



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

FIRST SECTION

CASE OF BARASHKOVA v. RUSSIA

(Application no. 26716/03)

JUDGMENT

STRASBOURG

29 April 2008

FINAL

29/07/2008

This judgment may be subject to editorial revision.

In the case of Barashkova v. Russia,
The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,
and André Wampach, *Deputy Section Registrar*,
Having deliberated in private on 1 April 2008,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 26716/03) 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 Galina Mikhaylovna Barashkova (“the applicant”), on 17 July 2003.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. The applicant alleged, in particular, that the court that had given the judgment of 1 July 2002 had not been composed in accordance with the relevant domestic law.

4. By a decision of 29 March 2007 the Court declared the application partly admissible.

5. The applicant, but not the Government, filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1944 and lives in Moscow.

7. 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.

8. The new hearing of the case was set for 14 May 2002. The Nagatinskiy District Court was composed of Ms F. (presiding judge), Ms B. and Mr S. (lay assessors). Prior to that, on 6 March 2001 in accordance with Section 5 of the Lay Assessors Act the acting President of the Nagatinskiy District Court of Moscow assigned the above two lay assessors to sit with judge F.

9. 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 rejected. No breach of the rules governing the calling of lay assessors was established.

10. At the next hearing of the case on 18 June 2002 the lay assessors Ms B. and Mr S. were absent.

11. On 1 July 2002 the presiding judge F. in accordance with Section 9 of the Lay Assessors Act "drew lots" among the lay assessors Ms B. and Mr S. assigned to her on 6 March 2001 by the acting President of the Nagatinskiy District Court, and chose both of them for sitting at the hearing of the applicant's case.

12. 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.

13. 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 the lay assessors Mr S. and Ms B.

14. 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.

15. The applicant subsequently produced documentary evidence showing that in the course of 2002 the lay assessor Mr S. sat in court in unrelated civil cases with the judge F. on 5 and 30 April, 14, 23 and 24 May, 5, 19 and 27 June, 1 July, 1, 11 and 12 November, 19 and 30 December. The applicant also produced documentary evidence showing that in the course of 2002 the lay assessor Ms B. sat on the bench with the

judge F. in unrelated cases on 4 March, 14 May, 5 and 27 June, 1 July, 4 and 17 October.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The RSFSR Code of Civil Procedure of 1964

16. According to Article 6 of the Code, in force at the material time, civil cases could be examined by a formation comprising two lay assessors and a professional judge. In the administration of justice lay assessors enjoyed the same rights as professional judges.

B. Lay Assessors Act of 2000

17. 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 Section 1 § 2 of the Act, lay assessors were persons authorised to sit in civil and criminal cases as non-professional judges.

18. Section 2 of the Act provided that lists of lay assessors had to be compiled for every district court by local self-government bodies, such lists being subject to validation by the regional legislature.

19. Section 5 of the Act determined the procedure for the selection of lay assessors. It provided that 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 the number of persons needed for a hearing.

20. In accordance with Section 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.

21. On 14 November 2002 the new Code of Civil Procedure of the Russian Federation was enacted and replaced the RSFSR Code of Civil Procedure from 1 February 2003. It no longer provided for participation of non-professional judges in civil cases.

C. Validation of the general lists of lay assessors

22. On 22 November 2000 the Moscow City Legislature validated the general lists of lay assessors assigned to the district courts of Moscow and the Supreme Court of Russia. The addendum no. 1 to the above regulation

contained the general list of 2810 lay assessors assigned to the Nagatinskiy District Court of Moscow.

D. Regulation on appointment of lay assessors

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 assessors. The regulation provided that the President of a district court should draw at random from the general list of lay assessors 156 names for each judge. The lay assessors for a particular case were to be drawn by lot by the judge to whom the case had been assigned.

THE LAW

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

24. The applicant complained under Article 6 § 1 of the Convention that the judgment of 1 July 2002 had not been issued by a tribunal established by 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.”

A. Submissions by the parties

1. The Government

25. 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 Section 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.

26. They further indicated that, pursuant to Section 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. sat 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.

2. The applicant

27. The applicant disputed the arguments put forward by the Government. She referred, firstly, to Section 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 the number of persons 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.

28. The applicant further relied on Section 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 had commenced, Ms B. sat on the bench in unrelated cases on 5 and 27 June, and Mr S. sat on 23 and 24 May, 5, 19 and 27 June 2002. After the rendering of the judgment in the applicant's case on 1 July 2002 Ms B. sat in court in unrelated cases on 4 and 17 October, and Mr S. sat on 1, 11 and 12 October, and 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.

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

B. The Court's assessment

30. 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 assessors 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 assessors enjoyed the same rights as professional judges (see paragraph 16 above).

31. The Court recalls that it has found a violation of Article 6 § 1 of the Convention in other Russian cases with similar factual circumstances (see *Posokhov v. Russia*, no. 63486/00, §§ 40-44, ECHR 2003-IV; *Fedotova v. Russia*, no. 73225/05, §§ 38-44, 13 April 2006; and *Shabanov and Tren v. Russia*, no. 5433/02, §§ 28-32, 14 December 2006). The finding of a violation was made against the background of, *inter alia*, “the apparent failure to observe the requirements of the Lay Assessors Act regarding the drawing of random lots and two weeks’ service per year”. These circumstances led the Court to conclude that district courts which heard the applicants’ cases had not been tribunals “established by law”.

32. Turning to the circumstances of the present case, the Court notes that, in compliance with the domestic law, on 22 November 2000 the Moscow City Legislature validated the general list of 2810 lay assessors assigned to the Nagatinskiy District Court of Moscow (see paragraphs 18 and 22 above). The Court observes that thereafter the President of the District Court had to select from the general list of lay assessors 156 names for each judge (see paragraph 23 above). However, as it follows from the decision of 6 March 2001, the acting President of the Nagatinskiy District Court of Moscow selected only two lay assessors to sit with judge F. with the consequence that on 1 July 2002 the judge F. instead of drawing lots among 156 lay assessors in order to select two of them for sitting on the bench for the hearing of the applicant’s case “drew lots” among only two of them. It follows that the procedure provided for by the domestic law for selection of lay assessors and drawing of random lots for their participation in the applicant’s case had not been observed.

33. The above considerations do not permit the Court to conclude that the Nagatinskiy District Court of Moscow which issued the judgment of 1 July 2002 could be regarded as a “tribunal established by law”. The Moscow City Court, in its review of the matter on appeal, did nothing to eliminate the above-mentioned defects.

34. Therefore, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 21,139 euros (EUR) in compensation of the pecuniary damage, which represents the value of the room privatised by the applicant's former husband after the termination of the proceedings in the present case. She further claimed EUR 20,000 in respect of the non-pecuniary damage.

37. The Government considered the applicant's claims to be excessive and unreasonable. They further submitted that in any event the finding of a violation would constitute adequate just satisfaction.

38. As to the claim in respect of pecuniary damage, the Court cannot speculate as to what the outcome of the proceedings at issue might have been if the violation of the Convention had not occurred. It therefore rejects this claim. On the other hand, 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 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 the applicant EUR 500 as compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

39. Relying on documentary evidence, the applicant claimed 500 Russian roubles for postage expenses.

40. The Government did not comment on the applicant's claims under this head.

41. The Court reiterates that it will award legal costs and expenses only if satisfied that these were necessarily incurred and reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 15 for the costs and expenses of the Convention proceedings, plus any tax that may be chargeable on that amount.

C. Default interest

42. 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*
 - (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 followings amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 500 (five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 15 (fifteen euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to the applicant 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President