CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF PODKOLZINA v. LATVIA

(Application no. 46726/99)

JUDGMENT

STRASBOURG

9 April 2002

FINAL

09/07/2002

In the case of Podkolzina v. Latvia,

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

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 29 January and 19 March 2002,

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

PROCEDURE

1. The case originated in an application (no. 46726/99) 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 a Latvian national, Mrs Ingrīda Podkolzina ("the applicant"), on 25 February 1999.

2. The applicant was initially represented by Mrs I. Oziša, the assistant of a member of the Latvian parliament. In a letter of 2 May 2001 the applicant informed the Court that she would thenceforth be represented by Mr W. Bowring, barrister, of Colchester (United Kingdom). The Latvian Government ("the Government") were represented by their Agent, Ms K. Maļinovska.

3. The applicant alleged that the removal of her name from the list of candidates at the general election for insufficient knowledge of Latvian, the official language in Latvia, constituted a breach of the right to stand as a candidate in an election, guaranteed by Article 3 of Protocol No. 1. She further complained of violations of Articles 13 (in substance) and 14 of the Convention.

4. The application was allocated to the second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr E. Levits, the judge elected in respect of Latvia, withdrew from sitting in the case (Rule 28). The 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).

5. By a decision of 8 February 2001 the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the Government, but not the applicant, filed observations on the merits (Rule 59 § 1). On 2 May 2001 the applicant submitted her claim for just satisfaction (Article 41 of the Convention). On 4 June 2001 the Government submitted their observations on the claim.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1) This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, a Latvian national born in 1964 and living in Daugavpils (Latvia), is a member of the Russian-speaking minority in Latvia.

9. By a decision of 30 July 1998 the Central Electoral Commission (*Centrālā vēlēšanu komisija*) registered the list of the candidates of the National Harmony Party (*Tautas saskaņas partija*) in the elections to the Latvian parliament (*Saeima*) of 3 October 1998. The applicant's name appeared on the list as the candidate for the constituency of Latgale.

At the time of the registration of its list of candidates the National Harmony Party supplied the Central Electoral Commission with all the documents required by the Parliamentary Elections Act, including a copy of the certificate attesting to the fact that the applicant knew the State's official language – Latvian – issued on 23 January 1997 by the Standing Committee for the Certification of Linguistic Competence in the town of Daugavpils, a body responsible to the State Language Centre (*Valsts valodas centrs*), an administrative institution which was itself answerable to the Ministry of Justice.

10. On 6 August 1998 an examiner employed by the State Language Inspectorate (*Valsts valodas inspekcija*), part of the State Language Centre, went to the applicant's place of work and examined her orally to assess her knowledge of Latvian. As the applicant had not been notified of the visit, the examiner approached her while she was conducting negotiations with her business associates.

Having informed the applicant of her intention to verify the level of her competence in Latvian, the examiner struck up a conversation with her in that language. During the conversation, which lasted over half an hour, the examiner asked the applicant, among other questions, why she supported the National Harmony Party rather than some other party.

The examiner returned next day accompanied by three persons whom the applicant did not know, who were to act as invigilators. The examiner asked the applicant to write an essay in Latvian. The applicant agreed to do so and began to write. However, being extremely nervous, because she had not expected such an examination and because of the constant presence of the invigilators, the applicant stopped writing and tore up her work.

11. The examiner then drew up a report to the effect that the applicant did not have an adequate command of the official language at the "third level", the highest of the three categories of competence defined in Latvian regulations.

12. On 10 August 1998 the State Language Centre sent the chairman of the Central Electoral Commission a letter certifying the level of knowledge of the official language attained by a number of candidates on the lists registered for the parliamentary elections. Although the letter referred to the report drawn up by the examiner from the State Language Inspectorate, the report was not appended to it. According to the certificate, of the nine candidates actually examined only the applicant did not have a command of Latvian at the "third level". Twelve other candidates, who had not been required to take an examination, had documents certifying that their knowledge was at the requisite level.

13. By a decision of 21 August 1998 the Central Electoral Commission struck the applicant's name out of the list of candidates.

14. On 27 August 1998 the National Harmony Party, acting on the applicant's behalf, asked the Riga Regional Court to set aside the above decision. In its pleading the party alleged that when the list of candidates in the election was registered a copy of the certificate attesting to the applicant's knowledge of the State language had been supplied to the Central Electoral Commission. It submitted that the Central Electoral Commission should have taken that certificate into account, instead of relying solely on the certificate issued by the State Language Centre, as the two documents contradicted each other.

