



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

THIRD SECTION

CASE OF BARSOVA v. RUSSIA

(Application no. 20289/10)

JUDGMENT

STRASBOURG

22 October 2019

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

In the case of Barsova v. Russia,

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

Alena Poláčková, *President*,

Dmitry Dedov,

Gilberto Felici, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 1 October 2019,

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

PROCEDURE

1. The case originated in an application (no. 20289/10) 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 Diana Mikhaylovna Barsova (formerly Udalova) (“the applicant”), on 31 March 2010.

2. The applicant was represented before the Court by Mr Ilya Sivoldayev, a lawyer practising in Voronezh. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 3 September 2015 the Government were given notice of the complaints concerning an excessively long prosecution of the assault on the applicant and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. Having considered the Government’s objection, the Court rejects it.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1968 and lives in Voronezh.

6. In 1997 Ms Barsova married U. The following year their daughter was born with a congenital disability. U. worked as a senior lecturer at the Voronezh police academy and provided for the family; Ms Barsova worked part-time to be able to care for their daughter.

7. U. frequently abused Ms Barsova when he was under the influence of alcohol. He would punch her, throw her on the floor, pin her arms in a lock behind the back, and demand excuses for imaginary transgressions. Ms Barsova did not complain to the police, fearing that a complaint might lead to his dismissal and loss of income for the family.

8. On 17 August 2006 U. assaulted her in the attic of their house. He hit her twice in the neck with his clenched fist. She managed to escape into the courtyard where neighbours could see her. She warned him that she would call the police if he did not stop. U. replied “You asked for the police, the police is here”, in reference to his rank of police lieutenant-colonel. Fearing a recurrence of violence, Ms Barsova dialled the police helpline. As she was about to give her address, U. attacked her again. She fell on her stomach, he pinned her down with his knees on her back, folded her arms in a lock and pulled her up by the wrists, causing severe pain to her shoulders. She begged for release and he let go of her.

9. Ms Barsova called the police from a street phone booth. Two hours later a police patrol arrived and took a statement from her. Police officers brought U. to the Tsentralnyi district police station but released him once he told them that his police rank was superior to theirs.

10. On the following day, Friday, and on Monday after that, Ms Barsova visited a general practitioner, a neurologist and a trauma surgeon. She was diagnosed with a concussion and multiple injuries to her neck, body and extremities, and placed on ten-day sick leave. The hospital also reported her injuries to the police.

11. On 29 August 2006 the chief of the Tsentralnyy district police station referred the matter of assault to the prosecutor’s office of the same district. He pointed out that U. was a senior police officer. On 4 September 2006 an investigator from the prosecutor’s office interviewed Ms Barsova and her husband and joined medical reports to the file. On the same day he issued a decision declining institution of criminal proceedings against U., finding that he had not committed the offence of abuse of power (Articles 285 and 286 of the Criminal Code). He advised Ms Barsova to mount a private-prosecution case before a court.

12. On 28 September 2006 Ms Barsova filed a private-prosecution complaint with a justice of the peace in the Tsentralnyy district in Voronezh. She accused U. of having committed “battery”, an offence under Article 116 of the Criminal Code, and submitted medical evidence.

13. The first hearing was fixed for 17 October 2006 but it was adjourned because the judge was not available. The case was twice reassigned to different judges. A new hearing fixed for 15 March 2007 did not take place owing to the absence of U. who had volunteered for a police peace-keeping mission abroad.

14. Upon U.’s return, three hearings were held between April and June 2007, but the proceedings were then adjourned to perform a one-day medical assessment. After the proceedings were resumed in September 2007, the following two hearings in October and November 2007 did not take place because U. had gone on another stint abroad.

15. Between January and April 2008 three hearings were held and two adjourned because the judge was on sick leave. Concerned about the

impending expiry of the two-year prescription period, on 24 June 2008 Ms Barsova complained of an excessive length of proceedings and unjustified delays to the President of the Regional Court. Six weeks later she received the reply that the trial judge had not committed any breaches of procedure but that the case would be reassigned to another judge.

