



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

FOURTH SECTION

CASE OF BOBIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 26529/10)

JUDGMENT

STRASBOURG

3 May 2012

FINAL

03/08/2012

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

In the case of Bobić v. Bosnia and Herzegovina,

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

Lech Garlicki, *President*,
David Thór Björgvinsson,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano,
Ljiljana Mijović, *judges*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 26529/10) 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 a citizen of Bosnia and Herzegovina, Ms Amira Bobić (“the applicant”), on 30 April 2010.

2. The applicant was represented by Muhić & Others, a law firm based in Tuzla. The Bosnian-Herzegovinian Government (“the Government”) were represented by their Agent, Ms M. Mijić.

3. The applicant complained, in particular, of the non-enforcement of a decision of 27 June 2007 of the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) in her favour.

4. On 16 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Bijeljina.

6. From 1979 until 1992 she worked as an accountant in a socially-owned catering company (“the company”) in Bijeljina, in what is today the Republika Srpska. During the 1992-95 war the company dismissed all its

employees of Bosniac and Croat origin, including the applicant. The relevant decision reads as follows:

“Given the special nature of the services performed by the company, all employees of Bosniac and Croat origin should no longer come to work from 22 July 1992”.

7. Following unsuccessful civil proceedings pursued by the applicant against the company, on 4 May 2000 she appealed to the Human Rights Chamber (a domestic human-rights body set up under Annex 6 to the 1995 General Framework Agreement for Peace).

8. In 2002 the company was privatised.

9. On 27 June 2007 the Constitutional Court (which inherited the cases of the Human Rights Chamber) ordered the Republika Srpska (one of the two Entities of Bosnia and Herzegovina) the following: first, to secure the applicant’s reinstatement within three months of the date of delivery of that decision; second, to pay her outstanding salary for the period from 13 December 1996 (when the applicant initiated civil proceedings against the company) until 27 June 2007, together with default interest at the statutory rate and all work-related benefits, as well as to continue to pay the applicant her salary and all work-related benefits until her reinstatement; and third, to pay the applicant 20 convertible marks (BAM) per working day starting from the date of delivery of that decision until her reinstatement. The Republika Srpska was to pay default interest on the above amounts at the annual rate of ten percent from the expiry of the three-month period until settlement.

10. On 23 August 2007 the Republika Srpska Government transmitted the decision of 27 June 2007 to the company for enforcement. On 25 September 2007 the company informed the Republika Srpska Government that the decision could not be enforced because the applicant’s post no longer existed. It claimed, furthermore, that it was not its responsibility to enforce the decision since it had not been a party to the proceedings before the Constitutional Court. On 23 October 2007 the Republika Srpska informed the company that, in accordance with Rule 56 of the Rules of the Constitutional Court (see paragraph 15 below), it was indeed the company’s duty to enforce the decision of 27 June 2007.

11. On 15 June 2010 the Republika Srpska paid the applicant BAM 16,807.47 in respect of the third order from the Constitutional Court’s decision for the period until 10 June 2010 (the principal debt in the amount of BAM 13,380 and default interest on that sum in the amount of BAM 3,427.47). It would appear that it has continued to pay the amount of BAM 20 per working day since then.

12. On 8 December 2010 the Constitutional Court held that the third order from its decision of 27 June 2007 had been enforced. It further held that the first order had not been enforced, but that its non-enforcement was justified. In this connection, it relied on the reasoning which the company

had provided to the Republika Srpska Government (see paragraph 10 above). Lastly, the Constitutional Court did not say anything as regards the second order.

13. At its session of 9 March 2011 the Republika Srpska Government concluded that it was the company's responsibility to enforce the Constitutional Court's decision of 27 June 2007, and not the responsibility of the Republika Srpska.

II. RELEVANT DOMESTIC LAW

14. Under Article 239 of the Criminal Code 2003 (published in Official Gazette of Bosnia and Herzegovina ("OG BH") nos. 3/03, 37/03, 32/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10), non-enforcement of a decision of the Constitutional Court is a criminal offence:

"An official of the State, the Entities or the Brčko District who refuses to enforce a final and enforceable decision of the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Human Rights Chamber, or the European Court of Human Rights, or who prevents the enforcement of any such decision, or who frustrates the enforcement of any such decision in some other way, shall be punished by imprisonment for a term of between six months and five years."

