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

FIRST SECTION

CASE OF KAFTAILOVA v. LATVIA

(Application no. 59643/00)

JUDGMENT

STRASBOURG

22 June 2006

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

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

In the case of Kaftailova v. Latvia,

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

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

Having deliberated in private on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 59643/00) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a stateless person of Georgian origin, Mrs Natella Kaftailova ("the applicant"), on 10 April 2000.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that in refusing to regularise her stay in Latvia the Latvian authorities had infringed her rights under Article 8 of the Convention.

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

5. As the seat of the judge in respect of Latvia was vacant, the Latvian Government, in a letter of 15 September 2004, appointed Mrs J. Briede as *ad hoc* judge in the present case (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 21 October 2004 the Court declared the application admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case remained assigned to the First Section, in its new composition (Rule 52 § 1).

8. Neither of the parties filed additional written observations on the merits (Rule 59 § 1). However, by letter of 3 February 2005, the Government informed the Court of further developments in the case and

requested that the application be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention. On 20 April 2005 the applicant submitted her observations on that letter.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, who is of Georgian origin, was born in 1958 in Georgia and has lived in Riga (Latvia) since 1984. She was a Soviet national until 1991 and now has no nationality.

A. Background to the case and initial regularisation of the applicant's stay

10. In 1982 the applicant, who was living in Russia at the time, married a Soviet civil servant employed by the USSR Ministry of the Interior. In 1984 the couple had a daughter, born in Russia. In the same year the applicant and her family settled in Latvian territory.

11. In 1987 the applicant's husband was granted the right, in a professional capacity, to rent a room in a "duty residence" in Riga. In July 1988 he exchanged the accommodation he had previously been renting in Kazan (Russia) for the right to rent a State-owned flat in Riga. He and his family moved in straight away.

12. On 16 March 1990 the applicant cancelled her formal registration of residence (known at the time as *прописка* in Russian and *pieraksts* or *dzīvesvietas reģistrācija* in Latvian) in Volzhsk (Russia). On 16 April 1990 the applicant's husband registered her, without her knowledge or consent, as resident at the family's new address in Riga. In August 1990 he registered his own residence at that address.

13. In the meantime, in May 1990, the applicant lodged a complaint with the relevant local authority concerning her residence registration, arguing that her husband had registered her residence unlawfully without informing her. Consequently, on 15 June 1990, her name was removed from the register in question. Her minor daughter, however, continued to be registered at her father's address until October 1994.

In October 1990 the applicant and her husband divorced.

14. In August 1991 Latvia regained full independence. In December 1991 the Soviet Union, the State of which the applicant had hitherto been a national, broke up. The applicant therefore became stateless.

15. By a final judgment of 3 February 1993 the Riga City Vidzeme District Court granted the applicant the right to rent the room obtained by

her former husband in a "duty residence" in 1987. Shortly afterwards, still in February 1993, the applicant requested the Interior Ministry's Nationality and Immigration Department (*Iekšlietu ministrijas Pilsonības un imigrācijas departaments* – "the Department") to enter her name in the register of residents (*Iedzīvotāju reģistrs*) as a permanent resident of Latvia. In her request, however, she gave the address at which her ex-husband had unlawfully registered her, rather than the address in Riga at which she then lived. The Government explained that this had been a case of mistaken interpretation of the law on the register of residents, one which had had far-reaching consequences, having led to the loss of the applicant's legal status in Latvia.

16. The Department granted the applicant's request. In March 1993 her daughter obtained the same registration as her mother. However, by a decision of 21 July 1993, the Department cancelled the applicant's registration on the ground that the stamp in her passport was false. The file was immediately forwarded to the Kurzeme district prosecutor who, in a decision of 17 January 1994, decided not to institute criminal proceedings against the applicant. The prosecutor found that the registration stamp was authentic, but had been placed in the passport by the authorities in breach of the relevant regulations. The prosecutor concluded that, although the applicant's registration of residence was not valid, she could not be charged with forgery or use of forged documents.

17. On 15 February 1994 the Department removed the applicant's name from the register of residents and cancelled her personal identification code (*personas kods*). On 21 September 1994 the same action was taken in respect of the applicant's minor daughter.

18. On 30 November 1994 the Civil Division of the Supreme Court allowed a third-party appeal by the Prosecutor General's Office and quashed the final judgment of 3 February 1993 concerning the applicant's right to rent the room she was living in. The case was therefore referred back to the Riga City Vidzeme District Court, which, in an order of 29 December 1999, decided "not to examine the case".

