

Russia found not to have violated its obligations to ensure a competent, independent and impartial tribunal

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Bakurov v. Russian Federation (1861/2009)

Summary

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The communication was submitted by a Russian national under the Optional Protocol to the Covenant.

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Background

In August 1997, the author of the communication, Mr Sergei Bakurov, was sentenced to death by a Krasnoyarsk Regional Court comprising one professional judge and two lay judges.

Although the Russian Code of Criminal Procedure had been amended in July 1993 to provide for the right of an accused to choose trial by jury in certain circumstances, including offences subject to the death penalty, trial by jury was not available to the author because he lived in the Krasnoyarsk region and the amendment had not taken effect in that region at the time the author was sentenced.

The Supreme Court upheld the author's sentence on appeal in June 1998, but the author was subsequently pardoned by presidential decree in June 1999. Under the terms of that pardon, the author's sentence was commuted to life imprisonment.

In February 1999, the Russian Constitutional Court considered the constitutionality of the 1993 amendments to the Russian code of criminal procedure at the Moscow City Court's request, and on the basis of the complaints by three prisoners. The Constitutional Court held that it was unconstitutional for persons charged with an offence that is subject to capital punishment not to be afforded the option of trial by jury. It further held that the fact the 1993 amendment to the Russian code of criminal procedure did not extend to the whole of Russia was unconstitutional.

After learning in 2006 that a city court in another region had brought the death sentence of another prisoner into compliance with the Constitutional Court's decision, the author filed a similar application in a district court in the Orenburg region. The application failed for lack of jurisdiction because the matter properly fell under the jurisdiction of the Presidium of the Supreme Court. The author then filed a petition with the Supreme Court in August 2007, but the Court rejected that petition.

Having exhausted his domestic remedies, the author submitted a communication under the Optional Protocol to the Covenant alleging that Russia had violated its obligations under articles 6 (right to life) and 7 (right not

to be subject to torture or to cruel, inhuman or degrading treatment or punishment). The author further alleged that Russia had violated its obligations under articles 2, 14 and 26 of the Covenant because he had been denied the option of trial by jury despite the fact this option was available to accused persons in the same circumstances in other regions of Russia. In addition, he argued that Russia had violated its obligation under article 15 of the Covenant not to impose a heavier penalty for an offence than the one applying at the time it was committed because his death sentence was commuted to life imprisonment but the maximum sentences proscribed for his offence were the death penalty or 15 years imprisonment.

Finally, the author argued that his inability to access legal assistance at different stages of the criminal process and the failure by the Russian authorities to explain his constitutionally guaranteed right to silence at the outset, resulted in violations of articles 14(3)(b), (d) and (g) of the Covenant.

In its response, Russia argued that in August 1997, the author was tried in the Krasnoyarsk region by a competent, independent and impartial tribunal established by law. Moreover, under Russia's Constitution, until the entry into force of the federal law providing for a right to trial by jury for offences subject to the death penalty in the Krasnoyarsk region, which had not yet occurred, the previous procedure for death penalty cases remained in place.

Russia also contended that the author's reliance on the Constitutional Court's 1999 decision was unfounded. The Constitutional Court's decision meant that no accused could be sentenced to death from the date of the decision in February 1999 until a federal law was in place throughout Russia providing for the right to trial by jury in certain cases, including offences subject to the death penalty. Here, the author had been sentenced to death in August 1997, prior to this decision.

Russia further noted that the presidential pardon and commutation of his sentence from the death penalty to life imprisonment did not go beyond the sanctions of the Russian Criminal Code, nor worsen his situation.

The Committee's decision

The Committee concluded that the author's claims under articles 7 and 14(3)(b) and (d) of the Covenant were inadmissible for lack of substantiation and for failure to exhaust domestic remedies. The further claim by the author under article 14(3)(g) of the Covenant alleging violation of his right to silence also failed for lack of substantiation because the author did not refute that he had certified by signature that his rights had been explained to him.

On the merits, the Committee rejected the author's claim that Russia's failure to provide him with a right to trial by jury and the failure of the domestic courts to bring his sentence into compliance with the Constitutional Court's February 1999 decision violated article 14(1) of the Covenant. The Committee observed that the author's rights under article 14(1) of the Covenant had not been violated because he was sentenced to death in August 1997 and the Constitutional Court's February 1999 decision did not apply retrospectively. The Court's 1999 decision could not be a basis for review of a sentence handed down in August 1997.

The Committee noted that the Russian Constitution preserved the procedure used in the Krasnoyarsk region to examine cases subject to the death penalty until the amended federal law entered into force for that region. Thus, even though trial by jury for offences subject to the death penalty had not been introduced in the Krasnoyarsk region at the time the author was sentenced, the author's case had been considered by a competent, independent and impartial tribunal established by law. According to the Committee, this was sufficient to satisfy Russia's obligations under article 14(1) of the Covenant.

The Committee briefly addressed the author's article 6 claim noting that the author was pardoned by presidential decree and in the circumstances the Committee did not need separately to examine this claim.

The Committee declined to make a finding on whether the author's rights under article 26 of the Covenant had been violated, but noted its previous jurisprudence that where the domestic law provides a right to trial by jury, it must be granted to others similarly situated on an equal basis. It is not a violation of article 26 for a federal State to allow its respective federal units to maintain different rules for the availability of trial by jury. The author would need to provide evidence that jury trials had been held in other capital punishment cases in the Krasnoyarsk region in order to show a difference in treatment.

The Committee also found that article 15(1) of the Covenant had not been violated, because a presidential pardon is humanitarian or discretionary in nature and does not imply that there has been a miscarriage of justice. In any event, it considered life imprisonment not to be a heavier penalty than the death penalty.

Accordingly, the Committee, under article 5(4) of the Optional Protocol found that no provision of the Covenant had been breached.

Sarah Jones is an international lawyer based in Paris

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