16. The newly assigned judge was required by law to examine all evidence over again. The judge fixed a hearing for 23 July 2008 but it was adjourned because U. had not been properly notified. At the following hearing on 7 August 2008 all parties were present, except U., and the judge issued the decision to suspend the proceedings. Ms Barsova appealed against the decision, and it was set aside by the Tsentralnyy District Court on 11 November 2008.

17. U. did not show up at four hearings in December 2008, January and February 2009. On 10 April 2009 he was heard in court. On 21 May 2009 he applied for a discontinuation of the proceedings on the grounds that the statute of limitations had expired. On the same day the trial judge granted his application and discontinued the proceedings.

18. On 21 August 2009 the Tsentralnyy District Court dismissed Ms Barsova's appeal against the discontinuation decision. On 1 October 2009 the Voronezh Regional Court refused her leave to appeal to the cassation instance.

19. Following the enactment of the Compensation Act on 4 May 2010 (see *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, §§ 15-20, 23 September 2010), Ms Barsova applied for compensation for a violation of her right to a trial within a reasonable time. By judgment of 10 May 2011, as upheld on appeal on 15 September 2011, the Voronezh Regional Court dismissed her claim. It held that, by examining witnesses and obtaining written evidence, such as the additional medical report, the trial court had "created conditions for the exercise by the private prosecutor of her rights and obligations in the criminal trial". The resulting delays were not imputable to the parties. It further considered that multiple transfers of the case between judges had not affected the length of the proceedings because each of them had been completed within "a reasonable time". The length of the case was accounted for by its "complexity" and "objective difficulties" relating to the defendant's absence from Russia.

II. RELEVANT DOMESTIC LAW

20. Chapter 16 of the Russian Criminal Code covers offences against the person, including murder and manslaughter (Articles 105 to 109) and three levels of assault occasioning actual bodily harm (Articles 111 to 115). Other forms of assault which may cause physical pain without resulting in actual bodily harm are treated as "battery" (*нободу*) under Article 116 "Battery" is punishable by a fine, community work, or up to three months' detention.

21. Causing grievous bodily harm is subject to public prosecution; the offences of “minor bodily harm” and “battery” are liable to private prosecution, meaning that the institution and pursuance of criminal proceedings is left to the victim, who has to collect evidence, identify the perpetrator, secure witness testimony and bring charges before a court (Article 20 § 2 of the Code of Criminal Procedure).

22. A suspect, an accused or defendant in criminal proceedings may be subject to a preventive measure consisting of a written undertaking by that person not to leave their place of residence without permission from an investigator or a court and to respond to any summons issued by them and to refrain from any other conduct obstructing the proceedings (Article 102 of the Code of Criminal Procedure).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3, 6 AND 13 OF THE CONVENTION

23. The applicant complained that the Russian authorities had failed to grant her effective protection against the acts of domestic violence. They had allowed the statute of limitations to expire without the perpetrator having ever been brought to justice. She relied on Articles 3, 6 and 13 of the Convention, which read, in the relevant parts, as follows:

Article 3

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

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

A. Submissions by the parties

24. The Government listed the provisions of the Criminal Code dealing with offences against physical integrity and the provisions of the Code of Criminal Procedure governing the procedure for examining private-prosecution claims. They considered that those provisions were sufficient to discharge their obligations flowing from Article 3 of the Convention. In the instant case, the delays in the trial had been chiefly accounted for by the defendant’s absence from Russia. U. had served on a

peace-keeping mission abroad from 25 February to 7 April 2007 and then from 14 October 2007 to 18 October 2008. The Government considered that the applicant had been unable to bring her husband to account for the reasons which were not attributable to Russian courts or authorities. Moreover, she could have brought a civil claim for compensation against him but she had not availed herself of that remedy.

