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. 1509/02
by Larisa TATISHVILI
against Russia

The European Court of Human Rights (First Section), sitting on 20 January 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 21 December 2001,

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

Having regard to the comments submitted by the Human Rights Centre "Memorial",

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Larisa Artemovna Tatishvili, was born in 1939 in Tbilisi, Georgia. She continues to hold citizenship of the former USSR. The applicant lives in Moscow and is represented before the Court by Mr E. Bobrov, a lawyer practising in Moscow. The respondent Government

are 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.

1. Refusal of the applicant's application for residence registration

On 25 December 2000 the applicant applied to the passports department at the "Filevskiy Park" police station in Moscow (*паспортный стол ОВД «Филевский парк» г. Москвы*) for residence registration. She produced her USSR passport, a consent form signed by the flat-owner and certified by the housing maintenance authority, an application form for residence registration, a document showing payment of housing maintenance dues and an extract from the residents' list. The applicant indicates that, apart from the passport and application form for residence registration, the other documents were not required by law and were requested only as a matter of administrative convenience.

The director of the passport department refused to accept the applicant's application for residence registration and the accompanying documents. He orally informed the applicant that she was refused because she was not a relative of the flat-owner. The applicant submits that the existence of a family relationship is not required by law for residence registration.

The applicant insisted on a written refusal. She was given a printed form on which a checkmark was placed next to the statement "failed to provide a complete set of documents". The allegedly missing documents were not specified.

2. Court proceedings concerning the refusal

(a) Before the first-instance court

On 15 January 2001 the applicant challenged the police refusal to register her place of residence before the Dorogomilovskiy District Court of Moscow. She submitted that there had been no legal basis for a restriction of her right to obtain residence registration in the flat, expressly provided to her for that purpose by its owner, and that the registration authorities had no discretion in granting residence registration once the appropriate documents had been produced, as had been done. She asked the court to declare the refusal unlawful and to order that she be registered as resident in the flat.

The case was assigned to Judge L. At a preliminary meeting with the judge, she told the applicant to join the flat-owner to her claim as an interested party. According to the applicant, the judge also opined that "the

matter look[ed] suspicious because the residence registration [was] sought by a person of Caucasian ethnic origin". The applicant retorted that there was no such ethnic origin, to which the judge replied that she should "go outside and look around".

On 12 February 2001 the director of the passport department filed his observations on the applicant's claim. He contended that the applicant did not have Russian citizenship and that she had come originally from Georgia. He continued that Georgian nationals were required to have an appropriate visa to enter Russia, which the applicant could not produce, and that, in any event, the registration of foreign nationals was a matter for the Ministry of the Interior's local visas departments.

On 13 February 2001 the Dorogomilovskiy District Court of Moscow ruled on the applicant's claim. A representative of the flat-owner stated before the court that the applicant had been living in the flat since 2000 and that the owner had no objections to her registration. The court dismissed the applicant's claim, providing two reasons for its decision.

First, with reference to the provisions of the Civil and Housing Codes regulating joining of family members and other persons to existing tenancy agreements and emphasising the absence of a family relationship between the applicant and the flat owner, the court ruled that the matter should be examined not as a challenge to the State official's refusal to grant registration, but rather as a civil action for determination of the applicant's right to move into the flat.

Secondly, the court held that the applicant had failed to demonstrate her Russian nationality or to confirm her intention of obtaining it and pointed out that certain unspecified treaties between Russia and Georgia provided for visa-based exchanges.

The judgment concluded as follows:

> "Given that the applicant had failed to produce information confirming her right to move into the flat in question, information on [her] nationality and the lawfulness of [her] entry into the Russian Federation, the court accordingly dismissed her claim."

On 5 March 2001 the Dorogomilovskiy District Court of Moscow confirmed certain amendments, submitted by the applicant's representative, to the minutes of the hearing of 13 February. In particular, the minutes were to reflect the applicant's statements about the non-applicability of municipal tenancy provisions to her situation, given that the flat had been in private ownership, and about the flat-owner's consent to her residence.

(b) Request for clarification of the first-instance judgment

On 16 March 2001 the applicant requested the Dorogomilovskiy District Court to clarify whether the judgment of 13 February should be construed as exempting her from the obligation to seek residence registration.

On 12 April 2001 the Dorogomilovskiy District Court refused her application for clarification, noting that it concerned an issue falling outside the subject matter of the original claim.

