



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

FOURTH SECTION

**CASE OF ŠEKEROVIĆ AND PAŠALIĆ v. BOSNIA AND
HERZEGOVINA**

(Applications nos. 5920/04 and 67396/09)

JUDGMENT

STRASBOURG

8 March 2011

FINAL

15/09/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Šekerović and Pašalić v. Bosnia and Herzegovina,
The European Court of Human Rights (Fourth Section), sitting as a
Chamber composed of:

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. de Gaetano, *judges*,
and Lawrence Early, *Section Registrar*,
Having deliberated in private on 15 February 2011,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 5920/04 and 67396/09) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two citizens of Bosnia and Herzegovina, Mr Mladen Šekerović and Ms Anka Pašalić (“the applicants”), on 29 December 2003 and 5 October 2009 respectively.

2. Ms Pašalić was represented by Mr B. Čupović. The Government of Bosnia and Herzegovina (“the Government”) were represented by their Agent, Ms M. Mijić.

3. The applicants alleged that domestic judgments in their favour, finding structural discrimination in the pension system and ordering some general measures to be taken, had not been enforced. The case is similar to *Karanović v. Bosnia and Herzegovina*, no. 39462/03, 20 November 2007.

4. On 17 March 2010 the President of the Fourth Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Mr Šekerović was born in 1932 and lives in Tuzla, Bosnia and Herzegovina. Ms Pašalić was born in 1926 and lives in Belgrade, Serbia.

6. Mr Šekerović was granted an old-age pension in 1984 and Ms Pašalić in 1981.

7. In 1992 they moved from what is today the Federation of Bosnia and Herzegovina (“the Federation”) to what is today the Republika Srpska (each of the Federation and the Republika Srpska being an “Entity”). While they were internally displaced, they received their pensions from the Republika Srpska Pension Fund (“the RS Fund”).

8. Having returned to the Federation in 2000 and 2001 respectively, the applicants unsuccessfully sought to have their pension entitlements transferred from the RS Fund to the Federation Pension Fund (“the FBH Fund”). Therefore, in 2002 they lodged applications with the Human Rights Chamber, a domestic human-rights body set up by Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

9. On 10 January 2003 the Human Rights Chamber delivered a landmark decision concerning three applicants, including one of the applicants in the present case (Ms Pašalić) and the applicant in *Karanović* (cited above), who had been granted pensions in what is today the Federation before the war, who had then moved to what is today the Republika Srpska during the war, and who, for that reason only, continued to receive RS Fund pensions despite their return to the Federation after the war (pursuant to the Pension Agreement, see paragraph 16 below). They were thus treated differently from those who had stayed in what is today the Federation during the war. The Human Rights Chamber considered that difference in treatment to be discriminatory and an obstacle to the return of displaced persons to their pre-war homes (RS Fund pensions were normally lower than FBH Fund pensions, and the cost of living was normally higher in the Federation). Furthermore, it held that the situation complained of had racist connotations (given the nature of the war, the population that had moved from what is today the Federation to what is today the Republika Srpska during the war had primarily been Serbs, and those who had stayed were mostly Bosniacs and Croats). The Human Rights Chamber ordered the Federation: (a) to take all necessary legislative and administrative actions by 10 July 2003 to ensure that the applicants were no longer discriminated against, particularly in comparison to those pensioners who had remained in what is today the Federation during the war; and (b) to compensate the applicants for the difference between their RS Fund pensions and the amount they would have received from the FBH Fund from the date of their application to the Human Rights Chamber until the date of the Federation’s compliance with the order under (a) above.

10. Having assessed that her pension from the FBH Fund would have been lower than the nominal amount of her pension from the RS Fund, on 22 July 2003 the FBH Fund informed Ms Pašalić that she would not be paid any compensation. The FBH Fund disregarded the fact that, at that time, pensioners in the Republika Srpska, as opposed to those in the Federation,

did not receive the nominal amount of their pensions, but only a fraction thereof, owing to fiscal difficulties in that Entity.

11. Mr Šekerović's case was still pending when the Human Rights Chamber ceased to exist on 31 December 2003. The Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") took over his case and on 27 June 2007 delivered a judgment similar to that in Ms Pašalić's case.

12. On 14 December 2007 the FBH Fund decided to pay Mr Šekerović 8,345 convertible marks (BAM)¹ by way of compensation for the difference between the sum which he had received from the RS Fund between 16 April 2002 and 30 November 2007 and the sum which he would have received from the FBH Fund in the same period. It also decided to continue paying any such difference in the future. In March 2008, for example, the applicant received BAM 531 from the RS Fund and BAM 105 from the FBH Fund.

