



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

FOURTH SECTION

CASE OF MILISAVLJEVIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 7435/04)

JUDGMENT

STRASBOURG

3 March 2009

FINAL

03/06/2009

This judgment may be subject to editorial revision

In the case of Milisavljević v. Bosnia and Herzegovina,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 7435/04) 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, Ms Tereza Milisavljević, Mr Miroslav Milisavljević and Mr Vladimir Milisavljević (“the applicants”), on 17 February 2004.

2. The applicants, who had been granted legal aid, were represented by Mr V. Marić, a lawyer practising in Mostar. The Government of Bosnia and Herzegovina (“the Government”) were represented by their Deputy Agent, Ms Z. Ibrahimović.

3. The applicants complained of the non-enforcement of a domestic decision of 7 May 2003 in the first applicant’s favour.

4. 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

5. The applicants were born in 1947, 1973 and 1977 respectively. While the first applicant lives in Sarajevo, her sons, the second and the third applicants, live in Belgrade, in Serbia.

6. On 24 June 1983 the local authorities expropriated an apartment in Sarajevo which was occupied (but not owned) by the applicants. The local planning authorities were ordered to allocate the first applicant a suitable replacement apartment. This decision entered into force on 21 October 1983.

7. On 6 April 1987 the first applicant initiated court proceedings seeking the allocation to her by the local planning authorities of a suitable replacement apartment.

8. On 29 April 1998 the Sarajevo First Municipal Court held that, while it was clear that the local planning authorities were required to allocate the first applicant a suitable replacement apartment, the courts of law had no power to designate such an apartment. The Sarajevo First Municipal Court, consequently, declined jurisdiction. This decision entered into force on 31 March 1999 when the Sarajevo Cantonal Court upheld it.

9. On 24 November 1999 the first applicant complained to the Human Rights Chamber about non-enforcement of the administrative decision of 24 June 1983.

10. On 7 May 2003 the Human Rights Chamber found breaches of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. It ordered the Federation of Bosnia and Herzegovina (a constituent Entity of Bosnia and Herzegovina) to allocate, or to cause the local planning authorities to allocate, to the first applicant a suitable replacement apartment at the latest within one month. The Human Rights Chamber awarded the first applicant, in pecuniary damage, 18,200 convertible marks (BAM) (approximately 9,300 euros (EUR)) plus BAM 200 (approximately EUR 100) per month from June 2003 until the end of the month in which she was to be allocated a suitable replacement apartment. She was further awarded BAM 3,000 (approximately EUR 1,550) in respect of non-pecuniary damage. Lastly, she was awarded default interest on the above amounts at an annual rate of 10%. This decision entered into force on 4 September 2003.

11. On 24 March 2005 the local planning authorities offered the first applicant a tenancy of an apartment in Sarajevo. On 31 March 2005 the applicant rejected the offer.

12. On 1 July 2005 the Federation of Bosnia and Herzegovina paid the following amounts to the first applicant: BAM 18,200 in respect of pecuniary damage, BAM 3,000 in respect of non-pecuniary damage and default interest on the above amounts at the rate indicated in the Human Rights Chamber's decision.

13. On 15 September 2005 the Federation of Bosnia and Herzegovina requested the interpretation of the order to allocate, or to cause the local planning authorities to allocate, to the first applicant a suitable replacement apartment set out in the Human Rights Chamber's decision.

14. On 15 December 2005 the legal successor of the Human Rights Chamber, the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, explained that in accordance with the Human Rights Chamber's decision the first applicant should be given ownership of a suitable apartment and not only a tenancy.

15. On 19 September 2006 the local planning authorities offered the first applicant a tenancy of the same apartment as on 24 March 2005. The applicant has not accepted the offer.

16. On 8 November 2006 the first applicant filed a criminal complaint against the Government of the Federation of Bosnia and Herzegovina with the Prosecutor's Office of Bosnia and Herzegovina (non-enforcement of a final and enforceable decision of the Human Rights Chamber constitutes a criminal offence). It would appear that no decision has been taken in that regard.