15. Rule 56 of the Rules for processing the cases of the former Human Rights Chamber (published in OG BH no. 38/07), as well as Rule 74 § 1 of the Rules of the Constitutional Court (published in OG BH nos. 60/05, 64/08 and 51/09) provides that the decisions of the Constitutional Court are final and binding on every legal and physical person. Furthermore, Rule 74 § 2 of the Rules of the Constitutional Court provides that all public bodies have a duty to enforce its decisions within their respective competence as established in the Constitution and the law.

THE LAW

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

16. The applicant complained of the non-enforcement of a final and enforceable decision of the Constitutional Court in her favour. She relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Article 6, in so far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

Article 1 of Protocol No. 1 to the Convention 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.”

A. Admissibility

17. The Government maintained that the application was incompatible *ratione personae* because the State (and the Republika Srpska as one of its Entities) cannot be held responsible for the acts and omissions of private legal entities.

18. The applicant disagreed.

19. The Court notes that there were some disagreements between the Republika Srpska Government and the company concerning the duty to enforce the Constitutional Court’s decision (see paragraphs 10 and 13 above). The applicant’s former employer had indeed been a private legal entity since 2002 and the State, or the Republika Srpska, did not exercise any control over it. However, the Court reiterates its established case-law that the State must also, within reason, ensure the execution of judgments against third parties who are not State actors (see *Kesyan v. Russia*, no. 36496/02, § 65, 19 October 2006). The Government’s objection must, therefore, be dismissed.

20. 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

21. The Government submitted that the Constitutional Court’s decision contained alternative orders. Since the Republika Srpska had complied with the third one by paying the applicant compensation for not being reinstated in the amount of BAM 20 per working day (see paragraph 11 above), there was no need to reinstate the applicant and pay her outstanding salary and work-related benefits.

22. The applicant agreed that the Republika Srpska paid BAM 16,807.47 in respect of the third order of the decision of 27 June 2007 and continued to pay BAM 20 per working day since then. However, she argued that it had failed to enforce the first and the second order, namely, to secure her reinstatement and to pay her outstanding salary for a period from 13 December 1996 until 27 June 2007, together with default interest at the statutory rate, and all work-related benefits, as well as to continue with the payment of her salary and work-related benefits until her reinstatement (see paragraph 9 above).

23. The general principles relating to the non-enforcement of domestic judgments were set out in *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, §§ 38-39 and 48, ECHR 2006-XII. The Court has held in particular that when the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the grounds of Article 6 § 1 and Article 1 of Protocol No. 1 (see also *Fuklev v. Ukraine*, no. 71186/01, §§ 84 and 89-93, 7 June 2005).

24. Turning to the present case, the Court notes that the final and enforceable decision of 27 June 2007 contained three separate orders (see paragraph 9 above). It is not in dispute between the parties that the Republika Srpska had enforced the third order from that decision. As regards the first order, the company argued that the applicant could not be reinstated because her post no longer existed (see paragraph 10 above). The Court notes that the Constitutional Court accepted this argument, without however giving any details as to why it considered that the non-enforcement of that particular order was justified (see paragraph 12 above). While this is a matter of regret the Court is nevertheless prepared to agree with the Constitutional Court's conclusion as regards the first order.

25. As regards the second order from the impugned decision, the Constitutional Court did not offer any explanation whatsoever on the failure of the Republika Srpska to enforce it.

26. Furthermore, contrary to what has been argued by the Government (see paragraph 21 above), it is clear from the wording of the decision of 27 June 2007 that the orders set out therein are of a cumulative nature. Indeed, this was confirmed by the Constitutional Court (although that court held that the non-enforcement of the first order was justified and did not say anything as regards the second order). The Court, accordingly, disagrees with the Government's claim that the decision of 27 June 2007 has been fully enforced. The Government therefore has a continuing obligation under the Constitutional Court's decision to enforce the second order.

