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. 73225/01
by Yelena FEDOTOVA
against Russia

The European Court of Human Rights (First Section), sitting on 1 April 2004 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application introduced on 28 January 2001,

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 Yelena Yuryevna Fedotova, is a Russian national, who was born in 1970 and lives in Taganrog. She is represented before the Court by Mr A. Kiriyanov, a lawyer practising in Taganrog. 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.

The applicant was a party to a civil dispute involving several other persons. On an unspecified date several actions brought by the parties to the dispute were joined.

On 2 October 2000 the Taganrog Town Court of the Rostov Region (*Таганрогский городской суд Ростовской области*), composed of Ms C. (presiding judge), Ms M. and Ms T. (lay judges), reversed its earlier decision of 17 July 2000 on the application of interim relief measures in connection with the applicant's action.

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 action and ordered her to pay legal expenses and fees.

On 23 and 24 October 2000 the applicant and her lawyer filed appeals against the decisions of 2 and 16 October 2000. The applicant challenged, *inter alia*, the composition of the bench that had given the said decisions. She alleged a breach of the rules on the appointment of lay judges in that in both cases the lay judges had not been drawn by lot contrary to the requirements of the Federal Law on the Lay Judges of the Federal Courts of General Jurisdiction ("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 M. and T., as well as judges S. and L., had been engaged earlier in the course of 2000 in at least one other trial. Also, according to an undated letter of the President of the Taganrog Town Court Mr T., the lay judges S. and L. had been assigned to sit with the presiding judge I. and not judge C.

On 24 January 2001 the Rostov Regional Court dismissed the applicant's appeals. The court rebutted the applicant's argument concerning the allegedly unlawful composition of the bench with reference to the Presidential 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 court pointed out that the list of lay judges had only been approved by the Rostov Regional Legislature on 15 June 2000 and made available to the court on 18 October 2000, i.e. after the decisions in the applicant's case had been made. The court relied on this fact when concluding that the lay judges who had sat in these cases were exempted from the requirements of the Lay Judges Act.

B. Relevant domestic law

1. On 10 January 2000, the Federal Law on the Lay Judges of the 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.

Section 2 of the Act provides that lists of lay judges must 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. Section 5 of the Act, which determines the procedure for the selection of lay judges, provides that the president of a district court should draw lots at random from a list of names of a certain number of lay judges to be assigned to the competent district court. The number of lay judges assigned to every professional judge should be at least three times greater than that needed for a hearing.

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 not be called more than once a year.

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

3. The Presidium of the Supreme Court of the Russian Federation issued on 14 January 2000 a regulation on the procedure for the 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 was assigned. The regulation also provided that the sitting lay judges should retain their powers until such time as new lists of judges were received.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the court which delivered the interim decision of 2 October 2000 and the judgment of 16 October 2000 could not be considered to have been a tribunal established by law because on both occasions it was composed in breach of the relevant national rules.

The applicant claims specifically that neither the presiding judge, nor the President of the court drew lots for the lay judges as required by law. The applicant also maintains that the lay judges S. and L., or M. and T., had

been acting in this capacity before the hearing on the applicant's claim for at least one month, instead of the maximum fourteen days permitted by law.

THE LAW

The applicant complains under Article 6 § 1 of the Convention that the court which gave the interim decision of 2 October 2000 and the judgment of 16 October 2000 was composed in violation of the relevant national law. Article 6 § 1, insofar as relevant, reads as follows:

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

A. Submissions by the parties

The Government submit that all four lay judges, S., L. M. and T., had the power to sit in the applicant's case as their statutory term of office had been extended by the Presidential Decree of 25 January 2000. They contend that 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 only made available to the Taganrog Town Court on 18 October 2000. Therefore, in the Government's opinion, the lay judges who had sat on 2 and 16 October 2000 were exempted from the requirements of the Lay Judges Act. Finally, the Government challenge the applicant's contention that the lay judges had sat in court for longer than two weeks as not supported by evidence.

