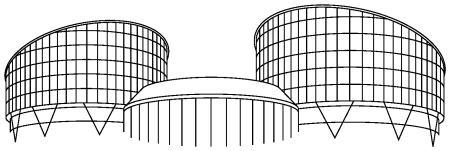

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PETROPAVLOVSKIS v. LATVIA

(Application no. 44230/06)

JUDGMENT

STRASBOURG

13 January 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Petropavlovskis v. Latvia,

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

Päivi Hirvelä, *President,*
Ineta Ziemele,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 18 November and 9 December 2014,

Delivers the following judgment, which was adopted on the latter date:

PROCEDURE

1. The case originated in an application (no. 44230/06) 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 "permanently resident non-citizen" of the Republic of Latvia, Mr Jurijs Petropavlovskis ("the applicant"), on 10 October 2006.

2. The applicant was represented by Mr A. Dimitrovs, a lawyer practising in Brussels. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine and, subsequently, Mrs K. Līce.

3. The applicant complained under Articles 10, 11 and 13 of the Convention that the allegedly arbitrary refusal of Latvian citizenship through naturalisation was a punitive measure imposed on him because he had imparted ideas and exercised his right of peaceful assembly in order to criticise the Government's position.

4. By a decision of 3 June 2008, the Court declared the application admissible and joined to the merits the Government's objection to the Court's jurisdiction *ratione materiae*.

5. The applicant and the Government each filed further written observations (Rule 59 § 1) on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Riga.

7. Before 29 October 1998, when the Latvian Parliament (*Saeima*) enacted the Education Law, education in State and municipal schools continued to be conducted in Latvian and Russian, a practice which was inherited from Soviet times. The Education Law, which took effect on 1 June 1999, provided that the only language of instruction in all State and municipal schools in the Republic of Latvia would be the State language, that is, Latvian. It also provided that the language of instruction might be different in private schools, in State and municipal schools implementing national minority curricula and in other educational establishments as provided by law. As regards the State and municipal schools implementing national minority curricula, it was for the Ministry of Education to set out specific subjects to be taught in the State language (section 9(1) and (2)) and the Minister for Education was to ensure that the relevant regulations were submitted to the Cabinet of Ministers by 1 September 1999 (transitional provisions, paragraph 3). It was also established that everyone should learn the State language and take the State language proficiency test in order to obtain primary and secondary education (section 9(3)).

8. Between 2003 and 2004 the applicant was actively involved in protests against the education reform. He was one of the main leaders of a movement named "Headquarters for the Protection of Russian Schools" ("*Krievu skolu aizstāvības štāb*s" in Latvian), which was involved in promoting and advocating protests against the education reform. He participated in meetings and demonstrations against the education reform and made public statements advocating ideas concerning the Russian-speaking community's rights to education in Russian and the preservation of the State-financed schools with Russian as the sole language of instruction. The Government provided the Court with evidence of media coverage of these protests in the period from 28 June 2003 to 23 September 2005, including news reports by the Latvian news agency LETA and articles in the daily newspapers *Diena* and *Lauku Avīze* and in the regional newspaper *Novaja Gazeta* (in Russian). There were thirteen news reports and articles in total.

9. After several sizable meetings and demonstrations, Parliament adopted amendments to the Education Law on 5 February 2004. The new text provided that from 1 September 2004 all secondary State and municipal schools implementing national minority curricula had to ensure instruction in the State language in not less than 60% of the study curriculum, including foreign languages, in respect of pupils commencing their studies in the tenth grade. These schools also had to ensure that the curriculum relating to minority language, identity and culture was taught in the minority language (transitional provisions, paragraph 3).

10. In November 2003 the applicant applied to the Naturalisation Board (*Naturalizācijas Pārvalde*) seeking to acquire Latvian citizenship through

naturalisation. On 1 December 2003 he passed the naturalisation exams (see paragraph 29 below).

11. The Naturalisation Board examined the documents submitted by the applicant and, finding that he met the requirements of Articles 11 and 12 of the Citizenship Law, included his name in the list of candidates applying for citizenship. The list was attached to the draft decision on granting citizenship and transferred to the Cabinet of Ministers (*Ministru kabinets*) for the final decision.

12. On 16 November 2004 the Cabinet of Ministers decided to strike the applicant's name out of the list, thus refusing his application for naturalisation.

13. On 30 November 2004 the Naturalisation Board informed the applicant of the decision of the Cabinet of Ministers.

14. On 7 December 2004 the applicant instituted administrative proceedings against the Cabinet of Ministers. He asked the Administrative District Court (*Administratīvā rajona tiesa*) to "obligate the Cabinet of Ministers to take a decision on admitting him to Latvian citizenship". The applicant stated that the decision regarding admission to Latvian citizenship was an administrative act and could not be regarded as a political decision. He considered *inter alia* that a person fulfilled the obligation of loyalty if he met all the requirements of the Citizenship Law and unless any restrictions stated in the Law could be applied to such person. He considered that the refusal to grant him citizenship was unlawful; in accordance with the principle of equal treatment, his views could not constitute grounds for a refusal. He stated that his name had been struck out of the list owing to his participation in the political party "For Human Rights in United Latvia" ("*Par cilvēka tiesībām vienotā Latvijā*", abbreviated to PCTVL) and to his public statements. The PCTVL had nominated him to run for office as mayor of Riga, but the refusal had denied him the right to stand for election in the local municipal elections and had been politically motivated.

15. On 10 December 2004 the applicant gave an interview to a journalist from the daily newspaper *Lauku Avīze*. His answer to the question whether he hoped to win the case before the domestic and international courts was reportedly as follows:

> "If I wanted to gain political power, I would have been naturalised a long time ago and would have been elected to [Parliament]. The chances of winning a case in a court in Latvia might be fifty-fifty. But I do not need that. Frankly speaking, we need a broad international scandal. With my case of citizenship we've achieved that, and, additionally, [we've got] a broad public relations campaign for the PCTVL for free."

16. In its submissions of 5 January 2005 to the Administrative District Court, the Cabinet of Ministers emphasised that the Minister of Justice had drawn attention to the provisions of the Citizenship Law to the effect that in seeking Latvian citizenship a candidate must demonstrate allegiance to the Republic of Latvia, not only with a promise but also by his actions, and that

the applicant's actions were not compatible with the oath of allegiance to the Republic of Latvia. Having examined the information at its disposal, the Cabinet of Ministers decided that the applicant's actions at the material time had not demonstrated loyalty to the Republic of Latvia.

