



[ECtHR - Slivenko v. Latvia](#)

The applicants, a mother and daughter, are of Russian origin and lived in Latvia. They were deported from Latvia and detained in the process. The husband and father of the applicants was a retired Soviet officer, ordered to leave Latvia together with his family in accordance with the Latvian-Russian treaty on the withdrawal of Russian troops following Latvian independence. The Court found that ordering the applicants' deportation failed to consider their individual circumstances and the private life they had built in Latvia and violated their Article 8 right to respect for private life.

Case name (in original language) : Slivenko v. Latvia

Case status: Decided

Case number: 48321/99

Citation: European Court of Human Rights, Slivenko v. Latvia (application no. 48321/99), 9 October 2003

Date of decision: 09/10/2003

State: Latvia

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English, French

Applicant's country of residence: Latvia

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Deportation and removal, Detention, Residence permit, Respect for private and family life, State succession and (de)colonisation

Relevant Legislative Provisions:

European Convention on Human Rights:

- Article 8
- Article 14
- Article 5(1)
- Article 5(4)

Domestic:

- Citizenship Act of 22 July 1994 (Pilsonības likums)
- Status of Former USSR Citizens Act of 12 April 1995 (Likums Par to bijušo PSRS pilsonu statusu, kuriem nav Latvijas vai citas valsts pilsonības)
- Asylum Act of 7 March 2002 (Patveruma likums)
- Stateless Persons Act of 18 February 1999 (Likums "Par bezvalstnieka statusu Latvijas Republika")
- Aliens and Stateless Persons (Entry and Residence) Act of 9 June 1992 (Likums "Par arvalstnieku un bezvalstnieku iecelošanu un uzturēšanos Latvijas Republika)
- Code of Civil Procedure

The Latvian-Russian Treaty on the Withdrawal of the Russian Troops 30th April 1994

Facts

The first applicant (the mother) was born in Estonia in 1959 into the family of a USSR officer and moved at one-month old to Latvia with her parents. In 1981 she had a daughter, the second applicant, with her husband. After Latvia regained independence in 1991, the applicants were registered as 'ex-USSR' citizens in the register of Latvian residents, and became stateless.

The husband was a USSR officer stationed in Latvia. He was discharged from the army in 1994. He applied for a temporary residence permit on the basis of his marriage to a permanent resident. This was refused on the grounds that the 1994 Latvian-Russian treaty provides that former USSR/Russian officers in service before 1992 must leave, together with their family. A disagreement about his date of retirement arose in court. The Latvian government stated that when the first applicant requested entry in the registrar, she submitted false information about her husband's profession. The applicants' registration was therefore annulled.

The deportation of all three family members was ordered in 1996 and they were evicted from their home in Latvia. The husband moved to Russia while the applicants remained in Latvia. The applicants challenged their removal from Latvia before the courts, who found that annulling the applicants' registration was a lawful decision.

In October 1998 the applicants were placed in an immigration detention centre. The applicants were released a day later, on the grounds that their arrest was premature as the first applicant had lodged an appeal against the deportation order. They were later ordered to leave the country. The second applicant was also detained for 30 hours in March 1999.

In July 1999 the applicants moved to Russia to join their husband and father and adopted Russian citizenship as former nationals of the USSR. The deportation order prevented the applicants from returning to Latvia for 5 years and limited the time they could visit the country for to 90 days per year. The first applicant's parents remained in Latvia and were seriously ill.

Legal arguments by the applicant

The applicants alleged a violation of Article 8 (right to respect for private and family life); Article 14 (prohibition on discrimination) and Article 5(1) and (4) (right to liberty and security) of the Convention.

Article 8

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

The applicants submitted that they had the right to obtain legal status in Latvia according to Latvian law, and that the Latvian-Russian treaty did not impact that right. The applicants argued that the only restriction imposed on the right to obtain permanent residence under Latvian law was if a person had arrived as a member of the family of a USSR or Russian military officer who had not retired from service by 28 January 1992. The first applicant arrived in Latvia as a member of her father's family, who had retired before 1992, and the second applicant was born in Latvia. The applicants argued they were thus entitled to the status of ex-USSR citizens and permanent residence permits, thus their entry in the registrar was lawful.

The applicants argued that it was unlawful to quash their legal status on the grounds of their relation to their husband and father. They argued that although the Latvian-Russian treaty had required USSR/Russian military officers to leave Latvia, it did not consider cases where the family members had arrived in Latvia independently and had obtained legal status in Latvia following the restoration of Latvia's independence. Thus, the treaty could not be applied to the applicants, "without finding out how they had arrived in Latvia and what national laws regulated their status".

The applicants contested the Latvian Government's allegation that the Latvian authorities had annulled their legal status in Latvia on the further ground that when applying for permanent residence the first applicant had submitted false information as to her husband's occupation. The applicants stated that the first applicant had never lied to the authorities about her husband's status, and that the document submitted in this connection by the respondent Government was falsified. The applicants thus argued that their deportation was unlawful.

They further argued that it pursued no legitimate aim and was unnecessary in a democratic society. They argued that during domestic proceedings no consideration of national security had been mentioned and that there was no justification for their removal.