B. Proceedings concerning the applicant's situation in Latvia

19. On 9 January 1995 the Department served a deportation order (*izbraukšanas rīkojums*) on the applicant, ordering her to leave Latvia with her daughter by 15 January 1995. The Department had discovered that, on 1 July 1992, the decisive date laid down by the Aliens and Stateless Persons (Entry and Residence) Act ("the Aliens Act"), the applicant had not had an officially registered permanent residence in Latvia. Under the terms of the first paragraph of the Supreme Council's decision on the arrangements for entry into force and application of that Act (see paragraph 40 below), she ought therefore to have applied for a residence permit within one month of

the date of entry into force, failing which she would be made the subject of a deportation order; the applicant, however, had omitted to do this.

20. Having lodged an administrative appeal with the head of the Department, without success, the applicant applied to the Riga City Vidzeme District Court seeking to have the order for her deportation set aside and to have her name re-entered in the register of residents.

21. By a judgment of 26 April 1995 the court of first instance rejected the application. The court found that, since the registration of the applicant's residence in Riga had never been valid, she did not fall within the scope of the Act on the Status of Former USSR Citizens without Latvian or other Citizenship ("the Non-Citizens Act"); she was therefore illegally resident in Latvia. The applicant lodged an appeal on points of law against this judgment with the Supreme Court. The latter, in a final judgment of 19 May 1995, dismissed the appeal on the same grounds as the lower court.

22. In March 1997 the applicant made a fresh application for a residence permit to the Department; the application was rejected.

23. Following the entry into force on 25 September 1998 of amendments to section 1 of the Non-Citizens Act, the applicant requested the head of the Interior Ministry's Nationality and Migration Directorate (*Iekšlietu ministrijas Pilsonības un migrācijas lietu pārvalde* – "the Directorate"), which had succeeded the Department, to regularise her stay in accordance with the Non-Citizens Act. When her request was refused, she lodged a fresh application with the Riga City Central District Court. In her memorial she stressed in particular that she had been living in Latvia for sixteen years and that she and her daughter had no other country to move to.

24. In a judgment of 8 September 1999 the district court rejected the application. It held that the applicant did not satisfy the conditions laid down in section 1(1) of the Non-Citizens Act since, on 1 July 1992, she had not had a valid registration of residence in Latvia. Furthermore, on that date, she had been resident in Latvian territory for only eight years rather than the required ten years. With specific regard to whether the registration of the applicant's residence in Latvia was null and void, the court referred to the arguments and findings set out in the Supreme Court judgment of 19 May 1995, which had become final.

25. The applicant appealed against the judgment before the Riga Regional Court. In a judgment of 15 May 2000 following adversarial proceedings, the regional court also found against the applicant, endorsing in substance the reasoning of the court of first instance. The applicant then lodged an appeal on points of law with the Senate of the Supreme Court. In a final order of 10 July 2000 the Senate, in a preparatory sitting (*rīcības sēde*) held in private, declared the appeal inadmissible for lack of arguable legal grounds.

26. Meanwhile, on 6 July 2000, the applicant made a third application for regularisation to the Directorate, requesting it to grant her "the right to reside legally in Latvia". Her application was rejected.

27. In a letter of 22 September 2000 to the Interior Ministry, the director of the National Human Rights Bureau (*Valsts cilvēktiesību birojs*) expressed support for the applicant's cause and requested the Ministry to regularise her stay in Latvia. The letter received no reply.

28. In August 2001 the head of the Directorate decided to reopen the file concerning the applicant's daughter, who was then seventeen. He noted in particular that, on 1 July 1992, she had been registered at her father's address as a "permanently resident non-citizen" of Latvia, and that she therefore fulfilled the requirements of section 1 of the Non-Citizens Act. Accordingly, in October 2001, the Directorate issued the applicant's daughter with a passport based on the status of "permanently resident non-citizen", re-entered her name in the register of residents and gave her a new personal identification code.

29. By Decree no. 820 of the Cabinet of Ministers of 24 December 2003, the applicant's daughter became a naturalised Latvian citizen (paragraph 1.105 of the Decree).

