



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

FOURTH SECTION

CASE OF JELIČIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 41183/02)

JUDGMENT

STRASBOURG

31 October 2006

FINAL

31/01/2007

In the case of Jeličić v. Bosnia and Herzegovina,

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

Nicolas Bratza, *President*,
Josep Casadevall,
Matti Pellonpää,
Rait Maruste,
Kristaq Traja,
Ljiljana Mijović,
Ján Šikuta, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 41183/02) 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 Ruža Jeličić (“the applicant”), on 19 August 2002.

2. The applicant complained that a final and enforceable judgment ordering the release of her “old” foreign-currency savings had not been enforced.

3. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. A hearing on admissibility and the merits took place in public in the Human Rights Building, Strasbourg, on 28 June 2005 (Rule 54 § 3).

There appeared before the Court:

(a) *for the Government*

Ms Z. IBRAHIMOVIĆ,
Ms M. MIJIĆ,

Acting Agent,
Acting Deputy Agent;

(b) *for the applicant*

Mr P. RADULOVIĆ,
Mr S. NIŠIĆ,

Counsel,
Adviser.

The Court heard addresses by Ms Ibrahimović and Mr Radulović, as well as their answers to questions put by Judge Mijović.

5. By a decision of 15 November 2005, the Chamber declared the application admissible.

6. The applicant and the Government each filed further observations (Rule 59 § 1). In addition, third-party comments were received from the Association of Foreign-Currency Savers (*Udruženje za zaštitu deviznih štediša u Bosni i Hercegovini*), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1953 and lives in Banja Luka.

8. Between 7 January 1977 and 31 January 1983 the applicant deposited in total 70,140 German marks (DEM) in her savings account at the then State-owned Privredna banka Sarajevo Filijala Banja Luka. In Bosnia and Herzegovina, as well as in other successor States of the former Socialist Federal Republic of Yugoslavia (“SFRY”), such savings are commonly referred to as “old” foreign-currency savings, having been deposited prior to the dissolution of the SFRY. The relevant background information on this subject is set out in detail in the Chamber’s decision on the admissibility of the present application (see *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-XII).

9. On 31 December 1991 the balance in the applicant’s account, which included accrued interest, was DEM 235,924 (in the former SFRY, foreign-currency deposits earned high interest).

10. On several occasions in 1992 and 1993, the applicant managed to withdraw in total DEM 9,352, regardless of statutory restrictions which had been introduced in the late 1980s.

11. On 3 October 1997 the applicant initiated civil proceedings against the Banjalučka banka, the legal successor of the Privredna banka Sarajevo Filijala Banja Luka, seeking the recovery of her entire “old” foreign-currency savings and accrued interest.

12. On 26 November 1998 the Banja Luka Court of First Instance established that the balance in the applicant’s account indicated above was DEM 295,274, including accrued interest. The court also found that the applicant had DEM 4,896 in another account at the same bank. The Banjalučka banka was ordered to pay the applicant, within 15 days, DEM 300,170 (approximately 153,475 euros (EUR)), default interest on the above amount at the rate applicable in the country of the currency (namely

Germany) from 3 October 1997, legal costs in the amount of 9,076 dinars (approximately EUR 290) and default interest on the last-mentioned amount at the statutory rate from the date of the judgment.

13. On 5 February 1999 the Banja Luka Court of First Instance mistakenly held that the Banjalučka banka had not appealed against the judgment of 26 November 1998 and accordingly issued a writ of execution (*rješenje o izvršenju*). On 25 February 1999 the Banja Luka Court of First Instance established that an appeal had in fact been submitted. On 4 November 1999 the Banja Luka District Court rejected that appeal and the first-instance judgment of 26 November 1998 therefore became enforceable.

14. Meanwhile, the applicant filed an application with the Human Rights Ombudsperson, who referred the application to the Human Rights Chamber (the human rights bodies set up by Annex 6 to the 1995 General Framework Agreement for Peace).

15. On 12 January 2000 the Human Rights Chamber found a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 arising from a failure to enforce the judgment of 26 November 1998. The Human Rights Chamber held the Republika Srpska responsible and ordered it to ensure full enforcement without further delay.

