



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

FOURTH SECTION

**CASE OF PEJAKOVIĆ AND OTHERS v. BOSNIA AND
HERZEGOVINA**

(Applications nos. 337/04, 36022/04 and 45219/04)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

18/03/2008

*This judgment will become final in the circumstances set out in Article 44
§ 2 of the Convention. It may be subject to editorial revision.*

In the case of Pejaković and Others v. Bosnia and Herzegovina,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 November 2007,

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

PROCEDURE

1. The case originated in three applications (nos. 337/04, 36022/04 and 45219/04) 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 three citizens of Bosnia and Herzegovina, Mr Čedomir Pejaković, Mr Dragomir Kusić and Ms Ružica Pejić (“the applicants”), between 8 December 2003 and 16 November 2004.

2. The applicants, two of whom had been granted legal aid, were represented by Mr P. Radulović, Ms D. Glušac and Mr M. Pjević respectively (all three lawyers practise in Banja Luka). The Government of Bosnia and Herzegovina (“the Government”) were represented by their Agent, Ms M. Mijić.

3. The applicants complain about non-enforcement of final and enforceable judgments in their favour.

4. On 14 December 2006 the President of the Fourth Section of the Court decided to give notice of the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1932, 1944 and 1942 respectively. Mr Pejaković and Mr Kusić live in Bosnia and Herzegovina, whereas Ms Pejić lives in Belgium.

6. Prior to the dissolution of the former Socialist Federal Republic of Yugoslavia (“SFRY”) the applicants deposited foreign currency in their bank accounts at the then Privredna banka Sarajevo Filijala Banja Luka (Mr Pejaković), Jugobanka Sarajevo Ekspozitura Gradiška (Mr Kusić) and Jugobanka Sarajevo Ekspozitura Brčko (Ms Pejić). In Bosnia and Herzegovina, as well as in other successor States of the former SFRY, such savings are commonly referred to as “old” foreign-currency savings (for the relevant background information see *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-...).

7. Following several unsuccessful attempts to withdraw their funds, the applicants instituted proceedings, seeking the recovery of their entire “old” foreign-currency savings and accrued interest.

8. By a decision of the Banja Luka Court of First Instance of 4 November 1999, the Banjalučka banka (the legal successor of the Privredna banka Sarajevo Filijala Banja Luka) was ordered to pay Mr Pejaković 18,952.59 German marks (DEM)¹, default interest on the above amount at the rate applicable in Germany to overnight deposits from 1 January 1998, legal costs in the amount of 250 convertible marks (BAM)² and default interest on the last-mentioned amount at the statutory rate from the date of the judgment. The judgment entered into force on 7 March 2001. On 6 June 2001 the Banja Luka Court of First Instance issued a writ of execution (*rješenje o izvršenju*). On 18 January 2002 the judgment debt became a public debt pursuant to section 20 of the Opening Balance Sheets Act 1998.

9. By a decision of the Gradiška Court of First Instance of 5 July 2000, the Kristal banka (the legal successor of the Jugobanka Sarajevo Ekspozitura Gradiška) was ordered to pay Mr Kusić 38,779.48 pounds sterling (GBP)³, 5,758.18 US dollars (USD)⁴ and 193,609.28 Australian dollars (AUD)⁵, default interest on the above amounts at the annual rate of 9% from 29 January 1993 and legal costs in the amount of BAM 6,500⁶.

¹ 9,691 euros as of 4 November 1999

² 128 euros as of 4 November 1999

³ 61,800 euros as of 5 July 2000

⁴ 6,052 euros as of 5 July 2000

⁵ 121,896 euros as of 5 July 2000

⁶ 3,323 euros as of 5 July 2000

The judgment entered into force on 8 September 2000. On 28 March 2001 the Gradiška Court of First Instance issued a writ of execution. On 17 April 2002 the judgment debt became a public debt pursuant to section 20 of the Opening Balance Sheets Act 1998.

10. By a decision of the Banja Luka Court of First Instance of 28 May 2001, the Kristal banka (the legal successor of the Jugobanka Sarajevo Ekspozitura Brčko) was ordered to pay Ms Pejić DEM 227,445.47¹, USD 3,964.17², 1,765.11 Dutch guilders³ and 13,735.84 French francs⁴, default interest on the above amounts at the rate applicable to overnight deposits from 1 January 1998 until 5 August 1999 and at the statutory rate thereafter, legal costs in the amount of BAM 4,360⁵ and default interest on the last-mentioned amount at the statutory rate from the date of the judgment. The judgment entered into force on 28 July 2001. On 19 October 2001 the Banja Luka Court of First Instance issued a writ of execution. On 17 April 2002 the judgment debt became a public debt pursuant to section 20 of the Opening Balance Sheets Act 1998.

11. On 14 December 2001, 29 May 2002 and 17 February 2004 Mr Kusić converted a part of his savings (AUD 26,436.35⁶, AUD 5,903.99⁷ and GBP 1,536.40⁸ respectively) into privatisation coupons pursuant to section 19 of the old Privatisation of Companies Act 1998. He subsequently sold those coupons on the secondary market. The price which he thereby obtained has not been indicated.