17. In its additional submissions of 17 November 2005 to the Administrative District Court, the Cabinet of Ministers argued, *inter alia*, that its political decision had been based on the applicant's actions; it was clear that he could not truthfully give a pledge of allegiance. It was evidenced by his own public statements, which indicated that he did not have a genuine link with the Republic of Latvia, that he did not wish to establish such a link and that he had applied for citizenship as part of a political campaign to harm the Republic of Latvia. The Cabinet quoted statements he had made during the interview on 10 December 2004 (see paragraph 15 above). Relying on the principle of "democracy capable of protecting itself", it argued that national security, protection of others and also the State language were the democratic values which the State purported to protect. The applicant's public statements revealed that his actions were aimed at destabilising the situation in the country and that his wish to become a citizen had this purpose in mind. His statements and actions showed that he posed a real threat to national security: (i) the applicant was a leader of an organisation whose activities were directed towards disturbing public order and safety[1]; (ii) the organisation's activities attested to the possibility of using violence[2]; (iii) the applicant's statements indicated that he was ready to use violence[3]; (iv) the applicant's actions demonstrated his unwillingness to allow the State authorities to exercise legitimate control over the lawfulness of the organisation's activities[4]; and (v) the applicant's genuine aim was not to acquire Latvian citizenship but to conduct an organised campaign directed at triggering a political scandal[5].

18. On 16 December 2005 the Administrative District Court decided to terminate the proceedings without examining the case on the merits. The court concluded that the decision of the Cabinet of Ministers regarding admission to Latvian citizenship (*lēmums par personas uzņemšanu Latvijas pilsonībā*) was "a political decision" (see paragraph 33 below) and as such not subject to examination by a court. The applicant appealed, stating, *inter alia*, that the Citizenship Law could not be used as a political weapon and that a court should have full jurisdiction over such decisions.

19. On 13 February 2006 the Administrative Regional Court (*Administratīvā apgabaltiesa*) upheld the decision of the Administrative District Court and also considered that the decision of the Cabinet of

1. Reference was made to the media reports of 27 April, 28 July, 14 and 17 August 2004.
2. Reference was made to the media reports of 21 February and 13 March 2004.
3. Reference was made to the media reports of 21 February, 8 March and 1 April 2004
4. Reference was made to the media report of 21 February 2004.
5. Reference was made to the media report of 10 December 2004.

Ministers was a political decision. The applicant appealed, stating, *inter alia*, that the granting of citizenship could not be used as a political weapon and that a court should have full jurisdiction over such decisions.

20. On 11 April 2006 the Administrative Department of the Senate of the Supreme Court (*Augstākās tiesas Senāta Administratīvo lietu departaments*) upheld the decision of the Administrative Regional Court. The court established that, under the Citizenship Law, the Naturalisation Board should prepare a draft decision as regards the establishment of legal facts. The final decision was taken by the Cabinet of Ministers. The Cabinet took its decision, based on the draft decision prepared by the Naturalisation Board, by a vote. Members of the Cabinet were not required to give reasons for their vote and the Law did not stipulate the details of the decision-making process in this respect. The court stated, *inter alia*, that:

> "[8.3] ... the Cabinet of Ministers [has] unrestricted competence as regards granting or refusing citizenship to persons who, as affirmed by the Naturalisation Board, have met the naturalisation criteria. Such unrestricted freedom of action, which is also in stark contrast (*krasi kontrastē*) with the detailed regulation regarding a decision of the Naturalisation Board, attests that the Cabinet of Ministers in such a case performs not an administrative but rather a constitutional function. Thus, the Cabinet of Ministers cannot be regarded as a public authority for the purposes of administrative procedure. Therefore, the argument stated in the ancillary complaint that the said decision meets all criteria of an administrative act is unfounded.
>
> Having regard to the above, the conclusion of [the Administrative Regional Court] that the decision appealed against cannot be regarded as an administrative act, but as a political decision, is correct. ...
>
> [10] In the Administrative Department's view, if a person meets all the requirements for naturalisation and if no restrictions for naturalisation are applicable, [there is] a subjective right only to have a draft decision concerning acquisition of citizenship examined by the Cabinet of Ministers.
>
> [11] The fact that the legislation does not set out a procedure for appeal against a decision of the Cabinet of Ministers does not mean that such decision is subject to appeal like an administrative act, in accordance with the Administrative Procedure Law. There is no established practice in Latvia of indicating *expressis verbis* in a legal act that the relevant decision is not subject to appeal ...
>
> [12] ... In the Administrative Department's view, the laws of Latvia provide for the possibility of monitoring (*kontrolēt*) decisions taken on naturalisation issues. That is to say, decisions taken by the Naturalisation Board (administrative acts) are subject to appeal before a court, in accordance with the Administrative Procedure Law, whereas if a decision of the Cabinet of Ministers or a part of it is incompatible with the law, a public prosecutor can submit an application for supervisory review (*protests*) under section 19 of the Law on the Prosecutor's Office. Therefore, the [applicant's] reference to [Article 12 of] the European Convention on Nationality is unfounded."

21. The applicant has not re-applied for Latvian citizenship through naturalisation to date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution (*Satversme*)

22. Under Article 4 of the Constitution, the Latvian language is the State language in the Republic of Latvia.

23. Under Article 100 of the Constitution, everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express one's views. Censorship is prohibited.

24. Under Article 102 of the Constitution, everyone has the right to form and join associations, political parties and other public organisations.

25. Under Article 103 of the Constitution, the State protects the freedom of previously announced peaceful meetings, street processions and demonstrations.

26. Under Article 116, the rights of persons set out in, *inter alia*, Articles 100, 102 and 103, may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs.

B. The Citizenship Law (*Pilsonības likums*) as in force at the material time

27. Section 1(1) of the Citizenship Law provided that Latvian citizenship was the enduring legal bond (*noturīga tiesiska saikne*) between a person and the Latvian State (*Latvijas valsts*). More generally, Latvian legislation on citizenship and immigration distinguished several categories of persons, each with a specific status. They have been summarised in *Slivenko v. Latvia* ([GC], no. 48321/99, §§ 50-53, ECHR 2003 X) and *Sisojeva and Others v. Latvia* ((striking out) [GC], no. 60654/00, §§ 46-47, ECHR 2007 I).

28. Section 11 listed the restrictions on naturalisation. It provided, *inter alia*, that persons who, by unconstitutional methods, had acted against the independence of the Republic of Latvia, the democratic parliamentary structure of the State or the existing State authority in Latvia, where established by a judgment of a court, could not be admitted to citizenship.

29. Section 12 provided as follows:

> "(1) Only those persons who are registered in the Population Register may be admitted to Latvian citizenship through naturalisation and where:
>
> 1) their permanent place of residence, as of the date of submission of an application for naturalisation, has been in Latvia for not less than five years calculated from 4 May 1990 (for persons who arrived in Latvia after 1 July 1992, the five-year period shall be calculated from the moment a permanent residence permit is obtained);

2) they know [*prast*] the Latvian language;

3) they know [*zināt*] the basic principles of the Constitution of the Republic of Latvia and the Constitutional Law [of 10 December 1991] on the rights and obligations of persons and citizens;

4) they know the text of the National Anthem and the history of Latvia;

5) they have a legal source of income;

6) they have given a pledge of allegiance to the Republic of Latvia;

7) they have submitted a notice regarding the renunciation of their former citizenship (nationality) and have received an expatriation permit from the State of their former citizenship (nationality), if such permit is provided for by the law of that State, or have received a document certifying the loss of citizenship (nationality), or, if they are citizens of the former USSR whose permanent place of residence on 4 May 1990 was in Latvia, a certificate that they have not acquired the citizenship (nationality) of another State; and

8) they are not subject to the naturalisation restrictions specified in section 11 of this Law.

