



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ČOLIĆ AND OTHERS v. BOSNIA AND HERZEGOVINA

*(Applications nos. 1218/07, 1240/07, 1242/07, 1335/07, 1368/07, 1369/07,
3424/07, 3428/07, 3430/07, 3935/07, 3940/07, 7194/07, 7204/07, 7206/07
and 7211/07)*

JUDGMENT

STRASBOURG

10 November 2009

FINAL

28/06/2010

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

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

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

Nicolas Bratza, *President*,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Ledi Bianku,
Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 October 2009,

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

PROCEDURE

1. The case originated in 15 applications (nos. 1218/07, 1240/07, 1242/07, 1335/07, 1368/07, 1369/07, 3424/07, 3428/07, 3430/07, 3935/07, 3940/07, 7194/07, 7204/07, 7206/07 and 7211/07) 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 26 citizens of Bosnia and Herzegovina, Mr Igor Čolić, Mr Stevo Trninić, Mr Dušan Punišić, Mr Teofik Jusufagić, Mr Jovica Novaković, Mr Predrag Vulin, Ms Velinka Žujić, Mr Duško Žujić, Mr Jovo Žujić, Mr Goran Simović, Mr Tomislav Malkić, Ms Draginja Malkić, Mr Dražen Malkić, Ms Kristina Todorović, Mr Mišo Todorović, Ms Marina Todorović, Ms Mila Todorović, Mr Vid Milić, Mr Vojin Višić, Ms Miladinka Bojanić, Ms Tatjana Petrović, Ms Marijana Ivanov, Mr Predrag Ivanov, Mr Milan Majstorović, Ms Mira Majstorović and Mr Siniša Majstorović (“the applicants”), between 25 November 2006 and 18 January 2007.

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

3. The applicants complained of the non-enforcement of domestic judgments in their favour.

4. On 23 June 2008 the President of the Fourth Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Mr Trninić and Mr Novaković live in Serbia and the other applicants in Bosnia and Herzegovina.

6. By judgments of the Banja Luka Court of First Instance of 18 September 2001, 28 January 2003, 27 March 2001, 25 February 2002, 19 March 2003, 6 July 1999, 5 November 2001, 4 April 2000, 21 December 1999, 12 May 1999, 1 October 1999, 17 April 2002, 17 October 2002, 22 April 2002, 17 July 2001 and 15 February 1999, which became final on 16 November 2004, 26 May 2005, 17 September 2003, 25 January 2005, 25 April 2005, 20 June 2001, 18 October 2004, 20 March 2002, 10 July 2001, 5 January 2001, 9 March 2001, 17 March 2005, 10 May 2005, 21 December 2004, 28 December 2004 and 6 July 2001 respectively, the Republika Srpska¹ was ordered to pay, within 15 days, the following amounts in respect of war damage together with default interest at the statutory rate from the date of the relevant first-instance judgment:

(a) 30,000 convertible marks (BAM)² in respect of non-pecuniary damage and BAM 2,410 in respect of legal costs to Mr Čolić;

(b) BAM 27,000 in respect of non-pecuniary damage and BAM 1,114 in respect of legal costs to Mr Trninić;

(c) BAM 15,500 in respect of non-pecuniary damage and BAM 1,782 in respect of legal costs to Mr Punišić;

(d) BAM 8,580 in respect of pecuniary damage and BAM 2,550 in respect of legal costs to Mr Jusufagić;

(e) BAM 27,000 in respect of non-pecuniary damage and BAM 1,456 in respect of legal costs to Mr Novaković;

(f) BAM 8,500 in respect of non-pecuniary damage to Mr Vulin;

(g) BAM 9,000 in respect of non-pecuniary damage and BAM 718 in respect of legal costs to Mr Vulin;

(h) BAM 6,000 in respect of non-pecuniary damage and BAM 1,175 in respect of legal costs to the Žujićs;

(i) BAM 15,200 in respect of non-pecuniary damage and BAM 1,567 in respect of legal costs to Mr Simović;

1. Bosnia and Herzegovina consists of two entities (the Federation of Bosnia and Herzegovina and the Republika Srpska) and a district (the Brčko District).

2. The convertible mark (BAM) uses the same fixed exchange rate to the euro (EUR) that the German mark (DEM) has (EUR 1 = BAM 1.95583).

(j) BAM 15,000 in respect of non-pecuniary damage, BAM 1,953 in respect of pecuniary damage and BAM 3,000 in respect of legal costs to the Malkićs;

(k) BAM 20,000 in respect of non-pecuniary damage, BAM 600 in respect of pecuniary damage and BAM 1,500 in respect of legal costs to the Todorovićs;

(l) BAM 16,500 in respect of non-pecuniary damage and BAM 1,374 in respect of legal costs to Mr Milić;

(m) BAM 11,400 in respect of non-pecuniary damage and BAM 987 in respect of legal costs to Mr Višić;

(n) BAM 10,000 in respect of non-pecuniary damage, BAM 2,000 in respect of pecuniary damage and BAM 1,015 in respect of legal costs to Ms Bojanić;

(o) BAM 7,500 in respect of non-pecuniary damage, BAM 1,050 in respect of pecuniary damage and BAM 2,327 in respect of legal costs to Ms Petrović and the Ivanovs; and

(p) BAM 15,000 in respect of non-pecuniary damage, BAM 2,241 in respect of pecuniary damage and BAM 1,132 in respect of legal costs to the Majstorovićs.

