



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

FOURTH SECTION

**CASE OF PODKOLZINA v. LATVIA**

*(Application No. 46726/99)*

JUDGEMENT

STRASBOURG

April 9, 2002

**DEFINITIVE**

*09/07/2002*

This judgement will be definitive under the terms defined in article 44 § 2 of the Convention. Its form may undergo alterations.

**In the case of Podkolzina v. Latvia,**

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

Sir Nicolas BRATZA, *President*,  
M<sup>me</sup> E. PALM,  
M. J. MAKARCZYK,  
M<sup>me</sup> V. STRÁŽNICKÁ,  
MM. M. FISCHBACH,  
J. CASADEVALL,  
R. MARUSTE, *judges*,

and M. M. O'BOYLE, *Section Registrar*

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

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

## PROCEDURE

1. The case's origin is an application (No. 46726/99) addressed versus the Republic of Latvia, whereby a Latvian national born, M<sup>me</sup> Ingrida Podkolzina (« the applicant ») brought the matter before the Court on February 25, 1999, pursuant to article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (« the Convention »).

2. The applicant was initially represented by M<sup>me</sup> I. Oziša, assistant of a member of the Latvian Parliament. In a letter of May 2, 2001, the applicant informed the Court that she would be from then on represented by M<sup>r</sup> W. Bowring, barrister in Colchester (United Kingdom). The Latvian government (« the Government ») is represented by its agent, M<sup>lle</sup> K. Maï inovska.

3. The applicant complained that the removal of her name from the list of candidates for the parliamentary elections on the ground that she had an inadequate command of Latvian, the official language of Latvia, infringed her right to stand as a candidate in elections, as guaranteed by Article 3 of Protocol No. 1 of the Convention. She further alleged a violation of Articles 13 (substantially) and 14 of the Convention.

4. The application was assigned to the Second Section of the Court (Rule 52 §1 of the Rules of Court), within which the chamber in charge of examining the case (Rule 27 § 1 of the Convention) was set up according to Rule 26 § 1 of the Rules of Court. As a result of the objection to M. E. Levits, judge elected on behalf of Latvia (Rule 28), the Government designated M. R. Maruste, the judge elected on behalf of Estonia, to sit instead of him (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court).

5. By means of a decision of February 8, 2001, the chamber declared the application admissible.

6. Once the chamber decided after consulting the parties that there was no ground to hold a sitting dedicated to the roots of the case (Rule 59 § 2 *in fine* of the Rules of Court), the Government lodged some complementary observations in writing on the roots of the case, but the applicant did not (Rule 59 § 1 of the Rules of Court). On May 2, 2002, the applicant presented her application of just satisfaction (Article 41 of the Convention). On June 4, 2001, the Government presented its observations on this application.

7. On November 1, 2001, the Court recomposed its sections (Rule 25 §1 of the Rules of Court). The present application was assigned to the Fourth Section according to its new composition (Rule 52 § 1 of the Rules of Court).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

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

9. By a decision of July 30, 1998, the Central Electoral Commission (*Centrālā vāļģđānu komisija*) registered the list of candidates of the National Harmony Party (*Tautas saskaōas partija*) for election to the Latvian Parliament (*Saeima*) in the general election of October 3, 1998. The applicant stood on the list as a candidate in the Latgale constituency.

The list in question was registered after the National Harmony Party had supplied it to the Central Electoral Commission with all the documents required by the legislation on parliamentary elections, including a copy of the certificate attesting to the fact that the applicant knew the State's official language –Latvian– issued on January 23, 1997, by the Standing Committee for Language Certification in the town of Daugavpils, a branch of the State Language Centre (*Valsts valodas centrs*), an administrative institution which was itself answerable to the Ministry of Justice.

10. On August 6, 1998, an examiner belonging to the Language Examination Service (*Valsts valodas inspekcija*) of the State Language Centre came to the applicant's workplace to check with an oral examination how well she knew Latvian. The applicant had not received a prior notice of the visit and the examiner approached her while she was carrying out negotiations with her commercial partners.

After having told the applicant her intention to check her command of Latvian, the examiner started a conversation in this language. During the course of the conversation, which lasted several tens of minutes, the examiner asked her, among other questions, why she supported the National Harmony Party rather than another party.

