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

FOURTH SECTION

CASE OF MURTIĆ AND ĆERIMOVIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 6495/09)

JUDGMENT

STRASBOURG

19 June 2012

FINAL

22/10/2012

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

In the case of Murtić and Ćerimović v. Bosnia and Herzegovina**,**

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Ljiljana Mijović, *judges,*
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 6495/09) 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 Fikret Murtić and Ms Raska Ćerimović ("the applicants"), on 6 October 2005.

2. The applicants were represented by J. Vukadin and V. Vukadin, lawyers practising in Zagreb. The Bosnian-Herzegovinian Government ("the Government") were represented by their Deputy Agent, Ms Z. Ibrahimović.

3. The applicants complained, in particular, of the non-enforcement of a decision of the Human Rights Chamber of 8 March 2002 in their favour.

4. On 7 May 2009 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 applicants were born in 1963 and 1959 respectively and live in Velika Kladuša.

6. They were both employed by Agrokomerc ("the company"), an agricultural company based in Velika Kladuša. In August 1991 the workers' council of the company adopted a decision on the issuance of internal shares

to the company's employees as part of its reorganisation from a socially owned company into a joint-stock company under the applicable regulations. It was decided that one third of the employees' salaries would be allocated towards instalment payments for the internal shares to be issued to them.[1] On 30 March 1993 the company's management board issued a series of resolutions authorising retention of earnings that resulted in an increase in the company's internal share capital. As a result of these board resolutions, the internal share capital amounted to 80.9% of the company's total share capital (the remainder being held by the State). The reorganisation process continued until August 1994, when the management of the company was taken over by the State following armed conflict in the north-western part of Bosnia and Herzegovina (where Velika Kladuša is located) during the 1992-95 war. Following the State taking control of the company, the applicants were effectively unable to exercise any of their rights as shareholders, although the company continued to state the privately-held internal share capital allotted to its employees on its annual balance sheets, as well as the State-owned capital, until 30 June 1999.

7. On 7 August 1995 the applicants' employment was suspended, as well as that of many other employees of the company, and they were placed on a waiting list for potential future employment by the new management of the company. However, they were never subsequently offered the opportunity to resume their employment.

8. On 20 June 2000 the applicants complained to the Human Rights Chamber (a domestic human-rights body set up under Annex 6 to the 1995 General Framework Agreement for Peace) in two separate appeals.

9. On 7 March 2001, Revsar, an auditing and consulting company based in Sarajevo, conducted an audit of the transfer of ownership of the company. It held that the measures taken from 1991 until 1994 to establish internal share capital had not been in accordance with the law and that, therefore, such internal share capital had never been formed. Consequently, it concluded that the company was 100% State-owned.

10. On 31 July 2001 the Federation of Bosnia and Herzegovina issued a decree[2] placing the company on the list of the companies under its control on the basis of the State-owned capital.

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1. In 1990 the Prime Minister of the former Socialist Federal Republic of Yugoslavia, Mr Ante Marković, proposed legislation under which socially owned companies could be privatised through the sale of internal shares, under favourable conditions, to employees, former employees and pensioners of the relevant company. The holders of internal shares were registered as shareholders with the competent court. However, at the time of registration most shareholders had not made any payments towards their shares. Rather, in most cases the company set up a system to allow shareholders to pay for their internal shares in instalments over a maximum period of ten years. For more details about this process, see the Human Rights Chamber decision of 8 March 2002 (*CH/00/5134 et al*, available at www.hrc.ba).

11. On 8 February 2002 the Human Rights Chamber joined the applicants' cases (see paragraph 8 above) and those of Mr M. Š. and the Association for the Protection of Unemployed Shareholders of Agrokomerc and adopted a single decision. It was delivered on 8 March 2002. The Human Rights Chamber held that the applicants had acquired possessions, in the form of their paid-up internal shares in the company, which were protected by law and found a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

The reasons were set out in the decision, the relevant paragraphs of which read as follows:

> "290. In summary, the Chamber has concluded that the applicants acquired protected "possessions" in their paid internal shares in Agrokomerc for which payment was made on the basis of: (a) permanent deposits; (b) allocation of parts of salaries, either on monthly basis during the period of 1991 to 1994, or on an annual basis for 1992; and (c) distribution of profits for 1992 in proportion to the amount of paid internal shares. The decision on the results of the renewed Revsar audit of 7 March 2001, which cancelled all internal shares in favour of state capital in Agrokomerc, deprived the applicants of these protected possessions. In addition, by exercising effective exclusive control over the management of Agrokomerc, the authorities of the Federation further interfered with the rights of the applicants to participate in the management and to share in the profits of Agrokomerc in relation to their paid internal shares. In these respects the Federation did not act "subject to the conditions provided by law". Consequently, the Chamber concludes that the Federation has violated the rights of the applicants protected by Article 1 of Protocol No. 1 to the Convention.
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> ...
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> 298. The applicants are correct that they have had no real and effective means to participate in the establishment of the ownership structure of Agrokomerc, as that has been established through the performance of the audit, which was conducted exclusively by the auditor Revsar [...]. There have been no actual or effective proceedings in which the applicants have been invited to participate. Under the law, the only way for the applicants to participate in the establishment of the ownership structure of the company in which they are shareholders has been to challenge the appointment of the auditor and to challenge the results of the audit [...]. This has not proven effective in this case. Moreover, the Chamber considers that this type of process has not been adequate properly to allow the applicants to have access to courts for the determination of their civil rights, as guaranteed by Article 6 of the Convention".

12. Furthermore, the Human Rights Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary steps to recognise the applicants as holders of internal shares in relation to the amount of their paid-up internal shares and to enable them to exercise their right as shareholders to participate in the management of the company. In particular,

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1. *Uredba o izmjeni Uredbe o vršenju ovlaštenja i obaveza organa Federacije Bosne i Hercegovine u privrednim društvima po osnovu državnog kapitala*, Official Gazette of the Federation of Bosnia and Herzegovina, no. 35/01.

the Federation was ordered to: (i) employ, at its own expense, internationally recognised auditors to undertake an audit to determine the complete ownership structure of the company, in compliance with International Accounting Standards and International Auditing Standards; (ii) establish the value of the applicants' shares and have them formally registered; and (iii) provide them with individual share certificates. Lastly, the Human Rights Chamber ordered interim measures whereby certain procedures and arrangements were put in place as regards the company's management until the adoption of the final audit report and the convocation of a general meeting of the company's shareholders.

13. On 28 November 2003 the Prague branch of Deloitte & Touche produced an audit report, which found that 90.33% of the company's capital was State-owned, the remaining 9.67% being in private ownership. In addition, only 3.34% of the total capital had been assigned to individual private shareholders, whilst the outstanding 6.33% remained unassigned. The value of the applicants' shares had not been established. Consequently, they could not attend the general meeting of the company's shareholders which was to be held on 16 March 2004.

14. On 7 May 2004 the Human Rights Commission (the legal successor of the Human Rights Chamber) decided to lift the interim measures indicated in the decision of 8 March 2002 (see paragraph 12 above), after having received the final report on the completed audit from the Federation of Bosnia and Herzegovina and a signed copy of the minutes of the first general meeting of the company's shareholders.

15. On 12 May 2005 the Bihać Cantonal Court registered the changes in the ownership of the company resulting from its reorganisation.

16. On 14 February 2006 a general meeting of the company's shareholders adopted a resolution authorising the distribution of the unassigned private share capital to individual shareholders (see paragraph 13 above).

17. On 29 October 2007 the applicants were issued with individual share certificates and their shares were formally registered with the Securities Commission. It was established that the first applicant was entitled to 451 shares with a market value of 4,510 convertible marks (BAM) and the second applicant to 1,086 shares with a market value of BAM 10,000. Consequently, the applicants were also allowed to attend general meetings of the company's shareholders.

18. On 15 January 2009 the Constitutional Court of Bosnia and Herzegovina (which became responsible for the supervision of the execution of the Human Rights Chamber's decisions after the Human Rights Commission ceased to exist) concluded that the Human Rights Chamber's decision of 8 March 2002 had been fully implemented.

II. RELEVANT DOMESTIC LAW

19. In accordance with Article 239 of the Criminal Code 2003 (Official Gazette of Bosnia and Herzegovina, 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 Human Rights Chamber 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."

THE LAW

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

20. The applicants complained of the non-enforcement of the Human Rights Chamber's decision of 8 March 2002. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

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

> "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

21. The Government submitted that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention because the decision in question had been fully enforced. The applicants disagreed.

22. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question of whether or not an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention.

23. The Court further reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, that there has been a breach of the Convention and then afforded redress for that breach (see, for example, *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 180 and 193, ECHR 2006-V).

24. Turning to the facts of the present case, the Court notes that the Human Rights Chamber's decision was fully enforced on 29 October 2007 (see paragraph 17 above). This was confirmed by the Constitutional Court (see paragraph 18 above). However, the implementation did not involve any acknowledgment of the violations alleged, nor did it afford the applicants adequate redress. In these circumstances, they may still claim to be victims within the meaning of Article 34 of the Convention in relation to the period during which the Human Rights Chamber's decision remained unenforced (see *Dubenko v. Ukraine*, no. 74221/01, § 36, 11 January 2005; and *Runić and Others v. Bosnia and Herzegovina*, nos. 28735/06, et al., § 16, 15 November 2011). The Court thus rejects the Government's objection.

25. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The Government argued that all the necessary steps for the implementation of the Human Rights Chamber's decision had been taken diligently and promptly. They maintained that the length of time taken to enforce the decision had not been excessive, bearing in mind the complex financial and legal procedures that the enforcement had required. In particular, after the audit to international standards had been completed, the undistributed share capital, which had been divided into 31,034.873 shares, had to be allocated to 7,000 individual shareholders. Moreover, before the shares could be allocated and the shareholders registered with the Securities Commission, the company had to be restructured in order to comply with the existing regulations governing businesses.

27. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a "hearing" for the purposes of Article 6 (see *Hornsby v. Greece*, no.18357/91, § 40, 19 March 1997). The

Court also recalls its extensive case-law concerning the non-enforcement or the delayed enforcement of final domestic judgments (see, amongst many other cases, *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, §§ 38-39, ECHR 2006-XII; *Tacea v. Romania*, no. 746/02, 29 September 2005; and *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 51-57, 15 October 2009).

28. The Court notes that the domestic decision in the present case ordered the authorities to establish the value of the applicants' shares, issue individual share certificates and register them with the Securities Commission, so as to enable them to exercise their rights as shareholders to participate in the management of the company and in the distribution of profits. The Court observes in that connection that the shares held by the applicants undoubtedly had an economic value and constituted "possessions" within the meaning of Article 1 of Protocol No. 1 (see *Olczak v. Poland* (dec.), no. 30417/96, § 60, ECHR 2002-X; and *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 91, ECHR 2002-VII).

29. The Court is aware that the implementation of the Human Rights Chamber's decision required a set of somewhat complex financial and legal actions. It is also aware that some important documents concerning the process of the company's privatisation were missing or destroyed due to the war and that its records had not been properly kept for a period. That, however, cannot be a justification for a delay of more than five years, the period for which the domestic decision under consideration in the present case remained unenforced. Such a delay has, in the past, been considered to be excessive (see *Jeličić,* cited above, § 40; *Kudić v. Bosnia and Herzegovina*, no. 28971/05, § 20, 9 December 2008; *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 16, 27 January 2009; *Čolić and Others v. Bosnia and Herzegovina*, nos. 1218/07 *et al*., § 15, 10 November 2009; and *Runić and Others,* cited above*,* § 21). The Court does not see any reason to depart from that jurisprudence.

30. Accordingly, there has been a violation 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

31. The applicants further complained that they did not have an effective domestic remedy for their non-enforcement complaint. They relied on Article 13 of the Convention, which reads as follows:

> "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."

32. The Government argued that there had not been a violation of Article 13 of the Convention in the present case, without developing this argument further.

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicants claimed 50,000 euros (EUR) each in respect of non-pecuniary damage. The Government considered that amount to be excessive and unjustified.

37. The Court considers that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants EUR 3,600 each in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

38. The applicants did not claim any costs and expenses.

C. Default interest

39. 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

1. *Declares* the application admissible by a majority;

2. *Holds* by six votes to one that there has been a violation of Article 6 of the Convention;

3. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

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

5. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand six hundred) each, in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into convertible marks 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;

6. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Kalaydjieva is annexed to this judgment.

L.G.
T.L.E.

DISSENTING OPINION OF JUDGE KALAYDJIEVA

I regret that I am unable to join the majority in the present case in their findings with regard to Article 6 and Article 1 of Protocol No.1 to the Convention.

