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

FIRST SECTION

CASE OF LARYAGIN and ARISTOV v. RUSSIA

(Applications nos. 38697/02 and 14711/03)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Laryagin and Aristov 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 Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 38697/02 and 14711/03) 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 two Russian nationals, Mr Sergey Vasilyevich Laryagin ("the first applicant") and Mr Vyacheslav Viktorovich Aristov ("the second applicant"), on 10 September 2002 and 25 March 2003 respectively.

2. The first applicant, who had been granted legal aid, was represented by the International Protection Centre, a Moscow-based human rights organisation; the second applicant was self-represented. The Russian Government ("the Government") were initially represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. Each applicant alleged, in particular, that the trial court in their case had not been a tribunal established by law because it had been composed in breach of domestic regulations.

4. On 3 June 2005 and 24 March 2006, respectively, the President of the First Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

5. The Government objected to the joint examination of the admissibility and merits of the applications. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1969 and 1967 respectively. They are currently serving prison sentences.

A. The applicants’ detention and pre-trial investigation

7. In October 1998 the applicants were arrested and remanded in custody on suspicion of several counts of murder, robbery and other crimes. Both applicants alleged that the policemen had ill-treated them and forced to confess.

8. The applicants partly confessed to several criminal offences. Both of them had lawyers at the preliminary stage of investigation. The applicants did not complain about the alleged ill-treatment during the pre-trial investigation.

9. Between January 1998 and March 1999 the investigation carried out a significant number of forensic expert examinations. On 17 April 1999 the investigator familiarised the first applicant with decisions to appoint all these examinations and with their conclusions. The first applicant refused to get acquainted with the examinations and stated that he would read them together with the whole case file at the end of the investigation.

B. Trial

10. On an unspecified date the investigation was completed and the case was referred to the Chelyabinsk Regional Court for trial. The trial court was composed of Mr S., the presiding judge, and Ms G. and Ms U., lay judges. The first applicant unsuccessfully asked for a trial by jury.

11. The first applicant admitted, partly or fully, his guilt on five counts of aggravated murder and robbery, one of attempted murder, unlawful possession of weapons, forgery of documents and several other crimes. He pleaded not guilty on two other counts. Apart from the first applicant’s confession, the trial court relied on statements of co-accused made both during the pre-trial investigation and the trial, witnesses, documentary evidence, numerous records of investigative actions, including a record of inspection of the first applicant’s flat, during which the police had found a number plate for a car, allegedly supposed to be used for robbery, and expert examinations. The first applicant, however, challenged the results of the forensic medical examination of the body of Mr S., one of the victims, claiming that the examined body had not been found in the place where he had committed the murder of Mr S.; therefore it belonged to another person.

12. Out of seven episodes of murder, robbery and unlawful possession of weapons, incriminated to the second applicant, he partly admitted his guilt as regards robbery and the murder of Mr S. He pleaded not guilty with respect to the remainder of the episodes. However the trial court found him guilty as charged. The court relied on depositions of the co-defendants, including the first applicant, the second applicant's confession made during the pre-trial investigation, documentary evidence, video recordings of investigative actions with the applicant and his co-defendants, and results of forensic examinations.

13. The second applicant requested that the trial court hear Mr I., who could allegedly have confirmed his alibi. The court noted that the authorities had tried to establish Mr I.'s whereabouts and had checked the address indicated by the second applicant. It was established that such a person had never lived in the Chelyabinsk Region, contrary to what had been alleged by the second applicant.

14. The first applicant and co-defendants complained to the trial court that the policemen had beaten them during the investigation. The court thoroughly examined these complaints and dismissed them as unsubstantiated. It appears that the second applicant did not make a similar complaint.

15. On 8 December 2000 the trial court heard the final pleas of the second applicant and co-defendants. The first applicant refused to speak because his lawyer was not present.

16. On 27 December 2000 the first applicant did not feel well and refused to pronounce his final plea. On the same day the Chelyabinsk Regional Court delivered judgment. It found the applicants guilty of having committed and abetted several aggravated murders and robberies, unlawful possession and theft of weapons, organising a criminal gang, and forgery of documents. The trial court sentenced the first applicant to life imprisonment and the second applicant to twenty-five years' imprisonment; and issued confiscation orders in respect of the applicants' property.

C. Appeal proceedings

17. The applicants appealed against the judgment of 27 December 2000. In their voluminous statements of appeal they challenged, *inter alia,* the composition of the bench that had given the judgment. Whilst 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 Ms G. and Ms U. had been engaged earlier in the course of at least one other trial in 2000.

18. On 18 October 2002 the Supreme Court of the Russian Federation upheld the judgment on appeal. The appeal court noted that there were no grounds for quashing the judgment of 27 December 2000 as the trial court

had examined the applicants' case thoroughly and without any bias. With respect to the composition of the bench the court noted that the applicant's complaint was unsubstantiated as "no lists of lay judges had been formed at the moment of examination of the case".