C. Developments after the application was declared admissible

30. On 7 January 2005 the Directorate sent a letter to the applicant which read as follows:

> " ... The Directorate ... has taken note of the final decision of the European Court of Human Rights (First Section) ... on the admissibility of the application in the case of *Natella Kaftailova v. Latvia*.
>
> The Directorate has explored the options currently available under Latvian legislation which might make it possible to regularise your stay in Latvia; it therefore invites you to take this opportunity to have your legal status in Latvia determined and to obtain a residence permit.
>
> On 9 January 1995 a deportation order was served on you under section 38 of the [Aliens] Act, requesting you to leave Latvian territory by 15 January 1995. The deportation order has not been enforced, nor have any measures been taken with a view to its enforcement. Section 360(4) of the Administrative Procedure Act ... currently in force stipulates that '*an administrative act may not be enforced if more than three years have elapsed since it became enforceable*'... In view of the fact that, under the previously existing rules, enforcement of the deportation order was not stayed, and that you did not comply with it, enforcement is no longer possible.
>
> The Status of Stateless Persons Act, in force prior to 2 March [2004], made no provision for granting stateless person status to persons illegally resident in Latvia. Accordingly, the Directorate did not invite you to submit the papers required to obtain that status.

The *Stateless Persons Act* which entered into force on 2 March 2004 replaced the Status of Stateless Persons Act... The conditions for the granting of stateless person status laid down by the [new] Act differ from those contained in the [old] Act.

Under Section 2(1) of the *Stateless Persons Act*, a person may be granted stateless person status ... if no other State has recognised him or her as a national in accordance with its own laws. Under section 3(1) of the Act, persons not covered by the Convention of 28 September 1954 relating to the Status of Stateless Persons cannot be recognised as stateless persons...

In accordance with section 4(1) of the *Stateless Persons Act*, 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.

In view of the fact that you were born in Georgia and are of Georgian ethnic origin and the fact that, prior to your arrival in Latvia, you had been living in Russia..., it is essential ... to ascertain that you are not recognised as a national of the Republic of Georgia or of the Russian Federation or guaranteed the right to nationality of those countries in accordance with their laws. Accordingly, to enable us to take a decision granting you stateless person status, you must provide [us] with a document issued by the competent bodies in the Republic of Georgia and the Russian Federation to the effect that you are not a national of those countries and that you are not guaranteed the right to such nationality, or with a document certifying the impossibility of obtaining such a document.

Under section 6(1) of the *Stateless Persons Act*, stateless persons must reside in Latvia in accordance with the rules laid down by the Immigration Act, that is to say, on the basis of a residence permit or, at least, a visa.

Having considered the circumstances of your case, we are prepared, once we have determined your legal status and obtained the necessary documentation..., to address an opinion to the Minister of the Interior proposing that you be issued with a permanent residence permit, in accordance with section 24(2) of the Immigration Act..."

31. The Directorate then listed the documents to be submitted by the applicant to her local department and indicated the usual period of validity of each document. The letter went on as follows:

"Once you have been recognised as a stateless person and been issued with a residence permit..., your personal data will be entered in the register of residents and you will receive a personal identification code.

In the Directorate's view, this is the only basis on which you can obtain a permanent residence permit, given the circumstances of your case... That being so, the Directorate, in addressing its opinion to the Minister of the Interior, will draw the Minister's attention to the fact that issuing you with a permanent residence permit would be compatible with the aspects [*sic*] of a democratic society, while maintaining the fair balance to be struck between the restriction of individual rights and the

benefits to society of that restriction. The aim is to ensure that you have the right to conduct your private and family life without hindrance.

The Directorate would draw your attention to the fact that no one can be recognised as a stateless person or obtain a residence permit on a unilateral basis. You must therefore express a personal interest by making an application to that effect. In the view of the Directorate, ... the solution outlined above corresponds to your interests, would remove the threat of deportation in the future and would enable you to exercise your right to private and family life without any great restrictions; moreover, in accordance with the *Nationality Act*, you could aspire to Latvian citizenship by naturalisation.

In view of the above, we invite you to contact the Directorate and submit the necessary documents to it, so that ... your legal status can be determined and ... the Minister of the Interior can take a decision on the issuing of a permanent residence permit. ..."

At the end of the letter the Directorate gave the telephone numbers of the officials to whom the applicant should address any further queries concerning the regularisation of her status.

32. By Decree no. 75 of 2 February 2005, the Cabinet of Ministers instructed the Minister of the Interior to issue the applicant with a permanent residence permit "once the documents required to make such an application have been received" (Article 1). At the same time the Minister of Foreign Affairs was instructed to have the Court's decision of 21 October 2004 on the admissibility of the present application translated into Latvian, and to have the translation published in the Official Gazette (Article 3).

