CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF FEDOTOVA v. RUSSIA

(Application no. 73225/01)

JUDGMENT

STRASBOURG

13 April 2006

FINAL

13/09/2006

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 Fedotova 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 F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 23 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 73225/01) 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 a Russian national, Ms Yelena Yuryevna Fedotova, on 28 January 2001.

2. The applicant was represented before the Court by Mr A. Kiryanov, a lawyer practising in Taganrog. 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 alleged, in particular, that the court that had given the judgment of 16 October 2000 had not been composed in accordance with the domestic law.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 1 April 2004 the Court declared the application partly admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1970 and lives in Taganrog.

A. Domestic proceedings

9. The applicant was a party to a civil dispute involving several other persons.

10. On 16 October 2000 the Taganrog Town Court of the Rostov Region, composed of Ms C. (presiding judge), Ms S. and Ms L. (lay judges), dismissed the applicant's claims and ordered her to bear costs and expenses.

11. On 23 and 24 October 2000 the applicant and her lawyer filed their notices of appeal. The applicant challenged, *inter alia*, the composition of the bench. She alleged a breach of the rules on the appointment of lay judges in that the lay judges had not been drawn by lot, contrary to the requirements of the Lay Judges Act. In addition, it was claimed that, while the Lay Judges Act allowed lay judges to be called once a year for a maximum period of fourteen days, or for as long as a specific case lasted, the lay judges S. and L. had been engaged earlier in the course of 2000 in at least one another case. Also, according to an undated letter of the President of the Taganrog Town Court, the lay judges S. and L. had been assigned to sit with the presiding judge I. rather than with the judge C.

12. On 24 January 2001 the Rostov Regional Court dismissed the appeals. The court rebutted the argument concerning the allegedly unlawful composition of the bench, relying on the President's Decree of 25 January 2000 whereby the term of office of acting lay judges had been extended pending appointment of new ones in accordance with the Lay Judges Act. The list of lay judges had only been approved by the Rostov Regional Legislature on 15 June 2000 and made available to the courts on 18 October 2000, that is after the decisions in the applicant's case had been made. This fact led the Regional Court to the conclusion that the lay judges who had sat in these cases were exempted from the requirements of the Lay Judges Act.

B. Police inquiry in connection with the applicant's claim for just satisfaction

13. Following the Court's decision as to the admissibility of the application, on 17 April 2004 the applicant submitted her claim for just satisfaction. She claimed, in particular, the legal fees paid to her

representative before the Court, Mr Kiryanov, and expenses relating to translation of documents carried out by Ms Volkova.

14. On 9 July 2004 an officer of the Taganrog police department who investigated tax offences formally requested the applicant's representative and translator to submit evidence that they had paid taxes on the amounts disbursed by the applicant.

15. On 11 July 2004 the applicant informed the Court about the above request. She alleged that it amounted to a hindrance with her right of individual application guaranteed under Article 34 of the Convention. The applicant submitted copies of the summonses for Mr Kiryanov and Ms Volkova and a description of Ms Volkova's interview at the police station. The police officer questioned Ms Volkova as to who had asked her to perform translations for the applicant, how the applicant had paid for translations, whether they had signed a contract on provision of services and why she had not paid taxes on these amounts.

16. The Court asked the respondent Government to comment on compatibility of the above measures with Article 34 of the Convention.

17. On 29 July 2004 the Government submitted their comments on the applicant's claim for just satisfaction. They indicated, in particular, that the claimed translation costs had not been "real" because Ms Volkova had not reported the amounts received on her tax declaration.

18. In response to the Court's request for comments, on 9 August 2004 the Government claimed that the applicant's allegation of hindrance under Article 34 of the Convention should be registered as a new application and a separate decision as to its admissibility should be taken. They denied that the authorities had forced the applicant, directly or indirectly, to withdraw or modify her application to the Court. The actions of the competent bodies had been lawful and purported to secure payment of taxes and to ensure "the economic well-being of the country". In the Government's submission, the inquiry was successful as it had revealed a breach of tax laws by Ms Volkova who had translated correspondence for the applicant but failed to pay taxes on the amounts received. The Government treated the applicant's letter of 11 July 2004 as "provocation" and maintained that no immunity should be granted to the applicant and her representatives solely by virtue of the fact that she had lodged an application with the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Lay Judges Act

19. On 10 January 2000 the Federal Law on Lay Judges of Federal Courts of General Jurisdiction in the Russian Federation ("the Lay Judges Act" or "the Act") came into effect. By section 1 (2) of the Act, lay judges

are persons authorised to sit in civil and criminal cases as non-professional judges.