On 26 April 2001 the Civil Section of the Moscow City Court upheld the refusal of the District Court.

(c) Before the appeal court

On 19 March 2001 the applicant's representative filed an appeal against the judgment of 13 February 2001. He submitted, in particular, that the first-instance court had incorrectly referred to the applicant's Georgian nationality and to a visa requirement for her entry into the Russian Federation, given that the applicant had never held Georgian nationality and that, in any event, the residence regulations applied uniformly to all persons lawfully residing within the Russian Federation, irrespective of their nationality. He indicated that the first-instance court had failed to advance any justification for the restriction on the applicant's right to choose her residence. He also contended that the first-instance court's reliance on tenancy provisions had been invalid because the flat-owner had had clear title to the flat and there could be no dispute as to the applicant's right to move in, since she had had the flat-owner's explicit consent.

On 2 August 2001 the Civil Section of the Moscow City Court upheld the judgment of 13 February 2001. The court reiterated the first-instance court's conclusion that the applicant's claim had to be dismissed because she had failed to prove her Russian nationality or her intention to obtain it and because she had failed to provide any documents confirming her right to move into the flat in question. The court did not address the arguments advanced by the applicant's representative in the grounds of appeal.

On 25 October 2001 a deputy President of the Moscow City Court refused the application for supervisory review submitted by the applicant's representative on her behalf.

B. Relevant domestic law and practice

1. Constitution of the Russian Federation of 12 December 1993

Article 19 provides for the equality of all before the law and courts of law, and equality of rights and liberties.

Article 27 provides that everyone lawfully within the territory of the Russian Federation shall have the right to move freely and choose his or her place of stay or residence.

Article 62 § 3 provides that foreign nationals and stateless persons shall have in the Russian Federation the same rights and obligations as Russian

nationals unless otherwise provided in a federal law or an international treaty to which the Russian Federation is a party.

2. Law on Russian nationality and the status of citizens of the former USSR

At the material time the issues related to Russian nationality were governed by the Law on Nationality of the Russian Federation (no. 1948-I of 28 November 1991, as amended on 6 February 1995), which provided that all citizens of the former USSR who were permanently resident in Russia on 6 February 1992 (the date of entry into force of the law) automatically obtained Russian nationality unless they expressed their wish to the contrary before 6 February 1993. The basis for establishing whether a person was permanently resident within Russia was the *propiska* stamp (internal residence registration) in his or her USSR passport. Section 18 (g) of the law provided for a simplified procedure ("by way of registration") for obtaining Russian nationality for citizens of the former USSR who arrived in Russia after 6 February 1992 and expressed their wish to become Russian nationals before 31 December 2000.

Under the powers vested in him by the law, on 10 April 1992 the President of the Russian Federation adopted the Regulation on the Procedure for Consideration of Issues of Nationality of the Russian Federation (decree no. 386, the "1992 Regulation"). Section II(5) stated that the notion of "a citizen of the former USSR" applied only to those individuals who did not obtain the nationality of one of the newly independent states, which had previously been members of the USSR. The same section stipulated that after 31 December 2000 the citizens of the former USSR who had not obtained Russian or other nationality would be considered as stateless persons.

Until August 2002 the status of foreign nationals and stateless persons in the Russian Federation was regulated by the USSR Law on the Legal Status of Foreign Nationals in the USSR (no. 5152-X of 24 June 1981, as amended on 15 August 1996, the "1981 USSR law"). By virtue of section 32 its provisions were likewise applicable to stateless persons. Section 5 drew the following distinction between "permanently resident" and "temporarily resident" foreign nationals (stateless persons):

> "Foreign nationals may be permanently resident in the USSR provided that they have authorisation and a residence permit issued by a department of the interior.
>
> Foreign nationals who are present in the USSR on another legal basis shall be considered as temporarily resident in the USSR. They shall obtain registration of their travel passports (or replacement documents) in accordance with the established procedure and shall leave the USSR upon the expiry of the authorised term of temporary residence."

In implementation of the 1981 USSR Law, on 26 April 1991 the USSR Cabinet of Ministers adopted resolution no. 212, whereby it approved the Rules on the Stay of Foreign Nationals in the USSR ("the 1991 Rules"). Those rules also applied to stateless persons and described the procedures for entering and leaving Russia, obtaining documents for temporary residence and permanent residence, etc.

