident non-citizen". In accordance with the regulations in force, she submitted alongside the application the second Soviet passport issued to her in 1981. On examining the file, the Directorate discovered that she had registered a second residence in Russia and had completed certain formalities on the basis of the old passport which had been mislaid and found again. Accordingly, by decision of 9 April 1998, the Directorate removed the applicant's name from the register of residents. On the same day the head of the Directorate issued an order for the applicant's deportation (*izbraukšanas rīkojums*), requesting her to leave Latvia for Russia by 19 June 1998. The deportation order was accompanied by a prohibition on re-entering Latvia for five years. It was served on the applicant on 11 June 1998.

17. After appealing unsuccessfully against the deportation order to the head of the Directorate, the applicant lodged an application with the Riga City Central District Court seeking to have the order set aside. In her memorial she submitted that, as the false stamp in her passport had been put there without her knowledge and she had therefore been unaware of it, she should not have to bear the consequences. In addition, since the registration of her residence in Russia had been merely temporary, it could not affect her existing registration in Latvia. She further argued that there were no legislative or regulatory provisions in force prohibiting her from having addresses in two different countries. Accordingly, the applicant requested the court to set aside the order for her deportation and to instruct the Directorate to issue her with a permanent residence permit.

18. In a judgment delivered on 3 December 1998 following adversarial proceedings, the court rejected the request, finding that the deportation order had been lawful and well founded. As to the applicant's request that she be

issued with a residence permit, the court declared that part of the application inadmissible on the ground that she had not applied for a permit to the relevant authorities, nor had she lodged an administrative appeal before applying to the courts, as required by section 34 of the Aliens and Stateless Persons (Entry and Residence) Act ("the Aliens Act").

19. On 13 July 1999 the Russian authorities cancelled the applicant's residence registration in Russia, at her request.

20. The applicant lodged an appeal with the Riga Regional Court against the judgment of 3 December 1998. In a judgment delivered on 29 September 1999 following adversarial proceedings, the Regional Court dismissed the appeal on the ground that, as the applicant had been illegally resident in Latvia since her return from Russia, her deportation was in accordance with section 38 of the Aliens Act. The Regional Court also upheld the District Court's findings as to the inadmissibility of the request for a residence permit.

21. In a judgment of 28 December 1999 the Senate of the Supreme Court dismissed an appeal by the applicant on points of law, finding that the interference complained of had been lawful and proportionate. In particular, the Senate observed that, in the instant case, the applicant's right to have two addresses or places of residence in two different countries had not been in dispute; the order for her deportation had been based solely on the fact that she had been resident in Latvia without a residence permit.

22. With the delivery of the Senate's judgment the order for the applicant's deportation became enforceable.

23. In two letters sent on 21 January and 3 February 2000, the applicant and her son requested the head of the Directorate to rescind the deportation order and to issue the applicant with a permanent residence permit. In support of their request, they argued that they did not have family ties in any country other than Latvia and that the expulsion of the applicant from Latvian territory, where they had lived together for twenty-six years, would constitute a serious infringement of their right to respect for their family life. They made explicit reference in that regard to Article 8 § 1 of the Convention and to similar provisions of the Latvian Constitution.

24. By letters dated 28 January and 15 February 2000 respectively, the head of the Directorate refused this request and reminded the applicant that she was required to leave Latvia immediately or be forcibly expelled.

25. After attempting without success to challenge this refusal by means of an administrative appeal to the Interior Minister, Mrs Shevanova and her son lodged a fresh application with the Riga City Central District Court to have the deportation order set aside. By order of 3 March 2000 the court declared the application inadmissible. On 24 May 2000 the Riga Regional Court upheld the order. An appeal on points of law by the applicant and her son was dismissed by an order of the Senate of the Supreme Court dated 29 November 2000.

26. On 12 February 2001 the applicant was arrested by the immigration police (*Imigrācijas policija*) and placed in a detention centre for illegal immigrants. On 21 February 2001 officials of the Directorate served a forcible expulsion decision on her (*lēmums par piespiedu izraidīšanu no valsts*).

27. On 26 February 2001 the applicant was admitted to hospital with acute hypertension. Consequently, on 28 February 2001, the head of the Directorate stayed execution of the forcible expulsion decision and requested the immigration police to formally order the applicant's release from the detention centre. The deportation order of 9 April 1998 was also suspended at the same time.

28. As execution of the forcible expulsion decision had been stayed indefinitely, the applicant continued to reside illegally in Latvia.

B. Developments subsequent to the admissibility decision

29. On 7 January 2005 the head of the Directorate wrote a letter to the Government's Agent in the following terms:

> "... [T]he ... Directorate ... has received your letter concerning the application lodged by Nina Shevanova with the European Court of Human Rights ... and requesting [us] to consider the possibility of issuing her with a permanent residence permit ... under section 24(2) of the Immigration Act. The reason you cite for your request is the existence of a real risk that a violation of Article 8 of the Convention might be found in this case. However, if Nina Shevanova were to be granted a sufficiently secure legal status in Latvia, the Latvian Government would be justified in requesting the European Court to dismiss the application.
>
> ...
>
> I would like first of all to draw your attention to the fact that section 24(3) of the Immigration Act does not apply to the circumstances of the *Shevanova* case. The Directorate has therefore explored other possible solutions.
>
> ...
>
> Regard being had ... to the relevant circumstances of the *Shevanova* case, and in particular the fact that Mrs Shevanova has lived and worked within Latvian territory for a long time – a fact which undoubtedly testifies to the existence of sufficiently strong private and social ties ... – the Directorate is prepared, once it has obtained the necessary documentation from Mrs Shevanova ..., to address an opinion to the Minister of the Interior proposing that she be issued with a temporary residence permit valid for five years, in accordance with section 23(3) of the Immigration Act...
>
> ...
>
> Under the terms of Council [of the European Union] Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, Member States are required to grant long-term resident status to third-country nationals who

have resided legally and continuously within their territory for five years immediately prior to submission of the relevant application. Accordingly, on expiry of the period of validity of her temporary residence permit, Nina Shevanova would be entitled to apply for and obtain the status of permanent resident and to be issued with an EC residence permit. Remedying Mrs Shevanova's situation in this way would be sufficient to put an end to any possible violation of her rights under Article 8 of the Convention.

With this aim in mind, the Directorate has already drawn up a letter inviting Mrs Shevanova to submit to it the documents required in order to apply for a residence permit. This letter will be sent to her in the next few days. It should be pointed out that, in accordance with section 61 of Regulation no. 213 ... on residence permits, [the person concerned] in such cases must submit a letter from a legal entity attesting to the necessity ... of his or her remaining in the Republic of Latvia. The Directorate notes in that connection that Mrs Shevanova will in all likelihood be unable to produce such a document. In any event, a positive ... outcome to the case can be achieved only if Mrs Shevanova herself displays an interest in such a solution.

Should Mrs Shevanova herself fail to take steps towards implementing the solution proposed by the Latvian Government, [it should be borne in mind that] the European Court of Human Rights has already acknowledged that, where applicants knowingly decline to take the appropriate measures suggested by the authorities ..., they cannot claim to be victims of a violation of their right to respect for their private and family life... The reference to Article 8 of the Convention ..., made in Mrs Shevanova's request, would therefore be without foundation."

30. By Decree no. 75 of 2 February 2005, the Cabinet of Ministers instructed the Minister of the Interior to issue the applicant with a permanent residence permit "once the documents required to make such an application have been received" (Article 1 of the decree).