The examiner returned the next day accompanied by three people whom the applicant did not know and who should serve as witnesses. The examiner asked her to write an essay in Latvian, to which demand the applicant assented and started to write. However, being extremely nervous, because she had not expected such an examination and because of the constant presence of the witnesses, 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 a «third level» command of the official language, the highest level, as established by the Latvian regulations.

12. On August 10, 1998, the State Language Centre sent to the president of the Central Electoral Commission a certificate of proficiency in the official language of several candidates who were included in the lists registered for the legislative elections. Although this certificate included a reference to the oral examination carried out by the examiner of the Language examination service, this document was not appended. In the terms of the certificate, among the nine candidates who were actually examined, only the applicant did not have a «third level» command of Latvian. Twelve other candidates, not subject to examination, had a certificate attesting this level.

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

14. On August 27, 1998, the National Harmony Party, acting on the applicant's behalf, brought an action for annulment of the above decision before the Riga Regional Court. In the written submission, the party emphasised that in the moment of registration of the list of candidates for the election, a copy of a certificate attesting the applicant's knowledge of the State's language had been delivered to the Central Electoral Commission. According to the party, the Central Electoral Commission should equally have taken this certificate into account, and not have based its argument solely on the attestation delivered by the State Language Centre, since these two documents contradict each other.

15. By a definitive sentence of August 31, 1998, the Riga Regional Court refused the action arguing that the Central Electoral Commission had acted within the limits foreseen by the legislation on parliamentary elections. In this sentence, the Riga Regional Court established that, according to Article 11 of the aforementioned legislation, the existence of a certificate attesting the «third level» command of the official language by all candidates who had not completed their primary and secondary studies in Latvian was the necessary precondition for registration on a list of candidates; therefore, by deciding to register the list which included the applicant, the Central Electoral Commission had conformed to the requirements foreseen by the legislation. On the other hand, Article 13 of this legislation empowered the Central Electoral Commission to modify the lists, which had already been registered by striking the candidates off due to unsatisfactory command of the official language, which had been confirmed in the current case by the certificate delivered by the State Language Centre. Thus, the Riga Regional Court decided on the absence of violation of the legislation.

16. A third-party application against that judgment by the National Harmony Party on September 14, 1998, on behalf of the applicant, to the President of the Civil Division of the Supreme Court and the Attorney-General was delivered asking for the reestablishment of the proceedings on the ground of a grave and manifest violation of the substantive rules of law resulting from a wrong interpretation of the legislation on parliamentary elections.

By two letters of September 29 and October 1, 1998, respectively, the Public Prosecutor and the President of the Civil Division of the Supreme Court refused the application on the ground that the decision had been reasoned and in compliance with the law.

## II. RELEVANT DOMESTIC LAW

### A. Provisions concerning the language requirements for the candidates to legislative elections and parliamentary representatives

17. Article 9 of the Constitution (*Satversme*) of the Republic of Latvia, adopted in 1922, is drawn up as follows:

« Any citizen of Latvia, who enjoys full rights of citizenship and, who is more than 21 years of age on the first day of elections may be elected to the Parliament ».

18. The relevant provisions of the law of May 25, 1995, on the parliamentary elections (*Saeimas vāļçðanu likums*) are thus worded:

#### Article 4

« Any citizen of Latvia who has reached the age of 21 on the day before the elections can be elected to the Saeima unless any of the restrictions set in Article 5 of this Law apply. »

#### Article 5

« Persons are not to be included in the candidate lists and are not eligible to the Saeima if they: (...)  
7) have not mastered the national language to the third level (highest) level of competence. »

#### Article 11

« The following documents shall be attached to the list of candidates: (...)  
5) if the nominated candidate has not completed a school with Latvian as the language of instruction (...), he/she shall submit a copy of a certified document (...) indicating the third level of national language skills »

#### Article 13

« (...) (2) The lists of candidates that have been registered may not be revoked, and amendments may only be made by the Central Electoral Commission in any of the following ways:

- 1) by deleting the name of a nominated candidate, if: (...)
  - a) the candidate is not a legitimate citizen of Latvia (Articles 4 and 5); (...)

(3) (...) The Commission shall strike off the candidate on the basis of document issued by the corresponding institution or of court verdict. That the candidate: (...)

7) is not proficient in the State language in accordance with the third (highest) knowledge level of the State language, is certified by document issued by the State Language Centre; (...) »

19. According to Article 50 of the law of July 28, 1994, which sets the Parliament's procedure (*Saeimas kārçibas rullis*), the only working language of the plenary meeting and of parliamentary commissions is Latvian. All bills and decisions, inquiries, questions and appended documents must be written in Latvian.

