

HUMAN RIGHTS COMMITTEE

Ignatane v. Latvia

Communication No. 884/1999

25 July 2001

CCPR/C/72/D/884/1999

VIEWS

Submitted by: Ms. Antonina Ignatane (represented by counsel, Ms. Tatyana Zhdanok)

Alleged victim: The author

State party: Latvia

Date of communication: 17 May 1998 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 July 2001,

Having concluded its consideration of communication No. 884/1999 submitted to the Human Rights Committee by Ms. Antonina Ignatane under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Ms. Antonina Ignatane, a Latvian citizen of Russian origin and a teacher, born in Riga on 21 February 1943. She claims to be the victim of violations of articles 2 and 25 of the International Covenant on Civil and Political Rights by Latvia. The author is represented by counsel.

1.2 The International Covenant on Civil and Political Rights entered into force for Latvia on 14 July 1992, and the Optional Protocol on 22 September 1994.

The facts as submitted by the author

2.1 At the time of the events in question, Ms. Ignatane was a teacher in Riga. In 1993, she had appeared before a certification board to take a Latvian language test and had subsequently been awarded a language aptitude certificate stating that she had level 3 proficiency (the highest level).

2.2 In 1997, the author stood for local elections to be held on 9 March 1997, as a candidate of the Movement of Social Justice and Equal Rights in Latvia list. On 11 February 1997, she was struck off the list by decision of the Riga Election Commission, on the basis of an opinion issued by the State Language Board (SLB) to the effect that she did not have the required proficiency in the official language.

2.3 On 17 February 1997, the author filed a complaint with the Central District Court concerning the Election Commission's decision, which she considered illegal. The Court transferred the case automatically to the Riga's Circuit Court, which dismissed the case on 25 February, with immediate effect.

2.4 On 4 March 1997, Ms. Ignatane filed a petition against the decision of 25 February with the President of the Civil Division of the Latvian Supreme Court. In a letter dated 8 April 1997, the Supreme Court refused to act on the petition.

2.5 The author had also filed a case with the Public Prosecutor's Office on 4 March 1997. Having considered the petition, the Public Prosecutor's Office stated on 22 April 1997 that there were no grounds to act on the complaint and that the decision in question had been taken with due regard to the law and did not violate the International Covenant on Civil and Political Rights.

2.6 The author has submitted to the Committee a translation of articles 9, 17 and 22 of the Law on Elections to Town Councils and Municipal Councils, of 13 January 1994. Article 9 of the Law lists the categories of people who may not stand for local elections. According to article 9, paragraph 7, no one who does not have level 3 (higher) proficiency in the State language may stand for election. According to article 17, if anyone standing for election is not a graduate of a school in which Latvian is the language of instruction, a copy of his or her language aptitude certificate showing higher level (3) proficiency in the State language must be attached to the "candidate's application". The author's counsel has explained that the copy of the certificate is required to enable SLB to check its authenticity, not its validity.

2.7 According to article 22, only the Election Commission registering a list of candidates is competent to alter the list, and then only:

(1) By striking a candidate from the list if: ...

(b) The conditions mentioned under article 9 of the present Law are applicable to the candidate, ..., and, in cases covered by paragraph 1 (a), (b) and (c) of the present article, a

candidate may be struck off the list on the basis of an opinion from the relevant institution or by court decision.

In the case of a candidate who: ...

(8) Does not meet the requirements corresponding to the higher level (3) of language proficiency in the State language, that fact must be certified by an opinion of the SLB.

2.8 Lastly, Ms. Ignatane recalls that, according to statements made by the SLB at the time of the case hearings, the certification board in the Ministry of Education had received complaints about her proficiency in Latvian. It so happens, the author says, that it was just that Ministry that, in 1996, had been involved in a widely publicized controversy surrounding the closure of No. 9 secondary school in Riga, where she was the head teacher. The school was a Russian-language school and its closure had had a very bad effect on the Russian minority in Latvia.

The complaint

3. The author claims that, by depriving her of the opportunity to stand for the local elections, Latvia violated articles 2 and 25 of the Covenant.

The State party's observations

4.1 In its observations of 28 April 2000, the State party contests the admissibility of the communication. It claims that the author has not exhausted the domestic remedies available to her.