31. By letter of 24 February 2005 the Directorate explained to the applicant how she could regularise her stay by obtaining a permanent residence permit, and invited her to submit the documents required for that purpose under the relevant regulations. It is clear from the case file, however, that the applicant has to date not taken the steps indicated by the Directorate.

II. RELEVANT DOMESTIC LAW

A. General provisions

32. Latvian legislation on nationality and immigration distinguishes several categories of persons, each with a specific status.

(a) Latvian citizens (*Latvijas Republikas pilsoņi*), whose legal status is governed by the Citizenship Act (*Pilsonības likums*);

(b) "permanently resident non-citizens" (*nepilsoņi*) – that is, citizens of the former USSR who lost their Soviet citizenship following the break-up of

the USSR in 1991, but have not subsequently obtained any other nationality – who are governed by the Non-Citizens Act (see paragraph 33 below);

(c) asylum-seekers and refugees, whose status is governed by the Asylum Act of 7 March 2002 (*Patvēruma likums*);

(d) “stateless persons” (*bezvalstnieki*) in the narrow and specific sense of the term. Prior to 2 March 2004 their status was governed by the Status of Stateless Persons Act, read in conjunction with the Aliens Act (see paragraph 34 below) and, after 1 May 2003, with the Immigration Act (see paragraph 36 below). Since 2 March 2004 their status has been governed by the new Stateless Persons Act, also read in conjunction with the Immigration Act;

(e) “aliens” in the broad sense of the term (*ārzemnieki*), a category which includes foreign nationals (*ārvalstnieki*) and stateless persons (*bezvalstnieki*) falling solely within the ambit of the Aliens Act (before 1 May 2003), and the Immigration Act (since that date).

B. “Permanently resident non-citizens”

33. Section 1(1) of the Act on the Status of Former USSR Citizens without Latvian or other Citizenship ((*Likums “Par to bijušo PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības*) reads as follows:

> [*Version in force before 25 September 1998*]: “This Act governs citizens of the former USSR resident in Latvia ..., who were resident within Latvian territory prior to 1 July 1992 and whose place of residence is registered there, regardless of the status of their housing, and who are not citizens of Latvia or any other State; it also governs the minor children of such persons who are not citizens of Latvia or any other State.”
>
> [*Version in force since 25 September 1998*]: “The persons governed by this Act – ‘non-citizens’ – shall be those citizens of the former USSR, and their children, who are resident in Latvia ... and who satisfy all the following criteria:
>
> (1) on 1 July 1992 they were registered as being resident within the territory of Latvia, regardless of the status of their housing; or their last registered place of residence by 1 July 1992 was in the Republic of Latvia; or a court has established that before the above-mentioned date they had been resident within Latvian territory for not less than ten years;
>
> (2) they do not have Latvian citizenship;
>
> (3) they are not and have not been citizens of any other State. ...”
>
> ...

C. Status of aliens generally

34. The relevant provisions of the Aliens and Stateless Persons (Entry and Residence) Act (*Likums "Par ārvalstnieku un bezvalstnieku ieceļošanu un uzturēšanos Latvijas Republikā*), in force prior to 1 May 2003, read as follows:

Section 11

"Any foreigner or stateless person shall be entitled to stay in the Republic of Latvia for more than three months [*version in force since 25 May 1999*: 'more than ninety days in the course of one half of a calendar year'], provided that he or she has obtained a residence permit in accordance with the provisions of this Act. ..."

Section 12

(*amended by the Act of 15 October 1998*)

"Aliens or stateless persons may be issued with...

(1) a temporary residence permit;

(2) a permanent residence permit. ..."

Section 23(1)

(*added by the Act of 18 December 1996, in force since 21 January 1997*)

"Permanent residence permits may be obtained by aliens who, on 1 July 1992, were officially registered as being resident for an indefinite period within the Republic of Latvia if, at the time of applying for a permanent residence permit, they are officially registered as being resident within the Republic of Latvia and are entered in the register of residents.

Citizens of the former USSR who acquired the citizenship of another State before 1 September 1996 must apply for a permanent residence permit by 31 March 1997. Citizens of the former USSR who acquired the citizenship of another State after 1 September 1996 must apply within six months of the date on which they acquired the citizenship of that State. ..."

Section 34

"The person concerned may, within one month of notification of the decision to refuse a residence permit, appeal against the decision to the head of the Directorate, who shall examine the appeal within one month.

The Minister of the Interior may, by decree, set aside an unlawful decision by the Directorate or the head of the Directorate ordering a residence permit to be issued or refused.

An appeal may be lodged with the courts against the above-mentioned decision or decree by

(1) the person concerned if he or she is legally resident within the territory of the Republic of Latvia;

(2) the person resident in Latvia who invited the alien ... whose application for a residence permit has been refused, where the invitation was in connection with family reunification. ...”

Section 35

“No residence permit shall be issued to a person who

...

(5) was deported from Latvia during the five years preceding the application;

(6) has knowingly supplied false information in order to obtain such a permit;

(7) is in possession of false or invalid identity or immigration documents;

...”

Section 38

“The head of the Directorate or of the regional office of the Directorate shall issue a deportation order...

...

(2) if the alien ... is in the country without a valid visa or residence permit; ...”

Section 40

“The individual concerned shall leave the territory of Latvia within seven days after the deportation order has been served on him or her, provided that no appeal is lodged against the order in accordance with this section.

Persons in respect of whom a deportation order is issued may appeal against it within seven days to the head of the Directorate, who shall extend the residence permit pending consideration of the appeal.

An appeal against the decision of the head of the Directorate shall lie to the court within whose territorial jurisdiction the Directorate’s headquarters are situated, within seven days after the decision has been served.”

35. At the material time the practical arrangements concerning registration of residence were governed by Regulation no. 76 of 12 February 1993 on registration of residence for residents of the Republic of Latvia and

cancellation thereof (*Iedzīvotāju pierakstīšanas un izrakstīšanas noteikumi Latvijas Republikā*). Section 4 required any existing registration of residence to be cancelled in order to obtain a new registration in Latvia.

36. Since 1 May 2003 the Aliens Act cited above is no longer in force; it was repealed and replaced by the Immigration Act (*Imigrācijas likums*) of 31 October 2002. The relevant provisions of the new Act read as follows:

Section 1

"The present Act uses the following definitions:

1. an alien [*ārzemnieks*] – a person who is neither a Latvian citizen nor a "[permanently resident] non-citizen" of Latvia; ..."

Section 23(3)

"In cases not covered by the present Act, the temporary residence permit shall be granted by the Minister of the Interior, where the relevant decision accords with the provisions of international law or the interests of the Latvian State, or on humanitarian grounds."

Section 24(2)

"In cases not covered by the present Act, the permanent residence permit shall be granted by the Minister of the Interior, where it accords with the interests of the State."

Section 33 (2)

"... When the time-limit set down [for submitting an application for a residence permit] has passed, the head of the Directorate may authorise [the person concerned] to submit the [relevant] documents, where such authorisation accords with the interests of the Latvian State, or on grounds of *force majeure* or humanitarian grounds."

Section 47

"1. Within ten days of establishment of the facts detailed in the first and second subparagraphs of the present paragraph, the [relevant] official of the Directorate shall take a forcible expulsion decision ..., where:

(1) the alien has not left the Republic of Latvia within seven days of receiving the deportation order ..., and has not appealed against the order to the head of the Directorate..., or the head of the Directorate has dismissed the appeal;

...

2. In the cases referred to in the first subparagraph of paragraph 1 of this section, no appeal shall lie against the forcible expulsion decision...

...