16. After the Banjalučka banka had failed to execute the judgment voluntarily, on 22 March 2000 the competent court sent a fresh writ of execution to the Republika Srpska Payment Bureau (*Služba za platni promet Republike Srpske*).

17. On 28 July 2000 the Supreme Court of the Republika Srpska rejected an appeal on points of law (*revizija*) against the judgment of 26 November 1998.

18. On 8 November 2000 the writ of execution was returned to the competent court, execution having been impossible on account of a statutory prohibition (see paragraph 24 below).

19. On 30 January 2001 the applicant converted part of her savings (DEM 20,000) into privatisation coupons under the Privatisation of Companies Act 1998. She subsequently sold those coupons on the secondary market, allegedly for DEM 9,000.

20. On 18 January 2002 the privatisation of the Banjalučka banka was completed and the applicant's "old" foreign-currency savings became a public debt of the Republika Srpska pursuant to section 20 of the Opening Balance Sheets Act 1998.

21. On 7 March 2002 and 9 February 2004 the applicant converted a further part of her savings (EUR 20,452 in total) into privatisation coupons as before. She subsequently sold those coupons on the secondary market, allegedly for EUR 8,794 in total.

22. On 15 April 2006 Bosnia and Herzegovina took over the debt arising from "old" foreign-currency savings from its constituent units pursuant to section 1 of the Old Foreign-Currency Savings Act 2006.

23. The judgment of 26 November 1998 has not yet been enforced.

II. RELEVANT DOMESTIC LAW

A. Statutory prevention of enforcement of judgments ordering the release of “old” foreign-currency savings

24. Enforcement of such judgments has been prevented in the Republika Srpska since 3 May 1996 in accordance with the relevant instructions of the government of the Republika Srpska (*Odluka o obustavljanju isplate “stare” devizne štednje*, Official Gazette of the Republika Srpska (“OG RS”) no. 10/96 of 27 May 1996, and *Zaključak*, OG RS no. 24/99 of 4 October 1999) and the following legislation:

(a) The Foreign-Currency Transactions Act 1996 (*Zakon o deviznom poslovanju*, OG RS no. 15/96 of 8 July 1996, amendments to which were published in OG RS no. 10/97 of 30 April 1997);

(b) The Postponement of Enforcement Act 2002 (*Zakon o odlaganju od izvršenja sudskih odluka na teret sredstava budžeta Republike Srpske po osnovu isplate naknade materijalne i nematerijalne štete nastale uslijed ratnih dejstava i po osnovu isplate stare devizne štednje*, OG RS no. 25/02 of 20 May 2002, amendments to which were published in OG RS no. 51/03 of 1 July 2003);

(c) The Foreign-Currency Transactions Act 2003 (*Zakon o deviznom poslovanju*, OG RS no. 96/03 of 24 November 2003);

(d) The Temporary Postponement of Enforcement Act 2003 (*Zakon o privremenom odlaganju od izvršenja potraživanja iz budžeta Republike Srpske*, OG RS no. 110/03 of 20 December 2003);

(e) The Settlement of Domestic Debt Act 2004 (*Zakon o utvrđivanju i načinu izmirenja unutrašnjeg duga Republike Srpske*, OG RS no. 63/04 of 15 July 2004, amendments to which were published in OG RS no. 47/06 of 11 May 2006); and

(f) The Old Foreign-Currency Savings Act 2006 (*Zakon o izmirenju obaveza po osnovu stare devizne štednje*, Official Gazette of Bosnia and Herzegovina (“OG BH”) no. 28/06 of 14 April 2006 – “the 2006 Act”).

B. Liability for “old” foreign-currency savings

25. In accordance with section 20 of the Opening Balance Sheets Act 1998 (*Zakon o početnom bilansu stanja u postupku privatizacije državnog kapitala u bankama*, OG RS no. 24/98 of 15 July 1998, amendments to which were published in OG RS no. 70/01 of 31 December 2001), as amended, liability for any debt arising from “old” foreign-currency savings

shifts from the bank in which the savings have been deposited to the Republika Srpska upon the completion of the bank's privatisation.

