CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF TATISHVILI v. RUSSIA

(Application no. 1509/02)

JUDGMENT

STRASBOURG

22 February 2007

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

In the case of Tatishvili v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 1509/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mrs Larisa Artemovna Tatishvili ("the applicant"), on 21 December 2001.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr E. Bobrov, 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.

3. The applicant complained, in particular, about the arbitrary denial of residence registration at the chosen address and unfair judicial proceedings on her claim.

4. On 7 June 2004 the President granted leave to the Human Rights Centre "Memorial", a Moscow-based non-governmental organisation, to intervene as a third party in the proceedings.

5. By a decision of 20 January 2005, the Court declared the application partly admissible.

6. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1939 in Tbilisi, Georgia. She continued to hold citizenship of the former USSR until 31 December 2000 and became a stateless person thereafter. The applicant lives in Moscow.

8. On 25 December 2000 the applicant applied to the passports department at the "Filevskiy Park" police station in Moscow 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 charges and an extract from the residents' list.

9. The director of the passport department refused to process the application for residence registration. He told the applicant that she could not get registration because she was not a relative of the flat-owner.

10. 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.

11. On 15 January 2001 the applicant challenged the refusal before the Dorogomilovskiy District Court of Moscow. She submitted that there had been no legal basis for a restriction on 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 the case.

12. On 12 February 2001 the director of the passports 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. Georgian citizens were required to have an appropriate visa to enter Russia which the applicant could not produce, and, in any event, the registration of foreign citizens was a matter for the Ministry of the Interior's local visas departments.

13. 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.

14. First, referring to the provisions of the Civil and Housing Codes regulating joining of family members and other persons to existing municipal-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.

15. Secondly, the court held that the applicant had failed to prove her Russian citizenship or to confirm her intention of obtaining it and pointed out that "a treaty" between Russia and Georgia provided for visa-based exchanges.

16. 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] citizenship and the lawfulness of [her] entry into the Russian Federation, the court accordingly dismissed her claim."

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

18. On 19 March 2001 the applicant's representative filed a statement of appeal. He submitted, in particular, that the District Court had incorrectly referred to the applicant's Georgian citizenship and to a visa requirement for her entry into the Russian Federation, given that the applicant had never held Georgian citizenship and that, in any event, the residence regulations applied uniformly to all persons lawfully residing within the Russian Federation, irrespective of their citizenship. He indicated that the District Court had failed to advance any justification for the restriction on the applicant's right to choose her residence. He also contended that the District 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.

19. On 2 August 2001 the Moscow City Court upheld the judgment. It reiterated the District Court's findings that the applicant's claim had to be dismissed because she had failed to prove her Russian citizenship or an intention to obtain it and because she had failed to provide any documents confirming her right to move into the flat in question. The City Court did not address the arguments advanced by the applicant's representative in the grounds of appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation of 12 December 1993

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

21. 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.

22. Article 62 § 3 provides that foreign citizens and stateless persons shall have in the Russian Federation the same rights and obligations as Russian citizens unless otherwise provided in a federal law or an international treaty to which the Russian Federation is a party.

B. Law on Russian citizenship and the status of citizens of the former USSR

23. At the material time the issues related to Russian citizenship were governed by the Law on Citizenship 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 citizenship unless they expressed their wish to the contrary before 6 February 1993. The basis for establishing whether a person was permanently resident within Russian was the *propiska* stamp (internal residence registration) in his or her USSR passport. Section 18 (gh) of the law provided for a simplified procedure ("by way of registration") for obtaining Russian citizenship for citizens of the former USSR who arrived in Russia after 6 February 1992 and expressed their wish to become Russian citizens before 31 December 2000.

24. 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 Citizenship 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 citizenship of one of the newly independent states, which had previously been members of the USSR. The same section stipulated that after 31 December 2000 all citizens of the former USSR who had not obtained Russian or other citizenship would be considered as stateless persons.