### B. Provisions concerning the establishment of the level of command of the official language

20. The relevant provisions of the language law (*Latvijas Republikas Valodu likums*) in force at the time of the facts and those in force until September 1, 2000, were worded as follows:

**Article 1**

« The official language of the Republic of Latvia is Latvian. »

**Article 4**

« (...) All agents of public institutions (...) must have a command of and use the official language and the other languages at a necessary level in order to accomplish their professional tasks. The level of command of the languages of these agents is defined by a regulation approved by the Council of Ministers (...) »

**Article 6**

« The official language of public institutions is the language of documentation and of work meetings. Those who do not have a command of this language may use another language at work meetings and with the consent of the rest of participants. In such case, when required by at least one participant at the meeting, the organiser shall provide a translation in the official language. »

**Article 7**

« The institutions and the organisations in the Republic of Latvia (...) must use the official language in all official documentation, as well as in the correspondence with consignees within the country. (...) »

21. At the time of the facts, the required levels of command of Latvian were determined by the regulation of May 25, 1992, concerning the attestation of knowledge of the State language (*Valsts valodas prasmes atestācijas nolikums*). Chapter II of this regulation defined the three levels of command of Latvian, whereby the third was defined as follows:

« The command of the spoken and written language is a requirement for those agents and employees whose professional tasks imply the management and organisation of work, or (...) wide contacts with the population, [as well as those] whose functions affect the welfare and health of the population (for instance, parliamentary representatives, heads of public or administrative institutions and of their structural units, of directions, inspections, and ventures, their assistants and secretaries, supervision specialists, advisors, chief clerks, employees of culture, education and science bodies of Latvia, doctors, assistant doctors, lawyers, judges). (...) »

This level of command of the official language implies that [the person] can:

- 4) speak freely,
- 5) understand texts randomly chosen,
- 6) write texts related to their professional duties. »

22. In the terms of Chapter IV of the said regulation, the tests for language certification were organised by certification commissions, which, according to the case, were composed by nine, seven or five members. In particular, a commission in charge of verifying the language abilities of the employees of a company had to be composed of at least five members, under which a representative of the profession concerned, a member authorised by the municipal certification commission, and specialists in the Latvian language.

Chapter VI of the regulation established in detail the assessment procedure of the language proficiency of those persons who took the examination. In the terms of this chapter, an examination should always be composed of a written and an oral part. Each examinee had twenty to thirty minutes to prepare the answer to the questions made by the members of the commission. These could make additional questions, but, in principle, they should refrain from interrupting the examinee. The language proficiency of each candidate was then evaluated according to several criteria (the ability to narrate, to hold a conversation and to write; the variety of vocabulary used; the right use of grammar rules). After the examination, the members of the commission held a deliberation, following to which the admissibility of each candidate was decided by a vote by absolute majority of the members. If the member authorised by the municipal certification commission issued an adverse vote for the examinee, he or she could challenge the final decision before the commission which had authorised it. A report had to be drawn concerning each of the candidates subject to examination.

### **C. Provisions regarding the actions against the decisions in election matters**

23. Article 51 of the parliamentary law (cf. paragraph 18 above) states the following:

« Once the organisation has submitted the list of candidates, the candidates themselves have the right to prosecute a decision of an electoral commission within the period of seven days by means of an action before the court whose jurisdiction includes the said electoral commission. »

24. The actions in administrative matters are regulated by the provisions of Chapter 24-A of the Latvian Code of Civil Procedure (*Latvijas Civilprocesa kodekss*), which are applicable to all actions of administrative law, except to those in which the law foresees a special procedure for actions. A *lex specialis* regulates electoral matters, namely Chapter 23 of the same code, whose relevant dispositions are as follows:

**Article 230**

« The (...) candidates running for the parliamentary elections of the Republic of Latvia (...) have the right to prosecute the decisions of an electoral commission by means of an action before the court whose jurisdiction includes the said electoral commission. »

**Article 233**

« Having examined the action, the court delivers a judgment and it can either:

- 1) confirm that the decision of the electoral commission has been made according to the law and the action can be thus dismissed;
- 2) recognise the adequacy of the action and annule the decision made by the electoral commission.