4.2 The State party also submits that the author does not challenge the conclusions of the State Language Board that her proficiency in Latvian is not of the level required in order to stand for elections (level 3), but only the legality of the Election Commission's decision to strike her off the list of candidates. The State party considers that the court rulings are lawful and legitimate and in full accordance with Latvian law and, in particular, with article 9, paragraph 7, and article 22, paragraph 8, of the Law on Elections to Town Councils and Municipal Councils.

4.3 The State party is of the view that the provisions of the aforementioned Law comply with the requirements of the International Covenant on Civil and Political Rights, as provided in the Human Rights Committee's General Comment No. 25 on article 25, which states that "any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria". According to the State party, participation in public affairs requires a high level of proficiency in the State language and such a precondition is reasonable and based on objective criteria, which are set forth in the regulations on the certification of proficiency in the State language. The State party says that, according to those regulations, level 3 proficiency in the State language is required for several categories of persons, including elected representatives. The highest level (level 3) shows an ability to speak the official language fluently, to understand texts chosen at random and to draft texts in the official language, in connection with his or her official duties.

4.4 The State party goes on to say that, as regards the plaintiff's real proficiency in the State language, there is extensive information provided in the court ruling, which states that, if there are

complaints about proficiency in the State language, an examination is carried out in order to establish whether the real language proficiency corresponds to the level attested by the certificate. In this particular case, the State party claims that complaints had been received by the Ministry of Education and Science concerning the plaintiff's proficiency in Latvian, although it does not elaborate further or provide any evidence. On 5 February 1997, an examination was carried out which showed that her language proficiency did not meet the requirements of level 3. The Court subsequently referred to the material evidence (a copy of the examination, with the corrections) that the SLB had provided in support of the results of the examination concerning Ms. Ignatane's proficiency in Latvian.

4.5 The examination results served as a basis for barring the plaintiff from the list of candidates for the elections, in accordance with the law. The legality of the act had subsequently been confirmed by the Supreme Court and the Public Prosecutor's Office.

4.6 Regarding the alleged contradiction between the author's certificate and the SLB's conclusions, the State party notes that the SLB's conclusions relate only to the issue of the candidate's eligibility and in no way either imply the automatic invalidation of the certificate or may be used as a basis for revising its appropriateness, unless the holder of the certificate so wishes.

4.7 The State party argues that the author could have taken two further measures. In the first place, Ms. Ignatane could have asked for another language examination, as the SLB indicated during the hearings. The purpose of such an examination would have been to verify the appropriateness of the certificate held by Ms. Ignatane. Secondly, the author could have taken legal action on the basis of the discrepancy between her certificate and the SLB's conclusions with regard to her electoral qualification, which would have led the Court to order another examination in order to verify the appropriateness of the certificate.

4.8 Since none of these possibilities was used by the author, the State party argues that not all domestic remedies have been exhausted. The State party also dismisses the allegation of discrimination against the author on the basis of her political convictions, since all the other members of the same list were accepted as candidates in the elections.

Author's comments on the State party's observations

5.1 In comments dated 22 September 2000, counsel addresses the State party's argument that Ms. Ignatane did not challenge the conclusions of the State Language Board that she did not have the highest level of proficiency in Latvian, but challenged the legality of the Election Commission's decision to strike her off the list of candidates. Counsel acknowledges that Ms. Ignatane certainly challenged the legality of the Electoral Commission's decision, but states that the only ground for that decision was the SLB's conclusion that her proficiency in Latvian did not meet the requirement for the highest level of aptitude. Therefore, according to counsel, the author challenged the legality of the decision by the Election Commission to strike her name from the list of election candidates, which was taken on the basis of the SLB's conclusion.

5.2 Counsel points out that the phrasing used by the State party - "the required third (highest) level to stand for election" - is open to misinterpretation. According to counsel, Latvian electoral law has

no requirement for any special level of proficiency in the State language purely in order to stand for election; it is only the regulations on the certification of proficiency in the State language for employment that indicate the three levels required for various positions and professions, and the language aptitude certificate showing level 1, 2 or 3 proficiency in the State language is general in scope.