25. The applicant submitted that the criminal proceedings against U. had taken such a long time – two days short of three years – that the prosecution had become time-barred. As a consequence, the judge had not ruled on the merits of the charges and U. had dodged criminal responsibility for ill-treating her. Delays in the proceedings were caused in particular by: multiple transfers of the case between judges; the failure to apply a preventive measure to U. such as an undertaking to stay in town, and to sanction him when he had not appeared at hearings; unreasonably long intervals between hearings lasting up to two months, and belated commissioning of a medical assessment. An excessive number of hearings mentally exhausted the applicant, distracted her from work and drained her finances. She disbursed up to a hundred euros for her legal representation at each hearing because victims of domestic violence had no access to free legal aid in Russia. U. had volunteered for a mission abroad as a way to delay the proceedings. The court could have required the Ministry of Interior to recall him from the mission, to prevent him from leaving by requiring him to appear before court, or to suspend the limitation period for the duration of his absence. It had not however taken any such initiative and rejected all of the applicant's requests to that effect. The absence of a judgment on the merits thwarted the applicant's attempts to vindicate her right to live free from violence and ill-treatment and to obtain compensation in respect of non-pecuniary damage and legal costs.

B. Admissibility

26. The Court considers that the application 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.

C. Merits

27. The Court reiterates that the issue of domestic violence, which can take various forms – ranging from physical assault to sexual, economic, emotional or verbal abuse – is a general problem which affects, to a varying degree, all member States and different family members, although women make up an overwhelming majority of victims. The particular vulnerability of the victims of domestic violence and the need for active State

involvement in their protection have been emphasised in a number of international instruments and well-established in the Court's case-law (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, §§ 64-65, 12 June 2008; *Opuz v. Turkey*, no. 33401/02, §§ 72-86 and 132, ECHR 2009, and *Hajduová v. Slovakia*, no. 2660/03, § 46, 30 November 2010).

28. The Court notes that the applicant suffered physical violence at the hands of her husband U. which was recorded in medical documents. It finds that her injuries which had incapacitated her for a period of ten days reached the required level of severity under Article 3 of the Convention. The Court also acknowledges that, in addition to physical injuries, psychological impact forms an important aspect of domestic violence (see *Valiulienė v. Lithuania*, no. 33234/07, § 69, 26 March 2013). The feelings of fear, anxiety and powerlessness that the applicant must have experienced in connection with her husband's controlling and coercive behaviour were sufficiently serious as to amount to inhuman treatment within the meaning of Article 3 of the Convention (see *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013).

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 under Article 1 of the Convention, read in conjunction with 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 (see *Bevacqua and S.*, cited above, § 65; *Opuz*, cited above, §§ 144-45 and 162-65; *Eremia*, cited above, §§ 49-52 and 56; *Valiulienė*, cited above, §§ 74-75; *Rumor v. Italy*, no. 72964/10, § 63, 27 May 2014; *Talpis v. Italy*, no. 41237/14, §§ 100-06, 2 March 2017; and *Bălșan v. Romania*, no. 49645/09, § 57, 23 May 2017).

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 criminalisation 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 (see *A. v. Croatia*, no. 55164/08, § 67, 14 October

2010; *Valiulienė*, cited above, § 71; *Eremia*, cited above, § 57; and *Ž.B. v. Croatia*, no. 47666/13, § 50, 11 July 2017).

31. Russia has not enacted specific legislation to address violence occurring within the family context, whether at the material time or at present. Acts of domestic violence do not constitute a separate offence under Russian law or feature as an aggravating form of any other offence. The Russian law does not contain any penalty-enhancing provisions relating to acts of domestic violence or make a distinction between domestic violence and violence inflicted by strangers. Not only do the existing provisions of the Criminal Code leave many forms of domestic violence, such as psychological or economic abuse or controlling or coercive behaviour, outside the scope of criminal-law protection, but also they require injuries to be of a certain degree of severity to be characterised as a publicly prosecutable offence.

32. The injuries the applicant had sustained were not deemed sufficiently serious for launching public prosecution. Her only option was to seek legal redress in private prosecution of her husband on the charge of “battery”, an offence under Article 116 of the Criminal Code which did not require proof of actual bodily harm or lasting damage to health. The fact that it was a private-prosecution offence meant that the institution and pursuance of criminal proceedings was left to her initiative and that she had to collect evidence capable to establish the abuser’s guilt to the criminal standard of proof. The Court has acknowledged that the effective protection of the Convention right to physical integrity does not require public prosecution in all cases of attacks by private individuals (see *Sandra Janković v. Croatia*, no. 38478/05, § 50, 5 March 2009). Within the context of domestic violence, however, it considered that the possibility to bring private prosecution proceedings is not sufficient, as such proceedings require time and resources (see *Bevacqua and S.*, cited above, § 83).

