CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 8459/03
by Zhanna DZHARAGETI
against Russia

The European Court of Human Rights (First Section), sitting on 9 November 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 13 February 2003,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Zhanna Mikhaylovna Dzharageti, is a Russian national who was born in 1965 and lives in Moscow. She was represented before the Court by Ms M. Kuznetsova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev,

Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

Before 1992 the applicant, a Russian national, lived in Abkhazia, Georgia. On 17 August 1992 the applicant together with her husband and two children (born in 1984 and 1986) left Abkhazia for Russia due to the outbreak of an armed conflict in the region.

At first they stayed with the applicant's mother in the Krasnodar Region, but shortly after that moved to Moscow. They remained registered at her mother's address. In February 1993 the applicant started to work as a school teacher. The school director requested the municipal authorities to provide the applicant with accommodation.

On 11 March 1993 the Chief of the Housing Department of the West Circuit Prefecture of Moscow decided that the applicant should be provided with housing as soon as it would become available.

On 7 June 1995 the applicant was temporarily allotted a two-room apartment. The municipal housing service opened a personal account on the applicant's name for the purpose of billing the communal charges. The applicant moved in with her family, lived there and regularly paid all charges. She applied to the housing authorities to have a social tenancy established in respect of this apartment, but this was refused.

In 1997 the residence block, including the applicant's flat, was placed at the disposal of the Moscow Migration Centre to be converted into dwellings for forced migrants.

On 30 May 1997 the Solntsevo District Prosecutor's Office brought eviction proceedings against the applicant on the grounds that her occupancy was not lawful.

On 24 June 1997 the West Circuit Prefecture of Moscow ordered that temporary occupants, including the applicant, vacate the flats. The applicant was advised to apply to the Moscow Migration Service to be provided with free housing. The school administration was also informed that the employment of staff members who were not registered in Moscow was unlawful.

In 1997 the applicant was dismissed from her job as a school teacher on the grounds that she had no officially registered address in Moscow.

On 9 July 1997 the applicant applied to the migration authorities of the Krasnodar Region to be granted the status of a forced migrant. She indicated that her permanent address was at her mother's house in the Krasnodar Region. On 17 July 1997 the applicant was granted the status of a forced migrant for the period until 17 July 2002.

On 8 April 1998 the applicant applied to the Moscow Migration Service to be registered as a forced migrant. She also applied to the Passport Office of the Interior to be registered at the flat in Moscow as her official address.

On 26 May 1998 the Solntsevo District Court of Moscow examined the prosecutor's eviction claim and rejected it having found that the applicant had had a *de facto* tenancy contract. This judgment entered into force on 6 June 1998 but was subsequently reversed in supervisory review proceedings. The case was re-examined in two sets of civil proceedings before the final decision was taken on 26 September 2002 (see below).

On 22 September 1998 the Passport Office of the Interior authorised the applicant and her children to be temporarily registered at the disputed flat for a period of six months.

On 2 November 1998 the Moscow Migration Service advised the applicant that she could not be registered with them as a forced migrant until she cancels her registration with the migration authorities of the Krasnodar Region.

On 22 March 1999 the applicant applied to the migration authorities of the Krasnodar Region to have her registration with them annulled and her file to be transferred to the Moscow migration authorities. On 24 March 1999 her request was granted.

On 14 May 1999 the applicant was informed that she could not be registered with the Moscow migration authorities because her official address remained in the Krasnodar Region. On 25 April 2000 the applicant reiterated her request for registration as a forced migrant in Moscow, which was refused on 5 May 2000 because the applicant had provided no proof of her of official address in Moscow. The applicant did not challenge the refusal.

On 26 September 2002 the Moscow City Court gave the final decision authorising the applicant's eviction without providing her with substitute housing. It was established in the proceedings that the applicant's occupancy was not based on social tenancy, as she had never been issued a "residence order" or offered to sign a tenancy contract. The courts also found that the applicant had no status of a forced migrant on the basis of which she could claim social housing.

On 18 November 2002 the applicant was served with an eviction order, but she did not comply with it.

On 30 April 2004 the municipal service required the applicant to vacate the flat, but she did not do so.

In December 2004 the applicant was served with another eviction order, which she again did not comply with. Her eviction has not been enforced and, according to the latest updates, she continues to occupy the flat.

On 6 April 2005 the Housing Commission of the Moscow Government decided that the disputed flat should be rented out to the applicant under a

common tenancy contract. The applicant was invited to sign the contract and to complete the formalities.

The applicant refused to sign the common tenancy contract as it required her to pay rent, supposedly at the market rate which she thought would be too expensive for her. She believed to have been entitled to social housing by virtue of her previous occupancy, due to being a "*de facto* refugee" and a teacher, and being in need of state support.

The parties provided no details of the common tenancy contract offered to the applicant.

On 13 January 2006 the applicant received a reminder to settle the tenancy rent, which she refuses to comply with.

B. Relevant domestic law

Article 49 of the Housing Code in force at the material time provided that tenancy in the publicly owned premises could only be validated by a documentary *residence order* issued by the local executive council. The form of the *residence order* was adopted by a governmental decree. Article 99 of the same Code provided for eviction of persons occupying premises without due permission.

According to Article 6 of the Law on Forced Migrants, dated 19 February 1993, No. 4530-1, persons registered as forced migrants may be provided with temporary accommodation in the specially allocated residence.

COMPLAINTS

The applicant complained under Articles 3 and 8 of the Convention about the authorities' alleged failure to grant her social tenancy in respect of the flat which she and her children have occupied since 1995.

She also complained under Article 6 § 1 of the Convention that the proceedings in the determination of her housing dispute were unfair.