The applicants argued that they had been completely integrated into Latvian society based on the 40 years the first applicant lived, studied, and worked there, and the 18 years that the second applicant lived and was educated there since her birth in Latvia, the fluency in Latvian of both applicants, and their ability to live a normal life in Latvia.

Article 14

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

as that of other Russian-speakers.

Article 5(1)

The applicants submitted that their detention pursued none of the aims referred to in Article 5(1). They also stated that even the Latvian immigration authorities had themselves admitted, by way of a letter, that that period of detention had been unlawful within the meaning of domestic law. The second applicant also complained that her detention in March 1999 had been arbitrary and unlawful. She submitted that at the time she had been a minor and had been detained without notification of her parents or other relatives. Moreover, the Latvian authorities had no right to detain her during that period as minors could not be expelled from Latvia separately from their parents.

Article 5(4)

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

Legal arguments by the opposing party

Article 8

The Latvian government argued that the applicants' removal must be considered in the context of attempts to eradicate the consequences of the illegal occupation of Latvia by the Soviet Union.

They submitted that there was no interference with the applicants' rights under Article 8, and even if there was an interference, it had been compatible with Latvian law and the Latvian-Russian treaty, had pursued the legitimate aims of the protection of national security and the prevention of disorder and crime, and it had been necessary in a democratic society.

The Government stated that pursuant to Article 2(3) of the Latvian-Russian treaty, all those who had been active servicemen in the Russian army in 1992, including those discharged thereafter, had been required to withdraw from Latvia. Therefore, the treaty had been duly applied in regard to the husband and father, and the

applicants as members of his family, and the applicants' removal had been compatible with the treaty and Latvian law. The Government submitted that the family had been notified that they were subject to the treaty provisions. The Latvian Government stated that the fact that the first applicant had arrived in Latvia as a relative of her father and not her husband had no bearing on the applicant's obligation to leave Latvia under the treaty, because the Treaty made no distinction regards to the reasons for arrival in Latvia.

The Government argued that under other domestic law the applicants' had been unable to claim permanent residence because they were family members of the husband, as well as because they were family members of another Soviet military officer (the first applicant's father). Around 900 other persons who were relatives of Russian military officers and required to leave under the treaty had been able to regularise their stay in Latvia because they had not arrived in connection with another relatives' service in the Soviet armed forces - but the applicant's did not belong to this category.

The Government further submitted that the Latvian authorities had annulled the applicants' legal status in Latvia also on the ground that the first applicant had submitted false information as to her husband's occupation, and lodged a document as evidence of this with the Court.

The Government argued the applicants had never been integrated into Latvia because they did not choose to live there but arrived due to military service of family members; they were not proficient in the Latvian language (the second applicant received the lowest degree of proficiency in Latvian on her school diploma); they were Russian-speaking; had Russian passports; and had accommodation in Russia.

The Government argued that the first applicant's parents did not live with the applicants and there is no evidence that they had been in regular need of medical care or other care from the applicants.

Article 14

The Government denied that there was a difference in treatment on the ground of language or ethnic origin. They also maintained that the difference in statutory treatment regarding the Russian army officers and their families had been justified as the removal of the foreign military forces and their families from the territory of

independent Latvia had been essential for the protection of national security, and therefore justified under the Convention.

Article 5(1)

According to the Government, it had not been necessary for the applicants' detention to pursue any of the "legitimate aims" as the fact remained that at that time deportation proceedings had been in place, thereby warranting the applicants' detention. The detention had not been arbitrary as the applicants had been detained in connection with the deportation proceedings. Moreover, the applicants had been arrested only following their repeated failure to comply with the deportation order, and following numerous warnings from the Latvian authorities.

The Government also stated that the applicants' release in October 1998 and March 1999 had merely been gestures of goodwill by the immigration authorities for humanitarian reasons, in view of the state of health of the first applicant's parents and the necessity for the second applicant to finish school.

Article 5(4)

The Government submitted Article 5(4) of the Convention was not applicable in cases where detainees had been released before a speedy determination of the lawfulness of the detention could have taken place. Furthermore, domestic complaints procedures were available to the applicants according to the government.

Decision & Reasoning

Article 8

The Court found a violation of Article 8 ECHR. The Court considered that the first applicant had moved to Latvia at one-month old, attended school, worked and was married in Latvia, and lived there until she was 40 years old. The second applicant was born in Latvia and lived there until she was 18 years old, completing secondary education there. Both applicants thus had personal, social, and economic ties that constituted a private life in Latvia. The Court also noted that they lost their flat where they had lived. The applicant's removal from Latvia therefore was an interference with their private life and home.

“They were thus removed from the country where they had developed, uninterruptedly since birth, the network of personal, social and economic relations that make up the private life of every human being.” Para96.

The Court considered however that the family unit itself was not broken up. The removal concerned all three family members and the Convention does not contain a right that allows choosing which country to continue or re-establish a family life in. The Court found that the first applicant’s parents were not part of the core family unit.

