CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FORMER FIRST SECTION

CASE OF SISOJEVA AND OTHERS v. LATVIA

(Application no. 60654/00)

JUDGMENT

STRASBOURG

16 June 2005

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
15 January 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 Sisojeva and Others v. Latvia,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*
Mrs J. BRIEDE, *ad hoc judge*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 19 May 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 60654/00) 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 four persons resident in Latvia, Mrs Svetlana Sisojeva, Mr Arkady Sisojev, Mrs Tatjana Vizule and Miss Aksana Sisojeva ("the applicants"), on 29 August 2000.

2. The applicants, who had been granted legal aid, were represented by Mr V. Portnov, a lawyer practising in Moscow. The Latvian Government ("the Government") were represented by their Agent, Mrs K. Maļinovska.

3. The applicants alleged, in particular, that the refusal of the Latvian authorities to regularise their stay in Latvia despite their long period of residence in the country amounted to a violation of their right to respect for their private and family life under 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).

On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). 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 decision of 28 February 2002 the Chamber declared the application admissible with regard to Mrs Svetlana Sisojeva, Mr Arkady Sisojev and Miss Aksana Sisojeva, and inadmissible with regard to Mrs Tatjana Vizule.

6. In a letter of 11 April 2002 the applicants informed the Court that the first applicant had been questioned by the police on the subject of their

application to the Court. The applicants therefore requested the Court to indicate interim measures to the Government under Rule 39. On 30 May 2002 the Chamber decided not to apply Rule 39, but to request the Government to submit their observations as to whether there had been a breach of Article 34 of the Convention. It also decided, after consulting the parties, to hold a hearing on the merits (Rule 59 § 3).

7. The applicants and the Government each filed written observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations. In addition, observations were received from the Russian Government, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 19 September 2002 (Rule 59 § 3).

There appeared before the Court:

(a) *for the respondent Government*
Mrs K. MALINOVSKA, Ministry of Foreign Affairs, *Agent*,
Miss A. ASTAHOVA, Nationality and Migration Directorate, *Adviser;*

(b) *for the applicants*
Mr A. ASNIS and
Mr V. PORTNOV, of the Moscow Bar, *Counsel*,
Mrs M. IVANOVA,
Mrs M. SAMSONOVA and
Miss D. MIKHALINA, *Advisers*;

(c) *for the Russian Government*
Mr P. LAPTEV, representative of the Russian Federation at the Court
Mr Y. BERESTNEV,
Mr D. SPIRIN and
Mr S. KULIK, *Advisers.*

The Court heard addresses by Mr Asnis, Mr Portnov, Mrs Maļinovska and Mr Laptev.

9. On the same day the Chamber declared admissible the applicants' additional complaint based in substance on the last sentence of Article 34 of the Convention.

10. As the seat of the judge in respect of Latvia was vacant, the President of the Chamber invited the Government on 7 October 2004 to indicate whether they wished to appoint to sit as judge either another elected judge or an *ad* hoc judge who possessed the qualifications required by Article 21 § 1 of the Convention. In a letter of 8 November 2004 the

Government appointed Mrs J. Briede as *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

11. On 29 March 2005 the President of the Chamber informed the Government of the Court's decision not to include in the case file the additional observations submitted by fax on 22 March 2005 on the ground that the Government had submitted them to the Court outside the time-limit for submission of written pleadings (Rule 38 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. The applicants are a married couple, Svetlana Sisojeva ("the first applicant") and Arkady Sisojev ("the second applicant") and their daughter, Aksana Sisojeva ("the third applicant"). They were born in 1949, 1946 and 1978 respectively. The second and third applicants have Russian nationality, while the first applicant has no nationality. All three live in Alūksne (Latvia).

13. The first two applicants arrived in Latvia in 1969 and 1968 respectively. The second applicant, who was a member of the Soviet armed forces at the time, was stationed in Latvia and remained there until he finished serving his time in November 1989. The third applicant and her elder sister, Mrs Tatjana Vizule, were born in Latvian territory.

14. Following the break-up of the Soviet Union and the restoration of Latvian independence in 1991 the applicants, who had previously been Soviet nationals, became stateless.

In August 1993 Tatjana married a Latvian national. She is mother to two minor children who have Latvian nationality.

A. The first set of proceedings, relating to regularisation of the applicants' stay in Latvia

15. In 1993 the first and second applicants applied to the Latvian Interior Ministry's Nationality and Immigration Department (*Iekšlietu ministrijas Pilsonības un imigrācijas departaments* – "the Department") to obtain permanent resident status and to be entered in the register of residents of the Republic of Latvia (*Latvijas Republikas Iedzīvotāju reģistrs*). However, on 19 June 1993 the Department issued them only with temporary residence permits.

16. The first and second applicants then lodged an application with the Alūksne District Court of First Instance, requesting it to direct the

Department to enter them in the register of residents as permanent residents. In a judgment delivered on 28 October 2003 after adversarial proceedings, which was upheld on 8 December 1993 following an appeal on points of law, the court allowed their application. It considered that, under the legislation in force, the situation of the second applicant, who had left the army before 4 May 1990 – the date on which Latvia had declared its independence – could not be equated with that of a non-Latvian serviceman temporarily present on Latvian soil, who would be entitled only to a temporary residence permit. The Department subsequently entered all the applicants in the register of residents.

B. The second set of proceedings, relating to withdrawal of the applicants' residence permits

17. In 1995 the Department discovered that the first two applicants had each obtained two former Soviet passports in January 1992 and had therefore been able to have their place of residence registered in Izhevsk (Russia) despite already having a registered place of residence in Latvia (*pieraksts* or *dzīvesvietas reģistrācija*).

18. In two decisions dated 3 November and 1 December 1995 the Alūksne police decided not to institute criminal proceedings against the applicants for using false identity papers. However, the Department imposed an administrative penalty of 25 lati (LVL) (approximately 40 euros (EUR)) on them for breach of the passport regulations. The Department also applied to the Alūksne District Court of First Instance to have the proceedings reopened to consider new facts, alleging fraudulent behaviour on the part of the first two applicants. The Department also noted that the third applicant had followed the example of her parents and sister in 1995, obtaining two passports and having her place of residence registered in both Russia and Latvia.

19. In an order of 28 May 1996 the Alūksne District Court of First Instance, ruling on the application for the proceedings to be reopened, allowed the Department's application, quashed its own judgment of 28 October 1993 and ordered the removal of the applicants' names from the register of residents. The first two applicants appealed to the Vidzeme Regional Court which, in an order dated 3 June 1997, quashed the decision in question and referred the case back to the Alūksne Court of First Instance.

20. In 1996 the second and third applicants applied for and obtained Russian nationality. On 8 August 1996 the Russian Embassy in Latvia issued them with passports of the Russian Federation.

21. In March 1998 the third applicant, by now an adult, was joined as a party to the proceedings before the Alūksne Court of First Instance.

22. In a letter of 15 May 1998 the Joint Committee for the implementation of the agreement between the Government of Latvia and the Government of the Russian Federation on social-welfare arrangements for retired members of the Russian armed forces and their family members residing in Latvia ("the Russian-Latvian agreement" – see paragraph 45 below) requested the Interior Ministry's Nationality and Migration Directorate (*Iekšlietu ministrijas Pilsonības un migrācijas lietu pārvalde* – "the Directorate"), which had replaced the Department, to issue the applicants with permanent residence permits, on the ground that they had the right to remain in Latvia under the above agreement. In a second letter sent the same day the Joint Committee informed the Alūksne Court of First Instance that the first applicant had neither Russian nor any other nationality.

23. In July 1998 the applicants submitted a further request to the Court of First Instance. In a joint memorial they argued that, as the second and third applicants had Russian nationality, they had the right to obtain permanent residence permits under the Russian-Latvian agreement. The first applicant, who had no nationality, contended that she was entitled to the status of a "permanently resident non-citizen (*nepilsonis*)" under the Act on the Status of Former USSR Citizens without Latvian or other Citizenship ("the Non-Citizens Act" – see paragraph 41 below).

24. In court, the applicants made no attempt to deny the actions of which they had been accused by the Department and the Directorate, but maintained that those actions had been in breach only of Russian law and therefore had no effect on their rights in Latvia.

25. In a judgment of 28 July 1998 the Alūksne District Court of First Instance allowed the applicants' request. It noted that the applicants' place of residence had been legally registered in Alūksne since 1970 and that they had lived there from then onwards. In the court's view, since the procuring of second passports by the applicants and their registration in Russia were illegal and void acts, they had no impact on the applicants' legal status in Latvia. The court also noted that the second applicant was on the list of former members of the Russian armed forces in receipt of a Russian military pension and entitled to remain in Latvia. That list had been drawn up jointly by the two governments in accordance with the Russian-Latvian agreement. Consequently, the court held that the first applicant was entitled to apply for a passport as a "permanently resident non-citizen" and that the second and third applicants were entitled to obtain permanent residence permits.

26. The Directorate appealed against that judgment to the Vidzeme Regional Court. In a judgment of 15 June 1999 the Regional Court dismissed the appeal, endorsing the findings and reasoning of the first-instance court.

27. The Directorate then lodged an appeal on points of law with the Senate of the Supreme Court. In a judgment of 15 September 1999 the

Senate quashed the Regional Court's judgment and declared it null and void. The Senate found that secretly obtaining two passports and registering places of residence in two different countries, failing to disclose the second passports and supplying false information to the authorities when applying for regularisation constituted serious breaches of Latvian immigration law. The Senate also referred to section 1 (3), subparagraph 5, of the Non-Citizens Act, which stated that the status of "permanently resident non-citizen" could not be granted to persons who, on 1 July 1992, had their permanent place of residence registered in a member State of the Commonwealth of Independent States (of which Russia is a member). The Senate considered that the provision in question was fully applicable to the applicants' case.