33. It is clear from the applicant's explanations that she did not take the steps indicated by the Directorate and that she continues to reside illegally in Latvia.

II. RELEVANT DOMESTIC LAW

A. General provisions

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

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

(b) "permanently resident non-citizens" (*nepilsoņi*) – that is, citizens of the former USSR who lost their Soviet citizenship following the break-up of the USSR in 1991, but have not subsequently obtained any other nationality – who are governed by the Non-Citizens Act (see paragraph 35 below);

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

(d) "stateless persons" (*bezvalstnieki*) in the narrow and specific sense of the term. Prior to 2 March 2004 their status was governed by the Status of Stateless Persons Act, read in conjunction with the Aliens Act (see

paragraphs 36 and 39 below) and, after 1 May 2003, with the Immigration Act (see paragraph 41 below). Since 2 March 2004 their status has been governed by the new Stateless Persons Act (see paragraph 38 below), also read in conjunction with the Immigration 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).

B. "Permanently resident non-citizens"

35. The relevant provisions of the Act of 12 April 1995 on the Status of Former USSR Citizens without Latvian or other Citizenship (*Likums "Par to bijušo PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības"*) read as follows:

Section 1(1)

[*Version in force before 25 September 1998*]: "This Act governs citizens of the former USSR resident in Latvia ..., who were resident within Latvian territory prior to 1 July 1992 and whose residence is registered there, regardless of the status of their housing, and who are not citizens of Latvia or any other State; it also governs the minor children of such persons who are not citizens of Latvia or any other State."

[*Version in force since 25 September 1998*]: "The persons governed by this Act – 'non-citizens' – shall be citizens of the former USSR who are resident in Latvia ..., and their children, 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 on 1 July 1992 was in the Republic of Latvia; or a court has established that before the above-mentioned date they had been resident within Latvian territory for not less than ten years;

(2) they do not have Latvian citizenship;

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

...

Section 2(2)

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

...

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

C. Specific status of “stateless person”

36. The specific status of “stateless person” (*bezvalstnieks*) was established by the Status of Stateless Persons Act (*Likums “Par bezvalstnieka statusu Latvijas Republikā”*) of 18 February 1999. The Act remained in force until 2 March 2004, when it was replaced by the Stateless Persons Act (*Bezvalstnieku likums*) of 29 January 2004.

37. Section 2(1) of the 1999 Act read as follows:

> “The status of stateless person may be granted to persons whose status is not defined either by the Act on the Status of Former USSR Citizens without Latvian or other Citizenship or by the Asylum Act , provided they
>
> ...
>
> (2) are legally resident in Latvia.”

38. The relevant provisions of the new Stateless Persons 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 3

> “1. In the Republic of Latvia, an individual not falling within the scope of the Convention of 28 September 1954 relating to the Status of Stateless Persons may not be recognised as a stateless person.
>
> 2. An individual whose status is governed by the [Non-Citizens] Act may not be recognised as a stateless person.”

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 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 5(3) and (4)

"...

3. The person [concerned] may appeal to the head of the Directorate against the decision [concerning the granting of stateless person status].

4. The person [concerned] may lodge an application with the courts challenging the decision by the head of the Directorate."

Section 6(1)

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

D. Status of aliens generally

39. The relevant provisions of the Aliens and Stateless Persons (Entry and Residence) Act of 9 June 1992 (*Likums "Par ārvalstnieku un bezvalstnieku ieceļošanu un uzturēšanos Latvijas Republikā*), in force prior to 1 May 2003, read as follows:

Section 11

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

Section 12

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

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

(1) a temporary residence permit;

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

Section 23(1), first paragraph

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

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

Section 35

"No residence permit shall be issued to a person who

...

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

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

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

..."

Section 38

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

...

(2) if the alien 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 accordance with this section.

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

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

40. The decision of the Supreme Council of the Republic of Latvia of 10 June 1992 on the arrangements for entry into force and application of the Aliens Act gave details of the scope of the Act. In particular, the first paragraph required foreign nationals and stateless persons resident in Latvia on the date of the Act's entry into force, but with no permanent registration of residence, to apply for a residence permit within one month, failing which they would be served with a deportation order.

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

Section 1

"The present Act uses the following definitions:

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

Section 24(2)

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

Section 33 (2)

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

Section 47

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

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

...

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

...