(2) Only those persons who meet all the requirements set out paragraph one of this section may be admitted to Latvian citizenship through naturalisation. ...

(6) Persons whose applications regarding matters of citizenship have been rejected, may resubmit them one year after the previous decision was taken."

30. Section 17(1) provided that the Naturalisation Board would receive and examine applications for naturalisation. A decision of the Naturalisation Board refusing naturalisation could be appealed against to a court (section 17(3)). Decisions regarding admission to citizenship would be taken by the Cabinet of Ministers (section 17(2)).

31. At the material time (prior to the legislative amendments effective from 1 October 2013), under section 18, all persons who were admitted to Latvian citizenship had to sign the following pledge regarding allegiance to the Republic of Latvia:

"I, (given name, surname) born (place of birth, date of birth), pledge that I will be loyal only to the Republic of Latvia.

I undertake to comply with the Constitution and laws of the Republic of Latvia in good faith and to use my best endeavours to protect them.

I undertake, without regard to my life, to defend the independence of the Latvian State (*Latvijas valsts*) and to live and work in good faith, in order to increase the prosperity of the Latvian State and of the people."

32. On 1 October 2013 several amendments to the Citizenship Law took effect; they included changes to all of the above-mentioned provisions.

C. The Administrative Procedure Law (*Administratīvā procesa likums*)

33. Pursuant to section 1(3) of the Administrative Procedure Law (as effective from 1 February 2004 to 30 November 2006), an administrative act is a legal instrument directed externally, which is issued by a public authority (*iestāde*) in the area of public law with regard to an individually named person (or persons), establishing, altering, determining or terminating specific legal relations (*tiesiskās attiecības*) or determining an existing situation. A decision regarding the establishment, alteration or termination of the legal status of, or the disciplinary punishment of an official (*amatpersona*) of or a person specially subordinated (*īpaši pakļauta persona*) to the public authority, as well as other decisions if they significantly interfere with the human rights of the official of or the person specially subordinated to the public authority are also administrative acts. A decision or other type of action of a public authority in the sphere of private law, and an internal decision which affects only the public authority itself, a body subordinated (*padota institūcija*) to it or a person specially subordinated to it, are not administrative acts; political decisions (political announcements, declarations, invitations, notifications about election of officials, and the like) by the *Saeima*, the President, the Cabinet of Ministers or local government city councils (district and parish councils), as well as decisions regarding criminal proceedings and court rulings are also not administrative acts.

D. Regulation of the Cabinet of Ministers no. 34 (1999), "The Receiving and Processing of Naturalisation Applications"

34. Paragraph 32 of Cabinet of Ministers Regulation no. 34 (1999), entitled "The Receiving and Processing of Naturalisation Applications" (*Naturalizācijas iesniegumu pieņemšanas un izskatīšanas kārtība*), as effective from 5 February 1999 to 9 July 2011, lays down certain grounds under which the Head of the Naturalisation Board may take a decision to refuse naturalisation. Such a decision has to be taken, for instance, if it has been established by a judgment which has lawfully entered into force that a person has intentionally provided false information (paragraph 32.1), or if it has been ascertained after the examination of an application that there is no lawful ground for naturalisation or that such a ground has ceased to exist (paragraph 32.2).

35. If a person is to be naturalised, an official of the Naturalisation Board, taking into consideration the documents contained in the person's naturalisation file, prepares a draft decision of the Cabinet of Ministers on granting Latvian citizenship by naturalisation (paragraph 33). The

Naturalisation Board informs the person of the decision adopted by the Cabinet of Ministers (paragraph 34).

E. The case-law of the Constitutional Court

36. On 13 May 2010 the Constitutional Court (*Satversmes tiesa*) delivered its judgment in case no. 2009-94-01 on the conformity of certain words in the first sentence of paragraph 1 of the Transitional Provisions of the Citizenship Law and the second sentence with Articles 1 and 2 of the Constitution, and also with the Preamble to the 4 May 1990 Declaration "On the Restoration of the Independence of the Republic of Latvia". This case was referred to the Constitutional Court by the Administrative Cases Division of the Senate of the Supreme Court (*Augstākās tiesas Senāta Administratīvo lietu departaments*) questioning whether the conditions for double citizenship laid down in the law were compatible with the doctrine of the State continuity of Latvia. The Constitutional Court found the legal regulation to be compatible with the Constitution and the Declaration. The relevant parts of its judgment read as follows (references omitted):

> "16. The Applicant has argued that citizenship must be viewed as one of the human rights and that the contested provisions are inconsistent with the principles of proportionality and legal certainty following from Article 1 of the Constitution.
>
> 16.1. The Constitutional Court has recognised in its case-law that it follows from the concept of a democratic Republic enshrined in Article 1 of the Constitution that the State has an obligation to abide by a number of fundamental principles of a law-governed State (*tiesiska valsts*), including the principles of proportionality and legal certainty ....
>
> In the field of regulating citizenship the State has a wide margin of appreciation .... However, this margin of appreciation cannot be deemed unlimited. In the framework of the [State] continuity doctrine the legislature has the obligation to ensure that no person who retained Latvian citizenship during the time of occupation would be excluded from the body of citizens, and also that the requirements set for the reinstitution of citizenship were proportionate.
>
> Thus, the Constitutional Court must assess whether the certainty that persons developed with regard to the possibility of retaining dual citizenship owing to the Decision of 27 November 1991 exceeded the legislature's discretion in regulating citizenship. This means that the Constitutional Court has to verify that the contested provisions do not violate a person's right to the citizenship of a specific State.
>
> 16.2. [It has been indicated in] the Application that citizenship or a person's link with the State is one of the human rights, since it is included in Article 15 of the [Universal] Declaration of Human Rights and consequently in Article 89 of the Constitution. The fixing of such a term, after the expiry of which a person, by registering as a Latvian citizen, has to renounce the citizenship of another State, is said to be equal to deprivation of citizenship or even deprivation of citizenship *en masse* or for a group of persons which can be identified by a specific feature.
>
> The Constitutional Court notes that the Declaration of Human Rights is an authoritative source of human rights and that the content of its provisions has

improved in time and has served as the basis for the development of the principles and customs of international law. However, in order to establish precisely the scope of Article 15 of the Declaration of Human Rights, which is binding on the State in accordance with Article 89 of the Constitution, an additional assessment is needed.

