



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

FIRST SECTION

CASE OF BRAGINA v. RUSSIA

(Application no. 20260/04)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

01/05/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bragina v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 20260/04) 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 Tatyana Ivanovna Bragina (“the applicant”), on 8 May 2004.

2. The applicant was represented by Mr V.I. Tarnarutskiy, a lawyer practising in Voronezh. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 13 October 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1957 and lives in Voronezh.

5. She brought civil proceedings against her local authority requesting arrears of child benefit due to her.

6. On 9 June 2000 the Zheleznodorozhny District Court of Voronezh granted her claims and awarded her the arrears in the amount of

2,040.02 roubles (RUR). The judgment was not appealed against and became final on 20 June 2000.

7. On an unspecified date a writ of execution was issued.

8. On 26 July 2001 the writ was returned to the applicant by the bailiff's service owing to a lack of funds in the debtor's account.

9. The applicant forwarded the writ of execution to the debtor's bank and requested it to debit the sum due from the debtor's account, but the bank refused.

10. She then brought proceedings against the bank claiming damages for its refusal to enforce the judgment of 9 June 2000.

11. On 17 April 2003 the Justice of the Peace of the Second Circuit of the Central District of Voronezh dismissed the applicant's claims on the ground that the bank had not been at fault in refusing to enforce the judgment of 9 June 2000. On appeal, the judgment was upheld by the Central District Court of Voronezh on 10 November 2003.

12. In February 2004 the applicant received RUR 1,110.36 in execution of the judgment of the Zheleznodorozhny District Court of Voronezh of 9 June 2000.

13. On 13 December 2005 she received the outstanding balance of RUR 929,66, thus completing full execution of the judgment.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

14. In their observations, the Government invited the Court to strike out the application in accordance with Article 37 of the Convention on account of the applicant's refusal to accept a friendly settlement.

15. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. It reiterates that under certain circumstances an application may indeed be struck out under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC] (preliminary issue), no. 26307/95, § 76, ECHR 2003-VI). It notes, however, that this procedure is an exceptional one and is not, as such, intended to circumvent the applicant's opposition to a friendly settlement.

16. Furthermore, the Court observes that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings (Article 38 § 2 of the

Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court (see *Androsov v. Russia*, no. 63973/00, § 45, 6 October 2005).

17. On the facts, the Court observes that the Government have failed to provide it with any formal statement capable of falling into the latter category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require it to continue with its examination of the case.

18. That being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

19. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the prolonged failure to execute the judgment in her favour. Article 6, in so far as relevant, provides as follows:

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

Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

20. The Government submitted that the judgment of the Zheleznodorozhny District Court of Voronezh of 9 June 2000 was fully executed.

21. The applicant argued that she retained victim status in respect of the alleged violation of Article 6 of the Convention and Article 1 of Protocol No. 1 notwithstanding the fact that the judgment of the Zheleznodorozhny District Court of Voronezh of 9 June 2000 was fully executed, because the execution proceedings had taken too long.

A. Admissibility

22. The Court notes that the application 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

23. The Court notes that the delay in executing the judgment in the applicant's favour totalled approximately five years. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to those in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; *Androsov*, cited above; and *Gorokhov and Rusyayev v. Russia*, no. 38305/02, 17 March 2005).

24. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to execute the final judicial decisions in the applicant's favour the domestic authorities deprived the provisions of Article 6 § 1 of all useful effect and prevented her from receiving the money she could reasonably have expected to receive.

25. There has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant did not specify the amount she sought to obtain for pecuniary damage, but requested the Court to adjust her judgment debt by a coefficient of 150 % on account of inflation plus RUR 450. She submitted a certificate by the Department of Statistics of the Voronezh Region confirming the inflation rate in the period between January 1997 and January 2006. In this regard she referred to the case of *Shestopalova and*

Others v. Russia, no. 39866/02, § 30, 17 November 2005. The applicant also claimed that she had suffered non-pecuniary damage as a result of the violation. However, she did not specify a particular amount and submitted rather confused calculations.

28. As regards the applicant's claim for pecuniary damage, the Government noted, firstly, that in their opinion damage should be determined only on the basis of the specific circumstances of the present case. Any references to the Court's case law in this regard were irrelevant. They further stated that, having regard to the certificate submitted by the applicant, the maximum amount of compensation for pecuniary damage she could obtain in domestic proceedings would be RUR 1,894.61. However, they said that she had not lodged a claim for compensation before the domestic courts and, therefore, had failed to make use of the available domestic remedy.

29. As regards the applicant's claim for non-pecuniary damage, the Government noted, firstly, that the applicant had not specified the amount. They accepted that she might have suffered distress as a result of the State authorities' failure to enforce the judgment in her favour during several years. However, they said that, should the Court find a violation, that would in itself constitute sufficient just satisfaction (*Tolokonnikova v. Russia*, no. 24651/03, 17 November 2005).

30. The Court finds that some pecuniary loss must have been occasioned by reason of the period that elapsed between the date the judgment became enforceable and the date of its execution (see, among other authorities, *Poznakhirina*, cited above, § 34; *Makarova and Others v. Russia*, no. 7023/03, 24 February 2005, § 38; and *Shestopalova and Others v. Russia*, cited above, § 32). Having regard to the material in its possession, the Court awards the applicant EUR 70 for pecuniary damage, plus any tax that may be chargeable on that amount.

31. The Court considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to execute a final judicial decision in her favour, and that this cannot be sufficiently compensated for by the finding of a violation. The Court has taken into account the award it made in the case of *Burdov* (cited above), the nature of the decision whose non-execution was at issue in the present case, the delay in the execution proceedings and other relevant considerations. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

32. The applicant did not make any claim in respect of the costs and expenses incurred before the domestic courts and before the Court within the time-limits set by the Court.

33. Accordingly, the Court makes no award under this head.

C. Default interest

34. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 70 (seventy euros) in respect of pecuniary damage and EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus
 - (b) any tax that may be chargeable on the above amounts;
 - (c) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Kovler is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE KOVLER

I share the conclusion of the Chamber that there has been a violation of Article 6 of the Convention and Article 1 of the Protocol No.1: by failing to execute final court decisions in the applicant's favour for 66 months, the national authorities deprived the above provision of the Convention of all useful effects and prevented the applicant from receiving the child benefits due to her.

My problem is the application of Article 41 of the Convention. In similar cases of non-enforcement of judgments of national courts concerning the child benefits (see *inter alia* *Pozhakhirina v. Russia*, 25964/01, Judgment of 6 July 2005; *Suntsova v. Russia*, 55687/00, Judgment of 17 November 2005, *Bratchikova v. Russia*, 66462/01, Judgment of 12 April 2006 and 9 similar judgments adopted the same day in the cases from the same region) the Court considered that having regard to the nature of the breach in these cases (child benefits not constituting the main source of income) finding a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. But the repeated character of this kind of violation, the increasing amount of non-paid sums and prolonged period of non-enforcement justify the Court's new approach: in *Bragina* judgment as in 6 other judgments of the same nature (*Nartova v. Russia*, 33685/05, *Deykina v. Russia*, 33689/05; *Lyudmila Aleksentseva v. Russia*, 33706/05; *Voloskova v. Russia*, 33707/05; *Zaichenko v. Russia*, 33720/05; *Voronina v. Russia*, 33728/05) the Court decided to apply the principle of non-pecuniary damage established in the case of *Burdov v. Russia*, so the non-paid child benefits are now considered an integral part of the applicant's income. I agree with this solution but I would like to see more detailed arguments of this “old new” approach than those given in § 31 of the Judgment.