THIRD SECTION

**CASE OF SHAYKHATAROV AND OTHERS v. RUSSIA**

*(Applications nos. 47737/10 and 4 others – see appended list)*

JUDGMENT

STRASBOURG

15 January 2019

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

In the case of Shaykhatarov and Others v. Russia,

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

 Helen Keller, *President,* Pere Pastor Vilanova, María Elósegui, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 11 December 2018,

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

PROCEDURE

1.  The case originated in five applications (nos. 47737/10, 53466/10, 61884/10, 21727/11 and 22996/11) 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 five Russian nationals. Their details appear in Appendix below.

2.  The applicants were represented by Mr A. Laptev (applications nos. 47737/10, 53466/10 and 61884/10), a lawyer practising in Moscow, and Mr E. Mezak (applications nos. 21727/11 and 22996/11. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, former 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 22 November 2016 and 25 October 2017 notice of the complaints concerning the composition of the tribunal was given to the Government and the remainder of application no. 53466/10 was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

A.  Appointment of Ms G. to office

4.  On 4 September 2000 the President of Russia appointed Ms G. to the office of judge of the Syktyvkar Town Court for a period of three years.

5.  On 21 May 2004 the State Council of the Komi Republic appointed Ms G. to the office of justice of the peace of Lesozavodskiy Judicial District of Syktyvkar for three years. On 31 May 2007 the Council extended her appointment for another seven years.

6.  On 16 January 2008 the Judicial Qualifications Board granted Ms G.’s application for resignation and terminated her judicial status effective as of 1 April 2008.

7.  On 19 November 2009 the acting President of the Supreme Court of the Komi Republic appointed Ms G. as acting justice of the peace for Kutuzovskiy district in Syktyvkar as of 23 November 2009 pending the appointment of a permanent justice. According to the Government, Ms G. served as justice of the peace until 8 February 2010.

8.  On 8 April 2010 the acting President of the Supreme Court of the Komi Republic appointed Ms G. to the office of justice of the peace in Vylgort as of 16 April 2010 for a period of one year.

B.  Shaykhatarov v. Russia, application no. 47737/10

9.  On 5, 9 and 29 May and 4 June 2010 the applicant was arrested by the police for (1) driving a vehicle without a registration plate, (2) driving without a driving licence, (3) refusal to take a breath test and (4) driving under the influence.

10.  On 4 and 22 June and 6 July 2010 Justice of the Peace G. found the applicant guilty on seven counts of road traffic offences and sentenced him to administrative detention and a fine.

11.  On an unspecified date the applicant appealed against the five judgments of 4 June 2010, arguing, *inter alia*, that the justice of the peace who had considered his cases had been appointed to the office in contravention of the applicable laws.

12.  On 24 and 30 June 2010 the Syktyvdinskiy District Court of the Komi Republic dismissed the applicant’s appeal. The District Court discerned no irregularities as regards the appointment of Ms G. to the office of justice of the peace.

13.  The applicant did not appeal against the judgments of 22 June and 6 July 2010 in view of the futility of his previous appeals.

C.  Lodygina v. Russia, application no. 53466/10

14.  On 24 December 2009 Justice of the Peace G. dismissed the applicant’s claims against the social-security authorities for interest payments and non-pecuniary damage.

15.  The applicant appealed, arguing, *inter alia*, that the justice of the peace who had considered her case had been appointed to the office in contravention of the applicable laws.

16.  On 23 April 2010 the Syktyvkar Town Court upheld the judgment of 24 December 2009 on appeal. The Town Court discerned no irregularities as regards the appointment of Ms G. to the office of justice of the peace.

D.  Valiyev v. Russia, application no. 61884/10

17.  On 9 May and 13 July 2010 the applicant was arrested by the police for refusal to take a breath test and driving under the influence respectively.

18.  On 13 July 2010 Justice of the Peace G. found the applicant guilty as charged and sentenced him to administrative detention.

19.   On an unspecified date the applicant appealed against the two judgments, arguing, *inter alia*, that the justice of the peace who had considered his cases had been appointed to the office in contravention of the applicable laws.

20.  On 6 August 2010 the Syktyvdinskiy District Court upheld the judgments on appeal. The District Court discerned no irregularities as regards the appointment of Ms G. to the office of justice of the peace.

E.  Appointment of Ms Ch. to office

21.  On 26 May 1990 Ms Ch. was elected to the office of judge of the Syktyvkar Town Court.

22.  On 22 December 1999 the Judicial Qualifications Board granted Ms Ch.’s application for resignation and terminated her judicial status.

23.  On 26 August 2010 the President of the Supreme Court of the Komi Republic appointed Ms Ch. as acting justice of the peace in Vylgort for a period of up to one year.

24.  On 11 January 2011 the President of the Supreme Court relieved Ms Ch. of her duties of office of acting justice of the peace.

F.  Kulakov v. Russia, application no. 21727/11

25.  On 21 September 2010 the applicant was arrested by the police for leaving the scene of a road traffic accident and refusal to take a breath test.