Article 15 of the Declaration of Human Rights provides that everyone has a right to a nationality. However, it does grant a person a right to the nationality of a specific State. Even though the content of the Article has changed over time and the development of international law has influenced the discretion of States with regard to nationality issues, its content is still limited.

[It has been noted in] legal opinion that nationality is not a natural or inalienable right, because it essentially follows from the existence of a sovereign State ....

At present, Article 15 of the Declaration of Human Rights contains three main elements: the right to nationality or avoidance of statelessness; the prohibition on depriving a person of nationality arbitrarily (including deprivation *en masse*); and a person's right to change his or her nationality. Deprivation of nationality because of political or other discriminatory considerations is considered to be arbitrary deprivation of nationality ... Also, any deprivation of nationality which results in statelessness is considered to be arbitrary ... The prohibition of discrimination cannot be construed widely; for example, a language proficiency requirement is not considered discriminatory. In addition to this, consensus in the following two fields can be identified: gender equality, which means the decreasing of statelessness in cases of marriage; and more pronouncedly, the obligation of a State to grant nationality to every child who has been born in its territory and who would otherwise become a stateless person ..."

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. The case-law of the Permanent Court of International Justice

37. In its advisory opinion concerning *Nationality Decrees Issued in Tunis and Morocco* (7 February 1923), the Permanent Court of International Justice concluded as follows:

"The words 'solely within the domestic jurisdiction' seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.

The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.

For the purpose of the present opinion, it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States."

B. The case-law of the International Court of Justice

38. In the *Nottebohm Case* (*Liechtenstein v. Guatemala*, judgment of 6 April 1955), the International Court of Justice (the "ICJ") concluded as follows:

> "It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation. It is not necessary to determine whether international law imposes any limitations on its freedom of decision in this domain. Furthermore, nationality has its most immediate, its most far-reaching and, for most people, its only effects within the legal system of the State conferring it. Nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals. This is implied in the wider concept that nationality is within the domestic jurisdiction of the State. ...
>
> According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection vis-à-vis another State, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national. ...
>
> Naturalization is not a matter to be taken lightly. To seek and to obtain it is not something that happens frequently in the life of a human being. It involves his breaking of a bond of allegiance and his establishment of a new bond of allegiance. It may have far-reaching consequences and involve profound changes in the destiny of the individual who obtains it. It concerns him personally, and to consider it only from the point of view of its repercussions with regard to his property would be to misunderstand its profound significance. In order to appraise its international effect, it is impossible to disregard the circumstances in which it was conferred, the serious character which attached to it, the real and effective, and not merely the verbal preference of the individual seeking it for the country which grants it to him."

C. The European Convention on Nationality (Council of Europe Treaty Series no. 166)

39. The principal Council of Europe document concerning nationality is the European Convention on Nationality, which was adopted on 6 November 1997 and entered into force on 1 March 2000. It has been ratified by 20 Member States of the Council of Europe. Latvia signed this Convention on 30 May 2001 but has not ratified it.

40. The relevant Articles of this Convention read as follows:

Article 2 – Definitions

"For the purpose of this Convention:

'nationality' means the legal bond between a person and a State and does not indicate the person's ethnic origin ..."

Article 3 – Competence of the State

"1. Each State shall determine under its own law who are its nationals.

2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality."

Article 4 – Principles

"The rules on nationality of each State Party shall be based on the following principles:

a. everyone has the right to a nationality;

b. statelessness shall be avoided;

c. no one shall be arbitrarily deprived of his or her nationality;

d. neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse."

41. The Explanatory Report to this Convention states, *inter alia*, in relation to Article 2:

Article 2 – Definitions

"22. The concept of nationality was explored by the International Court of Justice in the *Nottebohm* case. This court defined nationality as 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties' (*Nottebohm* case, ICJ Reports 1955, p. 23).

23. 'Nationality' is defined in Article 2 of the Convention as 'the legal bond between a person and a State and does not indicate the person's ethnic origin'. It thus refers to a specific legal relationship between an individual and a State which is recognised by that State. As already indicated in a footnote to paragraph 1 of this explanatory report, with regard to the effects of the Convention, the terms 'nationality' and 'citizenship' are synonymous."

D. The case-law of the Court of Justice of the European Union

42. In case C-135/08 *Janko Rottmann v Freistaat Bayern* (judgment of 2 March 2010), the Court of Justice ruled as follows (references omitted):

"45. Thus, the Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law ...

48. The proviso that due regard must be had to European Union law does not compromise the principle of international law previously recognised by the Court, and

mentioned in paragraph 39 above, that the Member States have the power to lay down the conditions for the acquisition and loss of nationality, but rather enshrines the principle that, in respect of citizens of the Union, the exercise of that power, in so far as it affects the rights conferred and protected by the legal order of the Union, as is in particular the case of a decision withdrawing naturalisation such as that at issue in the main proceedings, is amenable to judicial review carried out in the light of European Union law. ...

55. In such a case, it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law."

E. The case-law of the Inter-American Court of Human Rights

43. In *Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica* (Advisory Opinion OC-4/84, 19 January 1984), the Inter-American Courts of Human Rights ruled as follows:

"31. The questions posed by the Government involve two sets of general legal problems which the Court will examine separately. There is, first, an issue related to the right to nationality established by Article 20 of the Convention. A second set of questions involves issues of possible discrimination prohibited by the Convention.

32. It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual's legal capacity.

Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights.

33. The classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues. This has been recognized in a regional instrument, the American Declaration of the Rights and Duties of Man of 2 May 1948 [text of Article 19]. Another instrument, the Universal Declaration of Human Rights ... provides the following [text of Article 15].

34. The right of every human being to a nationality has been recognized as such by international law. Two aspects of this right are reflected in Article 20 of the Convention: first, the right to a nationality established therein provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question; and, second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all of his political rights as well as of those civil rights that are tied to the nationality of the individual.

35. Nationality can be deemed to be the political and legal bond that links a person to a given state and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that state. In different ways, most states have offered individuals who did not originally possess their nationality the opportunity to acquire it at a later date, usually through a declaration of intention made after complying with certain conditions. In these cases, nationality no longer depends on the fortuity of birth in a given territory or on parents having that nationality; it is based rather on a voluntary act aimed at establishing a relationship with a given political society, its culture, its way of life and its values.

36. Since it is the state that offers the possibility of acquiring its nationality to persons who were originally aliens, it is natural that the conditions and procedures for its acquisition should be governed primarily by the domestic law of that state. As long as such rules do not conflict with superior norms, it is the state conferring nationality which is best able to judge what conditions to impose to ensure that an effective link exists between the applicant for naturalization and the systems of values and interests of the society with which he seeks to fully associate himself. That state is also best able to decide whether these conditions have been complied with. Within these same limits, it is equally logical that the perceived needs of each state should determine the decision whether to facilitate naturalization to a greater or lesser degree; and since a state's perceived needs do not remain static, it is quite natural that the conditions for naturalization might be liberalized or restricted with the changed circumstances. It is therefore not surprising that at a given moment new conditions might be imposed to ensure that a change of nationality not be effected to solve some temporary problems encountered by the applicants when these have not established real and lasting ties with the country, which would justify an act as serious and far-reaching as the change of nationality."