20. Section 2 provides that lists of lay judges must be compiled for every district court by local self-government bodies, such lists being subject to confirmation by the regional legislature. Section 5 determines the procedure for selection of lay judges. It provides that the president of a district court is to draw random lots from a list of lay judges assigned to that court. The number of lay judges assigned to every professional judge should be at least three times as many as that needed for a hearing.

21. By section 9, lay judges should be called to serve in a district court for a period of fourteen days, or as long as the proceedings in a particular case last. Lay judges may only be called for service once a year.

B. President's Decree of 25 January 2000

22. Under the Decree of the acting President of Russia issued on 25 January 2000, lay judges serving in the courts of general jurisdiction were authorised to remain in office until the courts received new lists of judges confirmed by the regional legislatures.

C. Regulation on appointment of lay judges

23. The Presidium of the Supreme Court of the Russian Federation issued on 14 January 2000 a regulation on the procedure for selection of lay judges. The regulation provided that the President of a district court should draw at random from the general list of lay judges, 156 names for each judge. The lay judges for a particular case were to be drawn by lot by the judge to whom the case had been assigned. The regulation also provided that the sitting lay judges would remain in office until new lists of lay judges had been received.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE THE APPLICATION OUT OF THE LIST OF CASES

24. By letter of 7 July 2004, the applicant informed the Court that she refused the settlement of the case on the terms proposed by the Government.

25. By letter of 13 September 2004, the Government asked the Court to strike the application out of the list of cases, in accordance with Article 37

§ 1 of the Convention, on the ground that the applicant had refused to negotiate the terms of a friendly settlement.

26. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. The Court recalls that under certain circumstances an application may indeed be struck out under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, 6 May 2003). It notes, however, that this procedure is an exceptional one and is not, as such, intended to circumvent the applicant's opposition to a friendly settlement. Moreover, accepting of the terms of the friendly settlement proposed by the Government is the applicant's right rather than an obligation and a refusal of such a proposal cannot, by itself, be construed as the absence of intention to pursue the application.

27. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and in the context of adversarial proceedings before the Court.

28. On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into the latter category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case.

29. This being so, the Court rejects the Government's request to strike the application out of the list of cases in accordance with Article 37 § 1 of the Convention.

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

30. The applicant complained under Article 6 § 1 of the Convention that the judgment of 16 October 2000 had not been issued by a tribunal established by law because the lay judges had not been drawn by lot and had acted in that capacity outside the time-limit set in the domestic law. The relevant parts of Article 6 § 1 read as follows:

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

A. Submissions by the parties

1. The applicant

31. The applicant submitted that on 16 October 2000 the status of the lay judges S. and L. should have been governed by the Lay Judges Act because a new list of lay judges had been approved by the Rostov Regional Legislature on 15 June 2000 and forwarded to the Courts' Administration Department of the Rostov Region already on 19 July 2000. That information that had been obtained from the head of the office of the legislature, cast doubt on the Government's assertion that on 16 October 2000 the lay judges S. and L. had been exempted from the requirements of the new procedure.

32. Even assuming that the lay judges only acquired their status under the new Lay Judges Act on 18 October 2000 when the new lists were delivered to the Taganrog Town Court, the applicant challenged the validity of their powers allegedly acquired under the USSR Judiciary Act of 8 July 1981. That Act provided that lay judges were to be elected at citizens' meetings. The minutes and results of the elections were to be certified and published by local executive committees and then forwarded to the district or town court. The applicant's lawyer asked the Ministry of Justice, the Governor of the Rostov Region, the Taganrog town administration, the Taganrog town archive and the local official newspaper *Taganrogskaya Pravda* for certified copies of minutes of the meetings for election of lay judges, lists of lay judges and copies of official publications of such lists. All the above bodies responded that they were not in possession of any such documents; a search of back issues of local newspapers did not yield any results either. The applicant inferred therefrom that until 18 October 2000 in the Rostov Region there had been no lay judges who had been duly nominated to their office in accordance with the USSR Judiciary Act.

33. The applicant produced copies of judgments and decisions of the Taganrog Town Court showing that the lay judges L. and S. had sat on the bench in different cases on 17 August, 28 September and 16 October 2000. It followed that they had functioned as lay judges for at least sixty-one days, that is in excess of the maximum fourteen-days term of office established in the Lay Judges Act. Moreover, the lay judges L. and S. had been assigned to sit with the judge I., whereas in the applicant's case the bench had been presided over by the judge C. Such "transfer" of lay judges from one presiding judge to another was, in the applicant's opinion, a separate violation of the Lay Judges Act.