3. Visa requirements for Georgian nationals

On 9 October 1992 nine member States of the Commonwealth of Independent States (CIS), including the Russian Federation, signed in Bishkek the Agreement on visa-free movement of citizens of member States of the Commonwealth of Independent States throughout their territory ("the Bishkek Agreement"). Georgia acceded to the Bishkek Agreement on 1 August 1995.

On 4 September 2000 the Russian Federation denounced the Bishkek Agreement as of 3 December 2000. In the absence of a bilateral agreement on visa-free exchanges between Russia and Georgia, Georgian nationals were required to apply for a Russian entry visa from 5 December 2000.

4. Regulations on residence registration

On 25 June 1993 Russia adopted a Law on the right of Russian citizens to liberty of movement and freedom to choose the place of temporary and permanent residence within the Russian Federation (no. 5242-I, the "1993 law"). Section 1 guaranteed the right of Russian nationals to liberty of movement and freedom to choose the place of residence, and extended the law's application to non-Russian nationals lawfully residing in Russian territory. Sections 3 and 7 required a person to apply for residence registration at a new address within seven days of moving. Section 8 contained an exhaustive list of territories where this right could be restricted (such as military settlements, environmental disaster zones, etc.) Finally, section 11 acknowledged the precedence of international treaties to which Russia is a party over the provisions of the Law.

In order to implement the 1993 law, on 17 July 1995 the Russian Government approved the Regulations for registration of temporary and permanent residence of Russian nationals (no. 713). By Government resolution no. 290 of 12 March 1997, the application of these Regulations was extended to former USSR citizens arriving from the Commonwealth of Independent States and the Baltic states. Section 9 of the Regulations imposed a general duty to seek residence registration at any address where a person intended to stay for longer than ten days. The person was required to file an application for registration within three days of the move and to submit an identity document, an application form and a document showing the legal basis for residence at the indicated address (such as a rent contract

or the consent of the flat-owner). Section 12 of the Regulations, as worded at the material time, provided that the registration could be refused if the applicant had not submitted written consent or had produced manifestly false documents; the list of grounds for the refusal was exhaustive.

On 2 February 1998 the Constitutional Court of the Russian Federation struck down certain provisions of the Regulations as incompatible with the Russian Constitution. It ruled, in particular, that:

> "...the registration authorities are only entitled to certify the freely expressed will of a citizen in his choice of... residence. This is why the registration system may not be permission-based and it shall not entail a restriction on the citizen's constitutional right to choose his place of... residence. Therefore the registration system in the sense compatible with the Russian Constitution is only a means... of counting people within the Russian Federation which is notice-based and reflects the fact of a citizen's stay at a place of his temporary or permanent residence."

The Constitutional Court emphasised that, upon presentation of an identity document and a document confirming the person's right to reside at the chosen address, the registration authority should have no discretion and should register the person concerned at the address indicated. The requirement to submit any additional document might lead to "paralysis of a citizen's rights". On that ground the Constitutional Court ruled that the registration authorities were not entitled to verify the authenticity of the submitted documents or their compliance with the Russian laws and, accordingly, any such grounds for refusal were unconstitutional.

On 14 August 2002 the Russian Government amended the Regulations and removed the provisions concerning the registration authorities' entitlement to refuse residence registration.

5. Penalties for violations of residence registration rules

On 9 July 1997 the Moscow Government passed a Law "on the conditions of residence in Moscow for foreign nationals who have the right to enter Russia without a visa (no. 33). The Law applied to foreign nationals from the CIS and to stateless persons. It required non-Russian nationals to apply for residence registration within three days of their arrival (if staying for longer than ten days). Section 10 of the Law provided that a non-Russian national residing in Moscow for more than three days without the appropriate residence registration was liable to a fine of up to RUR 500 (approximately EUR 20 in 2001) or, in the event of a repeated offence, up to RUR 2000 (EUR 80). The same penalty could be imposed on a flat-owner who permitted a non-Russian national to live in his or her premises without residence registration.

This Law was repealed on 18 September 2002 in connection with the entry into force of the Russian Code of Administrative Offences (no. 195-FZ of 30 December 2001). Section 19.15 of the Code provides that a person living without residence registration is liable to a fine of up to 100

RUR (EUR 4) and that flat-owners who tolerate tenants without residence registration may be fined up to 300 RUR (EUR 12).