26.  On 15 October 2010 justice of the peace Ch. delivered two judgments, finding the applicant in violation of road traffic rules and sentenced him to administrative detention. The applicant appealed, arguing, *inter alia*, that Ms Ch. had been appointed to the office in contravention of the applicable laws.

27.  On 17 November the Syktyvdinskiy District Court of the Komi Republic upheld both judgments of 15 October 2010 on appeal. The court discerned no irregularity as regards Ms Ch.’s appointment to the office of justice of the peace.

G.  Agiyeva v. Russia, application no. 22996/11

28.  On 7 October 2010 Justice of the Peace Ch. allowed an action lodged by Yu. against the applicant and reduced the amount of monthly maintenance Yu. had to pay as child support for the parties’ minor daughter. The applicant appealed, arguing, *inter alia*, that Ms Ch. had been appointed to her office in contravention of the applicable laws.

29.  On 8 December 2010 the District Court upheld the judgment of 7 October 2010 on appeal. The court discerned no irregularity as regards Ms Ch.’s appointment to the office of justice of the peace.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

30.  Section 11(2) of the Judicial System Act (Federal Constitutional Law No. 1-FKZ on the Judicial System of the Russian Federation, enacted on 31 December 1996) specified, at the relevant time, that only retired judges who had served for at least ten years could be appointed as an acting judge in accordance with the procedure set out in the Judicial Status Act.

31.  Section 7(1) of the Judicial Status Act (Law of the Russian Federation No. 3132-1 on Judicial Status, enacted on 26 June 1992) provided at the material time that the president of a higher court, subject to the prior approval of the judicial qualifications’ board, could appoint a retired judge as an acting judge for a period of up to one year.

32.  In its ruling no. 16-P of 16 July 2009 concerning the compliance of section 7(1) the Judicial Status Act the Constitutional Court of the Russian Federation reiterated that only retired judges who had served for at least ten years could be appointed as acting judges (section 3.2 of the said ruling).

THE LAW

I.  JOINDER OF THE APPLICATIONS

33.  In accordance with Rule 42 § 1 of the Rules of the Court, the Court decides to join the applications, given their similar factual and legal background.

II.  ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34.  The applicants complained that their cases had not been examined by a “tribunal established by law”. Ms Lodygina also argued that the appellate court had not responded to her complaint as regards the lawfulness of appointment of Ms G. to office. The applicants relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“1.  In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing ... by [a] ... tribunal established by law.”

35.  The Government contested that argument. They pointed out that Ms G. and Ms Ch. had been appointed to the office of justice of the peace in strict accordance with the procedure set out in the Judicial Status Act, which, at the relevant time, had not specified that a retired judge had to have served at least ten years to be re-appointed to office.

36.  The applicants maintained their complaints. They alleged numerous irregularities as regards the re-appointment of Ms G. and Ms Ch. to office. In particular, relying on the Judicial System Act (see paragraph 30 above), they pointed out that neither Ms G. nor Ms Ch. had completed ten years’ service at the date of their retirement and, accordingly, should not have been re-appointed as justices of the peace.

A.  Admissibility

37.  The Court observes that the applicants’ complaint was raised in respect of (1) the proceedings concerning determination of their civil rights and obligations (applications nos. 53466/10 and 22996/11) and (2) the proceedings classified by the domestic legislation as administrative (applications nos. 47737/10, 61884/10 and 21727/11). It further observes that the Government did not object as to the applicability of Article 6 of the Convention to the administrative proceedings in question. Regard being had to its well-established case-law on the application of Article 6 of the Convention under its criminal limb (see *Menesheva v. Russia*, no. 59261/00, §§ 94-98, ECHR 2006‑III), the Court does not reason otherwise. It considers that Article 6 of the Convention applies.

38.  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

39.  The Court reiterates that, under Article 6 § 1 of the Convention, a “tribunal” must always be “established by law”. This phrase reflects the principle of the rule of law which is inherent in the entire system of the Convention and its Protocols. The phrase “established by law” covers not only the legislation concerning the establishment and jurisdiction of a tribunal (see *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002), but also the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000, and *Posokhov v. Russia*, no. 63486/00, § 39, ECHR 2003 IV). A “tribunal” referred to in Article 6 § 1 of the Convention must also satisfy a series of other conditions, including the independence of its members and the length of their terms of office, impartiality and the existence of procedural safeguards (see *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 99, ECHR 2000-VII).