15. In a final judgment of 31 August 1998 the Riga Regional Court refused the application on the ground that the Central Electoral Commission had acted within the limits laid down by the Parliamentary Elections Act. In its judgment the Regional Court noted that section 11 of the Act made possession of a certificate of knowledge of the official language at the "third level" by all candidates who had not completed their primary or secondary education in Latvian a prerequisite for the registration of a list of candidates. Consequently, the Central Electoral Commission had complied with the

requirements of the Act by deciding to register the list on which the applicant's name appeared. On the other hand, section 13 of the Act empowered the Commission to rectify the lists already registered by striking out the names of candidates whose level of knowledge of the official language had proved to be insufficient; in the applicant's case the inadequacy of her linguistic competence had been confirmed by the State Language Centre's certificate. The Riga Regional Court accordingly held that there had been no breach of the law.

16. On 14 September 1998 the National Harmony Party, acting on the applicant's behalf, lodged third-party appeals against that judgment with the President of the Civil Division of the Supreme Court and the Attorney-General, asking for the proceedings to be reopened on account of a serious and manifest breach of the substantive legal rules, resulting from faulty interpretation of the Parliamentary Elections Act.

By two letters dated 29 September and 1 October 1998 respectively, the Attorney-General's office and the President of the Civil Division of the Supreme Court dismissed the appeals, ruling that the Regional Court had given reasons for its judgment and that the judgment was in accordance with the law.

II. RELEVANT DOMESTIC LAW

A. Provisions on linguistic requirements for members of Parliament and candidates for election to Parliament

17. Article 9 of the Constitution (*Satversme*) of the Republic of Latvia, adopted in 1922, provides:

> "Any Latvian citizen in possession of his full civic rights who has reached the age of 21 by the date of an election shall be eligible for election to Parliament."

18. The relevant provisions of the Law of 25 May 1995 on parliamentary elections (*Saeimas vēlēšanu likums* – "the Parliamentary Elections Act") are worded as follows:

Section 4

> "Any Latvian citizen who has reached the age of 21 by the date of an election shall be eligible for election to Parliament, provided that he is not barred by one of the restrictions set out in section 5 of this Act."

Section 5

> "The following persons may not stand as candidates in an election or be elected to Parliament:
>
> ...

(7) persons who do not have a command of the official language at the third (upper) level of knowledge."

Section 11

"The following documents must be enclosed with the list of candidates:

...

(5) a certified copy ... of the certificate of knowledge of the official language at the third (upper) level, where the candidate was not taught in Latvian at school ..."

Section 13

"...

(2) Once registered, lists of candidates may not be altered, and the only corrections which the Central Electoral Commission may make to them are:

1. striking a candidate's name out of the list where:

(a) the candidate is not a citizen in possession of full civic rights (see sections 4 and 5 above);

...

(3) ... [T]he candidate's name shall be struck out of the list by virtue of a certificate from the relevant authority or a decision of the court. The fact that the candidate:

...

7. does not have a command of the official language at the third (upper) level of knowledge shall be certified by the State Language Centre; ..."

19. By section 50 of the Law of 28 July 1994 on the rules of parliamentary procedure (*Saeimas kārtības rullis* – "the Rules of Parliamentary Procedure Act"), Latvian is the sole working language in Parliament and its committees. All draft legislation and decisions, challenges and questions by members, and any documents appended to them must be written in Latvian.

B. Provisions on determination of the level of command of the official language

20. The relevant provisions of the Languages Act (*Latvijas Republikas Valodu likums*), in force at the material time and up to 1 September 2000, were worded as follows:

Section 1

"In the Republic of Latvia the official language shall be Latvian."

Section 4

"... [A]ll agents of public institutions ... must be capable of understanding and using the official language and the other languages at the level which is necessary for them to be able to perform their professional duties. The level of linguistic knowledge required of these agents shall be laid down in a regulation approved by the Cabinet ..."

Section 6

"[I]n public institutions the official language shall be the language used for information documents and for all working meetings. Persons who do not have a command of the official language may, at working meetings and with the consent of the other participants, use another language. In that case, whenever at least one participant so requests, the organiser shall ensure that a translation into the official language is provided."