26. On 15 April 2006 Bosnia and Herzegovina took over from its constituent units the debt arising from "old" foreign-currency savings (section 1 of the 2006 Act).

C. Other relevant legislation concerning "old" foreign-currency savings

1. Legislation of Bosnia and Herzegovina

27. The 2006 Act has been in force since 15 April 2006. The following are its relevant provisions.

Section 1

"(1) This Act defines the procedure, manner and deadlines for the fulfilment of the obligations of Bosnia and Herzegovina arising from old foreign-currency savings deposited in local banks in the territory of Bosnia and Herzegovina.

(2) While Bosnia and Herzegovina shall be responsible for the fulfilment of obligations arising from old foreign-currency savings, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina shall provide the means.

...

(4) In accordance with the 2001 Agreement on Succession Issues, successor States to the former Socialist Federal Republic of Yugoslavia shall be liable for foreign-currency accounts opened at banks which had their seat in their respective territories. Bosnia and Herzegovina shall provide assistance, within the scope of its international activities, to the holders of such foreign-currency accounts ...

(5) Bosnia and Herzegovina shall fulfil its obligations defined in paragraphs 1 and 2 above following a verification process."

Section 2

"(1) Under this Act, old foreign-currency savings are foreign-currency savings in banks located in the territory of Bosnia and Herzegovina as at 31 December 1991, including interest earned until that date, less any payment after that date and any funds transferred to special privatisation accounts.

(2) Old foreign-currency savings defined in paragraph 1 above shall not include foreign-currency savings in branch offices located in the territory of Bosnia and Herzegovina of the Ljubljanska banka, Invest banka or other foreign banks."

Section 3(1)

“According to preliminary data ... old foreign-currency savings amount to 1,979,000,000 Bosnian markas¹. The amount shall be determined in the verification process.”

Section 4

“Any interest accrued after 1 January 1992 but not paid shall be cancelled. Interest for the period between 1 January 1992 and the entry into force of this Act shall be calculated afresh at an annual rate of 0.5%.”

Section 5

“The fulfilment of obligations arising from old foreign-currency savings, if not verified in accordance with this Act, can only be requested in court proceedings.”

Section 6

“...

(2) Following the verification process, each claimant shall be provided with a certificate which identifies him or her and the amount of his or her old foreign-currency savings.

(3) The certificate referred to in paragraph 2 above ... shall include, *inter alia*, the following:

...

(c) a statement that the claimant will renounce any legal action following a cash payment;

...”

Section 15

“...

(5) Following the verification process, a written decision shall be given to each claimant.

(6) It shall be permitted to appeal against a [first-instance] decision to the [competent second-instance body]. It shall be permitted to pursue an administrative dispute before the competent court against a [second-instance] decision.

(7) The legislation concerning administrative procedure of the Entities and District shall apply to the verification process.”

1. Approximately EUR 1,012,000,000.

Section 17(1)

“An application for verification can be submitted by [16 October 2006] and the verification process shall be completed by [15 January 2007].”

Section 18

“...

(2) Should the claimant accept the amount determined in the verification process, the claimant shall sign a verification certificate. Following the claimant's waiver of the right to appeal, a maximum of 100 Bosnian markas¹, or the total amount of savings lower than 100 Bosnian markas, shall be paid ...

(3) Furthermore, by the end of 2007 a maximum of 1,000 Bosnian markas², or the total amount of savings lower than 1,000 Bosnian markas, shall be paid. The remaining amount shall be reimbursed in State bonds in accordance with this Act ...

...”

Section 21(1)

“... All State bonds shall be issued at the same time ... at the latest by 31 March 2008 on the following conditions:

- (a) they shall become due within no more than thirteen years and at the latest by 31 December 2020 ...;
- (b) they shall earn interest at an annual rate of 2.5%;
- (c) they shall be redeemable before their maturity.”

Section 27

“(1) Final judicial decisions concerning old foreign-currency savings shall also be subject to verification ...

