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

CASE OF SLIVENKO v. LATVIA

(Application no. 48321/99)

JUDGMENT

STRASBOURG

9 October 2003

In the case of Slivenko v. Latvia,

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

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Mr G. RESS,
Sir Nicolas BRATZA,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mr K. TRAJA,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,

and also of Mr P.J.MAHONEY, *Registrar*,

Having deliberated in private on 12 July 2002, 25 September 2002 and 9 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 48321/99) 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 two former residents of Latvia, Mrs Tatjana Slivenko and Ms Karina Slivenko ("the applicants"), on 28 January 1999. Initially, the application had also been brought by Mr Nikolay Slivenko, a Russian citizen married to the first applicant and father of the second applicant.

2. The applicants, who had been granted legal aid, were represented by Mr A. Asnis and Mr V. Portnov, lawyers practising in Moscow. The Latvian Government ("the respondent Government") were represented by their Agent, Ms K. Maļinovska.

3. The applicants alleged, in particular, that their removal from Latvia had violated Article 8 of the Convention, taken alone or in conjunction with Article 14, and that the applicants' detention on 28-29 October 1998 and 16-17 March 1999 had breached Article 5 §§ 1 and 4 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court).

5. The Chamber called upon to deal with the case was constituted according to Rule 26. Mr E. Levits, the judge elected in respect of Latvia, withdrew from sitting in the case (Rule 28). The respondent Government accordingly appointed Mr R. Maruste, the judge elected in respect of Estonia, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. On 27 January 2000 the Chamber communicated the case to the respondent Government (former Rule 54 § 3 (b)). The parties submitted observations in writing and subsequently replied to each other's observations. In addition, third-party comments were received from the Russian Government, having exercised their right to intervene (Article 36 § 1 of the Convention and Rule 61 § 2). The parties replied to those comments (Rule 61 § 5).

7. On 14 June 2001 the Chamber of the Second Section, composed of Mr C.L. Rozakis, President, Mr A. B. Baka, Mrs V. Stráznická, Mr P. Lorenzen, Mrs M. Tsatsa-Nikolovska, Mr R. Maruste, Mr A. Kovler,judges, and Mr E. Fribergh, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

8. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24, Mr Maruste continuing in his function as an elected judge designated *ad hoc* by the respondent Government to replace the judge elected in respect of the respondent State (Rule 29 § 1).

9. A hearing on the admissibility and merits of the case took place in public in the HumanRightsBuilding, Strasbourg, on 14 November 2001 (Rule 59 § 3).

There appeared before the Court:

(a) *for the respondent Government*
Ms K. MAĻINOVSKA, *Agent*,
Ms A. ASTAHOVA, *Counsel*;

(b) *for the applicants*
Mr A. ASNIS,
Mr V. PORTNOV,
Ms T. RYBINA, *Counsel*;

(c) *for the third party*
Mr P. LAPTEV, *Representative of the Russian Federation*,
Mr S. VOLKOVSKIY,
Mr S. KULIK, *Counsel.*

The applicants also attended the hearing.

The Grand Chamber heard addresses by Ms Maļinovska, Mr Portnov and Mr Laptev as well as their replies to questions from judges.

10. By a decision of 23 January 2002[1], the Grand Chamber declared the application admissible in so far as the applicants' complaints under Articles 5§§ 1 and 4, 8 and 14 were concerned. Their remaining complaints, as well as those of Mr Nikolay Slivenko, were declared inadmissible.

11. At the Court's request, the parties and the third party submitted supplementary observations on the merits of the case. The parties replied to each other's observations.

12. On 12 July 2002 the Court rejected requests by the applicants and the third party to obtain an independent expert opinion on an allegedly falsified document submitted by the respondent Government (see paragraphs 19 and 20 below) and to hold a further hearing on the merits.

13. Although the applicants and the respondent Government had only been invited to comment on the Russian Government's third-party submissions, they made further extensive submissions which went beyond such comments. On 25 September 2002 the Court decided to admit those submissions to the file and to give the parties and the third party an opportunity to present their final conclusions. Final conclusions were received from the parties and the third party in November 2002.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

14. The facts of the case, as submitted by the parties, may be summarised as follows.

15. The first applicant is Mrs Tatjana Slivenko, born in 1959. The second applicant is her daughter, Ms Karina Slivenko, born in 1981.

16. The applicants are of Russian origin. The first applicant was born in Estonia into the family of a military officer of the Union of Soviet Socialist Republics (USSR). At the age of one month she moved to Latvia together with her parents. Her husband, Nikolay Slivenko, born in 1952, was

1. *Note by the Registry*. Extracts of the decision are published in ECHR 2002-II.

transferred to Latvia in 1977 to serve as a Soviet military officer. He met the first applicant in Latvia and married her there in 1980. In 1981 the first applicant gave birth to their daughter, the second applicant. The first applicant's father retired from the army in 1986.

17. Latvia regained independence from the USSR in 1991. On 28 January 1992 the Russian Federation assumed jurisdiction over the former Soviet armed forces, including those stationed in the territory of Latvia.

18. On 4 March 1993 the applicants and the first applicant's parents were entered in the register of Latvian residents ("the register") as "ex-USSR citizens" (see paragraphs 50-56 below). At that time, none of them were citizens of any particular State. In her request to be entered in the register, the first applicant had not indicated that her husband was a Russian military officer.

19. The respondent Government state that, in requesting her entry in the register, the first applicant submitted false information about the occupation of Nikolay Slivenko, stating that he worked at a factory. The respondent Government have submitted a copy of an annex to the first applicant's application for residence in Latvia, including the statement that her husband worked at a factory.

20. The applicants and the third party submit that the document is falsified, and that it does not exist. They also refer to the fact that, during the subsequent proceedings concerning the legality of their stay in Latvia (see paragraphs 34-39 below), the immigration authorities did not refer to any such false information, and the Latvian courts did not establish that the applicants had at any point submitted the information mentioned by the respondent Government.

21. Nikolay Slivenko, who had become a Russian citizen on an unspecified date in the early 1990s, continued his service in the Russian army until his discharge in 1994 on the ground of the abolition of his post. The parties disagree as to the actual date of his discharge: the applicants state that he was discharged on 2 March 1994. They rely on the fact that an order for his discharge was signed and became effective on 2 March 1994. The Russian Government support this conclusion. The respondent Government argue that the first applicant's husband was discharged on 5 June 1994 as it was only on that date that he formally completed his leave; his leave allowance and retirement benefits had been calculated with reference to that date.

22. The treaty between Latvia and Russia on the withdrawal of the Russian troops ("the treaty") was signed in Moscow on 30 April 1994 and became effective on that date (see paragraphs 64-67 below).

23. According to the respondent Government, even before the signature and entry into force of the treaty, various Latvian and Russian authorities cooperated in establishing the names of the Russian military personnel liable to be removed from Latvia. In this context, on 31 March 1994, the

Russian military authorities submitted to the Latvian authorities a list of the Russian military officers in Latvia, including the first applicant's husband, with an accompanying request to prolong his and his family's temporary residence in Latvia. This, the respondent Government contend, made it clear that their stay in Latvia was temporary, and that they would be required to leave.

24. According to the applicants and the Russian Government, the list of 31 March 1994 did not entail any obligation on Nikolay Slivenko to leave Latvia as it was a document solely requesting the prolongation of his temporary stay in Latvia, submitted before the actual signature and entry into force of the treaty.

25. On 7 October 1994 Nikolay Slivenko applied to the Latvian Citizenship and Migration Authority ("the CMA") for a temporary residence permit in Latvia by reason, *inter alia*, of his marriage to the first applicant, a permanent resident of Latvia. This was refused on the ground that, as a Russian military officer, he was required to leave Latvia as a result of the withdrawal of the Russian troops in accordance with the treaty.

26. On 29 November 1994 the CMA annulled the applicants' entry in the register on the ground of Nikolay Slivenko's military status. The applicants state that they were not informed about the decision, and that they found out about it only in 1996, in the context of the court proceedings brought by the first applicant's husband (see paragraph 29 below).

27. The respondent Government have also produced a list dated 10 December 1994, which according to them had been submitted to the Latvian authorities by the Russian armed forces. In the list Nikolay Slivenko was included in the category of military personnel who had retired after 28 January 1992. The applicants and the third party contest the authenticity of the list.

28. The respondent Government have further produced a list dated 16 October 1995, which according to them had been sent to the Latvian Ministry of Foreign Affairs by the Russian consulate in Riga. According to the respondent Government, Nikolay Slivenko's name appeared on the list among those Russian military pensioners who had been discharged from the Russian armed forces after 28 January 1992. It was also noted in the list that on 3 August 1994 Nikolay Slivenko had been given housing in the city of Kursk in Russia, and that he had left Latvia on 31 December 1994. The applicants and the third party contest the authenticity of the list.

29. In point of fact, however, the first applicant's husband had stayed in Latvia. He brought a court action against the CMA, claiming that their refusal to issue him with a temporary residence permit was void. On 2 January 1996 the Riga City Vidzeme District Court found in his favour. The CMA appealed against the judgment.

30. On 19 June 1996 the Riga Regional Courtallowed the CMA's appeal, finding, *inter alia*, that Nikolay Slivenko had been a Russian military officer until 5 June 1994 and that the treaty of 30 April 1994 required all Russian

officers in service on 28 January 1992 to leave Latvia together with their families. The Regional Court referred, *inter alia,* to the list of 16 October 1995, which confirmed that he had been provided with accommodation in Kursk, and that he had left Latvia in 1994. He did not bring a cassation appeal against the appellate judgment.

31. On 20 August 1996 the immigration authorities issued a deportation order in respect of the applicants. The order was served on them on 22 August 1996.

32. On that date the local authorities decided to evict the applicants from their flat, which they rented from the Latvian Ministry of Defence. Russian military officers and their families as well as other residents of Latvia lived in the block where the flat was located. The eviction order was not enforced.

33. On an unspecified date in 1996 Nikolay Slivenko moved to Russia, while the applicants remained in Latvia.

34. The first applicant brought a court action in her own name and on behalf of her daughter, claiming that they were in fact permanent residents of Latvia and that they could not be removed from the country.

35. On 19 February 1997 the Riga City Vidzeme District Court found in favour of the applicants. The court held, *inter alia*, that the first applicant had come to Latvia as a relative of her father, not her husband. As her father had retired in 1986, he could thereafter no longer be regarded as a military officer, and his close relatives, including the applicants, could be entered in the register as permanent residents of Latvia. The court quashed the deportation order in respect of the applicants and authorised their re-entry in the register.

36. The CMA appealed against the judgment of 19 February 1997. On 30 October 1997 the Riga Regional Court dismissed the appeal, finding that the first-instance court had decided the case properly. Upon a cassation appeal by the CMA, on 7 January 1998 the Supreme Court quashed the decisions of the lower courts and remitted the case to the appellate court for a fresh examination. The Supreme Court referred to the fact that the applicants had been provided with a flat in Kursk, and that they were subject to the provisions of the treaty of 30 April 1994.

37. On 6 May 1998 the Riga Regional Courtallowed the CMA's appeal, finding that Nikolay Slivenko had been a serving Russian military officer until 5 June 1994. Referring to the fact that he had been given housing in Kursk in 1994 following his retirement from the Russian military, the court decided that he had been required to leave Latvia with his family in accordance with the treaty. The court found that the decision of the immigration authorities to annul the applicants' entry in the register had been lawful.

38. On 12 June 1998 the first applicant was informed by the immigration authorities that the deportation order of 20 August 1996 had become effective upon the delivery of the appellate court's judgment of 6 May 1998.

39. On 29 July 1998, on a cassation appeal by the applicants, the Supreme Court confirmed the decision of 6 May 1998. The Supreme Court stated that Nikolay Slivenko had been discharged from the Russian armed forces on 5 June 1994. The Supreme Court noted that the applicants had been allocated the flat in Kursk in the context of the material assistance provided by the United States of America for the withdrawal of Russian troops. Relying on the fact that Nikolay Slivenko had been discharged from the military after 28 January 1992, the Supreme Court concluded that the applicants, as part of his family, had also been required to leave Latvia in accordance with the treaty.

40. On 14 September 1998 the first applicant requested the CMA to defer execution of the deportation order. That was refused on 22 September 1998.

