CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40772/98
by Anna PANČENKO
against Latvia

The European Court of Human Rights (Second Section) sitting on 28 October 1999 as a Chamber composed of

Mr C. Rozakis, *President,*
Mr M. Fischbach,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr E. Levits, *Judges,*

and Mr E. Fribergh, *Section Registrar;*

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 16 December 1997 by Anna PANČENKO against Latvia and registered on 15 April 1998 under file no. 40772/98;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the information provided by the respondent Government pursuant to Rule 49 § 2 of the Rules of Court on 21 April 1999, the applicant's observations in reply submitted on 18 May 1999, and her additional observations of 18 August 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Ukrainian citizen, born in 1941. At present she lives in Liepājā in Latvia.

She represented before the Court by Mr G. Kotov, a lawyer practising in Riga.

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

A. Particular circumstances of the case

The applicant lived in Ukraine until her marriage in Potsdam (Germany) in 1963. Thereafter, together with her husband, a Soviet military officer, the applicant briefly lived in the Kaliningrad enclave of Russia where she gave birth to her son. In 1967 the applicant came to Latvia for the first time, when her husband was appointed to a military post in Liepājā. She stayed there until 1968, when the family moved to the far north of Russia, where the husband continued his military service. The applicant remained in Russia until 1985, when she came back to Liepājā separately from her spouse. Ever since she has been living in Latvia alone. Following the formal divorce in 1994, her former husband died in Ukraine in 1996. Her son and granddaughter live in Ukraine.

In 1992, under the Status of the Former USSR Citizens Act, the applicant was entered on the Register of Latvian Residents (hereinafter referred to as “the Register”) on the basis of her status as “an ex-USSR citizen”, a particular category of stateless persons under the Latvian law (see the Relevant domestic law part below). The applicant had no specific citizenship at that point.

On 10 October 1994 the applicant adopted citizenship of Russia. She submits that she did so to be able to leave the territory of Latvia and to go abroad on occasional commercial trips with a view to earning money.

On 17 February 1995 the Latvian Citizenship and Migration Authority (hereinafter referred to as “the CMA”) annulled the applicant's entry in the Register and, upon her request, issued her with a temporary residence permit valid until 21 February 1996.

On 6 March 1995 the applicant complained to the CMA, alleging a CMA official had misled her in offering to apply for temporary residence. The applicant stated that she was in fact entitled to the entry on the Register as a permanent resident of Latvia.

On 7 July 1995 she brought court proceedings, alleging that the decision of the immigration authorities to annul her entry in the Register was void.

On 17 January 1996 the applicant denounced her Russian citizenship.

On 18 March 1996 the Liepājā City District Court rejected the applicant's claim.

On 3 July 1996, on the applicant's appeal, the Kurzeme Regional Court transmitted the case back to the District Court for new examination on the ground of technical defect relating to the composition of the court at first instance.

On 10 December 1996 the Liepājā City District Court again dismissed the applicant's action. The Court held that the applicant had been a Russian citizen, and that her entry had been lawfully withdrawn by the CMA from the Register as she had lost her special status as "an ex-USSR citizen". The Court also noted that the applicant had herself filed an application for a temporary residence permit, which had been granted.

On 9 April 1997, on the applicant's appeal, the Kurzeme Regional Court confirmed the decision of the District Court. The appellate court held that, having obtained Russian citizenship, the applicant became subject of Russia, and that her entry could not remain in the Register.

The applicant appealed to the Supreme Court.

She also presented her problems to various parliamentary, executive and non-governmental institutions, but without success.

As the applicant failed to extend her temporary residence permit following its expiry on 21 February 1996, she was presented with an expulsion order on 23 May 1997. She refused to sign the deportation order pending her cassation appeal.

On 18 June 1997 the Supreme Court dismissed the cassation appeal, finding that the lower courts had properly decided the case.

By a letter of 8 July 1997 the Ministry of Interior informed the applicant that her stay in Latvia was illegal.

The applicant again approached the immigration authorities, requesting registration as a permanent resident. This was refused. She did not request an extension of her temporary residence permit.

On 4 November 1997 the applicant introduced a fresh court action, asking to be re-registered.

On 20 January 1998 the Riga City Central District Court rejected the application, finding that the matter had already been decided in the first set of court proceedings which had ended by a final decision of the Supreme Court on 18 June 1997. The applicant appealed, stating that the action was in fact new. On 11 May 1998 the Riga Regional Court dismissed the appeal.

By a letter of the CMA of 16 July 1998 the applicant was informed that her continued stay in Latvia was illegal, and that she was required to leave the country. She was warned that, otherwise, she would be served with a deportation order.