28. The Senate also noted that the judgment of the Alūksne Court of First Instance of 28 October 1993 had been subsequently set aside when the proceedings were reopened, thereby depriving the entry of the applicants on the register of residents of any legal basis. It concluded that the second and third applicants, since they did not satisfy the requirements of section 23 (1) of the Aliens and Stateless Persons (Entry and Residence) Act ("the Aliens Act" – see paragraph 43 below), were also not entitled to obtain permanent residence permits. Consequently, the Senate set aside the judgment of 15 June 1999 and referred the case back to the appellate court.

29. For procedural reasons, the case was transferred to the Latgale Regional Court which, in a judgment of 10 January 2000, rejected the applicants' application, reaffirming the reasons given by the Senate. Unlike the Russian-Latvian Joint Committee, the Regional Court considered that the first applicant had Russian nationality under the Russian Federation's Nationality Act. With regard to the second applicant, it considered that the fact that an individual was on the list of retired army personnel merely attested to the fact that the person concerned actually resided in Latvia and was in receipt of a Russian military pension; it did not in any sense confer entitlement to a residence permit.

30. In a judgment of 12 April 2000 the Senate of the Supreme Court dismissed an appeal by the applicants on points of law, endorsing in substance the arguments of the Regional Court.

31. In two letters dated 17 May and 26 June 2000 the Directorate reminded the applicants that they were required to leave Latvia.

32. On 11 November 2003 the head of the Directorate sent a letter to each of the applicants explaining the procedure to be followed in order to regularise their stay in Latvia. The relevant passages of the letter sent to the first applicant read as follows:

> "... The [Directorate] ... would remind you that, in accordance with the principle of proportionality, no order has hitherto been made for your deportation, and that it is open to you to regularise your stay in the Republic of Latvia in accordance with the [country's] legislation.

Under sections 1 and 2 of the Status of Stateless Persons Act, persons who are not considered to be nationals of any one State under the laws of that State ... and who are legally resident in Latvia, may obtain stateless persons status.

You satisfy the above requirements...

In view of the above, the Directorate is prepared to regularise your stay in Latvia by entering your name in the register of residents as a stateless person [resident] in Latvia and by issuing you with an identity document on that basis.

In order to complete the necessary formalities, you will need to go in person to the Alūksne district office of the Directorate, bringing with you your identity papers, your birth certificate and two photographs...”

33. The letters sent to the other two applicants were similar in content. The letter to the second applicant stated in particular:

“... If your wife, Mrs Svetlana Sisojeva, avails herself of the opportunity to regularise her stay in the Republic of Latvia in accordance with the provisions in force, you will be entitled, under the Immigration Act, to obtain a residence permit. The Directorate is not aware of any reason which would prevent you from applying for and obtaining a residence permit in Latvia.

Under the terms of section 32 of the Immigration Act, only aliens residing in Latvia on the basis of a residence permit may apply to the Directorate for a residence permit... In other cases, and where such a move accords with international human rights provisions and the interests of the Latvian State, or on humanitarian grounds, the head of the Directorate may authorise the person concerned to submit the relevant papers to the Directorate in order to apply for a residence permit. As no order has hitherto been made for your deportation, you may submit the relevant papers ... to the Alūksne district office of the Directorate...

...

In view of the above, the Directorate is prepared to issue you with a residence permit at your wife's place of residence, in accordance with section 26 of the Immigration Act, on condition that S. Sisojeva completes the necessary formalities in order to regularise her stay in Latvia as a stateless person, and that she responds to the invitation from the Alūksne office of the Directorate...”

34. Lastly, the letter to the third applicant contained the following passages:

“ ... If your mother, Mrs Svetlana Sisojeva, avails herself of the opportunity offered to her and, after completing the necessary formalities, regularises her stay in the Republic of Latvia in accordance with the provisions in force, you will be entitled, under the Immigration Act, to obtain a residence permit. The Directorate is not aware of any reason which would prevent you from applying for and obtaining a residence permit in Latvia.

...

The Directorate would further inform you that, in accordance with section 23 (3) of the Immigration Act, in cases not provided for by the Act, a temporary residence

> permit may be issued by the Minister of the Interior, where such a move is in accordance with the provisions of international law. Consequently, you are also entitled to apply to the Minister of the Interior for a residence permit valid for a period longer than that specified in section 23 (1) subparagraph 1 of the Immigration Act. Furthermore, after a period of residence of ten years on the basis of a temporary residence permit, you may apply for a permanent residence permit in accordance with section 24 (1) subparagraph 7 of the Immigration Act...”

35. In addition, a letter containing the above information concerning the three applicants was sent to the Government's Agent. On the same date, 11 November 2003, the head of the Directorate signed three decisions formally regularising the applicants' status in Latvia. More specifically, he ordered that the first applicant be entered in the register of residents as a “stateless person”, that she be issued with an identity document valid for two years, and that the second and third applicants be issued with temporary residence permits valid for one year and six months respectively. However, regularisation of the status of the second and third applicants was contingent upon that of the first applicant. In other words, in order for Arkady Sisojev and Aksana Sisojeva to obtain residence permits, Svetlana Sisojeva first had to submit the relevant documents to the Directorate.

36. None of the applicants complied with the instructions outlined above in order to obtain residence permits. As matters stand, the applicants continue to reside in Latvia. According to the information available to the Court, the second applicant is legally employed as the operator of a municipal communal heating plant in Alūksne, while the third applicant is studying law at a private establishment in Riga.

C. The questioning of the first applicant by the security police

37. The applicants contended that, on the morning of 6 March 2002, the first applicant, Svetlana Sisojeva, had been summoned to the regional headquarters of the security police (*Drošības policija*). An officer of the security police had asked her a number of questions, some of them relating to her application to the Court and to an interview she had given to journalists from a Russian television channel on the subject. In particular, the police had asked the first applicant how the Russian journalists had made contact with her, how she had heard about the possibility of lodging an individual application with the Court, how she had found lawyers to represent her before the Court and how she had known that certain persons had bribed Directorate officials in order to obtain Latvian residence permits. In addition, the police officer had asked her several questions about her professional career and about the members of her family.

38. The dialogue between the first applicant and the police officer, as reconstructed by the applicant and sent to her lawyers on 4 April 2002, ran as follows:

"**Police officer**: How did the television channel *ORT* find you?

Applicant: We had had telephone calls in November [and] December. At the time, we had refused to meet them, but journalists are bloodhounds, they always get what they want.

Police officer : And then?

Applicant: They telephoned from Riga and said they wanted to meet us and talk to us. I agreed. They wanted to talk to several [people] who had brought cases before the courts.

Police officer: When did they phone?

Applicant: It was a Saturday night, about 10 p.m. They came round on the Sunday, at about 3.30 p.m. If you want to come round [too], you're welcome. Our door is always open.

Police officer: You said that you'd taken the case all the way to the European Court, didn't you?

Applicant: Yes, I did. There were fourteen sets of proceedings; we fought and fought [again], and eventually we turned to the European Court, because of the people in charge in the [Directorate]. They saw it as a game to get us deported from the country, while we wanted to prove that we were in the right. [Their] attitude towards us was based on prejudice: we hadn't broken any laws in Latvia.

Police officer: How and where did you find out that you could apply to the European Court?

Applicant: The issue of our regularisation was discussed several times by the tripartite Joint Committee. We had approached the Human Rights Committee. We had lawyers. The representatives of the Interior Ministry and the [Directorate] had told us at the last meeting that they had no objections to raise or accusations to make as far as we were concerned, and that everything would be fine. Unfortunately, they haven't kept their promises so far. The Committee advised us to lodge an application with the European Court about the length of the proceedings if the case wasn't resolved.

Police officer: And how did you find those lawyers?

Applicant: With the help of the lawyers in the social welfare office we were registered with.

Police officer: Perhaps your lawyers threatened you, saying that if you didn't give information to *ORT* they would stop working with you?

Applicant: That's nonsense. They told us not to give information to anyone without their consent, not even to *ORT*...

Police officer: You said that over forty people had lodged applications?

Applicant: Yes, I did. Actually, there are even more people involved: I meant that there were forty families. We've all been through the courts: some of us once, some twice, and some even three times. A lot of people solved the problem by paying backhanders.

Police officer: How do you know that?

Applicant: We were all in the same boat and we helped one another. We used to say to one another that if someone had money, it was better for him to pay, to avoid a trial. [*The first applicant then gave the example of two families whose status had been regularised after they had bribed Directorate officials; she named one of the officials concerned.*]

Police officer: And why did you not come to us?

Applicant: We didn't know you could help us.

Police officer: How did you come by the information that forty people had lodged applications?

Applicant: Actually, the figure is higher. We've all had a lot of problems. [*The applicant dwelt in detail on five specific cases concerning the regularisation of persons in a similar situation to her own.*]

Police officer: What does your husband think about the case?

Applicant: He supports [me]: what would you do?

[*The police officer then asked the applicant a series of questions about her education, her work, her husband's work and the family's financial situation.*]

Police officer: Once more, how did you find out that you could take your case to the European Court?

Applicant: We read the papers, we watch television; the cases of Podkolzina, Kulakova, Slivenko and several other families were reported in the media. We approached the Human Rights Committee, who gave us advice and even offered to [help us] find a lawyer. Strange, isn't it? It was very hard for us, having to bring a case against Latvia before the European Court, but all the avenues open to us to try and resolve the problem in Latvia had been exhausted. It's the fault of the [Directorate and its officials], who flout the law and force people to leave Latvia. They're the ones who bring shame on Latvia. We haven't broken any law.

Police officer: When is the case going to be examined?

Applicant: We don't know.

Police officer: What documents have you sent them?

Applicant: The courts' decisions."