5.3 With regard to the State party's assertion that the relevant electoral law complies with the requirements of the International Covenant on Civil and Political Rights, as provided in the General Comment on article 25, counsel states that the conditions contained in article 9, paragraph 7, and article 22, paragraph 8, of the Law in question are not based on objective and reasonable criteria, as required by the Human Rights Committee's General Comment on non-discrimination.

5.4 According to article 9, paragraph 7, of the Law, persons whose proficiency in the State language does not meet the requirements of the highest level (level 3) may not be nominated as candidates for local council elections and may not be elected to councils. According to article 22, paragraph 8, a candidate may be struck off the list if his or her language skills do not meet the requirements of proficiency level 3 in the State language, on the basis of an opinion of the State Language Board. According to counsel, in practice, that provision is open to a practically infinite range of interpretations and opens the door to totally discretionary and arbitrary decisions.

5.5 Counsel then addresses the State party's point that an election candidate is given a language examination if complaints have been received. If no complaints have been received, the SLB should submit opinions on every candidate, in the form of an authentication of the copy of each candidate's Latvian language aptitude certificate. Counsel maintains that an unsupported statement that complaints had been made about a candidate and the results of the subsequent examination, which was conducted by a single examiner, a senior inspector at the State Language Inspectorate, cannot be described as objective criteria. The full powers given to a senior inspector are not commensurate with the consequences they give rise to, i.e. the disqualification of an election candidate. Such an approach to the verification of proficiency in the State language makes it possible, if need be, to disqualify all candidates representing a minority.

5.6 Counsel goes on to describe the conditions in which the examination was carried out. Ms. Ignatane was at work, when the German lesson she was giving to a class of schoolchildren was interrupted and she was required to do a written exercise in Latvian. The examination was carried out by an inspector in the presence of two witnesses, who were teachers employed at the same school. Given the circumstances, counsel contends, the spelling mistakes and other errors that were used as evidence of the author's limited proficiency in Latvian should not be taken into account.

5.7 In the third place, with reference to the State party's assertion that participation in public affairs requires a high level of proficiency in the State language and that such a precondition is reasonable and based on objective criteria set forth in the regulations on the certification of proficiency in the State language, counsel contends that such a precondition for standing in local elections is not reasonable. There are no other preconditions for candidates in general, for example with regard to level of education or professional skills. The fact that the only precondition relates to proficiency in Latvian means, according to counsel, that the rights to vote and to be elected are not respected and guaranteed to all individuals with no distinction on the grounds of their language status. Counsel

asserts that, for around 40 per cent of the population of Latvia, Latvian is not the mother tongue.

5.8 According to counsel, this precondition of a high level of proficiency in Latvian for participation in local elections is not based on objective criteria. However, that does not mean that the author is of the opinion that the criteria set forth in the regulations on the certification of proficiency in the State language are not objective. Simply, the latter criteria are not applied in the provision (in article 22, paragraph 8, of the Law) that a candidate may be struck off the list if he or she does not meet the requirements of the highest level (level 3) of proficiency in Latvian, and that this must be certified by an opinion of the SLB. Counsel states that, according to the regulations on the certification of proficiency in the State language, language proficiency is certified by a special Certification Commission made up of at least five language specialists. The regulations describe in detail the testing and certification procedure, thereby ensuring its objectivity and reliability. Level 1, 2 and 3 certificates are valid for an unlimited period. According to article 17 of the Law, candidates who have not obtained their secondary school diploma from a school in which Latvian is the language of instruction must submit a copy of their level 3 certificate to the Election Commission. The author had submitted such a copy to the Riga Election Commission. Counsel maintains that the SLB opinion, issued on the basis of an ad hoc examination conducted by a single inspector from the State Language Inspectorate following complaints allegedly received by the Ministry of

Education, was not consistent with the requirements of the regulations on the certification of proficiency in the State language. Moreover, the State party acknowledges that the SLB opinion relates only to the issue of eligibility and in no way either implies the automatic invalidation of the certificate or may be used as a basis for revising its appropriateness.

5.9 Fourth and last, counsel takes up the State party's contention that all domestic remedies have not been exhausted. Counsel recalls that the court judgement of 25 February 1997 confirming the Riga Election Commission's decision of 11 February 1997 was final and entered into force with immediate effect. The special procedure available for appealing such decisions is in fact the procedure that the author followed.