13. After the *Karanović* judgment, cited above, the FBH Fund revised its practice and agreed to compensate Ms Pašalić for the difference between the sum which she had actually received from the RS Fund (rather than the nominal amount of her RS Fund pension, see paragraph 10 above) and the sum which she would have received from the FBH Fund in the period after 18 February 2002. In order to determine the amount due, on 23 June and 22 July 2008 the FBH Fund asked the RS Fund to indicate the sums actually paid to Ms Pašalić. The RS Fund failed to respond. On 3 July and 28 August 2008 the FBH Fund sent letters to Ms Pašalić (one to an address in Sarajevo and the other to an address in Belgrade), but they were returned as undeliverable (addressee unknown). In June 2010 the applicant finally provided the necessary information and in July 2010 the FBH Fund paid Ms Pašalić BAM 1,425 (that is, BAM 839 for 2002, BAM 530 for 2003 and BAM 56 for 2004). Since 2005 the applicant had apparently been receiving more from the RS Fund than she would have received from the FBH Fund (in April 2010 she thus received BAM 627 from the RS Fund whereas she would have received BAM 483 from the FBH Fund).

14. On 13 October 2010 the Constitutional Court held that its decision in Mr Šekerović's case of 27 June 2007 had not been enforced, because he had not yet been granted an FBH Fund pension (see paragraph 19 below).

15. According to official figures, the average pension has always been lower in the Republika Srpska than in the Federation. That difference has, however, decreased: while in 2003 the average pension was BAM 133 in the Republika Srpska and BAM 192 in the Federation, in 2009 the figures were BAM 335 in the Republika Srpska and BAM 346 in the Federation. Furthermore, pensioners in the Republika Srpska now receive, as do those in the Federation, the nominal amount of their pensions (until recently, the

1. The convertible mark uses the same fixed exchange rate to the euro that the German mark has (1 euro = 1.95583 convertible marks).

former, as opposed to the latter, were only receiving a fraction of their nominal pensions owing to fiscal difficulties in that Entity).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

16. The Pension Agreement² between the local pension funds entered into force on 27 March 2000. Pursuant to Article 2 § 1 of that Agreement, persons who were receiving pensions from, for example, the RS Fund on 27 March 2000 will continue to receive their pensions from that Fund, even if they subsequently move to the Federation.

17. All pensioners living in one Entity have equal access to health care, regardless of whether they receive their pensions from that Entity or from the other Entity (Article 2 § 2 of the Health Care Agreement³).

18. Pensions are not taxable in either of the Entities, regardless of whether they are received from the Entity concerned, from the other Entity or from abroad (see the Income Tax Act 2008⁴ and the Income Tax Act 2006⁵).

B. Relevant domestic practice

19. The former Human Rights Chamber and the Constitutional Court rendered four decisions concerning nineteen pensioners (including the present applicants) who had been granted pensions in what is today the Federation before the war, who had then moved to what is today the Republika Srpska during the war, and who, for that reason only, had continued to receive RS Fund pensions despite their return to the Federation after the war. They held that this amounted to discrimination and ordered that some general measures be taken by the Federation (see paragraph 9 above). The Constitutional Court considered that the full enforcement of those decisions required that the applicants be granted FBH Fund pensions and that the applicable legislation be amended so as to render all others in

2. Official Gazette of the Federation no. 24/00 of 30 June 2000 and Official Gazette of the Republika Srpska no. 15/00 of 5 June 2000.

3. Official Gazette of Bosnia and Herzegovina no. 30/01 of 18 December 2001, Official Gazette of the Federation no. 8/02 of 28 February 2002, Official Gazette of the Republika Srpska no. 9/02 of 25 February 2002, and Official Gazette of the Brčko District no. 6/02.

4. Official Gazette of the Federation no. 10/08 of 5 March 2008, amendments published in Official Gazette no. 9/10 of 26 February 2010.

5. Official Gazette of the Republika Srpska no. 91/06 of 20 September 2006, amendments published in Official Gazette nos. 128/06 of 29 December 2006, 120/08 of 22 December 2008 and 71/10 of 23 July 2010.

that situation eligible to apply for FBH Fund pensions (see decisions CH/02/9364 of 13 December 2007 and CH/00/6413 of 13 October 2010).

20. In contrast, as regards those who had been granted pensions in what is today the Federation before the war, who had moved to what is today the Republika Srpska during the war and who had not returned to the Federation after the war, the same bodies held that the fact that they received RS Fund pensions (instead of higher FBH Fund pensions) did not amount to discrimination (Human Rights Chamber's decision CH/03/12994 of 4 November 2003 and Constitutional Court's decision AP/272/08 of 28 April 2010).

THE LAW

I. JOINDER OF THE APPLICATIONS

21. Given their common factual and legal background, the Court decides that these two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

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

22. The applicants complained of the non-enforcement of the domestic judgments in issue. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Article 6, in so far as relevant, reads as follows:

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

Article 1 of Protocol No. 1 to the Convention provides:

“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.”