12. On 24 January 2002 and 7 August 2002 Mr Pejaković converted a part of his savings (in total 810 euros) into privatisation coupons pursuant to section 19 of the old Privatisation of Companies Act 1998. When purchasing a State-owned apartment at a later date, the applicant paid a price reduced by the nominal value of those coupons pursuant to section 33 of the Privatisation of Apartments Act 2000.

13. On 15 April 2006 the Old Foreign-Currency Savings Act 2006 entered into force ("2006 Act"). Former section 27 of the 2006 Act, which was in force until 27 September 2007, effectively amended the awards made by the domestic courts: for example, interest accrued from 1 January 1992 was to be calculated afresh at an annual rate of 0.5% instead of the significantly higher interest rates awarded by the domestic courts.

14. On 5 July 2006 the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("Human Rights

¹ 116,291 euros as of 28 May 2001

² 4,612 euros as of 28 May 2001

³ 801 euros as of 28 May 2001

⁴ 2,094 euros as of 28 May 2001

⁵ 2,229 euros as of 28 May 2001

⁶ 15,367 euros as of 14 December 2001

⁷ 3,572 euros as of 29 May 2002

⁸ 2,275 euros as of 17 February 2004

Commission”) dismissed the application brought by Mr Kusić (together with those brought by a number of other “old” foreign-currency savers) on the ground that, following the entry into force of the 2006 Act, the matter had been resolved.

15. It would appear that the judgments at issue have not yet been enforced.

II. RELEVANT LAW AND PRACTICE

16. The relevant law and practice were outlined in the admissibility decision in *Jeličić* (cited above), *Suljagić v. Bosnia and Herzegovina* ((dec.), no. 27912/02, 20 June 2006) and the judgment in *Jeličić v. Bosnia and Herzegovina* (no. 41183/02, ECHR 2006-...).

17. Following the judgment in *Jeličić* (cited above), section 27 of the 2006 Act has been amended. It now reads as follows:

“The courts shall send all their enforceable judgments ordering the release of “old” foreign-currency savings either to the Ministry of Finance of the Federation of Bosnia and Herzegovina, or the Ministry of Finance of the Republika Srpska or the Directorate for Finance of the Brčko District of Bosnia and Herzegovina.”

THE LAW

18. The applicants complained about non-enforcement of final and enforceable judgments in their favour. Their complaints were examined by the Court under 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.”

I. ADMISSIBILITY

19. The Government submitted that the complaints of Mr Pejaković and Ms Pejić were inadmissible on non-exhaustion grounds, by reason of their failure to complain to the Constitutional Court of Bosnia and Herzegovina (“Constitutional Court”). They referred to the finding of the Court that an appeal to the Constitutional Court constituted, in principle, an effective remedy for raising a complaint about non-enforcement of judgments (see *Mirazović v. Bosnia and Herzegovina* (dec.), no. 13628/03, 16 May 2006 and *Lukić v. Bosnia and Herzegovina* (dec.), no. 34379/03, 9 January 2007).

20. The applicants contested the applicability of that principle to the judgments ordering the release of “old” foreign-currency savings on the ground of their being subject to a special legal regime.

21. The general principles concerning the rule of exhaustion of domestic remedies were outlined in *Mirazović* (cited above).

22. Given the Government's failure to provide a single example of a case in which an individual in a similar situation obtained redress from the Constitutional Court as well as the recent, unsuccessful attempt of Mr Kusić to obtain redress from the Human Rights Commission, which is institutionally close to the Constitutional Court, the Court agrees with the applicants that the remedy at issue offered no reasonable prospects of success in the special circumstances of the present case.

23. Therefore, Mr Pejaković and Ms Pejić were not required to make use of that remedy and the Government's objection is thus dismissed.

24. The Court considers that the applicants' complaints raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

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

25. The applicants argued that the principle of the rule of law, which Bosnia and Herzegovina undertook to respect when it ratified the Convention, required that every single judgment be enforced. They further submitted that Bosnia and Herzegovina, together with other successor States, had inherited valuable assets from the former SFRY pursuant to the 2001 Agreement on Succession Issues: for example, Bosnia and Herzegovina received only from the Bank for International Settlements the equivalent of BAM 156,011,373.15 in 2002 (see the Earmarking of Certain

Assets Act 2002; *Zakon o namjeni i korištenju dijela imovine koju je Bosna i Hercegovina dobila po Sporazumu o pitanjima sukcesije*; published in the Official Gazette of Bosnia and Herzegovina no. 11/02 of 30 May 2002). They concluded that the financial difficulties of Bosnia and Herzegovina were not as serious as the Government suggested. Indeed, they accused the Government of weak public-sector management and of being influenced by narrow private interests.