33. The applicant did not benefit from assistance by the State authorities in the private-prosecution proceedings against her abusive husband. No police officer had helped her to collect the evidence. No prosecutor had made himself or herself available to draft legal documents on her behalf or to defend her rights in a court. Victims of domestic violence are not eligible for free legal aid in the Russian legal system, so she bore the costs of her own representation. She also had to take time off from work and from caring for the child to be present at the hearings. The pursuance of proceedings against the abuser was entirely dependent on her stamina and determination to bring him to account.

34. The Court finds that leaving the victim of domestic violence, such as the applicant in the instant case, to fend for herself in private-prosecution proceedings has put an excessive burden on her. The Russian legal framework – which does not define domestic violence whether as a separate offence or an aggravating element of other offences and establishes a

minimum threshold of gravity of injuries required for launching public prosecution – falls short of the requirements inherent in the State’s positive obligation to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for victims (see *Opuz*, cited above, § 145).

35. Turning next to the State’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 (see *M.A. v. Slovenia*, no. 3400/07, § 48, 15 January 2015, and *Kosteckas v. Lithuania*, no. 960/13, § 41, 13 June 2017). Special diligence is required in dealing with domestic-violence cases, and the specific nature of the domestic violence must be taken into account in the course of the proceedings. 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 (see *Opuz*, cited above, §§ 145-51 and 168; *Talpis*, cited above, §§ 106 and 129, and *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 46, 28 January 2014). Violations have been found in cases where the trial had continued unduly or had ended by prescription allowing the accused perpetrators to escape accountability (see *Opuz*, cited above, § 151, and *P.M. v. Bulgaria*, no. 49669/07, §§ 64-66, 24 January 2012). The effectiveness principle means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public’s confidence in, and support for, the rule of law and for preventing any appearance of the authorities’ tolerance of or collusion in acts of violence (see *Okkali v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)).

36. The proceedings against the applicant’s abuser were pending before the trial court for more than two years until his prosecution had become prescribed. A short statute of limitations was accounted for by the fact that Russian law classified the offence of “battery” as a crime of low seriousness, irrespective of whether the underlying facts disclosed a simple altercation with a stranger or a serious act of domestic violence. Nevertheless, the Court considers that, in the circumstances of the present case, the two-year period was not so short as to justify the Russian courts’ failure to bring proceedings to the judgment stage. The case was not complex, involving, as it did, one violent incident. The identity of the perpetrator was known and undisputed. The medical evidence supporting the applicant’s claims was available from the first day of the proceedings; an additional medical assessment was completed in one day.

37. The Court finds that many delays in the proceedings were directly attributable to the way in which the Russian courts handled the case.

Multiple replacements of the trial judge delayed the opening of the trial by at least several months (compare *Moiseyev v. Russia*, no. 62936/00, § 191, 9 October 2008). The pace of the ensuing proceedings cannot be described as anything but exceptionally slow. Hearings were never scheduled on consecutive days or at least weeks but rather at widely spaced month-long intervals. On one occasion in 2007, the proceedings were adjourned by three months to perform a one-day medical assessment. In 2008, as the statute of limitation was about to expire, the applicant's complaint to the president of a higher court did not lead to an acknowledgment of delays or to any measures capable of speeding up the proceedings but rather to the decision to replace the trial judge once again with the effect that the trial had to be started from the beginning (compare *Hüseyin Şimşek v. Turkey*, no. 68881/01, § 69, 20 May 2008). Later that year, it took the District Court more than three months to set aside the trial judge's unjustified decision to suspend the proceedings.