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

E. General administrative law

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

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

43. By letter of 3 February 2005 the Government informed the Court of the practical measures taken by the Latvian authorities with a view to

regularising the applicant's stay in Latvia (see paragraphs 30-32 above). They explained that it had been decided at the Cabinet of Ministers' meeting of 2 February 2005 not to offer the applicant a friendly settlement within the meaning of Article 39 of the Convention, but to remedy her complaint directly by offering her a permanent residence permit. In view of these measures, the Government considered that the matter giving rise to the application had been resolved and the application should be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention.

44. The applicant opposed the striking-out of the application. She contended that the Government could not rely on domestic legislation adopted after the domestic legal decisions which had given rise to the alleged violation. The applicant argued that "the Court should examine only the legal basis on which [she] and [her] daughter [had been] deprived of [their] rights". Similarly, accepting the Government's proposals and subscribing to their point of view would "leave her devoid of arguments". Finally, the applicant considered that, by acting as they had, the Government had "acknowledged implicitly that they were wrong". In sum, the matter was far from being resolved and there were no grounds for applying Article 37 § 1 (b) of the Convention.

B. The Court's assessment

45. The Court considers that in the instant case the objection raised by the Government is closely linked to the question whether the applicant has effectively lost her status of "victim" within the meaning of Article 34 of the Convention as a result of developments since the application was declared admissible. It is true that, in its judgment in *Pisano v. Italy* ([GC] (striking out), no. 36732/97, 24 October 2002), the Court examined this question separately from the question of the application of Article 37 § 1 (b), ruling that the applicant could continue to claim the status of "victim", while going on to decide that the matter had been resolved (*loc. cit.*, §§ 38-39). However, the present application concerns the removal of a foreign national and her illegal residence within the national territory; in cases of this type, where the applicant's stay was regularised during the course of the Court's examination of the application, the Court has generally considered whether it should continue its examination under Article 34 of the Convention by reference precisely to the notion of "victim" (see, for example, *Maaouia v. France* (dec.), no. 39652/98, ECHR 1999-II; *Pančenko v. Latvia* (dec.), no. 40772/98, 28 October 1999; *Mikheyeva v. Latvia* (dec.), no. 50029/99, 12 September 2002; *Aristimuño Mendizabal v. France*, (dec.), no. 51431/99, 21 June 2005; and *Yildiz v. Germany* (dec.), no. 40932/02, 13 October 2005). The Court considers that in the instant case the Government's objection should be examined under both provisions taken together, as a finding that the applicant has lost her "victim" status

within the meaning of Article 34 of the Convention would prompt the Court to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b).

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

47. Where the person concerned complains in particular of his or her deportation or illegal status within the country, the minimum steps required are, firstly, the setting-aside of the deportation order and, secondly, the issuing or recognition of a residence permit (see the *Mikheyeva* decision, cited above, and the decision of 21 October 2004 on the admissibility of the present application). However, it is also necessary to ascertain in each case whether these measures are sufficient to fully remedy the complaint in question.

48. In the instant case the Court observes that, until 1994, the applicant was legally resident in Latvia. In February 1994 her name was removed from the register of residents and her personal identification code was cancelled; in January 1995 an order was made for her deportation. Although the order was never enforced, its existence indisputably placed the applicant in a very uncertain and insecure position in Latvia. Only in January and February 2005, that is, after the present application had been declared admissible by the Court, did the Latvian authorities take practical steps aimed at regularising the applicant's stay. It is worth noting that eleven years elapsed between the removal of the applicant's name from the register and the adoption of the above-mentioned measures.

49. The Court notes that none of the relevant Latvian authorities explicitly acknowledged the existence of a violation of Article 8 of the Convention. It observes, however, that the Directorate's letter of 7 January 2005 and Government Decree no. 75 of 2 February 2005 both referred to the Court's decision on the admissibility of the present application. It therefore

accepts that the fact that the applicant's complaint to the Court was thus taken into consideration could be regarded as implicit acknowledgement of the existence of an issue under Article 8.

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

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

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

Accordingly, the Court dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. The parties' submissions

1. The Government

53. The Government denied that there had been interference with the exercise of the applicant's right to respect for her private and family life.

They submitted a legal analysis designed to demonstrate that all the decisions taken in the case by the Latvian authorities had been in accordance with domestic law, that the applicant was not, and never had been, entitled to the status of "permanently resident non-citizen" which she was claiming, and that there had been no indication of arbitrariness in the conduct of the authorities. The Government further pointed out that the applicant was currently at no risk of being deported from Latvia and could regularise her stay at any time by following the indications given by the Directorate. Consequently, the measures taken in respect of the applicant had not attained a sufficient degree of severity to amount to "interference" within the meaning of Article 8 § 2 of the Convention.