Section 7

"In the Republic of Latvia ... institutions and organisations must use the official language in all official information documents and in correspondence with addressees within the country. ..."

21. At the material time the precise levels of knowledge of Latvian were laid down by the regulation of 25 May 1992 on certification of knowledge of the State language (*Valsts valodas prasmes atestācijas nolikums*). Chapter II of the regulation fixed the limits of the three levels of knowledge of Latvian, of which the third was defined as follows:

"Mastery of the spoken and written language is required for agents and employees whose professional tasks entail management of an undertaking and organisation of labour, or ... frequent contact with the public, [and for those] whose duties have to do with the well-being and health of the population (for example, members of parliament, persons managing public or administrative institutions or their structural units, boards of directors, inspectorates or undertakings, their deputies and secretaries, senior specialists, advisers, auditors, employees of Latvian cultural, educational and scientific bodies, doctors, assistant doctors, lawyers and judges). ...

This level of knowledge of the official language entails the ability to:

(1) converse freely;

(2) understand texts chosen at random; and

(3) draft texts relating to one's professional duties."

22. Chapter IV of the regulation provided that examinations to test linguistic competence were to be organised by certification boards of nine, seven or five members, as the case required. Thus a board to verify the

linguistic competence of a firm's employees had to have at least five members, including one representative of the trade concerned, one member delegated by the municipal certification board, and specialists in Latvian.

Chapter VI of the regulation governed in detail the procedure for assessing the linguistic knowledge of persons required to take the examination. Each examination was to include a written part and an oral part. Each candidate was to have twenty to thirty minutes to prepare answers to the questions asked by members of the board, who could ask supplementary questions, but should, in principle, refrain from interrupting the candidate. The linguistic competence of each candidate was then assessed according to a number of different criteria (his narrative, conversational and writing skills, the breadth of the vocabulary used, and observance of grammatical rules). After the examination, board members deliberated before deciding by a simple majority vote which candidates had passed. Where the municipal certification board's delegate expressed an unfavourable vote, the unsuccessful candidate could appeal against the final decision to the board which had delegated him. A report had to be written on each candidate.

C. Provisions on appeals against electoral commission decisions

23. Section 51 of the Parliamentary Elections Act (see paragraph 18 above) provides:

> "An organisation which has submitted a list of candidates, or the candidates themselves, may challenge the decision of an electoral commission within seven days by means of an appeal to the court in whose territorial jurisdiction the electoral commission concerned falls."

24. Administrative appeals are governed by the provisions of Chapter 24-A of the Latvian Code of Civil Procedure (*Latvijas Civilprocesa kodekss*), applicable to all relations covered by administrative law, except those for which a special appeals procedure has been laid down by law. In respect of electoral matters the *lex specialis* is Chapter 23 of the Code, whose relevant provisions provide as follows:

Article 230

> "... candidates for election to the Parliament of the Republic of Latvia ... may challenge an electoral commission's decisions by means of an appeal to the court in whose territorial jurisdiction the electoral commission concerned falls."

Article 233

> "After hearing the appeal, the court shall deliver a judgment, either
>
> (1) ruling that the electoral commission's decision was taken in accordance with the law and dismissing the appeal; or

(2) upholding the appeal and setting aside the electoral commission's decision.

No appeal shall lie against this judgment, which shall take effect on delivery. The court shall immediately serve a copy of it on the Central Electoral Commission ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

25. The applicant complained that the removal of her name from the list of candidates for insufficient knowledge of Latvian had infringed her right to stand as a candidate in the parliamentary election, guaranteed by Article 3 of Protocol No. 1, which provides:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

A. Arguments of the parties

1. The Government

26. Referring in the first place to the general principles laid down in the established case-law of the Convention institutions regarding the nature and scope of the guarantees of Article 3 of Protocol No. 1, the Government observed that the rights it guaranteed were not absolute, that there was room for “implied limitations”, and that Contracting States had a wide margin of appreciation regarding the conditions governing the right to stand for election. However, these conditions should not curtail electoral rights to such an extent as to impair their very essence; they should be imposed in pursuit of a legitimate aim; and the means employed should not be disproportionate.