41. On 7 October 1998 the first applicant lodged with the immigration authorities an appeal against the deportation order, requesting a residence permit and her re-entry in the register. She stated, *inter alia*, that Latvia was her and her daughter's motherland as they had lived there all their lives and had no other citizenship, and that she was required to take care of her disabled parents who were permanently resident in Latvia.

42. In the late evening of 28 October 1998 the police entered the applicants' flat. They were arrested at 10.30 p.m. on the same date. On 29 October 1998, at 12.30 a.m., a police officer issued an arrest warrant in respect of the applicants on the basis of section 48-5 of the Aliens Act. The warrant stated that the applicants had no valid documents justifying their stay in Latvia, and that the applicants' entry in the register of Latvian residents had been annulled by the Supreme Court's final judgment of 29 July 1998. It was also mentioned in the warrant that the applicants "did not leave Latvia following the judgment, and there were reasonable grounds to suspect that they were staying in Latvia illegally". The warrant was signed by the applicants. On the basis of the warrant the applicants were immediately detained in a centre for illegal immigrants.

43. Also on 29 October 1998 the Director of the CMA sent a letter to the immigration police, stating that the applicants' arrest had been "premature" in view of the fact that the first applicant had lodged an appeal on 7 October 1998. No reference to domestic law was made in the letter. The Director of the CMA ordered the immigration police to release the applicants. They were released at an unspecified time on 29 October 1998.

44. On 3 February 1999 the applicants received a letter from the Director of the CMA dated 29 October 1998, informing them that they were required to leave Latvia immediately. They were also informed that, if they complied voluntarily with the deportation order, they could thereafter be issued with a visa enabling them to stay in the country for ninety days per annum.

45. On 16 March 1999 the flat of the first applicant's parents was searched by the police in the presence of the second applicant. On the same

date, at 9 a.m., a police officer issued a warrant for the second applicant's arrest on the basis of section 48-5 of the Aliens Act. The warrant stated that the second applicant had no valid document justifying her stay in Latvia, and that there were reasonable grounds to suspect that she was staying in Latvia illegally. The order was signed by the second applicant. She was immediately arrested and thereafter detained for thirty hours in a centre for illegal immigrants. She was released on 17 March 1999.

46. On 11 July 1999 the applicants moved to Russia to join Nikolay Slivenko. By that time the second applicant had completed her secondary education in Latvia. On an unspecified date in 2001 the applicants adopted Russian citizenship as former nationals of the USSR. The applicants now live in Kursk, in accommodation which was provided by the Russian defence authorities. After the applicants left Latvia, their flat in Riga was taken back by the Latvian authorities. Meanwhile, the first applicant's parents continued living in Latvia on the basis of their status as "ex-USSR citizens".

47. According to the applicants, the first applicant's parents are seriously ill, but the applicants have not been able to go to Latviato visit them. The deportation order of 20 August 1996 prohibited the applicants from entering Latvia for five years. That prohibition expired on 20 August 2001. Towards the end of 2001 the applicants obtained visas permitting their stay in Latvia for no more than ninety days per annum.

48. In view of the fact that Nikolay Slivenko had left Latvia voluntarily, the prohibition on entering Latvia was not extended to him. He was allowed to visit Latvia several times in the period between 1996 and 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Citizenship and nationality in Latvia

49. Latvian laws use the term "citizenship" (*pilsonība*) to denote the nationality of a person. In the official English translations of the domestic statutes, the term "nationality" is sometimes used in brackets alongside the term "citizenship". An official English translation of the Aliens Act (Part I) provides, for example, that "an 'alien' [is] a person having the citizenship (nationality) of another State; [a] 'stateless person' [is] a person having no citizenship (nationality)".

B. Categories of Latvian residents

50. Latvian legislation on nationality and immigration identifies several categories of persons, each with its own status defined in a specific Act:

(a) Latvian citizens (*Latvijas Republikas pilsoņi*), whose legal status is governed by the Citizenship Act of 22 July 1994 (*Pilsonības likums*);

(b) "permanently resident non-citizens" (*nepilsoņi*) – that is, citizens of the former USSR who lost their Soviet citizenship following the dissolution of the USSR but have not subsequently obtained any other nationality – who are governed by the Status of Former USSR Citizens Act of 12 April 1995 (*Likums "Par to bijušo PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības"*); this group of persons may also be referred to as "ex-USSR citizens";

(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 Stateless Persons Act of 18 February 1999 (*Likums "Par bezvalstnieka statusu Latvijas Republikā"*), read in conjunction with the Aliens Act and, since 1 May 2003, with the Immigration Act which replaced it;

(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 and Stateless Persons (Entry and Residence) Act of 9 June 1992 (*Likums "Par ārvalstnieku un bezvalstnieku ieceļošanu un uzturēšanos Latvijas Republikā"* – "the Aliens Act") (before 1 May 2003), and the Immigration Act (after that date).

51. The Citizenship Act is based on two principles: the principle of *jus sanguinis* and the doctrine of State succession in matters of international and constitutional law. Accordingly, with certain exceptions, only those persons who had Latvian citizenship on 17 June 1940 (the date on which Latvia came under Soviet domination) and their descendants are recognised *ipso jure* as Latvian citizens (section 2(1)). The fact of having been born within Latvian territory or having been resident there for a long period does not in itself confer Latvian citizenship; accordingly, citizens of the former USSR who arrived in Latvia during the Soviet era (1944-91) and their descendants were not automatically granted Latvian citizenship after Latvia had regained its independence.

52. Furthermore, the Citizenship Act provides for the possibility of becoming a Latvian citizen by means of naturalisation, in accordance with the conditions and procedure laid down in Chapter II of the Act. Persons seeking naturalisation as Latvian citizens must have been lawfully resident in Latvia for at least the past five years, have a legal source of income, pass an examination testing proficiency in Latvian, be familiar with the Latvian Constitution and national anthem, have a basic knowledge of Latvian history, swear an oath of allegiance and, where appropriate, renounce their existing citizenship (section 12). Section 11(1) lists the grounds on which naturalisation may be refused; for example the provision prohibits the naturalisation of persons who

> "... after 17 June 1940 chose the Republic of Latvia as their place of residence immediately after being discharged from the USSR (Russian) armed forces, and who

did not have their permanent residence in Latvia on the date of their conscription or enlistment ...".

53. In the version in force before 25 September 1998, section 1 of the Status of Former USSR Citizens Act provided:

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

In the version in force since 25 September 1998, section 1 of the Status of Former USSR Citizens Act provides:

"(1) The persons governed by this Act – 'non-citizens' – shall be those citizens of the former USSR, and their children, who are resident in Latvia ... and who satisfy all the following criteria:

1. on 1 July 1992 they were registered as being resident within the territory of Latvia, regardless of the status of their housing; or their last registered place of residence by 1 July 1992 was in the Republic of Latvia; or a court has established that before the above-mentioned date they had been resident within the territory of Latvia for not less than ten years;

2. they do not have Latvian citizenship; and

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

(2) The legal status of persons who arrived in the Republic of Latvia after 1 July 1992 shall be determined by the Aliens and Stateless Persons Acts.

(3) The present Act shall not apply to:

1. military specialists engaged in the operation and dismantling of Russian Federation military [radar equipment] installed in the territory of Latvia, and civilians sent to Latvia for that purpose;

2. persons who were discharged from the armed forces after 28 January 1992, if on the date of their enlistment they were not permanently resident in the territory of Latvia and if they are not close relatives of Latvian citizens;

3. spouses of the persons [mentioned above] and members of their families (children and other dependants) living with them, where, irrespective of the date of their arrival, they arrived in Latvia in connection with the service of a member of the Russian Federation (USSR) armed forces;

4. persons who have received compensation for establishing their permanent residence abroad, regardless of whether the compensation was paid by a Latvian central or local authority or by an international or foreign authority or foundation; or

5. persons who on 1 July 1992 were officially registered as being resident for an indefinite period within a member country of the Commonwealth of Independent States."

Section 2( )2 of the Act prohibits the deportation of "non-citizens", "save where deportation takes place in accordance with the law and another State has agreed to receive the deportee". Furthermore, section 5 (which became section 8 on 7 April 2000) provides:

"(1) Section 2 ... of this Act shall also [apply to] stateless persons and their descendants who are not and have never been citizens of any State and who, before 1 July 1992, were resident within the territory of Latvia and were registered as being permanently resident there ...

(2) Section 2 of this Act shall also apply to nationals of other States and their descendants who were resident within the territory of Latvia before 1 July 1992 and were registered as being permanently resident there ..., provided that they do not have Latvian citizenship ..."

Lastly, section 49 provides that international agreements on immigration "concluded by the Republic of Latvia and approved by Parliament" take precedence over national legislation.

54. The relevant provisions of the Aliens Act were worded 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 from 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 23

"The following may obtain a permanent residence permit:

...

(2) the spouse of a Latvian citizen, of a 'permanently resident non-citizen' of Latvia or of an alien or stateless person who has [himself or herself] been granted a permanent residence permit, in accordance [with section] ... 26 of this Act, and the spouse's minor or dependent children ..."

55. When the Aliens Act came into force, it did not contain any provision excluding serving members of the Russian armed forces who had been discharged after 28 January 1992. Regulation no. 297 of 6 August 1996, confirmed by the Act of 18 December 1996, amended section 23 as follows:

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

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

This section shall not apply to:

1. military specialists engaged in the operation and dismantling of Russian military [radar equipment] installed in the territory of Latvia, and civilians sent to Latvia for that purpose;

2. persons who were discharged from active military service after 28 January 1992 if on the date of their enlistment they were not permanently resident in the territory of Latvia and if they are not close relatives of Latvian citizens; or

3. spouses of the persons [mentioned above] and members of their families (children and other dependants) living with them, where, irrespective of the date of their arrival, they arrived in Latvia in connection with the service of a member of the Russian Federation (USSR) armed forces."

56. Persons who are lawfully resident in Latvia are entered in the register of residents and given a personal identification number (*personas kods*). The functioning of the register, which is kept by the interior authorities, is laid down in the Register of Residents Act of 27 August 1998 (*Iedzīvotāju reģistra likums*), which replaced the previous Act of 11 December 1991 (*Likums "Par iedzīvotāju reģistru"*).

57. According to the information provided by the respondent Government, about 900 persons – close relatives of Russian military officers required to leave Latvia under the treaty – were able to legalise their stay in Latvia because those persons were either Latvian citizens or close relatives of Latvian citizens, and had not arrived in Latvia in connection with service in the Soviet armed forces.

C. Expulsion of aliens and their detention pending deportation

58. Section 35 of the Aliens Act lists the circumstances in which a residence permit, even a temporary one, will not be issued. Section 36 of the Aliens Act lists the grounds on which a residence permit may be withdrawn. The fact of having been a serving member of the Russian armed forces after 28 January 1992 does not appear in either of these lists.

Point 1 of section 36 provides that a residence permit should be withdrawn where its holder "has knowingly submitted false information to the Department". Point 3 provides for the same consequences if the holder of a residence permit "arouses reasonable suspicion on the part of the competent authorities that he or she presents a threat to public order and safety or national security". Point 6 concerns persons who have "entered the service of a foreign State, whether in the armed forces or otherwise, except in cases provided for by international agreements". Lastly, point 14 concerns persons who have "received compensation for establishing their permanent residence abroad, regardless of whether the compensation was paid by a Latvian central or local authority or by an international or foreign authority or foundation".

59. Section 38 of the Act provides that the head of the Department of the Interior or of one of its regional offices should issue a deportation order where an alien or stateless person resides within the territory of Latvia without being in possession of a valid visa or residence permit or in any other circumstances listed in Article 36.

60. Sections 39 and 40 provide:

Section 39

"Where a deportation order is issued in respect of a person with dependent relatives in Latvia, the latter must leave with him or her. The deportation order shall not apply to members of his or her family who are Latvian citizens or non-citizens."

Section 40

"A person shall leave the territory of Latvia within seven days after the deportation order has been served on him or her, provided that no appeal is lodged against the order in the manner prescribed in this section.

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

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

61. Under section 48, where a person has not complied with a deportation order, he or she may be forcefully removed from Latvia by the police. Under section 48-4, the police have the right to arrest a person in order to execute a deportation order.

Under section 48-5, the police have the right to arrest a person where no decision to deport him or her has been taken, if:

(1) the person has illegally entered the State;

(2) the person has knowingly provided false information to the competent authorities in order to receive a visa or residence permit;

(3) the authorities have a well-founded suspicion that the person will hide, or that he or she has no permanent place of residence; or

(4) the authorities have a well-founded suspicion that the person poses a threat to public order or national security.