26. The Government accepted that former section 27 of the 2006 Act restricted the applicants' access to court, maintaining, at the same time, that the restrictions pursued legitimate aims (namely, the macroeconomic stability and fiscal sustainability of Bosnia and Herzegovina) and that they were balanced. The Government then addressed the general situation of "old" foreign-currency savings. Lastly, they submitted that, following the Court's judgment in *Jeličić* (cited above), it had been realised that the number of judgments ordering the release of "old" foreign-currency savings could amount to 200 and not, as earlier believed, 10 to 20 judgments. The public debt arising from those judgments exceeded BAM 100,000,000, the Government claimed.

27. The Court notes that the present case is nearly identical to *Jeličić* (cited above) in which the Court found a violation of Article 6 of the Convention as well as a violation of Article 1 of Protocol No. 1 to the Convention. It is true that section 27 of the 2006 Act has recently been amended and that this could eventually lead to the full enforcement of the judgments at issue. Nevertheless, it would appear that this has not yet happened. Furthermore, while there is no doubt that the public debt to which the Government referred constitutes an important burden for the State, the Government failed to substantiate their claim that the enforcement of the judgments ordering the release of "old" foreign-currency savings (such as those in the present case) would indeed endanger the macroeconomic stability and fiscal sustainability of Bosnia and Herzegovina. That being so, the Court does not see any reason to depart from its well-established case-law pursuant to which it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt (see *Jeličić*, cited above, § 39). The remaining arguments of the Government were either already rejected in *Jeličić* (cited above, §§ 41 and 44) or became moot following the amendment of section 27 of the 2006 Act.

There has accordingly been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. In respect of pecuniary damage, the applicants sought the payment of the judgment debt. In addition, they claimed 4,000 euros (EUR), EUR 10,000 and EUR 10,000 by way of compensation for non-pecuniary damage.

30. The Government submitted that the amounts converted into privatisation coupons should be deducted as in *Jeličić* (cited above, § 53). They further considered the amounts claimed for non-pecuniary damage to be excessive.

31. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicants as far as possible are put in the position in which they would have been had the requirements of Article 6 not been disregarded (see *Jeličić*, cited above, § 53). 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 awards made by the domestic courts.

32. In respect of Mr Pejaković this award consists of a principal debt (in the amount of EUR 9,691), default interest on the above amount at the rate and for the period specified by the domestic courts (EUR 1,602), legal costs (EUR 128) and default interest on the last-mentioned amount at the statutory rate for the period specified by the domestic courts (EUR 128). The amount of EUR 810 should be deducted because it has been invested in the privatisation process (see paragraph 12 above). Mr Pejaković should therefore receive EUR 10,739 in all under this head plus any tax that may be chargeable.

33. In respect of Mr Kusić this award consists of a principal debt (in the amount of EUR 189,748), default interest on the above amount at the rate and for the period specified by the domestic courts (EUR 246,745) and legal costs (EUR 3,323). As for the amount to be deducted, the Court notes that the applicant has converted a part of his savings (in total EUR 21,213) into privatisation coupons which he has then sold for an unknown price on the secondary market (see paragraph 11 above). Taking into consideration the going rate for such coupons at the relevant time (see the Human Rights Chamber's decision nos. CH/98/420, CH/00/5893, CH/02/9315 and CH/02/9852 of 4 September 2003, § 159), the presumption is that the

applicant has received 60% of the nominal value of his privatisation coupons. Accordingly, the amount of EUR 12,728 should be deducted (see *Jeličić*, cited above, § 54). Mr Kusić should therefore receive EUR 427,088 in all under this head plus any tax that may be chargeable.

34. In respect of Ms Pejić this award consists of a principal debt (in the amount of EUR 123,798), default interest on the above amount at the rate and for the period specified by the domestic courts (EUR 130,753), legal costs (EUR 2,229) and default interest on the last-mentioned amount at the statutory rate for the period specified by the domestic courts (EUR 2,229). It would appear that the applicant has not converted any of her savings into privatisation coupons. Ms Pejić should therefore receive EUR 259,009 in all under this head plus any tax that may be chargeable.

35. As for non-pecuniary damage, the Court accepts that the applicants suffered distress, anxiety and frustration because of the State's failure to enforce judgments in their favour. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards EUR 4,000 to each applicant under this head plus any tax that may be chargeable.

B. Costs and expenses

36. Ms Pejić also claimed the equivalent of EUR 2,550 for the costs and expenses incurred before the Court.

37. The Government disagreed with the amount claimed by the applicant.

38. The Court notes that Ms Pejić was granted legal aid under the Court's legal-aid scheme in the amount of EUR 850. She failed to submit evidence, such as itemised bills and invoices, that any additional expenses had been actually incurred. Accordingly, the Court rejects her claim.

C. Default interest

39. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay Mr Pejaković, 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 convertible marks at the rate applicable on the date of settlement:
 - (i) EUR 10,739 (ten thousand seven hundred and thirty nine 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 the respondent State is to pay Mr Kusić, 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 convertible marks at the rate applicable on the date of settlement:
 - (i) EUR 427,088 (four hundred and twenty seven thousand and eighty eight 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;
 - (c) that the respondent State is to pay Ms Pejić, 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 convertible marks at the rate applicable on the date of settlement:
 - (i) EUR 259,009 (two hundred and fifty nine thousand and nine 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;
 - (d) 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President