34. Finally, the applicant contended that, irrespective of how and when the lay judges had been nominated to their office, they should have been drawn by random lots for their participation in a specific case but no such drawing had taken place in the present case.

2. The Government

35. The Government submitted that the lay judges S. and L. had been competent to sit in the applicant's case as their statutory term of office had been extended by the President's Decree of 25 January 2000. The list of lay judges serving in the Rostov Region had been approved by a decision of the Rostov Regional Legislature on 15 June 2000 and made available to the Taganrog Town Court on 18 October 2000. Therefore, in the Government's opinion, the lay judges who had sat on 16 October 2000 had been exempted from the requirements of the Lay Judges Act. The applicant's contention that the lay judges had sat in court for longer than two weeks was not supported by evidence.

36. In their supplementary submissions the Government acknowledged that the Taganrog Town Court was not in possession of minutes of any citizens' meetings held for the election of lay judges.

37. Finally, the Government indicated that both the USSR Judiciary Act (section 70) and the Lay Judges Act (section 9 § 1) set the global term of lay judges' service at fourteen days. The Lay Judges Act also provided that the lay judges could take up their duties once a year. However, there was no requirement that their term of service be continuous, and lay judges could take part in several proceedings throughout the year.

B. The Court's assessment

38. The Court reiterates that the phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000). The Court is therefore requested to examine allegations such as those made in the present case concerning a breach of the domestic rules for appointment of judicial officers. The fact that the allegation in the present case concerned lay judges, does not make it any less important as, pursuant to Article 6 of the Code of Civil Procedure then in force, in their judicial capacity lay judges enjoyed the same rights as professional judges.

39. The Court recalls that it has found a violation of Article 6 § 1 of the Convention in a similar case that originated in the same Russian region (see *Posokhov v. Russia*, no. 63486/00, §§ 40-44, ECHR 2003-IV). The finding of a violation was made against the background of "the apparent failure to observe the requirements of the Lay Judges Act regarding the drawing of random lots and two weeks' service per year" and the domestic authorities' admission that there had been no lists of lay judges before 15 June 2000 when the Rostov Regional Legislature approved a list of lay judges established under the new Lay Judges Act. The combination of these

circumstances led the Court to conclude that the district court which heard the applicant's case had not been a tribunal "established by law".

40. The Court notes that substantially similar circumstances are present in the instant case as well. The parties disagreed whether at the time of passing the judgment of 16 October 2000 the status of lay judges S. and L. had been governed by the USSR Judiciary Act of 1981 or by the more recent Russian Lay Judges Act. However, the Court need not decide on this issue for it appears that in either case essential requirements of the procedure for selection of lay judges were not respected.

41. The Government claimed that on 16 October 2000 the lay judges S. and L. had enjoyed the extended term of office by virtue of the President's Decree of 25 January 2000. In such a case they should have been appointed to the tribunal in accordance with the USSR Judiciary Act. However, the Government acknowledged that the district court was not in possession of any documents that could constitute the legal basis for their appointment, such as the minutes of citizens' meetings for election of lay judges. An extensive archive research carried out by the applicant with a view to finding such documents was unavailing as no regional or central authority had been able to produce documents showing that those lay judges had ever been elected to sit in the court (see paragraph 32 above). It follows that there existed no legal grounds for the participation of the lay judges S. and L. in the administration of justice.

42. Alternatively, if the lay judges S. and L. had been selected to sit on the bench on 16 October 2000 in accordance with the new procedure described in the Lay Judges Act, the Court notes the apparent failure to observe the requirements of that Act regarding the drawing of random lots for their participation in the case. Nor was it disputed that the lay judges S. and L. had been selected to sit with the professional judge I. but on 16 October 2000 the bench had been presided over by the professional judge C. Furthermore, the applicant produced documentary evidence showing that the lay judges S. and L. had also sat on the bench on 17 August and 28 September 2000. This evidence begs the conclusion either that the maximum permitted fourteen-day period of service had been significantly exceeded or that those lay judges had been called for service several times in the same year. In either case this amounted to a substantive breach of the rules for selection of lay judges established in section 9 of the Lay Judges Act (see paragraph 21 above).

43. The above considerations do not permit the Court to conclude that the Taganrog Town Court that issued the judgment of 16 October 2000 could be regarded as a "tribunal established by law". The Rostov Regional Court, in its review of the matter on appeal, did nothing to eliminate the above-mentioned defects.

