



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

DECISION

Communication 1224/2003

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| <u>Submitted by:</u> | Lyudmila Litvina (not represented by counsel) |
| <u>Alleged victims:</u> | The author |
| <u>State party:</u> | Latvia |
| <u>Date of communication:</u> | 4 October 2003 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 decision (old rule 91), transmitted to the State party on 27 November 2003 (not issued in document form) |
| <u>Date of adoption of decision:</u> | 26 March 2007 |

* Made public by decision of the Human Rights Committee.

Subject matter: Denial of protection of the law for judicial challenges to actions and decisions of administrative bodies.

Substantive issue: Right to have access to court.

Procedural issue: Non-exhaustion of domestic remedies

Article of the Covenant: article 14, paragraph 1

Article of the Optional Protocol: article 5, paragraph 2 (b)

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Eighty-ninth session

concerning

Communication 1224/2003**

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| <u>Submitted by:</u> | Lyudmila Litvina (not represented by counsel) |
| <u>Alleged victims:</u> | The author |
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The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 2007,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Lyudmila Litvina, who claims to be stateless, born in Latvia on 9 June 1953 and currently residing in Latvia. She claims to be a victim of violations by Latvia¹ of her rights under article 14, paragraph 1, of the International Covenant on Civil and Political Rights.² She is unrepresented.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez -Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

¹ Although the author did not invoke any specific Covenant's provisions in her initial communication of 4 October 2003, the State party chose to submit its observations on the alleged violation of article 14, paragraph 1, and, in the submissions received on 26 July 2004, the author herself was commenting on the violation of article 14.

² The Optional Protocol entered into force for the State party on 22 September 1994.

Factual background

2.1 On 14 September 1999, the author obtained a certificate of proficiency in the Latvian language issued by the State Examination Commission of Latgales, a suburb of Riga, with the State seal. On 4 June 2001, the author took a written Latvian language proficiency examination in the Liepāja Branch of the Naturalization Board with a view to obtain Latvian citizenship by naturalization. On the same day, the Examination Commission of the regional branch of the Naturalization Board (hereinafter, Examination Commission) competent to evaluate these examinations, decided that the author had failed the test.

2.2 On 5 June 2001, the author appealed this decision to the head of the Naturalization Board. The appeal was received on 13 June 2001; two days later, the head of the Naturalization Board asked the Appeal Commission to consider it. On 26 June 2001, the Board informed the author that her appeal was examined during the Appeal Commission's sitting of 21 June 2001. The Board rejected the author's application and considered that the Commission had assessed the quality of the author's written exam and concluded that the evaluation of the Examination Commission was objective. Thus, there were no reasons to repeal it. By the same letter, the author was informed that she could appeal this decision either to the Ministry of Justice or within a month to a court.

2.3 On 4 July 2001, the author requested the Examination Commission to provide her with certified copies of all materials related to her naturalization examination under the Law "On the Openness of Information" (hereinafter, the Law). According to the State party, the Naturalization Board replied to her request on 16 July 2001, explaining that the Naturalization Board could not satisfy her request, since she had not substantiated her request and had not indicated for what she intended to use the information requested. The Board referred to article 5, paragraph 2, subparagraph 5 and article 10, paragraph 2 of the Law; articles 17, 20 and 21.4 of the Regulation of the Cabinet of Ministers No. 275 on procedures governing the disclosure of information, which is at the disposal of the state authorities and local government of 3 August 1999 (hereinafter, Regulation No. 275). The Board added that such request should be addressed to the head of the Board, describing the necessary information and indicating for what she intended to use the information requested. A copy of a form for filing such a request was attached to the Board's letter. The author claims that she never received a reply to her request of 4 July 2001.

2.4 On 23 July 2001, the author complained to the Liepāja court and requested, *inter alia*, to declare that the refusal of the Naturalization Board to provide her with a copy of her written examination was illegal and to order the Board to provide the author with a copy. On 11 September 2001, the court examined the complaint. During the hearing the judge asked the author whether she could submit to the head of the Board the request with an indication of how she intended to use the materials related to her naturalization examination. The author promised to send such a request. As a result, the court adjourned the hearing to 27 September 2001, thus giving the author time to reach a friendly settlement.

2.5 On 17 September 2001, the head of the Liepāja regional branch of the Naturalization Board wrote to the author, informing her that under paragraph 1 and 3 of the Cabinet of Ministers Regulation No. 351 on "Statutes of the Naturalization Department" of 21 November 1995 (hereinafter, Regulation No. 351), the Naturalization Board was a legal person, while its

branches did not have such status. Therefore, they could not provide the copies of the materials related to her naturalization examination. Under article 5, paragraph 2, subparagraph 5, article 10, paragraph 2 of the Law, and article 16 of the Regulation No. 275, materials related to the naturalization examination are restricted information. The author did not send a request to the head of the Naturalization Board to substantiate her request and indicate for what she intended to use the information requested. As a result, the author was re-invited to submit such a request.