This judgement may not be appealed; it enters into force once it has been pronounced. The court immediately sends the judgment to the Central Electoral Commission (...) »

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 OF THE CONVENTION

25. The applicant complained that the removal of her name from the list of candidates on the ground that she had an inadequate command of the official language, infringed her right to stand as a candidate in legislative elections, as guaranteed by Article 3 of Protocol No. 1, which is thus worded:

« 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 regarding its choice of the legislature. »

#### A. The arguments of the parties

##### 1. The Government

26. By referring in the very first place to the general principles delivered by the constant precedents of the bodies of the Convention regarding the nature and the range of guarantees of this provision, the Government reminds that the rights guaranteed by Article 3 are not absolute, that «implicit limitations » may be introduced, and that the contracting States enjoy a large margin of appreciation in relation to the conditions of eligibility. However, the mentioned conditions must not reduce the electoral rights to the extent of observing them within its own substance, they must act in furtherance of a legitimate aim, and the means employed must not be disproportionate.

27. The Government reminds in the very first place that the criticised language requirements did not exist before 1995, so that, at the time of the first legislative elections after the re-establishment of the State's independence, in 1993, several people could not speak or understand Latvian and became parliamentary representatives. These people were unable to follow the debates at the plenary meeting and at the commissions, thus seriously interfering with the work at the Parliament. Therefore, since the adoption of the new electoral law, the Parliament decided to introduce the condition for the candidates to have a command of the

official language, in order to avoid similar practical difficulties in the future. Consequently, the contested provision acts in furtherance of legitimate aims, namely the need of the electorate to communicate with their elected representatives, and of the parliamentary representatives to exercise in a normal way the tasks entrusted by the electorate.

28. Then, the Government argues that the requirement of mastering the official language to the highest level of competence is not detrimental of the very substance of the passive electoral law, since every person wishing to stand as candidate in an election who has an insufficient command of Latvian, can always reach the required level by improving his or her command of the language. Thus, this requirement is proportionate to the legitimate aim in question.

29. Regarding the supposedly arbitrary character of the language examination imposed to the applicant, the Government reminds that this examination is conceived to determine the candidate's actual level of command of the language. So, whereas it may well be that when the applicant received her language certificate of proficiency in the State language in January 1997, she did have a « third level » command of Latvian, her knowledge of the language was worsened in the course of the eighteen months previous to the criticised examination.

Finally, the Government reckons that the deletion of the applicant off the list of candidates was done by the Central Electoral Commission in strict compliance with the law on parliamentary elections, which excludes any possibility of arbitrariness. Therefore, the Government concluded on an absence of violation of Article 3 of Protocol No. 1 in relation to the applicant.

## *2. The applicant*

30. The applicant replies to the Government's argument. She reminds in the very first place that Latvian is not the mother tongue of the members of the Russian-speaking minority, which constitutes nearly forty percent of Latvia's population and to which she belongs. Consequently, she does not see why her insufficient command of Latvian should stop her from exercising the mandate bestowed to her by her Russian-speaking electors or from communicating with them. In this respect, although she assumes that her command of the Latvian language does not correspond to the « third level », it suffices in any case for the normal exercise of her parliamentary tasks. Thus, the applicant reckons that her deletion off the list of candidates is manifestly disproportionate in relation to any legitimate aim which the criticised requirement may attempt to reach.

31. Moreover, the applicant criticises the verification of her command of Latvian, carried out by the Language Examination Service pursuant to Article 13 §3 of the law on parliamentary elections. She specially questions the need for such a verification, as the validity and the authenticity of her permanent certificate of proficiency of the State's language were not questioned by any of the national authorities. Furthermore, by comparing this verification with the ordinary procedure of language attestation to which she was submitted in 1997 in order to get her certificate, she stresses that the language attestation examination was carried out by a commission of at least five members, while the verification was carried out by only one examiner. Likewise, the modalities of normal attestation procedure are defined by a set of regulations, which also foresee the marking criteria deemed as objective and reasonable by the applicant. On the other hand, regarding the current case, the examiner did not respect these criteria and the assessment of her level was entirely left at the discretion of the examiner. In particular, the language and spelling errors were inevitable provided that the applicant was extremely nervous due to the examiner's behaviour. Consequently, the applicant reckons that the way of verifying her level of command of Latvian, which had led to her deletion, featured a manifestly arbitrary character.

