



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

FOURTH SECTION

CASE OF LAZAREVIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 29422/17)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Arbitrary court rulings amounting to denial of justice

STRASBOURG

14 January 2020

FINAL

14/05/2020

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

In the case of Lazarević v. Bosnia and Herzegovina,

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

Branko Lubarda, *President*,
Faris Vehabović,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 17 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 29422/17) 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 national of Bosnia and Herzegovina, Mr Slobodan Lazarević (“the applicant”), on 7 April 2017.

2. The applicant was represented by Ms I. Pužić-Obradović, a lawyer practising in Doboj. The Government of Bosnia and Herzegovina (“the Government”) were represented by their Agent, Ms B. Skalonjić.

3. The applicant complained about the unfairness of a set of labour proceedings.

4. On 15 December 2017 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Doboj.

6. On 29 June 2012 the applicant was dismissed from his employment with the “Željeznice Republike Srpske A.D. Doboj” (hereinafter: “Željeznice RS”), a public railway company, after he refused to conclude a new employment contract under changed conditions.

7. On 18 July 2012 the applicant filed a civil claim against Željeznice RS seeking payment of redundancy pay (*otpremnina*), summer bonuses

(*regres*), winter bonuses (*zimnica i ogrev*), meal allowances (*topli obrok*), and related pension contributions.

8. On 4 July 2013 the Doboj Court of First Instance granted the applicant's claim for redundancy pay but rejected the remainder of his claim on account of his former employer's dire financial situation.

9. On 27 January 2014 the Doboj District Court upheld that decision.

10. On 16 June 2016 the Supreme Court of the Republika Srpska (hereinafter "the Supreme Court") dismissed an appeal on points of law lodged by the applicant as incompatible *ratione valoris*.

11. On 21 July 2016 the applicant lodged an appeal with the Constitutional Court in which he complained about the unfairness of his labour proceedings, contending that despite clear legal provision the domestic courts had rejected his claim on irrelevant grounds. In support of his contention he referred to the judgment of the Supreme Court of 18 February 2015 (see paragraph 17 below) and the interpretation by the Commission for the Interpretation and Monitoring of the Application of the General Collective Agreement of 12 February 2014 (see paragraph 20 below).

12. On 26 October 2016 the Constitutional Court of Bosnia and Herzegovina dismissed the applicant's appeal as manifestly ill-founded, in a joint decision also dealing with four other appeals relating to other issues.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. 2003 Civil Procedure Act

13. Section 237 of the Civil Procedure Act 2003 (*Zakon o parničnom postupku*, Official Gazette of the Republika Srpska nos. 58/03, 85/03, 74/05, 63/07, and 49/09), as in force at the material time, reads as follows:

"(1) The parties may file the request for revision of the final second instance judgment within thirty (30) days from the day of the service of the judgment.

(2) The revision shall not be allowed if the value of the contested part of the final judgment does not exceed 10,000 convertible marks (BAM).

(3) Exceptionally the Supreme Court of the Republika Srpska may also allow revision in all cases if it finds that deciding on revision is important for the application of law in other cases."

14. Section 264a of the Civil Procedure Act 2003, introduced with the 2013 amendments (Official Gazette of the Republika Srpska no. 61/13), reads as follows:

"(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by

Bosnia and Herzegovina, a party may, within ninety days of the judgment of the European Court of Human Rights becoming final, file an application with the first-instance court which originally adjudicated the proceedings resulting in the decision violating the human right or fundamental freedom, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions in relation to reopening proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom.”

2. Labour law

15. In accordance with section 33 of the General Collective Agreement (*Opšti kolektivni ugovor*, Official Gazette of the Republika Srpska no. 40/10), as in force at the material time, every employee was entitled to a meal allowance and a summer bonus, in the amounts calculated in accordance with that provision.

16. Under section 57 of the General Collective Agreement a joint commission was established for the interpretation and monitoring of the application of that collective agreement, and the resolution of the disputed issues that may arise in the implementation of the collective agreement.