39. The Government contested the accuracy of this record, particularly in view of the length of time that had elapsed between the interview itself and the drafting of the document. The first applicant conceded that the document was probably less than perfect, given that it had been drafted from memory almost a month after the fact; she acknowledged that several other questions (which she could not recall) might have been asked during the interview. However, she contended that her record reflected with sufficient accuracy the content and tone of the interview. Furthermore, she was "absolutely certain" that her conversation with the police officer had been recorded on tape.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Immigration law and the Russian-Latvian agreement of 30 April 1994

40. 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 but have not subsequently obtained any other nationality – who are governed by the Act of 12 April 1995 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"* – "the Non-Citizens Act"; see paragraph 41 below);

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

(d) "stateless persons" (*bezvalstnieki*) within the meaning of the Status of Stateless Persons Act of 18 February 1999 (*Likums "Par bezvalstnieka statusu Latvijas Republikā"* – see paragraph 42 below), read in conjunction with the Aliens and Stateless Persons (Entry and Residence) Act of 9 June 1992 ("the Aliens Act" – see paragraph 43 below) and, since 1 May 2003, with the Immigration Act of 31 October 2002 (*Imigrācijas likums* – see paragraph 44 below);

(e) "aliens" in the broad sense of the term (*ārzemnieki*), including foreign nationals (*ārvalstnieki*) and stateless persons (*bezvalstnieki*) falling solely within the ambit of the Aliens Act (before 1 May 2003), and the Immigration Act (after that date).

41. The relevant provisions of the Non-Citizens Act read as follows:

Section 1 (1)
[Version in force before 25 September 1998]

"This Act shall apply to citizens of the former USSR who are resident in Latvia ..., were resident within Latvian territory before 1 July 1992 and are registered as being resident there, regardless of the status of their housing, provided that they are not citizens of Latvia or of any other State, and also to their children below the age of majority, if the latter are not citizens of Latvia or of 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 the territory of Latvia for not less than ten years;

(2) they do not have Latvian citizenship; and

(3) they are not and have not been citizens of any other State.

..."

Section 2 (2)

"... [N]on-citizens have the right

...

(2) not to be deported from Latvia, save where deportation takes place in accordance with the law and another State has agreed to receive the deportee. ..."

42. The relevant provisions of the Status of Stateless Persons Act read as follows:

Section 2

"1. The status of stateless person may be granted to persons whose status is not defined either by the Act on the Status of Former USSR Citizens without Latvian or other Citizenship or by the Asylum Act , provided they

...

(2) are legally resident in Latvia.

2. Stateless persons who have obtained outside Latvia documents attesting to the fact that they are stateless may obtain the status of stateless person in Latvia only if they have obtained a permanent residence permit in Latvia.

..."

Section 3 (1)

"Stateless persons shall be issued with an identity document for stateless persons, which shall also serve as [a] travel document."

Section 4

"1. Stateless persons in Latvia shall enjoy all the human rights enshrined in the Latvian Constitution [*Satversme*].

2. In addition to the rights referred to in the first paragraph of this section, stateless persons shall be entitled

(1) to leave and return to Latvia freely;

(2) to be joined by their spouse from outside the country, and by their own minor children or those dependent on their spouse, in accordance with the rules laid down by the Aliens and Stateless Persons (Entry and Residence) Act;

(3) to preserve their native language, culture and traditions, provided these are not in breach of the law;

...

3. During their stay in Latvia, stateless persons shall be bound by [the provisions of] Latvian law."

43. The relevant provisions of the Aliens Act, 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

"The following may obtain a permanent residence permit:

...

(2) the spouse of a Latvian citizen, of a 'permanently resident non-citizen' of Latvia or of an alien or stateless person who has [himself or herself] been granted a

permanent residence permit, in accordance [with section] ... 26 of this Act, and the spouse's minor or dependent children ...”

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 26 (1)
(*amended by the Act of 18 December 1996, in force since 21 January 1997*)

“The spouse of an alien or stateless person in possession of a permanent residence permit in Latvia, if [he or she] is not a Latvian citizen or non-citizen or an alien or stateless person in possession of a permanent residence permit, shall be issued with:

(1) following the initial application: a temporary residence permit valid for one year;

(2) following the second application: a temporary residence permit valid for four years;

(3) following the third application: a permanent residence permit.”

Section 35

“No residence permit shall be issued to a person who

...

(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 or stateless person is in the country without a valid visa or residence permit...”

Section 40

“A person 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 the manner prescribed in 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.”

Section 49

“Where an international agreement on the entry, residence and deportation of aliens and stateless persons, concluded by the Republic of Latvia and approved by Parliament, contains provisions at variance with the provisions of the present Act, the provisions of the international agreement shall take precedence.”

44. Since 1 May 2003 the Aliens Act cited above is no longer in force; it was repealed and replaced by the Immigration Act. 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

“1. In accordance with the arrangements laid down in the present Act, an alien may request a temporary residence permit

(1) once in the course of the calendar year, for a period not exceeding six months, if he or she is the relative of a Latvian citizen or a “[permanently resident] non-citizen” of Latvia or of an alien who has obtained a permanent residence permit. This shall apply up to the third degree in lineal descent, the second degree collaterally or the second degree by marriage;

...

(6) for the duration of his or her employment, up to a maximum of four years;

...

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.

4. In the cases referred to in subparagraphs 1 to 10 ... of paragraph 1 of this section, an application for a permanent residence permit may also be lodged by the spouse of the alien, his or her minor children (including those under his or her guardianship) or by persons placed under his or her supervision."

Section 24

"1. In accordance with the arrangements laid down in the present Act, the following persons may apply for a permanent residence permit:

...

(2) the spouse of a Latvian citizen or a "[permanently resident] non-citizen" of Latvia or of an alien who has obtained a permanent residence permit, in accordance with section 25 or 26 of the present Act...;

...

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.

...

5. The aliens referred to in paragraph 1, subparagraph 2 ... of this section may obtain a permanent residence permit if they have a command of the official language. The level of knowledge of the official language and the means of verifying that knowledge shall be determined by the Council of Ministers.

6. Aliens who do not satisfy the requirements set forth in paragraph 5 of this section shall be entitled to continue to reside in Latvia if they hold a temporary residence permit."

Section 26 (1)

"An alien married to an[other] alien who holds a permanent residence permit may obtain:

(1) following the initial application: a temporary residence permit valid for one year;

(2) following the second application: a temporary residence permit valid for four years;

(3) following the third application: a permanent residence permit."

Section 32 (3)

"[By way of exception,] [t]he head of the Directorate may authorise [the person concerned] to submit an application for a residence permit to the Directorate, where such authorisation accords with the provisions of international law or the interests of the Latvian State, or on humanitarian grounds."

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 40

"1. Where a decision is taken to refuse an application by an alien for a residence permit or to withdraw his or her residence permit, the person who invited the alien may appeal against that decision to the head of the Directorate, within thirty days after the decision has been served.

2. Where the head of the Directorate refuses an application for a residence permit from an alien legally resident in the Republic of Latvia, the alien concerned, or the person who invited him or her, may appeal before the courts against that decision, in the manner prescribed by law."

Section 42

"1. Aliens in respect of whom a deportation order is issued ... may lodge an appeal against that decision with the head of the Directorate within seven days. The head of the Directorate shall extend the person's stay pending consideration of the appeal.

"2. 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. ..."

45. An agreement between Russia and Latvia on social-welfare arrangements for retired members of the armed forces of the Russian Federation and their family members resident in Latvia was signed in Moscow on 30 April 1994. It was ratified by Latvia on 24 November 1994 and entered into force on 27 February 1995. The relevant provisions of the agreement read as follows:

Article 1

"The present agreement shall apply to persons residing in the Republic of Latvia who are covered by the Russian Federation Act of 12 February 1993 on the granting of retirement benefit to persons who have served in the armed forces and in the organs of the Ministry of the Interior ("retired members of the armed forces") and to their family members. The phrase "family members" shall be taken to mean the spouses, minor children and other dependants of retired members of the armed forces."

Article 2

"The persons referred to in Article 1 of this agreement shall enjoy fundamental rights in the Republic of Latvia, in accordance with international law, the provisions of this agreement and Latvian legislation.

The persons to whom this agreement applies ... and who were permanently resident in Latvia before 28 January 1992, including those persons appearing in the lists confirmed by both Parties and annexed to the agreement in respect of whom the relevant formalities have not been completed, shall retain the right to reside without hindrance in Latvia if they so wish. By agreement between the Parties, persons who were permanently resident in Latvia before 28 January 1992 and whose names, for whatever reason, have not been entered on the abovementioned lists, may have their names added. ..."

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

Article 187

"... Use of a passport which has been replaced by a new passport shall be punishable by a fine of up to 100 lati."

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."

B. The legislation on operational investigative measures

47. The main provisions governing interviews similar to that complained of by the first applicant are contained in the Act of 16 December 1993 on operational measures (*Operatīvās darbības likums*). The "operational measures" referred to in the Act cover all operations, covert or otherwise, aimed at protecting individuals, the independence and sovereignty of the State, the constitutional system, the country's economic and scientific potential and classified information against external or internal threats (section 1). Operational measures are aimed in particular at preventing and detecting criminal offences, tracing the perpetrators of criminal offences and gathering evidence (section 2).

48. The most straightforward measure is the "intelligence-related operational procedure" (*operatīvā izzināšana*), designed to "obtain information on events, persons or objects" (section 9 (1)). The procedure takes one of the following forms:

(i) an "operational request for intelligence" (*operatīvā aptauja*), during which "the persons concerned are asked questions about the facts of interest to the [relevant] authorities" (section 9 (2));

(ii) "operational intelligence gathering" (*operatīvā uzziņa*), which involves "gathering information relating to specific persons" (section 9 (3));

(iii) "operational clarification of intelligence" (*operatīvā noskaidrošana*), consisting in obtaining information by covert or indirect means where there is reason to suspect that the informer will be unwilling to supply the information directly (section 9 (4)).