In such cases the police have the right to detain a person for not more than seventy-two hours, or, where a prosecutor has been notified, for not more than ten days. The police must immediately inform the immigration authorities about the arrest, with a view to their issuing an order for the deportation of the person by the use of force. The person concerned can appeal against that deportation order in accordance with the provisions of section 40 of the Act.

By section 48-6, a person in respect of whom such a deportation order has been issued may be detained until the execution of the order, and a prosecutor must be notified of the order.

Section 48-7 provides that an arrested person must be immediately informed of the reasons for his arrest, and of his right to have legal assistance.

By section 48-10, the police have the right to arrest aliens and stateless persons who reside in Latvia without a valid visa or residence permit. Such persons must be brought to the immigration authorities or to a police remand centre within three hours.

D. Action for a breach of personal rights

62. Chapter 24-A of the Code of Civil Procedure guarantees the right to appeal to a court against administrative acts breaching personal rights.

Article 239-2 § 1 states that a complaint against an action (decision) of a State authority may be submitted to a court, after a hierarchical complaint in this connection has been determined by the competent administrative authority.

Under Article 239-3 § 1 of the Code, a complaint to a court may be submitted within one month from the date of the notification of the dismissal of the hierarchical complaint, or within one month from the date of the contested act, provided that the person concerned has not received a decision.

Article 239-5 provides that the court must examine the complaint within ten days, having questioned the parties and other persons, if necessary.

Pursuant to Article 239-7, if the court considers that the act concerned violates an individual's personal rights, the court should adopt a judgment obliging the authority to remedy the violation.

E. "Registration" of the place of residence

63. Under the Soviet legislation, a citizen was issued with a "registration" (*propiska*) at a particular address, by way of a special seal in his passport attesting to his place of permanent residence for the purposes of domestic law. Following the restoration of Latvian independence in 1991, the "registration" system remained effective under the Latvian legislation.

III. THE LATVIAN-RUSSIAN TREATY ON THE WITHDRAWAL OF THE RUSSIAN TROOPS

64. The treaty between Latvia and Russia on the conditions and schedule for the complete withdrawal of Russian Federation military troops from the territory of the Republic of Latvia and their status pending withdrawal ("the treaty") was signed in Moscow on 30 April 1994, published in *Latvijas Vēstnesis* (Official Gazette) on 10 December 1994, and came into force on 27 February 1995.

In the preamble of the treaty the parties stated, *inter alia*, that by signing the treaty they wished to "eradicate the negative consequences of their common history".

65. The other relevant provisions of the treaty read as follows:

Article 2

"The Russian Federation's military troops shall leave the territory of the Republic of Latvia by 31 August 1994.

The withdrawal of Russian Federation military troops shall concern all members of the armed forces of the Russian Federation, members of their families and their movable property.

The closure of military bases in the territory of the Republic of Latvia and the discharge of military personnel after 28 January 1992 shall not be regarded as the withdrawal of military troops.

..."

Article 3, fifth paragraph

"The Russian Federation shall inform the Republic of Latvia about its military personnel and their families in the territory of Latvia. It shall provide regular information, at least every three months, about the withdrawal of, and quantitative changes in, each of the above-mentioned groups. ..."

Article 9

"The Republic of Latvia shall guarantee the rights and freedoms of Russian Federation military troops affected by the withdrawal, and also of their families, in accordance with the legislation of the Republic of Latvia and the principles of international law."

Article 15

"This treaty ... shall be applied on a provisional basis from the date of signature and shall come into force on the date of exchange of the instruments of ratification. ..."

66. The conditions for the implementation by Latvia of the above-mentioned treaty are laid down in Regulation no. 118 of 22 April 1995, the relevant parts of the second paragraph of which provide:

"The Ministry of the Interior:

...

2.2. shall issue residence permits, after checking the list of military personnel ... to dischargedmembers of the Russian armed forces who were resident within the territory of Latvia on 28 January 1992 and have been registered by the Nationality and Immigration Department ...

2.3. shall issue deportation orders in respect of members of the armed forces who are unlawfully resident in the Republic of Latvia, and shall supervise the execution of such orders; ...”

67. An agreement between Russia and Latvia, also signed on 30 April 1994, concerns the social protection of retired members of the Russian Federation armed forces and their families residing within the territory of the Republic of Latvia. Article 2 of the agreement, which applies principally to persons discharged from the Soviet armed forces before Latvia regained its independence, provides:

“The persons to whom this agreement applies shall enjoy their fundamental rights within the territory of the Republic of Latvia, in accordance with the standards of international law, the provisions of this agreement and Latvian legislation.

The persons to whom this agreement applies ... and who were permanently resident within the territory of the Republic of Latvia before 28 January 1992, including those in respect of whom the relevant formalities have not been carried out and who are on the lists verified by both parties and appended to this agreement, shall retain the right to reside without hindrance in the territory of Latvia, if they so desire. By agreement between the Parties, any persons who were permanently resident within the territory of Latvia before 28 January 1992 and, for various reasons, have not been included on the lists referred to above may be added to them. ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

68. The applicants complained that their removal from Latvia had violated Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

A. The parties' submissions

1. The applicants

69. The applicants claimed that their removal from Latvia had violated their right to respect for their "private life", their "family life" and their "home" within the meaning of Article 8 of the Convention. They considered that their removal had not been required by Latvian law or by the Latvian-Russian treaty on the withdrawal of the Russian troops, interpreted correctly, and that in any event the resultant interference with their above rights had pursued no legitimate aim and had not been necessary in a democratic society. The applicants also stated that, on the basis of the Latvian courts' incorrect interpretation of the Latvian-Russian treaty on the withdrawal of the Russian troops, they had lost their legal status in Latvia and had been forced to leave the country as a result of political changes rather than of their own actions.

70. In this connection, the applicants submitted that they did in fact have the right to obtain legal status in Latvia according to Latvian law, and that the Latvian-Russian treaty on the withdrawal of the Russian troops had no bearing on that right. In their view, they were entitled to be registered as permanent residents of Latvia under the Status of Former USSR Citizens Act. According to the applicants, the only restriction imposed by that law (section 1) and also by the Aliens Act (section 23) on the right to obtain permanent residence in Latvia concerned persons who had arrived in Latvia as a member of the family of a Soviet or Russian military officer who had not retired from service by 28 January 1992. However, the first applicant had arrived in Latvia as a member of the family of her father, who had retired from the military before 28 January 1992, and the second applicant had been born in Latvia and had lived there all her life. Accordingly, the applicants were entitled to obtain the status of "ex-USSR citizens" and permanent residence permits, and to be entered in the register of Latvian residents. The applicants concluded in this respect that their entry in the register on 3 March 1994 had been perfectly lawful.

71. The applicants further submitted that the Latvian authorities had improperly interpreted Latvian law by subsequently quashing their legal status in Latvia on the ground that they were close relatives of Nikolay Slivenko. In the applicants' view, their right to live in Latvia was not dependent on the legal status of Nikolay Slivenko. The applicants admitted that the Latvian-Russian treaty on the withdrawal of the Russian troops had required Russian military officers to leave Latvia. But the treaty did not deal with situations such as the applicants', where members of the family of a Russian military officer had arrived in Latvia independently from him, had entered into family ties with him while already living there, and had obtained legal status in Latvia following the restoration of Latvia's independence. Thus, the treaty could not be applied in regard to the applicants "without finding out how they had arrived in Latvia and what national laws regulated their status". In the applicants' view, the Latvian authorities' decision to apply the treaty and to annul their legal status in Latvia had been unlawful.

72. The applicants also contested the respondent Government's allegation that the Latvian authorities had annulled their legal status in Latvia on the further ground that when applying for permanent residence the first applicant had submitted false information as to Nikolay Slivenko's occupation. The applicants stated that the first applicant had never lied to the authorities about her husband's status, and that the document submitted in this connection by the respondent Government was falsified (see paragraphs 19-20 above). In this respect the applicants also pointed out that during the subsequent proceedings concerning the legality of their stay in Latvia the immigration authorities had not referred to any false information submitted by them, and the Latvian courts had not established that the applicants had at any point submitted the information mentioned by the respondent Government. The applicants concluded in this respect that they ought to have been allowed to stay in Latvia, that the deportation order of 20 August 1996 had constituted an interference with their rights under Article 8 of the Convention and that that interference had not been authorised by law within the meaning of the second paragraph of that Article.

73. Furthermore, the interference had pursued no legitimate aim within the meaning of that provision, and had in any event not been necessary in a democratic society. The applicants stated that during the proceedings concerning the legality of their stay in Latvia no consideration of national security, public order or prevention of crime had been mentioned by the domestic courts; the proceedings had related solely to the legality of their stay in accordance with the domestic legislation. Therefore, no ground referred to in the second paragraph of Article 8 had been advanced by the domestic courts to justify their removal from Latvia.

74. According to the applicants, they were completely integrated into Latvian society and had developed irreplaceable personal, social and economic ties in Latvia as a result of the following circumstances.

(a) The first applicant had lived in Latvia from the age of one month and the second applicant had been born in Latvia and had always lived there.

(b) There had been no separate lists of Soviet military officers or their close relatives in the register of residents during the Soviet rule of Latvia until 1991. During that period Nikolay Slivenko and the applicants had been fully-fledged citizens of the USSR living in the territory of Latvia and having their “registration” (see paragraph 63 above) in Riga; therefore their formal residential status until 1991 had been the same as that of other Soviet citizens living in Latvia.

(c) The first applicant had been educated in Latvia, and from the age of 17 she had worked in various organisations and companies in the city of Riga. She had never worked for a Soviet or Russian military organisation.

(d) From 1991 until 1995 the first applicant had worked in certain Latvian companies, and in one of them she had worked as a secretary. In the

first applicant's view, this fact attested to her proficiency in the Latvian language.

(e) The second applicant had completed her secondary education in Latvia in 1999, obtaining, *inter alia*,a certificate attesting to her fluency in the Latvian language.

(f) The first applicant's parents had lived in Latvia since 1959; they had obtained the status of "ex-USSR citizens" and currently lived in Latvia.

(g) Nikolay Slivenko had arrived in Latvia in 1977. Following the first applicant's marriage to him in 1980, they had lived in a flat in Rigaamong the civilian population, not in the Soviet army barracks or any other special or restricted area.

(h) Almost half of the Latvian population during the Soviet era and about 40% of the Latvian population today consisted of persons of Russian ethnic origin. Therefore, the applicants had had no problems leading a normal life in Latvia as a result of the fact that they were native Russianspeakers. In any event, while the applicants had graduated from educational establishments teaching in Russian, they were also fully proficient in Latvian.

75. In view of the above circumstances, the applicants were completely integrated into Latvian society, and the level of their integration had not been different from that of persons having the status of permanent residents of Latvia. Following the restoration of Latvian independence in 1991, the applicants had considered that their future lay exclusively inLatvia. The applicants had had no connections, acquaintances or accommodation in any other State. After Nikolay Slivenko's move to Russia in 1996, he had obtained a flat from the local authorities in Kursk as a retired serviceman, not in compensation for his removal from Latvia. The applicants submitted that the Latvian authorities had separated them by force from Nikolay Slivenko, who had not been joined in Russia by the applicants until 1999. In addition, in forcing the applicants out of Latvia, the authorities had also separated them from the first applicant's elderly parents. The prohibition on the applicants' entering Latvia as visitors until 20 August 2001 had aggravated that situation. Against this background, the right to respect for the applicants' private life, family life and home had been violated as a result of their removal from Latvia.

2. The respondent Government

76. The respondent Government submitted that the issue of the applicants' removal from Latvia ought to be examined in the context of the eradication of the consequences of the illegal occupation of Latvia by the Soviet Union, which had been completed by the withdrawal of the Russian troops from the territory of Latvia.

77. The respondent Government further submitted that there had been no interference with the applicants' rights under Article 8 of the Convention. In any event, even assuming that their removal had constituted an interference

with their rights under Article 8, it had been compatible with Latvian law and the Latvian-Russian treaty on the withdrawal of the Russian troops. Furthermore, the interference had pursued the legitimate aims of the protection of national security and the prevention of disorder and crime and it had been necessary in a democratic society in accordance with the second paragraph of Article 8 of the Convention.