7. The Banja Luka Court of First Instance issued writs of execution (*rješenje o izvršenju*) on 20 April 2005, 24 October 2005, 4 November 2003, 19 April 2005, 26 December 2005, 31 January 2005 (ordering the enforcement of two judgments in favour of Mr Vulin), 2 June 2003, 1 November 2001, 6 July 2001, 4 April 2002, 5 September 2005, 25 October 2005, 7 April 2005, 19 April 2005 and 29 August 2001 respectively.

8. The applicants complained of non-enforcement to the Human Rights Chamber or to the Constitutional Court of Bosnia and Herzegovina. On 9 November 2005 the Human Rights Commission (the legal successor of the Human Rights Chamber) found a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention in the cases of Mr Simović, the Malkićs, the Todorovićs and the Majstorovićs. On 20 December 2005, 12 April and 27 June 2006 the Constitutional Court ruled likewise in the cases of Mr Čolić, Mr Trninić, Mr Jusufagić, Mr Novaković, Mr Vulin, Mr Milić, Mr Višić, Ms Bojanić, Ms Petrović and the Ivanovs. On 3 July 2006, following amendments to the Domestic Debt Act 2004, the Human Rights Commission, in the cases of Mr Punišić and the Žujićs, considered the matter to have been resolved and dismissed these cases.

9. It would appear that the judgments under consideration in the present case have not yet been fully enforced (see paragraph 11 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. In view of many civil actions brought under the ordinary rules of tort law, on 29 November 2005 the Republika Srpska created a general compensation scheme for war damage and extinguished the pending civil actions (see the War Damage Act 2005¹). The deadline for submitting such claims expired in most cases on 28 February 2007 (as regards damage caused by the disappearance of a close relative, it expires on 31 December 2009). Compensation awarded under this scheme is to be paid in government bonds, which are to be amortised in ten annual instalments. The bonds earn interest at an annual rate of 1.5% and may be traded on the Stock Exchange (their current trade price on the Stock Exchange is around 45% of their nominal value). As from 12 May 2009, they may also be used to pay direct taxes accrued by 31 December 2007. According to official data, around 6,000 administrative decisions had been issued under this scheme by 7 August 2008 (the compensation thus awarded amounted to approximately BAM 50,000,000). Around 21,000 cases were still pending.

11. Some 9,000 judgments (including those under consideration in the present case) became final by 29 November 2005. The Republika Srpska was ordered to pay approximately BAM 140,000,000 in total plus default interest. Their enforcement (apart from legal costs and associated default interest which have recently been paid) has been suspended since 28 May 2002 pursuant to the Postponement of Enforcement Act 2002², the Temporary Postponement of Enforcement Act 2003³ and the Domestic Debt Act 2004⁴. In accordance with the settlement plan⁵, principal debt and associated default interest is to be paid in ten annual instalments between

1. *Zakon o ostvarivanju prava na naknadu materijalne i nematerijalne štete nastale u periodu ratnih dejstava od 20. maja 1992. do 19. juna 1996. godine*, published in Official Gazette of the Republika Srpska no. 103/05 of 21 November 2005, amendments published in Official Gazette nos. 1/09 of 5 January 2009 and 49/09 of 3 July 2009.

2. *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*, published in Official Gazette of the Republika Srpska no. 25/02 of 20 May 2002, amendments published in Official Gazette no. 51/03 of 1 July 2003.

3. *Zakon o privremenom odlaganju od izvršenja potraživanja iz budžeta Republike Srpske*, published in Official Gazette of the Republika Srpska no. 110/03 of 20 December 2003, amendments published in Official Gazette no. 63/04 of 29 June 2004.

4. *Zakon o utvrđivanju i načinu izmirenja unutrašnjeg duga Republike Srpske*, published in Official Gazette of the Republika Srpska no. 63/04 of 15 July 2004, amendments published in Official Gazette nos. 47/06 of 11 May 2006, 68/07 of 1 August 2007, 17/08 of 26 February 2008, 64/08 of 11 July 2008 and 34/09 of 4 May 2009.

5. *Odluka o emisiji obveznica Republike Srpske za izmirenje obaveza po osnovu materijalne i nematerijalne štete nastale u periodu ratnih dejstava od 20. maja 1992. do 19. juna 1996. godine*, published in Official Gazette of the Republika Srpska no. 62/08 of 7 July 2008.

2014 and 2023. Meanwhile, on 30 June 2008 government bonds were issued to all holders of such judgments in the amount of their principal claims and default interest accrued hitherto (default interest no longer accrues as of that date). The bonds earn interest at an annual rate of 1.5%. Those who are unable or unwilling to wait until 2023 may sell their bonds on the Stock Exchange (their current price is around 45% of their nominal value). As from 12 May 2009, the bonds may also be used to pay direct taxes accrued by 31 December 2007.