4. In the event of a change of circumstances, the head of the Directorate may set aside a forcible expulsion decision."

D. General administrative law

37. Section 360(4) of the Administrative Procedure Act (*Administratīvā procesa likums*), in force since 1 February 2004, provides:

"An administrative act may not be enforced if more than three years have elapsed since it became enforceable. In calculating the limitation period, any period during which implementation of the administrative act was suspended shall be deducted."

38. At the time of the facts reported by the applicant, the relevant provisions of the Regulatory Offences Code (*Administratīvo pārkāpumu kodekss*) read as follows:

Article 187, fourth paragraph

"... Use of a passport which has been replaced by a new passport shall be punishable by a fine of up to 100 lati [*approximately 150 euros*]."

Article 190(3)

"Failure to provide the offices of the Latvian Nationality and Immigration Department ... with the information to be entered in the register of residents within the time allowed shall be punishable by a fine of between 10 and 25 lati [*approximately 38 euros*]."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

39. By letter of 3 February 2005 the Government informed the Court of the practical measures taken by the authorities with a view to regularising the applicant's stay in Latvia (see paragraphs 29-31 above). They explained

that a decision had been taken at the Cabinet of Ministers' meeting of 2 February 2005 to remedy the applicant's complaint directly by offering her a permanent residence permit. In view of these measures, the Government considered that the matter giving rise to the case had been resolved and the application should be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention. In that connection, the Government referred in particular to the cases of *Pančenko v. Latvia* (dec.), no. 40772/98, 28 October 1999, and *Mikheyeva v. Latvia* (dec.), no. 50029/99, 12 September 2002, in which the Court had held that the regularisation of the applicants' stay sufficed for them no longer to be able to claim to be victims of a violation of Article 8 of the Convention.

40. The applicant observed that she did not have all the documents required in order to obtain a permanent residence permit; for instance, she had no document attesting to the lawfulness of her income. She was prepared in principle to "agree to the Government's proposal", but solely on condition that the Government provided redress for the damage she had sustained as a result of the alleged violation, and reimbursed the costs and expenses she had incurred in the proceedings before the Court. The applicant claimed an overall sum of 14, 626.86 lati (LVL) in that regard.

41. In their observations in reply, the Government submitted that the applicant's stay could not be regularised unilaterally; Mrs Shevanova must actually come forward and demonstrate her wish to obtain the residence permit granted to her. To date, however, the applicant had not taken the steps indicated by the Directorate. As for providing proof of lawful income, the Government furnished a copy of a letter from the head of the Directorate dated 12 May 2005, according to which a written guarantee from the applicant's son, who was legally resident in Latvia, would suffice for that purpose. As to the sum claimed by the applicant, the Government considered it to be unjustified.

B. The Court's assessment

42. The Court considers that in the instant case the objection raised by the Government is closely linked to the question whether the applicant has effectively lost her status of "victim" within the meaning of Article 34 of the Convention as a result of developments since the admissibility decision in the present case. It is true that, in its judgment in *Pisano v. Italy* ([GC] (striking out), no. 36732/97, 24 October 2002), the Court examined this question separately from the question of the application of Article 37 § 1 (b), ruling that the applicant could continue to claim the status of "victim", while going on to decide that the matter had been resolved (*loc. cit.,* §§ 38-39). However, the present application concerns the removal of a foreign national and her illegal residence within the national territory; in cases of this type, where the applicant's stay was regularised during the

course of the Court's examination of the application, the Court has generally considered whether it should continue its examination under Article 34 of the Convention by reference precisely to the notion of "victim" (see, for example, the *Pančenko* and *Mikheyeva* decisions, cited above; see also *Maaouia v. France* (dec.), no. 39652/98, ECHR 1999-II; *Aristimuño Mendizabal v. France*, (dec.), no. 51431/99, 21 June 2005; and *Yildiz v. Germany* (dec.), no. 40932/02, 13 October 2005). The Court considers that in the instant case the Government's objection should be examined under Articles 34 and 37 taken together, as a finding that the applicant has lost her "victim" status within the meaning of Article 34 of the Convention would prompt the Court to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b).

43. The Court points out first of all that, in order to conclude in the instant case that the matter has been resolved within the meaning of Article 37 § 1 (b) and that there is therefore no longer any objective justification for the applicant to pursue her application, it is necessary to examine, firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano*, cited above, § 42). Furthermore, in relation to Article 34, the Court has always held that, as a general rule, a decision or measure favourable to the applicant is not sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the alleged breach of the Convention (see, among many other authorities, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Labita v. Italy* [GC], no. 26772/95, § 142, ECHR 2000-IV; and *Guisset v. France*, no. 33933/96, § 66, ECHR 2000-IX).

44. Where the person concerned complains in particular of his or her deportation or illegal status within the country, the minimum steps required are firstly, the setting-aside of the deportation order and, secondly, the issuing or recognition of a residence permit (see the *Mikheyeva* decision, cited above). However, it is also necessary to ascertain in each case whether these measures are sufficient to fully remedy the complaint in question.

45. In the instant case the Court observes that, until 1998, the applicant was legally resident in Latvia. In April 1998 her name was removed from the register of residents and she was served with a deportation order. Although the order was never enforced, its existence indisputably placed the applicant in a very uncertain and insecure position in Latvia. Only in January and February 2005, that is, after the present application had been declared admissible by the Court, did the Latvian authorities take practical steps aimed at regularising the applicant's stay. It is worth noting that

almost seven years elapsed between the removal of the applicant's name from the register and the adoption of the above-mentioned measures.

46. The Court notes that none of the relevant Latvian authorities explicitly acknowledged the existence of a violation of Article 8 of the Convention. It observes, however, that the Directorate's letter of 7 January 2005 referred to the Court's decision on the admissibility of the present application. It therefore accepts that the fact that the applicant's complaint to the Court was thus taken into consideration could be regarded as implicit acknowledgement of the existence of an issue under Article 8.

47. That said, and regard being had to all the relevant circumstances of the case, the Court considers that the measures taken by the authorities do not constitute adequate redress for the complaint in question. Admittedly, the Government's explanations – which have not been disputed by the applicant – make clear that the regularisation arrangements proposed would allow her to live permanently and without hindrance in Latvia. However, that solution does not erase the long period of insecurity and legal uncertainty which she has undergone in Latvia. In sum, while it is true that some redress has been afforded, it is no more than partial (see the *Aristimuño Mendizabal* decision, cited above, and, *mutatis mutandis*, *Chevrol v. France*, no. 49636/99, § 42, ECHR 2003-III).

48. The Court further considers that this case differs from the cases of *Maaouia, Pančenko, Mikheyeva* and *Yildiz*, cited above, and from the case of *Mehemi v. France (no. 2)* (no. 53470/99, ECHR 2003-IV), in which the granting of a residence permit was found to constitute redress. In *Maaouia, Mehemi (no. 2)* and *Yildiz*, the alleged violation of Article 8 stemmed from the removal or deportation of the applicants. In *Pančenko* and *Mikheyeva*, the complaints were similar to that of Mrs Shevanova, but the length of the applicants' illegal residence in the country was appreciably shorter (almost three years in the case of Mrs Pančenko and approximately six years in the case of Mrs Mikheyeva). In the instant case, the alleged violation stems from the insecure and uncertain situation in which the applicant lived for around seven years. In the circumstances, the Court finds that the adverse consequences for the applicant resulting from the circumstances complained of have not been wholly erased.

49. It follows that, since the authorities have not afforded full redress for the violation alleged by the applicant, the latter can still claim to be a "victim" within the meaning of Article 34 of the Convention. The matter has therefore not yet been resolved and the Court sees no grounds for applying Article 37 § 1 (b) of the Convention.