44. In *the Case of Girls Yean and Bosico v. Dominican Republic* (judgment of 8 September 2005), the Inter-American Court of Human Rights ruled as follows (footnotes omitted):

"139. The American Convention recognizes both aspects of the right to nationality: the right to have a nationality from the perspective of granting the individual a 'minimal measure of legal protection in international relations through the link his nationality establishes between him and the State in question; and second the protection accorded the individual against the arbitrary deprivation of his nationality, without that are tied to the nationality of the individual.'

140. The determination of who has a right to be a national continues to fall within a State's domestic jurisdiction. However, its discretional authority in this regard is gradually being restricted with the evolution of international law, in order to ensure a better protection of the individual in the face of arbitrary acts of States. Thus, at the current stage of the development of international human rights law, this authority of the States is limited, on the one hand, by their obligation to provide individuals with the equal and effective protection of the law and, on the other hand, by their obligation to prevent, avoid and reduce statelessness.

141. The Court considers that the peremptory legal principle of the equal and effective protection of the law and non-discrimination determines that, when regulating mechanisms for granting nationality, States must abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of population when exercising their rights. Moreover, States must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the

affirmative measures needed to ensure the effective right to equal protection for all individuals.

142. States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability."

45. The principles emerging from the case-law of the Inter-American Court of Human Rights concerning the right to nationality have been recently confirmed in the case of *Expelled Dominicans and Haitians v. Dominican Republic* (judgment of 28 August 2014, paragraphs 253-264).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

46. The applicant complained under Articles 10 and 11 of the Convention that the allegedly arbitrary denial of Latvian citizenship through naturalisation was a punitive measure imposed on him because he had imparted ideas and exercised his right of assembly in order to criticise the Government's position. He further complained that the aforementioned infringements of his rights, contrary to the requirements of Article 10 § 2 and Article 11 § 2 of the Convention, were not prescribed by law, did not pursue a legitimate aim and were disproportionate and not necessary in a democratic society. Articles 10 and 11 of the Convention read as follows:

Article 10 (freedom of expression)

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11 (freedom of assembly and association)

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

47. The Government denied that there had been a violation of these Articles.

A. The parties' submissions

1. The applicant

48. The applicant pointed out that issues pertaining to nationality were not within States' exclusive competence if they affected human rights. He submitted that the *Nationality Decrees Issued in Tunisia and Morocco* Advisory Opinion and the *Nottebohm Case* reflected the situation of international law in 1923 and 1955, respectively, and not at the present time. He argued that there was an emerging international consensus that nationality laws and practice had to be consistent with general principles of international law, in particular human rights law. State discretion in granting nationality was not completely unfettered; referring to Article 15 § 1 of the Universal Declaration of Human Rights, the applicant argued that decisions concerning nationality were to be examined in the light of human rights. He cited paragraphs 32 and 140, respectively, of two relevant cases before the Inter-American Court of Human Rights (see paragraphs 43 and 44 above). The applicant alleged that the Inter-American approach was also confirmed in Europe, relying on Article 4 of the European Convention of Nationality and its Explanatory Report. The applicant described his status as a "non-citizen" and considered himself a "privileged" stateless person in terms of international law. He also referred to the *Nottebohm Case* and explained that he was born in Latvia, his habitual residence and centre of interests was in Latvia, and his wife and two daughters lived in Latvia. He asserted that he had no genuine or effective links with any other country.

49. Recognising that the right to a particular citizenship was not as such guaranteed by the Convention or its Protocols, the applicant relied on the Court's decision in the case of *Karassev v. Finland* ((dec.), no. 31414/96, ECHR 1999-II) and argued that arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact on the rights of an individual. He further referred to

the case of *Genovese v. Malta* (no. 53124/09, § 45, 11 October 2011), where the Court had found a violation of Article 14 in conjunction with Article 8 concerning access to citizenship. The applicant argued that it had been found in other international *fora* that national competence for the establishment of rules on citizenship was not exclusive; he referred to the above-cited *Rottmann* case before the Court of Justice of the European Union as an example. He also argued that for the purposes of the present case the obligation to reduce statelessness limited State discretion and, relying on the case of *Andrejeva v. Latvia* ([GC], no. 55707/00, § 88, ECHR 2009), asserted that Latvia was the only State with which he had stable legal ties.

50. The applicant conceded that he did not have a right to acquire Latvian citizenship under the Convention; his argument was that his rights under Articles 10 and 11 had been breached during the naturalisation process. Nothing in the Court's case-law suggested that only issues under Articles 8 and 14 could arise. It was his view that "arbitrary denial of citizenship" could also raise issues under Articles 10 and 11. The applicant argued that there was a sufficient causal link between his participation in activities against the introduction of the State language of the Republic of Latvia in schools which had the Russian language as their language of instruction and the subsequent decision of the Cabinet of Ministers to refuse his naturalisation. He considered that "the denial of citizenship" was a punitive measure used against him in response to his activities and statements.

51. The applicant disagreed with the Government that the *Ezelin* case was to be distinguished from the present case. The applicant submitted that the nature and severity of the sanction imposed were factors to be taken into account when assessing the proportionality of the interference (he referred to *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 64, ECHR 1999-IV). The refusal to grant him Latvian citizenship had had a number of immediate consequences. He mentioned one such example: the fact that he could not stand for the municipal elections held in 2005 because he could re-apply for naturalisation only after one year (section 12(6) of the Citizenship Law). Such a consequence had not been foreseeable given the positive opinion of the Security Police. The applicant remained a "non-citizen" and was excluded from fully-fledged participation in the political processes. He pointed out that he did not have the right to vote or stand as candidate in any elections – municipal or parliamentary, or in the elections for the European Parliament.

52. While agreeing that the sanctions did not prevent him from expressing himself, they had nonetheless in his view amounted to a kind of censorship which was likely to discourage him from making criticisms of that kind again in the future (he referred to *Lingens v. Austria*, 8 July 1986, § 44, Series A no. 103). More generally, the applicant submitted that the

measures taken by the domestic authorities were capable of discouraging the participation of "non-citizens" in debates over matters of legitimate public concern (he cited Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III).