49. All operational measures must be in strict compliance with the law and human rights. In particular, no harm – physical or otherwise – may be caused to the persons concerned, nor may they be subjected to violence or threats (section 4 (1) to (3)). Any person who considers that he or she has suffered harm as a result of the actions of a member of the security forces may lodge a complaint with the prosecuting authorities or the relevant court (section 5).

50. Under section 15 of the National Security Establishments Act of 5 May 1994 (*Valsts drošības iestāžu likums*), the security police come under the supervision of the Ministry of the Interior. They have powers to deploy operational measures in order to combat corruption.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

51. In a letter of 12 November 2003 the Government informed the Court of the practical steps taken by the Latvian authorities with a view to assisting the regularisation of the applicants' stay in Latvia (see paragraphs 32-35 above and 86-90 below). In view of those steps, the Government considered that the dispute forming the subject of the instant case had been resolved and that the Court should strike the application out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

52. The applicants and the Russian Government opposed the striking-out of the application. In their opinion, the dispute was far from being resolved.

53. In the Court's view, the issue at stake here is whether the applicants effectively ceased to have "victim" status within the meaning of Article 34 of the Convention as a result of the decisions taken by the Directorate on 11 November 2003. The Court reiterates its settled case-law to the effect that a decision or measure favourable to the applicant is not in principle 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 breach of the Convention (see, for example, *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 *Ilaşcu and Others v. Moldova and Russia* [GC] (dec.), no. 48787/99, 4 July 2001).

54. In the present case, the Court notes that the Latvian authorities have not acknowledged, still less afforded redress for, the damage sustained by the applicants. The decision to allow them to regularise their stay is merely a proposal which is subject to strict conditions and does not correspond to the original application they made as far back as 1993 to be granted permanent resident status and have their names entered on the register of residents of Latvia, an application which the Alūksne District Court of First Instance, moreover, allowed on two occasions. Nor has the decision in question erased the long period of insecurity and legal uncertainty which they have undergone in Latvia.

55. In these circumstances, the Court considers that the applicants can still claim to be victims of a violation of the Convention within the meaning of Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicants contended that they had been victims of a violation of Article 8 of the Convention, the relevant passages of which read:

> "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 applicants

(a) Whether there was an interference and whether it was justified

57. The applicants considered that their situation amounted to an interference with their rights under Article 8 of the Convention. They emphasised first the particular nature of their situation, which was linked to the break-up of the former Soviet Union. In the Soviet Union, there had been no freedom of movement or freedom to choose one's residence. Armed

forces personnel had been obliged to go wherever they were sent; hence, the second applicant's move to Latvia in 1968 had not been voluntary. The applicants were therefore victims of a historical and political upheaval beyond their control.

58. The applicants further stressed the strength of their ties with Latvia and the extent to which they were integrated in Latvian society. As a result, they argued, Latvia was the only country in which they could lead a normal family life. Firstly, they pointed to the exemplary length of their residence in the country – over thirty years. Furthermore, they argued, they could not be regarded as "immigrants" in the strict sense of the word, having arrived in Latvia when its territory still formed part of the Soviet Union. The third applicant stressed in particular that she had been born in Latvia and had always lived there.

59. Secondly, the applicants maintained that any attempts to cast doubt upon the family ties between themselves and Mrs Vizule and her two children were contrived and unfounded (see paragraphs 1, 5, 12 and 13 above). In that connection they explained that they belonged to the Udmurt ethnic group, for whom the relationship between grandchildren and their grandparents was traditionally very close. The applicants' deportation from Latvia would also mean that the two sisters, Mrs Vizule and the third applicant, would be split up, dealing the entire family a severe psychological blow.

60. Thirdly, the applicants argued that they had strong links with Latvian society and culture, for which they had great respect. They had sufficient command of Latvian to be able to correspond with the authorities and lead a normal social and working life. Moreover, the first applicant was very active in her local community in Alūksne, where she was involved in voluntary work, running activities for children and chairing the association of council flat tenants.

61. In view of the above, the applicants rejected the argument that their ties with Russia were stronger than those with Latvia. In their view, the mere fact that they could speak Russian was insufficient basis for such a conclusion. Furthermore, their ties with their family in Russia had become very tenuous over the years. The second and third applicants maintained in particular that their decision to choose Russian nationality had been prompted by the attitude of the Latvian authorities in refusing to issue them with any form of identity papers and threatening to deport them.

62. To sum up, the applicants' irregular status amounted in their view to an interference with their rights under Article 8.

63. With regard to the conditions set forth in Article 8 § 2 of the Convention, the applicants said that they had never committed a criminal offence or done anything to undermine national security, public safety, the economic well-being of the country, health or morals or the rights of others. Unlike the Government, the applicants did not consider that their conduct –

that is, the fact that they had not informed the Latvian authorities that they had two Soviet passports and a place of residence registered outside the country – amounted to supplying "false information" within the meaning of section 35 of the Aliens Act. In any event, they argued that, while their conduct may have been reprehensible, it was certainly understandable in the specific context of their situation. Like hundreds of thousands of other Russian-speaking citizens of the former Soviet Union who had remained in Latvia after the break-up of the Soviet Union, they had feared persecution and had done everything possible to secure their future in case they should be deported. The registration of a place of residence in Russia, therefore, had clearly been notional; it did not confer on them any entitlement to obtain accommodation in Russia, nor did it reflect any wish on their part to move to Russia.

64. Furthermore, the applicants pointed out that the Alūksne police had decided not to institute criminal proceedings against them. The omission in question was merely a regulatory offence in Latvian law, and in November 1995 they had been ordered to pay a fine of 25 lati as a result of that offence (see paragraph 18 above). In the circumstances, they considered that deportation would be manifestly disproportionate to the nature and seriousness of the acts concerned.

65. In addition, the applicants argued that the Government had been in clear breach of Article 2 of the Russian-Latvian agreement, which gave retired Russian military personnel and their families the right to "reside without hindrance in Latvia". Deporting them would constitute a violation of that provision, regardless of their legal status in Latvia.

66. Finally, the applicants challenged the assertion that they were not currently at any risk of deportation from Latvia. They contended that the risk of deportation was real and imminent, since they had no legal status in Latvia, no residence permits and not even any valid identity papers. They referred in that connection to the Directorate's letters of 17 May and 26 June 2000, reminding them that they were required to leave Latvia. As those letters had never been formally revoked, the applicants feared that the threats expressed in them might be carried out at any time. The very real nature of the threats was amply demonstrated by the example of other families, such as the Slivenko family (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, §§ 6-37, ECHR 2002-II).

(b) Current possibilities for regularising the applicants' stay

67. With regard to the current possibilities for regularising their stay in Latvia, the applicants believed that the only measure capable of affording them adequate redress would be the granting of "permanently resident non-citizen" status to the first applicant and of residence permits to the other two applicants. They argued that the position of the Latvian authorities was unlawful and arbitrary; the registration of their place of residence in Russia

had clearly been notional (see paragraph 63 above) and, consequently, could not give rise to automatic invalidation of their registration in Latvia, as claimed by the Government. Accordingly, the first applicant had fulfilled the first condition laid down by section 1 (1) of the Non-Citizens Act – namely that persons governed by the Act must, on 1 July 1992, have had their place of residence registered within Latvian territory – and was entitled to the status of "permanently resident non-citizen". As for the second and third applicants, they were entitled to obtain permanent residence permits on the basis of their Russian citizenship.

68. The applicants regarded as "unacceptable" the Directorate's suggestion that the first applicant should be granted "stateless person" status, the second applicant be issued with a permanent residence permit after holding two temporary permits and the third applicant be issued with a temporary permit (see paragraphs 86-90 below). In their view, the proposals were humiliating both to the first two applicants, who had lived in Latvia for over thirty years, and to the third applicant, who had been born in Latvia and had never had any other home.

69. The applicants pointed out that, although the status of "stateless person" and that of "non-citizen" conferred similar sets of rights, the Status of Stateless Persons Act contained no guarantees that the person concerned would not be deported; section 2 (2) of the Non-Citizens Act, however, contained just such a guarantee.

70. The applicants also considered that gradual regularisation as provided for by section 26 (1) of the Immigration Act (section 26 of the former Aliens Act) could be applied only to a recently married couple; such a procedure would be humiliating to a couple who had lived together for over thirty years. Lastly, with regard to the third applicant, they considered it unacceptable to offer a temporary residence permit to someone who had been born in Latvia and had always lived there. They stressed in particular that Aksana was a student and was dependent on her parents, and that her prospects for remaining in Latvia would be very uncertain if she had only a temporary residence permit.

71. Finally, the applicants considered that the Directorate's decisions of 11 November 2003 did not constitute an adequate remedy, as they "were not based on Article 8 of the Convention".

72. In any event, the means of regularisation proposed by the Directorate would not afford the applicants sufficient redress for their grievances. The proposed measures would not erase the damage they had sustained over a nine-year period in their desperate attempts to regularise their stay in Latvia. During that time, they had been unable to enjoy the social and financial rights to which persons who were legally resident were entitled; they had so far been unable, for instance, to acquire ownership of the council flat in which they lived. More generally, the fact that the applicants' period of legal residence in Latvia would begin only on the date when their position was

regularised would call into question everything they had built up during their time in Latvia.

2. The Government

(a) Whether there was an interference and whether it was justified

73. The Government acknowledged the existence of a "family life", principally between the first two applicants, but also between the two of them and the third applicant, who had been a minor when the regularisation proceedings began in the domestic courts. With regard to Mrs Vizule, an adult who was married and had two children, the Government took the view that she belonged to a separate "family" for the purposes of Article 8 of the Convention.