50. Accordingly, the Court dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

51. The applicant submitted that the decision to deport her from Latvia constituted unjustified and disproportionate interference with the exercise of her right to respect for her private and family life, as guaranteed by Article 8 of the Convention. The relevant passages of Article 8 provide:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

52. The Government denied that there had been interference with the applicant's rights under Article 8. They made the point first of all that, in guaranteeing the right to respect for family life, Article 8 presupposed the existence of a "family". That concept encompassed on the one hand the relationship established by marriage and on the other the relationship between parents and their children. In particular, the latter relationship did not necessarily attract the protection of Article 8 without evidence of further elements of dependency. In the Government's view, the applicant had not provided evidence of a specific bond of dependency between herself and her adult son. The Government further submitted that, in immigration matters, Article 8 did not entail any general obligation on the part of the State to allow family reunification within its territory.

53. In the instant case the Government emphasised that, when applying for the status of "permanently resident non-citizen", the applicant had deliberately concealed the fact that she had obtained Russian citizenship four years previously. The relevant provision of the Non-Citizens Act (see paragraph 33 above), however, was couched in clear terms such that the applicant could not have been unaware that the Act did not apply to persons who had citizenship of another State. The Government further endorsed the findings of the Senate of the Supreme Court to the effect that the right of individuals to have two addresses in two different countries had not been at issue in the case, as the only offence of which the applicant had been accused was of having resided in Latvia without a valid visa or residence permit.

54. The Government stated in that connection that the main function of the register of residents introduced in 1991 was to identify those persons who were legally and permanently resident in Latvia. Being formally

registered in Latvia was a prerequisite for non-nationals wishing to be entered in the register. (The system was a legacy from the Soviet era, when it had been known as *propiska*). Under this system, only a single residence could be registered, whether in Latvia or elsewhere. Hence, a registration of residence in another country rendered the person's registration in Latvia invalid and *vice versa*.

55. The Government also observed that, as a Russian citizen, the applicant could have applied to the Latvian authorities for a permanent residence permit under section 23(1) of the Aliens Act, but had not done so. The provision in question had been designed specifically to enable citizens of the former USSR who had acquired citizenship of another State to reside without hindrance in Latvia. Instead of entering an application and having her stay regularised in accordance with the law, the applicant had chosen to flout the law, mislead the Latvian authorities and remain in Latvia illegally.

56. Even assuming that the measure complained of could be said to amount to interference with the applicant's rights under Article 8 of the Convention, the Government were satisfied that the said interference fulfilled the requirements of the second paragraph of that Article. Firstly, it had been "in accordance with the law", having been based on section 38 of the Aliens Act, which was drafted in a sufficiently clear and foreseeable manner and authorised the Directorate or its head to issue a deportation order in respect of a non-national illegally resident within Latvian territory.

57. Secondly, the interference had pursued at least two "legitimate aims" within the meaning of Article 8 § 2 of the Convention, namely the prevention of crime and the prevention of disorder. The Government observed that the primary function of the register of residents was to identify those persons who were resident in Latvia on a legal and permanent basis and towards whom the State might have certain obligations, for instance in the social-security sphere. In such circumstances, the State and society had an interest in ensuring that illegal residents did not benefit from rights and guarantees to which they had no entitlement. Moreover, the objectives of the impugned measure had been linked to the overall objectives of immigration legislation, which included the protection of national security, individual citizens and the democratic system.

58. Lastly, the Government replied in the affirmative to the question whether the impugned measure had been "necessary in a democratic society" in order to achieve the aim pursued. In their view, the expulsion of an alien for contravening the immigration legislation was a measure generally accepted in the domestic law of the Contracting States. Equally, in the present case, the interference at issue had been examined at every level of the courts, which had subjected the deportation order to careful scrutiny and found it to be lawful. The Government stressed that the applicant was a Russian national, had been born in Russia, was of Russian ethnic origin, spoke Russian as her mother tongue and had a brother living in Russia. She

therefore had sufficiently strong ties with that country. The Government expressed doubts, on the other hand, as to the degree to which the applicant was integrated in Latvian society.

59. Finally, the Government submitted that the deportation order had not been followed by the applicant's immediate removal from Latvian territory as soon as it became enforceable; a period of time had elapsed before the head of the Directorate had ordered her forcible expulsion. Moreover, the measure complained of had never been enforced, and the applicant continued to live in Latvia to the present day.

2. The applicant

60. The applicant submitted that the decision to deport her from Latvia undoubtedly amounted to interference with her private and family life since, should the deportation order be executed, she would be separated from the son with whom she lived in Latvia. She stressed that Latvia had been her sole country of residence for over thirty-five years and that, until 2000, she had been legally registered as resident in the country. With regard to her work in Russia in 1995 and 1996, she said that the two periods she had spent working there had lasted only 100 and 120 days respectively. As to her Russian citizenship and her official registration of a place of residence in Russia, she argued that these had been essential in order to avoid potential problems in an unstable region close to Chechnya. In other words, it had never been her intention either to leave Latvia or to settle in Russia.

61. The applicant further expressed doubts as to the "lawfulness" of the interference. Firstly, in her view, section 38 of the Aliens Act was to be read in conjunction with section 49, which stated that international treaties took precedence over domestic legislation. The Latvian authorities should therefore take account of Article 8 of the Convention, which guaranteed the applicant's right to respect for her private and family life and constituted a reason for not deporting her. Secondly, the applicant challenged the Government's argument that her registration of a residence in Russia had automatically cancelled out – or "rendered invalid" – her residence registration in Latvia. On the contrary, her residence permit had been valid until 9 April 1998, when the Directorate had removed her name from the register of residents and issued an order for her deportation; hence, her residence in Latvia had been perfectly legal until then. Lastly, the applicant contested the view that the effects of the provisions in question were foreseeable. In her opinion, it was not obvious who was or was not covered by the Non-Citizens Act, a fact demonstrated by the numerous sets of judicial proceedings which had been brought on that very subject.

62. Finally, as to the alleged breaches of Latvian immigration law, the applicant conceded that she had omitted to apply for a permanent residence permit in accordance with the law. However, she considered that this fact could not serve as a basis for withdrawing her permanent-resident status in

Latvia and deporting her. Neither did that omission on her part prevent her from applying for a residence permit after the deadline set by the above-mentioned provision. In support of that argument the applicant provided copies of two judgments by the Senate of the Supreme Court in two separate cases concerning citizens of the former USSR who had left Latvia temporarily and returned subsequently. In both cases the Senate had found that the persons concerned did not automatically and unconditionally lose the right to remain in Latvia.

63. The applicant also acknowledged that she had concealed her Russian citizenship when applying for the status of "permanently resident non-citizen". She submitted in that connection that, since she was not a lawyer, she had not realised that only persons who had no nationality could obtain that status. Even assuming that she had concealed the information deliberately, the decision to expel her constituted in any event a measure manifestly disproportionate to any legitimate aim pursued. The applicant argued in particular that, under Latvian law, the action in question was merely a regulatory offence not punishable under criminal law and attracting a fine of LVL 100 (approximately 150 euros (EUR)). There was therefore no foundation for the Government's assertion that her actions had been sufficiently dangerous to justify her removal from Latvia. In the circumstances, the applicant took the view that the interference in question could not be said to be necessary and justified in a democratic society.