78. The respondent Government stated that, pursuant to the third paragraph of Article 2of the Latvian-Russian treaty on the withdrawal of the Russian troops, all those who had been active servicemen in the Russian army on 28 January 1992, including those discharged thereafter, had been required to leaveLatvia. Therefore, the treaty had been duly applied in regard to Nikolay Slivenko and the applicants as members of his family, and the applicants' removal had been compatible with the treaty and Latvian law.

79. According to the respondent Government, prior to the withdrawal of the Russian armed forces from Latvia, all Russian military personnel stationed in Latvia had been required to obtain temporary residence permits. It was in this context that on 31 March 1994 the Russian authorities had submitted a list indicating the names of Russian military officers, including Nikolay Slivenko and the applicants as members of his family, in order for such temporary residence permits to be issued. The respondent Government stated that the list had attested that the applicants were "related to [members of the] Russian armed forces, [had no] right to be entered in the register of Latvian residents, and thus would leave Latvia during the forthcoming withdrawal of the Russian troops" (see also paragraphs 23-24 above).

80. The lists of 10 December 1994 and 16 October 1995 bearing the name of Nikolay Slivenko had been submitted by the Russian embassy in Latvia pursuant to the fifth paragraph of Article 3 of the Latvian-Russian treaty on the withdrawal of the Russian troops. The list of 10 December 1994 had been submitted to the Latvian authorities by the head of the Social Maintenance Section of the Russian embassy in Riga, indicating the names of the Russian military personnel, including Nikolay Slivenko, who had been discharged from the Russian armed forces after 28 January 1992 (see also paragraph 27 above). The list of 16 October 1995 had been submitted by the same Russian authority as an update of the list of 10 December 1994, indicating the Russian military personnel who had left Latvia or had remained in Latvia, mostly for technical reasons, and persons who had requested permanent residence in Latvia despite the fact that they had been discharged from the Russian armed forces after 28 January 1992 (see also paragraph 28 above).

81. The respondent Government stated that the submission by the Russian authorities of the above lists, together with the fact that Nikolay Slivenko had been granted accommodation in Russia, had constituted notification by Russia that Nikolay Slivenko and the applicants, as members of his family, were subject to the provisions of the treaty.

82. The respondent Government further stated that the treaty had made no distinction between close relatives of a Russian military officer who had arrived in Latvia in connection with that officer's duties, and those persons who had lived in Latvia prior to joining the family of a military officer required to leave Latvia under the treaty. Therefore, the fact that the first applicant had arrived in Latvia as a relative of her father (who had not been required to leave Latvia under the treaty), and not as a relative of Nikolay Slivenko, had no bearing on the applicants' obligation under the treaty to leave Latvia together with Nikolay Slivenko.

83. With reference to the interpretation by the Latvian courts of the provisions concerning the register of residents (see paragraph 56 above), the respondent Government stated that domestic law (considered separately from the treaty) provided for specific legal treatment of persons who were close relatives of a Russian military officer required to leave the country under the treaty, and who had not arrived in Latvia in connection with the service of any of their relatives in the Soviet armed forces. Such persons could obtain permanent residence in Latvia, provided that they had grounds recognised in Latvian law for doing so. By contrast, no right to residence could be afforded to persons such as the applicants, who were close relatives of a Russian military officer required to leave Latvia under the treaty, and who had arrived in Latvia in connection with the service of another relative in the Soviet armed forces, even if that relative had been entitled to remain in Latvia. The respondent Government concluded in this connection that the applicants had been unable to claim permanent residence in Latvia under the domestic law, not only because they belonged to Nikolay Slivenko's family, but also because the first applicant had arrived in Latvia as a member of the family of another Soviet military officer, her father.

84. The respondent Government stated that they had no statistics as to how many persons had been in a legal situation similar to that of the applicants –that is, being members of the family of a Russian military officer required to leave Latvia under the treaty and, at the same time, belonging to the group of persons who had arrived in Latvia in connection with the service of other relatives in the Soviet armed forces.

85. The respondent Government could, however, confirm that about 900 persons – relatives of Russian military officers required to leave Latvia under the treaty – had been able to legalise their stay in Latvia because those persons had not arrived in Latvia in connection with their relatives' service in the Soviet armed forces, and had been either Latvian citizens or relatives of Latvian citizens. However, the applicants did not belong to any of those categories.

86. The respondent Government further submitted that the Latvian authorities had also annulled the applicants' legal status in Latvia on the ground that the first applicant had submitted false information as to Nikolay Slivenko's occupation. The respondent Government stated that the

document submitted by them as confirmation of the false statements by the first applicant had been genuine, that it had been included in the casefile during the domestic proceedings, and that it had been used as evidence and referred to before the Latvian courts (see paragraphs 19-20 above).

87. The respondent Government also stated that the applicants had not been prevented from visiting Latvia following their move to Russia. Furthermore, the applicants had been informed that they could obtain an entry visa to Latvia if they complied voluntarily with the deportation order. The applicants' statement that they had therefore been prevented from taking care of the first applicant's parents was thus unjustified.

88. According to the respondent Government, the applicants, while living in the territory of Latvia, had never been integrated into Latvian society in view of the following circumstances.

(a) The applicants had not chosen Latvia as their place of residence but had arrived there in connection with the military service of members of theirfamily.

(b) Soviet military servicemen had not had the same residence status in the former Soviet Union as other Soviet citizens; upon commencing their service, all military servicemen had been required to hand over their passport to the military authorities, to be replaced by a conscription document serving as their only piece of identification.

(c) In their everyday life the military personnel of the USSR stationed in the territory of Latvia had not been required to deal with the local inhabitants or authorities as the majority of services, such as medical care and accommodation, had been provided by the military authorities.

(d) The applicants were not proficient in the Latvian language; in particular, the certificate awarded to the second applicant on leaving secondary school attested to the lowest degree of proficiency in the Latvian language.

(e) According to the respondent Government, the facts that the applicants were Russian-speaking, held Russian citizens' passports and had accommodation in Russia also served as evidence that they had integrated into Russian, not Latvian, society. The respondent Government also stated that the first applicant's parents had lived separately from the applicants, and that there was no evidence that they had been in regular need of help from them for medical or any other care.

89. Against this background, the respondent Government concluded that the applicants' removal had been compatible with Article 8 of the Convention, given in particular that the Convention could not be interpreted as creating rights for military servicemen of a foreign State or members of their family to claim permanent residence in the country in which they are posted.

B. The third party's comments

90. According to the Russian Government, the removal of the applicants had not been required by the Latvian-Russian treaty on the withdrawal of the Russian troops as Nikolay Slivenko had already been discharged from the Russian armed forces on 2 March 1994. The treaty had not concerned persons who had been discharged from the armed forces before its signature and entry into force. The Russian authorities had not indicated to the Latvian authorities that Nikolay Slivenko and his family should be removed under the fifth paragraph of Article 3 of the treaty. The interpretation by the respondent Government that they had had to be removed from Latvia as part of the treaty-based withdrawal was therefore wrong.

91. The applicants had completely integrated into Latvian society as they had been nationals of the Latvian Soviet Socialist Republic. There had been no formal or other differences in the applicants' status compared with that of other USSR citizens living in Latvia at the material time. Any distinction of the applicants' legal status in Latvia as a result of the political changes in 1991 had therefore been completely unjustified.

92. In any event, the interference with the applicants' rights as a result of their removal had pursued no legitimate aim within the meaning of Article 8 § 2 of the Convention, and had not been necessary in a democratic society as there was no evidence showing that Nikolay Slivenko or the applicants could have caused any damage to the interests of security, safety, public order or the economic well-being of Latvia. Furthermore, the Latvian authorities had taken no account of the fact that the applicants had lived in Latvia almost all their lives and had been completely integrated into Latvian society. The third party concluded that the applicants had been arbitrarily excluded from their homeland in breach of Article 8 of the Convention.

C. The Court's assessment

1. Interference with the applicants' rights under Article 8 § 1 of the Convention

93. The applicants complained that their removal from Latvia had violated their rights guaranteed by Article 8 of the Convention in that the measures taken against them in that connection had not respected their private life, their family life and their home in Latvia. They claimed that those measures had not been in accordance with the law, had not pursued any legitimate aim and could not be regarded as necessary in a democratic society within the meaning of Article 8 § 2. The Court must first determine whether the applicants are entitled to claim that they had a “private life”, “family life” or “home” in Latvia within the meaning of Article 8 § 1, and, if so, whether their removal from Latvia amounted to an interference with their right to respect for them.

94. In the Convention case-law relating to expulsion and extradition measures, the main emphasis has consistently been placed on the “family

life" aspect, which has been interpreted as encompassing the effective "family life" established in the territory of a Contracting State by aliens lawfully resident there, it being understood that "family life" in this sense is normally limited to the core family (see, *mutatis mutandis*, *Marckx v. Belgium*,judgment of 13 June 1979, Series A no. 31, p. 21, § 45; see also, *X v. Germany*,no. 3110/67, Commission decision of 19 July 1968, Collection of decisions 27, pp. 77-96). The Court has, however, also held that the Convention includes no right, as such, to establish one's family life in a particular country (see, *inter alia*, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 68; *Gül v. Switzerland*, judgment of 19 February 1996, *Reports of Judgments and Decisions* 1996-I, pp. 174-75, § 38; and *Boultif v. Switzerland*,no. 54273/00, § 39, ECHR 2001-IX).

95. The Court further observes that the case-law has consistently treated the expulsion of long-term residents under the head of "private life" as well as that of "family life", some importance being attached in this context to the degree of social integration of the persons concerned (see, for example, *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, pp. 88-89, §§ 42-45). Moreover, the Court has recognised that Article 8 applies to the exclusion of displaced persons from their homes (see *Cyprus v. Turkey* [GC], no. 25781/94, § 175, ECHR 2001-IV).

96. As regards the facts of the present case, the first applicant arrived in Latvia in 1959, when she was only one month old. Until 1999, by which time she was 40 years of age, she continued to live in Latvia. She attended school there, found employment and married. Her daughter, the second applicant, was born in Latvia in 1981 and lived there until the age of 18, when she was compelled to leave the country together with her mother, having just completed her secondary education (see paragraphs 16 and 46 above). It is undisputed that the applicants left Latvia against their own will, as a result of the unsuccessful outcome of the proceedings concerning the legality of their stay in Latvia. They were thus removed from the country where they had developed, uninterruptedly since birth, the network of personal, social and economic relations that make up the private life of every human being. Furthermore, as a result of the removal, the applicants lost the flat in which they had lived in Riga (see paragraphs 32 and 46 above). In these circumstances, the Court cannot but find that the applicants' removal from Latvia constituted an interference with their "private life" and their "home" within the meaning of Article 8 § 1 of the Convention.

97. In contrast, even though the applicants evidently had an established "family life" in Latvia, the impugned measures of removal from the country were not aimed at breaking up the family, nor did they have such an effect, given that the Latvian authorities deported the family, namely Nikolay, Tatjana and Karina Slivenko, in implementation of the Latvian-Russian treaty on the withdrawal of Russian troops. In the light of the Court's above-mentioned case-law, it is clear that under the Convention the applicants

were not entitled to choose in which of the two countries –Latvia or Russia– to continue or re-establish an effective family life. Furthermore, the existence of "family life" could not be relied on by the applicants in relation to the first applicant's elderly parents, adults who did not belong to the core family and who have not been shown to have been dependent members of the applicants' family, the applicants' arguments in this respect not having been sufficiently substantiated. Nonetheless, the impact of the impugned measures on the applicants' family life – notably their ultimate enforced migration as a family unit to the Russian Federation – is a relevant factor for the Court's assessment of the case under Article 8 of the Convention. The Court will also take into account the applicants' link with the first applicant's parents (the second applicant's grandparents) under the head of the applicants' "private life" within the meaning of Article 8 § 1 of the Convention.

98. The Court will accordingly concentrate its further examination on the question whether the interference with the applicants' right to respect for their "private life" and their "home" was justified or not.

2. Justification of the interference

99. Such interference will be in breach ofArticle 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

(a) "In accordance with the law"

100. According to the established case-law of the Court, the expression "in accordance with the law" requires that the impugned measure should have some basis in domestic law, and it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Amann v. Switzerland* [GC], no. 27798/95, § 50, ECHR 2000-II).