27. Having regard to the above, it is clear that more than four years have passed since the domestic decision at issue became final and that the applicant has not yet received compensation in respect of her outstanding salary for the period from 13 December 1996 until 27 June 2007, together with default interest at the statutory rate and all work-related benefits, and

compensation in respect of her outstanding salary and work-related benefits for the period thereafter, together with default interest at the annual rate of ten percent from the expiry of the three-month period of the date of delivery of the domestic decision. Accordingly, the Court concludes that there has been a breach of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

28. The applicant further complained that she had not had an effective domestic remedy for her non-enforcement complaint.

29. Article 13 provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

30. The Government did not submit any comments in this regard.

31. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

32. Having regard to its finding above under Article 6 and Article 1 of Protocol No. 1 to the Convention, the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF, AND ARTICLE 1 OF PROTOCOL NO. 12 TO, THE CONVENTION

33. The applicant claimed that the refusal to enforce the Constitutional Court’s decision was based on the same discriminatory reason as her dismissal. She relied on Article 14 of, and Article 1 of Protocol No. 12 to, the Convention.

Article 14 of the Convention 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.”

Article 1 of Protocol No. 12 to the Convention provides:

“1. The enjoyment of any right set forth by law 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.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

34. The Government contested that argument.

35. The Court notes that the applicant's dismissal was clearly based on her ethnic origin (see paragraph 6 above). Such an act would be clearly unacceptable under the Convention. However, this issue raised by the applicant falls outside the Court's competence *ratione temporis*. As regards the non-enforcement of the Constitutional Court's decision, the Court notes that the applicant's former employer is a private company. Thus, the State was not competent to reinstate her, but only to take the necessary measures to facilitate the enforcement of the final judicial decision ordering her reinstatement. The applicant has failed to show that any person in a situation similar to hers has been treated differently, that is, that the Republika Srpska has been more active in securing the reinstatement of a person of another ethnic origin. Accordingly, she has failed to produce *prima facie* evidence placing the burden on the State to justify a difference in treatment (compare *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, ECHR 2007-IV). Therefore, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. In respect of pecuniary damage, the applicant demanded that the Constitutional Court's decision in question be fully enforced. She further claimed 13,000 euros (EUR) in respect of non-pecuniary damage. The Government considered the amount claimed to be excessive and unsubstantiated.

38. As regards the payment of the outstanding judgment debt, the Court has previously found that the most appropriate form of redress in non-enforcement cases is indeed to ensure full enforcement of the domestic judgments in question (see *Jeličić*, cited above, § 53, and *Pejaković and Others v. Bosnia and Herzegovina*, nos. 337/04, 36022/04 and 45219/04, § 31, 18 December 2007). This principle applies equally to the present case, having regard to the violation found. It therefore considers that the Government should pay the applicant the outstanding debt owed to her under the Constitutional Court's decision of 27 June 2007 (see paragraph 27 above). Furthermore, in the particular circumstances of the present case

(notably, the context in which the applicant was dismissed and the impossibility of her reinstatement), and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court further awards the applicant EUR 6,000 by way of compensation for pecuniary and non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

39. The applicant also claimed EUR 1,900 for the costs and expenses incurred before the Court.

40. The Government considered the amount claimed to be excessive.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). The Court notes that the applicant's representative submitted an initial application in one of the official languages of Bosnia and Herzegovina and, at the request of the Court, written pleadings in English. Having regard to the tariff fixed by the local bar associations, which the Court considers reasonable in the circumstances of this case, the applicant is entitled to approximately EUR 1,700. In addition, the Court awards the sum of EUR 100 for secretarial and other expenses.

42. The Court therefore awards the applicant EUR 1,800 in total, plus any tax that may be chargeable.

C. Default interest

43. 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. *Declares* the complaints concerning Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *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, the outstanding debt owed to her under the Constitutional Court's decision of 27 June 2007 and to pay the applicant, within the same time-limit, the following amounts, to be converted into convertible marks at the rate applicable on the date of settlement:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of costs and expenses;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President