While the Human Rights Commission and the Constitutional Court of Bosnia and Herzegovina initially considered this solution to be incompatible with Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention (see decision CH/00/3615 of the Human Rights Commission of 9 November 2005 and decision AP 774/04 of the Constitutional Court of 20 December 2005), they decided that the matter had been resolved following amendments to the Domestic Debt Act 2004 (see decision CH/01/7197 of the Human Rights Commission of 3 July 2006 and a letter of 17 November 2008 sent by the Constitutional Court to the appellant in the case AP 505/06). The amendments concerned, among other things, the time-frame for the enforcement of these judgments and the payment of default interest and legal costs awarded therein. Following a decision of the Constitutional Court of the Republika Srpska of 15 January 2009, the Domestic Debt Act 2004 has undergone further amendments.

12. According to the Default Interest Rate Act 2001¹, default interest cannot exceed principal debt. It is calculated on the basis of the official retail price growth rate plus another 0.05% daily (which corresponds to an annual rate of 18.25%).

THE LAW

13. The applicants complained of the non-enforcement of the final domestic judgments indicated in paragraph 6 above. 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:

1. *Zakon o visini stope zatezne kamate*, published in Official Gazette of the Republika Srpska no. 19/01 of 11 May 2001, amendments published in Official Gazette nos. 52/06 of 17 May 2006 and 103/08 of 4 November 2008.

“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. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

A. Admissibility

14. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible. In accordance with the decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the applications.

The Court further considers that it is appropriate to join the applications pursuant to Rule 42 of the Rules of Court.

B. Merits

15. The present case is similar – although not identical – to *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, ECHR 2006-XII, in which the Court found a breach of Article 6 and Article 1 of Protocol No. 1. It concerns, as *Jeličić* did, the statutory suspension of the enforcement of an entire category of final judgments on account of the size of public debt arising from these judgments. While the applicants invited the Court to apply the *Jeličić* jurisprudence to their case, the Government sought to distinguish the two cases on the following grounds.

First, the Government maintained that there were considerably more domestic judgments ordering the payment of compensation for war damage (under consideration in the present case) than those ordering the release of “old” foreign-currency savings (under consideration in *Jeličić*). The Court notes, however, that the size of public debt seemingly arising from these two categories of judgments is similar (see *Pejaković and Others v. Bosnia and Herzegovina*, nos. 337/04 *et al.*, §§ 26-27, 18 December 2007).

Secondly, the Government submitted that many people fell under the general compensation scheme, described in paragraph 10 above, and that it would be unacceptable to treat them differently from those with final

judgments in their favour. The Court disagrees. While a situation where a significant number of war-related civil claims are pending may call for their replacement by a general compensation scheme (see, by analogy, *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007), this is of no relevance to the obligation of the respondent State to enforce judgments which became final before the creation of such a scheme.

The Court therefore does not see any reason to depart from the *Jeličić* jurisprudence. Since the final judgments under consideration in the present case have not yet been fully enforced and the situation has already lasted more than four years, there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

16. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

17. The violation which the Court has found in the present case affects many people (see paragraph 11 above). There are already more than one hundred similar applications pending before the Court. Therefore, before examining the applicants' individual claims for just satisfaction under Article 41 of the Convention, the Court wishes to consider what consequences may be drawn for the respondent State from Article 46 of the Convention. It reiterates that by virtue of Article 46 the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers of the Council of Europe. It follows 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 under Article 41, but also to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures. Such measures must also be taken in respect of other persons in the applicants' position, notably by solving the problems that have led to the Court's findings (see *Karanović v. Bosnia and Herzegovina*, no. 39462/03, § 28, 20 November 2007 and the authorities cited therein).

18. As regards the similar applications lodged with the Court before the delivery of the present judgment, which will be communicated shortly to the Government under Rule 54 § 2 (b) of the Rules of the Court, the Court

considers that the respondent State must grant adequate and sufficient redress to all applicants. Such redress may be achieved through *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements and, notably, in accordance with the criteria set out in paragraphs 20 and 21 below (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 145, ECHR 2009-...).

B. Article 41 of the Convention

19. 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.”

1. Damage

20. In respect of pecuniary damage, the applicants sought the payment of the outstanding judgment debt. The Court reiterates that the most appropriate form of redress in non-enforcement cases is indeed to ensure full enforcement of the domestic judgments in question (see *Jeličić*, cited above, § 53, and *Pejaković and Others*, cited above, § 31). This principle equally applies to the present case.

21. The applicants further claimed BAM 3,000 each in respect of non-pecuniary damage. The Government considered the amount claimed to be excessive. The Court accepts that the applicants suffered distress, anxiety and frustration as a result of the respondent State's failure to fully enforce final domestic judgments in their favour. Making its assessment on an equitable basis, as required by Article 41 of the Convention, it awards EUR 1,500 per application (and not per applicant as claimed by the applicants) plus any tax that may be chargeable.

2. Costs and expenses

22. The applicants did not submit a claim for costs and expenses.

3. Default interest

23. 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 § 1 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 secure enforcement of the domestic judgments under consideration in the present case and, in addition, 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 1,500 (one thousand five hundred euros) per application, 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President