101. In the present case, the respondent Government relied on two different grounds as the legal basis for the deportation order issued in respect of the applicants: in the first place, they relied on the decisions of the Latvian courts, according to which the applicants were required to leave the country under the provisions of the Latvian-Russian treaty on the withdrawal of the Russian troops; secondly, they alleged, as an additional reason justifying the deportation of the applicants, that the first applicant, when requesting her entry in the register of Latvian residents, had submitted false information concerning her husband's occupation.

102. The Court considers it appropriate to deal first with the second, subsidiary ground relied on by the respondent Government. In this context, it notes that the applicants and the third party disputed that false information had been submitted and claimed that the document relied on by the

respondent Government in this connection was a forgery. Indeed, the third party submitted an expert report by a forensic institute in Moscow which, they claimed, proved that the document had been falsified. They further asked the Court to order an independent expert opinion with a view to corroborating the Moscow institute's findings. However, in a decision of 12 July 2002 the Court rejected that request (see paragraph 12 above).

103. The Court points out that the basis for its examination must always be the impugned decisions of the domestic authorities and the legal grounds on which they relied. It cannot take into account any alternative legal grounds suggested by the respondent Government in order to justify the measure in question if those grounds are not reflected or inherent in the decisions of the competent domestic authorities. In the present case, it has not been shown that any of the decisions of the Latvian authorities, either in the proceedings brought by the first applicant's husband prior to the issuing of the deportation order (see paragraphs 25-26 and 29-30 above) or in those subsequently brought by the applicants themselves with a view to challenging that order (see paragraphs 34-39 above), relied on the submission of false information as a ground for justifying the removal of any of the members of the Slivenko family from Latvian territory. Under these circumstances, the respondent Government's submissions on this point must be disregarded and the applicants' and the third party's request for an expert opinion no longer has any purpose.

104. There remains the first and principal ground relied on by the respondent Government, the argument that the applicants' removal from Latvia was required by the bilateral treaty on the withdrawal of the Russian troops. In this connection, the applicants and the third party argued that the Latvian courts had incorrectly interpreted the treaty, that according to a correct interpretation of the treaty the first applicant's husband and indeed the applicants themselves could not have been ordered to leave Latvia, and that the Russian authorities had never requested the removal of the applicants' family from Latvia. The Court notes that here, too, the parties disagreed on certain factual matters, namely the date of the retirement of the first applicant's husband and the nature and authenticity of the lists of 31 March 1994, 10 December 1994 and 16 October 1995.

105. The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Amann*,cited above, § 52). This also applies where international treaties are concerned; it is for the implementing party to interpret the treaty, and in this respect it is not the Court's task to substitute its own judgment for that of the domestic authorities, even less to settle a dispute between the parties to the treaty as to its correct interpretation. Nor is it the task of the Court to re-examine the facts as found by the domestic authorities as the basis for their legal assessment. The Court's function is to review, from the point of view of the Convention, the reasoning in the decisions of the domestic courts rather

than to re-examine their findings as to the particular circumstances of the case or the legal classification of those circumstances under domestic law.

106. In the present case, the Latvian courts stated that the ground for the applicants' removal had been the Latvian-Russian treaty on the withdrawal of the Russian troops. In this context they also interpreted certain provisions of Latvian domestic legislation in the light of the treaty, in particular by concluding that neither the Russian military officers required to leave the country nor the members of their families qualified for residential status in Latvia as "ex-USSR citizens" (Article 2, second paragraph, of the treaty). Admittedly, at the time when the applicants first applied for their entry in the register of residents as "ex-USSR citizens", the treaty was not yet in force and, accordingly, only the relevant provisions of the domestic legislation applied. However, later on, the relevant domestic provisions could legitimately be interpreted and applied in the light of the treaty, a legal instrument which was clearly accessible to the applicants at the relevant time.

107. As to the foreseeability of the combined application of the treaty provisions and domestic law in the applicants' case, the Court is also satisfied that the requirements of the Convention were met. The applicants must have been able to foresee to a reasonable degree, at least with the advice of legal experts, that they would be regarded as covered by the treaty provisions requiring the departure of relatives of Russian military officers affected by the withdrawal and that, consequently, they could not be granted permanent residential status in Latvia as provided for in the domestic legislation. Absolute certainty in this matter could not be expected.

108. In any event, the decisions of the Latvian courts do not appear arbitrary. In particular, as regards the applicability of the treaty to the applicants' situation, the Court does not find arbitrary the interpretation of the third paragraph of Article 2 of the treaty according to which the cut-off date applied for determining whether or not a military officer was required to leave was 28 January 1992, the date when the Russian Federation assumed jurisdiction over the former Soviet armed forces stationed in Latvia (see paragraph 17 above). As the first applicant's husband was discharged from the armed forces after this date, the treaty could reasonably be regarded as applying to him and his family. Also, the date of his actual discharge, whether before or after the signature of the treaty, could reasonably be regarded as irrelevant to the applicability of the treaty, notwithstanding the contrary view of the third party (see Articles 2, third paragraph, and 15 of the treaty). Furthermore, as to the legal assessment of the various lists submitted by the Russian authorities to the Latvian authorities, it could reasonably be considered that the validity and lawfulness of the deportation order itself, a measure taken under Latvian domestic law in implementation of the treaty, did not depend on the submission of a specific request by Russia.

109. The applicants' removal from Latvia can accordingly be considered to have been "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

(b) Legitimate aim

110. The respondent Government submitted that the applicants' removal from Latvia had pursued the legitimate aims of the protection of national security and the prevention of disorder and crime. They emphasised in this connection that the measure had to be seen in the context of the "eradication of the consequences of the illegal occupation of Latvia by the Soviet Union". The applicants contested those submissions, none of the above aims having been mentioned in the domestic proceedings concerning their own case, which had been limited to reviewing the lawfulness of their residential status in Latvia. The third party objected to the respondent Government's statement describing the situation of Latviaprior to 1991 as having been illegal under international law.

111. The Court considers that the aim of the particular measures taken in respect of the applicants cannot be dissociated from the wider context of the constitutional and international law arrangements made after Latvia regained its independence in 1991. In this context it is not necessary to deal with the previous situation of Latvia under international law. It is sufficient to note that after the dissolution of the USSR, former Soviet military troops remained in Latvia under Russian jurisdiction, at the time when both Latvia and Russia were independent States. The Court therefore accepts that with the Latvian-Russian treaty on the withdrawal of the Russian troops and the measures for the implementation of this treaty, the Latvian authorities sought to protect the interest of the country's national security.

112. In short, the measures of the applicants' removal can be said to have been imposed in pursuance of the protection of national security, a legitimate aim within the meaning of Article 8 § 2 of the Convention.

(c) "Necessary in a democratic society"

113. A measure interfering with rights guaranteed by Article 8 § 1 of the Convention can be regarded as being "necessary in a democratic society" if it has been taken in order to respond to a pressing social need and if the means employed are proportionate to the aims pursued. The national authorities enjoy a certain margin of appreciation in this matter. The Court's task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other.

114. In the present case the applicants, who had resided in Latvia almost all their lives, but who had become stateless when Latvia regained its independence in 1991, were required to leave the country under a deportation order issued in respect of them, as members of the family of a

retired Russian military officer, pursuant to the Latvian-Russian treaty on the withdrawal of the Russian troops. In connection with this measure, they were refused entry in the register of Latvian residents as "ex-USSR citizens".

115. The Court reiterates that no right of an alien to enter or reside in a particular country is as such guaranteed by the Convention. It is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens (see, among many other authorities, *Dalia*,cited above, p. 91, § 52).

116. In the Court's view, the withdrawal of the armed forces of one independent State from the territory of another, following the dissolution of the State to which they both formerly belonged, constitutes, from the point of view of the Convention, a legitimate means of dealing with the various political, social and economic problems arising from that dissolution. The fact that in the present case the Latvian-Russian treaty provided for the withdrawal of all military officers who after 28 January 1992 had been placed under Russian jurisdiction, including those who had been discharged from the armed forces prior to the entry into force of the treaty (which in this respect therefore had retroactive effect), and that it also obliged their families to leave the country, is not in itself objectionable from the point of view of the Convention and in particular Article 8. Indeed, it can be said that this arrangement respectedthe family life of the persons concerned in that it did not interfere with the family unit and obliged Russia to accept the whole family within its territory, irrespective of the origin or nationality of the individual family members.

117. In so far as the withdrawal of the Russian troops interfered with the private life and home of the persons concerned, this interference would normally not appear disproportionate, having regard to the conditions of service of military officers. This is true in particular in the case of active servicemen and their families. Their withdrawal can be treated as akin to a transfer to another place of service, which might have been ordered onother occasions in the course of their normal service. Moreover, it is evident that the continued presence of active servicemen of a foreign army, with their families, may be seen as being incompatible with the sovereignty of an independent State and as a threat to national security. The public interest in the removal of active servicemen and their families from the territory will therefore normally outweigh the individual's interest in staying. However, even in respect of such persons it is not to be excluded that the specific circumstances of their case might render the removal measures unjustified from the point of view of the Convention.

118. The justification of removal measures does not apply to the same extent to retired military officers and their families. After their discharge from the armed forces a requirement to move for reasons of service will normally no longer apply to them.While their inclusion in the treaty does

not as such appear objectionable (see paragraph 116 above), the interests of national security will in the Court's view carry less weight in respect of this category of persons, while more importance must be attached to their legitimate private interests.

119. In the present case, the first applicant's husband retired from the military after 28 January 1992, the deadline established by the third paragraph of Article 2 of the treaty, and was thus regarded by the Latvian authorities as being concerned by the withdrawal of troops, together with active servicemen. Regardless of the actual date of his retirement, which is disputed by the parties, the fact remains that from mid-1994 onwards, and during the proceedings concerning the legality of the applicants' stay in Latvia, the first applicant's husband was already retired. Yet that fact made no difference to the determination of the applicants' status in Latvia.

120. The Court further takes account of the information provided by the respondent Government on the treatment of hardship cases. According to that information about 900 persons (Latvian citizens or close relatives of Latvian citizens) were able to legalise their stay in Latvia notwithstanding their status as relatives of Russian military officers required to leave (see paragraphs 57 and 85 above). This shows that the Latvian authorities were not of the opinion that the treaty's provisions on the withdrawal of troops had to be applied without exceptions. On the contrary, the authorities considered that they had some latitude which allowed them to ensure respect for the private and family life and the home of the persons concerned, in accordance with the requirements of Article 8 of the Convention. As regards Latvian citizens, their expulsion would moreover have contravened Article 3 of Protocol no. 4 to the Convention. In any event, the Court reiterates that the treaty cannot serve as a valid basis for depriving the Court of its power to review whether there was an interference with the applicants' rights and freedoms under the Convention, and, if so, whether such interference was justified (see the admissibility decision in the present application, § 62, ECHR 2002-II).

121. The Court notes that the derogation from the obligation to leave was not limited to persons holding Latvian citizenship, but was apparently extended to other residents, the cases in question being decided on a case-by-case basis. However, it seems that in this context the authorities did not examine whether each person concerned presented a specific danger to national security or public order. Nor has any allegation been made in this particular case that the applicants presented such a danger. The public interest instead seems to have been perceived in abstract terms underlying the legal distinctions made in domestic law.

122. The Court considers that schemes such as the present one for the withdrawal of foreign troops and their families, based on a general finding that their removal is necessary for national security, cannot as such be deemed to be contrary to Article 8 of the Convention. However, application of such a scheme without any possibility of taking into account the

individual circumstances of persons not exempted by the domestic law from removal is in the Court's view not compatible with the requirements of that Article. In order to strike a fair balance between the competing interests of the individual and the community, the removal of a person should not be enforced where such measure is disproportionate to the legitimate aim pursued. In the present case the question is whether the applicants' specific situation was such as to outweigh any danger to national security based on their family ties with former foreign military officers.

123. The respondent Government argued that the applicants had not been sufficiently integrated into Latvian society (see paragraph 88 above). In this connection the Court observes that the applicants have spent virtually all their lives in Latvia (see paragraph 96 above). It is true that the applicants are not of Latvian origin, and that they arrived and lived in Latvia – then part of the USSR – in connection with the service of members of their family (the first applicant's father and her husband) in the Soviet armed forces. However, the applicants also developed personal, social and economic ties in Latvia unrelated to their status as relatives of Soviet (and later Russian) military officers. This is shown by the fact that the applicants did not live in army barracks or any other restricted area, but in a block of flats in which there were also civilians. Nor did they study or work in a military institution. The first applicant was able to find employment in Latvian companies after Latvia regained its independence in 1991.

