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. 26716/03
by Galina Mikhaylovna BARASHKOVA
against Russia

The European Court of Human Rights (First Section), sitting on 29 March 2007 as a Chamber composed of

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

Having regard to the above application introduced on 17 July 2003,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Galina Mikhaylovna Barashkova, is a Russian national who was born in 1944 and lives in Moscow. The respondent Government were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

The applicant was a party to a civil dispute with her former husband over a flat which they occupied under a tenancy agreement.

The Nagatinskiy District Court of Moscow twice rendered judgments unfavourable to the applicant but the Moscow City Court quashed them on appeals and remitted the case for fresh examinations.

The new hearing of the case was set for 14 May 2002. Before the court started to examine the claims, the applicant challenged the composition of the bench. She alleged a breach of rules on the appointment of lay assessors in that the lay assessors Ms B. and Mr S. had not been drawn by lot contrary to the requirements of the Federal Law on the Lay Assessors of the Federal Courts of General Jurisdiction (*Федеральный Закон «О народных заседателях федеральных судов общей юрисдикции в Российской Федерации»*). However, the applicant's motion of challenge was declined. No breach of the rules governing the calling of lay assessors was established.

On 1 July 2002 the Nagatinskiy District Court of Moscow composed of Ms F. (presiding judge), Ms B. and Mr S. (lay assessors), dismissed the applicant's action.

The applicant appealed against the judgment. In her grounds for appeal the applicant again raised the issue of the lay assessors being appointed in breach of rules set forth in the Lay Assessors Act. In particular, she submitted that the case file did not contain the record of selection of lay assessors Mr S. and Ms B. She also contended that she was not notified of the hearing of 1 July 2002.

On 30 January 2003 the Moscow City Court upheld the judgment on appeal. The applicant's argument about the lack of record of the selection of lay assessors in the case file was found in itself insufficient for quashing of the judgment on appeal. The court did not go into further examination of the applicant's allegation. The applicant's argument about not being notified of the hearing was found unpersuasive because the case file contained the evidence that she had been informed about the place and the time of the hearing, but refused to accept the summons. The absence of the representative from the hearing did not impede the court to proceed with the hearing.

B. Relevant domestic law

On 10 January 2000, the Federal Law on the Lay Assessors of the Federal Courts of General Jurisdiction in the Russian Federation ("the Lay Assessors Act" or "the Act") came into effect. Under Article 1 § 2 of the

Act, lay assessors were persons authorised to sit in civil and criminal cases as non-professional judges.

Article 2 of the Act provided that lists of lay assessors had to be compiled for every district court by local self-governing representative authorities, such lists being subject to confirmation by the legislature of the respective Federation entity.

Pursuant to Article 5 of the Act, which determined the procedure for the selection of lay assessors, the President of a district court had to draw at random from the list a certain number of lay assessors to be called to the competent district court. The number of lay assessors assigned to every professional judge had to be at least three times greater than that needed for a hearing.

In accordance with Article 9, lay assessors were to be called to serve in a district court for a period of fourteen days, or as long as the proceedings in a particular case lasted. Lay assessors could not be called more than once a year.

In the present moment the domestic law no longer provides for participation of non-professional judges in either civil or criminal cases.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that the court that rendered the judgment of 1 July 2002 had been composed in violation of the relevant national law.

She specifically claimed that neither the presiding judge nor the President of the court drew for the lay assessors as required by law and that the assessors Ms B. and Mr S. were engaged in the course of 2002 in several other trials.

2. Under the same Article the applicant complained that her right to a fair trial had been impaired, because neither she nor her representative had been apprised of the hearing of 1 July 2002, that her request to time-bar her former husband's action had been dismissed after the delivery of the judgement of 1 July 2002. She further complained that the principle of equality of arms had not been respected in the course of the proceedings in that the court had refused to examine the applicant's additional claims, refused to allow a new representative in the proceedings, to obtain the attendance of certain witnesses on the applicant's behalf, to investigate further into the circumstances of the case and to give due consideration to her counter-claim.

3. The applicant further complained under Article 1 of Protocol No. 1 about the violation of her property rights, because, following the court's

judgment her former husband privatised the room assigned to him and the applicant had to buy it.

4. Finally, she complained under Article 3 that the proceedings before the domestic courts had humiliated her.

THE LAW

1. The applicant complained under Article 6 § 1 of the Convention that the court which rendered the judgment of 1 July 2002 was composed in violation of the relevant national law. Article 6 § 1, in so far as relevant, reads as follows:

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

The Government submitted that the selection procedure of lay assessors for participation in the hearing at the Nagatinskiy District Court of Moscow of 1 July 2002 was in accordance with Article 5 of the Lay Assessors Act, which was confirmed by the decision of the acting President of the Nagatinskiy District Court of Moscow of 6 March 2001 on the assignment of lay assessors Ms B. and Mr S. to sit with judge F., and by the minutes and results of the drawing of lay assessors for the purposes of the hearing of 1 July 2002 by the presiding judge F.