I am not convinced that on 7 May 2009, when the Court communicated the complaints of Mr Murtic and Ms Cerimovic, the applicants could still be considered victims of the authorities' failure to enforce the Human Rights Chamber's decision of 2002, as alleged by them in their application of 6 October 2005 (see paragraphs 1 and 4 of the judgment).

In its decision the Human Rights Chamber found violations of their rights to "possessions" within the meaning of Article 1 of Protocol No. 1, and to access to a court under Article 6 for the purpose of determining the dispute concerning these "possessions". The Chamber imposed interim measures and ordered the authorities to take steps to provide appropriate redress in respect of the violations found; this implied a complicated procedure of international audit in order to determine the value of the applicants' shares in "Agrokomerc" and to enter their names in the register of shareholders. It is not contested that these steps were undertaken shortly after the decision and were completed by 29 October 2007, when the applicants' rights as shareholders were registered with the national Securities Commission, nor that the applicants exercised their rights as shareholders effectively thereafter. On 15 January 2009, several months prior to communication of the applicants' complaints by the Court, the Constitutional Court of Bosnia and Herzegovina – responsible for supervising execution of the decisions of the Human Rights Chamber (see paragraph 18) – confirmed that it had been fully implemented. In my understanding, this was sufficient to conclude that the matters concerning enforcement of the decision were resolved, at the latest, on 29 October 2007. The grounds on which the applicants contest the full implementation of the impugned decision were not specified (see paragraph 21).

In so far as the applicants complain of the delay accumulated in the enforcement process, I disagree with the somewhat automatic application of the principles reached by the Court in earlier cases against Bosnia and Herzegovina, listed in paragraph 29. In my opinion, it should not be overlooked that, in contrast to those cases, which concerned failure or delay in the payment of specific amounts, the present case involved far more complicated enforcement steps, such as an international audit for the purposes of determining the applicant's shares in a company - a process which no doubt entails "somewhat complex financial and legal actions" in all legal systems. In the instant case this process also involved difficulties in connection with missing or destroyed documents, and absent or improperly kept records from the war period (see paragraph 29). In the absence of any specific inaction or delay in enforcement for which the authorities were responsible, these difficulties are serious enough to explain the impugned five-year delay in implementation of the decision of the Human Rights Chamber. This situation should be distinguished from that examined in the cases cited in paragraph 29, where non-enforcement resulted from legislative amendments adopted to avoid, modify or at least delay the enforcement of final decisions ordering the payment of specified amounts to the affected individuals. In my view these differences suffice to find no violation of the applicants' rights under Article 6 and Article 1 of Protocol No. 1.

In so far as the applicants may be considered to complain that the enforcement of the decision of the Human Rights Chamber was not sufficient to redress the violations established by that body, such a complaint seems not to be pertinent to its enforcement, since the Human Rights Chamber's 2002 decision failed to order any compensation for the non-pecuniary damage resulting from the violations of their rights to "possessions" and access to court. This issue should be distinguished from the question whether the applicants were entitled to any compensation for the subsequent delay in the enforcement of the impugned decision. It appears that in this regard the scope of the applicants' case as registered before the Court differed from that under parallel examination by the Constitutional Court in supervising enforcement of the Human Rights Chamber's decision. One can only regret that, having reached the Court in 2005, the applicants' complaints under the Convention were communicated to the respondent Government only after the Constitutional Court's decision of 2009, which was not called to rule on the reasonableness of the delay in implementation of the Human Rights Chamber's decision as adopted in 2002, but only on its completeness.

In this regard the applicants fail to explain whether they sought at any time to obtain compensation for non-pecuniary damage arising from the allegedly unreasonable delay. This raises issues as to the admissibility of their complaints in respect of the existence of appropriate domestic remedies capable of affording redress for the alleged violation of their rights to enforcement of a final decision without unreasonable delay. I am not convinced that the authorities were given a chance to react to the complaints of delay and any ensuing potential necessity to redress it.

However, since in my opinion the circumstances of the present case disclose no violation in respect of either non-enforcement of a final decision as originally submitted, or unreasonable delay in such enforcement, as subsequently maintained by the applicants, no issue arises as to the appropriate redress for such violations. Thus, I agree with the majority's conclusions under Article 13, albeit for different reasons.