124. As regards the respondent Government's argument about the level of the applicants' proficiency in Latvian, the Court observes that, insofar as this is a relevant consideration, it has not been shown that the degree of the applicants' fluency in the language – although the precise level is in dispute – was insufficient for them to lead a normal everyday life in Latvia. In particular, there is no evidence that the level of the applicants' knowledge of Latvian was in any way different from that of other native Russian speakers living in Latvia, including those who wereable to obtain the status of "ex-USSR citizens" in order to remain in Latvia on a permanent basis.

125. Although in 1999 the applicants moved to Russia to join Nikolay Slivenko and eventually obtained Russian citizenship, by that time they had apparently not developed personal, social or economic ties in Russia similar to those they had established in Latvia. In short, the Court finds that at the relevant time the applicants were sufficiently integrated into Latvian society.

126. Finally, the Court notes the respondent Government's statement (see paragraph 83 above) that the reason for the different treatment of the applicants' case was the fact that the first applicant had arrived in the country in 1959 as a member of the family of a Soviet military officer – her father and the second applicant's grandfather. The decisive element was therefore not the applicants' current family situation – that is, their being, respectively, the wife and daughter of Nikolay Slivenko, a retired Russian military officer who had left Latvia more than two years before the

measures were enforced against the applicants – but their family history, that is, the fact of their being, respectively, the daughter and granddaughter of a former Soviet military officer.

127. However, the first applicant's father and the second applicant's grandfather had retired from the military as long ago as 1986. As this was long before the cut-off date provided for in the third paragraph of Article 2 of the treaty, he was not himself subject to the obligation to leave pursuant to the treaty, and there were no formal obstacles to prevent him and his wife from becoming permanent residents of Latvia as "ex-USSR citizens". In fact, they remained in the country even after the applicants' removal. The Court is unable to accept that the applicants could be regarded as endangering the national security of Latvia by reason of belonging to the family of the first applicant's father, a former Soviet military officer who was not himself deemed to present any such danger.

128. Having regard to all the circumstances, the Court considers that the Latvian authorities overstepped the margin of appreciation enjoyed by the Contracting Parties in such a matter, and that they failed to strike a fair balance between the legitimate aim of the protection of national security and the interest of the protection of the applicants' rights under Article 8. Therefore, the applicants' removal from the territory of Latvia cannot be regarded as having been "necessary in a democratic society".

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

130. The applicants also alleged a violation of Article 14 of the Convention taken in conjunction with Article 8 on account of the difference in the statutory treatment of members of families of Russian military officers who were required to leave Latvia, and that of other Russian-speaking residents of Latvia who as former Soviet citizens could obtain residence in the country.

Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The applicants

131. The applicants contended, relying on Article 14 of the Convention taken in conjunction with Article 8, that they had been removed from Latvia as members of the Russian-speaking ethnic minority and of the family of a former Russian military officer. They complained that they had thus been subjected to treatment different from that of other Latvian residents having the status of "ex-USSR citizens". In particular, they submitted that the difference in their treatment from that of persons who had been able to obtain the status of "ex-USSR citizens" could not be justified, in view of the fact that the level of their integration into Latvian society had been the same as that of other Russianspeakers.

2. The respondent Government

132. The respondent Government denied that there was a difference in treatment on the ground of language or ethnic origin. They also maintained that the difference in statutory treatment regarding the Russian army officers and their families had been justified, as the removal of the foreign military forces and their families from the territory of independent Latvia had been essential for the protection of national security, and therefore justified under the Convention.

B. The third party's comments

133. The Russian Government submitted that the difference in the treatment in Latvia of former Soviet or Russian military officers and their families on the one hand, and of other Russian-speaking residents of Latvia on the other hand, was not justified by Article 14. There was no evidence to show that Nikolay Slivenko or the applicants could have caused any damage to the security, safety, public order, or economic well-being of Latvia. The applicants' removal had been the result of "ethnic cleansing" by the Latvian authorities. The third party further alleged that there was a difference in the statutory treatment of all ethnic Russians in Latvia.

C. The Court's assessment

134. In view of its finding of a violation of Article 8 of the Convention (see paragraph 129 above), the Court considers that it is not necessary to rule on the applicants' complaints under Article 14 of the Convention taken in conjunction with Article 8.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

135. The applicants complained that their detention on 28-29 October 1998 and the second applicant's detention on 16-17 March 1999 had been arbitrary and unlawful, in breach of Article 5 of the Convention.

The relevant parts of Article 5 § 1 of the Convention read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. The parties' submissions

1. The applicants

136. The applicants complained that their detention on 28-29 October 1998 and the second applicant's detention on 16-17 March 1999 had breached Article 5 § 1 of the Convention.

137. In regard to both periods of detention, the applicants submitted that the detention had pursuednone of the aims referred to in Article 5 § 1 of the Convention. Furthermore, the detention had been arbitrary in that the Latvian authorities had had no reason to suspect that the applicants could have hidden or that they had had no place of residence. In this regard the detention had not complied with domestic law, namely the requirements set out in section 48 of the Aliens Act.

138. As regards their detention on 28-29 October 1998, the applicants submitted that their appeal against the deportation order should have suspended the validityof the order pursuant to Latvian law as from 7October 1998, and that their detention had thus been contrary to section 40 of the Aliens Act. The applicants also stated that even the Latvian immigration authorities had themselves admitted, by way of the letter of 29 October 1998, that that period of detention had been unlawful within the meaning of domestic law (see paragraph 43 above).

139. The second applicant also complained that her detention on 16-17 March 1999 had been arbitrary and unlawful. She submitted that at the time she had been a minor, but that she had been detained without notification of her parents or other relatives. Moreover, the Latvian authorities had had no right to detain her during that period in view of the fact that minors could not be expelled from Latvia separately from their parents.

2. The respondent Government

140. The respondent Government submitted that the contested periods of detention had been compatible with the provisions of Article 5 § 1 (f) of the

Convention as the unlawfulness of the applicants' stay in Latvia had been confirmed by valid decisions of the domestic courts, and there had been a valid deportation order in respect of them. According to the respondent Government, it had not been necessary for the applicants' detention to pursue any of the "legitimate aims" specified by the applicants as the fact remained that at that time deportation proceedings had been in place, thereby warranting the applicants' detention for the purpose of Article 5 § 1 (f) of the Convention.

141. The detention had not been arbitrary as the applicants had been detained in connection with the deportation proceedings based on the provisions of domestic legislation, which had been clear and accessible to them. The applicants had been arrested because the authorities had "reasonable grounds to believe that these persons [would] hide, or that these persons [had no] fixed place of residence". Moreover, the applicants had only been arrested following their repeated failure to comply with the deportation order, and following numerous warnings from the Latvian authorities in this regard.

142. The respondent Government also submitted that sections 40 and 48-5 of the Aliens Act provided that a deportation order became effective once all remedies had been exhausted, that is, once the complaint concerning the lawfulness of the issuing of the deportation order had been dismissed. According to the respondent Government, such a decision validating the deportation order had been taken by the Riga Regional Court on 6 May 1998. Thereafter, the deportation order had been effective, permitting the detention of the applicants.

143. The detention on 28-29 October 1998 and 16-17 March 1999 had been based on valid decisions by the police, taken pursuant to section 48-5 of the Aliens Act and the relevant provisions of the Police Act. The applicants had read and signed the decisions warranting the detention, and had therefore been aware of the reasons for it. The first applicant's appeal of 7 October 1998 against the deportation order had had no suspensive effect on the validity of the order within the meaning of domestic law as her appeal in this connection had already been determined by the courts. The respondent Government concluded that the detention had been compatible with the domestic law.

144. The respondent Government also stated that the applicants' release on 29 October 1998 and the second applicant's release on 17 March 1999 had merely been gestures of good will by the immigration authorities for humanitarian reasons, in view of the state of health of the first applicants' parents and the necessity for the second applicant to finish school. As a result of these considerations the immigration authorities had "suspended the execution of the deportation order".

B. The third party's comments

145. The Russian Government stated that the applicants' detention on 28-29 October 1998 and the second applicant's detention on 16-17 March 1999 had been arbitrary and unlawful in that there had been no court order authorising their detention, and no reason had been indicated by the Latvian authorities to justify the detention. In addition, the detention of the second applicant, a minor, on 16-17 March 1999 had been unlawful in that she had had no legal capacity at the material time, and should not have been expelled or detained separately from the first applicant.

C. The Court's assessment

146. The Court is satisfied that the applicants' detention on the two occasions falls to be examined under Article 5 § 1 (f) of the Convention as detention "with a view to deportation". This provision requires only that "action is being taken with a view to deportation" and it is therefore immaterial, for the purposes of its application, whether the underlying decision to expel can be justified under national or Convention law. However, any deprivation of liberty under Article 5 § 1 (f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not pursued with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) of the Convention (see *Chahal v. the United Kingdom*,judgment of 15 November 1996, *Reports* 1996-V,pp. 1862-63, §§ 112-13). In the present case, it has not been disputed that the applicants' detention, which on both occasions was of very short duration (less than twenty-four hours on 28-29 October 1998 and thirty hours on 16-17 March 1999), was ordered in the context of deportation proceedings against them which were still pending on the relevant dates. Moreover, it cannot be said that these proceedings were not pursued with due diligence by the authorities.

147. There remains the question whether the detention was in each case "lawful" and "in accordance with a procedure prescribed by law". In this connection, the Convention refers essentially to the obligation of the authorities to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Chahal*, cited above, p. 1864, § 118).

148. The police warrants for the applicants' arrest issued on 29 October 1998 and 16 March 1999 (see paragraphs 42 and 45 above) set out both the relevant domestic legal basis for the arrest (namely, section 48-5 of the Aliens Act in each case) and the factualcircumstances underlying the suspicion that the applicants were staying in Latvia illegally. The applicants countersigned the warrants, thereby confirming that they had acquainted themselves with the reasons stated therein (see Article 5 § 2 of the Convention).

149. It is true that in a letter of 29 October 1998 the immigration authority informed the police of its view that the applicants' arrest on that date was "premature" in view of the fact that on 7 October 1998 the first applicant had lodged an appeal against the expulsion order (see paragraph 43 above). However, even the existence of certain flaws in a detention order does not necessarily render the concomitant period of detention unlawful within the meaning of Article 5 § 1 (see, *mutatis mutandis*, *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, pp. 753-54, §§ 42-47) and this will be true, in particular, if, as in the present case, the putative error is immediately detected and redressed by the release of the persons concerned.

150. Moreover, as the respondent Government have observed, the immigration authority's view may not have been based on a correct interpretation of the applicable domestic law. In fact, on the relevant dates, namely 28-29 October 1998 and 16-17 March 1999, the deportation order issued on 20 August 1996 had already become final by virtue of the Supreme Court's judgment of 29 July 1998, and it was therefore apparent that no further remedies were available to the applicants to prevent their removal from Latvia. It is significant in this regard that the "appeal" of 7 October 1998 was not acted upon by the immigration authority, which instead informed the applicants in a letter, also dated 29 October 1998, that they had to leave the country immediately (see paragraph 44 above).

151. In view of the provisions of sections 40 and 48-5 of the Aliens Act, according to which a deportation order becomes effective once all remedies have been exhausted, the Court considers that neither of the arrest warrants issued by the police against the applicants lacked a statutory basis in domestic law. Moreover, there is no evidence that the police acted in bad faith or arbitrarily when issuing those orders.

152. It follows that the applicants' detention on 28-29 October 1998 and 16-17 March 1999 was ordered "in accordance with a procedure prescribed by law" and that it was "lawful" within the meaning of Article 5 § 1 (f) of the Convention. There has thus been no violation of this provision in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

153. The applicants further complained that they had not been able to obtain judicial review of their detention, contrary to the requirements of Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

1. The applicants

154. The applicants submitted that the absence of any possibility of applying to a court in order to contest the lawfulness of their detention on 28-29 October 1998 and 16-17 March 1999 had breached Article 5 § 4 of the Convention. In their view, the general possibility of contesting any administrative act in court had not conferred on them the right set forth in Article 5 § 4.

2. The respondent Government

155. The respondent Government submitted, with reference to *Fox, Campbell and Hartleyv. the United Kingdom*(judgment of 30 August 1990, Series A no.182), that Article 5 § 4 of the Convention was not applicable in cases where detainees had been released before a speedy determination of the lawfulness of the detention could have taken place. In view of the very brief periods of the contested detention, the above provision of the Convention had not been applicable in the present case.