54. Even assuming this not to be the case, the Government contended that the alleged interference met the requirements of the second paragraph of Article 8. Firstly, it had been "in accordance with the law" and, secondly, it had pursued a "legitimate aim", namely the "prevention of disorder", in view, among other things, of the particularly wide margin of appreciation enjoyed by States in immigration matters.

55. The Government further took the view that the interference in question had been and continued to be "necessary in a democratic society", that is to say, that it was proportionate to the legitimate aim pursued. In that connection the Government pointed out that the applicant had been born in Georgia and had lived in Russia until the age of twenty-six. All her schooling had been in Russia and she had completed her professional training there. It was in Russia that she had married a man of Russian origin, and there that her daughter had been born in 1984. The Government stressed the fact that, originally, it had not been the applicant's choice to move to Latvian territory; she had been accompanying her husband, an official with the USSR Interior Ministry, who had been transferred there for a period of time. In the Government's view, this was borne out by the fact that the applicant's ex-husband had been able to obtain only a room in a "duty residence" rather than permanent accommodation.

56. Consequently, the applicant could not be regarded as an "integrated alien" within the meaning of the Court's established case-law. On the contrary, she had quite strong linguistic and cultural ties with Russia. As she herself had declared in her application for registration in 1993, she spoke Russian and Georgian with her family; her command of Latvian, on the other hand, was poor. Accordingly, she would have no major difficulty in adjusting to life in Russia from a social and cultural point of view if she were forced to move there.

57. As to the applicant's daughter, the Government pointed out that Mrs Kaftailova herself was unemployed; consequently, there could be no bond of specific economic dependency between them. Similarly, the case file showed that, until 1994, the applicant's daughter had lived with her father, who continued to support her financially. Lastly, the applicant had

not claimed the existence of any obstacle to her visiting her daughter in Latvia on the basis of a visa or having her daughter visit her in Russia. The ties between the applicant and her daughter were therefore not such as to render the interference in question disproportionate.

2. The applicant

58. The applicant challenged the Government's position. Like the Government, she submitted an analysis, in this case aimed at demonstrating that the removal of her name from the register of residents had been in breach of Latvian domestic law. She further pointed out that she and her daughter had lived in Latvia since 1984; at that time, Latvian territory had formed part of the Soviet Union and people had been free to move between the different parts of that State. In that connection the applicant emphasised the fact that, following the break-up of the USSR, she had been left without any nationality; she maintained that the Latvian authorities had deprived her of the Latvian citizenship she had held previously.

59. The applicant stressed the social and economic problems she faced on account of her illegal status in Latvia. She could not work legally or receive allowances or social security benefits; moreover, she lived under constant threat of losing the only accommodation she had. With regard to the regularisation of her daughter's stay and her subsequent naturalisation, the applicant considered that these measures did not afford adequate redress for the damage they had both sustained as a result of their ordeals. In sum, there had been a violation of Article 8 of the Convention.

B. The Court's assessment

1. Whether there was interference

60. The Court observes at the outset that some of the events referred to by the applicant occurred before 27 June 1997, the date of the Convention's entry into force in respect of Latvia. While the Court cannot rule on the existence of a violation of the Convention or the Protocols thereto prior to that date, it nevertheless can, and must, take into consideration the events which occurred during that period.

61. The Court reiterates that the Convention does not guarantee as such the right of an alien to enter or to reside in a particular country and that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens (see, among many other authorities, *Baghli v. France*, no. 34374/97, § 45, ECHR 1999-VIII, and *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX). Nevertheless, the decisions taken by States in the immigration sphere can in some cases amount to interference with the right

to respect for private and family life secured by Article 8 § 1 of the Convention, in particular where the persons concerned possess strong personal or family ties in the host country which are liable to be seriously affected by application of the measure in question.

62. In the instant case the applicant maintained that the Latvian authorities had deprived her of the Latvian citizenship she had previously held. In that connection the Court observes that the applicant was originally a citizen of the Soviet Union, a State which ceased to exist in 1991, and has at no time been a Latvian citizen. Nor is there anything to show that she could legally claim Latvian citizenship under that country's laws, or that it was arbitrarily denied her (see, *mutatis mutandis*, *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, §§ 77-78, ECHR 2002-II). The applicant's allegations on this point are therefore unfounded (see *Kolosovskiy v. Latvia* (dec.), no. 50183/99, 29 January 2004).