32. The applicant equally denounces the fact that, among the twenty-one candidates who had a certificate of proficiency in the language at « third level », only nine, among which herself, were submitted to the aforementioned verification. On the other hand, the certificates of the other twelve candidates were recognised as sufficient in order to determine their level of command of Latvian. Since this distinction has no basis in national law, the applicant considers that it confirms the existence of arbitrariness in the case.

Taking into consideration all that precedes, the applicant believes that her right to stand as candidate in an election, expressed in Article 3 of Protocol No. 1, has been violated.

## **B. The Court's appraisal**

33. The Court reminds that Article 3 of Protocol No. 1 only implies subjective rights: the right to vote and the right to stand as candidate in an election. As important as they may be, these rights are, nonetheless, not absolute. Since Article 3 recognises this without stating them in explicit terms, even less defining them, «implicit limitations » may be introduced. In principle, within the contracting States' legal order, the conditions of rights of vote and of eligibility are not opposed by Article 3. In this matter they enjoy a wide margin of appreciation, but it is the Court's duty to ultimately decide on the observation of the requirements of Protocol No. 1; the Court must ensure that the said conditions do not reduce the rights with which it is concerned, to the extent of observing them according to its very substance and thereby depriving them of their efficiency, that they pursue a legitimate aim and that the means employed do not prove disproportionate (cf. judgments *Mathieu-Mohin and Clerfayt v. Belgium* of March 2, 1987, Series A no. 113, p. 23, § 52 ; *Gitonas and others v. Greece* of July 1, 1997, *Reports of judgments and decisions* 1997-IV, p. 233, § 39 ; *Ahmed and others v. United Kingdom* of September 2, 1998, *Reports* 1998-VI, § 75 , and *Labita v. Italy* [GC], no. 26772/95, § 201, CEDH 2000-IV).

In particular, the States are widely allowed to establish, within their constitutional order, rules regarding the status of parliamentary representative, under which the criteria of ineligibility. Although arising from a common concern –to ensure the independence of the elected candidates but also the freedom of the voters–, these criteria vary according to each State's historical and political factors; the great amount of situations foreseen in the constitutions and the electoral legislations of a few member States of the Council of Europe is a proof of the diversity of choices in this matter. In order to apply Article 3, every electoral law must be considered taking the country's political evolution into account, so that some unacceptable details within the framework of a certain system may be justified within the framework of another system. However, this margin of action recognised to the State is limited by the obligation to respect the fundamental principle of Article 3, namely «the free expression of the opinion of the people regarding its choice of the legislature » (cf. aforementioned judgment *Mathieu-Mohin and Clerfayt*, § 54).

34. In the current case, the Court notes that the applicant has been removed from the list of candidates pursuant to Article 5, under 7), of the law on parliamentary elections, which postulates the ineligibility of those citizens who do not have a command of Latvian at the highest level of competence. According to the Government, the obligation of a candidate to understand and speak the Latvian language is due to the need to ensure the good functioning of the Parliament, where it is the sole working language. The Government particularly underlines that this requirement is aimed at allowing the elected candidates to participate actively in the workings of the assembly and to defend the interests of their voters in an efficient way.

The Court would not know how to question such an argument. It considers indeed that the interest of each State to ensure the proper functioning of their own institutional system unquestionably applies to a legitimate character. It is thus *a fortiori* for the national Parliament, which is invested with the legislative power and plays a primary role within a democratic State. Likewise, in relation to the above-mentioned principle of respect for the national peculiarities, the Court is not to take a position on the choice of the working language of a national Parliament. Indeed, this choice, which is dictated by historical and political considerations, in principle comes under the State's exclusive competence domain. Therefore, as regards the respondent State's margin of appreciation, the Court concludes that the fact of requiring a candidate for the national Parliament to have a sufficient command of the official language pursues a legitimate aim.