27. The Government pointed out that the linguistic requirements complained of did not exist before 1995 and that as a result, at the first parliamentary elections after the State recovered its independence, in 1993, a number of persons who neither spoke nor understood Latvian had become MPs. As the persons concerned had been incapable of following the debates in Parliament and its committees, its work had been seriously hampered. That was why, in enacting the new electoral legislation, Parliament had decided to require candidates to prove that they had a command of the official language, in order to avoid similar practical difficulties in future. The provision complained of therefore pursued legitimate aims, namely

meeting the need for electors to communicate with their elected representatives and for MPs to carry on normally the work that voters had entrusted to them.

28. The Government further submitted that the requirement of a command of the official language at the upper level did not impair the very essence of the right to stand as a candidate since anyone who wished to do so but did not have a sufficient command of Latvian could always reach the level required by improving his knowledge of the language. In that respect, the requirement was proportionate to the legitimate aim pursued.

29. As regards the allegedly arbitrary nature of the examination in Latvian imposed on the applicant, the Government observed that the test was designed to determine the current level of a candidate's knowledge of the language. Accordingly, while the applicant might have had a command of Latvian at the "third level" when she received the certificate attesting to her knowledge of the State language, in January 1997, her linguistic competence could have deteriorated during the eighteen months that had elapsed before the examination in issue.

In the final analysis, the Government contended that the Central Electoral Commission had removed the applicant's name from the list of candidates in a manner which meticulously complied with the Parliamentary Elections Act, so that any possibility of arbitrariness was excluded. Consequently, the Government submitted that there had been no violation of Article 3 of Protocol No. 1 to the applicant's detriment.

2. The applicant

30. The applicant contested the Government's arguments. She pointed out in the first place that Latvian was not the mother tongue of the members of the Russian-speaking minority, which accounted for almost 40% of the population of Latvia and to which she belonged. She therefore could not see how her insufficient knowledge of Latvian could prevent her from carrying out the tasks entrusted to her by her Russian-speaking constituents or from communicating with them. In that connection, and even supposing that her knowledge of Latvian did not correspond to the "third level", it was in any event sufficient to enable her to carry out her parliamentary duties normally. She therefore considered that the removal of her name from the list of candidates had been manifestly disproportionate to any legitimate aim the requirement complained of might have pursued.

31. In addition, the applicant criticised the verification of her knowledge of Latvian carried out by the State Language Inspectorate, purportedly under section 13(3) of the Parliamentary Elections Act, contesting in particular the need for such verification, since the validity and authenticity of her permanent certificate of knowledge of the State language had not been disputed by any national authority. Moreover, comparing that verification with the ordinary procedure for certification of linguistic

competence, which she had been required to comply with in 1997 in order to obtain her certificate, she pointed out that an examination for the purpose of certifying linguistic competence was conducted by a board with at least five members, whereas the verification in issue had been carried out by a single examiner. Furthermore, the ordinary certification procedure was laid down in a regulation containing the assessment criteria, which the applicant considered objective and reasonable. On the other hand, when carrying out the verification in issue, the examiner had not been required to observe those criteria and had a completely free hand in assessing the applicant's level. In particular, language and spelling mistakes were inevitable in view of the applicant's extreme nervousness, caused by the examiner's conduct. The applicant accordingly submitted that the verification of the level of her command of Latvian which had led to the removal of her name from the list of candidates had been carried out in a manifestly arbitrary way.

32. The applicant further criticised the fact that of the twenty-one candidates in possession of a certificate attesting to knowledge of Latvian at the "third level" only nine, including herself, had had to undergo this check, whereas the certificates of the other twelve candidates had been adjudged sufficient to establish their level of command of the language. As there was no basis in domestic law for that distinction, the applicant submitted that it confirmed the existence of an arbitrary attitude towards her.

In the light of the foregoing considerations, the applicant contended that there had been an infringement of her right under Article 3 of Protocol No. 1 to stand as a candidate in the elections.

B. The Court's assessment

33. The Court reiterates that the subjective rights to vote and to stand for election are implicit in Article 3 of Protocol No. 1. Although those rights are important, they are not absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for "implied limitations". In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 23, § 52; *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, pp. 1233-34, § 39; *Ahmed and Others v. the United Kingdom*, judgment of 2 September 1998, *Reports* 1998-VI,

p. 2384, § 75; and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV).