2.6 On 21 September 2001, the author sent a letter to the Liepāja court, requesting it to order the Naturalization Board to provide her with a copy of her written examination, so that she could ‘challenge the results’. On 27 September 2001, the Liepāja court rejected the author's complaint. During the hearing, a representative of the Liepāja regional branch of the Naturalization Board explained that materials related to the naturalization examination is restricted information, because disclosure would make it possible for candidates with insufficient knowledge to pass the examination. Disclosure of the examination papers may lower existing standards of the required proficiency in Latvian for candidates for Latvian citizenship. It would make it more difficult for the naturalization bodies to fulfil their responsibilities. The court concluded that article 16 of the Regulation No. 275 and Order No. 369 of the Naturalization Board of 22 October 1999 (hereinafter, Order No. 369) fully applied to the materials related to the Latvian language examination for applicants for Latvian citizenship. Anyone requesting such information must indicate in writing the purposes for what the information is intended to be used. The court ascertained, through witness testimonies and materials in the file, that the author had been told many times, orally and in writing, that materials related to the language examination had to be requested through the head of the Naturalization Board, by submitting a formal request. The author had not submitted such a request.

2.7 On 26 October 2001, the author appealed the decision to the Civil Chamber of the Kurzemes Regional Court, which, on 5 December 2001, found the author's complaint well-founded and directed the Naturalization Board to provide the author with copies of her written examination. The Regional Court pointed out that:

“[...] one cannot assume that the materials of the author's written language proficiency examination should be considered as restricted information. Article 2 of Order No. 369 stipulates that except for cases where the information concerns a person requesting it, the restricted information may be provided to natural and legal persons only with the written consent of the head or deputy head of the Naturalization Board. The author requested the information concerning her; thus, under the above Order, there are no reasons to consider this information as restricted information. [...]”

2.8 The decision of the Kurzemes Regional Court was appealed by the Naturalization Board and the prosecutor on 11 January 2002 and 20 December 2001, respectively. Both pointed out that the Regional Court had not applied the provision governing the case, i.e. article 5, paragraph 2, subparagraph 5 of the Law, according to which the information related to the evaluation of examination should be deemed restricted information.

2.9 On 27 February 2002, the Senate of the Supreme Court repealed the decision of the Regional Court and remitted the case back to the Regional Court for reconsideration.

2.10 After reconsidering the case, the Kurzemes Regional Court, by decision of 23 April 2002, refused to satisfy the author's complaint, invoking the arguments mentioned in the decision of the Supreme Court Senate. On 3 May 2002, the author's representative, one Zaytsev, requested the Naturalization Board to show to him the materials of the author's language examination. On 17 May 2002, the head of the Naturalization Board refused to comply with the request, arguing that demonstration and provision of this type of information was subject to the same legal requirement that the purpose for which the information was intended had to be stated. On 11 September 2002, the Senate of the Supreme Court rejected the author's appeal on cassation of 30 May 2002.

2.11 By Order of the Naturalization Board dated 30 December 2003, consideration of the author's application for naturalization was terminated pursuant to article 31.5 of the Regulation of the Cabinet of Ministers No. 34 on procedure governing the receipt and examination of applications for naturalization of 2 February 1999. The author did not appeal this decision of the Naturalization Board.

2.12 On 22 January 2004, the author proposed to the Naturalization Board that it consider her language proficiency examination as having been passed, stating that the Order of the Naturalization Board was issued shortly after she submitted her case to the Committee. On 6 February 2004, the Naturalization Board rejected her proposal. Since then, the author has not re-taken the language proficiency examination.

The complaint

3. The author argues that the Latvian courts denied her the protection of law in her efforts to challenge the actions and decisions of the Naturalization Board, *inter alia*, to provide her with copies of her written language proficiency examination, contrary to article 14, paragraph 1, of the Covenant. The Supreme Court Senate, in particular, by not directing the Naturalization Board to provide her with these materials, deprived her of the possibility to bring a lawsuit against the Naturalization Board, with a view to challenging the results of her language proficiency examination in court.

The State party's observations on admissibility and the merits

4.1 On 26 May 2004, the State party contested both admissibility and merits of the communication. On admissibility, it argues that the communication is inadmissible under article 2 of the Optional Protocol for failure to exhaust available domestic remedies. On the merits, it argues that Latvian law provides for effective access to the courts with a view to appealing any decision of the Naturalization Board, including in the present case.