(2) ... The provisions of this Act concerning the cancellation of interest, cash payments and State bonds shall apply.”

Section 28

“The competent court shall of its own motion submit any pending case to the verification process in accordance with this Act.”

1. Approximately EUR 50.
2. Approximately EUR 500.

2. Legislation of the Republika Srpska

(a) **Privatisation of Companies Act 1998** (*Zakon o privatizaciji državnog kapitala u preduzećima*, OG RS no. 24/98 of 15 July 1998, amendments to which were published in OG RS nos. 62/02 of 7 October 2002, 38/03 of 30 May 2003, 65/03 of 11 August 2003 and 109/05 of 16 November 2005)

28. This Act was in force from 23 July 1998 until 25 May 2006. The following were the relevant provisions:

Section 19(1) and (2) (as amended on 19 August 2003)

“A person who has ‘old’ foreign-currency savings in a bank located in the Republika Srpska and who is a citizen of the Republika Srpska at the date of the entry into force of this Act shall be entitled to coupons for the purchase of shares pursuant to this Act.

A person who is entitled to coupons in accordance with this section may decide to convert into coupons his or her entire savings or a part thereof.”

The privatisation coupons acquired in accordance with the above provisions were transferable; this included the possibility of selling them on the secondary market (section 22(2)). Any conversion into privatisation coupons was irrevocable (section 25(3)).

(b) **Privatisation of Business Premises and Garages Act 2004** (*Zakon o privatizaciji poslovnih zgrada, poslovnih prostorija i garaža*, OG RS no. 98/04 of 4 November 2004)

29. This Act has been in force since 12 November 2004. Section 10(3) provides that “old” foreign-currency savings may be used for the purchase of State-owned business premises and garages on condition that a minimum of 40% of the price is paid in cash.

D. Non-enforcement of the decisions of the former Human Rights Chamber

30. In accordance with Article 239 of the Criminal Code 2003 (*Krivični zakon Bosne i Hercegovine*, OG BH nos. 3/03 of 10 February 2003 and 37/03 of 22 November 2003, amendments to which were published in OG BH nos. 32/03 of 28 October 2003, 54/04 of 8 December 2004, 61/04 of 29 December 2004 and 30/05 of 17 May 2005), non-enforcement of a final and enforceable decision of the former Human Rights Chamber amounts to a criminal offence:

“Any official of the institutions of Bosnia and Herzegovina, of the Entities or of the Brčko District of Bosnia and Herzegovina who refuses to enforce a final and enforceable decision of the Constitutional Court of Bosnia and Herzegovina, of the Court of Bosnia and Herzegovina or of the Human Rights Chamber of Bosnia and Herzegovina, or who prevents the enforcement of any such decision, or who frustrates

the enforcement of the decision in some other way, shall be punished by imprisonment for a term between six months and five years.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

31. The applicant complained of the statutory prevention of the enforcement of a final and enforceable judgment in her favour. Her complaint was first examined by the Court under Article 6 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 and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

A. The parties’ submissions

32. The applicant asserted that a failure to enforce a final and enforceable judgment could not be justified under any circumstances. She relied directly on the principle of the rule of law.

33. The Government maintained that the obligation to enforce final and binding judicial decisions was not absolute. Since the judgment in issue concerned “old” foreign-currency savings, which represented a significant part of the large public debt, the Government asserted that the impugned statutory intervention was justified.

34. Their submissions then addressed the general situation of “old” foreign-currency savers without distinguishing between those in the present applicant’s position (where there had been a judgment ordering the release of her savings) and the majority of other “old” foreign-currency savers (who had not obtained any such judgment).

35. The Government confirmed that, following the recent Old Foreign-Currency Savings Act 2006 (“the 2006 Act”), the applicant should not expect full enforcement of the judgment in issue. Interest accrued from 1 January 1992 would be calculated afresh at an annual rate of 0.5% (instead of the significantly higher interest rate applied by the Banjalučka banka and awarded by the domestic courts). Furthermore, the nominal value of the privatisation coupons into which the applicant had converted a part of her savings would be deducted from the amount awarded by the domestic courts. The judgment would be enforced partly in cash (1,000 Bosnian markas, equivalent to EUR 511, by the end of 2007) and partly in State bonds (to become due by the end of 2020, to earn interest at an annual rate

of 2.5% and to be redeemable before their maturity). Lastly, the applicant should undergo a verification process like any other “old” foreign-currency saver.