They further indicated that, pursuant to Article 9 of the Lay Assessors Act the overall term of office of lay assessors was not to exceed two weeks. The Lay Assessors Act also provided that the lay assessors could take up their duties once a year. However, there was no requirement that their term of service should be continuous, and lay assessors could take part in several proceedings throughout the year. Therefore, the fact that the lay assessor Ms B. sat on the bench in different cases on 4 March, 14 May, 5 and 27 June, 1 July and 17 October 2002 and that the lay assessor Mr S. – on 5 and 30 April, 14, 23 and 24 May, 5, 19 and 27 June, 1 July, 1, 11 and 12 November, 19 and 20 December did not upset the requirements of the domestic law.

The applicant disputed the arguments put forward by the Government. She referred, firstly, to Article 5 of the Lay Assessors Act, which provided that the number of lay assessors assigned to sit with every professional judge should be at least three times greater than that needed for a hearing. Secondly, the applicant referred to Article 6 of the RSFSR Code of Civil Procedure in force at the time when the applicant's case was examined, which provided that the bench in a district court should comprise one professional judge and two lay assessors. Consequently, the number of lay assessors assigned to sit with a professional judge should not be less than six. However, contrary to the above requirements, on 6 March 2001 the

acting President of the Nagatinskiy District Court of Moscow assigned only two lay assessors – Ms B. and Mr S. to sit with judge F. The minutes of drawing of lay assessors of 1 July 2002 confirm that instead of drawing lots among six lay assessors in order to select two of them for the purposes of the hearing the presiding judge drew lots among only two lay assessors, which violated the procedure.

The applicant further relied on Article 9 of the Lay Assessors Act. In accordance with this provision lay assessors 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 assessors may not be called more than once a year. The applicant submitted that the lay assessors Ms B. and Mr S. sat on the bench in the applicant's case on 14 May and 1 July 2002. They were absent from the hearing of the applicant's case on 18 June 2002, which is confirmed by the minutes of the hearing. Before sitting on the bench in the applicant's case the lay assessors Ms B. and Mr S. sat in court in unrelated cases: Ms B. – on 4 March and Mr S. – on 5 and 30 April. After the hearing of the applicant's case commenced, Ms B. sat on the bench in unrelated cases on 5 and 27 June, and Mr S. – on 23 and 24 May, 5, 19 and 27 June 2002. After the rendering of the judgment in the applicant's case of 1 July 2002 Ms B. sat in court in unrelated cases on 4 and 17 October, and Mr S. – on 1, 11 and 12 October, on 19 and 20 December 2002. Thus, the lay assessors Ms B. and Mr S. interrupted the continuity of the processing of the applicant's case and sat on the bench more than once in the course of 2002.

In conclusion the applicant referred to the case of *Posokhov v. Russia* (judgment of 4 March 2003, no.63486/00) where a violation of Article 6 § 1 on account of unlawful composition of the bench was established.

The Court considers, in the light of the parties' submissions, that this 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. Under the same Article the applicant complained that her right to a fair trial had been impaired, because neither she nor her representative had been apprised of the hearing of 1 July 2002, that her request to time-bar her former husband's action had been dismissed after the hearing of 1 July 2002 had taken place. She further complained that the principle of equality of arms had not been respected in the course of the proceedings in that the court had refused to examine the applicant's additional claims, that the court had also refused to allow a new representative in the proceedings, to obtain the attendance of certain witnesses on the applicant's behalf, to investigate further into the circumstances of the case and to give due consideration to her counter-claim. Article 6 § 1, in so far as relevant, reads as follows:

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

In so far as the applicant complained about not having been apprised of the hearing of 1 July 2002, the Court observes that the materials in its possession prove otherwise. There is no evidence in the case file allowing the Court to depart from these findings.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

In so far as the applicant complained about the fact that her request to time-bar her former husband's action was dismissed after the delivery of the judgment of 1 July 2002, the Court notes that it is not substantiated by evidence.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

As regards the alleged breach of the equality of arms principle, the Court notes that the applicant did not raise this particular issue before the domestic courts.

It follows that this complaint is also inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. The applicant further complained under Article 1 of Protocol No. 1 about the violation of her property rights, on account of the fact that following the court's judgment her former husband privatised the room assigned to him and the applicant had to buy it. The relevant part of Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law..."

The Court recalls that Article 1 of Protocol No. 1 applies only to "existing" possessions. A person who complains of a violation of his right to property must first show that this right existed, or that his position in law was sufficiently strong to amount to a "legitimate expectation", attracting the protection of Article 1 of Protocol No. 1. None of these elements is present in this case: neither the applicant's property rights nor her "legitimate expectations" were at issue. Therefore, the Court finds no indication of a breach of Article 1 of Protocol No. 1.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected under Article 35 § 4 of the Convention.

4. Finally, the applicant complained under Article 3 that the proceedings before the domestic courts had humiliated her. Article 3 of the Convention reads as follows:

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

The Court reiterates that, according to the constant case-law of the Convention organs, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII).

The Court finds nothing in the circumstances of the case which would indicate that the minimum level of severity was reached.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

For these reasons, the Court

Declares unanimously admissible, without prejudging the merits, the applicant's complaint that the judgment of the Nagatinskiy District Court of Moscow of 1 July 2002 was not made by a tribunal established by law;

Declares by a majority inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President