B. Relevant domestic practice

1. Supreme Court

17. In decision no. 85 0 Pc 034496 14 Rev of 18 February 2015 the Supreme Court held that meal allowances and summer bonuses were employment benefits guaranteed by section 33 of the General Collective Agreement, which were, as such, “of an imperative and obligatory character”, and that Željeznice RS had to pay them in full regardless of its financial situation.

2. Constitutional Court

18. In decision no. AP-1886/15 of 21 January 2016 the Constitutional Court rejected as unfounded appeals lodged by Željeznice RS against the judgment of the Supreme Court of 18 February 2015 (see paragraph 17 above). The relevant part of the decision reads as follows:

“35. ... [T]he Constitutional Court confirms that the provisions regulating the payment of the employment-related claims (the meal allowance, the summer bonus, and transportation costs to and from work), which were the subject of these proceedings, are not unclear and ambiguous, but precisely the opposite, clearly stipulating that employees are entitled to those payments, as concluded by the Supreme Court and the Court of Appeal in the challenged judgments. The Constitutional Court holds that in the reasoning given for the decisions challenged by the respective appeals, the Supreme Court and the Court of Appeal gave detailed,

clear and precise explanations in that regard. Therefore, the conclusion cannot be reached that the application of the relevant legal provisions was in any way arbitrary ... Moreover, the allegations made by the appellant as regards its financial situation, which are repeated in its appeal, were examined in detail in the challenged judgments and clear reasoning has been provided as to why those allegations cannot lead to a finding of a different solution in the instant legal case and the Constitutional Court, given the circumstances of the present case, does not consider that reasoning to be arbitrary.”

19. In decision no. AP-4589/15 of 17 February 2016 the Constitutional Court similarly rejected as unfounded further appeals lodged by Željeznice RS. It largely referred to the reasoning of its decision of 21 January 2016 (see paragraph 18 above). The relevant part reads as follows:

“42. The Constitutional Court concludes that there has been no violation of the right to a fair trial under Section II/3e) of the Constitution of Bosnia and Herzegovina because the Court of Appeal, by applying the relevant provisions of the Labour Act and the General Collective Agreement, which are clear, accessible and unambiguous, obliged the appellant to pay the claimants the summer bonus and the meal allowance, and that in the circumstances of this case there is nothing to point to a conclusion that the application of the statutory law in the contested judgments was arbitrary ...”

3. Commission for the Interpretation and Monitoring of the Application of the General Collective Agreement

20. In the domestic proceedings and before the Court the applicant also submitted an interpretation by the Commission for the Interpretation and Monitoring of the Application of the General Collective Agreement of 12 February 2014 (see paragraph 16 above), which in so far as relevant reads as follows:

“The provisions of section 33 of the General Collective Agreement are of an imperative and obligatory nature, namely the employer is obliged to pay the costs of the meal allowance, transportation costs to and from work, and the summer bonus, in the amounts laid down in the collective agreement.

The indicated obligations must be respected notwithstanding the material situation of the company, that is, the employer may not be released from this obligation, or the above payments, as a result of the poor performance of the company.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant complained about the unfairness of the labour proceedings. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

22. The Government contested that argument.

A. Admissibility

23. The Government argued that the claims rejected by domestic courts amounted to approximately 1,100 euros (EUR) and that the applicant had therefore not suffered a significant disadvantage.

24. The applicant disagreed, indicating that he is a pensioner and that the rejected claim represents a great loss for him in financial terms.

25. The Court notes that the question of whether the applicant has suffered any significant disadvantage represents the main element of the criterion set forth in Article 35 § 3 (b) of the Convention (see *Ionescu v. Romania* (dec.), no. 36659/04, § 32, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010). The Court has held that the absence of any significant disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Konstantin Stefanov v. Bulgaria*, no. 35399/05, § 44, 27 October 2015).

26. Turning to the present case, the Court considers that the amount in question is not insignificant and must have had negative effect on the applicant's personal situation. The Government's objection must accordingly be dismissed.

27. The Court notes that the application 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

28. The applicant claimed that the domestic judgments rendered in his case were clearly contrary to the domestic legislation and to the case-law of the highest courts.

29. The Government contended that the Court was not a court of fourth-instance. It should therefore not question the interpretation of domestic law by national courts.