B. The Court's assessment

1. Whether there was interference

64. The Court reiterates at the outset that the Convention does not guarantee the right of an alien to enter or to reside in a particular country and that Contracting States have the right, as a matter of well-established international law, to control the entry, residence and expulsion of aliens (see, among many other authorities, *El Boujaïdi v. France*, judgment of 26 September 1997, *Reports* 1997-VI, p. 1992, § 39; *Baghli v. France*, no. 34374/97, § 45, ECHR 1999-VIII; and *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).

65. Nevertheless, the decisions taken by States in the immigration sphere can in some cases amount to interference with the right to respect for private and family life secured by Article 8 § 1 of the Convention, in particular where the persons concerned possess strong personal or family ties in the host country which are liable to be seriously affected by an expulsion order. Such interference is in breach of Article 8 unless it is "in accordance with the law", pursues one or more legitimate aims under the second paragraph of that Article, and is "necessary in a democratic society" in order to achieve them (see, for example, *Moustaquim v. Belgium*, judgment of

18 February 1991, Series A no. 193, p. 18, § 36; *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, p. 91, § 52; and *Amrollahi v. Denmark*, no. 56811/00, § 33, 11 July 2002).

66. In the instant case the Court notes that the applicant arrived in Latvia in 1970, that is, at the age of twenty-two. The evidence in the case file shows that, since 1970, she has always lived within Latvian territory, and that her work-related absences in 1995 and 1996 are the longest periods she has spent outside the country. Moreover, for seven years of her time in Latvia she was married, and she gave birth to her son there. In fact, it is not in dispute that, during her stay within Latvian territory, she has forged the personal, social and economic ties that make up the private life of every human being. The Court cannot but find, therefore, that the decision to deport the applicant from Latvia constituted an interference with her "private life" within the meaning of Article 8 of the Convention (see, *mutatis mutandis*, *Slivenko v. Latvia* [GC], no. 48321/99, § 96, ECHR 2003-X).

67. On the other hand, the Court is of the opinion that the applicant cannot rely on the existence of "family life" in relation to her adult son. The Court has consistently held that the relationship between adult children and their parents, which does not form part of the core family, does not necessarily attract the protection of Article 8 without evidence of further elements of dependency involving more than the normal affective ties (see, in particular, *Kwakye-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000). In the present case, the Court has already found that there was no specific bond of this type between the applicant and her son (see *Shevanova and Ševanovs v. Latvia* (dec.), no. 58822/00, 15 February 2001). Nevertheless, it will take into consideration the ties between the applicant and her adult son under the head of the applicant's "private" life (see, *mutatis mutandis*, the *Slivenko* judgment, cited above, § 97; see also *Kolosovskiy v. Latvia* (dec.), no. 50183/99, 29 January 2004, and *Ivanov v. Latvia* (dec.), no. 55933/00, 25 March 2004).

68. Lastly, the Court observes that the deportation order served on the applicant on 11 June 1998 has never been enforced. It further notes that section 360(4) of the Administrative Procedure Act stipulates that an administrative act may not be enforced if more than three years have elapsed since it became enforceable (see paragraph 37 above). Accordingly, the applicant is no longer under any real threat of removal from Latvia. Moreover, in its Decree no. 75 of 2 February 2005, the Cabinet of Ministers instructed the Minister of the Interior to issue the applicant with a permanent residence permit "once the documents required to make such an application have been received". The Court observes that this solution would allow the applicant to remain in Latvia on a legal and permanent basis; that in turn would enable her to lead a normal social life and maintain normal ties with her son and any other persons close to her. The applicant

could therefore exercise freely her right to respect for her private and family life as interpreted in the Court's case-law.

69. However, the Court reiterates that Article 8, like any other provision of the Convention or the Protocols thereto, must be interpreted in such a way as to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, *mutatis mutandis*, *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33, and *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 34, § 87). Furthermore, while the chief object of Article 8, which deals with the right to respect for one's private and family life, is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life (see, for example, *Gül v. Switzerland*, judgment of 19 February 1996, *Reports* 1996-I, pp. 174-175, § 38; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Mehemi v. France (no. 2)*, no. 53470/99, § 45, ECHR 2003-IV). In other words, it is not enough for the host State to refrain from deporting the person concerned; it must also, by means of positive measures if necessary, afford him or her the opportunity to exercise the rights in question without interference. As the Court has observed above, all the measures taken by the Government do not wipe out the long period of uncertainty and insecurity undergone by the applicant in Latvia.

70. In sum, the fact that the applicant has not been deported from Latvia and that she can now regularise her stay there does not alter the Court's reasoning as to the existence of interference with the applicant's private life.

2. *Whether the interference was justified*

71. It remains to be determined whether the interference which the Court has found to have occurred was compatible with the second paragraph of Article 8 of the Convention, that is, whether it was "in accordance with the law", pursued one or more of the legitimate aims listed in that paragraph and was "necessary in a democratic society" in order to achieve them.

72. With regard first of all to the lawfulness of the interference, the Court reiterates that the words "in accordance with the law" within the meaning of Article 8 § 2 of the Convention mean first and foremost that the impugned measure must have a basis in domestic law. However, the existence of a legal basis is not sufficient: the law in question must also be accessible to the person concerned and be formulated with sufficient precision to enable him or her – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. A law which confers a measure of discretion is not in itself incompatible with this requirement, provided that the scope of any such discretion and the manner of its exercise

are defined with sufficient precision, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrariness. The level of precision required depends, however, on the sphere concerned: in relation to rights guaranteed by Article 8 of the Convention, the law must be couched in clear terms in order to indicate to all concerned in what circumstances and under what conditions the public authorities are entitled to interfere with these rights (see, among many other authorities, *Lavents v. Latvia*, no. 58442/00, § 135, 28 November 2002).

73. In the instant case the Court notes that the relevant domestic authority applied section 38 of the Aliens Act, in force at the material time, which allowed the head of the Directorate to issue a deportation order in respect of an alien residing within Latvian territory without a valid visa or residence permit. Section 35 of the same Act, meanwhile, stated that no residence permit would be issued to persons who had been deported from Latvia in the previous five years or who had knowingly provided false information with a view to obtaining a residence permit. In the light of the principles outlined above, the Court considers that these provisions were couched in sufficiently clear terms for anyone concerned to foresee, with a reasonable degree of certainty, the likely legal consequences of the conduct contemplated therein (see, for example, *Eriksson v. Sweden*, judgment of 22 June 1989, Series A no. 156, p. 24, § 59, and *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, p. 25, § 48). The same is true of section 1(1) of the Non-Citizens Act, which makes very clear that the Act applies only to persons “who are not citizens of Latvia or any other State”. The interference was therefore “in accordance with the law”.

74. The Court further considers that the right of the State to control the entry and residence of non-nationals within its territory presupposes that it may take dissuasive measures against persons who have broken the law on immigration. Consequently, the decision to deport the applicant pursued at least one of the aims cited by the Government, namely that of preventing disorder.

75. It remains to be established whether the impugned measure was “necessary in a democratic society”, that is to say, whether it was proportionate to the legitimate aim pursued. In that connection the Court notes that the removal of the applicant’s name from the register of residents and the order for her deportation were prompted by her own dishonest conduct: having found the Soviet passport which she had mislaid eight years previously and which had been replaced by a new identity document, the applicant omitted to return it to the relevant authorities. Being in possession of two passports, she performed a number of fraudulent actions, having a false stamp placed in the first passport, which had been officially reported as no longer valid, and using that passport to obtain a residence registration in Russia and Russian citizenship. She also concealed the fact of her Russian citizenship in her dealings with the immigration authorities, leading

them to believe that her legal status remained unchanged. The Court observes in particular that, as a Russian citizen, the applicant could have regularised her stay in Latvia by applying for a residence permit under section 23(1) of the Aliens Act, but did not do so. On the contrary, instead of taking this lawful approach she chose to act in a fraudulent manner which she herself concedes to have been illegal.