The removal of the applicants was held to be in accordance with the law under the treaty on the withdrawal of Russian troops. Although the treaty was not in force when the applicants registered as ex-USSR citizens, it was reasonable to foresee that the applicants would be affected by the treaty, and the decisions of national courts were not arbitrary.

The Court found that the treaty had a legitimate aim, in that it was in place to protect national security. The Court commented that the removal measure did not interfere with the family unit, and that the withdrawal of servicemen and their families may be considered normal in this profession, but the presence of active servicemen of a foreign army may be seen as incompatible with the sovereignty of Latvia as an independent State.

The Court then considered whether the removal measures were justified. The Court found that when the general order to remove foreign service men and their families was in put in place, the authorities had not considered what risk to national security or the public interest was posed by individuals in family units. A scheme that aimed to withdraw foreign troops and their families was not incompatible with Article 8, but implementing such measures without considering individual circumstances was incompatible with Article 8.

Given that the applicants did have a private life in Latvia, were integrated in society, and were members of the first applicant’s father’s family (who was an ex-serviceman retired in 1986 and not considered a national security risk), then the applicants could not be considered a risk to national security. The applicants’ removal then could not be regarded as having been necessary in a democratic society.

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

Partly dissenting, Judge Kovler stated *“In my humble opinion... the Court has narrowed the concept of “family life” by taking it to cover ties within the “core family” only.*” He commented that the Court has opted for a traditional concept of a family that does not take into account the ‘sociological and human aspects of contemporary European families.’

Article 14

The Court found it unnecessary to rule on Article 14 ECHR.

Article 5(1)

The Court found no violation of Article 5(1) ECHR. The Court noted that the arrest warrants were lawful and prescribed by law. The police warrants for both applicants set out the domestic legal basis for the arrest. The police did in fact acknowledge that the first arrest was ‘premature’. However, the Court said (para 149) that *“certain flaws in a detention order does not necessarily render the concomitant period of detention unlawful within the meaning of Article 5(1)... and this will be true, in particular, if, as in the present case, the putative error is immediately detected and redressed by the release of the persons concerned.”* The Court also stated that there was no evidence suggesting that the police acted arbitrarily, thus the detention of the applicant’s was lawful.

Partly dissenting, Judge Kovler disagreed that when considering the lawfulness of a deprivation of liberty, protecting individuals from arbitrary actions by a government is crucial, particularly in the case where said individuals were women, and one was a minor.

Article 5(4)

The Court found it unnecessary to rule on this complaint as the applicant’s were released quickly before a judicial review of their detention could take place. Even if

the detention order may have been premature, it was remedied by a speedy release.

Decision documents

[ECtHR, Slivenko v. Latvia \(application no. 48321/99\)](#)

Outcome

Violation of Articles 8 and 5(1) ECHR. Unnecessary to rule on Articles 14 and 5(4).

The Court awarded each applicant EUR 10,000 for non-pecuniary damage.

Caselaw cited

Fox, Campbell and Hartley v. the United Kingdom judgment (30 August 1990, Series A no. 182)

Marckx v. Belgium, judgment of 13 June 1979, Series A no. 31

X v. Germany, no. 3110/67

Abdulaziz, Cabales and Balkandali v. the United Kingdom, judgment of 28 May 1985, Series A no. 94

Gül v. Switzerland, judgment of 19 February 1996

Boultif v. Switzerland, no. 54273/00, § 39, ECHR 2001-IX

Dalia v. France, judgment of 19 February 1998

Cyprus v. Turkey [GC], no. 25781/94, § 175, ECHR 2001-IV

Amann v. Switzerland [GC], no. 27798/95, § 50, ECHR 2000-II

Chahal v. the United Kingdom, judgment of 15 November 1996, Reports 1996-V, pp. 1862-63

Benham v. the United Kingdom, judgment of 10 June 1996, Reports 1996-III, pp. 753-54

Third party interventions

The Russian Government intervened as a third party in this case.

Article 8

The Russian Government submitted that the removal of the applicants was not required by the Latvian-Russian treaty because their husband and father had been discharged in 1994. The treaty had not concerned persons who had been discharged from the armed forces before its signature and entry into force. Furthermore, the applicants had completely integrated into Latvian society and there had been no formal or other differences in the applicants' status compared with that of other USSR citizens living in Latvia at the time. Any distinction of the applicants' legal status in Latvia as a result of the political changes in 1991 had therefore been completely unjustified.

In any event, the interference with the applicants' rights as a result of their removal had pursued no legitimate aim within the meaning of Article 8(2), and had not been necessary in a democratic society as there was no evidence showing that the husband or the applicants could have caused any damage to the interests of security, safety, public order or the economic well-being of Latvia.

Article 14

The Russian Government submitted that the difference in the treatment in Latvia of former Soviet or Russian military officers and their families on the one hand, and of other Russian-speaking residents of Latvia on the other hand, was not justified by Article 14. The applicants' removal had been the result of "ethnic cleansing" by the Latvian authorities.

Article 5(1)

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

Article 5(4)

The Russian government agreed that the applicants had no possibility to contest the lawfulness of their detention under Latvian law.