74. The Government considered first that the applicants' complaint related to three separate factual and legal aspects: their removal from the register of residents, the decision not to grant them a specific status based on the legislation relating to aliens and, finally, the Directorate's letters of 17 May and 26 June 2000 reminding them that they were required to leave Latvia. In the Government's view, none of the three measures amounted to an interference with the applicants' right to respect for their private or family life. Even assuming that such interference had occurred, it was compatible with the second paragraph of Article 8.

75. With regard firstly to the removal of the applicants' names from the register of residents, the Government pointed out that in 1992 and 1993 the applicants had deliberately deceived the Latvian authorities by acting in a fraudulent manner, each having two passports and registering their place of residence in Russia without having cancelled their registration in Latvia and without informing the Latvian authorities. The Government argued in that connection that, in accordance with the regulations and practice at the time, an individual could register only one residence at a time in that way. Registration of a place of residence abroad entailed *ipso facto* the invalidation of the registration of residence in Latvia and hence the automatic forfeiture of permanent resident status in that country. The Alūksne District Court had merely reiterated that fact in its order of 28 May 1996.

76. The Government further observed that the first two applicants had been born in Russia. The second and third applicants had themselves requested and obtained Russian nationality; furthermore, the second applicant had, until 1998, been in receipt of a retirement pension from the Russian Government owing to his having served in the Soviet armed forces. In addition, the first applicant's mother and the second applicant's four sisters lived in Russia. All the applicants were fluent in Russian; their command of Latvian, on the other hand, was rudimentary and patently inadequate to enable them to be integrated into Latvian society.

77. In the Government's view, all the above elements demonstrated the real and effective intention of the whole family to strengthen their ties with the Russian Federation rather than with Latvia. Consequently, there was nothing to prevent the applicants from conducting and developing their private and family life in Russia. In the light of the above, the Government concluded that there had been no interference of any kind in the applicants' private or family life.

78. Even assuming that the removal of the applicants' names from the register of residents had amounted to an interference with the exercise of their rights under Article 8 of the Convention, such interference was in line with the requirements of the second paragraph of that Article. The measure complained of had been "in accordance with the law", and it had pursued a "legitimate aim", namely the protection of public safety and public order. Equally, given that the second applicant had been a member of the Soviet armed forces – which had been hostile to Latvian independence and democracy – national security had also been a consideration.

79. Finally, the interference complained of had been "necessary in a democratic society", that is, it had been proportionate to the above-mentioned legitimate aim. The Government observed in that connection 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 the circumstances, the removal of the applicants from the register had been the only means of ensuring that they did not benefit illegally from rights and guarantees to which they had no entitlement.

80. As to the refusal of the Latvian authorities to grant the first applicant the status of "permanently resident non-citizen", or to issue the other two applicants with permanent residence permits, the Government considered that that could not be regarded, either, as "interference" within the meaning of Article 8 § 2 of the Convention. Article 2 of the Russian-Latvian agreement of 30 April 1994 (see paragraph 45 above), to which the applicants referred, could not be construed as entitling them to obtain whatever legal status they wished. The provision in question merely guaranteed the persons concerned their "fundamental rights ... in accordance with international law ... and Latvian legislation". In immigration matters, international law afforded the State considerable latitude, a fact which, moreover, had been acknowledged in the Court's case-law.

81. The above considerations led the Government to two conclusions. First, they considered that neither Article 8 of the Convention nor Article 2 of the Russian-Latvian agreement referred to above could be taken to mean that the person concerned was guaranteed a particular status on the basis of the legislation governing aliens. Second, there was nothing in the wording of the Russian-Latvian agreement to suggest that the persons concerned

would be exempt from the requirement to comply with domestic law and in particular with the formal requirements in place. On the contrary, Article 2 made express reference to "Latvian legislation". Had the applicants acted in accordance with the law, they would in all likelihood have obtained the status they had requested.

82. In the Government's view, it was perfectly clear from the Non-Citizens Act that the first applicant did not fall within the scope of the legislation *ratione personae*. Section 1 (1) of the Act stipulated that the status of "permanently resident non-citizen" could be granted only to persons who, on 1 July 1992, had been officially registered as being resident in Latvia. By registering their place of residence in Russia in January 1992, the first two applicants had rendered the registration of their residence in Latvia invalid (see paragraph 75 above). With regard to the possibility of issuing permanent residence permits to the other two applicants, the Government observed that section 35 of the Aliens Act, which was couched in clear and comprehensible terms, stated that persons who had supplied false information with a view to regularising their status in Latvia were ineligible for a residence permit.

83. The Government further pointed out that the fact that the applicants had no specific legal status in Latvia had no effect on their private or family life, as they continued to interact freely with one another, with Mrs Vizule's family and with non-family members. The Government were therefore satisfied that the refusal of the Latvian authorities to grant the first applicant the status of "permanently resident non-citizen" and to issue the other two applicants with permanent residence permits did not amount to an "interference" with the rights enshrined in Article 8 of the Convention.

84. Even assuming that there had been such interference, the Government took the view that, like the removal of the applicants from the register of residents, it had been compatible with Article 8 § 2 of the Convention. The alleged interference had been "in accordance with the law", had pursued "legitimate aims" (the protection of national security and public safety) and, in the absence of any appearance of arbitrary conduct, had been proportionate to those aims.

85. As to the Directorate's letters of 17 May and 26 June 2000 reminding the applicants that they were required to leave Latvia, the Government maintained that they had merely constituted a warning which had no real legal effect. The only measure which could give rise to deportation from Latvia was a deportation order issued in accordance with section 38 of the Aliens Act. No formal order had ever been issued in respect of the applicants; the Directorate had consciously refrained from such a move "on grounds of proportionality" and had no intention of taking such a step in the future. Even if an order were to be issued one day, the applicants would have the opportunity of appealing against it before the relevant courts.

(b) Current possibilities for regularising the applicants' stay

86. The Government stressed that, despite their uncertain legal situation, it was still open to the applicants to regularise their stay in Latvia. The legal status which they had requested was not the only possible solution to their problem. In that connection, the Government referred to the three decisions taken by the Directorate on 11 November 2003 and the three letters sent to the applicants on the same day. In the Government's view, the solutions explicitly proposed to each one of them, as set out below, satisfied the requirements of Article 8 of the Convention.

87. The first applicant, Svetlana Sisojeva, could obtain the status of "stateless person" within the meaning of the Status of Stateless Persons Act (see paragraph 42 above). Admittedly, section 2 (1) of the Act stipulated that the person concerned must be "legally" resident in Latvia. However, as made clear in the letter of 11 November 2003, the Directorate was prepared to concede that the first applicant was "legally" resident in Latvia, thereby enabling her to regularise her status in accordance with the Act. Furthermore, the Government had supplied a copy of a letter which the head of the Directorate had sent to their Agent on 17 December 2002 and which stated the willingness of the Directorate to grant the first applicant "stateless person" status if she requested it.

88. Were the first applicant to obtain "stateless person" status, she would enjoy the rights referred to in sections 3 and 4 of the Status of Stateless Persons Act: the right to leave and return to the country freely, the right to "be joined by [her] spouse from outside the country" and the right to "preserve [her] native language, culture and traditions". In addition she would receive identity papers allowing her to travel abroad without hindrance. Moreover, the minimum period of legal residence required by the law in order to apply for naturalisation would start as soon as the first applicant had obtained "stateless person" status.

89. As to the other two applicants, who were Russian citizens, the regularisation of their status depended on that of Svetlana. As explained in the Directorate's letter, if the first applicant obtained "stateless person" status, the second applicant could choose the option set out in section 26 (1) of the new Immigration Act and regularise his stay as the spouse of a stateless person in possession of a permanent residence permit. Hence, on the basis of the Directorate's decision of 11 November 2003, the second applicant could be issued with a temporary residence permit valid for one year, on condition that his wife took the necessary steps to obtain "stateless person" status. After a year, he could expect to be issued with a second temporary permit, valid for four years and, finally, with a permanent permit. Again the Government, referring to the letter from the head of the Directorate of 17 December 2002, stated that the Directorate was prepared to concede that the second applicant was legally resident in Latvia, and to allow him to apply for a residence permit without leaving the country. In

addition to being allowed to live in Latvia and enjoy the full range of fundamental rights there, that meant that he would be entitled to work without special permission.

90. As for the third applicant, she would be issued with a temporary residence permit – under the same conditions as her father – valid for six months. In addition, she could apply to the Minister of the Interior at any time to have her status regularised on an exceptional basis on "humanitarian grounds" in accordance with section 23 (3) of the Immigration Act.

3. The Russian Government

91. The Russian Government agreed in substance with the arguments adduced by the applicants. They considered that the situation complained of constituted an interference with the applicants' rights under Article 8 § 1 of the Convention, and that the interference in question did not satisfy the requirements of the second paragraph of Article 8.

92. The Russian Government disputed the lawfulness of the interference complained of. First it contended that, in agreeing to the revision – owing to the emergence of new facts – of its own judgment of 28 October 1993, which had become final, the Alūksne District Court of First Instance had acted in an arbitrary manner, in breach of universally recognised legal principles. Second, the Russian Government pointed out that inalienable human rights could be restricted only on the basis of a statutory provision. In the present case, the argument of the respondent Government that the registration of the applicants' place of residence in Russia automatically cancelled their registration in Latvia had been based solely on an internal administrative practice which could patently not be described as a "law" within the meaning of Article 8 § 2 of the Convention. For the same reason, the respondent Government were wrong to assert that the applicants had maintained the registration of their residence in Latvia "illegally", given that no law expressly prohibited this.

93. The Russian Government endorsed the applicants' position regarding the strength of their personal and family ties in Latvia. All three were well integrated into Latvian society and nothing in their personal situation or their behaviour suggested any intention to leave Latvia and move to Russia. There was no basis for the respondent Government's assertion that the applicants could lead a normal private and family life in Russia, where they had neither accommodation nor employment. Moreover, the applicants' native language was not Russian but Udmurt, a language belonging to the Finno-Ugric family.