25. Until August 2002 the status of foreign citizens and stateless persons in the Russian Federation was regulated by the USSR Law on the Legal Status of Foreign Citizens 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.

26. 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 Citizens 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.

C. Visa requirements for Georgian citizens

27. 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.

28. 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 citizens were required to apply for a Russian entry visa from 5 December 2000.

D. Regulations on residence registration

29. 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 citizens to liberty of movement and freedom to choose the place of residence, and extended the law's application to non-Russian citizens 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.)

30. 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 citizens (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.

31. 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.

E. Penalties for violations of residence registration rules

32. On 9 July 1997 the Moscow Government passed a Law on the conditions of residence in Moscow for foreign citizens who have the right to enter Russia without a visa (no. 33). The Law applied to foreign citizens from the CIS and to stateless persons. It required non-Russian citizens 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 citizen 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 2,000 (EUR 80). The same penalty could be imposed on a flat-owner who permitted a non-Russian citizen to live in his or her premises without residence registration.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

33. 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'..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4

34. The applicant complained about the domestic authorities' arbitrary refusal to certify her residence at the chosen address, which had substantially complicated her daily life and rendered uncertain her access to medical care. The Court decided to examine this complaint 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."

A. Applicability of Article 2 of Protocol No. 4

1. Submissions by the parties

35. The Government denied that there had been an interference with the applicant's right to liberty of movement because her presence in the Russian Federation had not been lawful. They claimed that the applicant, who had arrived from Georgia, had failed to take any steps to determine her citizenship and to make her residence in Russia lawful, such as confirming her Georgian citizenship or applying for Russian citizenship. They stated that the applicant's situation had been governed by the 1981 USSR Law on the Legal Status of Foreign Citizens in the USSR and by the 1991 Rules on the Stay of Foreign Citizens 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 the department of the interior. The Government concurrently claimed that, after entry visas had been introduced for Georgian citizens 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.

36. The applicant criticised the Government's arguments as mutually exclusive and inconsistent. She continued to hold citizenship of the former USSR and had never acquired Georgian citizenship. Consequently, she had not been required to obtain an entry visa as a Georgian citizen. In any event, she had not crossed the Russian border in 2000 or later. 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 had remained, and it had therefore not been applicable to her. In fact, until a new Russian law on the Legal Status of Foreign Citizens 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. Thus, at the material time she was lawfully present in the Russian Federation.

37. The third party submitted that at least after the adoption of Government resolution no. 290 of 12 March 1997 (see paragraph 30 above) the conditions for enjoyment of liberty of movement across Russia had been the same for Russian citizens and citizens of the former USSR, that is, the very presence (even without registration at the place of residence) of citizens of the former USSR in Russia had constituted lawful residence. Recognition of the status of citizens of the former USSR in the Russian Federation had 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 citizens. The third party noted 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*.

2. The Court's assessment

38. Article 2 of Protocol No. 4 guarantees the right to liberty of movement and freedom to choose his residence to everyone who is "lawfully within the territory of a State". The Government claimed that the applicant did not fit into that category because she did not possess a residence permit and an entry visa.

39. The Court notes at the outset that the reasons advanced by the Government did not form the basis for the initial administrative decision refusing registration of the applicant's address for a failure to submit a complete set of documents (see paragraph 10 above). The contention that the applicant should have possessed an entry visa as a Georgian citizen, appeared for the first time in the comments on the applicant's statement of claim and was subsequently upheld by the domestic courts (see paragraph 12 et seq. above).

40. In so far as the Russian authorities claimed that the applicant needed an entry visa as a Georgian citizen, the Court observes that the applicant maintained as her citizenship that of the former USSR. She denied that she had ever acquired Georgian citizenship. Neither in the domestic proceedings nor before the Court did the Russian authorities produce any evidence in support of their claim that the applicant had been a Georgian citizen. The registration of the applicant's residence in Tbilisi dating back to early 1990s had no automatic bearing on determination of her citizenship under either Russian or Georgian laws. As the Government's allegation that the applicant was of Georgian citizenship has no evidentiary basis, the denunciation, by the Russian Federation, of the Bishkek Agreement on visa-free exchanges could not have affected the lawfulness of her residence on the Russian territory.

