

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

THIRD SECTION

CASE OF BAKRINA v. RUSSIA

(Application no. 46926/09)

JUDGMENT

STRASBOURG

17 May 2016

This judgment is final but it may be subject to editorial revision.



In the case of Bakrina v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Helen Keller, *President,*
Johannes Silvis,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 26 April 2016,

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

PROCEDURE

1. The case originated in an application (no. 46926/09) 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 Anzhelika Rafaelevna Bakrina ("the applicant"), on 3 July 2009.

2. The applicant was represented by Mr R. Faizov, a lawyer practising in Kazan. The Russian Government ("the Government") were represented by were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1978 and lives in Kazan.

5. On 24 November 2006 the Novo-Savinovskiy District Court of Kazan (*Ново-Савиновский районный суда города Казани*) acquitted the applicant on four counts of drug-dealing, convicted her on one count and sentenced her to eight years' imprisonment and a fine.

6. On 13 February 2007 the Supreme Court of Republic of Tatarstan (*Верховный суд Республики Татарстан*) upheld the judgment on appeal with minor changes.

7. On 2 July 2008 the Presidium of the Supreme Court of the Republic of Tatarstan in supervisory review proceedings annulled the judgment on the applicant's request, because she was formally indicted outside the prescribed statutory time-limits.

8. On 15 October 2008 the Novo-Savinovskiy District Court of Kazan acquitted the applicant on the same grounds after re-calculation of the applicable time-limits for investigative actions.

9. On 18 November 2008 the Supreme Court of the Republic of Tatarstan upheld the judgment on appeal.

10. On 18 February 2009 the Presidium of the Supreme Court of the Republic of Tatarstan in supervisory review proceedings annulled the judgments on the prosecutor's request. The annulment was reasoned by three main arguments: 1) in the opinion of the supervisory court all of the evidence was collected within the statutory time-limits, 2) the lower courts having examining all the evidence during the hearings did not mention them in the judgments and only gave reasons for dismissing them, and 3) formal indictment of the applicant outside of the statutory time-limits should not have led to acquittal in any event. The case was sent for reconsideration.

11. On 9 October 2009 the applicant was convicted, sentenced to five years' imprisonment, suspended for five years, and fined.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law governing supervisory review in criminal proceedings at the material time has been summarised in the case *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II (extracts).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

13. The applicant complained in substance that the annulment of the final judgment of acquittal violated her rights as provided in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

14. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The applicant claimed that the annulment of the final judgment of acquittal via supervisory review procedure was in breach of the legal certainty requirement of Article 6 § 1 of the Convention.

16. The Government stated that the annulment was in compliance with the guarantees of Article 6 § 1 of Convention, because it had been necessitated by the fundamental judicial errors made by the domestic courts in trial and appeal proceedings.

17. The Court notes from the outset that the possibility of reopening a criminal case is as such compatible with the Convention, including the guarantees of Article 6 as long as the actual manner in which it is used does not impair the very essence of a fair trial. In other words, the power to reopen criminal proceedings must be exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the effectiveness of the system of criminal justice (see *Nikitin v. Russia*, no. 50178/99, §§ 56-58, ECHR 2004-VIII).

18. Previously the Court indicated that the fundamental defects in the proceedings justifying annulment of a final and binding judgment may include jurisdictional errors, serious breaches of court procedure, abuses of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice (see *Radchikov v. Russia*, no. 65582/01, § 48, 24 May 2007).

19. Turning to the facts of the present case the Court notes that on 18 February 2009 the Presidium of the Supreme Court of the Republic of Tatarstan based the annulment of the applicant's acquittal on three reasons: 1) in the opinion of the supervisory court all of the evidence was collected within the statutory time-limits; 2) the lower courts, having examining all the evidence during the hearings, did not mention it in their judgments and only gave reasons for dismissing the charges; and 3) formal indictment of the applicant outside of the statutory time-limits should not in any event have led to an acquittal.

20. Having regard to its case-law under Article 6 of the Convention, all of the available material and the arguments of the parties the Court does not find it possible to conclude that the above reasons constituted fundamental defects in the proceedings justifying annulment of the final and binding judgments of the Novo-Savinovskiy District Court of Kazan of 15 October 2008 and of the Supreme Court of the Republic of Tatarstan of 18 November 2008.

21. Accordingly, the Court concludes that the annulment of the final judgment of acquittal was in breach of the legal certainty requirements and that there has thus been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The applicant also lodged a number of accessory and substantively similar complaints invoking Articles 6, 8, 13, 17 and 53 of the Convention, as well as Articles 2, 3 and 4 of Protocol No. 7 to the Convention. Having regard to its findings under Article 6 § 1 of the Convention the Court does not find it necessary to separately examine the admissibility and merits of these complaints.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 12,000 and 217,500 euros (EUR) in respect of pecuniary and non-pecuniary damage respectively.

25. The Government contested these amounts.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court making its assessment on equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant did not submit a claim for costs and expenses.

C. Default interest

28. The Court considers it appropriate that the default interest rate 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. *Declares* the complaints concerning the annulment of the final judgment of acquittal via supervisory review proceedings under Article 6 § 1 of the Convention admissible;

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

3. *Holds* that there is no need to separately examine the remainder of the applicant's complaints;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 17 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helen Keller President