Finally, she complained that she and her family had had no official registration at the address where they lived and therefore they had had limited access to healthcare and welfare benefits, education and employment. She invoked Article 14 of the Convention and Article 2 of Protocol No. 1 to the Convention.

THE LAW

The applicant claimed that the authorities' refusal to offer her social tenancy in respect of the flat where she and her family lived since 1995 amounted to a violation of Articles 3 and 8 of the Convention:

Article 3 provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

The Government contested the applicant's claims that she could legitimately expect to acquire the flat on the terms of social tenancy. They considered that in the absence of a valid tenancy contract, the applicant's occupancy of the disputed flat was always seen as temporary. She should have been aware from the beginning that she could be required at any moment to vacate the flat. They also stated that the applicant had not lawfully acquired the status of a forced migrant on the basis of which she could claim a right to occupy a flat in the special migrants' residence. They further pointed out that even if the applicant's claim to the flat would be linked to the authorities' failure to grant her such status, the Court would have to reject it on the grounds of non-exhaustion of domestic remedies, because the applicant had not challenged before domestic courts the relevant act or a failure to act on the part of migration authorities.

The applicant maintained her complaints. She stated that having allowed her stay in the flat for such a long time created a situation of a *de facto* tenancy contract which should be protected under domestic law. She claimed that she would be incapable to pay rent under a common tenancy contract because official employment is denied to her due to the absence of registration at her official address, which was being refused because her occupancy of the flat was considered unlawful.

1. As regards Article 3 of the Convention, the Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1517,

§ 52). In the present case, the Court finds no circumstances of such a nature or degree as to fall within the scope of Article 3.

It follows that this part of the application is manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Turning to Article 8 of the Convention, the Court recalls that the concept of "home" within the meaning of Article 8 is not limited to those which are lawfully occupied or which have been lawfully established (see *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 46; and *Prokopovich v. Russia*, no. 58255/00, §§ 36-39, ECHR 2004-XI (extracts)). In the instant case, it is not in dispute that the contested flat constituted the applicant's "home" for the purposes of that Article. The Court is satisfied that the applicant has been occupying it since 1995 and has not established any other home elsewhere. Accordingly, it may be regarded as her home for the purposes of Article 8 of the Convention.

The Court has therefore examined whether any State authority had interfered with the applicant's right to respect for her home. It first notes that as matters currently stand the applicant is not required to move out because she has been offered a common tenancy contract in respect of the same flat. It follows that the measure contested before the Court is not the applicant's imminent eviction, but the proposed conditions of tenancy, in particular the likely increase of the rent. The Court would not exclude that a newly-imposed requirement to pay for accommodation might constitute an interference with the right to respect for home. Therefore the Court will examine whether such interference was justified under Article 8 § 2 of the Convention.

The Court notes that under domestic law the applicant could be required at any time to leave the disputed flat without being offered a substitute dwelling. The circumstances of her taking residence in the flat, and in particular the absence of the *residence order* which at the material time was a prerequisite to validating a tenancy contract, gave her no grounds to view it as social tenancy protected by law. It is clear from the file that her placement was intended as a temporary emergency arrangement, which did not engage the authorities' undertaking to lodge the applicant and her family indefinitely.

In so far as the applicant claimed that being a forced migrant warranted her social housing, the Court sees no basis to assume any such entitlement. In 1997-1999 the applicant was indeed registered with the migration authorities, but she did not claim any housing benefits in that period. Later, when her status expired, and she was under threat of eviction, she attempted to renew this status but she did not succeed in her application before the Moscow migration authorities. There is no indication that the authorities were at fault refusing to register her, but in any event she did not challenge it in the domestic proceedings. It follows that the applicant cannot claim to have had legitimate expectations to acquire protected tenancy on the

grounds of being a forced migrant. Likewise, her claim to social housing on the grounds of low income is unsubstantiated because she has never been placed on any register or a waiting list of such persons. Therefore the requirement that she complies with the conditions of common tenancy was lawful in domestic terms.

In the Court's view, this measure pursued a legitimate aim, namely the efficient running of the public system of social housing intended to promote the economic well-being of the country and the protection of the rights of those entitled to housing aid. It therefore remains for the Court to establish whether it could also be regarded as "necessary in a democratic society".

The Court recalls that in socio-economic matters such as housing the margin of appreciation available to the State is necessarily a wide one (see *James and Others v. the United Kingdom,* judgment of 21 February 1986, Series A no. 98, p. 32, § 46; and *Mellacher and Others v. Austria,* judgment of 19 December 1989, Series A no. 169, p. 25, § 45; and, *mutatis mutandis*, *Fadeyeva v. Russia*, no. 55723/00, ECHR 2005-...). Bearing that in mind the Court has to assess whether in the circumstances of the applicant's case the measure employed was disproportionate to the legitimate aim pursued.

The Court notes that pending the offer of the common tenancy contract the applicant, though remaining under a legal obligation to vacate the flat, was not actually evicted by force. At present she continues to occupy the flat even though she has been refusing to settle the tenancy bills. In this respect the Court notes that the applicant's objections to the common tenancy do not relate to any specific amount that she allegedly cannot afford to pay, and that she presented no estimates of her probable expenses under such contract. Instead she complains about the very fact of not being exempted from paying full rent. However, this fact alone does not disclose any arbitrariness on the part of authorities, which would render their conduct a disproportionate interference with the applicant's right to respect for her home.

Furthermore, in her complaints the applicant maintained that her financial difficulties were caused by limitations on her employment due to the absence of official registration at her address. Had she accepted the offer of common tenancy this obstacle would cease to exist. The applicant therefore cannot rely on this circumstance as a genuine reason for her refusal to accept the tenancy conditions.

It follows that this part of the application is also manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The Court has examined the remainder of the complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of were within its competence, the Court found that they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its

Protocols. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and *declares* the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President