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

GRAND CHAMBER

CASE OF SISOJEVA AND OTHERS v. LATVIA

(Application no. 60654/00)

JUDGMENT
(Striking out)

STRASBOURG

15 January 2007

In the case of Sisojeva and Others v. Latvia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Luzius Wildhaber, *President*,
Jean-Paul Costa,
Nicolas Bratza,
Boštjan M. Zupančič,
Ireneu Cabral Barreto,
Rıza Türmen,
Corneliu Bîrsan,
Karel Jungwiert,
Volodymyr Butkevych,
Matti Pellonpää,
Mindia Ugrekhelidze,
Antonella Mularoni,
Elisabet Fura-Sandström,
Renate Jaeger,
Davíd Thór Björgvinsson,
Dragoljub Popović, *judges*,
Jautrite Briede, ad hoc *judge*,
and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 23 May and 11 October 2006,

Delivers the following judgment, which was adopted on the last-mentioned 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 of Russian origin, 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. On 28 November 2006 the latter informed the Court that he would no longer be representing the applicants. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine. The Russian Government, who had exercised their right to intervene under Article 36 § 1 of the Convention, were represented by Mr P. Laptev, representative of the Russian Federation at the Court.

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. It rejected Mrs Tatjana Vizule's complaints as manifestly ill-founded.

6. By 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 the last sentence of Article 34 of the Convention.

7. The applicants and the Government each filed 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 on the merits took place in public in the Human Rights Building, Strasbourg, on 19 September 2002 (Rule 59 § 3). 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.

9. As the seat of the judge elected 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. By a letter of 8 November 2004, the Government appointed Jautrite Briede as *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

10. 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).

11. On 16 June 2005 a Chamber of the First Section, composed of Christos Rozakis, President, Françoise Tulkens, Nina Vajić, Anatoly Kovler, Vladimiro Zagrebelsky and Elisabeth Steiner, judges, Jautrite Briede, *ad hoc* judge, and Søren Nielsen, Section Registrar, delivered a judgment in which it held as follows: by five votes to two, that the applicants could claim to be "victims" for the purposes of Article 34 of the Convention; by five votes to two, that there had been a violation of Article 8 of the Convention; and by six votes to one, that the respondent Government had not failed to comply with their obligations under Article 34 of the Convention. The Chamber also decided, by five votes to two, to award each of the three applicants 5,000 euros in respect of non-pecuniary damage. The partly dissenting opinion of Judge Kovler and the joint dissenting opinion of Judges Vajić and Briede were annexed to the judgment.

12. On 16 September 2005 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention. On 30 November 2005 a panel of the Grand Chamber granted the request.

13. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. On 3 May 2006 Ireneu Cabral Barreto, substitute judge, replaced Christos Rozakis, who was unable to take part in the further consideration of the case (Rule 24 § 3). In the same manner, on 4 October 2006, Matti Pellonpää, substitute judge, replaced Lucius Caflisch.

14. A hearing took place in public in the Human Rights Building, Strasbourg, on 24 May 2006 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mrs	I. REINE,	*Agent*,
Mrs	S. KAULIŅA,	*Counsel*,
Mrs	M. ZVAUNE,	
Mr	K. ĀBOLIŅŠ,	*Advisers*;

(b) *for the applicants*

Mr	V. PORTNOV,	
Mrs	G. NILUS,	*Counsel*,
Mrs	Y. BORISOVA,	
Mrs	M. SAMSONOVA,	*Advisers*;

(c) *for the Russian Government*
Mr P. LAPTEV, representative of the
Russian Federation at the Court,
Mr Y. BERESTNEV,
Mr D. SPIRIN, *Counsel*,
Mr M. VINOGRADOV, *Adviser*.

The Court heard addresses by Mr Portnov, Mrs Nilus, Mrs Reine and Mr Laptev.

15. On 15 June and 4 July 2006 respectively the Latvian Government and the applicants provided written replies to the additional questions asked by some of the judges at the hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

16. 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).

17. The first two applicants entered Latvian territory in 1969 and 1968 respectively, when the territory formed part of the Soviet Union. 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 his military service in November 1989. The third applicant and her elder sister, Mrs Tatjana Vizule, were born in Latvian territory.

18. 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

19. In 1993 the first and second applicants applied to the Latvian Ministry of the Interior'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 with temporary residence permits only.

20. 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, 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 to a temporary residence permit only. 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

21. In the meantime, in January 1992, the first two applicants had each obtained two former Soviet passports 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*). The Department only discovered this fact in 1995.

22. 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.

23. By 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, by an order of 3 June 1997, quashed the decision in question and referred the case back to the Alūksne Court of First Instance.

24. 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 Russian Federation passports.

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.

25. By a letter of 15 May 1998, the Tripartite Joint Committee for the implementation of the agreement between the governments of Latvia and the Russian Federation on the social welfare of retired military personnel of the Russian Federation and their family members residing on the territory of the Republic of Latvia ("the Russian-Latvian agreement" – see paragraph 53 below) requested the Ministry of the Interior'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 Committee informed the Alūksne Court of First Instance that the first applicant had neither Russian nor any other nationality.

26. 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 Law on the status of former USSR citizens without Latvian or other citizenship ("the Non-Citizens Act" – see paragraph 47 below).

27. 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.

28. 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.

29. 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.

30. 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), sub-paragraph 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.

31. 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 in the register of residents of any legal basis. It concluded that the second and third applicants, since they did not satisfy the requirements of the Law on aliens and stateless persons (entry and residence) ("the Aliens Act" – see paragraph 50 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.

32. 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 Tripartite 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.

33. 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.

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

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

35. On the morning of 6 March 2002, the first applicant, Svetlana Sisojeva, was summoned to the regional headquarters of the security police (*Drošības policija*). An officer of the security police 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 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 asked her several questions about her professional career and about the members of her family.

36. 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 Ministry of the Interior 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."

37. 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.

D. The proposals for regularising the applicants' stay

38. 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 (Svetlana Sisojeva) 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 State under the laws of that State ... and who are legally resident in Latvia, may obtain stateless-person 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 ...”