6. Case-law of the Supreme Court of the Russian Federation

On 19 March 2002 the Supreme Court of the Russian Federation heard case no. GKPI 01-1611, in which a Ukrainian national, G., sought a declaration of nullity of the provisions of the 1991 Rules (see above) in the part requiring foreign nationals, including those who, like himself, were lawfully resident in Russia without a visa and for an unlimited term, to obtain a residence permit as a condition for permanent residence registration. It dismissed the claim, finding, in particular, as follows:

> "G.'s reliance on the fact that, as a person enjoying visa-free entry, he is lawfully present in the Russian Federation without any limit in time and that he is not required to obtain authorisation and a residence permit... in order to choose his place of residence within the Russian Federation, is not grounded in law. These facts demonstrate that, until he has obtained authorisation and a residence permit, he is temporarily resident in the Russian Federation, even if his stay is not limited in time...
>
> Foreign nationals who are present in the Russian Federation on another legal basis and who are considered to be temporarily resident in the Russian Federation (section 5 § 2 of the [1981] USSR law) shall have the right to choose the place of temporary residence (section 3 § 1 of the [1993] Russian law) or the place of permanent residence in the Russian Federation in accordance with the procedure established in the [1991] Rules (upon obtaining authorisation and a residence permit)...
>
> In this connection the court notes that the [1991] Rules contain no restrictions on the foreign national's right to choose the place of permanent residence in the Russian Federation; it agrees with the claimant that such restriction may only be established by a federal law."

C. Relevant Council of Europe documents

Resolution 1277 (2002) on honouring of obligations and commitments by the Russian Federation, adopted by the Parliamentary Assembly of the Council of Europe on 23 April 2002, noted in the relevant part as follows:

> "8. However, the Assembly is concerned about a number of obligations and major commitments with which progress remains insufficient, and the honouring of which requires further action by the Russian authorities:
>
> ...
>
> xii. whilst noting that the Russian federal authorities have achieved notable progress in abolishing the remains of the old *propiska* (internal registration) system, the Assembly regrets that restrictive registration requirements continue to be enforced, often in a discriminatory manner, against ethnic minorities. Therefore, the Assembly reiterates its call made in Recommendation 1544 (2001), in which it urged member states concerned 'to undertake a thorough review of national laws and policies with a

view to eliminating any provisions which might impede the right to freedom of movement and choice of place of residence within internal borders'...”

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that the refusal by the Moscow police to grant her residence registration at her chosen address amounts to inhuman and degrading treatment, because she is living in constant fear of administrative sanctions or even arrest. She complains that without residence registration she cannot obtain employment, become an independent businessperson, claim her pension benefits, register a car or even have a notary public certify her signature. She submits that in September 2001 she applied for a mandatory medical insurance policy and was met with a refusal based on her failure to show residence registration in Moscow. This makes her situation very precarious because she suffers from diabetes and cannot obtain medical assistance from any State clinic without the mandatory medical insurance policy.

2. The applicant complains under Article 6 § 1 of the Convention that the first-instance judge demonstrated subjective bias, that the first-instance court substituted itself for the defendant (the registration authority) and protected the defendant's interests, that she was not notified of the hearing on her application for clarification or of the hearing before the appeal court concerning her appeal against the clarification refusal and, finally, that the appeal court did not address the merits of her arguments. The applicant complains under Article 13 of the Convention that the courts failed to apply the domestic laws correctly and, under Article 14 of the Convention, about discrimination against her on the ground of her ethnic origin.

THE LAW

1. The applicant complained under Article 3 of the Convention about the domestic authorities' refusal to certify her residence at the chosen address, which had substantially complicated her daily life and rendered uncertain her access to medical assistance. The Court considers that this complaint falls to be examined under Article 2 of Protocol No. 4, which reads in the relevant parts as follows:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Arguments of the parties

The Government

The Government deny that there was an interference with the applicant's right to liberty of movement, claiming that her presence in the Russian Federation was not lawful. They submit that the applicant, who had arrived from Georgia, failed to take any steps to determine her nationality and to make her residence in Russia lawful, such as confirming her Georgian nationality or applying for Russian citizenship. They state that the applicant's situation was governed by the 1981 USSR Law on the Legal Status of Foreign Nationals in the USSR and by the 1991 Rules on the Stay of Foreign Nationals in the USSR. Pursuant to sections 5 and 32 of the 1981 USSR law, the applicant, as a stateless person, should have obtained a residence permit from a department of the interior. The Government claim concurrently that, once entry visas had been introduced for Georgian nationals from 5 December 2000, the applicant could only be lawfully resident in Russia on 25 December 2000 if she had crossed the border with a valid Russian visa in her national passport. Finally, the Government contend that, as the applicant could not produce either a residence permit or an entry visa, her complaint is manifestly ill-founded.