156. The respondent Government further stated that the applicants had in any case had the right to challenge their detention in court, by submitting a complaint under the Code of Civil Procedure (Chapter 24-A), which guaranteed the right to appeal to a court against any administrative act breaching personal rights (see paragraph 62 above). In sum, there had been no violation of Article 5 § 4 in this case. The respondent Government stated that they were unable to find any decision by Latvian courts in which a complaint regarding allegedly unlawful detention in the context of deportation proceedings had been examined by means of the aforementioned procedure. However, in their view, the absence of any such case-law did not disprove the existence of such a remedy in practice.

B. The third party's comments

157. The Russian Government supported the applicants' contention, claiming that Latvian law had provided no possibility for the applicants to contest the lawfulness of their detention in court.

C. The Court's assessment

158. The Court notes that both applicants were detained for a period of less than twenty-four hours on 28-29 October 1998, and the second applicant was detained for a period of thirty hours on 16-17 March 1999. On both occasions the applicants were released speedily before any judicial review of the lawfulness of their detention could have taken place. It is not for the Court to determine *in abstracto* whether, had this not been so, the scope of the remedies available in Latvia would have satisfied the requirements of Article 5 § 4 of the Convention. The Court observes in this context that Article 5 § 4 deals only with those remedies which must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release. The provision does not deal with other remedies which may serve to review the lawfulness of a period of detention which has already ended, including, in particular, a short-term detention such as in the present case.

159. Accordingly, the Court does not find it necessary to examine the merits of the applicants' complaints under Article 5 § 4 of the Convention (see, *mutatis mutandis*, *Fox, Campbell and Hartley*,cited above, pp. 20-21, § 45).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

160. Article 41 of the Convention provides:

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

A. Damage

161. The applicants claimed 400,000 euros (EUR) for non-pecuniary damage as a result of their enforced removal from Latvia, which they considered their motherland. They alleged that the immigration and other authorities had treated them particularly harshly and severely, as was shown especially by their detention, and that such treatment justified the amount of compensation they claimed for non-pecuniary damage.

162. The applicants also alleged that they had suffered certain pecuniary damage, namely the loss of earning opportunities in Latvia, and that their property had been taken away by the Latvian authorities. The applicants stated that they were unable to submit any documents in support of their claim for compensation in respect of pecuniary damage as all the relevant documents had been left behind in Latvia. Therefore, the applicants specified no particular sum in regard to this claim.

163. The respondent Government considered the claims to be exorbitant.

164. The third party supported the applicants' claims.

165. The Court has established a breach of Article 8 of the Convention on account of the applicants' removal from Latvia only as regards their right to respect for their private life and their home, but not in relation to any disturbance of their family life. It has furthermore found no violation of Article 5 of the Convention.

166. As to the applicants' claim for compensation in respect of pecuniary damage, the Court notes that they have not specified the amount which they claim under this head, nor have they provided any details concerning the property allegedly lost and the loss of earnings claimed. In any event, the Court cannot discern a sufficient causal link between the alleged pecuniary damage and the breach of the Convention found above.

167. As regards the applicants' claim for compensation in respect of non-pecuniary damage, the Court considers that they have suffered certain damage as a result of the violation found. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 10,000 under this head.

B. Costs and expenses

168. The Court notes that it has granted the applicants legal aid under the Court's legal-aid scheme for the presentation of the case at the hearing,the submission of the applicants' observations and additional comments, the conduct of the friendly-settlement negotiations and secretarial expenses. The applicants submitted no claim for additional legal expenses. Accordingly, the Court is not required to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

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

2. *Holds* by eleven votes to six that it is not necessary to deal separately with the applicants' complaints under Article 14 of the Convention taken in conjunction with Article 8;

3. *Holds* by sixteen votes to one that there has been no violation of Article 5 § 1 of the Convention;

4. *Holds* unanimously that it is not required to deal with the merits of the applicants' complaint under Article 5 § 4 of the Convention;

5. *Holds* by eleven votes to six:
(a) that the respondent State is to pay each of the applicants, within three months, EUR 10,000 (ten thousand euros) for non-pecuniary damage, plus any tax that may be chargeable on the amount by the respondent State;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* unanimously the remainder of the applicants' claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 October 2003.

Luzius WILDHABER
President

Paul MAHONEY
Registrar

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

(a) partly concurring and partly dissenting opinion of Mr Kovler;

(b) joint dissenting opinion of Mr Wildhaber, Mr Ress, Sir Nicolas Bratza, Mr Cabral Barreto, Mrs Greve and Mr Maruste;

(c) separate dissenting opinion of Mr Maruste.

L.W.
P.J.M.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE KOVLER

(Translation)

1. As regards Article 8 of the Convention

Although I share the majority's opinion that there has been a violation of Article 8 § 1 of the Convention, I should nevertheless like to clarify my position on the alleged interference with the applicants' "family life", a complaint which the Court has dismissed in its reasoning.

In my humble opinion, in paragraph 97 of its judgment the Court has narrowed the concept of "family life" by taking it to cover ties within the "core family" only. In other words, the Court has opted for the traditional concept of a family based on the conjugal covenant – that is to say, a conjugal family consisting of a father, a mother and their children below the age of majority, while adult children and grandparents are excluded from the circle. That might be correct within the strict legal meaning of the term as used by European countries in their civil legislation, but the manner in which the Court has construed Article 8 § 1 in its case-law opens up other horizons by placing the emphasis on broader family ties.

In the actual text of the *Marckx* judgment cited in the instant case, the Court observed 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" and concluded 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). To put it another way, the Court could at least have made a more careful distinction between the "family" in the strict legal sense of the term and the broader concept of "family life" set out in *Marckx*.

Accordingly, the assertion in the present judgment that "the existence of 'family life' could not be relied on by the applicants in relation to the first applicant's elderly parents, adults who did not belong to the core family" departs from the case-law referred to above and does not take into account the sociological and human aspects of contemporary European families (I am deliberately leaving aside Muslim and African families since my reasoning relates solely to the geographical area within the Court's jurisdiction). Reference may be made, for example, to the Littré *Dictionnaire de la langue française*, which defines "*famille*" ("family") as "*l'ensemble des individus de même sang qui vivent les uns à côté des autres*" ("a group of persons related by blood who live together"). Even if

that concept is not necessarily a legal one, it reflects the perception of those subject to our courts' jurisdiction.

The restrictive concept of a conjugal family (known as a "nuclear family" in legal anthropology) is becoming obsolete in the light of the obvious changes reflected in family legislation recently enacted in a number of European States. At the same time, the tradition of the "extended family", so strong in east and southern European countries, is enshrined in those countries' basic laws. For example, the Constitution of the Russian Federation – the State of which the applicants are now nationals – provides: "Children over 18 years of age who are able to work shall provide for their parents who are unfit for work" (Article 38 § 3). There are similar provisions in the Constitutions of Ukraine (Article 51 § 2), Moldova (Article 48 § 4) and other countries. This means that in those countries the tradition of helping one's elderly parents is firmly established as a moral imperative written into the Constitution. Those were essentially the considerations guiding the applicants in their ultimately unsuccessful request to the Latvian authorities not to separate them from their elderly, sick ascendants. "Family life" was plainly inconceivable for them if they were denied the possibility of looking after those relatives. What could be more natural or more humane?

It follows, in my opinion, that the applicants' removal amounted to unjustified interference not only with their "private life" and "home" but also, and above all, with their "family life".

2. As regards Article 5 § 1 of the Convention

I regret that I am unable to agree with the opinion of the majority that there has been no violation of Article 5 § 1 of the Convention in the present case.

I would not have had any complaints about the measures taken to extradite the two applicants, including their arrest, if the Court had not held that their removal from the territory of Latvia had not been "necessary in a democratic society" (see paragraph 128 of the judgment). In the light of the finding of a violation of Article 8 of the Convention, the deportation proceedings, which are covered by Article 5 § 1 (f), are extremely hard to justify in themselves.

While deportation proceedings will often justify depriving a person of his or her liberty on the basis of Article 5 § 1 (f), such a deprivation of liberty must comply with the principle of the "lawfulness" of detention with a view to deportation (see, among other authorities, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1864, §118); in other words, the individual must be protected from arbitrariness. In my opinion, that requirement is especially pressing in the case of women, one of whom was a minor.

In general, "... under Article 5 of the Convention any deprivation of liberty must be 'lawful', which includes a requirement that it must be effected 'in accordance with a procedure prescribed by law'. On this point, the Convention essentially refers to national law and lays down an obligation to comply with its substantive and procedural provisions" (see *Witold Litwa v.Poland*, no. 26629/95, § 72, ECHR 2000-III). In the present case the representative of the national authorities stated in a letter to the immigration police that the applicants' arrest on 28 October 1998 had been "premature" (see paragraph 43 of the judgment). The Court accepted the respondent Government's comments that "the immigration authority's view may not have been based on a correct interpretation of the applicable domestic law", which in my opinion does not render the applicants' arrest entirely "lawful". The conduct of the two women, who countersigned the warrants for their arrest, proves that they had no intention of absconding or hiding. Seeing that they had a fixed place of residence until they left the country, there were no valid grounds on which the restrictions imposed on them could be justified as being necessary in a democratic society.

The detention of the second applicant (who at the material time had not reached the age of majority) in a camp outside the city on 16-17 March 1999 was even less "lawful" because the respondent Government failed to show that her arrest satisfied the requirements of section 48-5 of the Aliens Act, the likelihood of her "hiding" being more than illusory. It would be illogical to make a "gesture of good will" by releasing a detainee if there really were grounds for believing that she would attempt to hide. Accordingly, the procedure followed, which had no sound basis in the provisions of section 48-5 of the Act, was not "prescribed by law". The second applicant's arrest cannot have been anything other than an act of intimidation designed to exert psychological pressure on her and to hasten the applicants' departure. Moreover, at the time of her arrest the girl did not have the opportunity to contact a lawyer, or at least her mother, and was forcibly led away into the unknown.

Those are the considerations that have led me to conclude that there has been a violation of Article 5 § 1.

JOINT DISSENTING OPINION OF JUDGES WILDHABER, RESS, Sir Nicolas BRATZA, CABRAL BARRETO, GREVE AND MARUSTE

1. We are unable to agree with the majority of the Court that the expulsion of the present applicants from Latvia gave rise to a violation of Article 8 of the Convention.

2. We fully share the view of the majority not only that the Latvian-Russian treaty of 30 April 1994 on the withdrawal of the Russian troops from Latvia served a legitimate aim in terms of Article 8 of the Convention, but also that the fact that the treaty provided for the withdrawal of all military officers who after 28 January 1992 had been placed under Russian jurisdiction, and that it further obliged their families to leave the country, was not in itself objectionable from the point of view of the Convention. We also endorse the view that, in so far as the withdrawal of the Russian troops interfered with the private life and home of the persons concerned, such interference would not normally appear disproportionate, having regard to the conditions of service of military officers; the continued presence of servicemen of a foreign army, with their families, may, as the judgment points out, be seen as incompatible with the sovereignty of an independent State and as a threat to national security ,and the public interest in their removal from the territory will normally outweigh the individual's interest in staying. All these reasons taken together justified in our view a finding of noviolation.

3. Where we therefore fundamentally differ from the majority is in their conclusion that the specific circumstances of the applicants' case were such as to render the removal measures disproportionate and unjustified in terms of Article 8 of the Convention.

4. We note at the outset the specific historical context and purpose for which the treaty was signed, namely the elimination of the consequences of the Soviet rule of Latvia. In the preamble of the treaty both parties to the agreement –Latvia and Russia– accepted that the withdrawal of the Russian troops was intended “to eradicate the negative consequences of their common history” (see paragraph 64 of the judgment). The legitimacy of this purpose of the treaty is, in our view, of foremost importance in assessing the justification for an interference with the rights of individual members of the armed forces and of their families, who were subject to removal from the country under the treaty.

It is also significant to note that the treaty itself did not impose on the Latvian authorities an obligation to justify each measure taken by reference to the actual danger posed to national security by the specific individual concerned, particularly in relation to non-military family members. General schemes such as the present one for the withdrawal of foreign troops and their families do not easily accommodate procedures of individual,

particularised justification on the merits of each and every case (see, *mutatis mutandis*, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 41-42, § 68). In our view the approach of defining in the governing instrument the broad categories of troops, and the accompanying members of their family, to be withdrawn without reference to their personal history strikes the requisite fair balance between the competing interests of the individual and the community.