D. Supervisory review proceedings

19. On 5 August 2005 a deputy Prosecutor General submitted a request for supervisory review (*надзорное представление*) to the Presidium of the Supreme Court of the Russian Federation. He requested that the judgments of 27 December 2000 and 18 October 2002 be quashed, having referred to the Court's conclusion in the case of *Posokhov v. Russia* (no. 63486/00, ECHR 2003-IV). The deputy Prosecutor General emphasised that Ms G. and Ms U. had sat in court in several other cases in 2000, in breach of section 9 of the Lay Judges Act. Thus, the applicants' case had been examined by a bench with an unlawful composition, which led to the quashing of the judgment pursuant to paragraph 2 of Article 381 of the Code of Criminal Procedure of the Russian Federation.

20. On 17 January 2007 the Presidium of the Supreme Court of the Russian Federation rejected the Prosecutor's request for supervisory review. The Presidium acknowledged that Ms G. and Ms U. had sat in court in other cases in 2000; however it found that lay judges sitting in court more than once a year was not in itself sufficient to challenge the legitimacy of the composition of the bench, as the above lay judges had been authorised by law to serve in an unlimited number of cases. According to the Supreme Court, a limitation set out in Section 9 of the Lay Judges Act served to protect the rights of those lay judges who wished to refuse to serve repeatedly within one year; however this limitation could not be considered a ground to declare the composition of the bench unlawful.

21. The Presidium also noted that one of the co-defendants had already been released and thus a new examination of the case could significantly impair his situation. In such circumstances quashing the final judgment would constitute a breach of the principle of legal certainty inherent in the Convention.

II. RELEVANT DOMESTIC LAW

A. Composition of courts in criminal proceedings

22. According to Article 15 of the RSFSR Code of Criminal Procedure, in force at the material time, hearings in first instance courts dealing with criminal cases should, subject to certain exceptions, be conducted by a

single judge or by a judge and two lay judges. In their judicial capacity, lay judges enjoy equal rights with the judge.

B. Lay judges

23. 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.

24. 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.

C. Expert examinations

25. According to Sections 78 and 80 of the RSFSR Code of Criminal Procedure of 1960, as in force at the relevant time, in cases requiring special knowledge of science, technology, art or particular skill, an investigative authority or a court may appoint an expert to carry out an expert examination. The conclusions of an expert are not binding on a court but any disagreement with them must be motivated. By Sections 81 and 290 of the Code incomplete, unclear, unjustified or dubious expert conclusions a court may order additional or repeated expert examinations.

26. Section 185 of the Code states that an accused and his counsel can challenge an expert, seek an appointment of a particular person as an expert, adduce further questions, be present during the expert examination in person and make any comments and be informed of expert conclusions. In case the respective request was granted, an investigation alters its decision to carry out the examination accordingly. By Section 193 of the Code, expert conclusions should be presented to the applicant who has the right to respond or object to these conclusions as well as the right to request the authority to put additional questions to the expert or carry out an additional or a repeated expert examination.

THE LAW

I. JOINDER OF THE APPLICATIONS

27. In view of the connection between the applications as regards the facts and the substantive questions that they both raise, the Court considers

it appropriate to join them in accordance with Rule 42 § 1 of the Rules of Court.

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

28. The applicants 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... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law."

A. Admissibility

29. The Government contended that the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. They maintained that they failed to lodge an application for a supervisory review of the judgment as the Deputy Prosecutor General had done in their interests.

30. The Court reiterates that an application for supervisory review is not a remedy to be exhausted under Article 35 § 1 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004). Therefore, the Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. Submissions by the parties

32. The applicants submitted that the lay judges Ms G. and Ms U. had been engaged in other trials in 2000 whereas according to Section 9 of the Lay Judges Act lay judges may not be called more than once a year. They considered therefore that Ms G. and Ms U. lacked legal basis to sit on the panel.

33. The Government confirmed that Ms G. and Ms U. had served in at least two criminal proceedings in 2000 and referred to the Deputy General Prosecutor's request for supervisory review in the applicants' case. However, they maintained that repeated participation of the above lay judges in a number of proceedings within one year, in breach of section 9 of the Lay Judges Act, had occurred due to a difficult situation with lay judges

before a new list had been created, and in any event had not involved an essential violation of the applicants' rights.

2. The Court's assessment

34. 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 judges does not make it any less important as, pursuant to Article 15 of the Code of Criminal Procedure then in force, in their judicial capacity lay judges enjoyed the same rights as professional judges (see paragraph 22 above).

35. The Court reiterates 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 Judges 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".