94. The Russian Government contested the respondent Government's arguments as to why the interference in question had been justified. First of all, they very much doubted whether the general principle whereby States had the right to control the entry, residence and expulsion of non-nationals could apply to the applicants; as nationals of the former "Soviet Socialist

Republic of Latvia" they could not be equated with "immigrants" in the strict sense of the word. For the same reason, they had an indisputable right to be recognised as permanent residents of Latvia. The Russian Government agreed with the applicants' argument that their actions in obtaining two passports and registering two places of residence had been acts of desperation prompted by their fears concerning the unpredictable policies of the Latvian authorities vis-à-vis Russian-speaking nationals of the former Soviet Union who had remained in Latvia. In any event, their actions had constituted merely a regulatory rather than a criminal offence. The respondent Government's argument as to the threat supposedly posed by the Soviet armed forces lacked any basis; moreover, the second applicant had long since left the army and retired.

95. In the light of all of the above, the Russian Government considered that the interference complained of did not correspond to any of the legitimate aims set out in Article 8 § 2 of the Convention, and was therefore not "necessary in a democratic society". The Latvian authorities had therefore failed in their duty to strike a fair balance between the interests of the State and those of the applicants, and had been in breach of their positive obligations under that provision.

96. The Russian Government further took the view that the right to "reside without hindrance in Latvia", secured to the applicants under Article 2 of the Russian-Latvian agreement, should be construed as granting them a "permanent" legal status in Latvia.

97. The Russian Government also took issue with the argument that no attempts were currently being made to deport the applicants from Latvia. In their view, the very fact that the Latvian Government mentioned in their observations the possibility of a deportation order being issued amounted to a threat of deportation. As to the right of judicial appeal against such an order, the Russian Government considered it to be ineffective and inadequate, given the excessive length of the regularisation proceedings in respect of the applicants (over nine years) and the example of the Slivenko family, who had lost their case before the Latvian courts (see the *Slivenko* decision cited above).

98. Finally, with regard to the possibilities for regularising the applicants' status in the manner proposed by the Latvian Government, the Russian Government considered that such a solution would be acceptable only if the applicants planned to live and work outside Latvia, which was not the case. Either way, the only appropriate way of providing redress for the grievance in question would be to grant the applicants permanent resident status, which the Latvian authorities were refusing to do.

B. The Court's assessment

99. 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 and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens (see, among many other authorities, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p.1853, § 73; *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).

100. The applicants maintained that, on account of their history in Latvia, the above principle did not apply to their case. In that connection the Court notes that, in the substantive framework of the Convention, the only provision which affords express protection against forced expulsion from a country's territory is Article 3 of Protocol No. 4, the first paragraph of which prohibits the expulsion by a State of its own nationals. Neither the Convention nor the Protocols thereto, however, contain any blanket ban on expulsion of foreign nationals or stateless persons. In the *Slivenko* decision cited above, the Court considered that the question as to whether the applicant was a "national" of a particular country must be determined, in principle, by reference to the national law. It further found that, in Latvia, the notion of a "national" within the meaning of Article 3 of Protocol No. 4, corresponded exactly to the notion of "citizenship" or "nationality" in the relevant Latvian legislation (ibid., §§ 77-78). In the instant case, it is undisputed that the applicants have not been Latvian citizens at any time since 27 June 1997, the date of the Convention's entry into force in respect of Latvia. Nor is there any indication that they had any lawful claim to Latvian nationality under the laws of that State, or that they were arbitrarily denied Latvian citizenship.

101. Nevertheless, the Court reiterates that 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).

102. In the instant case, the Court notes that the first two applicants arrived in Latvia in 1969 and 1968 respectively, that is, at the age of 20 in the case of Svetlana and 22 in the case of Arkady. Since then, they have lived continuously in Latvia. Their daughter, the third applicant, was born in Latvia in 1978 and has always lived there. Accordingly, it is not disputed that during their time in Latvia the applicants have developed the personal, social and economic ties that make up the private life of every human being. Therefore, the Court cannot but find that the measure imposed on the applicants constituted an interference with their "private life" within the meaning of Article 8 § 1 of the Convention (see the judgment in *Slivenko v. Latvia* [GC], no. 48321/99, § 96, ECHR 2003-X).

103. However, while the applicants clearly have an established "family life" in Latvia, the situation they complain of does not have the effect of breaking up that life. Moreover, the first two applicants can no longer claim the existence of a "family life" with the third applicant, who is an adult; the same is true of the ties between the three applicants and the family's elder daughter, Mrs Vizule (see, *mutatis mutandis*, *Kolosovski v. Latvia* (dec.), no. 50183/99, 29 January 2004). The Court will therefore examine the applicants' complaint under the head of their "private" life within the meaning of Article 8 § 1 of the Convention.

104. The Court further notes that no formal deportation order has been issued in respect of the applicants. It reiterates, however, that Article 8, like any other provision of the Convention or the Protocols thereto, must be interpreted in such a way that it guarantees 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.

105. Consequently, the Court considers that the prolonged refusal of the Latvian authorities to grant the applicants the right to reside in Latvia on a permanent basis constitutes an interference with the exercise of their right to respect for their private life. It remains to be considered whether that

interference 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.

106. With reference first of all to the "lawfulness" of the measure for the purposes of Article 8 § 2 of the Convention, the Court agrees with the Government's assertion that the interference was "in accordance with the law" (in this instance section 1 (1) of the Non-Citizens Act and section 35 of the former Aliens Act). Equally, in view of the fact that the measure was designed to ensure compliance with immigration laws, the Court accepts that it pursued a "legitimate aim", namely "to prevent disorder".

107. As to whether the impugned measure was "necessary in a democratic society", that is, proportionate to the legitimate aim pursued, the Court notes that the applicants have spent all, or almost all, of their lives in Latvia. Although they are not of Latvian origin, the fact remains that they have developed personal, social and economic ties strong enough for them to be regarded as sufficiently well integrated in Latvian society, even if, as the Government maintain, there are gaps in their knowledge of Latvian (see the *Slivenko* judgment cited above, § 124). Similarly, although the second and third applicants have Russian nationality and had an officially registered residence in Russia, none of the three applicants appears to have developed personal ties in that country comparable to those they have established in Latvia (ibid., § 125).

108. In these circumstances the Court considers that, in terms of the conditions imposed on the applicants in order to have their position regularised, only reasons of a particularly serious nature could justify refusal. The Court has been unable to discern any such reasons in the instant case. While it recognises the right of each State to take effective steps to ensure compliance with its immigration laws, it considers that a measure of the kind imposed on the applicants could be considered to be proportionate only if the applicants had acted in a particularly dangerous manner. In that connection the Court reiterates that most of the similar cases it has examined under Article 8 of the Convention have related to situations in which the applicants had been deported after being convicted of serious criminal offences. In the instant case, however, the applicants received only a modest fine which was not classified as a criminal penalty under Latvian law (see paragraph 18 above).

109. The Court further notes that regularisation of the second and third applicants' status depends on that of the first applicant (see paragraphs 35 and 87-90 above). In other words, if the first applicant does not take advantage of the opportunity offered to her to regularise her stay, the situation of the other two applicants will remain unchanged. The Court considers that, in making the ability of these two applicants to lead a normal private life contingent on circumstances beyond their control, the domestic

authorities who, admittedly, enjoy a margin of appreciation, have not taken the measures that could have been reasonably required of them.

110. Accordingly, taking all the circumstances into account, and in particular the long period of insecurity and legal uncertainty which the applicants have undergone in Latvia, the Court considers that the Latvian authorities exceeded the margin of appreciation enjoyed by the Contracting States in this sphere, and did not strike a fair balance between the legitimate aim of preventing disorder and the applicants' interest in having their rights under Article 8 protected. It is therefore unable to find that the interference complained of was "necessary in a democratic society".

111. Having regard to all of the above, the Court finds that there has been a violation of Article 8 of the Convention in the instant case.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

112. The applicants complained that the questioning of the first applicant by the security police on 6 March 2002 constituted an infringement of their right of individual petition, in breach of the last sentence of Article 34 of the Convention. Article 34 reads:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

1. The applicants

113. The applicants maintained that, in view of the nature of the questions put to the first applicant by the police officer, the above-mentioned interview amounted to an attempt to subject her to pressure and intimidate her psychologically so that she would withdraw the application to the Court. In their view, once their complaints had been declared admissible, they should have been considered to be under the Court's protection. That implied in particular that the domestic authorities must refrain from any activity liable to undermine the principle of equality between the parties to the proceedings before the Court. In asking the first applicant how she had found lawyers and whether those lawyers had threatened her, the security police had been in breach of that principle. The applicants considered that the questions concerned had been unrelated to the need to investigate possible cases of corruption, the reason given by the Government.

114. The applicants also maintained that they had learned that the Latvian authorities had planned other coercive measures against them, including "arresting them and sending them to prison". In addition, they alleged that their telephone calls were regularly intercepted.

2. The Government

115. The Government disputed the applicants' assertion that the interview in question had been aimed at forcing the first applicant to withdraw her application. In that connection they pointed out that, during her interview with the Russian journalists, the first applicant had stated publicly that several individuals who were without a residence permit and were in a similar situation to her own had managed to regularise their status by bribing certain employees of the Directorate. As a result of that statement, the security police had opened a preliminary investigation on the ground that the applicant's allegations, should they prove to be true, disclosed a serious offence punishable under the Criminal Code. The Government stressed in particular that the interview at issue had been perfectly lawful, as the security police had powers to take such measures.

116. Consequently, the questioning of the applicant had related not to her application before the Court, but solely to the alleged acts of corruption on the part of the officials concerned, which had been discussed during the interview.