B. Third-party submissions

36. The Association of Foreign-Currency Savers (*Udruženje za zaštitu deviznih štediša u Bosni i Hercegovini*) explained in some detail the history of the “old” foreign-currency savings issue. According to the Association, one of the main reasons for the gradual “disappearance” of the hard-currency reserves of the then Socialist Federal Republic of Yugoslavia (“SFRY”) had been the unlawful raids into the monetary system by what are now the successor States of the former SFRY. The Association also asserted that the Socialist Republic of Bosnia and Herzegovina had been the sole entity of the then SFRY with a positive foreign-trade balance, because of its export-oriented economy.

37. Judgments ordering the release of “old” foreign-currency savings were rare: only some courts in the Republika Srpska had ruled in favour of “old” foreign-currency savers and no court in the Federation of Bosnia and Herzegovina had done so. In any event, such judgments, rare as they were, had remained inoperative owing to statutory intervention.

C. The Court’s assessment

38. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would indeed be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

39. The Court further reiterates that it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in

particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III, and *Teteriny v. Russia*, no. 11931/03, § 41, 30 June 2005).

40. Turning to the instant case, the Court notes that the judgment of 26 November 1998, although final and enforceable, has not yet been executed. The impugned situation has thus already lasted more than four years since the ratification of the Convention by Bosnia and Herzegovina on 12 July 2002 (the period which falls within the Court's jurisdiction *ratione temporis*). The Court also notes that the judgment debt is the liability of the State (see paragraphs 25 and 26 above).

41. The Government did not dispute that in ordinary circumstances a delay in the execution of a judgment of more than four years would not be consistent with the requirements of Article 6 (see, for example, *Voytenko v. Ukraine*, no. 18966/02, §§ 41-42, 29 June 2004). However, they maintained that the present case was exceptional as the judgment in issue concerned the release of the applicant's "old" foreign-currency savings. It would be unacceptable to execute this judgment without reimbursing other "old" foreign-currency savers at the same time (including those who had not obtained a final and enforceable judgment in their favour) and such a course of action was simply impossible because of the magnitude of the "old" foreign-currency savings.

The Court disagrees. It considers that the situation of the applicant in the present case is significantly different from that of the majority of "old" foreign-currency savers who have not obtained any judgment ordering the release of their funds.

42. The Court does not consider that the payment of the award made by the domestic courts in the present case, even with the accumulated default interest, would be a significant burden for the State, let alone result in the collapse of its economy as suggested by the Government. In any event, the applicant should not be prevented from benefiting from the success of her litigation on the ground of alleged financial difficulties experienced by the State.

43. Further, the evidence is that judgments ordering the release of "old" foreign-currency savings are the exception rather than the norm. This has been corroborated by the case-law of the former Human Rights Chamber, the Human Rights Commission within the Constitutional Court and the Constitutional Court of Bosnia and Herzegovina; they have determined more than a thousand "old" foreign-currency cases and a final and enforceable judgment ordering the release of savings has been made in only five cases (applications nos. CH/98/1019, CH/98/1084, CH/99/1859, CH/99/2733 and CH/99/2997 lodged with the Human Rights Chamber). Similarly, of the approximately eighty-five cases pending before this Court (submitted on behalf of more than 3,750 applicants) concerning "old"

foreign-currency savings, about ten applicants have obtained a final and enforceable judgment ordering the release of their savings.