35. Starting from this fact, it is appropriate to determine whether the decision of removing the applicant from the list of candidates was proportionate to the aim in question. In this regard, the Court reminds that the object and the aim of the Convention, which is an instrument of protection for human beings, require the interpretation and the application of these provisions in a way that derives from requirements which are not theoretical or illusory, but concrete and effective (cf., for instance, judgments *Artico v. Italy* of May 13, 1980, Series A no. 37, p. 15-16, § 33; *United Communist Party of Turkey and others v. Turkey* of January 30, 1998, *Reports* 1998-I, p. 18, § 33, and *Chassagnou v. France* [GC], nos. 25088/94, 28331/95, and 28443/95, § 100, CEDH 1999-III). But the right to stand as candidate in the election, which is guaranteed by Article 3 of Protocol No. 1 and inherent to the notion of a truly democratic regime, would be nothing but illusory if the interested party could be arbitrarily deprived of it at any moment. Therefore, if it is true that States have a wide margin of appreciation in order to establish *in abstracto* eligibility conditions, the principle of efficiency of rights requires that the decisions

prove the non-respect for these conditions in the individual case of each candidate, which corresponds to a certain number of criteria which allow avoiding arbitrariness. In particular, these decisions must be made by a body, which presents a minimum guarantee of impartiality. Likewise, this body's autonomous power of appreciation must not be excessive; it must have a sufficient level of precision, defined by the provisions of national law. Finally, the procedure used to prove ineligibility must be likely to guarantee a fair and objective decision, as well as to avoid any abuse of power on the part of the competent authority.

36. In the current case, the Court notes that the removal of the applicant from the list of candidates had not been justified on the basis of an absence of a valid language certificate, required by Article 11, under 5), of the law on parliamentary elections. Quite the contrary, when the list was registered, she held such a certificate, which attested that she had the highest level of command of Latvian, as defined by the national regulation. The Court underlines that the validity of this document has never been contested by the Latvian authorities. It also notes that the said certificate was delivered to the applicant following an examination organised by a commission which was composed of five members, according to the regulation of May 25, 1992, regarding the attestation of command of the State language. Her level of competence of Latvian was determined in the course of a deliberation followed by a vote, and according to the objective marking criteria set by the mentioned regulation (cf. paragraph 22 above).

The Court observes that, notwithstanding the fact that she held a regular and valid certificate, the State Language Centre decided to require the applicant to sit a further language examination. However, it notes that, among the twenty-one candidates who delivered their certificate of proficiency in the State language, only nine, under which the applicant, were subject to a second examination. The Court highly questions the legal basis of this distinction, since the Government has not furnished any explanation about this matter. As a matter of fact and supposing that the further examination was legally based on Article 13 § 3 of the law on parliamentary elections, the Court notes that this procedure is substantially different from the usual procedure of language attestation, set by the above-mentioned regulation of May 25, 1992. Specifically, the re-examination on the applicant had been carried out by only one examiner, instead of a commission of experts, and this examiner did not respect the procedural guarantee and the criteria of appreciation established by the regulation. By acting this way, the assessment of the applicant's proficiency in the language had been left to the sole discretion of a single official, whose discretionary powers were excessive. Furthermore, the Court cannot but express surprise that, according to the applicant in an account that was not disputed by the Government, during the examination she was basically questioned about the reasons for her political affinities, which obviously is not any subject related with the requirement of language competence.

Under such conditions, the Court deems that in the absence of any guarantee of objectivity and regardless of the purpose pursued by the second examination, the procedure applied to the applicant is, whatever the circumstances, incompatible with the required conditions of procedural fairness and legal certainty for determining eligibility for election (cf. paragraph 35 above).

37. The Court considers that this conclusion is confirmed by the way in which the Riga Regional Court examined the applicant's application. Indeed, in its judgment of August 31, 1998, this jurisdiction based its argument exclusively on the attestation certificate issued by the State Language Centre as a result of the impugned examination, without expressing its opinion on the other elements of proof, which were likewise present in the file. Thus, the Court believes that, by admitting the results of an examination whose procedure had no fundamental guarantees of fairness as incontrovertible, the regional court voluntarily renounced to remedy the committed violation.

38. According to all that precedes, the Court concluded that the deletion of the applicant off the list of candidates could not be deemed as proportionate to any legitimate aim appealed by the Government. It follows that there had been a violation of Article 3 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL NO. 1 OF THE CONVENTION

39. The applicant also complains that, due to the refusal of the right to stand as candidate in the legislative elections on the only ground that she did not master Latvian at the highest level, as set by the national regulation, the Latvian authorities have committed a discrimination

barred by Article 14 of the Convention, within the exercise of her right guaranteed by Article 3 of Protocol No. 1. The relevant parts of Article 14 are thus worded:

« The enjoyment of the rights and freedoms set forth in this (...) Convention shall be secured without discrimination on any ground such as (...) language, (...) national (...) origin, association with a national minority (...). »

40. The Government reminds that in the terms of the judgment of July 23, 1968, in the case « regarding certain aspects of the language status in Belgium's education system » (Series A no. 6), the equal treatment set out by Article 14 of the Convention is only violated if the distinction has no objective and reasonable justification (*ibidem*, § 10). Consequently, considering its conclusions regarding solely the alleged violation of Article 3 of Protocol no. 1, the Government believes that the criticised distinction is based upon such a justification. It specifically emphasises that the applicant was not the only candidate in the list whose language proficiency was tested. Therefore, there was no violation of Article 14.