In a supplementary letter the Government accept that the Taganrog Town Court was not in possession of minutes of any meetings held for the election of lay judges. They further submit that, pursuant to Section 70 of the RSFSR Law on Judicial System of the Russian Soviet Federalist Socialist Republic of 8 July 1981 ("the Soviet Judicial System Law"), the overall term of office of lay judges was not to exceed two weeks, yet there was no requirement for that period to be continuous and lay judges could take part in several proceedings throughout a year.

The applicant submits, firstly, that the new list of lay judges approved by the Rostov Regional Legislature on 15 June 2000 included lay judges S., L. and T., but not lay judge M. According to the information which the applicant's representative received from the head of the office of the Rostov Regional Legislature Mr Pavlov, the new lists of lay judges were forwarded by the Legislature to the Courts' Administration Department of the Rostov Region on 19 July 2000. This admission, in the applicant's opinion, casts doubt on the Government's assertion that on 16 October 2000 lay judges S. and L. enjoyed the extended term of office granted by the Presidential

Decree and therefore were exempted from the requirements of the new procedure.

Even assuming that all four 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 challenges the validity of their powers allegedly acquired under the Soviet Judicial System Law of 8 July 1981. Sections 57-60 of that Law 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 respective district or town court. The applicant's lawyer sent requests to the Ministry of Justice of the Russian Federation, the Governor of the Rostov Region, the Taganrog Town Administration, the Taganrog Town Archive and the local official newspaper *Taganrogskaya Pravda* to be provided with certified copies of minutes of the meetings held for election of lay judges, lists of lay judges and copies of official publications of such lists. All of the above bodies responded that they were not in possession of the requested documents; a special search of back issues of local newspapers in a public library did not yield any results, either. The applicant concludes that until 18 October 2000 in the Rostov Region there were no lay judges who had been duly nominated to their office in accordance with the procedure described in the Soviet Judicial System Law.

The applicant provides copies of judgments and decisions of the Taganrog Town Court showing that lay judges M. and T. took part in court hearings in a number of unrelated cases on 13 January, 14 February, 13 April and 2 October 2000, and lay judges L. and S. sat on the bench in different cases on 17 August, 28 September and 16 October 2000. The applicant concludes that lay judges M. and T. sat on the bench for at least 262 days and lay judges L. and S. acted in this capacity for at least 61 days, both periods being significantly in excess of the maximum fourteen-days term of office provided for in the Lay Judges Act. The applicant indicates that lay judges L. and S. were assigned to sit with judge I., while in the applicant's case the bench was presided by judge C. Such “transfer” of lay judges from one presiding judge to another is, in the applicant's opinion, an independent violation of the Lay Judges Act. Finally, the applicant contends that, irrespective of how and when lay judges were nominated to their office, they should have been drawn by lot for participation in a specific case as required by the Lay Judges Act, and no such drawing took place in the applicant's case.

B. The Court's assessment

a) As regards the interim decision of the Taganrog Town Court of 2 October 2000, the Court notes that it only concerned certain interim relief

measures and it neither finally nor even provisionally determined the applicant's civil rights and obligations. Indeed, it merely lifted an injunction that had been earlier imposed on the other party pending the outcome of the main proceedings. The Court therefore concludes that the applicant's complaint about the interim decision of 2 October 2000 as such is outside the scope of Article 6 of the Convention (see, *e.g.*, *Verlagsgruppe News GmbH v. Austria* (dec.), no. 62763/00, 16 January 2003; *Wiot v. France* (dec.), no. 43722/98, 15 March 2001; *Apis a.s. v. Slovakia* (dec.), no. 39754/98, 13 January 2000).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

b) As regards the judgment of the Taganrog Town Court of 16 October 2000, 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.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint that the judgment of the Taganrog Town Court of 16 October 2000 was not made by a tribunal established by law;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President