53. In response to the Government's argument that he had not fulfilled the precondition of loyalty, the applicant drew a distinction between loyalty to the State and loyalty to the government. He acknowledged that the requirement of loyalty to the State might be legitimate, but that it should not be used to counter pluralism of views where such views were expressed in compliance with the law (he referred to *Tănase v. Moldova* [GC], no. 7/08, §§ 166-167, ECHR 2010). The applicant further alleged that the Government had not provided evidence as to his alleged calls to overthrow the government, to use violence and to trigger an international scandal. The applicant was surprised that the Government had referred to media reports in order to substantiate the allegations, when more objective evidence could have been found. He referred to the positive opinion by the Security Police and mentioned that he had been punished only once with a written warning for participation in a demonstration and that no criminal sanctions had ever been imposed on him; media reports only reflected the opinions of their authors. He relied on the same statements from the media (see paragraph 17 above) to argue that his protests had been staged only against the particular government led by Prime Minister, and the ruling coalition, not against any legitimate government whatsoever; that he had not wished to use any violence; his invitation "to a boxing contest in a police sports club" had been made to avoid any violence on the streets. Lastly, the statements made during his interview of 10 December 2004 could not have been grounds for the refusal since it had been given after the Cabinet of Ministers had refused to grant him Latvian citizenship.

54. In any event, freedom of expression also covered ideas and expression that offended, shocked or disturbed (he cited *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24) and freedom of assembly also protected demonstrations that might annoy or give offence to persons opposed to the ideas or claims that they were seeking to promote (he referred to *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139). Furthermore, the limits of criticism were wider in relation to the government than to a private citizen (he cited *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236).

2. The Government

55. The Government insisted that the applicant's complaint was a disguised attempt to complain about the fact that his naturalisation application had been refused. They maintained that the applicant had not shown how that refusal had interfered with or had otherwise had a negative

impact on his rights and freedoms under Articles 10 and 11 of the Convention.

56. According to the Government, the denial of naturalisation in no way affected the applicant's rights and freedoms. The Government referred to extensive media coverage reflecting the applicant's public statements, in which he had freely expressed his views and position on the education reform and also his plans and actions in that connection. The media coverage also reflected the applicant's participation in further meetings and demonstrations in 2005. He had become an assistant to a Member of the European Parliament, Ms Ždanoka, and had continued to speak out against government policy as regards the education reform. The Government mentioned specific examples of meetings in which the applicant had participated since the 16 November 2004 decision (for example, a meeting of 6 December 2004 concerning the education reform). In addition, they mentioned that in 2012 the applicant had been one of the organisers of a collection of signatures to initiate a referendum on citizenship for "non-citizens". In the same year, the applicant had participated in establishing a body called "the Congress of Non-Citizens", and within it, on 1 June 2013, he had been elected a member of a self-proclaimed "Parliament of the Unrepresented". He had participated in a number of conferences, protests and demonstrations, in which he had freely expressed his opinion that "non-citizens" should be automatically granted citizenship.

57. Nor had the applicant been subjected to any punishment, penalty, prosecution or conviction by any of the State institutions for his opinions or public remarks. The Government referred to the case of *Jokšas v. Lithuania* (no. 25330/07, 12 November 2013) and considered it relevant for the purposes of the present case in so far as, in that case, no interference and, accordingly, no violation, had been found in the absence of any disciplinary sanction, prosecution or conviction for public remarks.

58. The Government disagreed with the applicant that the refusal by the Latvian authorities to grant him citizenship had been a punitive measure and distinguished the present case from *Ezelin v. France* (26 April 1991, Series A no. 202). In the latter case the applicant had received a disciplinary sanction for participating in a demonstration; such a punishment leaving negative legal consequences on the applicant's employment record. In the present case, however, the refusal to grant citizenship had only had one immediate consequence – inability at a given moment of time to obtain Latvian citizenship. The Government reiterated that there had been no adverse effects on the applicant's rights under Articles 10 and 11 of the Convention and that the refusal did not prevent the applicant from submitting a new request in the future.

59. The Government also considered that the present case should be distinguished from the cases of *Redfearn* and *Vogt*, where the applicants had subsequently experienced difficulties in finding employment after dismissal

(*Redfearn v. the United Kingdom*, no. 47335/06, 6 November 2012, and *Vogt v. Germany*, 26 September 1995, Series A no. 323). By contrast, the refusal of Latvian citizenship through naturalisation in the present case did not irreversibly entail any difficulties for the applicant as he could re-apply for Latvian citizenship. Nor did it create any negative consequences for his political career. The fact that the applicant had not re-applied for naturalisation showed that he had never had any genuine intention of obtaining Latvian citizenship.

60. The Government referred to the above-cited *Nationality Decrees Issued in Tunisia and Morocco* Advisory Opinion and *Nottebohm Case*, arguing that under international law questions of nationality fell within the exclusive competence of the States and were a matter solely within the domestic jurisdiction of States. Regulation in international law on the subject of nationality remained fragmented – it covered such areas as conflicts of jurisdiction to decide on nationality and State succession, none of which were relevant for the purposes of the present case. The Government mentioned that attempts to develop more unified standards regarding nationality in general were still underway, pointing to the fact that the European Convention on Nationality had been ratified by only 16 States at the time of the Government's submission of their first observations (now by 20 States, see paragraph 39 above).

61. With reference to the Strasbourg case-law (*Family K. and W. v. the Netherlands*, no. 11278/84, Commission decision of 1 July 1985, *Decisions and Reports* (DR) 43, p. 216; *Slepcik v. the Netherlands and the Czech Republic*, no. 30913/96, Commission decision of 2 September 1996, DR 86-B, p. 176; and *Jazvinsky v. the Slovak Republic* (dec.), nos. 33088/96, 52236/99, 52451/99, 52452/99, 52453/99, 52455/99, 52457/99, 52458/99, 52459/99, 7 December 2000), the Government reiterated that the right to citizenship of a certain State was not among the rights guaranteed by the Convention or its Protocols.

62. Referring to the ruling of the Constitutional Court in case no. 2009-94-01, the Government argued that the State had a wide margin of appreciation in laying down rules on citizenship (see paragraph 36 above). The Government reiterated that naturalisation was a political decision of the State and that every State had a mechanism aimed at identifying citizens who were loyal to that particular State; the State could not be obliged to grant citizenship to persons it considered non-integrated, disloyal and untrustworthy.

63. Latvian law did not guarantee a right to acquire Latvian citizenship by naturalisation; it merely provided for a right to apply for it if certain criteria were met. The Government further explained the two-step process of naturalisation. First, the Naturalisation Board carried out the administrative task of receiving and reviewing individual applications to determine whether or not they met the criteria laid down by law, and its

decision was amenable to judicial review pursuant to section 17(3) of the Citizenship Law. Second, the Cabinet of Minister's task was one of a discretionary nature, among other things to take account of political considerations including the person's loyalty to the Republic of Latvia. The Cabinet of Ministers had concluded that the applicant's statements and actions were aimed at destabilising the situation in the State and that he had misused the naturalisation procedure to achieve that aim (see paragraph 17 above).