41. The applicant challenges this argument. According to her, the way in which such a verification was carried out and the nearly total freedom enjoyed by the examiner facilitated the removal from the list of any person whose mother tongue were not Latvian. Thus, there had been a truly discriminatory practice affecting the members of a national minority. The applicant also reminds that, among the twenty-one candidates who had not studied in Latvian, only nine, under which the applicant herself, were subject to the aforementioned verification. On this respect, the applicant infers the existence of a concealed discrimination.

42. The Court considers that this grievance is essentially the same as the one stated under Article 3 of Protocol No. 1. As regards the conclusion reached in this respect (cf. paragraph 38 above), the Court finds it unnecessary to carry out a separate examination of the grievance derived from Article 14 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL NO. 1 OF THE CONVENTION

43. By appealing substantially Article 13 of the Convention in conjunction with Article 3 of Protocol No. 1, the applicant complains that by restricting itself to take the certificate on behalf of an attestation delivered by an administrative authority, without verifying its adequacy and without expressing its opinion on the other proving elements at its disposal, the Riga Regional Court has violated her right to present an effective appeal before a national court. Article 13 reads as follows:

« 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. »

44. The Government sustains that the State Language Centre is the only competent authority than can prove the proficiency level in the State language of a candidate standing in the elections. According to the Government, the applicant could unobstructedly exercise her right to present an appeal before the Riga Regional Court, which, in the hearing of August 31, 1998, carried out a detailed assessment of the proofs at its disposal in order to conclude on the accordance of the criticised measure with the law on parliamentary elections. Having the Regional Court substantially examined the applicant's grievances, there is no reason to believe that the possibility of the appeal, offered by Latvian law, is not effective in the sense of Article 13 of the Convention.

45. As well as for Article 14, the Court considers that the conclusions it has reached regarding the alleged violation of Article 3 of Protocol No. 1 taken alone (cf. paragraphs 37 and 38 above), exempt it from the obligation to carry out an examination of the complaint under Article 13 of the Convention.

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. In the terms of Article 41 of the Convention,

« 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 sustains that her removal from the list of candidates has had adverse repercussions for her economic conditions. In this respect, she argues that the negative publicity she has suffered as a result of this removal has immersed her in a state of distress and frustration by stopping her from exercising her trade activities in a normal way and preventing her from potential trade partners. Moreover, the applicant underlines that the State Language Centre's attestation, according to which she did not master Latvian at the highest level of competence, implied indeed that she was from then on unable to assume the charge of manager, which made her resign her post. Since then, with the exception of a temporary part-time job in a private company, she has not succeeded to find an adequate job. Under such circumstances, the applicant asks the Court to grant her 1,500 Latvian lats (LVL) on behalf of the actual pecuniary prejudice and the possible loss of earnings.

48. In the eyes of the Government, there is no connection between the alleged violation and the amount claimed by the applicant. The Government especially stresses that she has willingly decided to resign her post at the company. Indeed, despite the fact that the applicant was afraid that the adverse opinion of the State Language Centre could be an inconvenience for her professional career, she could have always claimed a re-examination of her language competence, which she did not do.

49. The Court, along with the Government, deems that there is no evidence of causality between the alleged pecuniary prejudice and the noted violations (cf. *Van Geyselghem v. Belgium* [GC], no. 26103/95, § 40, CEDH 1999-I, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, CEDH 1999-II). Therefore, it rejects the applicant's claims in this respect.

## B. Moral damage

50. The applicant claims 50,000 LVL [around 89,000 euros] as reparation for the mental anguish and the humiliation she had to suffer as a result of her deletion of the list of candidates. Considering the criteria set by the Court in matters of reparation of moral prejudice, the applicant reckons that the current case involves a serious violation of the fundamental rights guaranteed by the Convention, and that the amount claimed is justified on behalf of the suffering she went through as a result of this violation.