36. Turning to the circumstances of the present case, the Court notes that they are similar. Both the Supreme Court and the respondent Government confirmed that lay judges Ms G. and Ms U. had been called for service more than once in the same year. This amounted to a breach of the rules for the selection of lay judges established in section 9 of the Lay Judges Act (see paragraph 24 above). Furthermore, the Government failed to produce any document setting out the legal grounds for participation of these lay judges in the administration of justice.

37. The above considerations do not permit the Court to conclude that the Chelyabinsk Regional Court that issued the judgment of 27 December 2000 could be regarded as a "tribunal established by law". The Supreme Court, in its review of the matter on appeal, did nothing to eliminate the above-mentioned defects.

38. There has therefore been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

39. The first applicant complained that at no stage of the proceedings had he been able to question experts and that the domestic courts had refused to obtain their attendance and examination. He relied on Article 6 § 3 (d) of the Convention, which, in so far as relevant, reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

40. The Government noted that on 17 April 1999 the first applicant had been given the decisions to appoint all the expert examinations in his case and their conclusions; however he had refused to study them. After the pre-trial investigation was completed and the first applicant had studied the expert conclusions, he was fully able to object to them, to lodge requests for additional examinations and for experts to be summoned to the court, which he never did. Neither had he requested the trial court to secure the experts' presence at the hearing or to appoint additional examinations. They concluded, therefore, that the first applicant's rights guaranteed by Article 6 § 3 (d) of the Convention had not been violated.

41. The first applicant disagreed. He maintained that requests to obtain experts' attendance had been repeatedly lodged by his co-defendants during the trial. Each time the court clarified the position of all the trial participants with respect to these requests he expressed his support. Therefore, in his point of view, it was not necessary to lodge the same requests again, and he was deprived of his right to obtain the attendance and examination of experts.

42. The Court reiterates that, as a general rule, it is for the national courts to assess the evidence before them, as well as the relevance of the evidence which defendants seek to adduce. Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses. However, where a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6 (see *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001-II). Within the meaning of Article 6, where an expert has been appointed by a court, the parties must in all instances be able to attend the interviews held by him or to be shown the documents he has taken into account (see *Mantovanelli v. France*, judgment of 18 March 1997, Reports of Judgments and Decisions 1997-II, § 33).

43. In the present case the Court notes that a large number of forensic expert examinations of various nature were performed and considered by

the court in the applicants' case. Although the first applicant was only informed about the examinations after they had been completed, he was fully able to object to these conclusions both after he studied them at the end of the pre-trial investigation and during the trial, as well as to request the investigative authorities and trial court to appoint additional expert examinations. The first applicant had not used these opportunities.

44. The Court further notes that the first applicant failed to explain which expert examinations he wished to challenge or specify, and why it would have been important to examine certain experts in the circumstances of the case. It follows from the material submitted that during the trial the first applicant only challenged the results of the forensic medical examination of the body of victim S., alleging that it belonged to another person (see paragraph 11 above), but he had not requested additional examination or proposed certain questions to experts to clarify the issue.

45. Further noting that the first applicant's conviction was based on a substantial amount of evidence – submissions of the applicants and co-defendants, witnesses' depositions, documentary evidence, records of investigative actions etc – the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. The applicants further complained under Article 3 of the Convention that they had been ill-treated during the preliminary stage of the investigation. They relied on Article 5, complaining that their detention was unlawful. They relied on Article 6, stressing that the criminal proceedings in their case had been excessively long. They also raised a number of complaints under Article 6 of unfairness of the proceedings. The first applicant complained that he had not been tried by jury and that in several other regions of Russia persons accused of the same crimes were tried by jury. Lastly, he complained under Article 34 of the Convention that he had had difficulties in sending documents to the Court in support of his application.

47. The Court has examined the remainder of the applicants' complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these parts of the applications should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The first applicant claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage. The second applicant claimed EUR 36 per day (presumably for each day of his detention) without any further specification.

50. The Government found these claims excessive and unsubstantiated.

51. The Court considers that the applicants must have suffered a feeling of injustice as the judgment in their case had been given by a tribunal which had not been "established by law". The non-pecuniary damage they have 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 applicants EUR 500 each as compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

52. The first applicant also claimed EUR 500 to be paid to his mother for the costs and expenses she incurred while representing him before the Court (telephone, postage etc). The second applicant did not claim any costs and expenses.

53. The Government noted that the first applicant had failed to submit payment receipts.

54. The Court notes that the first applicant was paid EUR 715 in legal aid by the Council of Europe. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court observes that the first applicant failed to make any specific claim for reimbursement of his costs and expenses as required under Rule 60 of the Rules of Court and did not produce documents in support of his claim. In these circumstances, the Court makes no award under this head to any of the applicants.

C. Default interest

55. 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. *Joins* the applications;

2. *Declares* the complaint concerning composition of the bench admissible and the remainder of the applications inadmissible;

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

4. *Holds*
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles 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 amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President