4.2 The State party notes that the author did not exhaust procedures governing the disclosure of restricted information in cases like author's. This procedure is set out in Regulation No. 275. In order to ensure implementation of the Law and the above Regulation, the head of the Naturalization Board adopted Order No. 369. Annex 1 of the Order sets out a list of restricted information, which includes documents relating to the examination of the Latvian language proficiency. In addition, the Order spelled out what is set out in Regulation No. 275, under which restricted information may be disclosed only with the written consent of the head or deputy head of the Naturalization Board. Annex 2 of the Order is a form to be used for submitting a request.

4.3 The State party recalls that despite having been informed about the procedure many times,³ the author never submitted a written request to the head of the Naturalization Board in accordance with the procedure. By rejecting her complaint, the local courts referred to the above procedure. Had the author submitted her written request to the Naturalization Board by filling in the form to be used, the Board would have examined her request and would have replied to her whether her interest to receive the information outweighed the public interest for non-disclosure. Thus, the author's allegation that non-disclosure by the Naturalization Board of a copy of her language proficiency examination deprived her of access to the courts is inadmissible.

4.4 Alternatively, the State party submits that when the author's case was considered, Latvian law afforded the author with an effective remedy to appeal the decision of the Naturalization Board of 26 June 2001 to a court. Under article 239(2) of the Civil Procedure Code (hereinafter, CPC), she could submit to a court a complaint against any action (decision) of a government authority. Under article 239(3) of the same Code, a complaint to a court should be submitted within one month from the date of the notification of the prior complaint to the competent administrative authority, or within one month starting from the date of the contested act. If the court considers that the challenged act violates the individual's rights, it would adopt a decision directing competent authority to remedy the violation.⁴

4.5 The State party does not see any obstacle which precluded the author from availing herself of the above procedure. As to her claim that non-disclosure of the materials relating to the language proficiency examination denied her the possibility to bring a law suit against the Naturalization Board and thus effective access to court, the State party notes that it is not necessary for a person appealing the evaluation of his/her proficiency examination either in an administrative authority or in a court to receive a copy of the examination. Under article 239(5) of the CPC, a court shall examine the materials of the authorities or officials who took the contested action. Had the author appealed the decision of the Naturalization Board to a court, that court would have requested the evaluation of the written examination by the Examination Commission, as well as by the Appeal Commission of the Naturalization Board. On the basis of such evidence, the court would have effectively examined the author's allegation.

Author's comments on the State party's observations

5.1 On 20 July 2004, the author commented on the State party's observations. She reiterates her claims and refutes the State party's argument that she could have challenged the decision of the Naturalization Board of 26 June 2001 in court, since she was unable to provide the court with a copy of the contested materials related to her language proficiency examination.

5.2 The author challenges the State party's assertion that she failed to exhaust all available domestic remedies, because she appealed to all levels of judicial and prosecutorial authorities in Latvia. She submits that the judges and prosecutors, by taking actions and decisions on her case

³ Reference is made to the letters of the Naturalization Board of 16 July 2001 and 17 September 2001 addressed to the author; transcript of the hearing in the Liepāja first instance court of 11 September 2001.

⁴ Reference is made to article 239(7) of the CPC.

violated various provisions of the Latvian CPC, the Law on judicial authority and the Law on the Prosecutor's Office.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee has noted the State party's objections to the admissibility of the communication for failure to exhaust domestic remedies and the author's comments thereon. It notes the author's claim that by not obliging the Naturalization Board to provide her with materials relating to her language proficiency examination, the courts deprived her of the possibility to bring a lawsuit against the Naturalization Board, to challenge the results. The Committee observes that according to the documents before it, neither the author, nor her representative ever submitted a request to the head of the Naturalization Board in accordance with the procedure set out by Latvian law, indicating for what she intended to use the materials related to her naturalization examination.

6.4 Even if the author, as she claims, did not receive a reply from the Naturalization Board of 16 July 2001 which explained the procedure, she was present during the court hearing of 11 September 2001, where the procedure to be followed was explained to her by the judge. This court adjourned the proceedings to allow her to avail herself of this procedure. In the absence of any proper request from the author to the head of the Naturalization Board, the Committee considers that her claim that the State party's courts denied her the possibility to act judicially against the Naturalization Board and to challenge the results of her language proficiency examination, is premature and hypothetical. As the author has not, in any meaningful detail, refuted the State party's argument that it would have been possible for the author to challenge the evaluation of the language proficiency examination in court, without having to produce in court a copy of the contested results of the examination, the Committee concludes that the author has failed to exhaust available domestic remedies and that the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol;
- (b) that this decision shall be communicated to the State party and to the author.

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