38. As regards the Government's contention that they were not responsible for the delays caused by the defendant, the Court reiterates that the domestic authorities have an obligation to constrain the abusive and dilatory conduct of a party to the proceedings (see *Nesterova v. Ukraine*, no. 10792/04, § 43, 28 May 2009). A large number of hearings did not take place because of U.'s absence from Russia. The Government did not offer any explanation why U. was afforded the freedom to come and go as he pleased for the entire duration of the trial. His absence from Russia was not continuous; he did attend a few hearings between April and October 2007 and also after October 2008. The trial judge did not use those occasions to ensure his attendance by requiring him to give an undertaking to appear or by applying a standard preventive measure in criminal proceedings, such as an obligation not to leave town without permission (see paragraph 22 above). Nor did the trial judge liaise with the human resources department of the Ministry of the Interior to have him recalled from the mission. As it happened, the court did not react in any way to the defendant's dilatory conduct (see *Rypakova v. Russia*, no. 16004/04, § 34, 8 January 2009, and *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005). The unrestricted liberty of movement put the defendant – the individual having a vested interest in seeing the statute of limitations expire before the trial had reached the judgment stage – in a position to control the pace of the proceedings. The Court reiterates that the judicial authorities bear ultimate responsibility for management of their proceedings so that they are expeditious and effective (see *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, § 56, 17 December 2002, and *Nikonenko v. Ukraine*, no. 14089/03, § 25, 29 May 2008). In the present case, by not availing themselves of the measures available under national law to secure the defendant's presence in the courtroom, the authorities bear responsibility for their failure to ensure

that the case be heard within a reasonable time and that the perpetrator of domestic violence be brought to justice.

39. The Court reiterates that, while the domestic courts need to uphold the due process rights of the defendant, they should also afford adequate protection to the victims, particularly where they happen to be vulnerable (see *Ristić v. Serbia*, no. 32181/08, § 50, 18 January 2011). In the instant case, however, not only was concern to provide adequate protection to the victim of ill-treatment sorely lacking throughout the proceedings, but the impunity which ensued was enough to shed doubt on the ability of the judicial machinery set in motion in this case to produce a sufficiently deterrent effect to protect women from domestic abuse (see, in a similar context of vulnerable victims of ill-treatment, *Okkali*, cited above, § 70, and *Ateşoğlu v. Turkey*, no. 53645/10, § 27, 20 January 2015).

40. The Court finally notes that the discontinuation of the criminal proceedings against U. on non-exonerating grounds did not bar the applicant from lodging a civil action against him. It cannot be said that she was denied access to a court for a determination of her civil rights (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 200-01, 25 June 2019). Nevertheless, such a civil action could have led only to the payment of compensation but not to the punishment of the perpetrator. Accordingly, it would not have been conducive to the State discharging its procedural obligation under Article 3 in respect of the prosecution of acts of ill-treatment (see *Okkali*, cited above, § 78; *Beganović v. Croatia*, no. 46423/06, § 56, 25 June 2009, and *Abdu v. Bulgaria*, no. 26827/08, § 51, 11 March 2014).

41. In view of the deficiencies of the Russian legal framework for dealing with acts of domestic violence and the manner in which Russian courts handled the applicant's case, failing to consider the applicant's grievances within a reasonable time and to sanction the abuser's dilatory conduct during the trial and thereby allowing her suffering to go unpunished, the Court finds that the State has failed to discharge its obligations under Article 3 of the Convention. There has therefore been a violation of this provision.

42. The Court further considers that it may dispense with ruling on the issue whether or not Article 6 was applicable in the circumstances of the case because it is not necessary, in the light of the elements leading to the finding of a violation of Article 3, to examine separately the alleged violations of Articles 6 and 13 of the Convention (see *Opuz*, cited above, §§ 203-05).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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.”

44. The applicant claimed 7,500 euros (EUR) in respect of non-pecuniary damage and also EUR 696 for the costs and expenses incurred before the domestic courts and EUR 1,000 for those incurred before the Court.

45. The Government submitted that Article 41 should be applied in accordance with the established case-law.

46. The Court awards the applicant the amounts claimed in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable to the applicant.

47. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there is no need to examine the complaints under Articles 6 and 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,696 (one thousand six hundred and ninety-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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.

Done in English, and notified in writing on 22 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Alena Poláčková
President