5. In finding that such a balance was not struck in the present case, the majority of the Court lay emphasis on a number of features of the case. In particular, reliance is placed on the fact

(i) that the applicants were members of the family of a retired military officer and that the interests of national security should carry correspondingly less weight than in the case of serving officers;

(ii) that the evidence indicated that 900 persons were able to legalise their stay in Latvia, notwithstanding their status as relatives of Russian military officers required to leave, thus showing that the Latvian authorities were not of the opinion that the treaty's provisions had to be applied without exceptions;

(iii) that no allegation had been made in the present case that the applicants presented a specific danger to national security or public order, the public interest being perceived in abstract terms underlying the legal distinctions made in domestic law;

(iv) that, at the time of their removal from Latvia, the applicants were sufficiently integrated into Latvian society, having developed personal, social and economic ties in the country unrelated to their status as relatives of Soviet (and later Russian) military officers;

(v) that the decisive element in the different treatment of the applicants was not their current family situation but the fact of their being the daughter and granddaughter of a former Soviet military officer, who had retired in 1986 and who remained in the country even after the applicants' removal: the applicants could not be regarded as endangering national security by reason of belonging to a family of someone who was not himself deemed to present any such danger.

6. We regret that we do not find that these factors, whether considered individually or in combination, are such as to justify the conclusion that the Latvian authorities failed to strike a fair balance in requiring the removal of the applicants from the territory.

7. As to the first of the factors relied on, the majority have already found that the retrospective character of the treaty so as to include those who had been discharged from the armed forces prior to the entry into force of that treaty was not incompatible with the requirements of the Convention, even though such persons had no active military role at the time of their removal and could be said to pose less of an individual threat to national security. The inclusion of close relatives of members of the armed forces covered by

the treaty, whether still in active service or in retirement, seems to us to be equally justified in terms of the Convention, even though the vast majority of family members, taken individually, would not pose a danger to national security. Having regard to the legitimate aim pursued by the treaty – namely, the repatriation of the totality of a foreign army, including both military personnel and dependants – Article 8 cannot in our view be interpreted as requiring that the treaty be applied in such a manner that close relatives who had resided in Latvia for a considerable time, thereby establishing a home and a private life there, could only be expelled if they personally could be shown to represent a threat to the national security of Latvia. Such an interpretation would undermine the effective implementation of the treaty since, by its very nature, the condition of actual danger to territorial security will hardly ever be satisfied in relation to family members. Once the legitimacy of including family members in the programme of withdrawal has been recognised, we find it difficult to accept that more importance must be attached to the private interests of family members of recently retired officers than to those of officers still in active service.

8. The majority of the Court rely on the fact that, after their discharge from the armed forces, a requirement to move as part of the general conditions of military service will normally no longer apply to military officers and their families. While this is true, the present case is concerned not with a reposting of military officers and their families in accordance with the general conditions of service, but rather with the implementation of the terms of an international treaty, designed to secure the withdrawal of an imposed and long-standing military presence from a foreign territory. In this regard, we would note that the treaty arrangements themselves endeavoured to take account of the family life of the persons concerned, by treating the family as a unit, with the Russian Federation undertaking to accept the whole family within its territory, irrespective of the origin or nationality of the individual members of the family.

9. The fact that in some 900 cases the Latvian authorities had allowed a derogation from the obligation under the treaty to leave the country does not in our view serve to reinforce the applicants' case. The beneficiaries of these derogations were all either Latvian citizens or close relatives of Latvian citizens, and the decisions had not been based on any consideration as to whether each person concerned presented a specific danger to the national security of Latvia (see paragraphs 57 and 85 of the judgment). Furthermore, as regards Latvian citizens, a derogation of this kind was indeed required by the Convention, since their expulsion would have contravened Article 3 of Protocol No. 4 to the Convention. The applicants, in contrast, had no such connection with Latvia. The refusal to grant them permanent residential status in Latvia has been explained by the respondent Government as being due to their dual affiliation to families of military officers: the first applicant

came to the country in 1959 as the daughter of a Soviet military officer then in active service; in 1980 she married another Soviet military officer who had come to Latvia on active service and who later continued to serve in the Russian armed forces stationed in Latvia after that country had regained its independence. The sole reason for the residence of the two applicants in Latvia was thus the presence there of the Soviet armed forces, which with effect from January 1992 became the armed forces of the Russian Federation. That being so, the refusal to grant them a derogation on the grounds of personal hardship was in accordance with the underlying logic of the treaty, which the Court has found to strike a fair balance.

10. It is correctly pointed out in the judgment that the applicants had in the period of their residence in Latvia developed strong links with the country. However, in deciding whether these links were such as to qualify the applicants for special treatment under the treaty, we consider that the Latvian authorities were entitled also to take into account the significant personal ties which the applicants had with Russia. In this connection we would note that the applicants were of Russian national origin and Russian-speaking, attended Russian-speaking educational establishments, and eventually were able to become Russian citizens. The first applicant's husband became a Russian citizen while he was still living in Latvia, and had moved to Russia by the time of the events complained of by the applicants (see paragraphs 21 and 33 of the judgment). From late 1994 onwards, there was also accommodation available for the family in Kursk in Russia (see paragraphs 28, 37 and 46 of the judgment) and it has not been submitted that the applicants have ultimately been unable to pursue any personal, educational or employment activities in Russia. Therefore, while their personal, social and economic ties with Latvia cannot be denied, it also appears that the applicants had equally significant ties of that nature in Russia (see *Dalia v. France*,judgment of 19February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 91-92, § 53; see also *C. v. Belgium*, judgment of 7 August 1996, *Reports* 1996-III, p. 924, § 34).

11. In these circumstances, we are unable to conclude that the Latvian authorities overstepped the margin of appreciation afforded to them under Article 8 of the Convention in the particular context of the withdrawal of the Russian armed forces from the territory of Latvia after almost fifty years of Soviet presence there. The Latvian authorities were in our view entitled to consider that the impugned interference with the applicants' right to respect for their private life and their home was “necessary in a democratic society”.

12. In view of this finding, it is necessary to consider the further contention of the applicants that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 on account of the difference in the statutory treatment of members of families of Russian military officers who were required to leave Latvia and that of other

Russian-speaking residents of Latvia, who as former Soviet citizens could obtain residence in the country.

13. According to the Court's case-law, a difference of treatment is discriminatory for the purposes of Article 14 if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see, among other authorities, *Van Raalte v. the Netherlands*, judgment of 21 February 1997, *Reports* 1997-I, p.186, § 39).

14. The applicants asserted that their removal disclosed discrimination on two grounds – their belonging to the Russian-speaking minority, and their belonging to the family of a Russian military officer. We find the applicants' claim that they were discriminated against as Russian speakers to be unsubstantiated. Indeed, a number of other Russian-speaking persons were in fact able to legalise their stay in Latvia. The distinction made in regard to the applicants by the Latvian authorities was not based on their ethnic origin, but on their dual affiliation with families of military officers, one of whom was a member of the Russian armed forces subject to withdrawal under the 1994 treaty. For the reasons already given in examining the complaint under Article 8 itself, these elements could in our view reasonably be taken into account to justify the imposition of the impugned measures to remove the applicants from the territory of Latvia.

15. For the same reasons, we find that the distinction made in the present case on the basis of the applicants' status – that is, the distinction made in the relevant legal provisions and then in the application of those provisions to the applicants – had an objective and reasonable justification and thus did not amount to discrimination within the meaning of Article 14 of the Convention.

16. There has, thus, in our view, been no breach of Article 14 of the Convention taken in conjunction with Article 8.

SEPARATE DISSENTING OPINION OF JUDGE MARUSTE

While sharing the views expressed in the joint dissenting opinion, I would like to express here some more reasons why I am unable to agree with the majority.

Firstly, I think the case is particular in its historical background. From that background flow consequences under constitutional and international law which cannot be disregarded. It is well known and recognised in international law that the Baltic States, including Latvia, lost their independence on the basis ofthe "Hitler-Stalin Pact" between Nazi Germany and the USSR, which actually refers to the Molotov-Ribbentrop Pact, or the secret protocols that were appended to the non-aggression treaty between the Soviet Union and Germany, which was signed on 23 August 1939. The result of this secret agreement was that Eastern Europe was divided into two spheres of influence, leaving the Baltic States, including Latvia, in the Soviet Union's sphere of interests. This was followed by Soviet threats of force in the form of an ultimatum addressed in 1940 to the Baltic States, including Latvia, in which the USSR demanded a change of government and the entry of Soviet armed forces (in addition to those already stationed in Soviet military bases). The actual entry of military forces and the change of government took place in June 1940.

According to Article 42 of the Hague Regulations on the Laws and Customs of War on Land, a territory is considered occupied "when it is actually placed under the authority of the hostile army". By way of comparison, the Nuremberg Military Tribunal included the ultimatum delivered by Germany to Austria in 1938 among the acts to be judged as "crimes against peace" within the meaning of the 1945 London Charter.

The above actions by the Soviet Union were not recognised by a majority of the international democratic community, including the European Parliament and the Council of Europe. The latter, for example, expressed its attitude in Resolution 189 (1960) on the situation in the Baltic States, noting, "on the twentieth anniversary of the occupation and forcible incorporation into the Soviet Union of the three European States of Estonia, Latvia and Lithuania" that "this illegal annexation took place without any genuine reference to the wishes of the people".

It has been an established principle in international law which is now also enshrined in the Statute of the International Criminal Court (Article 8) that the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies is not allowed. Indeed, according to the same Article 8, it is a war crime.

According to generally recognised principles of international law, every internationally wrongful act of a State entails international responsibility and gives rise to the obligation of that State to restore the *status quo ante*. Consequently, the restoration of the independence of the Baltic States on the

basis of legal continuity and the withdrawal of the Soviet/Russian troops has to be regarded as redress for a historical injustice. This aim was also stressed in the preamble of the Latvian-Russian treaty of 30 April 1994 on the withdrawal of troops, where it was mentioned that by signing the treaty the parties wished to "eradicate the negative consequences of their common history" (see paragraph 64 of the judgment). Thus, the treaty requirement of the withdrawal of military servicemen and their family members (second paragraph of Article 2 of the treaty) is fully in conformity with the principles of international law. Consequently, the aim pursued by the Latvian-Russian treaty of 30 April 1994 was fully legitimate for the purposes of the Convention (see paragraph 111 of the judgment). The Court rightly accepted that the withdrawal of the armed forces of one independent State from the territory of another constitutes an appropriate way of dealing with the various political, social and economic problems arising from that historical injustice.

As Latvia had regained its independence from the USSR in 1991 and the Russian Federation had assumed jurisdiction over the armed forces of the former Soviet Union with effect from 28 January 1992, the scheme established under the treaty covered all military officers together with their families who had been serving in the Russian armed forces in Latvia at that moment, even if they had been discharged prior to the entry into force of the treaty. The programme of withdrawal was not in itself such as to bring the measures ordered in respect of the two applicants outside the margin of appreciation available to the Latvian authorities for achieving the legitimate objective they pursued. It is to be noted that the treaty itself did not impose on the Latvian authorities an obligation to justify each measure taken by reference to the actual danger which the specific individual concerned posed to national security, particularly in relation to non-military family members. Moreover, the list of those to be removed, according to the terms of the treaty, was drawn up not by the Latvian, but by the Russian side. In these circumstances the responsibility for the removal belongs at least to both parties to the treaty and not only to the Latvian side. It must also be noted that, although this was contested by the applicants and the third party, it was the Latvian courts which found that the first applicant had not presented all the necessary information (in the 1995 registration form) about her husband's (military) occupation. The document was known to the applicants, but they never challenged its validity before the domestic courts. They and the third party did so only at a later stage.

Finally, from late 1994 onwards a large-scale Western financial-aid scheme was introduced to accommodate returning Soviet/Russian military personnel, under which accommodation, as decided by the Latvian Supreme Court, was made available to the Slivenko family also. Whereas I understand that for the majority the award of compensation to the applicants was the logical consequence of finding a violation, in the light of this aid

scheme and taking into account the historical context, in which most of those who suffered injustices were never able to get compensation for either pecuniary or non-pecuniary damage, it is hard for me to agree with the financial compensation awarded by the Court.