117. The Government conceded that some of the questions asked by the police officer had referred explicitly to the proceedings being pursued by the applicants in Strasbourg. However, they considered those questions to be logical, since the first applicant had stated that she had learned of the existence of corruption during the preparation of her application to the Court. In any event, the content of the questions could not be considered an attempt at intimidation. In support of their argument, the Government submitted a copy of a letter sent by the head of the security police to their Agent on 16 July 2002, the relevant passages of which read as follows:

> " ... [W]e wish to inform you that, on 6 March 2002, pursuant to the obligations set forth in section 15 of the Act relating to State security establishments, including those engaged in combating corruption, a conversation was conducted with Mrs Svetlana Sisojeva concerning the cases of corruption known to her.
>
> [That] conversation cannot be regarded as an interview [as] no procedural record was kept on [that] occasion and Mrs Sisojeva refused to provide information on the persons known to her who had allegedly offered bribes to officials...
>
> ...
>
> At the beginning of the conversation, Mrs Sisojeva was asked whether she had any information about cases of active corruption in State bodies. She replied that she knew several Russian speakers who had given bribes in order to obtain Latvian residence permits and "[permanently resident] non-citizen" passports.

> Mrs Sisojeva was asked to give the names of those persons, but refused to do so, saying that she was afraid that the persons in question would have their residence permits and "non-citizen" passports confiscated in the course of the corruption inquiry.
>
> During the conversation, Mrs Sisojeva was asked what problems had prompted her application to the European Court of Human Rights. She replied that the problems had begun in 1996 with the head of the regional office ... [of the Department], Mr [S.R.], who had refused to issue her with a Latvian residence permit and a "non-citizen" passport. There had been several sets of proceedings, which had resulted in findings against her; for that reason, she had decided to seek the assistance of the European Court of Human Rights. ..."

118. In the light of the above, the Government argued that the interview at issue had not, taken overall, been connected with the first applicant's application as such, and therefore could not be considered to have interfered with her right of individual petition. Furthermore, the Government considered that the applicants' other allegations, relating to the risk of their being arrested and the supposed interception of their telephone calls, lacked any factual basis.

3. The Russian Government

119. The Russian Government considered that, in view of the content of the questions put by the officer of the security police to the first applicant, the impugned interview constituted clear psychological pressure linked to the present application to the Court. They argued that, in view of the particular role played by the State security services in the former Soviet Union, most people who had lived under the Soviet regime had been, and continued to be, particularly fearful of them. There was nothing in the case file to bear out the Government's claim that the main focus of the conversation had been corruption on the part of some officials; on the contrary, the dialogue reproduced by the first applicant showed clearly that the security police had been trying to intimidate her, in breach of the last sentence of Article 34 of the Convention. As to the content of the dialogue, the Russian Government saw no reason to cast doubt on the accuracy of the applicant's reconstruction, pointing to the fact that the respondent Government had not provided any official report or record of the impugned conversation. In short, the Russian Government were satisfied that the interview had been aimed first and foremost at intimidating the applicants in order to force them to withdraw their application, then pending before the Court.

B. The Court's assessment

120. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by

Article 34 of the Convention that applicants or potential applicants are able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1219, § 105; *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1192, § 159; *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, p. 1784, § 105; and *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII).

121. The word "pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their families or legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy. Whether or not contacts between the authorities and an applicant or potential applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances at issue. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see, for example, *Petra v. Romania*, judgment of 23 September 1998, *Reports* 1998-VII, pp. 2854-2855, § 43; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3304, § 170; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV).

122. In the instant case the parties agree that on 6 March 2002 the first applicant, Mrs Svetlana Sisojeva, was summoned to the headquarters of the security police, where one of the officers asked her a number of questions relating in particular to her application before the Court. In that connection, the Court does not consider it necessary to examine whether the questioning constituted a formal "interview" for the purposes of domestic law.

123. As to the exact content of the questions asked by the police officer, the Court notes that no official report was drawn up following the interview. The only document submitted in that connection by the first applicant is a record which she herself drafted from memory about a month after the event and the accuracy of which is disputed by the Government (see paragraphs 38-39 above). For their part, the Government supplied a copy of a letter from the head of the security police outlining briefly the aim of the interview and how it had been conducted (see paragraph 117 above). In the absence of more convincing evidence, the Court is unable to verify the content of the questions put to the first applicant; it will, however, take as established those facts on which the two documents concur.

124. It is clear from both documents that, a few days prior to the interview, the first applicant had given an interview to a Russian television station in which she had mentioned several cases of corruption among Directorate officials. As corruption in the public sector is punishable under criminal law and constitutes a serious offence, the applicant should

reasonably have expected the police or the prosecuting authorities to take an interest in the allegations. It appears also that the interview was in accordance with the national legislation, which authorises the security police to investigate corruption offences and to gather information from the individuals concerned (see paragraphs 47-50 above). Accordingly, the Court accepts the Government's explanation that the main focus of the interview was the allegation that Directorate officials had acted in a corrupt manner, rather than the proceedings being pursued by the applicants in Strasbourg.

125. However, the fact remains that, in the course of his conversation with the first applicant, the police officer asked her several questions about her application to the Court. Unlike the Government, who argued that the questions were justified by the requirements of the investigation, the Court has serious doubts as to their necessity and relevance, and has difficulty discerning a connection between acts of corruption allegedly committed by unidentified third parties and the present application. In that connection the Court reiterates that it is inappropriate for the authorities of a respondent State to enter into direct contact with an applicant. Even if a Government has reason to believe that in a particular case the right of individual petition is being abused, the appropriate course of action is for that Government to alert the Court and inform it of their misgivings (see *Tanrikulu*, cited above, § 131, and *Orhan v. Turkey*, no. 25656/94, § 409, 18 June 2002). By questioning the first applicant on her reasons for lodging an application with the Court, the officer of the security police therefore exceeded the remit of the investigation by a considerable margin.

126. As the Court pointed out above, in determining whether a State has failed in its obligations under Article 34, all the circumstances of the case must be taken into account. In the instant case, the Court notes that the questioning of the first applicant in general and the questions put to her in particular were of an incidental nature. There is nothing in the case file to indicate that the Latvian authorities attempted to summon the applicant a second time (see, conversely, *Ergi*, cited above, pp. 1761-1762 and p. 1784, §§ 26-28 and § 105). Neither does it appear that the security police forced the first applicant to give evidence, in relation either to her application to the Court or to the alleged acts of corruption which were the main focus of the interview. On the contrary, the applicant's refusal to disclose the names of the allegedly corrupt officials was respected and did not entail any legal consequences for her. Furthermore, assuming the record of the conversation written by the first applicant to be accurate, the Court observes that the language used by the police officer was polite and did not contain any expressions, references or insinuations of a threatening or even a dissuasive nature (see, conversely, *Petra*, cited above, p. 2855, § 44).

127. Likewise, taking an overall view, the Court observes that the questions put by the police officer were of a general nature and were not aimed at inducing the applicant to reveal the content of the documents in the

applicants' case file or of their correspondence with the Court, or at casting doubt on the authenticity of their application or their capacity to conduct legal proceedings (see, conversely, *Tanrikulu*, cited above, § 131).

128. Finally, the Court considers that it cannot disregard the wider context in which the impugned interview took place. It is true that, in a number of cases in which the authorities had questioned applicants about their applications, the Court has found them to be in breach of their obligations under Article 34 (or the former Article 25 § 1) of the Convention (see *Akdivar and Others*, cited above, p. 1219, § 105; *Kurt*, cited above, pp. 1192-1193, § 160; *Tanrikulu*, cited above, § 130; and *Orhan*, cited above, § 407; see also *Bilgin v. Turkey*, no. 23819/94, § 133, 16 November 2000; *Dulaş v. Turkey*, no. 25801/94, § 79, 30 January 2001; and *Akdeniz and Others v. Turkey*, no. 23954/94, § 118, 31 May 2001). However, bearing in mind the very specific circumstances of the cases cited above, the Court has found no indication that similar factors exist either in Latvia in general or in the applicants' case in particular.

129. In sum, and in the light of all the relevant circumstances of the case, the Court considers that the questioning of the first applicant by an officer of the security police on 6 March 2002 did not attain a sufficient level of severity to be considered as a form of "pressure", "intimidation" or "harassment" which might have induced the applicants to withdraw or modify their application or hindered them in any other way in the exercise of their right of individual petition.

130. Lastly, with regard to the alleged interception of the applicants' telephone conversations, the Court observes that this is merely an unsubstantiated and unproven assertion (see *Michael Edward Cooke v. Austria*, no. 25878/94, § 48, 8 February 2000). The same is true of the complaint that the Latvian authorities had intended to send the applicants to prison.

131. Consequently, the respondent State has not failed to comply with its obligations under the last sentence of Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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. Damage

133. The applicants claimed LVL 36,736 (approximately EUR 55,800) for the "suffering and problems" resulting from their irregular status in Latvia, their attempts to regularise their status and the proceedings they had pursued before the Latvian courts. In addition, the applicants requested an official apology from the Government for the summoning and questioning of the first applicant by the security police.

134. The Government considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which might have been sustained by the applicants.

135. The Russian Government endorsed the applicants' position in substance.

136. The Court considers that the applicants sustained a certain amount of damage as a result of their irregular status in Latvia, which led it to find a violation of Article 8 of the Convention. Ruling on an equitable basis as required by Article 41, it awards the applicants EUR 5,000 each under this head.

B. Costs and expenses

137. The applicants claimed LVL 2,422.21 (approximately EUR 3,680) in costs and expenses, broken down as follows:

(a) LVL 1,300 for the fees of the lawyers who represented them before the Latvian courts;

(b) LVL 429.20 for travel expenses incurred in travelling to Riga in connection with their application and returning to Alūksne;

(c) LVL 200 for translation of the documents in the case file;

(d) LVL 66.50 for photocopying of the documents in the case file;

(e) LVL 18.41 in notary's fees for certification of the two authorities to act issued to their lawyers in 1998 and 2001;

(f) LVL 409.10 for other expenses arising out of the applicants' irregular status in Latvia.

