



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

FOURTH SECTION

CASE OF KUDIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 28971/05)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Kudić v. Bosnia and Herzegovina,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 28971/05) 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 Enver Kudić and Ms Mesuda Kudić (“the applicants”), on 26 July 2005.

2. The applicants were represented by Mr M. Spaho, a lawyer practising in Sarajevo. The Government of Bosnia and Herzegovina (“the Government”) were represented by their Agent, Ms M. Mijić.

3. On 29 May 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1928 and 1933 respectively and live in Bihać.

5. Prior to the dissolution of the former Socialist Federal Republic of Yugoslavia (“the SFRY”) the applicants deposited foreign currency in their bank accounts at the Privredna banka Sarajevo Glavna filijala Bihać. 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-...).

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

7. By a decision of the Bihać Municipal Court of 3 December 1993, the Privredna banka Sarajevo Glavna filijala Bihać was ordered to pay the applicants 54,469.42 German marks (DEM), 19,257.25 Swiss francs, 81.12 French francs, 60,120.49 Austrian shillings, 185.61 Canadian dollars, 231.86 US dollars, 163.39 Dutch guilders and 22,217.60 Italian liras, default interest on the above amounts at the rate applicable to overnight deposits from private individuals from 1 January 1992 and legal costs in the amount of DEM 1,940. The judgment entered into force on 12 June 1994.

8. On 9 April 1997 the Bihać Municipal Court issued a writ of execution (*rješenje o izvršenju*). The execution proceedings were effectively stayed between 12 January 1998 and 12 September 2001.

9. Meanwhile, on 28 November 1997, the judgment debt became a public debt pursuant to the Settlement of Claims Against the Federation of Bosnia and Herzegovina Act 1997.

10. On 6 April 2005 the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina (“the Human Rights Commission”) found a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention arising from a failure to enforce the judgment of 3 December 1993. It ordered the Federation of Bosnia and Herzegovina to ensure full enforcement of the judgment in issue within two months, to pay the equivalent of 255 euros in respect of non-pecuniary damage within three months and to pay default interest after the expiry of the above time-limits at the annual rate of 10%.

11. On 28 October 2005 the applicants received the compensation awarded by the Human Rights Commission.

12. The judgment of 3 December 1993 was fully enforced on 5 June 2007 (the applicants were paid the principal debt, default interest and legal costs in the amounts specified in the judgment).

II. RELEVANT LAW AND PRACTICE

13. For relevant law and practice see the admissibility decision in *Jeličić*, cited above; *Suljagić v. Bosnia and Herzegovina* (dec.), no. 27912/02, 20 June 2006; the judgment in *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, ECHR 2006-...; and *Pejaković and Others v. Bosnia and Herzegovina*, nos. 337/04, 36022/04 and 45219/04, 18 December 2007.

THE LAW

14. The applicants complained of the protracted non-enforcement of a final and enforceable judgment in their favour. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Article 6, in so far as relevant, provides:

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

Article 1 of Protocol No. 1 to the Convention reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

15. The Government submitted that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention since the judgment in issue had been enforced and the Human Rights Commission had acknowledged the alleged breach and awarded compensation.

16. The applicants disagreed that the compensation awarded by the Human Rights Commission constituted appropriate and sufficient redress.

17. According to the Court’s settled case-law, 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 the breach (at least in substance) and afforded redress for it (see the admissibility decision in *Jeličić*, cited above). It is further recalled that redress afforded by the national authorities must be appropriate and sufficient (see *Višnjevac v. Bosnia and Herzegovina* (dec.), no. 2333/04, 24 October 2006).

As the Court has already held in length-of-proceedings cases, one of the characteristics of sufficient redress which may remove an applicant’s victim status relates to the amount awarded as a result of using the domestic remedy (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 93, ECHR 2006-..., or *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 202, ECHR 2006 - ...). Since enforcement proceedings are regarded as an integral part of the “trial” for the purposes of Article 6 of the Convention (see, as a recent authority, *Wasserman v. Russia (no. 2)*, no. 21071/05, § 51, 10 April 2008), the

principles developed in the context of length-of-proceedings cases are also applicable in the situation where an applicant complains of the protracted non-enforcement of a final and enforceable judgment in his favour (as in the present case).

18. Turning to the instant case, the Court observes that at the time when the Human Rights Commission's decision was given the enforcement proceedings had already been pending for more than two years and eight months after the date of ratification of the Convention by Bosnia and Herzegovina. The just satisfaction awarded by the Human Rights Commission is not in reasonable proportion with what the Court would have been likely to award under Article 41 of the Convention in respect of the same period (as illustrated in the judgment in *Jeličić*, cited above). It therefore cannot be regarded as adequate in the circumstances of the case (see, by analogy, the principles established in *Cocchiarella*, cited above, §§ 65-107, or *Scordino*, cited above, §§ 173-216). Furthermore, the enforcement proceedings continued for more than two years after the Human Rights Commission's decision.

The Government's objection must thus be dismissed.

19. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 3 above), the Court will immediately consider the merits of the case.

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

20. The Court notes that the present case is practically identical to *Jeličić* (cited above) and *Pejaković and Others* (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. Considering the length of the period of non-enforcement of the judgment in issue in the present case (almost five years after the date of ratification of the Convention by Bosnia and Herzegovina), and having examined all relevant circumstances, the Court does not see any reason to depart from its previous case-law.

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

21. 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

22. The applicants claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

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

24. The Court considers it clear that the applicants sustained some non-pecuniary loss arising from the violations of the Convention found in the present case, for which they should be compensated. Having regard to the amounts awarded in comparable cases (see *Jeličić*, cited above, and *Pejaković and Others*, cited above) and to the amount of compensation already awarded to the applicants (see paragraph 8 above) and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants a total of EUR 1,300 plus any tax that may be chargeable under this head.

B. Costs and expenses

25. The applicants did not claim costs and expenses.

C. Default interest

26. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*

(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 1,300 (one thousand three hundred euros) in total, plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President