



Enforcement time-frame of war damages settlement plan too long

In today's **Chamber judgment**¹ in the case of [Đurić v. Bosnia and Herzegovina](#) (application nos. 79867/12, 79873/12, 80027/12, 80182/12, 80203/12 and 115/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 (right to a fair trial) of the European Convention on Human Rights, and
a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention.**

The case concerned the settlement plan introduced in October 2012 by Bosnia and Herzegovina for the enforcement of final domestic judgments awarding war damages. The settlement plan was introduced following a leading ECHR judgment² against Bosnia and Herzegovina of November 2009 in which it was held that the size of public debt could not justify statutory suspension of the enforcement of an entire category of final judgments. The plan envisaged the enforcement of final judgments ordering payment of war damages in cash within 13 years starting from 2013. This enforcement time-frame was extended to 20 years in July 2013.

The Court, although commending the settlement plan as outlined in October 2012 as well as the gesture of awarding compensation for non-pecuniary damage in respect of the prolonged non-enforcement, found that staggering the enforcement of final judgments over a period of 20 years – as proposed in 2013 – was too long, especially in the light of the delays which had already occurred.

The Court also decided to provide some guidance as to the proper implementation of today's judgment. It considered that Bosnia and Herzegovina should amend the settlement plan by introducing a more reasonable enforcement interval, notably suggesting that the 13-year time-frame initially proposed in the settlement plan of October 2012 was far more reasonable at the time it was introduced. Furthermore, it considered that, in any event, in the cases in which there had already been a delay of more than 10 years, the judgments needed to be enforced without further delay.

All similar pending and incoming cases will be adjourned accordingly until further notice.

Principal facts

The applicants are 18 nationals of Bosnia and Herzegovina, including members of five different families (the Đurićs, the Bošnjaks, the Bojanićs, the Čolićs and the Komljenovićs) and two individuals, Danijela Banjac and Neđo Lazarević.

Between 1999 and 2008, the Republika Srpska (an Entity of Bosnia and Herzegovina) was ordered by six judgments of the Banja Luka Court of First Instance to pay war damages to the five families as well as Ms Banjac and Mr Lazarević. The judgments having become final but remaining unenforced, the applicants complained to the Constitutional Court of Bosnia and Herzegovina. In January 2013 the Constitutional Court found a breach of the European Convention on Human Rights in the cases

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

² [Čolić and Others v. Bosnia and Herzegovina](#) (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)

of the Đurićs, Mr Lazarević, the Bojanićs and Ms Banjac. The cases of the Čolićs, the Komljenovićs and the Bošnjaks are still pending before the Constitutional Court.

In the meantime, in a leading judgment against Bosnia and Herzegovina of November 2009 the European Court of Human Rights held that the non-enforcement of final domestic judgments awarding war damages had breached Article 6 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property) of the European Convention. The Court held in particular that the size of public debt could not justify statutory suspension of the enforcement of an entire category of final judgments. In view of the large number of other similar cases, the Court invited the State to solve the problem. As a result, in October 2012, the Republika Srpska introduced a settlement plan which envisaged the enforcement of final judgments ordering payment of war damages in cash within 13 years starting from 2013. The Republika Srpska also undertook to pay 50 euros non-pecuniary damage. In July 2013 the enforcement time-frame was extended to 20 years starting from 2013.

Under the new settlement plan the Đurićs' case was scheduled for enforcement in 2014; the Bošnjaks' in 2019; the Bojanićs' and Ms Banjac's in 2030; the Čolićs' in 2024; Mr Lazarević's in 2026; and the Komljenovićs' in 2017.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property), the applicants complained about the continued non-enforcement of the final judgments given in their favour between 1999 and 2008.

The applications were lodged with the European Court of Human Rights on 4 and 5 December 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta Ziemele (Latvia), *President*,
George Nicolaou (Cyprus),
Ledi Bianku (Albania),
Nona Tsotsoria (Georgia),
Zdravka Kalaydjieva (Bulgaria),
Paul Mahoney (the United Kingdom),
Faris Vehabović (Bosnia and Herzegovina),

and also Françoise Elens-Passos, *Section Registrar*.

Decision of the Court

Article 6 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property)

The Court found that the staggering of the enforcement of final domestic judgments awarding war damages over a period of 20 years – as proposed in the amended settlement plan of January 2013 – was too long, especially in the light of the delays which had already occurred. The Court reiterated that a State could not cite lack of funds as an excuse for not honouring a judgment debt.

Indeed, the consequences of such a delay imposed an individual and excessive burden on the creditors – such as the applicants – concerned. Some of the applicants in the present case had obtained final judgments in their favour 13 years ago and those judgments remain unenforced to this day. There are many more people in similar situations: there are notably around 400 similar cases currently pending before the European Court of Human Rights.

Although commending the settlement plan as outlined in October 2012 as well as the gesture of awarding compensation for non-pecuniary damage in respect of the prolonged non-enforcement,

the Court concluded that the settlement plan, as extended in 2013, was not in accordance with Article 6 and Article 1 of Protocol No. 1.

Accordingly, the Court held that there had been a violation of Article 6 and Article 1 of Protocol No. 1 in the present case on account of the prolonged non-enforcement of final and enforceable judgments in the applicants' favour.

Article 46 (binding force and implementation)

The Court considered that Bosnia and Herzegovina should amend the settlement plan – preferably within one year of the date on which the present judgment becomes final – by introducing a more reasonable enforcement interval. In that respect, the Court found that the interval of 13 years initially proposed in the settlement plan of October 2012 was far more reasonable at the time it was introduced. In any event, in the cases in which there had already been a delay of more than ten years, the judgments needed to be enforced without further delay.

Article 41 (just satisfaction)

The Court held that Bosnia and Herzegovina was to pay 1,000 euros (EUR) per application in respect of non-pecuniary damage and EUR 450 per application for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.