In particular, States have broad latitude to establish constitutional rules on the status of members of parliament, including criteria for declaring them ineligible. Although they have a common origin in the need to ensure both the independence of elected representatives and the freedom of electors, these criteria vary in accordance with the historical and political factors specific to each State; the multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area. For the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another. However, the State's margin of appreciation in this regard is limited by the obligation to respect the fundamental principle of Article 3, namely "the free expression of the opinion of the people in the choice of the legislature" (see *Mathieu-Mohin and Clerfayt*, cited above, pp. 23-24, § 54).

34. In the present case the Court notes that the applicant was struck out of the list of candidates in accordance with section 5, point 7, of the Parliamentary Elections Act, which makes ineligible persons who do not have a command of Latvian at the "upper" level. In the Government's submission, the obligation for a candidate to understand and speak Latvian is warranted by the need to ensure the proper functioning of Parliament, in which Latvian is the sole working language. They emphasised in particular that the aim of this requirement was to enable MPs to take an active part in the work of the House and effectively defend their electors' interests.

The Court cannot contest that argument. It considers that the interest of each State in ensuring that its own institutional system functions normally is incontestably legitimate. That applies all the more to the national parliament, which is vested with legislative power and plays a primordial role in a democratic State. Similarly, regard being had to the principle of respect for national characteristics enunciated above, the Court is not required to adopt a position on the choice of a national parliament's working language. That decision, which is determined by historical and political considerations specific to each country, is in principle one which the State alone has the power to make. Accordingly, regard being had to the respondent State's margin of appreciation, the Court concludes that requiring a candidate for election to the national parliament to have sufficient knowledge of the official language pursues a legitimate aim.

35. That being so, it must determine whether the decision to remove the applicant's name from the list of candidates was proportionate to the aim pursued. In that connection, the Court reiterates that the object and purpose of the Convention, which is an instrument for the protection of human

beings, requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see, for example, *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33; *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, pp. 18-19, § 33; and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III). The right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would only be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing eligibility conditions in the abstract, the principle that rights must be effective requires the finding that this or that candidate has failed to satisfy them to comply with a number of criteria framed to prevent arbitrary decisions. In particular, such a finding must be reached by a body which can provide a minimum of guarantees of its impartiality. Similarly, the discretion enjoyed by the body concerned must not be exorbitantly wide; it must be circumscribed, with sufficient precision, by the provisions of domestic law. Lastly, the procedure for ruling a candidate ineligible must be such as to guarantee a fair and objective decision and prevent any abuse of power on the part of the relevant authority.

36. In the present case, the Court notes that the decision to strike the applicant out of the list of candidates was not grounded on the fact that she had no valid certificate of linguistic competence, as required by section 11, point 5, of the Parliamentary Elections Act. On the contrary, at the time when the list was registered she was in possession of such a certificate, which attested to the fact that her knowledge of Latvian had reached the upper level as defined in the Latvian regulations. The Court emphasises that the validity of the applicant's certificate was never questioned by the Latvian authorities. It further notes that it was issued to the applicant after an examination organised by a board composed, pursuant to the regulation of 25 May 1992 on certification of knowledge of the State language, of five examiners. Her command of Latvian was determined by means of deliberations followed by a vote and in accordance with objective assessment criteria laid down by the regulation (see paragraph 22 above).

The Court observes that the State Language Centre decided to subject the applicant to a new language examination even though she had a valid, lawful certificate. It notes, however, that of the twenty-one candidates who had to provide certificates attesting to knowledge of the State language only nine, including the applicant, were required to sit a second examination. The Court has grave doubts about the legal basis for that distinction, and the Government have not supplied any explanation on the point. In any event, and even supposing that the legal basis for the additional verification was section 13(3) of the Parliamentary Elections Act, the Court notes that the

procedure followed differed fundamentally from the normal procedure for certification of linguistic competence, which is governed by the above-mentioned regulation of 25 May 1992. In particular, the additional verification to which the applicant was subjected was carried out by one examiner instead of a board of experts and the examiner was not required to observe the procedural safeguards and assessment criteria laid down in the regulation. Thus the full responsibility for assessing the applicant's linguistic knowledge was left to a single civil servant, who had exorbitant power in the matter. Moreover, the Court can only express its surprise over the fact – related by the applicant and not disputed by the Government – that during the examination the applicant was questioned mainly about the reasons for her political orientation, a subject which quite clearly had nothing to do with the requirement that she should have a good knowledge of Latvian.