41. The Government concurrently maintained that the applicant had been a stateless person – having acquired no other citizenship after the collapse of the Soviet Union – and had been therefore required to hold a residence permit in accordance with the 1981 USSR Law on Foreign Citizens. The Court notes at the outset that this argument first appeared in the Government's observations of 26 March 2004 and that it had not been relied upon for refusing the application for residence registration in the domestic proceedings. In any event, the Court does not consider this argument convincing for the following reasons.

42. Before 31 December 2000 the individuals who had not obtained the citizenship of one of the newly independent States that had once formed the Soviet Union, had had a special legal status in Russia, that of a "citizen of the former USSR". Only after that date they were to be considered as

stateless persons (see paragraph 24 above). The applicant claimed that she belonged into that category and the Government did not produce any evidence to the contrary. It follows that at the material time, in early December 2000, the requirement to have a residence permit established in the 1981 USSR law governing the status of foreign citizens and stateless persons did not apply to her because she was neither a foreign citizen nor a stateless person (see paragraph 25 above). In any event, both the 1993 Law on the liberty of movement and freedom to choose residence, and the Government resolution of 12 March 1997 established that the procedure for registration of residence of "former USSR citizens" should be the same as that for Russian citizens (see paragraphs 29 and 30 above).

43. Since the Government's claims that the applicant's presence in Russia was unlawful have been found to be without legal and/or factual basis, the Court accepts that the applicant, a "citizen of the former USSR" at the material time, was lawfully present in Russia.

Article 2 § 1 of Protocol No. 4 is therefore applicable in the instant case.

B. Compliance with Article 2 of Protocol No. 4

1. Existence of an interference

44. The applicant submitted that residence registration is the proof of residence in the Russian Federation and its absence had prevented her from exercising many social rights, including access to medical assistance, social security, old-age pension, the right to possess property, to marry, and others.

45. The Court reiterates that it has found the requirement to report to the police every time applicants wished to change their place of residence or visit family friends to disclose an interference with their right to liberty of movement (see *Denizci and Others v. Cyprus*, nos. 25316-25321/94 and 27207/95, §§ 346-47 and 403-04, ECHR 2001-V; and *Bolat v. Russia*, no. 14139/03, § 65, 5 October 2006).

46. In the present case the applicant was required by law to have her place of residence registered by the police within three days of moving in (see paragraph 30 above). The domestic authorities' refusal to certify her residence at the chosen address exposed her to administrative penalties and fines (see paragraph 32 above). Accordingly, the Court considers that there has been an interference with the applicant's right to liberty of movement under Article 2 of Protocol No. 4.

2. Justification for the interference

47. The Court has next to determine whether the interference complained about was justified. In this connection it observes that the Parliamentary Assembly of the Council of Europe expressed concern over

the existing restrictive system of residence registration in Russia (see paragraph 33 above). It reiterates, however, that it is not the Court's task to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied in a particular case gave rise to a violation. Accordingly, in the present case the Court has to ascertain whether the interference with the applicant's right to freedom to choose residence was "in accordance with the law", pursued one or more of the legitimate aims set out in paragraph 3 of Article 2 of Protocol No. 4 and was "necessary in a democratic society" or, where it applies to particular areas only, was "justified by the public interest in a democratic society" as established in paragraph 4 (see *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 45, ECHR 2005-...).

48. The applicant maintained that she had produced a complete set of documents, even though some of these documents had not been required by law but requested as a matter of administrative convenience. In these circumstances, the police department had had no discretion to refuse her application for residence registration.

49. The Government did not offer any justification for the interference, beyond the arguments of the unlawfulness of the applicant's residence in Russia, which the Court has already examined and rejected above.