138. The Government disputed each of the amounts claimed by the applicants which, they argued, either bore no relation to the object of the

application, were not substantiated by appropriate supporting documents or quite simply lacked any factual basis.

139. The Russian Government did not make any specific observations on this point.

140. The Court observes that the applicants received assistance under its legal aid scheme for presenting their case at the hearing, preparing their additional observations and comments, conducting the negotiations concerning a friendly settlement and for secretarial expenses. Consequently, and in the absence of any specific further expenses, it does not consider it necessary to make an award under this head.

C. Default interest

141. 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. *Holds* by five votes to two that the applicants may claim to be "victims" for the purposes of Article 34 of the Convention;

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

3. *Holds* by six votes to one that the respondent Government has not failed to comply with its obligations under Article 34 of the Convention;

4. *Holds* by five votes to two
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Latvian lati at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 16 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

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

(a) Partly dissenting opinion of Mr Kovler;

(b) Joint dissenting opinion of Mrs Vajić and Mrs Briede.

C.L.R.
S.N.

PARTLY DISSENTING OPINION OF JUDGE KOVLER

(Translation)

I share the conclusion of the majority of the Chamber in finding a violation of Article 8 of the Convention, while regretting the fact that the Court, in following the same reasoning as in *Slivenko v. Latvia* ([GC], no. 48321/99, ECHR 2003-X), found that "the first two applicants can no longer claim the existence of a 'family life' with the third applicant, who is an adult; the same is true of the ties between the three applicants and the family's elder daughter, Mrs Vizule" (see paragraph 103 of the present judgment). I would therefore refer back to my dissenting opinion in *Slivenko*, adding that the applicants, who are of Udmurt ethnic origin, traditionally have much stronger family ties between parents and adult children than is appreciated in western Europe.

As to the question of the violation of Article 34 of the Convention on account of the questioning of the first applicant, Svetlana Sisojeva, by the security police on 6 March 2002, I would point out that the Latvian Government admitted that Mrs Sisojeva had been summoned. The Government also conceded that some of the questions asked by the police officer related explicitly to the proceedings instituted by the applicants in Strasbourg (see paragraph 117). In addition, the Government did not expressly deny that any of the questions in the applicant's account had been asked by the police officer, nor did they present their own version of events. It should therefore be accepted that the applicant's account is accurate.

In its judgment the Court reiterated that it was of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 of the Convention that applicants were able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw their complaints (see paragraph 120 and its references to the Court's case-law).

If we are to believe the first applicant's account (which was not disputed by the Government), she was questioned during the interview on her reasons for lodging an application with the Court and on her relationship with her lawyers. The judgment quite rightly states that "the Court has serious doubts as to [the] necessity and relevance [of such questions], and has difficulty discerning a connection between acts of corruption allegedly committed by unidentified third parties and the present application", before adding that "the officer of the security police therefore exceeded the remit

of the investigation by a considerable margin" (paragraph 125). I regret the fact that, having implied its disapproval, the Court should then have confined itself to taking "an overall view" (paragraph 127), before concluding that the first applicant's complaint did not attain a sufficient level of severity (paragraph 129).

The alleged interception of the applicants' telephone calls ("an unsubstantiated and unproven assertion") also deserved greater attention from the Court, in view of the strange telephone bills submitted by the applicants. As to the allegation that the Latvian authorities "had intended to send the applicants to prison", the *Slivenko*, *Chevanova* and, above all, *Vikulov* cases against Latvia are sad proof of the very real nature of such measures against "candidates" for expulsion. These facts (which amount in a sense to aggravating circumstances), taken together with the interview in question, do indeed constitute "an overall view", namely the overall context of the complaint under Article 34.

I regret the fact that the Court, in the light of all these factors, did not find, as it has done on numerous occasions, that they amounted to a form of "pressure" and "intimidation". I am not convinced that such a finding would result in a substantial extension of the State's obligations under Article 34.

JOINT DISSENTING OPINION OF JUDGES VAJIĆ AND BRIEDE

(Translation)

We regret that we are unable to subscribe to the conclusions and the reasoning of the majority in this case.

1. 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 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). We would observe that, 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.

In the present case, the Government contended that the applicants could regularise their status in Latvia at any time in accordance with the Directorate's decisions of 11 November 2003. In their view, the first applicant qualified for the status of "stateless person" within the meaning of the relevant Act. The second applicant could obtain a permanent residence permit after being issued with two temporary permits; the third applicant, meanwhile, was entitled to a temporary residence permit (see paragraphs 32-36 of the judgment). For their part, the applicants considered this approach to be wholly inadequate and humiliating (see paragraph 68). In their view, the only means of remedying their complaint was for the first applicant to be granted the status of "permanently resident non-citizen" and the other two applicants to be issued automatically with permanent residence permits (paragraph 67).

2. In view of the measures taken by the Latvian authorities on 11 November 2003, we have great difficulty in tracing any logical and convincing arguments in the judgment. By stating that the arrangements proposed by the Directorate are inadequate, the judgment is calling existing case-law into question in a radical manner on three fronts.

(a) First, it calls into question the case-law established by *Vijayanathan and Pusparajah v. France*, (judgment of 27 August 1992, Series A no. 241-B), in which the Court found that in the absence of a formal expulsion order, in other words, where there was no imminent risk of expulsion, the applicants could not claim to be "victims" of the alleged violation. In the present case, no expulsion order was issued in respect of

the applicants; what is more, the Directorate informed them officially in 2003 that they could regularise their stay in Latvia.

(b) It should also be borne in mind that, when aliens or stateless persons complain of their deportation or in a more general sense of their irregular status in the country, the issuing of a residence permit constitutes in principle an adequate and sufficient remedy (see, in particular, *Pančenko v. Latvia* (dec.), no. 40772/98, 28 October 1999; *Bogdanovski v. Italy* (dec.), no. 72177/01, 9 July 2002; *S.F. v. Switzerland*, no. 16360/90, Commission decision of 2 March 1994, DR 76, p. 13; and *I.F. v. France*, no. 22802/93, Commission decision of 11 December 1997, DR 91, p. 10). This holds true even if the applicant obtains satisfaction after the proceedings before the Court have begun, in accordance with the subsidiary nature of the Convention system of safeguards (see, *mutatis mutandis*, *Preikhzas v. Germany*, no. 6504/74, Commission report of 13 December 1978, DR 16, p. 5, and *Mikheyeva v. Latvia* (dec.), no. 50029/99, 12 September 2002).

It is true that, even without any formal expulsion measure having been taken, the applicants found themselves in an uncertain and somewhat precarious situation which might in itself pose a problem under Article 8 of the Convention. However, in the *Pančenko* and *Mikheyeva* decisions cited above, the Court reiterated its settled case-law. In *Mikheyeva* it stated:

> "In particular, where the applicant complains of his deportation or, more generally, of his irregular status within the country, the quashing of the deportation order against him and the granting of a residence permit are sufficient in principle for him no longer to be able to claim to be a "victim" within the meaning of Article 34 of the Convention."

In the same decision the Court stated:

> "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."

(c) Finally, if it is assumed that the solutions proposed to the applicants by the Directorate were inadequate to remedy their complaint, we fail to see how this argument can be reconciled with the decision of 28 February 2002 on the admissibility of the present case. In that decision, the Court declared the complaints of the Sisojev family's elder daughter, Tatjana Vizule, inadmissible in the following terms:

> "... [I]n so far as the third applicant complains of the refusal of the Directorate to accord her the status of "permanently resident non-citizen", the Court reiterates that the Convention does not lay down for Contracting States any given manner for ensuring within their internal law the effective implementation of the Convention... Consequently, the Court considers that Article 8 does not extend to guaranteeing the person concerned a particular type of residence permit, provided that the solution proposed by the authorities allows him to exercise without hindrance his right to respect for his private and family life. In the instant case the Court observes that a permanent residence permit would allow the third applicant to live close to her family

in Latvia for an indefinite period, and would therefore constitute an adequate safeguard to protect the rights enshrined in Article 8 of the Convention...”

It is true that, in the present case, the second and third applicants were not offered permanent residence permits at the outset. However, in our view, the decisive factor as regards the obligations under the Convention is the fact that the regularisation procedures proposed by the Government would allow the applicants to remain without hindrance within Latvian territory, to lead a normal social life there and to enjoy the rights enshrined in Article 8 of the Convention. The choice of the practical means of achieving that is a matter first and foremost for the authorities in the respondent State, in accordance with the principle of subsidiarity which underpins the entire Convention system. It should be noted in that context that the argument advanced in paragraph 54 of the judgment is contrary to the Court's case-law, which has never stated that applicants had the right to choose the method by which their stay in a State Party to the Convention was regularised. The same applies to the argument of the majority (also in paragraph 54) endorsing the decisions of the first-instance courts despite being aware that the highest courts in the country had ruled otherwise.

3. In the instant case, despite the fact that the Directorate, in its letters of 17 May and 26 June 2000, requested the applicants to leave the country – a request which was not in itself enforceable – no deportation order was issued in respect of the applicants (see paragraph 85 of the judgment; for a similar situation, see *Vijayanathan and Pusparajah v. France*, cited above, p. 87, § 46). Moreover, according to the Government, the Latvian authorities abandoned the idea of deporting the applicants, “on grounds of proportionality”. In view of the circumstances of the case, we see no reason to cast doubt upon that assertion.

In sum, we believe that the applicants currently face no real risk of deportation from Latvia and that it is still open to them to regularise their status in accordance with the procedures prescribed by domestic law. For those reasons, we felt unable to vote in favour of the finding of a violation of the Convention in the present case.