That being the case, the Court considers that in the absence of any guarantee of objectivity, and whatever the purpose of the second examination was, the procedure applied to the applicant was in any case incompatible with the requirements of procedural fairness and legal certainty to be satisfied in relation to candidates' eligibility (see paragraph 35 above).

37. The Court considers that the above conclusion is confirmed by the way the Riga Regional Court examined the applicant's appeal. The sole basis for its judgment of 31 August 1998 was the certificate drawn up by the State Language Centre after the examination in issue; it did not rule on the other evidence in the file. The Court therefore considers that in admitting as irrebuttable evidence the results of an examination the procedure for which lacked the fundamental guarantees of fairness, the Regional Court deliberately avoided providing a remedy for the violation committed.

38. Having regard to all the foregoing considerations, the Court concludes that the decision to strike the applicant out of the list of candidates cannot be regarded as proportionate to any legitimate aim pleaded by the Government. It follows that in this case there has been a violation of Article 3 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1

39. The applicant further complained that in denying her the right to stand as a candidate in the parliamentary elections for the sole reason that she did not have a command of Latvian at the highest level defined by the domestic regulations the Latvian authorities had caused her to suffer discrimination prohibited by Article 14 of the Convention in the exercise of

her right under Article 3 of Protocol No. 1. The relevant parts of Article 14 provide:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... language, ... national ... origin, association with a national minority ..."

40. The Government observed that, according to the judgment of 23 July 1968 in the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits) (Series A no. 6), the equality of treatment enshrined in Article 14 of the Convention is violated only where a distinction has no objective and reasonable justification (loc. cit., pp. 34-35, § 10). In the light of their arguments concerning the alleged violation of Article 3 of Protocol No. 1 taken separately, the Government submitted that the distinction criticised had been based on such a justification. They pointed out in particular that the applicant was not the only candidate on her list who was required to undergo a verification of her linguistic competence. There had accordingly been no violation of Article 14.

41. The applicant rejected that argument. In her submission, the way in which such a verification was carried out and the almost total freedom enjoyed by the examiner made it easy to strike out of the list any person whose mother tongue was not Latvian. As a result, a truly discriminatory practice *vis-à-vis* members of national minorities was to be feared. The applicant further observed that of the twenty-one candidates who had not been educated in Latvian only nine, including her, had been required to take the above-mentioned test. In that connection, she presumed the existence of covert discrimination.

42. The Court considers that this complaint is essentially the same as the complaint under Article 3 of Protocol No. 1. Regard being had to the conclusion it reached in that connection (see paragraph 38 above), the Court considers that it is not necessary to examine the complaint under Article 14 of the Convention separately.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1

43. Relying in substance on Article 13 of the Convention taken in conjunction with Article 3 of Protocol No. 1, the applicant complained that in confining itself to endorsing the finding set out in a certificate issued by an administrative authority, without verifying the truth of the matter and without ruling on the other evidence before it, the Riga Regional Court had infringed her right to an effective remedy before a national authority. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

44. The Government contended that the State Language Centre was the only authority empowered to determine the level of a candidate's knowledge of the State language. They submitted that the applicant had been able to exercise without hindrance her right to a remedy by means of an appeal to the Riga Regional Court. At the hearing on 31 August 1998 that court had made a detailed assessment of the evidence before it before holding that the measure complained of had complied with the Parliamentary Elections Act. As the Regional Court had looked into the merits of the applicant's complaints, there was no reason to consider that the remedy afforded in Latvian law was not an effective one for the purposes of Article 13 of the Convention.

45. As with Article 14, the Court considers that the conclusions it reached regarding the alleged violation of Article 3 of Protocol No. 1 taken separately (see paragraphs 37-38 above) absolve it from the obligation to consider the case from the standpoint of Article 13 of the Convention also.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

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

A. Pecuniary damage

47. The applicant submitted that the removal of her name from the list of candidates had had detrimental consequences for her economic situation. In that connection, she maintained that the negative publicity about her after she was struck out had plunged her into a state of distress and frustration which prevented her from carrying on her commercial activities normally and caused potential business associates to avoid her. In addition, the certificate in which the State Language Centre had asserted that she did not have a command of Latvian at the upper level in fact meant that she was thenceforth unfit for the post of managing director, and this had led her to resign from her job. Since then, with the exception of half-time work here and there in a small private business, she had not managed to find appropriate employment. The applicant therefore asked the Court to award her 1,500 lati (LVL) for the loss she had sustained and for loss of earnings.