A. Admissibility

23. The Government maintained that the Constitutional Court's decision in Mr Šekerović's case had been fully enforced in December 2007 when the FBH Fund had not only paid the difference between the sum which the applicant had received from the RS Fund and the sum which he would have received from the FBH Fund, but had also agreed to pay any such difference in the future. Mr Šekerović consequently, it was argued, could no longer claim to be the victim of a violation of the Convention.

As regards Ms Pašalić, they submitted that the Human Rights Chamber's decision had been fully enforced in July 2010 when the FBH Fund had paid the difference between the sum which the applicant had received from the RS Fund and the sum which she would have received from the FBH Fund. As the applicant had only produced the information necessary for the calculation and payment of that difference in June 2010, after having introduced her case before the Court, she had abused the right of individual petition (Article 35 § 3 (a) of the Convention). Taking into consideration also the size of the sum at issue, the Government argued that the applicant had not suffered a significant disadvantage (Article 35 § 3 (b) of the Convention).

24. Mr Šekerović failed to make any written observations in reply to the Government. Ms Pašalić contended that she had left Sarajevo in June 2005 because of the refusal of the FBH Fund to grant her a pension, regardless of the Human Rights Chamber's order of 10 January 2003, and that she could not be criticised for not having kept that Fund informed of her whereabouts thereafter.

25. The Court notes that the Government, in their objections, proceeded from the assumption that the enforcement of the domestic decisions under consideration required nothing more than compensation for the difference between the sums which the applicants had received from the RS Fund and those which they would have received from the FBH Fund. The Government thus took as a starting point that the transfer of the applicants' pension entitlements from the RS Fund to the FBH Fund was needless. The Court considers that this goes to the very heart of the question of whether the domestic decisions have been enforced, as required by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention (see paragraphs 27-28 below). It would consequently be more appropriately examined at the merits stage.

26. This complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The applicants maintained that the full enforcement of the domestic decisions under consideration required that their pension entitlements be transferred to the FBH Fund.

28. The Government disagreed. They contended that the only difference between those who lived in the Federation whilst in receipt of an RS Fund pension and those who lived there whilst in receipt of an FBH Fund pension was the difference in the amount of pension afforded (see paragraphs 17-18 above), which was decreasing over time (see paragraph 15 above). Furthermore, the applicants had been, and would continue to be, compensated for any difference between their RS Fund pensions and what their FBH Fund pensions would have been (see paragraphs 12-13 above). The Government submitted that there was therefore no need to transfer the applicants' pension entitlements from the RS Fund to the FBH Fund.

29. The general principles in relation to the enforcement of judgments were recently restated in *Burdov v. Russia* (no. 2), no. 33509/04, §§ 65-70, ECHR 2009-....

30. The Court has already dealt with the question raised by this case in *Karanović*, cited above, and decided that the enforcement of a similar domestic decision required the applicant's pension entitlement to be transferred from the RS Fund to the FBH Fund. It also held that the fact that the disparity between the pensions paid by each of the funds had become smaller after the adoption of the domestic decision in issue was of no relevance to the obligation of the respondent State to enforce it. The Constitutional Court later came to the same conclusion in the present applicant's case: despite the fact that the FBH Fund had agreed to pay Mr Šekerović the difference between his current pension and what he would have received as a pension from the FBH Fund and to continue paying any such difference in the future, the Constitutional Court held that Mr Šekerović should instead be granted an FBH Fund pension (see paragraph 14 above). It also ordered in another case that the relevant legislation be amended in order to render all others in that situation eligible to apply for FBH Fund pensions (see paragraph 19 above). The Court, therefore, sees no reason to depart from the *Karanović* jurisprudence.

31. Since many years have passed since the domestic decisions became final and the relevant legislation has not yet been amended in order to render the applicants and others in that situation eligible to apply for FBH Fund pensions, the Court rejects the Government's objections (see paragraphs 23-25 above) and finds that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. Ms Pašalić, without further substantiation, claimed that there had been a violation of Article 13 in her case.

33. The Court finds that this complaint is manifestly ill-founded for lack of substantiation and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

34. Lastly, Ms Pašalić alleged that the non-enforcement of the domestic decision in issue amounted to a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1. Article 14 provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

35. The Government contested that argument, relying on the reasons set out in paragraph 28 above.

36. According to the Court’s case-law, Article 14 complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous –, there can be no room for its application unless the facts at issue fall “within the ambit” of one or more of the latter (*Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 39, 22 December 2009, and the authorities cited therein). The Court has further held that discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. “No objective and reasonable justification” means that the distinction in issue does not pursue a “legitimate aim” or that there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (ibid, § 42).