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

III. ALLEGATION OF HINDRANCE TO THE RIGHT OF INDIVIDUAL PETITON UNDER ARTICLE 34 OF THE CONVENTION

45. The applicant alleged that a police inquiry into the tax matters of her representative before the Court and translator of her correspondence with the Court, amounted to a hindrance to the exercise of her right of individual petition under Article 34 of the Convention which reads:

> "The Court may receive applications from any person... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

46. The Government's comments on the applicant's allegations are summarised above in paragraph 18.

47. The Court observes from the outset that the timing of the applicant's complaint under Article 34 does not give rise to any issue of admissibility under the Convention (see *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000; *Ergi v. Turkey*, judgment of 28 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 105). The Government's argument on this point must be rejected.

48. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, § 160; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references). The threat of criminal or disciplinary proceedings invoked against an applicant's lawyer concerning the contents of a statement submitted to the Court has previously been found to interfere with the applicant's right of petition (see *Kurt*, cited above, §§ 160 and 164, and *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002) as has the institution of criminal proceedings against a lawyer involved in the preparation of an application to the Commission (see *Şarli v. Turkey*, no. 24490/94, §§ 85-86, 22 May 2001).

49. In the instant case it is not in dispute that the local police summoned the applicant's legal representative and translator for a formal interview in connection with the applicant's claims for just satisfaction. The Government furnished no explanation as to how the Rostov police had obtained the documents submitted in the framework of the Convention proceedings. There is no doubt, however, that the inquiry had been launched at the

request of the Government's representative before the Court because the Government relied on the findings of the police inquiry in their comments on the applicant's claim for just satisfaction (see paragraphs 17 and 58).

50. It is of particular concern for the Court that the police interview was not confined to matters regarding Ms Volkova's tax reporting but probed into more general aspects of her relationship with the applicant and other persons (see paragraph 15 above). Also, the Court sees no plausible reason as to why, in the absence of any apparent indication of a criminal offence, the questioning had been conducted by the regional police rather than by a competent tax authority (cf. *Ergi*, cited above, § 105).

51. The Court would emphasise that it is not appropriate for the authorities of a respondent State to enter into direct contact with an applicant on the pretext that "forged documents have been submitted in other cases" (see *Tanrıkulu*, cited above, § 131). If the Government had reason to believe that in a particular case the right of individual petition had been abused, the appropriate course of action was for that Government to alert the Court and to inform it of its misgivings (*ibid*.). To proceed as the Government did in the present case could very well have been interpreted by the applicant as an attempt to intimidate her. The fact that the summons had been served on the applicant's legal representative and translator does not make any difference. The moves made by the Russian Government to investigate the applicant's disbursements to her representatives, even though they did not apparently result in a criminal prosecution, must be considered an interference with the exercise of the applicant's right of individual petition and incompatible with the respondent State's obligation under Article 34 of the Convention (cf. *Kurt*, cited above, § 164).

52. In view of the foregoing, the Court considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 1,000 euros (EUR) in respect of compensation for non-pecuniary damage for the violation of Article 6 § 1 of the

Convention. She submitted that the amount claimed was in line with the Court's award in the *Posokhov* case.

55. The Government considered the claim excessive and unreasonable. They claimed that a token amount would be an equitable just satisfaction.

56. The Court considers that the applicant must have suffered a feeling of injustice as the judgment in her case had been given by a tribunal which had not been "established by law". The moves by the Government that brought about a police inquiry into her relationship with counsel and translator, caused the applicant further anxiety and disquiet. The non-pecuniary damage she has thereby sustained would not be adequately compensated by the finding of a violation. Accordingly, making its assessment on an equitable basis, the Court awards her 1,000 euros, plus any tax that may be chargeable on that amount.

B. Costs and expenses

57. Relying on documentary evidence, the applicant claimed EUR 1,070.71 in respect of the legal fee for her representation before the Court and EUR 169.16 for postage, research, travel and translation expenses.

58. The Government accepted the applicant's claim in respect of the legal fee and postage expenses. Travel expenses were not necessarily incurred as the information could have been obtained by phone or fax. Translation expenses were not "real" because the applicant's translator did not include the amounts received in her tax declaration.

59. Taking into account that only one of the applicant's complaints was declared admissible, the Court, making its assessment on an equitable basis, awards the applicant a global amount of EUR 800 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

60. 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 6 § 1 of the Convention;

2. *Holds* that the respondent State has failed to comply with its obligations under Article 34 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;

(ii) EUR 800 (eight hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 13 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President