64. Moreover, the applicant's statements and actions were incompatible with the fundamental values of the Republic of Latvia as a democratic State and he had not fulfilled the loyalty precondition under Article 18 of the Citizenship Law. Referring to the above-cited *Nottebohm Case*, the Government considered it normal to request that naturalisation applicants demonstrate a genuine connection to the country, including a certain level of loyalty to the Republic of Latvia when acquiring its citizenship. While acknowledging that in principle Article 10 of the Convention protected the right to express oneself in a way which offended, shocked or disturbed, the Government also noted that a person exercising his freedom of expression undertook duties and responsibilities, the scope of which depended on the particular situation (they referred to *Handyside*, cited above, § 49). In the Government's view, the applicant had a duty to choose the means by which he wished to achieve his goals and refrain from provocative statements regarding the possibility of using violence, thus undermining the fundamental values of the democratic society. Similarly, they noted that Article 11 of the Convention did not protect those who had violent intentions resulting in public disorder (they cited *G. v. the Federal Republic of Germany*, no. 10833/84, Commission decision of 13 October 1987).

65. In the present case, the applicant could not be seen as exercising his freedom of expression or assembly when advocating ideas concerning the Russian-speaking community and the education reform. By refusing to grant him citizenship through naturalisation, the objective of the Cabinet of Ministers had been not to punish the applicant for any misdeeds, but to protect democracy as established in the Constitution.

66. Lastly, in their post-admissibility observations the Government noted that in the domestic proceedings the applicant had never complained of any interference with or restriction of his freedom of expression or assembly. Instead he had expressly complained about the decision on the refusal of naturalisation, and in their view this case was thus to be contrasted with that of *Heinisch v. Germany* (no. 28274/08, ECHR 2011 (extracts)).

B. The Court's assessment

1. General principles

67. The Court's Grand Chamber judgment in the case of *Mouvement raëlien suisse v. Switzerland* (no. 16354/06, § 48, ECHR 2012 (extracts)) reiterated the fundamental principles as regards freedom of expression (referring to the cases of *Stoll v. Switzerland* [GC], no. 69698/01, § 101, ECHR 2007 V, and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II) as follows:

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'.... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ...."

68. The Court also emphasises the "chilling effect" that the fear of sanctions has on the exercise of freedom of expression. This effect, which works to the detriment of society as a whole, is likewise a factor which concerns the proportionality of, and thus the justification for, the sanctions imposed on individuals (see *Kudeshkina v. Russia*, no. 29492/05, § 99, 26 February 2009 with further references).

69. The exceptions to the rule of freedom of association set out in Article 11 are, like those in Article 10, to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a "pressing social need"; thus, the

notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 95, ECHR 2004-I).

70. The Court has recently reiterated that pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position. Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society (see *S.A.S. v. France* [GC], no. 43835/11, § 128, ECHR 2014 (extracts) with further references). Respect by the State of the views of a minority by tolerating conduct which is not *per se* incompatible with the values of a democratic society or wholly outside the norms of conduct of such a society, far from creating unjust inequalities or discrimination, ensures cohesive and stable pluralism and promotes harmony and tolerance in society (see, *mutatis mutandis*, *Bayatyan v. Armenia* [GC], no. 23459/03, § 126, ECHR 2011).

71. The Court has also held that a "remark directed against the Convention's underlying values" is removed from the protection of Article 10 by Article 17 (see *Lehideux and Isorni v. France*, 23 September 1998, § 53, Reports 1998-VII, and *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX). The freedoms guaranteed by Articles 10 and 11 of the Convention cannot deprive the authorities of a State in which an association, through its activities, jeopardises that State's institutions, of the right to protect those institutions. In this connection, the Court points out that it has previously held that some compromise between the requirements of defending democratic society and individual rights is inherent in the Convention system. For there to be a compromise of that sort, any intervention by the authorities must be in accordance with paragraph 2 of Article 11. Only when that review is complete will the Court be in a position to decide, in the light of all the circumstances of the case, whether Article 17 of the Convention should be applied (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 96, ECHR 2003-II).

72. The Court considers that no one should be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society. Consequently, in order to guarantee the stability and effectiveness of a democratic system, the State may be required to take specific measures to protect itself. Every time a State intends to rely on the principle of "a democracy capable of defending itself" in order to justify interference with individual rights, it must carefully evaluate the scope and

consequences of the measure under consideration, to ensure that the aforementioned balance is achieved (see *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 99 and 100, ECHR 2006-IV).

73. Lastly, the Court reiterates that a "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights, or a right to acquire or retain a particular nationality, is not guaranteed by the Convention or its Protocols. Nevertheless, the Court has not excluded the possibility that an arbitrary denial of nationality might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see *Karassev*, cited above, and *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II). Likewise, the Court has ruled that no right to renounce citizenship is guaranteed by the Convention or its Protocols; but it cannot exclude that an arbitrary refusal of a request to renounce citizenship might in certain very exceptional circumstances raise an issue under Article 8 of the Convention if such a refusal has an impact on the individual's private life (see *Riener v. Bulgaria*, no. 46343/99, §§ 153-154, 23 May 2006).

74. Thus, the Court has considered that in circumstances where a member State has gone beyond its obligations under Article 8 in creating a right to citizenship by descent and has established a procedure to that end, that State consequently must ensure that the right is secured without discrimination within the meaning of Article 14 of the Convention (see *Genovese*, cited above, § 34).

2. Application of those principles to the present case

75. The Court notes that the applicant considered his freedom of expression and assembly to have been interfered with by the fact that the Cabinet of Ministers had adopted a negative decision regarding his application to acquire Latvian citizenship through naturalisation and thus punished him for his views and had a chilling effect on the exercise of his freedoms. The Government distinguished between the decision not to grant citizenship through naturalisation and the right to freedom of expression, where the latter could be freely exercised by the applicant with or without Latvian citizenship.

76. In view of the Court's decision to join to the merits the Government's objection to the Court's jurisdiction *ratione materiae* (see paragraph 4 above), the first question that the Court needs to determine now is whether Articles 10 and 11 are applicable in the circumstances of the present case.

77. The applicant alleged that the refusal to grant him Latvian citizenship through naturalisation was a punitive measure in response to the views he had expressed during the various demonstrations against the education reform. The Court observes, however, that the applicant had been

able freely to express his views, which had been widely reported in the mass media at the time (see paragraphs 8, 15, 17 and 56 above). Besides, he continued to express his views on the education reform without any hindrance after his application for naturalisation was refused (see paragraphs 8 and 15 above). Furthermore, the applicant remained politically active and continued to express his views also on other matters of public interest (see paragraph 56 above). The Court notes that the availability or absence of a given civil status does not appear to have interfered with the applicant's civic activities. Even though the applicant maintained that the decision regarding his naturalisation application had affected his courage to speak up and had, therefore, impeded his participation in debates on matters of public interest, the Government submitted ample evidence to the contrary (see paragraphs 8, 15, 17 and 56 above) and the applicant did not further substantiate his allegation or submit any proof in this connection. Nor is there any other information in the Court's possession suggesting that the Government's policy relating to citizenship may have generated a chilling effect for the applicant or those expressing similar views.