39. The letters sent to the other two applicants were similar in content. The letter to the second applicant (Arkady Sisojev) 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 ...”

40. Lastly, the letter to the third applicant (Aksana Sisojeva) 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), sub-paragraph 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), sub-paragraph 7, of the Immigration Act ...”

41. 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.

None of the applicants complied with the instructions outlined above in order to obtain residence permits.

42. By Decree no. 15 of 22 March 2005, the Cabinet of Ministers (*Ministru kabinets*) instructed the Minister of the Interior to issue Arkady Sisojev and Aksana Sisojeva with five-year temporary residence permits, "in accordance with section 23(3) of the Immigration Act". In a letter sent on the same day, the Government informed the Court of the measure, pointing out that, after the five years had elapsed, the two applicants in question could obtain permanent residence permits

43. On 15 November 2005 the applicants applied to the Directorate to have their stay regularised on the basis they had requested initially, that is, for the first applicant to be granted the status of "permanently resident non-citizen" and for the other two applicants to be issued with permanent residence permits. The Directorate replied on the following day, 16 November 2005. After outlining the background to the case before the domestic courts and in Strasbourg, the Directorate went on:

> " ... On 11 December 2003 you stated that you would not consider the Directorate's proposals until after the European Court of Human Rights had delivered its judgment.
>
> In accordance with ... the Status of Stateless Persons Act ... in force at the time, an order was given for Svetlana Sisojeva to be issued with an identity document for stateless persons, and she was told that the authorities were willing to grant her stateless-person status. It was [therefore] open to Mrs Sisojeva to take advantage of that option, but she failed to do so. However, in accordance with the principle of respect for personal rights and the principle of legitimate expectation, the Directorate has not set aside its decision of 11 November 2003 in respect of Svetlana Sisojeva. Consequently, *it remains open to her to regularise her stay in Latvia under section 6(1) of the Stateless Persons Act and paragraph 2 of its transitional provisions.* Since Svetlana Sisojeva's entitlement to stateless-person status ... was recognised before the entry into force of that Act, *were she to obtain an identity document for stateless persons she would also be issued with a permanent residence permit* ... As for Arkady Sisojev and Aksana Sisojeva, they would be entitled, on the same basis, to obtain temporary residence permits.
>
> ...

> The Directorate would further point out that, on 22 March 2005, the Cabinet of Ministers ... instructed the Minister of the Interior to issue Arkady Sisojev and Aksana Sisojeva with five-year temporary residence permits, under section 23(3) of the Immigration Act.
>
> In view of the above, the Directorate would remind you of the possibility of regularising your stay in the Republic of Latvia, on the following basis: Svetlana Sisojeva may obtain stateless-person status and be issued with a permanent residence permit; Arkady Sisojev and Aksana Sisojeva, meanwhile, may apply for and obtain temporary residence permits, in accordance with section 23(3) of the Immigration Act. ...”

The remainder of the letter explained in detail to each of the applicants the procedure to be followed and the documents to be submitted in order to have their stay regularised, and the tax rates which applied for that purpose. The applicants did not take the steps indicated by the Directorate.

44. On 2 and 3 November 2005, the relevant official of the border police questioned the applicants, asking them why they had not regularised their stay. Following that conversation, the Commander of the border police requested details from the Head of the Directorate concerning the applicants’ precise status in Latvia. By a letter of 22 November 2005, the latter explained that, since 2000, there had been sufficient legal basis for issuing orders for the applicants’ deportation, but that no such orders had been issued on the grounds of proportionality and in view of the proceedings pending before the European Court of Human Rights.

By a letter of 16 December 2005, the Directorate reminded the applicants once more that they had the possibility of regularising their stay. No reply was forthcoming.

45. As matters stand, the applicants are resident in Latvia without valid residence permits. According to the information supplied by the applicants, which has not been disputed by the Government, Svetlana Sisojeva has been unemployed since 1992. Arkady Sisojev works as a technician in a municipal communal heating plant in Alūksne; despite being cautioned repeatedly by the authorities, his employer has consistently refused to dismiss him on the sole ground that he is illegally resident in Latvia. Aksana Sisojeva, meanwhile, obtained a law degree from the Baltic Russian Institute (*Baltijas Krievu institūts*) in July 2004. The applicants contend that, owing to her irregular status, she has to date been unable to find work.

II. RELEVANT DOMESTIC LAW

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

1. General information

46. 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 Law 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");

(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 18 February 1999 Status of Stateless Persons Act (*Likums "Par bezvalstnieka statusu Latvijas Republikā"*), read in conjunction with the Law of 9 June 1992 on aliens and stateless persons (entry and residence) ("the Aliens Act") and, since 1 May 2003, with the Immigration Act of 31 October 2002 (*Imigrācijas likums*). On 2 March 2004 the Status of Stateless Persons Act was replaced by a new Stateless Persons Act;

(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).

2. "Permanently resident non-citizens"

47. Section 1 of the Non-Citizens Act formally set forth detailed criteria for obtaining the status of "permanently resident non-citizen". In the version in force since 25 September 1998, the first paragraph of section 1 reads as follows:

> "The persons governed by this Act – 'non-citizens' – shall be those citizens of the former USSR, and their children, who are resident in Latvia ... and who satisfy all the following criteria:
>
> 1. on 1 July 1992 they were registered as being resident within the territory of Latvia, regardless of the status of their housing; or their last registered place of

residence by 1 July 1992 was in the Republic of Latvia; or a court has established that before the above-mentioned date they had been resident within Latvian territory for not less than ten years;

2. they do not have Latvian citizenship; and

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

3. Stateless persons

48. The relevant provisions of the former 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 Law 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.”

49. On 29 January 2004 Parliament enacted a new Stateless Persons Act (*Bezvalstnieku likums*), which came into force on 2 March 2004 and replaced the former Status of Stateless Persons Act. The relevant provisions of the new Act read as follows.

Section 2(1)

“In the Republic of Latvia, an individual may be recognised as a stateless person if no other State has recognised him or her as a national in accordance with its own laws.”

Section 4

“(1) In order to be recognised as a stateless person, the individual concerned must submit to the [Directorate]:

1. a [written] application;

2. an identity document;

3. a document issued by a competent body in the foreign State, to be determined by the Directorate, certifying that the person concerned is not a national of that State and is not guaranteed nationality of that State, or a document certifying the impossibility of obtaining such a document.

(2) Where, for reasons beyond his or her control, the individual concerned is unable to produce one of the documents referred to in points 2 or 3 of the first paragraph, an official instructed by the Head of the Directorate shall decide whether or not to grant him or her the status of stateless person. The decision shall be taken on the basis of information available to the Directorate supported by documentary evidence.”

Section 6

“(1) The stateless person shall reside in the Republic of Latvia in accordance with the provisions of the Immigration Act.

(2) A stateless person legally resident in the Republic of Latvia may obtain a travel document in accordance with the statutory arrangements ...”

Section 7(2)

“A stateless person legally resident in the Republic of Latvia shall enjoy the rights guaranteed by ... the Convention of 28 September 1954 on the Status of Stateless Persons.”

4. Aliens

50. The relevant provisions of the former Aliens Act, in force prior to 1 May 2003, read as follows.

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

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

51. Since 1 May 2003 the Aliens Act cited above has no longer been in force; it has been 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(3)

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

Section 24

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

...

7. an alien who has been resident without interruption in Latvia for at least five years immediately prior to submission of the application ...;

...

(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, sub-paragraph ... 7, 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 Cabinet of Ministers.

...

(6) Aliens who do not satisfy the requirements set forth in paragraph 5 of this section shall nevertheless be entitled to continue to reside in Latvia on the basis of a temporary 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, an appeal may be lodged against that decision ... with the Head of the Directorate, within thirty days of the entry into force of the decision.

(2) Where the Head of the Directorate refuses an application for a residence permit an appeal may be lodged ... with the courts against that decision, in the manner prescribed by law ...”

Section 41

“(1) The [relevant] official of the Directorate shall issue a deportation order and determine the length of the ban on re-entering Latvian territory, requesting the alien concerned to leave the Republic of Latvia within seven days, where he or she has ... acted in breach of the rules on the entry and residence of aliens in the Republic of Latvia. ...

(2) The Head of the Directorate may set aside a deportation order ... or suspend execution thereof on humanitarian grounds.”

Section 42

“(1) The alien concerned may appeal against the deportation order and the length of the ban on re-entering Latvian territory laid down therein to the Head of the Directorate, within seven days of the order’s entry into force. He or she shall have the right to remain in the Republic of Latvia while the appeal is being considered.

(2) The alien concerned may appeal before the courts against the decision of the Head of the Directorate concerning the deportation order and the length of the ban on re-entering Latvian territory laid down therein, within seven days of the decision’s entry into force. The lodging of an appeal with the court shall not suspend execution of the decision.”

Section 47

“(1) Within ten days of establishment of the facts detailed in the present paragraph, the [relevant] official of the Directorate shall take a forcible expulsion decision in respect of the alien and determine the length of the ban on re-entering Latvian territory ..., where:

1. the alien has not left the Republic of Latvia within seven days of receiving the deportation order, as required by section 41(1) of the present Act, and has not appealed against the order under section 42;

...

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

...

(4) The Head of the Directorate may set aside a forcible expulsion decision or stay its execution on humanitarian grounds.”

5. *Penalties*

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

Section 187

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

Section 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."

6. *The Russian-Latvian agreement of 30 April 1994*

53. An agreement between Russia and Latvia on the social welfare of retired military personnel of the Russian Federation and their family members residing on the territory of the Republic of Latvia was signed in Moscow on 30 April 1994. It was ratified by Latvia on 24 November 1994 and came into force on 27 February 1995. Under the terms of the second paragraph of Article 2 of the agreement, persons to whom the agreement applied and who were permanently resident in Latvian territory before 28 January 1992 retained the right to reside without hindrance in Latvia if they so wished.

B. General administrative law

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

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

C. The legislation on operational investigative measures

55. The main provisions governing interviews similar to that complained of by the first applicant are contained in the Law of 16 December 1993 on operational measures (*Operatīvās darbības likums*). The "operational measures" referred to in the Law 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).

56. 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)).

57. All operational measures must be implemented 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).

58. Under section 15 of the 5 May 1994 National Security Establishments Act (*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. PRELIMINARY QUESTION CONCERNING THE SCOPE OF THE GRAND CHAMBER'S JURISDICTION

59. At the hearing the applicants and the Russian Government, referring implicitly to Article 43 of the Convention, requested the Grand Chamber to reverse the decision of the former First Section of 28 February 2002 in so far as the latter had declared the application inadmissible with regard to the Sisojev family's elder daughter, Mrs Tatjana Vizule.

The Latvian Government, for their part, said that Mrs Vizule had, in 2005, obtained the permanent residence permit which had long been on

offer to her. In any event, they pointed out, Mrs Vizule's complaints had been declared inadmissible by the Court once and for all.

60. It is therefore for the Court to determine what should be the scope of its examination of the case following the applicants' request for referral to the Grand Chamber under Article 43 of the Convention. Article 43 provides:

> "1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
>
> 2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
>
> 3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment."

61. According to the Court's settled case-law, the "case" referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment. The content and scope of the "case" referred to the Grand Chamber are therefore delimited by the Chamber's decision on admissibility (see *K. and T. v. Finland* [GC], no. 25702/94, §§ 140-41, ECHR 2001-VII; *Göç v. Turkey* [GC], no. 36590/97, §§ 35-37, ECHR 2002-V; *Perna v. Italy* [GC], no. 48898/99, §§ 23-24, ECHR 2003-V; and *Azinas v. Cyprus* [GC], no. 56679/00, § 32, ECHR 2004-III). This means that the Grand Chamber may examine the case in its entirety in so far as it has been declared admissible; it cannot, however, examine those parts of the application which have been declared inadmissible by the Chamber. The Court sees no reason to depart from this principle in the present case.

62. In sum, the Court holds that, in the context of the present case, it no longer has jurisdiction to examine any complaint or complaints raised by Mrs Vizule.

II. COMPLAINT UNDER ARTICLE 8 OF THE CONVENTION

63. The applicants claimed to be victims of a violation of their rights under Article 8 of the Convention, the relevant parts of which provide:

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

64. During the proceedings before the Chamber the Government had raised an objection, which they maintained before the Grand Chamber. They submitted that, in view of the measures taken by the Latvian authorities to help the applicants regularise their stay in Latvia, the matter had been effectively resolved and the application should be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention. Article 37 § 1 reads:

"The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

65. The applicants and the Russian Government opposed striking the application out of the list.

A. The Chamber judgment

66. Following the decision by its President not to include in the case file the Government's submissions of 22 March 2005 informing the Court of new developments in the case (see paragraphs 10 and 42 above), the Chamber ruled on the basis of the facts as they had stood before the above-mentioned date. The relevant part of the Chamber judgment of 16 June 2005 reads:

"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* (dec.) [GC], 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."

67. As to the merits, the Chamber noted in particular:

"109. The Court further notes that regularisation of the second and third applicants' status depends on that of the first applicant ... 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."

B. The parties' submissions

1. The applicants

68. The applicants submitted that they could still claim to be "victims" of the alleged violation and that the matter giving rise to the case was far from being resolved. In their view, all the measures taken by the Latvian authorities, whether before or after 22 March 2005, were manifestly inadequate to remedy their complaint under Article 8.

69. The applicants maintained at the outset that they still ran the risk of being deported from Latvia. The Directorate's letters of 17 May and 26 June 2000, reminding the applicants that they were required to leave the country (see paragraph 34 above), had never been explicitly revoked. The government decree of 22 March 2005 – which the applicants said they had never seen – did not put an end to the risk of deportation, particularly in the case of the second and third applicants. Firstly, the applicants did not have all the documents required by the Directorate in its letter of 16 November 2005. Secondly, even assuming that the government showed itself

particularly willing to cooperate and no longer required them to produce the documents, Arkady Sisojev and Aksana Sisojeva would receive only temporary residence permits valid for five years. They had no guarantee that, at the end of the five years, their stay in Latvia would be regularised again.

70. The applicants then referred to the judgment in *Eckle v. Germany* (15 July 1982, Series A no. 51), in which the Court had held that a decision or measure favourable to the applicant was not sufficient to deprive him of his status as a "victim" unless the national authorities acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (§ 66). Those two conditions – first acknowledgment of, and then redress for, the violation – had since been reiterated on numerous occasions and were firmly anchored in the Court's case-law. Neither condition had been met in the instant case.

71. First of all, the applicants observed that the Latvian authorities had done nothing to acknowledge the existence of a violation of Article 8 of the Convention in their regard. If anything, the attitude of the authorities suggested the opposite: on 2 and 3 November 2005, for instance, Arkady Sisojev and Svetlana Sisojeva had been called in for questioning by the police, who had questioned them about the reasons for their illegal residence in Latvia.

72. Next, the applicants submitted that none of the regularisation measures proposed by the Latvian authorities constituted an adequate remedy for their complaint. In that connection, they reiterated their original request that the first applicant be granted the status of "permanently resident non-citizen" and the other two applicants be issued with permanent residence permits. Those requests were perfectly legitimate and justified. The first applicant was entitled to permanent-resident status in accordance with the relevant statute (see paragraph 47 above): her registration of an address in Russia had clearly been notional and could not give rise to automatic invalidation of her registration in Latvia. Accordingly, she had fulfilled the first condition laid down by section 1(1) of the Non-Citizens Act by having her registered place of residence in Latvia on 1 July 1992. As for the other two applicants, the Russian-Latvian agreement of 30 April 1994 (see paragraph 53 above) entitled them to permanent residence in Latvia. In short, the applicants were requesting only what was theirs by right under the law and the agreement. In their view, the saying "He who can do more cannot necessarily do less", applied on occasions by the Court in its case-law, meant that they could not be forced to accept less when they were entitled to more.

73. The applicants also referred to the arguments they had raised before the Chamber. The proposals made by the authorities, they argued, were unacceptable and humiliating, both in relation to the first and second applicants, who had lived on Latvian territory for over thirty-five years, and

in relation to the third applicant, who had been born on Latvian soil and had always lived there. They further submitted that, even after 22 March 2005, the regularisation of the second and third applicants' stay remained contingent on that of the first applicant. In other words, the fate of Arkady Sisojev and Aksana Sisojeva continued to depend on circumstances beyond their control.

74. According to the applicants, the measures taken by the Latvian authorities were also inadequate as they did not afford sufficient redress for the applicants' suffering over a period of many years. In particular, they had endured prolonged uncertainty, anguish and distress throughout the whole period, especially when they had faced a real risk of being deported from Latvia. The fact that they had no Latvian identity papers had also caused the applicants a series of practical problems in their day-to-day lives. They were unable, for instance, to leave Latvia secure in the knowledge that they could return; since October 2002, they no longer received a range of social security benefits, in particular sickness-insurance benefits; they could not buy medicines at reduced rates; the third applicant was unable to obtain a driving licence; and, in 2004 and 2005, they had been unable to complete a number of civil-law transactions which required a notarised deed. To sum up, the effects of all these ordeals could not be wiped out by the simple expedient of issuing a residence permit.

2. The Government

75. The Government referred first of all to the Court's settled case-law relating to the deportation or extradition of non-nationals, according to which the regularisation of an applicant's stay – even if the case was still pending before the Court – was sufficient in principle to remedy a complaint under Article 8 (the Government cited *Pančenko v. Latvia* (dec.), no. 40772/98, 28 October 1999; *Mikheyeva v. Latvia* (dec.), no. 50029/99, 12 September 2002; *Yang Chun Jin alias Yang Xiaolin v. Hungary* (striking out), no. 58073/00, §§ 20-23, 8 March 2001; and, most recently, *Fjodorova and Others v. Latvia* (dec.), no. 69405/01, 6 April 2006). In the Government's view, the Chamber had not only failed to follow that case-law, but had also adopted a judgment which contradicted its own decision of 28 February 2002 in the present case (see paragraph 5 above). In its decision, the Chamber had rejected Mrs Vizule's complaints on the ground that she had been given the opportunity in the meantime to regularise her stay in Latvia.

76. In any event, the applicants now faced no real risk of being deported from Latvia. Admittedly, from a formal standpoint, there was nothing to prevent the Directorate from issuing a deportation order in respect of the applicants, as they were illegally resident in Latvia. However, any such order would be subject to appeal before three levels of the administrative courts. In that connection, the Government referred to *Vijayanathan and*

Pusparajah v. France (27 August 1992, §§ 46-47, Series A no. 241-B), in which the Court had found that the applicants could not claim to be "victims" of a violation in the absence of a deportation order. The Directorate's letters of 17 May and 26 June 2000 did not constitute "administrative acts" within the meaning of domestic law; even assuming that they did, they would have long since ceased to be enforceable, in accordance with section 360(4) of the Administrative Procedure Act (see paragraph 54 above).

77. Moreover, the authorities had, on several occasions, proposed clear, specific and effective regularisation arrangements to the applicants which would enable them to reside without hindrance in Latvia. Furthermore, and contrary to the applicants' assertions, the decree of 22 March 2005 meant that the issuing of residence permits to Arkady Sisojev and Aksana Sisojeva was no longer contingent upon the legal status of Svetlana Sisojeva; they could henceforth regularise their position independently of one another. The applicants had been given notice of the decree (see paragraphs 43-44 above); furthermore, it had been published in the Official Gazette, with the result that the applicants could not claim that they had been unaware of its content.

78. With regard to the regularisation arrangements requested by the applicants, the Government said that the rights which they sought were not available to them under domestic law. In particular, it was abundantly clear from the Non-Citizens Act that the first applicant did not fall within its scope of application *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 had their officially registered residence in Latvia. By registering their residence in Russia in January 1992, both Svetlana Sisojeva and her husband had rendered the registration of their residence in Latvia invalid. The Government were adamant that it was as a result of their own fraudulent conduct that the applicants had lost the possibility of obtaining the legal status they had requested.

79. That being so, the approach proposed by the authorities remained more than adequate for the purposes of Article 8 of the Convention, which did not guarantee, as such, the right to a particular type of residence permit. It was true that the applicants still needed to meet some formal and technical requirements, in particular by producing certain documents. However, those requirements were legitimate and reasonable; moreover, they had no effect on the decision in principle adopted by the Cabinet of Ministers. If the applicants nevertheless persisted in ignoring the Government's proposals and recommendations, they did so of their own free will and had to take responsibility for that; no one could be forced to accept a residence permit he did not want. In particular, there was no justification for the applicants' claim that the Directorate was asking them to produce documents they could not obtain; in that regard, the Government cited the example of Mrs Vizule,

whose application had been granted despite the alleged absence of certain documents (see the admissibility decision of 28 February 2002 in the present case).

80. The Government further contended that the approach proposed by the authorities afforded sufficient redress for the applicants' past ordeals. They advanced a number of arguments in that regard. Firstly, the Government pointed out that, prior to 1989, Arkady Sisojev had been in active service with the Soviet armed forces stationed on Latvian territory; his entire family would therefore have known that he might be transferred to another posting at any time. When he left the army, the applicants could still legitimately consider themselves to be living in their own country, the USSR, of which they were nationals. However, from August 1991 onwards, they could not overlook the fact that they were henceforth resident in another sovereign State, one whose laws they must observe.

81. Secondly, and with regard to the uncertainty and distress the applicants claimed to have undergone over a period of years, the Government reiterated that this had been due in large measure to their own conduct. As one-time nationals of the former Soviet Union, they could not have been unaware of the basic rules on the registration of residence which had been in existence since the 1930s, and in particular of the fact that an individual could have only one registered address at a time. Knowing that, they had deliberately broken the law by supplying the authorities with false information; they should therefore have weighed up the consequences of their actions. In the Government's view the applicants' fraudulent conduct, considered in the light of their very real personal and family ties in Russia, demonstrated that they had seriously considered returning to that country; in other words, a registered address in Russia had been more important to them than permanent residence in Latvia.

82. Thirdly, the Government argued that the decision to remove the applicants' names from the register of residents had been lawful and legitimate under both domestic and international law; they referred in that regard to the recent activities of the International Law Commission in particular.

83. Lastly, the Government disputed the seriousness of the applicants' situation as they themselves portrayed it. Referring to documents in the case file, they pointed out that, despite the fact that the applicants had been illegally resident in Latvia during the period in question, they had managed to acquire two flats and a garage. In addition, the third applicant had had no difficulty in completing her higher education.

84. In view of the above, the Government concluded that there had been no "interference" with the applicants' private or family life. In the alternative, they argued that the applicants could not – or could no longer – claim to be "victims" of a violation of Article 8 of the Convention. In any

event, the Government requested the Court to hold that the matter had been resolved and to strike the application out of its list of cases.

C. The third-party intervener's submissions

85. The Russian Government endorsed the applicants' arguments. They too considered that, despite the steps taken by the Latvian authorities with a view to regularising the applicants' status, the applicants could still claim to be "victims" of a violation of Article 8 of the Convention.

86. Firstly, like the applicants, the Russian Government referred to the general principle in the Court's case-law whereby applicants could be deprived of their victim status only if the alleged violation was acknowledged and redress was afforded. Neither of those conditions had been met in the instant case. With regard to the first condition, the Latvian authorities had at no point acknowledged the existence of a violation; as to the second condition, only monetary compensation could afford redress for the damage sustained by the Sisojev family in the present case.

87. Secondly, the Russian Government considered that even the most recent measures taken by the respondent Government were inadequate to remedy the applicants' complaint. In particular, the second and third applicants had been offered only temporary residence permits whereas, under the Russian-Latvian agreement of 30 April 1994 (see paragraph 53 above), they were entitled to permanent permits. In addition, like the applicants, the Russian Government submitted that regularisation of the stay of the second and third applicants continued to depend on that of the first applicant, Svetlana Sisojeva.

88. The Russian Government further cited the judgment in *Slivenko v. Latvia* ([GC], no. 48321/99, ECHR 2003-X), which they considered to be similar to the present case. In their view, the applicants were the victims of political changes beyond their control, and the ordeals they had endured had to be seen in the wider context of an anti-Russian policy on the part of the Latvian authorities since the country's return to independence.

D. The Court's assessment

89. The Court notes at the outset that the applicants consider the Non-Citizens Act and the Russian-Latvian agreement of 30 April 1994 to have been incorrectly applied to their case. In that connection it reiterates that, in accordance with Article 19 of the Convention, its sole duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court or to substitute its own assessment for that of the national courts or other national authorities unless and in so far as they may have infringed rights and

freedoms protected by the Convention (see, for example, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). In other words, the Court cannot question the assessment of the domestic authorities unless there is clear evidence of arbitrariness, which there is not in the instant case.

90. The Court further reiterates that the machinery for the protection of fundamental rights established by the Convention is subsidiary to the national systems safeguarding human rights. The Convention does not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of the Convention. The choice as to the most appropriate means of achieving this is in principle a matter for the domestic authorities, who are in continuous contact with the vital forces of their countries and are better placed to assess the possibilities and resources afforded by their respective domestic legal systems (see *Swedish Engine Drivers' Union v. Sweden*, 6 February 1976, § 50, Series A no. 20, and *Chapman v. the United Kingdom* [GC], no. 27238/95, § 91, ECHR 2001-I).

91. This principle applies to immigration matters as well as in other spheres. Hence, as the Court has reaffirmed on several occasions, Article 8 cannot be construed as guaranteeing, as such, the right to a particular type of residence permit. Where the domestic legislation provides for several different types, the Court must analyse the legal and practical implications of issuing a particular permit. If it allows the holder to reside within the territory of the host country and to exercise freely there the right to respect for his or her private and family life, the granting of such a permit represents in principle a sufficient measure to meet the requirements of that provision. In such cases, the Court is not empowered 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 (see *Aristimuño Mendizabal v. France*, no. 51431/99, § 66, 17 January 2006; *Dremlyuga v. Latvia* (dec.), no. 66729/01, 29 April 2003; and *Gribenko v. Latvia* (dec.), no. 76878/01, 15 May 2003; see also the admissibility decision of 28 February 2002 in the present case).

92. In the instant case the Government argued that the applicants could not claim the status of "victims". In that connection, the Court reiterates that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission in issue (see, among many other authorities, *Nsona v. the Netherlands*, 28 November 1996, § 106, *Reports of Judgments and Decisions* 1996-V, and *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII). In other words, the person concerned must be directly affected by it or run the risk of being directly affected by it (see, for example, *Norris v. Ireland*, 26 October 1988, §§ 30-31, Series A no. 142, and *Otto-Preminger-Institut v. Austria*, 20 September 1994, § 39, Series A no. 295-A). It is not therefore possible to

claim to be a "victim" of an act which is deprived, temporarily or permanently, of any legal effect.

93. In the above-mentioned *Eckle* judgment, the Court indeed held that a decision or measure favourable to the applicant was not sufficient to deprive him of his status as a "victim" unless the national authorities acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (ibid., § 66; see also *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III; *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* (dec.) [GC], no. 48787/99, 4 July 2001). However, with more particular reference to the specific category of cases involving the deportation of non-nationals, the Court has consistently held that an applicant cannot claim to be the "victim" of a deportation measure if the measure is not enforceable (see *Vijayanathan and Pusparajah*, cited above, § 46; see also *Pellumbi v. France* (dec.), no. 65730/01, 18 January 2005, and *Etanji v. France* (dec.), no. 60411/00, 1 March 2005). It has adopted the same stance in cases where execution of the deportation order has been stayed indefinitely or otherwise deprived of legal effect and where any decision by the authorities to proceed with deportation can be appealed against before the relevant courts (see *Kalantari v. Germany* (striking out), no. 51342/99, §§ 55-56, ECHR 2001-X, and *Mehemi v. France (no. 2)*, no. 53470/99, § 54, ECHR 2003-IV; see also *Andric v. Sweden* (dec.), no. 45917/99, 23 February 1999; *Benamar and Others v. France* (dec.), no. 42216/98, 14 November 2000; *Djemailji v. Switzerland* (dec.), no. 13531/03, 18 January 2005; and *Yildiz v. Germany* (dec.), no. 40932/02, 13 October 2005).

94. In the instant case the Court acknowledges that, if not from the time of their removal from the register of residents in May 1996, then at the latest from the time of the final dismissal of their appeal on points of law in April 2000, the members of the Sisojev family experienced a period of insecurity and legal uncertainty in Latvia which lasted until November 2003. However, it does not consider that their situation was substantially more uncertain than that of the applicants in most similar cases (see, in particular, the decisions in *Pančenko*, *Mikheyeva* and *Fjodorova and Others*, cited above). Firstly, the Court notes that, in 1992 and 1995, the applicants in the present case obtained two passports each and registered their residence in both Russia and Latvia without informing the relevant Latvian authorities. In the Court's view, this demonstrates that returning to Russia one day was an option they were prepared to consider. What is more, the applicants were undoubtedly aware that their conduct – for which, moreover, they were subsequently ordered to pay a fine – was in breach of the Latvian legislation of the time. Accordingly, it cannot but be said that the problems they experienced following the withdrawal of their initial residence permits stemmed to a large extent from their own actions.

95. Secondly, the Court observes that the first concrete proposal from the Directorate aimed at regularising the applicants' stay was made on 11 November 2003. Accordingly, it very much doubts whether the applicants can claim the existence of an "uncertain situation" after that date. Lastly, it is clear from the case file that, despite having long been an illegal resident in Latvia, the second applicant has been and continues to be in paid employment; the third applicant, meanwhile, has been able to complete a course of higher education and obtain a degree (see paragraph 45 above).

96. However, in the instant case, the Court does not consider it necessary either to reach a conclusion on the question whether, at the time they lodged their application, the applicants could claim to be "victims" of a violation of Article 8 of the Convention, or even to determine whether they can claim that status today. In the light of the new facts brought to its attention since 22 March 2005 (see paragraphs 10 and 42 above), the Court considers that there is no objective justification for continuing to examine this complaint, for the reasons set out below.

97. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may "... at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...". In order to ascertain whether that provision applies to the present case, the Court must answer two questions in turn: firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002). In the present case, that entails first of all establishing whether the risk of the applicants' being deported persists; after that, the Court must consider whether the measures taken by the authorities constitute sufficient redress for the applicants' complaint.

98. The Court must determine whether the regularisation of the applicants' stay would be sufficient to remedy the possible effects of the situation of which they complained to the Court. With reference first of all to the first applicant, Svetlana Sisojeva, the Court takes note of the Directorate's letter of 16 November 2005 (see paragraph 43 above), according to which it is still open to the first applicant to regularise her stay in accordance with the procedure described by the Directorate in its letter of 11 November 2003, that is, by obtaining an identity document for stateless persons and, accordingly, a permanent residence permit. She would thus be able to remain in Latvia on a legal and permanent basis and, as a result, live a normal social life and maintain her relationships with her family, including Mrs Vizule and the latter's two children.

99. With regard to the other two applicants, Arkady Sisojev and Aksana Sisojeva, the Court observes that, by a decree of 22 March 2005, the Cabinet of Ministers instructed the Minister of the Interior to issue them

with five-year temporary residence permits; according to the Government, the applicants may apply for permanent permits when that period has elapsed. Contrary to what the two applicants concerned and the third-party intervener apparently maintained, the Court notes in particular that the regularisation of their status no longer depends on that of Svetlana Sisojeva, with the result that each applicant can regularise his or her stay in Latvia independently of the other two.

100. In short, as matters stand, the applicants do not face any real and imminent risk of deportation (see, *mutatis mutandis*, *Vijayanathan and Pusparajah*, cited above, §§ 46-47, and opinion of the Commission, § 119).

101. The Court notes that, despite repeated reminders on the part of the Directorate, none of the applicants has so far acted on the latter's recommendations. In their submissions to the Grand Chamber, the applicants contended that they did not have all the documents required in order to apply for a residence permit, so that any response on their part would have been futile. However, the Court observes that they have hitherto failed to make any attempt, however small, to get in touch with the authorities and try to find a solution to whatever difficulties may arise. Having regard to the case file as a whole as it currently stands, and in the light of the explanations provided by the Government, the Court sees no indication that the latter have acted in bad faith.

102. In short, the measures indicated by the Government would enable the applicants to remain in Latvia and to exercise freely in that country their right to respect for their private and family life as protected by Article 8 of the Convention and interpreted in the Court's established case-law (see, *mutatis mutandis*, *Boughanemi v. France*, 24 April 1996, § 35, *Reports* 1996-II; *C. v. Belgium*, 7 August 1996, § 25, *Reports* 1996-III; *Boujlifa v. France*, 21 October 1997, § 36, *Reports* 1997-VI; and *Buscemi v. Italy*, no. 29569/95, § 53, ECHR 1999-VI). Consequently, and in the light of all the relevant circumstances of the case, the Court considers that the options outlined by the Latvian authorities for regularising the applicants' situation are adequate and sufficient to remedy their complaint.

103. Having regard to all of the above, the Court finds that both conditions for the application of Article 37 § 1 (b) of the Convention are met. The matter giving rise to this complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

104. Accordingly, the application should be struck out of the Court's list of cases in so far as it relates to Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

105. The applicants complained that the questioning of the first applicant by the security police on 6 March 2002 constituted interference with the exercise 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 Chamber judgment

106. In its judgment, the Chamber noted at the outset the discrepancy between the applicants' version of the facts and that of the Government. Being unable to verify the content of the questions put to Svetlana Sisojeva, it based its analysis on the facts on which the two versions concurred. The Chamber accepted the Government's explanation that the main focus of the interview had been the allegation that Directorate officials had acted in a corrupt manner, rather than the proceedings brought by the applicants in Strasbourg. The Chamber also noted that the police officer in question had asked the first applicant several questions concerning her application, the relevance of which the Chamber failed to discern. Nevertheless, having regard to all the relevant circumstances of the case, and in particular the wider context in which the interview had taken place, the Chamber reached the conclusion that the measure in question had not attained a sufficient level of severity to be considered 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. It therefore held that there had been no violation of Article 34 of the Convention.

B. The parties' submissions

1. The applicants

107. The applicants submitted at the outset that, in view of their precarious and vulnerable situation in Latvia, and given the "image of the security [police]" in society, being summoned by that institution was in itself liable, in their case, to prompt fears of arrest and deportation. Similarly, given the nature of the questions asked of the first applicant by the police officer, the interview in question amounted to an attempt to

subject her to pressure and intimidate her psychologically so that she would withdraw her application to the Court. In the applicants' 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 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. Questions of that nature were wholly unrelated to the need to investigate possible cases of corruption, the reason given by the Government.

108. The applicants argued that the Government's explanations on this point were unconvincing. Firstly, investigations into corruption offences were normally the task of a different branch of the police (the criminal police rather than the security police). Secondly, the applicants complained of the fact that the first applicant had been questioned without her lawyer being present. Thirdly, they observed that the content of the conversation had not been recorded in any official report.

109. The applicants had further maintained before the Chamber that they had learned of other coercive measures planned against them by the Latvian authorities, including "arresting them and sending them to prison". In addition, they had alleged that their telephone calls were constantly being intercepted.

2. The Government

110. 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 members of staff 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 in issue had been perfectly lawful, as the security police had powers to take such measures.

111. Hence, 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. Since the applicant had been summoned and questioned simply as a witness, the presence of a lawyer was not required; however, had she wished to be accompanied by a lawyer, she could have made a request to that effect.

112. 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 have been 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 arguments, 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 Law 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. ..."

113. In the light of the above, the Government concluded that the interview in 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.

C. The third-party intervener's submissions

114. 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, made all the more serious by the fact that the first and second applicants had been called in for questioning in November 2005. 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. Referring in that regard to the judgment in *Fedotova v. Russia* (no. 73225/01, §§ 48-52, 13 April 2006), the Russian Government argued that the interview in issue had in itself been improper. There was nothing in the case file to bear out the Latvian 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. 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, in breach of the last sentence of Article 34 of the Convention.

D. The Court's assessment

115. 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*, 16 September 1996, § 105, *Reports* 1996-IV; *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III; *Ergi v. Turkey*, 28 July 1998, § 105, *Reports* 1998-IV; and *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII).

116. 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 contact designed to dissuade or discourage them from pursuing a Convention remedy. Whether or not contact between the authorities and an applicant or potential applicant amounts to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances in

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*, 23 September 1998, § 43, *Reports* 1998-VII; *Assenov and Others v. Bulgaria*, 28 October 1998, § 170, *Reports* 1998-VIII; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV).

117. In the instant case the parties agreed 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.

118. 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. 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. 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.

119. 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 paragraph 58 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 before the Court (see, conversely, *Fedotova*, cited above, §§ 49-50).

120. 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, 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 its misgivings (see *Tanrıkulu*, 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.

121. 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, §§ 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, § 44).

122. Likewise, taking an overall view, the Court observes that the questions put by the police officer 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, *Tanrıkulu*, cited above, § 131).

123. 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 questioned applicants about their applications, the Court has found them to be in breach of their obligations under Article 34 (or former Article 25 § 1) of the Convention (see *Akdivar and Others*, cited above, § 105; *Kurt*, cited above, § 160; *Tanrıkulu*, 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 in the applicants' case.

124. In sum, while bearing in mind the reservations expressed in paragraph 120 above and taking into account all the relevant circumstances

of the case, the Court considers that there is insufficient evidence to conclude that the questioning of the first applicant by an officer of the security police on 6 March 2002 should be regarded 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.

125. 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 *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.

126. 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 18 OF THE CONVENTION

127. At the hearing the applicants and the Russian Government requested the Court to raise of its own motion the issue of the application of Article 18 of the Convention and to hold that there had been a violation of that Article, as in *Gusinskiy v. Russia* (no. 70276/01, §§ 70-78, ECHR 2004-IV). Article 18 provides:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

128. In the applicants' view, the Latvian authorities had abused the powers of interference available to them under Article 8 § 2 of the Convention, as the interference in issue had not been necessary in order to achieve any of the aims referred to by that provision. The authorities' true aim – one they had pursued since 1993 and done everything in their power to achieve – had been to deprive the applicants of their right to reside permanently in Latvia. The Russian Government endorsed that argument.

129. Leaving to one side the question whether the applicants and the Russian Government are still entitled to make this request to the Grand Chamber or whether they are estopped from so doing, the Court sees no evidence that the Latvian authorities abused their powers by applying a restriction authorised by the Convention for a purpose other than that for which it was intended. On that point, it sees no similarity between this case and *Gusinskiy*, cited above, where the applicant's detention was found to have been motivated in part by reasons other than those provided for in the Convention. In these circumstances, and in view of all its findings set out above, the Court sees no reason to raise of its own motion the issue of the application of Article 18 of the Convention.

V. COSTS

130. Rule 43 § 4 of the Rules of Court provides:

> “When an application has been struck out, the costs shall be at the discretion of the Court. ...”

131. The Court reiterates that the striking out of the application which it has just ordered is only partial, since it is confined to the complaint under Article 8 of the Convention (see paragraph 104 above). However, it considers it nevertheless necessary to rule on the application of Rule 43 § 4.

132. As they had done before the Chamber, the applicants claimed 36,736 lati (LVL) (approximately 55,800 euros (EUR)) in respect of non-pecuniary damage and LVL 2,422.21 (approximately EUR 3,680) for costs and expenses. In that connection, the Court reiterates that Article 41 of the Convention allows it to award just satisfaction to the “injured party” only if it has previously “[found] that there has been a violation of the Convention or the Protocols thereto”, which it has not in this case. Accordingly, under Rule 43 § 4, the Court can award only costs and expenses to the applicants.

133. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see *Pisano*, cited above, §§ 53-54). In other words, in order to be reimbursed, the costs must relate to the alleged violation or violations and be reasonable as to quantum. Furthermore, under Rule 60 § 2, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Lavents v. Latvia*, no. 58442/00, § 154, 28 November 2002). In addition, it is clear from the structure of Rule 43 § 4 that, when the Grand Chamber makes a decision on the award of expenses, it must do so with reference to the entire proceedings before the Court, including the stages prior to referral to the Grand Chamber.

134. In the instant case the Court observes that, during the proceedings before the Chamber, the applicants were granted legal aid for presenting their case at the hearing, preparing their submissions and additional comments, conducting negotiations with a view to a friendly settlement and for secretarial expenses. It notes that the applicants have not submitted any specific claims for reimbursement of expenses since then, in particular for expenses incurred before the Grand Chamber. Accordingly, and in the absence of any further costs that might be added, it makes no award under this head.

FOR THESE REASONS, THE COURT

1. *Holds* by sixteen votes to one that the matter giving rise to the applicants' complaint under Article 8 of the Convention has been resolved and *decides* to strike the application out of its list of cases in so far as it relates to that complaint;

2. *Holds* unanimously that the respondent Government have not failed to comply with their obligations under Article 34 of the Convention.

Done in English and in French, and notified in writing on 15 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle Luzius Wildhaber
Deputy Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Zupančič is annexed to this judgment.

L.W.
M.O'B.

DISSENTING OPINION OF JUDGE ZUPANČIČ

My reasons for disagreeing as to the applicants' loss of victim status are, *mutatis mutandis*, the same as those advanced by the First Section in its judgments in *Shevanova v. Latvia* (no. 58822/00, §§ 42-50) and *Kaftailova v. Latvia* (no. 59643/00, §§ 45-52), delivered on 15 June and 22 June 2006 respectively.

Due to the obvious disagreement between the Court's conclusions in *Sisojeva and Others* and in these two cases, the latter have been admitted for reconsideration by the Grand Chamber. Nevertheless, the arguments in both the First Section's judgments are, to me, wholly persuasive.

Henceforth, we shall be bound by the outcome in *Sisojeva and Others.* However, that was not yet the case during the deliberations and the vote in the present case.

Accordingly, I dissent.