17. On 13 March 2008 the Federation of Bosnia and Herzegovina paid an additional amount of BAM 10,069.76 to the first applicant in respect of pecuniary damage (that is, BAM 200 per month for the period from June 2003 until September 2006 plus default interest on those monthly amounts at the rate indicated in the Human Rights Chamber's decision).

II. RELEVANT LAW AND PRACTICE

18. The relevant law and practice were outlined in *Karanović v. Bosnia and Herzegovina* (no. 39462/03, §§ 13-15, 20 November 2007) also concerning the non-enforcement of a Human Rights Chamber's decision.

THE LAW

19. The applicants complained of the non-enforcement of a final and enforceable decision of the Human Rights Chamber in the first applicant's 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

20. The Government maintained that the applicants had failed to raise their complaints before the domestic courts.

Furthermore, they submitted that the second and the third applicants could not claim to be victims of the alleged breaches because they were not parties to the domestic proceedings.

21. The applicants repudiated the first objection without going into detail and declined to comment on the second objection.

22. The Court has previously established that there was no effective domestic remedy for complaints about the non-enforcement of the decisions of the Human Rights Chamber (see *Karanović*, cited above, § 19). The first objection of the Government is thus dismissed.

23. As regards the second objection, the Court agrees with the Government. Since the instant case concerns non-enforcement of a domestic decision in the first applicant’s favour, the second and the third applicants do not have the requisite standing under Article 34 of the Convention (see, for example, *Teteriny v. Russia*, no. 11931/03, §§ 27-30, 30 June 2005). This part of the application must hence be rejected as incompatible *ratione personae* with the provisions of the Convention in accordance with Article 35 §§ 3 and 4.

24. The first applicant’s grievances are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that they are not inadmissible on any other grounds. This part of the application must therefore be declared admissible.

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

25. In their submissions on the merits, the Government criticised the impugned decision of the Human Rights Chamber. In their opinion, there was no basis in domestic law for the order of the Human Rights Chamber that the first applicant be given ownership of a suitable replacement apartment. The Government maintained that she should have been granted a mere tenancy.

26. The Court recalls that one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that 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 and *Jeličić v. Bosnia and Herzegovina* (no. 41183/02, § 44, ECHR 2006-...)).

27. In the present case, it is clear that more than five years have passed since the domestic decision at issue became final and that the first applicant has not yet been given ownership of a suitable apartment and has not yet received full compensation (she should still receive BAM 200 per month for the period from October 2006 until the end of the month in which she is to be allocated a suitable replacement apartment plus default interest on those monthly amounts). Since the Government failed to provide any justification for the delay, the Court concludes that there has been a breach of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention (see *Jeličić*, cited above, §§ 38-46 and 48-49).

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. The first applicant primarily demanded that the Human Rights Chamber’s decision in question be enforced. Alternatively, she claimed the current market value of a suitable replacement apartment, which she assessed at 120,000 euros (EUR). The first applicant claimed, in addition, EUR 15,000 in respect of non-pecuniary damage.

30. The Government considered the amounts claimed to be excessive.

31. The Court points out that by Article 46 of the Convention the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, among other things, that a judgment in which the Court finds a breach 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 their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, by analogy, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which

it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment.

32. Accordingly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied.

33. In the present case, the Court sees no reason to doubt that the Government will indeed, following this judgment, enforce the Human Rights Chamber's decision by way of allocating to the first applicant a suitable apartment in ownership and paying the remainder of the compensation due (see paragraph 27 above). Therefore, it deems unnecessary to examine the first applicant's alternative claim.

34. On the other hand, the Court considers it clear that the first 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 plus any tax that may be chargeable.

B. Costs and expenses

35. The first applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic authorities.

36. The Government considered this claim to be unsubstantiated.

37. The Court recalls that it will uphold claims for costs and expenses only in so far as they are referable to the violations it has found. There is no evidence that the first applicant incurred any costs and expenses before the domestic authorities in trying to speed up the enforcement of the Human Rights Chamber's decision in question, or to obtain redress in connection with the violations of the Convention found in the present case. Accordingly, the Court rejects this claim.

C. Default interest

38. 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 first applicant's complaints admissible and the remainder of the application inadmissible;

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 first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), 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 claim for just satisfaction.

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

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President