The applicant

The applicant challenges the Government's arguments as mutually exclusive and inconsistent. She continues to hold citizenship of the former USSR and has never acquired Georgian nationality. Consequently, she could not obtain an entry visa as a Georgian national. In any event, she did not cross the Russian border in 2000 or subsequently. As to the Government's reliance on the 1981 USSR law and the 1991 Rules, section 1 of that law states that it did not apply to USSR citizens, which the applicant remained, and it was therefore not applicable to her. In fact, until a new Russian law on the Legal Status of Foreign Nationals was adopted on 25 June 2002, Russia had no legislation imposing an obligation on citizens of the former USSR to obtain residence permits as a condition of their lawful residence in Russia. It follows that at the material time the applicant

was lawfully present in the Russian Federation and her complaint is well-founded. The applicant submits that residence registration is the main proof of residence in the Russian Federation and its absence has prevented her from exercising many rights, including access to medical assistance, social security, old-age pension, the right to use property, the right to marry, etc.

The third party

The Human Rights Centre "Memorial", a Russian non-governmental organisation, submits that at least after the adoption of Government resolution no. 290 of 12 March 1997 (see "Relevant domestic law" above) the conditions for enjoyment of liberty of movement across Russia were the same for Russian nationals and citizens of the former USSR, i.e. the very presence (even without registration at the place of residence) of citizens of the former USSR in Russia should have been considered as constituting lawful residence. Recognition of the status of citizens of the former USSR in the Russian Federation ceased to exist only on 31 December 2000. After that date they were to be considered as stateless persons and subjected to the same legal regime as foreign nationals.

The third party notes that before 1 November 2002 there had been no notion of temporary residence permits in Russian legislation, and registration at the permanent place of residence could not by its nature be regarded as such a permit. Failure to register at the place of residence could lead to a fine, but it did not affect the lawfulness of the residence of citizens of the former USSR in Russia *per se*.

The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complained under Articles 6 § 1, 13 and 14 of the Convention that the domestic courts had discriminated against her on account of her ethnic origin, that their findings had been arbitrary and contrary to the facts of the claim, that they had not applied the domestic laws correctly and that she had not been given an opportunity to take part in the proceedings concerning clarification of the hearing record. The Convention provisions relied on read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 13

"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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Arguments of the parties

The Government

The Government submit that the proceedings were fair because the applicant and her representative took part in the hearings and put forward arguments in defence of her claim. There is no indication of any breach of the principle of equality of arms. The applicant and her representative were able to appeal the first-instance court's judgment to an appeal court and also to lodge an application for supervisory review. Those applications were duly examined and dismissed by reasoned decisions. Given that the applicant had no documents showing the lawfulness of her residence in Russia, there had been no discrimination against her on any ground whatsoever.

The applicant

The applicant submits that the proceedings were not fair in that the domestic courts based their decisions on a treaty between Russia and Georgia on visa-based exchanges which had never existed. The judges did not investigate whether she had ever crossed the Russian border and, consequently, whether she had been required to be in possession of an entry visa. In addition, notwithstanding the production by the flat-owner's representative of written consent to her moving into the flat, the courts insisted that her right to live in the flat was not sufficiently established. The judges misrepresented the facts with a view to dismissing her claim. The applicant also asserts that Judge L. held a personal prejudice against her because of her Georgian origins.

The Court's assessment

(a) Insofar as the applicant complained about discrimination against her in the domestic proceedings, the Court notes that she does not appear to have been prevented from challenging the allegedly prejudiced judge of the first-instance court and from raising this issue in her grounds of appeal. However, she has used neither remedy.

It follows that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) Insofar as the applicant complained about arbitrary findings of the domestic courts which were irreconcilable with the factual submissions, about procedural irregularities and about the lack of effective remedies, the Court considers that this part of the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints about the denial of residence registration at the chosen address and about the proceedings on her claims;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President