76. As the Court stated above, the sovereign right of a State to control the entry and residence of non-nationals within its territory implies of necessity that it may take dissuasive measures against persons who act in breach of the applicable provisions in the matter; without that possibility, the right would be merely illusory. Expulsion of the person concerned from the country would seem to be the most logical penalty, in view of the specific nature of the rights in question. In many cases, sentencing the offender to a prison term or payment of a fine and not deporting him or her would be tantamount to saying that the sentence imposed dispensed the person concerned from the obligation to comply with the law. Nevertheless, even in a situation of this kind, the person's expulsion may be disproportionate for the purposes of Article 8 § 2 of the Convention, in particular where the individual concerned has strong personal or family ties within the country.

77. The Court reiterates that most of the similar applications it has examined to date under Article 8 of the Convention concerned cases in which the alien deported or about to be deported had committed crimes or serious offences (see, among other authorities, the *Moustaquim*, *El Boujaïdi*, *Dalia* and *Baghli* judgments, cited above; see also *Beldjoudi v. France*, judgment of 26 March 1992, Series A no. 234-A; *Nasri v. France*, judgment of 13 July 1995, Series A no. 320-B; *Boughanemi v. France*, judgment of 24 April 1996, *Reports* 1996-II; *Bouchelkia v. France*, judgment of 29 January 1997, *Reports* 1997-I; *Mehemi v. France*, judgment of 26 September 1997, *Reports* 1997-VI; *Boujlifa v. France*, judgment of 21 October 1997, *Reports* 1997-VI; and *Ezzouhdi v. France*, no. 47160/99, 13 February 2001). In some of these cases, the Court found that there had been a violation of Article 8 of the Convention notwithstanding the seriousness of the applicants' criminal convictions. In the present case, on the other hand, the actions of which the applicant was accused did not constitute a criminal offence in the strict sense, but merely a regulatory offence attracting a relatively small fine – which, moreover, was never enforced.

78. In sum, and having weighed up on the one hand the seriousness of the actions of which the applicant was accused and, on the other, the severity of the measure taken against her, the Court concludes that the Latvian authorities exceeded the margin of appreciation left to the Contracting States in this sphere and did not strike a fair balance between the legitimate aim of preventing disorder and the applicant's interest in

having her right to respect for her private life protected. The Court is therefore unable to find that the interference complained of was "necessary in a democratic society".

Accordingly, there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

80. The applicant submitted that, owing to her detention "in February and March 2001", she had not been paid her full salary; during the two months in question, she had received only LVL 32 whereas, in 2002, her average monthly salary had been LVL 129.28. Consequently, the Government should repay her the difference between the first amount and a sum double the second amount, giving a total of LVL 226.56. In addition, between 27 February and 5 March 2001, she had been in hospital; her hospital stay had cost LVL 10.30. Finally, she had had to buy medicines for fifteen months at a cost of approximately LVL 20 per month, making a total of LVL 300 (however, the applicant did not produce any documents to substantiate this amount). Hence, the overall sum claimed by the applicant in respect of pecuniary damage totalled LVL 536.86 (approximately EUR 812).

81. The Government disputed the existence of a causal link between the alleged violation and the amounts claimed by the applicant. Firstly, they challenged the applicant's assertion of a partial loss of earnings: the applicant had left the detention centre for illegal immigrants on 28 February 2001 and had been in hospital until 5 March 2001. However, after the latter date she had been able to work, and the supposed loss of earnings for the month of March could not possibly be connected to the deportation proceedings against her. The same applied to the other two amounts claimed. Referring to the applicant's medical file, the Government argued that, while her heart condition had certainly become worse during that period, it had existed previously. Lastly, with regard to the medicines the applicant claimed to have purchased, the Government stressed that no evidence had been produced demonstrating, for instance, that they had in

fact been purchased or for what length of time the applicant had had to take them.

82. The Court considers that the applicant has not demonstrated with sufficient certainty the existence of a direct causal link between the alleged pecuniary damage and the violation (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 40, ECHR 1999-I, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999-II). Accordingly, it dismisses the applicant's claims under this head.

B. Non-pecuniary damage

83. The applicant claimed LVL 10,000 (approximately EUR 15,000) in compensation for the anxiety she had suffered for almost four years, particularly on account of the threat of deportation she had faced throughout that time. Her arrest and detention in February 2001 had further aggravated her psychological state: moreover, her detention had constituted a serious infringement of Article 5 of the Convention. Producing a medical certificate in support of her argument, the applicant asserted that her state of health had deteriorated as a result of the psychological trauma she had undergone in detention.

84. The Government considered the sum claimed by the applicant to be excessive. Firstly, they pointed out that the application related only to the alleged violation of Article 8 of the Convention; the applicant had relied on Article 5 only in her claim for just satisfaction. Secondly, the Government maintained that the anxiety suffered by the applicant had resulted from her own conduct rather than from the measures taken in the case by the Latvian authorities. Thirdly, they pointed out that the order for Mrs Shevanova's deportation had never been enforced, that she continued to reside in Latvia and that she could regularise her stay at any time, as had been made clear to her. In the circumstances, the Government considered that the finding of a violation would constitute in itself sufficient redress for any non-pecuniary damage the applicant might have sustained; in support of that argument, they cited several judgments of the Court and several decisions by the Latvian courts.

85. The Court considers that the applicant sustained a certain degree of non-pecuniary damage on account of her illegal status within Latvian territory, giving rise to the finding of a violation of Article 8 of the Convention. Ruling on an equitable basis as required by Article 41, the Court awards the applicant EUR 5,000 under this head.

C. Costs and expenses

86. The applicant claimed a sum of LVL 1,525.45 (approximately EUR 2,300) for costs and expenses, including:

(a) LVL 1,420 for the work carried out by the non-governmental organisation *Latvijas Cilvēktiesību komiteja* (the Latvian Human Rights Committee): that amount, set out in an overall invoice issued on 26 April 2002, was broken down as follows:

(i) LVL 350 for the drafting of complaints and applications to the Latvian administrative authorities (70 hours' work at an hourly rate of LVL 5);

(ii) LVL 250 for representing the applicant before the Latvian courts and other authorities in Latvia (10 hours' work at an hourly rate of LVL 25);

(iii) LVL 300 for preparation of the application (60 hours' work at an hourly rate of LVL 5) and LVL 60 for the translation of the documents in the case file to accompany the application;

(iv) LVL 250 for the correspondence with the Registry of the Court after the application had been lodged (50 hours' work at an hourly rate of LVL 5);

(v) LVL 210 for office expenses (telephone, fax, Internet and so forth);

(b) LVL 150.45 for other expenses (including the legal costs incurred by the applicant during the second set of proceedings seeking to have the deportation order set aside (see paragraph 25 above) and for the translation into Russian of the Court's partial decision on the admissibility of the application).

87. The Government challenged the sums claimed by the applicant. In particular, they considered that there were no grounds for her request for reimbursement of the costs incurred during the second set of proceedings before the Latvian courts, as the effective aim of those proceedings had been to challenge a final decision. Hence, the proceedings in question had been extraordinary and were not to be taken into consideration for the purposes of exhaustion of domestic remedies. Similarly, in its partial decision of 15 February 2001, the Court had declared only one of the applicant's complaints admissible – the complaint under Article 8 of the Convention – and had rejected the remainder. In the Government's view, that fact should be taken into account in calculating the amount to be reimbursed under Article 41 of the Convention.

88. The Court reiterates that, in order to be reimbursed, costs must relate to the violation or violations found and must be reasonable as to quantum. In addition, Rule 60 § 2 of the Rules of Court provides that itemised particulars must be submitted of all claims made under Article 41 of the Convention, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Lavents*, cited above, § 154). Equally, the Court may award the

injured party payment not only of the costs and expenses incurred in the proceedings before it, but also those incurred before the domestic courts to prevent or rectify a violation found by the Court (see *Rotaru v. Romania* [GC], no. 28341/95, § 86, ECHR 2000-V).

89. The Court notes that some confusion surrounds the documents substantiating the legal assistance provided to the applicant. It observes at the outset that none of the documents in the file provides evidence of the Latvian Human Rights Committee having participated in the proceedings before it. However, the content of some of the documents, and in particular a legal representation contract dated 6 June 2000, shows that the applicant was represented by Mr G. Kotovs, working for the said association. As to the expenses set out in the invoice of 26 April 2002, the Court notes that they are described in very general terms, without the cost of the individual legal services being specified. In any event, the sum claimed by the applicant – EUR 2,300 – appears somewhat excessive given the nature and legal complexity of the case. In these circumstances, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant the sum of EUR 1,000 to cover all heads of costs taken together. To this amount is to be added any value-added tax that may be chargeable (see *Lavents*, cited above, *loc. cit.*).

D. Default interest

90. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses* by six votes to one the Government's preliminary objection;

2. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;

3. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Latvian lati at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

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

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Christos ROZAKIS
President

Søren NIELSEN
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly concurring opinion of Mr Spielmann;

(b) dissenting opinion of Mrs Briede.

C.L.R.
S.N.

PARTLY CONCURRING OPINION OF JUDGE SPIELMANN

(*Translation*)

1. I share the opinion of the majority in finding a violation of Article 8 of the Convention under the heading of "private life". However, I do not share the majority's view that the applicant cannot rely on the existence of "family life" between herself and her adult son on the ground that the relationship between adult children and their parents, which does not form part of the core family, does not necessarily attract the protection of Article 8 without evidence of further elements of dependency involving more than the normal affective ties (see paragraph 67 of the judgment).

2. It is true that this very restrictive interpretation of the notion of family life is in line – in the specific sphere of the entry, residence and expulsion of non-nationals – with the case-law established in *Slivenko* (see *Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003-X). In addition – and I am keenly aware of this – the Court found, in its partial decision of 15 February 2001 on the admissibility of the present case, that the ties between the applicant and her son did not go beyond the normal affective ties. The Court found as follows (translation):

> "In the instant case the Court notes that the second applicant was twenty-five years old when the deportation order was served on his mother, and that he has not claimed the existence of any specific ties of dependency, whether financial or otherwise, between himself and his mother. It may well be that, since they have lived together continuously, the second applicant would prefer to maintain his links with his mother in Latvia. However, as the principles articulated in the Court's case-law make clear, Article 8 does not guarantee a right to choose the most suitable place to develop family life (see, *mutatis mutandis*, *Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports of Judgments and Decisions* 1996-VI, § 71). In the instant case the second applicant has not claimed the existence of any obstacle to his visiting his mother in Russia or having her visit him in Latvia on the basis of a visa, and the Court does not believe that he could develop family life with her only if she were to remain resident in Latvia.
>
> In the circumstances, and in so far as this complaint was raised by the second applicant, it should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention."

3. Allowing for this, and still bearing in mind the *Slivenko* judgment of 9 October 2003, which I am obliged to follow, I cannot in all conscience fail to register my disagreement with this unduly restrictive approach to the notion of family life.

4. The Court has traditionally – in a wide variety of spheres, moreover – adopted a broad construction of the notion of "family life". As far back as the *Marckx* case, it emphasised that "'family life', within the meaning of Article 8, includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a

considerable part in family life". The Court went on to conclude that "'respect' for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally" (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 21, § 45; see also *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII).

5. By way of example I would cite the *L.* judgment of 1 June 2004, in which the Court accepted that family life could also exist between a child and a parent who had never lived together, if other factors demonstrated that the relationship had sufficient constancy to create *de facto* family ties (see *L. v. the Netherlands*, no. 45582/99, § 36, ECHR 2004-IV)[1]. The Court has even gone so far as to say that "family life" can encompass *de facto* relationships between persons with no ties of kinship (see *X, Y and Z v. the United Kingdom*, judgment of 22 April 1997, *Reports* 1997-II, pp. 629-630, §§ 36-37)[2]. What counts is whether there are "legal or factual elements indicating the existence of a close personal relationship" (see *L.*, cited above, § 37).

6. In the instant case the respondent Government, in the context of possible regularisation of the applicant's stay, stated that a written guarantee from the applicant's son would suffice as proof of the applicant's lawful income (see paragraph 41 of the judgment). They thereby acknowledged, at least implicitly, the possibility of the mother being dependent on her son. The Court, in its partial decision on admissibility of 15 February 2001, noted that the applicant's son had not claimed the existence of any ties of dependency with his mother. It added that, in its view, the applicant's remaining in Latvia was not the only means by which her son could develop family life with her. While acknowledging that "it may well be that ... the second applicant would prefer to maintain his ties with his mother in Latvia", the Court, on the basis of all these factual elements, decided not to recognise the existence of "family life".

7. I do not subscribe to this point of view.

8. Giving precedence to the criterion of dependency to the detriment of that of normal affective ties strikes me as a very artificial approach to determining the existence of "family life". It seems inconceivable to me that so little importance can be attached to the affective ties between a mother and her son that they can fall outside the scope of "family life".

9. This line of case-law which, admittedly, appears to be confined to the sphere of expulsions, greatly impoverishes the notion of "family life".

[1] See also the arguments set out in F. Sudre *et al*, *Les grands arrêts de la Cour européenne des Droits de l'Homme*, 3rd edition, Paris, PUF, Coll. Thémis Droit, 2003, p. 474.

[2] See also F. Sudre, *Droit européen et international des droits de l'homme*, 7th edition, Paris, PUF, Coll. Droit fondamental, 2005, p. 429.

DISSENTING OPINION OF JUDGE BRIEDE

(*Translation*)

1. I regret that I am unable to subscribe to the findings and the reasoning of the majority in this case. It is my firm conviction that, given the steps taken by the Latvian authorities in 2005 to regularise the applicant's stay, the latter can no longer claim to be a "victim" of the alleged violation of Article 8 of the Convention. I shall set out below the reasons why I have reached this conclusion.

2. Let me first make two preliminary remarks. Firstly, to my mind, the case as it stood at the time of adoption of the judgment bears a close resemblance to the case of *Sisojeva and Others v. Latvia* (no. 60654/00, judgment of 16 June 2005), in which Judge Vajić and I expressed a joint dissenting opinion. I will therefore refer to that opinion, while adding some further comments.

3. Secondly, although in the instant case – unlike *Sisojeva* – this issue does not appear to be central, I should like nonetheless to reiterate that Article 8 of the Convention cannot be construed as guaranteeing as such the right to a particular type of residence permit. Where the domestic legislation provides for several different types, the Court must analyse the legal and practical implications of issuing a particular permit. If it allows the holder to reside within the territory of the host country and to exercise freely there the rights secured by Article 8 § 1 of the Convention, the granting of such a permit represents in principle a sufficient measure to meet the requirements of that provision (see, *mutatis mutandis*, *Mehemi v. France (no. 2)*, no. 53470/99, § 55, ECHR 2003-IV). In such cases, the Court is not competent to rule on whether the individual concerned should be granted one particular legal status rather than another, that choice being a matter for the domestic authorities alone.