5.10 Counsel goes on to point out that remedies should not only be adequate and sufficient, but should also make it possible in practice to obtain the re-establishment of the situation in question. The remedy exhausted by the author - the special procedure for appealing the Election Commission's decision - was the only remedy that would have made it possible to achieve the objective of the complaint, namely, to allow the author to stand in the Riga City Council elections in 1997 by restoring her name to the electoral list.

5.11 Counsel maintains that the State party contradicts itself when it says, on the one hand, that it cannot agree that domestic remedies have been exhausted, since neither of the two possible remedies it mentions for verifying the appropriateness of the author's certificate has been used, and, on the other hand, that, according to the communication, the author challenges the legality of striking her off the list of candidates but not the SLB's opinion that her proficiency in Latvian was not of the required level 3. In any case, each of the procedures mentioned by the State party to verify the appropriateness of the author's certificate takes several months at least and therefore would not have allowed the author to stand in the 1997 elections. In that regard, counsel recalls that the decision to bar the author was taken 26 days before the elections. Time constraints precluded any effort on the

author's part to avail herself subsequently of any other legal remedy.

The Committee's deliberations concerning admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

6.2 The Committee observes that the State party contests the admissibility of the communication on the grounds that domestic remedies have not been exhausted, since the author did not contest the SLB's conclusion that her knowledge of the language was not of the required standard, but contested the Election Commission's decision to strike her off the list. The Committee cannot agree with the State party's argument that this shows that the author had not exhausted the available remedies, since at the time the author was in possession of a valid, legally issued certificate demonstrating her knowledge of the official language to the required standard, which the State party itself does not contest.

6.3 The Committee also notes counsel's arguments that the remedies listed by the State party are not effective remedies and that the State party has not proved that they are effective or indeed contested counsel's arguments. The Committee also takes account of counsel's comment that the remedies listed by the State party take several months to reach a conclusion in any case and to have exhausted them would have meant that the author would not have been able to stand in the elections. The Committee notes that counsel's reactions were brought to the attention of the State party, but that the latter did not respond. Under the circumstances, the Committee considers that there is no impediment to the admissibility of the communication.

6.4 The Committee therefore declares the communication admissible and decides to proceed to an examination of the case on its merits, in accordance with article 5, paragraph 2, of the Optional Protocol.

Examination of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information submitted to it in writing by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The issue before the Committee is whether the rights of the author under articles 2 and 25 were violated by not allowing her to stand as candidate for the local elections held in March 1997.

7.3 According to the State party participation in public affairs requires a high level of proficiency in the State language and a language requirement for standing as a candidate in elections is hence reasonable and objective. The Committee notes that article 25 secures to every citizen the right and the opportunity to be elected at genuine periodic elections without any of the distinctions mentioned in article 2, including language.

7.4 The Committee notes that, in this case, the decision of a single inspector, taken a few days

before the elections and contradicting a language aptitude certificate issued some years earlier, for an unlimited period, by a board of Latvian language specialists, was enough for the Election Commission to decide to strike the author off the list of candidates for the municipal elections. The Committee notes that the State party does not contest the validity of the certificate as it relates to the author's professional position, but argues on the basis of the results of the inspector's review in the matter of the author's eligibility. The Committee also notes that the State party has not contested counsel's argument that Latvian law does not provide for separate levels of proficiency in the official language in order to stand for election, but applies the standards and certification used in other instances. The results of the review led to the author's being prevented from exercising her right to participate in public life in conformity with article 25 of the Covenant. The Committee notes that the first examination, in 1993, was conducted in accordance with formal requirements and was assessed by five experts, whereas the 1997 review was conducted in an ad hoc manner and assessed by a single individual. The annulment of the author's candidacy pursuant to a review that was not based on objective criteria and which the State party has not demonstrated to be procedurally correct is not compatible with the State party's obligations under article 25 of the Covenant.

7.5 The Committee concludes that Mrs. Ignatane has suffered specific injury in being prevented from standing for the local elections in the city of Riga in 1997, because of having been struck off the list of candidates on the basis of insufficient proficiency in the official language. The Human Rights Committee considers that the author is a victim of a violation of article 25, in conjunction with article 2 of the Covenant

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Ms. Ignatane with an effective remedy. It is also under an obligation to take steps to prevent similar violations occurring in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the General Assembly.]