44. While the Court appreciates that a major part of “old” foreign-currency savings may have ceased to exist before or during the dissolution of the former SFRY and the disintegration of its banking and monetary systems (see the report by Erik Jurgens, “Repayment of the deposits of foreign exchange made in the offices of the Ljubljanska banka not on the territory of Slovenia, 1977-1991”, accompanying Resolution 1410 (2004), adopted by the Parliamentary Assembly of the Council of Europe on 23 November 2004), such circumstances fall to be raised and examined prior to a final domestic determination of a case, and where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

45. In the circumstances of the present case, the Court considers that it was not justified to delay for so long the execution of a final and enforceable judgment, or to intervene in the execution of the judgment in the manner permitted by section 27 of the 2006 Act (see paragraph 35 above).

46. The Court concludes that the essence of the applicant’s right of access to a court, as protected by Article 6 of the Convention, was thereby impaired. There has accordingly been a breach of that Article.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

47. The applicant’s complaint about the statutory prevention of enforcement of a final and enforceable judgment in her favour was also examined under Article 1 of Protocol No. 1, which 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.”

48. The Court reiterates that the impossibility of obtaining the execution of a final judgment in an applicant’s favour constitutes an interference with his or her right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov*, cited above, § 40; *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003; and *Voytenko*, cited above, § 53).

49. For the reasons set out above in the context of Article 6, the Court further considers that the interference with the applicant's possessions was not justified in the circumstances of the present case.

Therefore, there has also been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. In respect of pecuniary damage, the applicant sought the payment of the judgment debt, including default interest and legal costs. She accepted that the amounts which she had actually received on 30 January 2001, 7 March 2002 and 9 February 2004 on the secondary market should be deducted (in total 13,395 euros (EUR)). However, she refused to bear the loss incurred in those transactions (that is, the difference of EUR 17,282 between the nominal value of her savings converted into privatisation coupons and the price of those coupons that was actually paid to her). The applicant explained that had the judgment in issue been enforced on time, she would not have had to convert her savings into coupons and would not have sustained that loss. In addition, the applicant claimed EUR 50,000 by way of compensation for non-pecuniary damage.

52. The Government submitted that the entire amount converted on three occasions into privatisation coupons (EUR 30,677) should be deducted. They did not question the amounts actually received by the applicant in the above-mentioned transactions. As to the claim for non-pecuniary damage, the Government considered it to be unsubstantiated.

53. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position in which he or she would have been had the requirements of Article 6 not been disregarded (see *Teteriny*, cited above, § 56). The Court finds that in the present case this principle applies as well, having regard to the violation found. It therefore considers that the Government should pay the award made by the domestic courts. This award consists of a principal debt (in the amount of EUR 153,475), default interest on the above amount at the rate and for the period specified by the domestic courts (EUR 22,660), legal costs (EUR 290) and default interest on the last-mentioned amount at the statutory rate for the period specified by the

domestic courts (EUR 430). The amount of EUR 13,395 which the applicant has already received should be deducted (see paragraph 51 above). The applicant should therefore receive EUR 163,460 in all under this head.

54. The Court agrees with the applicant that it would not be fair for her to bear the loss incurred in the above-mentioned transactions of 30 January 2001, 7 March 2002 and 9 February 2004 since the primary responsibility for the loss lies with the State for its failure to enforce the judgment in issue in a timely manner. The difference (EUR 17,282) between the nominal value of the applicant's savings converted into privatisation coupons and the price of those coupons actually paid to her should not therefore be deducted from the sums outlined in the preceding paragraph as being due to her.

55. The Court also considers it clear that the applicant sustained some non-pecuniary loss arising from the violations of the Convention found in the present case, for which she should be compensated. It awards EUR 4,000 under this head.

B. Costs and expenses

56. The Court notes that the applicant was granted legal aid under the Court's legal aid scheme for the submission of her written observations, for her appearance before the Court and for secretarial expenses. She has submitted no claim for additional legal expenses. Accordingly, the Court is not required to make an award under this head.

C. Default interest

57. The Court considers it appropriate that the 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. *Holds* that there has been a violation of Article 6 of the Convention;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
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, the following amounts, which should be converted into Bosnian markas at the rate applicable on the date of settlement:

- (i) EUR 163,460 (one hundred and sixty-three thousand four hundred and sixty euros) in respect of pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage; and
 - (iii) any tax that may be chargeable on the above amounts;
- (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President