40.  Turning to the circumstances of the present case, the Court notes that the national legislation sets forth a number of requirements to be satisfied by a retired judge in order to be re-appointed temporarily for an office. In particular, as established by the Judicial System Act and confirmed by the Constitutional Court, only retired judges who have served for at least ten years can be re-appointed as acting judges in accordance with the procedure set out in the Judicial Status Act (see paragraphs 30 and 32 above). The Court notes that the said Federal Constitutional Law was in force at the relevant time and its provisions should have been applied to the re‑appointment of retired judges Ms G. and Ms Ch. to the office of justice of the peace. However, the Court discerns nothing in the Government’s submissions to support their argument that the re-appointment of Ms G. and Ms Ch. to the office was in compliance with the legislative requirements. Prior to their retirement, Ms G. and Ms Ch. had served in office for approximately eight years and nine and a half years respectively. Nevertheless, despite the insufficient length of service, both of them were re-appointed to serve as justices of the peace. Neither the domestic courts nor the Government referred to any domestic provision that would justify the exemption from the rule set forth by the Federal Constitutional Law. The Government’s argument that the Judicial Status Act, at the relevant time, did not indicate the requirement as to the minimum term of office necessary for the re-appointment of a retired judge has no bearing in the circumstances of the case. As noted above, the requirement as regards the minimum term of office for a retired judge to be re-appointed was clearly provided for by the Judicial System Act in force at the relevant time.

41.  The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention. A bench composed of these justices of the peace cannot be considered “a tribunal established by law”.

42.  In view of the above finding, the Court does not consider it necessary to examine Ms Lodygina’s allegation that the appellate court failed to respond to a certain argument in her statement of appeal.

III.  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.”

A.  Damage

44.  The applicants’ claims in respect of pecuniary and non-pecuniary damage are summarised in the table below:

| Application no. | Pecuniary damage (Russian roubles) | Non-pecuniary damage (euros – EUR) |
| --- | --- | --- |
| 47737/10 | 10,000 (amount of the fine imposed) | 45,500 |
| 53466/10 |  | 8,000 |
| 61884/10 |  | 14,000 |
| 21727/11 |  | 8,000 |
| 22996/11 |  | 5,000 |

45.  The Government considered that there was no causal link between Mr Shaykhatarov’s claims in respect of pecuniary damage and the violation alleged. They further submitted that the applicants’ claims in respect of non‑pecuniary damage were excessive and unreasonable. In any event, the Government considered that the applicants’ rights under Article 6 of the Convention had not been violated and that no compensation should be awarded to them.

46.  The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicants did not have the benefit of the guarantees of Article 6 § 1 of the Convention. It cannot speculate as to what the outcome of the proceedings compatible with Article 6 § 1 might have been, had the requirements of this provision not been violated (compare *Menchinskaya v. Russia*, no. 42454/02, § 46, 15 January 2009; and *Popov v. Russia*, no. 26853/04, § 260, 13 July 2006). It therefore rejects Mr Shaykhatarov’s claim in respect of pecuniary damage. As to the applicants’ claims in respect of non-pecuniary damage, the Court awards each of them EUR 2,500.

B.  Costs and expenses

47.  Mr Kulakov and Ms Agiyeva did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award them any sum on that account.

48.  Mr Shaykhatarov, Ms Lodygina and Mr Valiyev claimed EUR 5,000, EUR 2,500 and EUR 1,500 respectively for the costs and expenses incurred before the Court. They requested that the said amounts should be paid directly into the bank account of Mr Mezak and Mr Laptev.

49.  The Government submitted that the applicants had failed to substantiate their claims. They had not produced any receipts, payment orders, etc. to show that they had actually incurred those expenses. The Government considered that the applicants’ claims should be dismissed.

50.  Regard being had to the documents in its possession and to its case‑law, the Court considers it reasonable to award the sum of EUR 1,000 to Mr E. Mezak and EUR 1,000 to Mr A. Laptev. The said awards are to be paid directly into the representatives’ bank accounts.

C.  Default interest

51.  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.  *Decides* to join the applications;

2.  *Declares* the applications admissible;

3.  *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the consideration of the applicants’ cases by the tribunal not established by law;

4.  *Holds* that there is no need to examine the remainder of the complaints under Article 6 of the Convention, as regards application no. 53466/10;

5.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months the following amounts,to be converted into the currency of the respondent Stateat the rate applicable at the date of settlement:

(i)  EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to each of the applicants;

(ii)  EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, as regards applications nos.  47737/10, 53466/10 and 61884/10. EUR 1,000 of this sum is to be paid directly into the bank account of Mr A. Laptev and EUR 1,000 is to be paid directly into the bank account of Mr E. Mezak;

(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;

6.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 15 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Helen Keller
 Deputy Registrar President

APPENDIX

Details of the applications

| **No.** | **Application no.** | **Date of introduction** | **Applicants’ details (name, date of birth, place of residence)** |
| --- | --- | --- | --- |
|  | 47737/10 | 28 July 2010 | **Vladimir Sayakhatdinovich Shaykhatarov**14 February 1954Pazhga, Komi Republic |
|  | 53466/10 | 22 July 2010 | **Valentina Nikolayevna Lodygina**29 November 1956Syktyvkar, Komi Republic |
|  | 61884/10 | 7 October 2010 | **Ruslan Gaptelkhamitovich Valiyev**26 July 1981Vylgort, Komi Republic |
|  | 21727/11 | 9 March 2011 | **Pavel Aleksandrovich Kulakov**31 January 1975Vylgort, Komi Republic (prior to conviction) |
|  | 22996/11 | 24 March 2011 | **Lyudmila Vladimirovna Agiyeva**19 March 1985Vylgort, Komi Republic |