50. The Court notes that the Regulations on registering residence required an applicant to submit a completed application form accompanied by an identity document and a document showing the legal basis for residing at the indicated address (see paragraph 30 above).

51. The applicant submitted to the Filevskiy Park passports department a completed application form, her passport and a duly signed and certified consent by the flat owner, as well as certain other documents not required by law (see paragraph 8 above). Her application was nevertheless declined for a failure to submit a complete set of documents. It has never been specified which of the documents required by law were allegedly missing (see paragraph 10 above).

52. In this connection the Court reiterates that if the applicant's application was not deemed complete, it was the national authorities' task to elucidate the applicable legal requirements and thus give the applicant clear notice how to prepare the documents in order to be able to obtain residence registration (see *Tsonev v. Bulgaria*, no. 45963/99, § 55, 13 April 2006). This had not, however, been done. Accordingly, the Court considers that this ground for refusing registration has not been made out.

53. The Court pays special attention to the authoritative interpretation of the Regulations for registering residence given by the Constitutional Court of the Russian Federation in 1998 (see paragraph 31 above). It held that the registration authority had a duty to certify an applicant's intention to live at the specified address and that it should have no discretion for reviewing the authenticity of the submitted documents or their compliance with the

Russian laws. It determined that any such grounds for refusal would not be compatible with the Constitution. It appears, however, that the binding interpretation of the Constitutional Court was disregarded by the domestic authorities in the applicant's case.

54. In these circumstances, the Court finds that the interference with the applicant's right to freedom to choose her residence was not "in accordance with law". This finding makes it unnecessary to determine whether it pursued a legitimate aim and was necessary in a democratic society (see *Gartukayev v. Russia*, no. 71933/01, § 21, 13 December 2005).

There has therefore been a violation of Article 2 of Protocol No. 4.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

55. The applicant complained under Articles 6 § 1 of the Convention that the domestic courts' findings had been arbitrary and contrary to the fact and that they had not applied the domestic laws correctly. The relevant parts of Article 6 read as follows:

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

56. The applicant submitted that the proceedings had not been fair because the domestic courts had founded their findings on "a treaty" between Russia and Georgia on visa-based exchanges which had never existed. Although the representative of the flat-owner had produced his written consent to her moving into the flat, the courts had insisted that her right to live in the flat had not been sufficiently established. The judges had misrepresented the facts with a view to dismissing her claim.

57. The Government claimed that the proceedings had been fair because the applicant and her representative had taken part in the hearings and put forward arguments in defence of her claim. There was no indication of any breach of the principle of equality of arms. The applicant and her representative had been able to appeal the first-instance court's judgment to an appeal court and also to lodge an application for supervisory review. Those applications had been duly examined and dismissed by reasoned decisions.

58. The Court reiterates that, according to its established case-law, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. Article 6 § 1 obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29). Even though a domestic court has a certain margin of appreciation when choosing arguments in a

particular case and admitting evidence in support of the parties' submissions, an authority is obliged to justify its activities by giving reasons for its decisions (see *Suominen v. Finland*, no. 37801/97, § 36, 1 July 2003). A further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (see, *mutatis mutandis*, *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001).

59. In the present case the judgments of the Dorogomilovskiy District Court and the Moscow City Court refusing the applicant's complaint, were founded on two grounds. They held, firstly, that there existed a dispute between the applicant and the flat-owner as to her right to move into the flat. Secondly, they found that the applicant's residence might have been unlawful because "a treaty" between Russia and Georgia on visa-based exchanges required her to be in possession of an entry visa.