In a letter to the CMA of 8 October 1998 the applicant stated that, following the entry into force of the amended Registration of Residents Act on 10 September 1998, she became entitled to be registered as a permanent resident of Latvia.

On 26 March 1999 the applicant took up Ukrainian citizenship.

On 19 April 1999 the CMA Director authorised the immigration authorities to issue the applicant with a permanent residence permit in Latvia on the basis of her status as a foreign citizen. By the above decision the deportation order in respect of the applicant was quashed.

On 22 April 1999 the applicant was issued with a permanent residence permit in Latvia.

B. Relevant domestic law

There are three categories of permanent residents of Latvia:
a) Latvian citizens;
b) stateless persons who have the special status of "ex-USSR citizens";
c) foreign citizens or other stateless persons who obtain permanent residence permits.

Categories a) and b) have the right to be entered on the Register of Residents by sole operation of, respectively, the Citizenship Act and the Status of the Former USSR Citizens Act. The persons in subparagraph c) can be granted permanent residence permits by decision of a competent authority or by virtue of the Entry and Residence of Foreign Citizens and Stateless Persons Act.

Article 1 § 3 of the Status of the Former USSR Citizens Act 1998 provides that only those stateless persons who "are not or have not been citizens of another State" can have the special status of an "ex-USSR citizen".

Other foreign citizens or stateless persons must obtain limited (temporary) residence permits or visas in order to stay in the country legally in accordance with the Entry and Residence of Foreign Citizens and Stateless Persons Act.

COMPLAINTS

1. Under Articles 6, 8 and 13 of the Convention and Article 2 of Protocol No. 4 to the Convention the applicant complains about the loss of her legal status in Latvia and the threat of being expelled from the country.

2. Under the above provisions the applicant also complains about her socio-economic problems in Latvia, including her indebtedness for communal charges in respect of her flat, unemployment, absence of free medical assistance or financial support from the State to ensure proper subsistence. She further complains that, although since 22 April 1999 she has had the status of a permanent resident of Latvia, she is denied the right to compensation for pecuniary and non-pecuniary damage suffered as a result of the authorities' refusal throughout 1995-1999 to acknowledge the validity of her claims to be recognised as a permanent resident of Latvia. She alleges that the immigration authorities legalised her stay in Latvia only following the institution of the Convention proceedings and the involvement of the Court.

PROCEDURE

The application was introduced on 16 December 1997 and registered on 15 April 1998.

By virtue of Article 5 § 2 of Protocol No. 11 to the Convention, which entered into force on 1 November 1998, the above application was transferred to the new European Court of Human Rights.

On 24 March 1999 the Government were requested, pursuant to Rule 49 § 2 of the Rules of Court, to submit additional factual information in relation to the applicant's legal status in Latvia and her possible deportation from the country.

The Government replied on 21 April 1999, informing that on 19 April 1999 the immigration authorities had decided to issue a permanent residence order in respect of the applicant and to quash her deportation order.

The applicant submitted her comments on 18 May 1999, and presented additional observations on 18 August 1999.

THE LAW

1. The applicant alleges violations of Articles 6, 8 and 13 of the Convention and Article 2 of Protocol No. 4 to the Convention in connection with the loss of her status as a permanent resident of Latvia and the threat of being expelled from the country.

Article 6 of the Convention provides, insofar as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13 states:

> "Everyone whose rights and freedoms as set forth in this 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."

Article 8 provides, insofar as relevant, as follows:

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

Article 2 of Protocol No. 4 to the Convention reads, insofar as relevant, as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own."

The Court notes that the applicant is now a permanent resident of Latvia, and that she is under no threat of being expelled from the country. Therefore, the alleged violations of the Convention concerning the absence of the applicant's legal status and the threat of being expelled were remedied by the quashing of the deportation order against her and the granting of a permanent residence permit. It follows that in this respect the applicant may no longer claim to be a victim of a violation of the Convention within the meaning of Article 34.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected under Article 35 § 4.

2. The applicant also complains about her socio-economic problems, and requests compensation for a violation relating to her former inability to be registered as a permanent resident of Latvia during the period 1995-1999.

The Court recalls first that the Convention does not guarantee, as such, socio-economic rights, including the right to charge-free dwelling, the right to work, the right to free medical assistance, or the right to claim financial assistance from a State to maintain a certain level of living.

To the extent that this part of the application relates to Article 3 of the Convention, which prohibits torture or inhuman or degrading treatment, the Court observes, on the basis of the applicant's submissions, that her present living conditions do not attain a minimum level of severity to amount to treatment contrary to the above provision of the Convention (see, *mutatis mutandis*, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 60-72, §§ 150-187).

In respect of the remainder of the above complaints, the Court considers that they do not disclose any appearance of a violation of the Convention or its Protocols.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected under Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President