78. The applicant mentioned one tangible consequence of the refusal of naturalisation: he could not vote or stand for municipal and parliamentary elections, or elections to the European Parliament. However, the Court observes that the applicant's complaint in the present case does not concern the rights that are laid down in Article 3 of Protocol No. 1 to the Convention (contrast *Ždanoka*, cited above, § 73). Nor does the applicant allege a violation of Article 8 of the Convention on account of being unable to preserve his current civil status (contrast *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 314, ECHR 2012 (extracts)). Above all, the Court's decision on the admissibility of the present application determines the scope of the case currently before it and it does not include any complaints other than those under Articles 10, 11 and 13 of the Convention (see paragraphs 3 and 4 above).

79. Furthermore, the applicant himself admitted that he had never been subjected to a criminal sanction for expressing his opinion or for participating in a demonstration. It appears that he had received one warning for participating in a protest; however, he did not specify any further details in this regard – date, place or context.

80. The Court will now assess whether the decision on naturalisation had any punitive character for the purpose of the exercise of the applicant's freedom of expression and assembly. In accordance with international law, decisions on naturalisation or any other form of granting of nationality are matters primarily falling within the domestic jurisdiction of the State; they are normally based on various criteria aimed at establishing a link between the State and the person requesting nationality (see paragraphs 37 and 38 above). While the European Convention on Nationality has not been widely ratified by the Council of Europe member States (see paragraph 39 above),

as noted in its Explanatory Report, its definition relies on the traditional understanding of a bond of nationality as expressed by the ICJ in the *Nottebohm Case* (see paragraphs 40 and 41 above). The choice of the criteria for the purposes of a naturalisation procedure is not, in principle, subject to any particular rules of international law and the States are free to decide on individual naturalisation (see paragraph 38 above). In certain situations, however, the States' discretion may be limited by the principle of non-intervention, according to which a State is prohibited from interfering in the internal or foreign affairs of another State (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits*, ICJ judgment of 27 June 1986, paragraphs 202-205). Nevertheless, such limitation cannot be considered of any relevance for the purposes of the present case.

81. In this respect, the applicant advanced two arguments to claim that the State's discretion was not completely unfettered in matters relating to the granting of nationality. First, he referred to the Universal Declaration of Human Rights and to the case-law of the Inter-American Court of Human Rights. However, as the Court has already noted above, under the Convention there is no "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights (see paragraph 73 above). The applicant's reference to the case-law of the Inter-American Court of Human Rights is likewise misguided, since the American Convention on Human Rights, which is a regional instrument, explicitly provides for a right to nationality in its Article 20 (see paragraphs 43-45 above).

82. The applicant's second argument was that the State's discretion was limited by the obligation to reduce statelessness. The Court observes that the applicant belongs to a category of Latvian residents who were granted a specific civil status under domestic law – "permanently resident non-citizens" (*nepilsoņi*) – that is, citizens of the former USSR who lost their Soviet citizenship following the dissolution of the USSR but, while being so entitled, have not subsequently obtained any other nationality (see, for more details relating to categories of Latvian residents, *Slivenko*, cited above, §§ 50-53, and *Sisojeva and Others*, cited above, §§ 46-47). The applicant has not shown how the availability or not of a given status in domestic law would have affected his exercise of freedom of expression and assembly.

83. Turning now to the Convention system, the Court reiterates that in some circumstances it has ruled that arbitrary or discriminatory decisions in the field of nationality may raise issues in human rights law in general and under the Convention specifically (see the above-cited cases of *Karassev*, *Riener*, § 153, and *Genovese*, § 34). However, as noted above, neither the Convention nor international law in general provides for the right to acquire a specific nationality. The applicant has accepted this. The Court observes that there is nothing in the Latvian Citizenship Law to indicate that the applicant could unconditionally claim a right to Latvian citizenship (see

paragraphs 20, 29 and 63 above) or that the negative decision of the Cabinet of Ministers could be seen as an arbitrary denial of such citizenship (contrast *Genovese*, cited above, § 34).

84. The issue whether or not the applicant has an arguable right to acquire citizenship of a State must in principle be resolved by reference to the domestic law of that State (see *Kolosovskiy v. Latvia* (dec.), no. 50183/99, 29 January 2004). Similarly, the question whether a person was denied a State's citizenship arbitrarily in a manner that might raise an issue under the Convention is to be determined with reference to the terms of the domestic law (see *Fehér and Dolník v. Slovakia* (dec.), nos. 14927/12 and 30415/12, § 41, 21 May 2013). The choice of criteria for the purposes of granting citizenship through naturalisation in accordance with domestic law is linked to the nature of the bond between the State and the individual concerned that each society deems necessary to ensure. In many jurisdictions, acquisition of citizenship is accompanied by an oath of allegiance whereby the individual pledges loyalty to the State. The Court has addressed the issue of loyalty, albeit in a slightly different context of electoral rights, and drawn a distinction between loyalty to the State and loyalty to the government (see *Tănase*, cited above, § 166).

85. The Court notes that the assessment of loyalty for the purposes of the naturalisation decision in the present case does not refer to loyalty to the government in power, but rather to the State and its Constitution. The Court considers that a democratic State is entitled to require persons who wish to acquire its citizenship to be loyal to the State and, in particular, to the constitutional principles on which it is founded. The applicant did not contest this. The Court agrees with the applicant that, in exercising his freedom of expression and assembly, he is free to disagree with government policies for as long as that critique takes place in accordance with the law; it is also true that the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. However, this is an entirely different matter from the issue of the criteria set for naturalisation and its procedure, which are both determined by domestic law. The requirement of loyalty to the State and its Constitution cannot be considered as a punitive measure capable of interfering with the freedom of expression and assembly. Rather, it is a criterion which has to be fulfilled by any person seeking to obtain the Latvian citizenship through naturalisation.

86. The Court does not see in what manner the applicant has been prevented from expressing his disagreement with government policy on the issue of interest to him. Nor can the Court discern any facts which would indicate that he was prevented from participating in any meetings or movements.

87. Consequently, Articles 10 and 11 of the Convention are not applicable in the circumstances of the present case and the Court upholds the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

88. The applicant also complained under Article 13 of the Convention that he did not have any effective domestic remedy in respect of his allegedly infringed rights as the Senate of the Supreme Court had ruled that the decision of the Cabinet of Ministers was a political decision. He considered that an application for supervisory review by a public prosecutor was not an effective remedy since a decision by the latter in the instant case would not be subject to appeal.

89. Article 13 of the Convention provides as follows:

> "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."

90. The Government disagreed.

91. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (see, for example, *Bazjaks v. Latvia*, no. 71572/01, § 127, 19 October 2010, with further references).

92. Having already found that Articles 10 and 11 of the Convention are not applicable in the present case, the Court reaches the same conclusion in respect of Article 13 as there is no "arguable complaint" under the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that Articles 10 and 11 of the Convention are not applicable;

2. *Holds* that Article 13 of the Convention is not applicable.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President