



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

FIRST SECTION

CASE OF BRAGA, TIMOFEYEV AND KIRYUSHKINA v. RUSSIA

(Application no. 24229/03)

JUDGMENT

STRASBOURG

6 March 2008

FINAL

29/09/2008

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 Braga, Timofeyev and Kiryushkina v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoli Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 24229/03) 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 three Russian nationals, Mrs Anna Nikolayevna Braga, Mrs Nina Ivanovna Kiryushkina and Mr Vyacheslav Aleksandrovch Timofeyev (“the applicants”), on 16 July 2003.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about a lengthy non-enforcement of the judgment in their favour.

4. On 21 February 2007 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 applications at the same time as their admissibility.

THE FACTS

5. The applicants live in Kemerovo. Mrs Braga died on 17 May 2007.

6. On 23 December 1999 the Tsentralniy District Court of Kemerovo granted the applicants’ claim against the Kemerovo Town Council and held that the Council should provide Mrs Braga with a two-room flat, Mrs Kiryushkina with a two-room flat and Mr Timofeyev with a one-room flat.

7. On 16 March 2000 the Kemerovo Regional Court upheld the judgment on appeal.

8. By letter of 5 April 2000, the Kemerovo Town Council informed the bailiffs that the applicants had been placed on the waiting list. By letter of 5 May 2000, the Council told Mrs Kiryushkina that there existed a waiting list for enforcement of judicial decisions requiring provision of flats and that the applicants had been assigned numbers 61 to 63 on the waiting list.

9. The applicants applied to the District Court, seeking to have the operative part of the judgment amended so as to receive the market value of the flats.

10. On 23 May 2001 the Tsentralniy District Court refused their application because the enforcement proceedings were still pending and because they had in the meantime advanced by thirty positions on the waiting list. On 19 July 2001 the Kemerovo Regional Court upheld that decision on appeal.

11. By letter of 9 November 2001, the Kemerovo Regional Prosecutor's Office informed the applicants that the enforcement proceedings had not been carried out in accordance with the Enforcement Act and that the bailiffs had been directed to remedy the violations.

12. On 2 June 2005 the applicant Mr Timofeyev received a one-room flat in Kemerovo under a social-tenancy agreement. On 23 June 2006 he privatised the flat and registered his title to it.

13. On 10 March 2005 the Town Council offered the applicants Mrs Braga and Mrs Kiryushkina two vacant two-room flats in Kemerovo. They did not accept the offer, indicating their wish to receive new flats. On 30 September 2005 two one-room flats in a new block of flats were offered to them but they refused the offer because the flats had only one room each. On 22 May 2007 Mrs Kiryushkina agreed to move into a two-room flat. Following the death of Mrs Braga, on 29 May 2007 her son agreed to a one-room flat.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT MRS BRAGA'S COMPLAINT UNDER ARTICLE 37 OF THE CONVENTION

14. The Government asked the Court to discontinue proceedings on Mrs Braga's complaint. They indicated that Mrs Braga had died and that no heirs had manifested an intention to pursue the proceedings in her stead.

15. The Court recalls Article 37 of the Convention which provides in the relevant part as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

...

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

16. The Court notes that Mrs Braga died on 17 May 2007 and that no request has been submitted by her heirs to pursue the examination of her complaint. In these circumstances, the Court finds that it is no longer justified to continue the examination of Mrs Braga’s complaint within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, it finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which would require the continued examination of her complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicants complained under Article 6 § 1 of the Convention about the continued failure to enforce the judgment of 23 December 1999, as upheld on 16 March 2000. Article 6, in the relevant part, provides as follows:

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

A. Admissibility

18. The Government submitted that the applicants did not exhaust the domestic remedies because they had not applied to domestic courts with a complaint about the continued non-enforcement of the judgment.

19. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant’s complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

20. The Court notes that the Government omitted to comment on the efficiency of the remedy they suggested. They did not explain how the lodging of a complaint before a domestic court could have put an end to the continued non-enforcement of the judgment or what kind of redress the applicants could have been provided with as a result of the action. Even assuming that the applicants could have brought a complaint and obtained a decision confirming that the non-enforcement had been unlawful in domestic terms, the outcome of such a claim would only have produced

repetitive results, namely a writ of execution enabling the bailiffs to proceed with the enforcement of the original judgment (compare, among many others, *Yavorivskaya v. Russia* (dec.), no. 34687/02, 13 May 2004). The Court dismisses the Government's objection as to the non-exhaustion of domestic remedies.

21. 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

22. The Government acknowledged that there was a violation of Article 6 of the Convention on account of lengthy non-enforcement of the judgment in favour of Mr Timofeyev. As regards the situation of Mrs Kiryushkina, they accepted their liability only for the period of non-enforcement lasting until 10 March 2005, the date on which Mrs Kiryushkina had refused the first offer of a two-room flat.

23. The applicants submitted that the initial offer had been made in respect of flats located outside the city confines of Kemerovo and that no formal offer had been made on 30 September 2005, contrary to the Government's allegations.

24. The Court observes that on 23 December 1999 the applicants Mr Timofeyev and Mrs Kiryushkina obtained a judgment in their favour against the town council. By terms of the judgment, the council was to provide them with flats. Acceptable flats were made available to Mr Timofeyev only on 2 June 2005, that is five years and five months later, and to Mrs Kiryushkina on 22 May 2007, that is seven years and four months later. The Court rejects the Government's argument that they may only be held liable for the period of non-enforcement up to the date when the first offer of a flat was made to Mrs Kiryushkina. If the domestic authorities considered her refusal whimsical or unreasonable, it was open to them to apply for discontinuation of the enforcement proceedings on that ground. No such application having been made, the proceedings had continued until the judgment was enforced in full.

25. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see *Reynbakh v. Russia*, no. 23405/03, § 23 et seq., 29 September 2005; *Gizzatova v. Russia*, no. 5124/03, § 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, § 23 et seq., 24 February 2005; *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 30 et seq., 17 March 2005; *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

26. 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 to comply with the enforceable judgment in the applicants' favour the domestic authorities violated their right to a court.

27. There has accordingly been a violation of Article 6 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed 15,000 euros (EUR) each in respect of non-pecuniary damage.

30. The Government submitted that the amount claimed was excessive and unreasonable because the applicants had not produced evidence of mental anguish.

31. The Court reiterates that non-pecuniary damage is an applicant's subjective measure of the distress he or she had endured because of a violation of his or her rights and, by its nature, is not amenable to proof (see *Korchagin v. Russia*, no. 19798/04, § 25, 1 June 2006). The Court accepts that the applicants Mr Timofeyev and Mrs Kiryushkina suffered distress and frustration because of the State authorities' failure to enforce the judgment in their favour within a reasonable time. Making its assessment on an equitable basis and taking into account the length of the enforcement stage, the Court awards the applicant Mr Timofeyev EUR 3,900 and the applicant Mrs Kiryushkina EUR 4,700 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

32. The applicants did not claim any costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

33. 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. *Decides* to discontinue the examination of Mrs Braga's complaint;
2. *Declares* the complaints by the applicant Mr Timofeyev and Mrs Kiryushkina admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,900 (three thousand nine hundred euros) to the applicant Mr Timofeyev and EUR 4,700 (four thousand seven hundred euros) to the applicant Mrs Kiryushkina, 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 6 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President