60. As regards the first finding by the domestic courts, the Court observes that the applicant had produced a written certified consent from the flat-owner to her moving in. A representative of the flat-owner confirmed that consent in the oral submissions before the District Court. The District Court subsequently directed that the reference to those submissions be added to the hearing record (see paragraph 17 above). It follows that the flat-owner's consent was validly produced in the domestic proceedings and its existence was acknowledged by the District Court which did not give any reasons whatsoever for its finding that there existed a dispute between the applicant and the flat-owner. Nor did the District Court indicate any reasons for holding that the municipal-tenancy provisions of the Housing and Civil Codes applied in the situation where the flat-owner had clear title to the flat and wished to provide it to the applicant.

61. As to the domestic courts' reliance on "a treaty" between Russia and Georgia on visa requirements, the Court observes that they omitted to check whether such a treaty had been in existence. In fact, the visa requirement for Georgian citizens had not been introduced by a treaty as the District Court maintained but had resulted from the denunciation by Russia of the Bishkek Agreement in the absence of a separate treaty on visa-free exchanges between Russia and Georgia (see paragraph 28 above). The Court is not convinced that this discrepancy could have been the result of a mere difference in terms because the text of the "treaty on visa-based exchanges" had never been produced in the domestic proceedings. The domestic courts appear to have taken the reference to it from the passports department's submissions. Furthermore, the Court finds it anomalous that the District Court relied on a treaty governing the conditions of entry and stay for Georgian citizens without giving any reasons for the assumption that the

applicant had been a Georgian citizen. As the Court has found above, no evidence to that effect has been produced either in the domestic proceedings or before it.

62. Nor was the inadequacy of the District Court's reasoning corrected by the Moscow City Court which simply endorsed the reasons for the lower body's decision. While such a technique of reasoning by an appellate court is, in principle, acceptable, in the circumstances of the present case it failed to satisfy the requirements of a fair trial. As the applicant's statement of appeal indicated that the District Court's findings had been devoid of a factual and/or legal basis, the more important was it that the City Court give proper reasons of its own (see *Hirvisaari*, cited above, § 32). Nevertheless, the City Court endorsed the District Court's findings in a summary fashion, without reviewing the arguments in the applicant's statement of appeal.

63. Accordingly, the Court considers that the manifestly deficient reasoning by the Dorogomilovskiy District Court and the subsequent approval of such inadequate reasoning by the Moscow City Court as an appellate body failed to fulfil the requirements of a fair trial.

There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

65. The applicant claimed 6,940.58 Russian roubles (RUR) and 15,947 US dollars (USD) in respect of compensation for pecuniary damage, representing the amounts she had spent on medicines that could have been provided to her free of charge if she had had residence registration, the complementary old-age pension for lawfully resident Muscovites, the loss of earnings and the administrative fine for the absence of residence registration in the amount of RUR 515. She further claimed EUR 49,900 in respect of non-pecuniary damage.

66. The Government submitted that there was no causal link between the alleged violations and the purchase of medicines.

67. The Court considers that there existed no causal link between the violations found and the applicant's claim for pecuniary damage in so far as it related to medical expenses and loss of potential income. It rejects this part of the applicant's claim but awards her EUR 15 in respect of

compensation for the administrative fine she had to pay for the absence of residence registration. The amount claimed in respect of non-pecuniary damage appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable.

B. Costs and expenses

68. The applicant claimed RUR 203,960 in respect of legal fees (exclusive of the legal aid received from the Court), RUR 13,497.15 for translation expenses, RUR 708.74 for postage, RUR 2,734 of court fees in the domestic proceedings and RUR 150 for certification of authority forms.

69. The Government claimed that the legal fees were manifestly excessive and served as a means of unjust enrichment. The average legal fee for the preparation of a case before the Court is EUR 1,500, which is far less than the applicant's claim.

70. The Court accepts that the applicant has incurred certain expenses in the domestic and Strasbourg proceedings. The particular amount claimed appears, however, excessive. Having regard to the materials in the case-file and deducting the amount already paid to the applicant by way of legal aid, the Court awards her EUR 2,500 in respect of costs and expenses, plus any tax that may be chargeable.

C. Default interest

71. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of Protocol No. 4;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 15 (fifteen euros) in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;

(iii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President