30. The Court agrees with the Government that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII). However, the Court may find a violation of Article 6 § 1 of the Convention if the national court's findings are arbitrary or manifestly

unreasonable, resulting in a “denial of justice” (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, §§ 83-85, 11 July 2017).

31. Turning to the present case, the Court notes that section 33 of the General Collective Agreement, in force at the material time, clearly provided that every employee was entitled to a meal allowance and summer bonus, in the amounts calculated in accordance with that provision (see paragraphs 15 above). Indeed, this was confirmed in a similar case by the Supreme Court, which, after the closing of the appeal proceedings in the present case, referred to the “imperative and obligatory character” of those work-related benefits, due regardless of the financial situation of employer (see paragraph 17 above). Subsequently, the Constitutional Court upheld the Supreme Court’s reasoning, holding that the provision concerning the obligation to pay the bonus and allowance at issue was clear, accessible and unambiguous (see paragraphs 18 and 19 above).

32. However, when examining the applicant’s labour claim, the first-instance court disregarded that provision and rejected the applicant’s claim, relying on irrelevant grounds – namely, the applicant’s former employer’s financial situation (see paragraph 8 above). The second-instance court did not remedy this error but reiterated the reasoning of the first-instance court (see paragraph 9 above). The Court therefore finds that such arbitrary rulings by the Doboj Court of First Instance and Doboj District Court amounted to a denial of justice in the applicant’s case (see, *mutatis mutandis*, *Andelković v. Serbia*, no. 1401/08, § 27, 9 April 2013).

33. The Court observes that the applicant’s appeal on points of law to the Supreme Court was dismissed as incompatible *ratione valoris*, and was thus not examined on its merits (see paragraphs 10 and 13 above). It reiterates in that connection that the application of a statutory *ratione valoris* threshold for appeals to the Supreme Court is a legitimate and reasonable procedural requirement having regard to the very essence of the Supreme Court’s role to deal only with matters of the requisite significance (see *Zubac v. Croatia* [GC], no. 40160/12, § 83, 5 April 2018, with further references).

34. Further recourse against the contested judgments was available to the applicant at the material time in the form of a constitutional appeal and he made use of it. In his appeal the applicant complained that despite clear legal provision the domestic courts had rejected his claim on irrelevant grounds, and he referred to the cited judgment of the Supreme Court (see paragraph 17 above), as well as to the interpretation by the Commission for Interpretation and Monitoring of the Application of the General Collective Agreement (see paragraph 19 above). However, the Constitutional Court summarily dismissed the applicant’s appeal as manifestly ill-founded, despite its own case-law in that connection indicating that the impugned provision, that is to say section 33 of the General Collective Agreement,

was “not unclear and ambiguous, but precisely the opposite” (see paragraphs 18, 19 and 31 above).

35. The foregoing considerations are sufficient to enable the Court to conclude that the Doboj Court of First Instance and Doboj District Court did not give the applicant’s case a fair hearing, and that this was not remedied by the Constitutional Court. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

II. 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. The applicant claimed 1,704.39 euros (EUR) in respect of pecuniary damage on account of the employment benefits claimed in the domestic proceedings.

38. The Government contested the applicant’s claim as unfounded.

39. In this connection, the Court notes that under section 264a of the Civil Procedure Act 2003 (see paragraph 14 above), an applicant may file an application for the reopening of civil proceedings in respect of which the Court has found a violation of Article 6 § 1 of the Convention, as in the present case. Having regard to the foregoing, the Court considers that there is no call to award the applicant any sum on account of pecuniary damage.

40. The applicant did not claim any compensation in respect of non-pecuniary damage. There is therefore no call to award him any sum on that account either.

B. Costs and expenses

41. The applicant also claimed EUR 1,349.80 for the costs and expenses incurred before the domestic courts and before the Court. He submitted a relatively detailed bill of costs.

42. The Government considered the applicant’s claim to be unsubstantiated.

43. 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, are reasonable as to quantum and concern proceedings that are related to the violation of the Convention provision found. The Court requires itemised bills and invoices

that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (*Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 94, ECHR 2013 (extracts)). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the claimed amount.

C. Default interest

44. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, EUR 1,349.80 (one thousand three hundred and forty nine euros and eighty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Branko Lubarda
President