51. The Government finds that the amount claimed by the applicant is excessive, especially considering the current life and revenue standards in Latvia. The Government believes that a proof of violation would be by itself a sufficient reparation for any moral wrong which the applicant may have experienced.

52. The Court reminds that the appreciation of a moral prejudice is made pursuant of autonomous criteria brought out by the Court on the basis of the Convention, and not pursuant of principles defined within the law or the practice of the State concerned (cf., *mutatis mutandis*, the judgments *Sunday Times v. United Kingdom* (just satisfaction) of November 6, 1980, Series A, no. 38, § 41, and *Probstmeier v. Germany* of July 1, 1997, *Reports* 1997-IV, p. 1109, § 77). In the current case, the Court could not question the moral prejudice suffered by the applicant, who was stopped from presenting her candidacy in the parliamentary elections. Consequently, acting with fairness and considering all the circumstances of the case, the Court grants her 7,500 euros on behalf of moral damage, an amount which is to be converted into Latvian lats at the applicable rate on the date of adoption of the current judgment.

## C. Costs and expenses

53. The applicant claims 1,750 LVL [around 3,150 euros] as refund for the costs and expenses incurred for the preparation and the presentation of her case before the Court, itemised as follows:

a) 750 LVL for the work of M<sup>me</sup> I. Oziša, the applicant's representative until May 2, 2001. In support of this amount, the applicant presents an invoice issued by a non-governmental association, « *Latvijas Cilvēktiesību komiteja* » (« Latvian Committee of Human Rights »);

b) £1,000 (which correspond to about 1,000 LVL) for legal fees (M<sup>e</sup> W. Bowring, in this case), in order to prepare the applicant's observations on the application's admissibility and adequacy, and to participate in the writing of her claim of just satisfaction.

54. On this matter, the Government resorts to the Court's discretion.

55. The Court reminds that on behalf of Article 41 of the Convention, it will only refund the costs on which it has been determined that they have actually and necessarily been incurred and which are of a reasonable amount (cf., among many others, judgments *Nikolova*, above-mentioned, § 79, and *Jėėius v. Lithuania*, no. 34578/97, § 112, CEDH 2000-IX). As for the current case, the Court notes some confusion regarding the documentary evidence of the legal assistance furnished to the applicant both in Latvia and abroad. Indeed, as regards the evidence related to the association «*Latvijas Cilvçktiesību komiteja*», there is no document in the dossier proving that it did participate as such in the proceeding before the Court. However, from what is written on the invoice delivered by the applicant it can be established that her representation was rendered by M<sup>me</sup> I. Oziša, acting on behalf of the said association. As for M<sup>e</sup> W. Bowring, the Court was informed of her participation in the proceeding solely on May 2, 2001, after the declaration of admissibility of the application, although the power of attorney signed by the applicant and dispatched in the Court by the same courier has a previous date, the 15th October, 2000.

Thereby, under such circumstances, the Court, acting with fairness as provided by Article 41 of the Convention, grants the applicant an amount of 1,500 euros, to be converted into Latvian lats at the applicable rate on the date of adoption of the present judgment, as well as any amount due for the application of the value added tax (cf. judgment *A. v. United Kingdom* of September 23, 1998, *Reports* 1998-VI, p. 2702, § 37).

#### **D. Interests for delay**

56. According to the information available to the Court, the legal interest yearly rate applicable in Latvia on the date of adoption of the present judgment is of 6 %.

### **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 3 of Protocol No. 1 of the Convention;
2. *Holds* that there is no ground to examine separately the grievance derived from Article 14 of the Convention;
3. *Holds* that there is no ground to examine separately the grievance derived from Article 13 of the Convention;
4. *Holds*:
  - a) that the respondent State is to pay the applicant, within three months starting from the day in which the judgment will be definitive according to Article 44 § 2 of the Convention, 7,500 (seven thousand five hundred) euros due to moral damage and 1,500 (one thousand five hundred) euros due to costs and expenses, which are to be converted into Latvian lats at the applicable rate on the date of adoption of the present judgment, plus any amount that may be due for the application of the value added tax;
  - b) that these amounts are to be increased with a simple yearly interest of 6 % from the expiration of the said delay and until the payment;
5. *Rejects* the claim of just satisfaction for the surplus.

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

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President