4. Accordingly, I should like to move on directly to the main issue at stake in this case, namely the definition of the status of "victim" within the meaning of Article 34 of the Convention. Admittedly, in dismissing the Government's preliminary objection, the majority was simply following well-established case-law; however, in my view, that case-law is erroneous.

5. In paragraphs 43-44 of the judgment, for instance, the majority states:

> "43. ... Furthermore, in relation to Article 34, the Court has always held that, as a general rule, a decision or measure favourable to the applicant is not sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the alleged breach of the Convention...
>
> 44. Where the person concerned complains in particular of his or her deportation or illegal status within the country, the minimum steps required are, firstly, the setting-aside of the deportation order and, secondly, the issuing or recognition of a

> residence permit... However, it is also necessary to ascertain in each case whether these measures are sufficient to fully remedy the complaint in question."

6. Furthermore, in its recent decision in the case of *Fjodorova and Others v. Latvia* (no. 69405/01, 6 April 2006), the Court held:

> "The Court reiterates that an applicant who has obtained adequate redress at domestic level for the alleged violations of the Convention may no longer claim the status of 'victim'... That rule applies even if the applicant obtains satisfaction after the proceedings before the Court have commenced, in accordance with the subsidiary nature of the Convention system of safeguards. As a general rule, where the applicant complains of his deportation and, consequently, of his irregular status within the country, the quashing of the deportation order against him and the granting of a residence permit are sufficient for him no longer to be able to claim to be a 'victim'..."

7. The Court's usual approach can thus be summarised as follows:

(1) as a general rule, in order for the applicant to lose his or her status as "victim", the Government must meet both of the following conditions: (a) it must *acknowledge* the existence of a violation of the Convention and (b) it must *afford redress* for it;

(2) in some specific cases, providing *effective redress* for the complaint is sufficient to deprive the applicant of his or her "victim" status. Cases concerning deportation and extradition therefore constitute a special category, one in which regularisation of the applicant's stay is in principle sufficient, without the respondent Government needing also to "acknowledge" the existence of a violation.

8. Leaving aside the somewhat inconsistent nature of this approach (as is clear in the *Fjodorova* decision, the first of these conditions is not always mentioned, with the result that it is not easy to discern where and when *acknowledgement* is actually a requirement), I should like to recall the background to it. The rule referred to above appears for the first time in *Eckle v. Germany* (judgment of 15 July 1982, Series A no. 51, pp. 30-31, §§ 66-67):

> "66. ... [M]itigation of sentence and discontinuance of prosecution granted on account of the excessive length of proceedings do not in principle deprive the individual concerned of his status as a victim ...; they are to be taken into consideration solely for the purpose of assessing the extent of the damage he has allegedly suffered...
>
> The Court does not exclude that this general rule might be subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention... In such circumstances, to duplicate the domestic process with proceedings before the Commission and the Court would appear hardly compatible with the subsidiary character of the machinery of protection established by the Convention...
>
> 67. ... Accordingly, it has to be ascertained whether, as the Government submitted, the German courts held that Article 6 par. 1 had been breached and, if so, whether they granted redress."

9. Allow me to remind you that, in the *Eckle* case, the applicant was complaining of the length of criminal proceedings against him. However, the above-mentioned formula – "first *acknowledge*, then *afford redress*" – appeared so effective that the Court began to use it in all kinds of cases examined by it. For example: detention of a person pending his deportation (*Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, § 36); freedom of expression (*Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI); right to a fair hearing before the *Conseil d'Etat* (*Chevrol v. France*, no. 49636/99, § 36, ECHR 2003-III); right to peaceful enjoyment of one's possessions (*Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII); electoral rights (*Ždanoka v. Latvia* [GC], no. 58278/00, § 69, ECHR 2006- ...), and so forth.

10. I do not dispute the fact that, in some cases, application of this formula was justified. What concerns me is that, by dint of excessive recourse to this principle, the Court has ultimately lost sight of its exceptional nature. In other words, it has, little by little, made into a general rule something which ought not to be, while at the same time turning the general principle into an exception.

11. It should be borne in mind that, in the *Eckle* case, the Court was faced with an exceptional situation, in which the applicant was complaining of the length of two sets of criminal proceedings which had lasted approximately seventeen and ten years respectively (see *Eckle*, cited above, § 79). As the Court observed at the very beginning of its reasoning, "such a delay is undoubtedly inordinate and is, as a general rule, to be regarded as exceeding the 'reasonable time' referred to in Article 6 § 1" (ibid., § 80); this, then, was a case in which it was clear from the outset that a violation would be found. There are certainly many other cases of this type – relating, for instance, to allegations of torture or ill-treatment – in which the finding of a serious violation of the Convention is more or less a foregone conclusion (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, ECHR 1999-V). In such cases it is not unreasonable to assert that, in view of the nature and seriousness of the alleged violations, the Government should first *acknowledge* that the person's fundamental rights were violated. However, I would stress that this category of cases is still the exception and represents a minority; the present case certainly does not fall into this category.

12. Of course, some might counter this argument by saying that the Court arrived at the reasoning in question as a result of its dynamic and changing interpretation of the Convention. Nevertheless, as I see it, the interpretation of legal rules, no matter how dynamic it is, must not produce an absurd or illogical outcome; the formula in question, however, leads us to precisely such a logical dead-end. It is clear that the status of "victim" within the meaning of Article 34 of the Convention (*locus standi*) is quite separate from the issue of whether or not the rights conferred by the

Convention have been violated. That being the case, how can the Court require the State to *acknowledge* the existence of a violation of the Convention if it is not yet sure of it itself?

13. In my opinion, the present case offered an excellent opportunity to remedy this situation; unfortunately, the majority has not taken that opportunity. Be that as it may, I remain convinced that, as a general rule, the domestic authorities deprive the applicant of his or her victim status when they effectively bring to an end the situation complained of and afford adequate redress. Only in exceptional cases (a category to which this case does not belong) do the seriousness and flagrant nature of the alleged violation require that the State first *acknowledge* that there has been a violation.

14. One last point: I should like to register my disagreement with paragraph 47 (and also paragraph 48) of the judgment. In dismissing the Government's preliminary objection, the majority referred to the decision in *Aristimuño Mendizabal v. France* (no. 51431/99, 21 June 2005; see also the judgment of 17 January 2006). In my view, the *Aristimuño Mendizabal* case is fundamentally different from the present case. Mrs Aristimuño Mendizabal complained of a situation of uncertainty created by the fact that, despite the existence of Community legislation entitling her to reside in France permanently, she had been obliged to seek temporary regularisation of her stay every three months over a fourteen-year period. Hence, I see no resemblance, however remote, to the situation of Mrs Shevanova, and I do not believe that the case cited above can serve as a precedent in the instant case.

15. In the light of the above I would have taken the view, unlike the majority, that, given the measures proposed to the applicant in order to regularise her stay, she could no longer claim to be a "victim" of a violation of Article 8 of the Convention. For that reason I would have concluded that the matter giving rise to the present case had been resolved and that the application should be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention. Such a solution would also have been fair from the applicant's point of view since, had the Court struck out the application, it would have been able to reimburse her costs and expenses under Rule 44 § 3 of the Rules of Court (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, §§ 51-56, 24 October 2002). That is why I voted with the majority on the question of just satisfaction, while specifying that my agreement related only to the amount of one thousand euros awarded by the Court for costs and expenses.