



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

FOURTH SECTION

CASE OF PRALICA v. BOSNIA AND HERZEGOVINA

(Application no. 38945/05)

JUDGMENT

STRASBOURG

27 January 2009

FINAL

27/04/2009

This judgment may be subject to editorial revision

In the case of Pralica 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 6 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 38945/05) 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 a citizen of Bosnia and Herzegovina, Mr Sretko Pralica (“the applicant”), on 14 October 2005.

2. The applicant was represented by Mr S. Bereta, a lawyer practising in Prijedor. The Government of Bosnia and Herzegovina (“the Government”) were represented by their Deputy Agent, Ms Z. Ibrahimović.

3. On 11 October 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 applicant was born in 1938 and lives in the vicinity of Prijedor.

5. Prior to the dissolution of the former Socialist Federal Republic of Yugoslavia (“the SFRY”) the applicant deposited foreign currency in his bank accounts at the then Privredna banka Sarajevo Filijala Prijedor. 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 his funds, the applicant instituted proceedings, seeking the recovery of his entire “old” foreign-currency savings and accrued interest.

7. By a decision of the Prijedor Court of First Instance of 4 September 1995 the Prijedorska banka (the legal successor of the Privredna banka Sarajevo Filijala Prijedor) was ordered to pay the applicant 254,725.85 German marks (DEM) and legal costs in the amount of 2,000 dinars (approximately DEM 770 on the date of the judgment). The judgment entered into force on 11 March 1996. On 26 December 1997 the Prijedor Court of First Instance issued a writ of execution (*rješenje o izvršenju*).

8. Although domestic authorities took over the judgment debt, the judgment has not yet been enforced.

II. RELEVANT LAW AND PRACTICE

9. For relevant law and practice see the admissibility decision in *Jeličić*, cited above; 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

10. The applicant complained of the non-enforcement of a final and enforceable judgment in his favour. He 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

11. The Government indicated two recent decisions of the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) finding violations of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention in circumstances similar to those in the present case (decision no. CH/03/10999 of 9 May 2007 and decision no. AP 158/06 of 18 October 2007). While the Constitutional Court awarded compensation for non-pecuniary damage in the amount of approximately 300 euros in one case (decision no. CH/03/10999), it rejected a similar request in the other case (decision no. AP 158/06). The Government claimed that those decisions had been enforced on 31 August 2007 and 14 March 2008 respectively. Given the developments in the Constitutional Court’s case-law, the Government submitted that an appeal to that court should now be considered an effective remedy within the meaning of Article 35 § 1 of the Convention in respect of the non-enforcement of judgments ordering the release of “old” foreign-currency savings. Accordingly, they invited the Court to declare the present application inadmissible on non-exhaustion grounds, by reason of the applicant’s failure to use that remedy.

12. The applicant raised doubts as to the effectiveness of that remedy without going into any details.

13. The general principles concerning the rule of exhaustion of domestic remedies were outlined in *Mirazović v. Bosnia and Herzegovina* ((dec.), no. 13628/03, 16 May 2006). It should be reiterated above all that, although there may be exceptions justified by the particular circumstances of each case, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V, and *Babylonová v. Slovakia*, no. 69146/01, § 44, ECHR 2006-...).

14. In the present case, the Court does not see any reason to depart from the above principle (see, by contrast, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX; *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX; and *Michalak v. Poland* (dec.), no. 24549/03, § 36, 1 March 2005). Since at the time when the applicant brought his application to the Court an appeal to the Constitutional Court offered no reasonable prospects of success in respect of his complaints (see *Pejaković and Others*, cited above, § 22), he was not required to make use of that remedy.

The Government’s objection is thus dismissed.

15. 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

16. 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 (more than six 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

17. 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

18. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

19. It must, however, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *Apostol v. Georgia*, no. 40765/02, §§ 71-73, ECHR

2006, and *Marčić and Others v. Serbia*, no. 17556/05, §§ 64-65, 30 October 2007).

20. Having regard to its finding in the instant case, and without prejudice to any other measures which may be deemed necessary, the Court considers that the respondent State must secure the enforcement of the judgment of 4 September 1995 by way of paying the applicant 130,632 euros (EUR) plus any tax that may be chargeable (see *Jeličić*, cited above, § 53, and *Pejaković and Others*, cited above, § 31).

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 secure the enforcement of the judgment of 4 September 1995 by way of paying the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 130,632 (one hundred and thirty thousand six hundred and thirty two euros), 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 27 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President