



Barsova v. Russia

Application No. 20289/10

Country:

Region: Africa

Year: 2019

Court: The European Court of Human Rights

Facts

Decision and Reasoning

HEADNOTE

The applicant suffered a domestic assault by her husband U. and was forced to engage in a private prosecution for damages. The applicant alleges the respondent State violated Article 3 of the European Convention on Human Rights due to the excessively long prosecution that resulted in a dismissal, thus preventing her attempt to vindicate her right to live free from violence and ill-treatment. The Court held that the applicant's injuries were serious enough to engage Article 3, and the State breached its Article 3 obligations to establish an adequate legal framework affording protection against ill-treatment and to conduct an effective investigation when an arguable claim of ill-treatment has been raised.

FACTUAL AND PROCEDURAL BACKGROUND

The applicant, Ms. Diana Mikhaylovna Barsova, married U. in 1997. U. worked for the police academy in Voronezh to provide for the family. The applicant was subject to physical abuse by U., and on August 17, 2006, the applicant called the police on U. after he seriously assaulted her. The applicant received a medical examination and was put on 10-day sick leave due to a concussion as well as multiple injuries to her neck, body, and extremities.

After the prosecutor's office declined to issue public criminal proceedings against U., the applicant filed a private prosecution on September 28, 2006. The applicant accused U. of committing battery under Article 216 of the Criminal Code and submitted her medical examination as evidence. A hearing was scheduled for October 17 but was adjourned because the judge was not available. After the case was reassigned twice to different judges, the new hearing on March 15, 2007, was postponed because U. volunteered for an assignment abroad. Further delays occurred from October to November when U. left the country again. Between January and April 2008, proceedings were delayed once again as the judge was on sick leave. In June 2008, the applicant complained of the excessive length of the proceedings to the regional court. Six weeks later she was informed that no breaches of procedure had occurred and the case was again reassigned to a new judge who had to reexamine the evidence, causing further delays. Despite missing four hearings between December 2008 and February 2009, U. applied for discontinuation of the proceedings on May 21, 2009, on the grounds that the statute of limitations had expired. His application was granted by the trial judge on the same day. The applicant appealed this decision but was dismissed by the Tsentralnyy District Court and the Voronezh Regional Court.

The applicant then applied to the European Court of Human Rights on the grounds that the Russian authorities had breached Articles 3, and 6 of the European Convention on Human Rights. The applicant claimed that due to the delays in the proceedings caused or allowed by the authorities, the judge had not ruled on the merits of the charges and the authorities had prevented her attempts to vindicate her right to live free from violence and ill-treatment. The State claimed that the provisions of the Criminal Code were sufficient to discharge any obligations flowing from Article 3. The applicant was unable to bring U. to account for reasons not attributable to Russian courts or authorities.

RELEVANT LEGAL PROVISIONS

European Convention on Human Rights Article 3

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

European Convention on Human Rights Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]

European Convention on Human Rights Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The Court held the injuries suffered by the applicant were serious enough to meet the requirements of Article 3 for "torture or inhuman or degrading treatment". The psychological impact of U.'s coercive behavior (fear, anxiety, and powerlessness) was also found to be serious enough to constitute inhuman treatment within Article 3.

The Court held that once Article 3 is triggered by certain ill-treatment, the court must then determine whether the State acted to discharge their obligations under Article 3 to protect individuals from this treatment. Two obligations were set forth: the obligation to establish an adequate legal framework affording protection against ill-treatment, and the obligation to conduct an effective investigation when an arguable claim of ill-treatment has been raised.

The Court held that the respondent State failed in their obligation under Article 3 to establish an adequate legal framework to punish all forms of domestic violence and provide safeguards to victims. The Court found that the respondent State's Criminal Code contained no offense for domestic violence, nor did it include domestic violence as an aggravating factor in other offenses. This resulted in many forms of domestic violence being excluded from criminal law protection. The Code also set an unreasonably high threshold of injury for a public prosecution to be available in domestic violence cases. Because her injuries did not meet this threshold, the applicant was forced to engage in a private prosecution, and in the context of domestic violence, the Court found that this placed an undue burden on her to collect evidence and charge her attacker at the cost of her own time and resources. The Court found that this legal framework did not meet the requirements of the State's positive obligations under Article 3 to protect against all forms of ill-treatment.

The Court held the State also failed in its obligation under Article 3 to conduct an effective investigation. Article 3 requires a prompt and thorough investigation into domestic violence, and unduly long proceedings that allow an accused to escape accountability are established violations of Article 3. The Court found that the delay in proceedings was a direct consequence of the respondent State's handling of the case. This included multiple replacements of the trial judge, scheduling hearings in widely spaced intervals at least a month apart, and adjourning for frivolous reasons. Furthermore, the Court held that the State had an obligation to constrain U.'s abuse of the proceedings. The Russian courts did not use available measures to ensure U.'s presence at the hearings, and this delayed proceedings significantly. The Court found that this flawed investigation did not meet the State's obligations under Article 3 to protect the applicant as the victim of ill-treatment and provide a deterrent effect to protect women from domestic abuse.

The Court held that the respondent State failed to discharge its obligations under Article 3, and thus, violated the provision. As such, it was unnecessary to examine the applicability and possible violations of Articles 6 and 13. As per Article 41, the Court awarded the amounts claimed in non-pecuniary damage and costs and expenses to the applicant.

Decision Excerpts

Para 27: "The particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection have been emphasized in a number of international instruments and well-established in the Court's case-law."

Para 29: "Once it has been established that treatment reached the threshold of severity triggering the protection of Article 3 of the Convention, the Court has to examine whether the State authorities have discharged their positive obligations [Article 3] to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment, including where such treatment is administered by private individuals. These positive obligations, which are interlinked, include in particular, the obligation to establish and apply in practice an adequate legal framework affording protection against ill-treatment by private individuals, and the obligation to conduct an effective investigation when an arguable claim of ill-treatment has been raised."

Para 30: "On the issue whether the respondent State's legal system provided adequate protection from domestic violence, the Court reiterates that the obligation on the State in cases involving acts of domestic

violence would usually require the domestic authorities to adopt positive measures in the sphere of criminal-law protection. Such measures would include, in particular, the criminalization of acts of violence within the family by providing effective, proportionate and dissuasive sanctions. Bringing the perpetrators of violent acts to justice serves to ensure that such acts do not remain ignored by the competent authorities and to provide effective protection against them.â€•

Para 35: â€œTurning next to the Stateâ€™s obligation to conduct an effective investigation into all acts of domestic violence capable of leading to the punishment of the perpetrator, the Court reiterates that the requirements of promptness and thoroughness enshrined in Article 3 apply to the proceedings as a whole, including the trial stage. [â€] This obligation will not be satisfied if the protection afforded by domestic law exists only in theory; above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays."

Copyright © 2015 www.GlobalHealthRights.org