



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

Communicated on 8 January 2014

FIRST SECTION

Application no. 42021/13
Aleksey Viktorovich YELISEYEV and Lyudmila Vladimirovna
YELISEYEVA
against Russia
lodged on 31 May 2013

STATEMENT OF FACTS

The applicants, Mr Aleksey Viktorovich Yeliseyev and Ms Lyudmila Vladimirovna Yeliseyeva, are Russian nationals, who were born in 1975 and 1984 respectively and live in the town of Barysh, Ulyanovsk Region.

A. The circumstances of the case

The applicants are spouses, married since 2007.

In 2001 the Russian Government adopted Federal Programme on Housing for the years 2002-2010. The Programme allowed families in need of housing to apply for state subsidies. Only families with both spouses younger than thirty six were eligible.

In September 2008 the applicants' family was put on the list of the participants of the Programme, which, according to the applicants, subsequently gave them the right to receive the subsidy. In July 2009 the applicants took a mortgage and bought a flat.

In 2011 Federal Programme on Housing for the years 2011-2015 was adopted. It appears that the terms of the Programme remained the same.

On 26 May 2012 the applicants applied for the subsidy. Having received no reply from the authorities, the applicants sued them in court. In the course of the proceedings it turned out that on 21 March 2011 the applicants' family had been excluded from the Programme on the ground that the first applicant had attained the age of thirty six years.

On 16 October 2012 the Baryshskiy Town Court of the Ulyanovsk Region dismissed the applicants' claim on the ground that the first applicant had by the time of attribution of the subsidy already turned thirty six.

The applicants appealed. In their grounds of appeal they referred to two appeal decisions of the Ulyanovsk Regional Court both dated 20 March

2012. In very similar circumstances the court held that after a family was once recognised as eligible for participation in the Programme it could not be denied the subsidy solely on the ground that a spouse turned thirty six. In particular, the court noted that:

“[it] ... has established that at the moment of acquisition of the flat [date] and taking the mortgage [date] the [claimants’] family was in need of housing and was put on the list of the families participating in the sub-Programme [...].

In the circumstances where the claimant aware of his right to receive the social benefit ... acquired [their] housing with a loan, the fact of the adoption of the new Programme and reaching the age of thirty six cannot be the ground to strike him out from the list [of the participants]”.

On 11 December 2012 the Ulyanovsk Regional court dismissed the applicants’ appeal in the following terms:

“As the applicants’ family does not satisfy the criteria for participation in the Programme, namely the condition of age, the [first] applicant having turned thirty six, the first-instance court’s finding as to the validity of the decision to exclude the family from the list of the Programme participants, is correct.

[...]

The law in force at the moment of the inclusion of the applicant’s family into the Programme also provided that reaching the age of thirty six was a circumstance excluding the family’s further participation in the Programme [...].”

B. Relevant domestic law

Federal Programme on Housing for 2002-2010 (adopted by Decree no. 675 of 17 September 2001) and Federal Programme on Housing for 2011-2015 (adopted by Decree no. 1050 of 17 December 2010) provided that young families could receive social allowances with a view to acquiring their own housing. The terms of eligibility were to be defined by a special sub-Programme.

Sub-Programme on Provision of Young Families with Housing for 2002-2010 (adopted by Decree no. 865 of 31 December 2005) provided that a young family was the one in which the age of the spouses did not exceed thirty five.

The Rules on granting young families with social allowances for acquisition of housing (introduced by Decree no. 285 of 13 May 2006) provided that a young family was the one in which the age of the spouses did not exceed thirty five at the time when a decision to put the family on the list of the participants was taken.

Municipal Programme on Provision of Young Families with Housing for 2011-2015 (adopted by Decree no. 1065-A of 12 October 2010 of the Barysh District Local Council) provided that a young family was the one in which the age of the spouses did not exceed thirty five.

COMPLAINTS

The applicants complain under Article 6 § 1 of the Convention that the appeal decision in their case delivered by the Ulyanovsk Regional Court on

11 December 2012 was inconsistent with that same court's previous practice. They further complain under Article 1 of Protocol 1 that it was unfair to deny them a subsidy in this manner.

QUESTIONS TO THE PARTIES

1. Did the applicants have a fair hearing in the determination of their civil rights and obligations, in accordance with Article 6 § 1 of the Convention, in so far as factually and legally similar legal actions before the domestic court had different outcomes (see *Ștefănică and Others v. Romania*, no. 38155/02, §§ 37-38, 2 November 2010, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 54-57, 20 October 2011)?

In particular:

a) Did the appeal decision of 11 December 2012 in the applicants' case and the appeal decisions of 20 March 2012 in cases nos. 33-735/2012 and 33-739/2012 concern the same legal issue?

b) If so, did the Ulyanovsk Regional Court change its position on this legal issue in the course of 2012 and for what reason? The Government are invited to submit relevant appeal decisions to confirm their statements, in particular those delivered by the Ulyanovsk Regional court both before and after 11 December 2012.

2. Has there been an interference with the applicants' property rights, within the meaning of Article 1 of Protocol No. 1, in the light of the different outcomes of similar proceedings? And if so, was it compatible with the requirements of that Convention provision?