48. The Government submitted that there was no connection between the alleged violation and the amount claimed by the applicant. They

observed in particular that she had decided to resign from her post in the company of her own free will. Even if she feared that the unfavourable report of the State Language Centre might cause her prejudice in her professional life, she could always have asked for her linguistic competence to be re-examined, but had not done so.

49. The Court considers, like the Government, that no causal link has been established between the alleged pecuniary loss and the violation found (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 40, ECHR 1999-I, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999-II). It accordingly dismisses the applicant's claims under this head.

B. Non-pecuniary damage

50. The applicant claimed LVL 50,000 (approximately 89,000 euros (EUR)) in compensation for the distress and humiliation she had suffered through being struck out of the list of candidates. In the light of the criteria laid down by the Court on the question of redress for non-pecuniary damage, she submitted that her case concerned a serious violation of the fundamental rights guaranteed by the Convention, and that the amount claimed was justified by the suffering she had endured as a result of the violation.

51. The Government considered the sum claimed by the applicant exorbitant, regard being had in particular to the cost of living and the level of income in Latvia at present. They submitted that the finding of a violation would in itself constitute sufficient just satisfaction for any non-pecuniary damage the applicant might have suffered.

52. The Court reiterates that non-pecuniary damage is to be assessed with reference to the autonomous criteria it has derived from the Convention, not on the basis of the principles defined in the law or practice of the State concerned (see, *mutatis mutandis*, The Sunday Times *v. the United Kingdom (no. 1)* (Article 50), judgment of 6 November 1980, Series A no. 38, p. 17, § 41, and *Probstmeier v. Germany*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1140, § 77). In the present case the Court cannot deny that the applicant suffered non-pecuniary damage as a result of being prevented from standing as a candidate in the general election. Consequently, ruling on an equitable basis and having regard to all the circumstances of the case, it awards her EUR 7,500 for non-pecuniary damage, to be converted into lati at the rate applicable on the date of adoption of the present judgment.

C. Costs and expenses

53. The applicant claimed LVL 1,750 (approximately EUR 3,150) as reimbursement for the costs and expenses she had incurred for the

preparation of her case and its presentation to the Court. That sum was broken down as follows:

(a) LVL 750 for work done by Mrs I. Oziša, the applicant's representative until 2 May 2001. In justification of that sum, the applicant submitted a bill presented by the Latvian Committee for Human Rights (*Latvijas Cilvēktiesību komiteja*), a non-governmental organisation;

(b) 1,000 pounds sterling (approximately LVL 1,000) for the fees of her lawyer, Mr W. Bowring, who had prepared the applicant's observations on the admissibility and merits of the application and had helped to draft her claim for just satisfaction.

54. The Government left this matter to the Court's discretion.

55. The Court reiterates that, in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, among many other authorities, *Nikolova*, cited above, § 79, and *Jėčius v. Lithuania*, no. 34578/97, § 112, ECHR 2000-IX). In the present case it notes some confusion about the documents submitted as evidence that the applicant received legal assistance both in Latvia and abroad, since there is no document in the file which shows that the association *Latvijas Cilvēktiesību komiteja* participated as such in the proceedings before the Court. However, it appears from the wording of the bill produced by the applicant that she was represented by Mrs I. Oziša, who works within that association. As regards Mr W. Bowring, the Court was not informed of his participation in the proceedings until 2 May 2001, that is after the application had been declared admissible, although the authority to act signed by the applicant and sent to the Court on the same date bears a much earlier date – 15 October 2000.

In these circumstances the Court, ruling on an equitable basis as required by Article 41 of the Convention, awards the applicant the sum of EUR 1,500 under this head, to be converted into lati at the rate applicable on the date of adoption of the present judgment, together with any value-added tax which may be payable (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2702, § 37).

D. Default interest

56. According to the information available to the Court, the statutory rate of interest applicable in Latvia at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of Protocol No. 1;

2. *Holds* that it is not necessary to examine separately the complaint under Article 14 of the Convention;

3. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros) for non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) for costs and expenses, to be converted into lati at the rate applicable on the date of adoption of the present judgment, together with any value-added tax which may be payable;
   (b) that simple interest at an annual rate of 6% shall be payable on the above amounts from the expiry of the above-mentioned three months until settlement;

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

Done in French, and notified in writing on 9 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Sir Nicolas BRATZA
President