37. It is undisputed that the facts of this case fall “within the ambit” of Article 1 of Protocol No. 1 to the Convention (see paragraph 31 above) and that Article 14 taken in conjunction with that provision is hence applicable. Turning to the merits of this complaint, it is noted that the domestic Human Rights Chamber held that the applicant and other pensioners returning from the Republika Srpska to the Federation after the war were discriminated against in comparison to pensioners who had stayed in what is today the Federation during the war in the absence of any objective and reasonable justification for such differential treatment (see paragraph 9 above). The

Court does not see any reason to depart from that ruling. Having regard to its finding that the measures indicated in that domestic decision have not yet been implemented (see paragraph 31 above), the Court considers that the applicant continues to be discriminated against solely on account of her status as a formerly internally displaced person. There has therefore been a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

38. Article 46 of the Convention, in so far as relevant, reads as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution....”

39. In *Karanović*, cited above, the Court found a violation of Article 6 of the Convention as a result of the non-enforcement of a similar domestic decision and held that the facts of the case disclosed the existence of a shortcoming affecting a whole class of citizens (those who had been granted pensions in what is today the Federation before the war, who had then moved to what is today the Republika Srpska during the war and who, for that reason only, had continued to receive RS Fund pensions despite their return to the Federation after the war). It ordered some individual measures (including the transfer of the applicant's pension entitlement to the FBH Fund), but left it to the respondent State to select, subject to supervision by the Committee of Ministers, the general measures to be adopted to put an end to the violation found by the Court. After the *Karanović* judgment, the respondent State has decided to enforce other similar domestic decisions (four decisions in total concerning nineteen individuals, including the present applicants) by paying any difference between the sums which they receive from the RS Fund and those which they would receive from the FBH Fund (see paragraphs 12-13 above). According to the Government, there are more than 3,500 people in a similar situation who have not yet obtained domestic decisions in their favour. However, no measures have so far been taken with regard to them.

40. In the present case, the Court has held, like the Constitutional Court, that the domestic decisions in question implied that the relevant legislation be amended in order to render the applicants and others in that situation eligible for FBH Fund pensions (see paragraph 31 above). It cannot be excluded that the Court would reach the same conclusion in any future case concerning the non-enforcement of a domestic decision of this type.

Furthermore, while it is true that only nineteen people have so far obtained such a judgment in their favour, many others could do so in the future according to the figures provided by the Government. Since the general measures ordered by the Constitutional Court in a similar case (see paragraph 19 above) have not yet been implemented, there would appear to be no basis for rejecting any future similar case simply because the applicant has not complained to the Constitutional Court (see *Halilović v. Bosnia and Herzegovina*, no. 23968/05, § 22, 24 November 2009, where the Court rejected the Government's objection that the applicant had failed to properly complain to the Constitutional Court, because general measures ordered by that court in a similar case had not been implemented). Therefore, although it is in principle not for the Court to determine what remedial measures may be appropriate to satisfy the respondent State's obligations under Article 46, the violation found in the instant case does not leave any real choice as to the measures required to remedy it.

41. In these conditions, given the large number of potential applicants, which represents a threat to the future effectiveness of the Convention machinery, the Court considers that the respondent State must secure the amendment of the relevant legislation in order to render the applicants and others in that situation (namely, those who were granted pensions in what is today the Federation before the war, who then moved to what is today the Republika Srpska during the war, and who, for that reason only, still receive RS Fund pensions despite their return to the Federation after the war) eligible to apply, if they so wish, for FBH Fund pensions. It must be emphasised that this order does not apply to those who did not return to the Federation after the war (see paragraph 20 above). That being said, those who are granted FBH Fund pensions after their return from the Republika Srpska should, just as any other FBH Fund pensioner, keep their pension entitlements even if they later move abroad (such as Ms Pašalić, who moved to Serbia after the Human Rights Chamber had rendered a decision in her favour).

B. Article 41 of the Convention

42. 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.”

1. Damage

43. Since Mr Šekerović did not submit a claim for just satisfaction, the Court considers that there is no call to award him any sum on that account.

44. Ms Pašalić claimed 12,000 euros (EUR) in respect of non-pecuniary damage. The Government considered that amount to be excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards Ms Pašalić EUR 5,000 in this respect.

2. Costs and expenses

45. The applicants did not claim costs and expenses.

3. Default interest

46. The Court considers it appropriate that 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 join the applications;
2. *Joins to the merits* the Government's preliminary objections concerning the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, *declares* those complaints as well as the complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and *dismisses* the Government's preliminary objections concerning that complaint;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention and *dismisses* the Government's preliminary objections concerning that complaint;
5. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 in respect of Ms Pašalić;
6. *Holds*
 - (a) that the respondent State is to secure, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amendment of the relevant legislation in order to render the applicants and others in that situation eligible to apply, if they so wish, for FBH Fund pensions;

(b) that the respondent State is to pay Ms Pašalić, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into convertible marks at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of Ms Pašalić's claim for just satisfaction.

Done in English, and notified in writing on 8 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President