63. In the instant case the Court notes that the applicant arrived in Latvian territory in 1984, at the age of twenty-six, since which time she has always lived in Latvia. Accordingly, it is not in dispute that, during her stay within Latvian territory, she has forged the personal, social and economic ties that make up the private life of every human being.

As to the existence of "family life" within the meaning of Article 8 § 1, the Court observes that the deportation order issued in 1995 in respect of the applicant also related to her daughter; as both were enjoined to leave the country, the measure could not have had the effect of breaking up their life together (see *Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003-X). The applicant's daughter is now twenty-two; she has been legally resident in Latvia since 2001 and has had Latvian citizenship since 2003. As her daughter is an adult, and in the absence of specific elements of dependency going beyond the normal affective ties, the applicant can no longer rely on the existence of "family life" in relation to her daughter (see, in particular, the *Kolosovskiy* decision, cited above). The Court will therefore examine the applicant's complaint under the heading of her "private" life.

64. The Court notes that the order for the applicant's deportation was never enforced and can no longer be enforced. In that connection it reiterates that Article 8, like any other provision of the Convention or the Protocols thereto, must be interpreted in such a way as to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, *mutatis mutandis*, *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, p. 16, § 33, and *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 34, § 87). Furthermore, while the chief object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life (see, for example, *Gül v. Switzerland*, judgment of 19 February 1996,

Reports 1996-I, pp. 174-175, § 38; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Mehemi (no. 2)*, cited above, § 45). In other words, it is not enough for the host State to refrain from deporting the person concerned; it must also, by means of positive measures if necessary, afford him or her the opportunity to exercise the rights in question without interference.

65. In the instant case the Court considers that the prolonged refusal of the Latvian authorities to recognise the applicant's right to reside legally and permanently in Latvia amounts to interference with her private life (see the *Slivenko* judgment, cited above, § 96). It remains to be ascertained whether that interference was compatible with the second paragraph of Article 8 of the Convention, that is, whether it was "in accordance with the law", pursued one or more of the legitimate aims listed in that paragraph and was "necessary in a democratic society" in order to achieve them (see *Boultif*, cited above, § 41).

2. Whether the interference was justified

66. With regard first of all to the lawfulness of the interference, the Court acknowledges that it was "in accordance with the law" (in this case sections 23(1), 35 and 38 of the former Aliens Act and the decision of the Supreme Council of 10 June 1992 on the arrangements for entry into force and application of that Act). Similarly, given the fact that the interference is or was designed to ensure compliance with the immigration laws, the Court accepts that it pursued a "legitimate aim", namely the "prevention of disorder".

67. As to whether the impugned measure was "necessary in a democratic society", that is to say, whether it was proportionate to the legitimate aim pursued, the Court notes that the applicant has lived in Latvia since 1984, in other words, for twenty-two years. Granted, she is not of Latvian origin and has spent a significant proportion of her life in Russia. However, the Court does not consider that circumstance to be decisive in the present case. Firstly, there is nothing to indicate that the applicant is entitled to obtain Russian or Georgian nationality; moreover, the Directorate itself appeared to acknowledge this in its letter, by inviting the applicant to provide documents certifying that she was not a citizen of either of these two countries and was not guaranteed the right to such citizenship (see paragraph 30 above). Secondly, it is not disputed that, in the period since 1984, the applicant has developed personal and social ties such that she can now be said to be sufficiently well integrated into Latvian society even if, as the Government contend, her level of Latvian is unsatisfactory (see the *Slivenko* judgment, cited above, § 124). The Court also notes that, until 1990, the applicant's officially registered residence was in Russia; however, she does not appear to have had genuine and stable ties to that country since then. In any event, it seems clear that the applicant has not established

personal and social ties in any other country similar to those she has in Latvia (ibid., § 125).

68. In these circumstances, only reasons of a particularly serious nature could justify the impugned measure, and the Court has been unable to discern such reasons in the instant case. Whilst it recognises the right of each State to take effective steps to ensure compliance with its immigration laws, it considers that a measure of the kind imposed on the applicant could be considered to be proportionate only if the applicant had acted in a particularly dangerous manner. In that connection the Court reiterates that most of the similar cases it has examined under Article 8 of the Convention have related to situations in which the applicants had been deported after being convicted of serious criminal offences. By contrast, in the present case, no penalty, however slight, was imposed on the applicant; on the contrary, the prosecutor dealing with the case decided on 17 January 1994 not to institute criminal proceedings against her (see paragraph 16 above).

69. To sum up, taking into consideration all the circumstances, and in particular the eleven-year period of instability and legal uncertainty which the applicant has undergone in Latvia, the Court considers that the Latvian authorities exceeded the margin of appreciation left to the Contracting States in this sphere and did not strike a fair balance between the legitimate aim of preventing disorder and the applicant's interest in having her rights under Article 8 protected. It is therefore unable to find that the interference complained of was "necessary in a democratic society".

70. In view of all the above considerations, the Court holds that there has been a violation of Article 8 of the Convention in the instant case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. Article 41 of the Convention provides:

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

72. The Court notes that the applicant did not submit a claim for just satisfaction within the time allowed. Accordingly, it sees no reason to award the applicant any sum under that head.

FOR THESE REASONS, THE COURT

1. *Dismisses* by five votes to two the Government's preliminary objection;

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

Done in French, and notified in writing on 22 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Registrar	President

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

(a) partly concurring opinion of Mr Spielmann, joined by Mr Kovler;
(b) dissenting opinion of Mrs Vajić;
(c) dissenting opinion of Mrs Briede.

C.L.R.
S.N.

PARTLY CONCURRING OPINION OF JUDGE SPIELMANN, JOINED BY JUDGE KOVLER

(*Translation*)

1. I share the opinion of the majority in finding a violation of Article 8 of the Convention under the heading of "private life". However, I do not share the majority's view that the applicant cannot rely on the existence of "family life" between herself and her daughter and that the complaint merits examination only under the heading of the applicant's "private life" (see paragraph 63 of the judgment).

2. It is true that this very restrictive interpretation of the notion of family life is in line – in the specific sphere of the entry, residence and expulsion of non-nationals – with the case-law established in *Slivenko* (see *Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003-X).

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

4. The Court has traditionally – in a wide variety of spheres, moreover – adopted a broad construction of the notion of "family life". As far back as the *Marckx* case, it emphasised that "'family life', within the meaning of Article 8, includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life". The Court went on to conclude that "'respect' for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally" (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 21, § 45; see also *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII).

5. By way of example I would cite the *L.* judgment of 1 June 2004, in which the Court accepted that family life could also exist between a child and a parent who had never lived together, if other factors demonstrated that the relationship had sufficient constancy to create *de facto* family ties (see *L. v. the Netherlands*, no. 45582/99, § 36, ECHR 2004-IV)[1]. The Court has even gone so far as to say that "family life" can encompass *de facto* relationships between persons with no ties of kinship (see *X, Y and Z v. the United Kingdom*, judgment of 22 April 1997, *Reports of Judgments and* Decisions 1997-11, pp. 629-630, §§ 36-37)[2]. What counts is whether there

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

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

are "legal or factual elements indicating the existence of a close personal relationship" (see *L.*, cited above, § 37).

6. In paragraph 63 of the judgment the Court notes that the order for the applicant's deportation made in 1995 also related to her daughter, observing that, as both were enjoined to leave the country, the measure could not have had the effect of breaking up their life together. The Court further observes that the applicant's daughter is now twenty-two; she has been legally resident in Latvia since 2001 and has had Latvian citizenship since 2003. The Court finds that, since she is an adult, and in the absence of specific elements of dependency going beyond the normal affective ties, the applicant can no longer rely on the existence of "family life" between herself and her daughter.

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

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

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

DISSENTING OPINION OF JUDGE VAJIĆ

(*Translation*)

I regret that I am unable to join the majority in finding that there has been a violation of Article 8 of the Convention in the instant case. In that connection, I would refer to the arguments expressed by Judge Briede and myself in our joint dissenting opinion in *Sisojeva and Others v. Latvia* (no. 60654/00, judgment of 16 June 2005).

Having regard to the circumstances of the case, and in particular the Government's offer to regularise the applicant's stay and the authorities' statement to the effect that enforcement of the deportation order is no longer possible (paragraph 30 of the judgment), I have come to the conclusion that the matter giving rise to the present case has been resolved. Accordingly, I am of the opinion that the application should have been struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention.

DISSENTING OPINION OF JUDGE BRIEDE

(*Translation*)

In the instant case I can only refer to my dissenting opinion in the case of *Shevanova v. Latvia* (no. 58822/00, judgment of 15 June 2006). As in that case, I consider that, in view of the measures proposed to the applicant to regularise her stay, she can no longer claim to be a "victim" of a violation of Article 8 of the Convention. In my opinion, the matter has been resolved and the application should be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention.