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

FOURTH SECTION

DECISION

Application no. 76581/16
BRITISH AIRWAYS PLC
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 3 September 2024 as a Committee composed of:

Anne Louise Bormann*, President*,
Branko Lubarda,
Sebastian Răduleţu*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 76581/16) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 December 2016 by British Airways PLC ("the applicant company"), incorporated in England and Wales with a registered office in West Drayton, which was represented by Mr D. Ninković, a lawyer practising in Belgrade;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the decision of the United Kingdom Government not to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant company's claims for damages resulting from an airplane crash in 1976.

2. On 10 September 1976 an aircraft operated by the applicant company collided mid-air with another aircraft, operated by Adria Airways. All 176 people on board the two aircraft were killed. It was later established that the collision was the result of an error on the part of air traffic controllers in Zagreb, the capital of the then Socialist Republic of Croatia, one of the six

constituent republics of the Socialist Federal Republic of Yugoslavia ("the SFRY").

3. On 9 September 1979 the applicant company lodged claims for compensation against the SFRY with the Belgrade Commercial Court. An insurance company, Dunav Insurance (*Dunav Osiguranje*), lodged compensation claims on behalf of Adria Airways. The court adjourned the hearing of the applicant company's case on several occasions pending the resolution of succession issues resulting from dissolution of the SFRY in 1991 and subsequently the dissolution of the State Union of Serbia and Montenegro in 2006. In particular, the proceedings were stayed from 20 October 1995 to 2 June 2004, from 4 July to 30 November 2006, and from 15 October 2007 to 16 July 2009.

4. On 18 October 2000 the Belgrade Commercial Court granted Dunav Insurance's claim for damages with interest and costs. The relevant judgment was upheld by the Commercial Court of Appeal and the Supreme Court of Serbia on 17 December 2001 and 2 July 2003 respectively. The respondent party was the Federal Republic of Yugoslavia, as the sole legal successor to the SFRY.

5. On 16 June 2011 the Belgrade Commercial Court granted the applicant company's claims, awarding damages, interest as of 9 September 1979 and costs to be paid by Serbia, which the court considered to be the legal successor to the SFRY. The Government appealed.

6. On 24 October 2011 the Commercial Court of Appeal upheld the judgment of 16 June 2011 regarding the principal debt, but it recalculated the interest as of the date of the judgment given by the court at first level of jurisdiction. Both parties asked for a review of the judgment.

7. On 8 November 2012 the Supreme Court of Cassation of the Republic of Serbia declared inadmissible *ratione valoris* the appeal on points of law lodged by the applicant company, referring to the statutory provision requiring the amount sought to exceed the counter value of EUR 300,000. It examined the merits of the appeal on points of law by the respondent State and held that Serbia could only be held liable, as regards the applicant company's claims for compensation resulting from the damage caused by the SFRY, for a 35.77 % share, as per the Agreement on Succession Issues that entered into force on 2 June 2004 (reference was made to Annex C, Article 5[C], Annex F, Article 1 [F]) and Article 2 of the Law on the ratification of the Agreement between the Republic of Serbia and the Republic of Montenegro on the Regulation of Membership of International Financial Organisations and the Distribution of Financial Assets and Liabilities of 2006, and accordingly reduced the amounts awarded to the applicant company.

8. On 30 July 2013 the applicant company lodged an appeal with the Constitutional Court of Serbia, alleging a violation of the constitutional rights to (1) a hearing within reasonable time, (2) a fair hearing, (3) compensation,

(4) property, and (5) the equal protection of rights and prohibition against discrimination.

9. On 3 June 2016 the Constitutional Court of Serbia acknowledged a violation of the applicant company's right to a hearing within a reasonable time and dismissed the remainder of the complaints.

10. Relying on Article 6 § 1 and Article 14 of the Convention, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12, the applicant company complained that it had been unable to obtain full compensation of damages. It alleged the domestic courts' decisions to grant its claims for damages in part had been arbitrary, inadequately reasoned and discriminatory.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

11. The relevant provisions of international law and practice concerning State succession following the SFRY's dissolution and, in particular, of the Agreement on Succession Issues (the "Succession Agreement") have been summarised in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* ([GC], no. 60642/08, §§ 59-67, ECHR 2014).

THE COURT'S ASSESSMENT

A. Article 1 of Protocol No. 1 complaint

12. The applicant company alleged a breach of Article 1 of Protocol No. 1 to the Convention, as regards its inability to obtain full compensation for the damage it claimed to have sustained.

1. Compatibility ratione temporis

13. In so far as the Government's *ratione temporis* objection is concerned, the Court notes that the applicant company did not complain about the damage to its property resulting from the mid-air collision, which is incontestably an instantaneous act that happened prior to Serbia's ratification of the Convention on 3 March 2004 and is accordingly beyond the Court's jurisdiction *ratione temporis*. The complaint relates to the State's failure to pay full compensation for the damage the applicant company claimed to have sustained, a situation which was finally resolved by the Serbian courts in 2016 (see, *mutatis mutandis*, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I). That failure came within the Court's jurisdiction *ratione temporis* after Serbia ratified the Convention. Accordingly, the Court will examine the applicant company's complaint only in so far as it concerns the events that occurred on or after 3 March 2004. Furthermore, for reasons of context and while examining the

situation complained of as a whole, it will also take into account any and all relevant events prior to that date (see, for example, *Milanović v. Serbia*, no. 44614/07, § 78, 14 December 2010, with further references). The Government's objection must therefore be dismissed.

2. Compatibility ratione materiae

14. The Government submitted that the applicant company could not have a legitimate expectation that its compensation claim would be granted in full. The State responsible for the damage incurred by the applicant company, namely the SFRY, had ceased to exist and Serbia was not the only successor State to have emerged after the dissolution of the SFRY. The applicant company could not have expected that Serbia would pay the full amount of compensation for damage caused by the authorities of the predecessor State.

15. The general principles applicable to the present complaint have been summarised, among others, in *Centro Europa 7 S.r.l. and Di Stefano v. Italy* ([GC], no. 38433/09, §§ 171-73, ECHR 2012) and *Anheuser-Busch Inc. v. Portugal* ([GC], no. 73049/01, §§ 63-65, ECHR 2007-I).

16. The Court also reiterates that the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to their ratification of the Convention (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004-IX). The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (see ibid., § 35, and *Văleanu and Others v. Romania*, nos. 59012/17 and 27 others, § 211, 8 November 2022).

17. The present case should be distinguished from earlier cases in which the Court dealt with the respondent States' failure to acknowledge or to honour their debts (see, among other authorities, *Ališić and Others*, cited above, which concerned the applicants' inability to recover their bank savings, and *Almeida Garrett, Mascarenhas Falcão and Others*, cited above, which concerned the respondent State's continuing failure to pay compensation for expropriated land). In the case under consideration, the national courts expressly acknowledged the applicant company's claims and granted them in part, corresponding to the share apportioned to Serbia by the Succession Agreement signed by the successor States after the dissolution of the SFRY. Before the Court, the applicant company argued that it was entitled to full compensation for the damage resulting from the accident attributed to the SFRY's air traffic controllers. Accordingly, the Court needs to establish whether the applicant company's expectations to obtain a full compensation following the dissolution of the SFRY were legitimately justified.

18. The Court answers this question in the negative. It notes that the proceedings in the applicant company's case were instituted against the SFRY, which dissolution in 1991 left multiple legal questions, including

allocation of debt and liability of the SFRY unresolved. After the Succession Agreement of 2004 which settled the issue of liability between the successor States, the proceedings were resumed against Serbia, being the only respondent party. In the Court's view, it should have been known to the applicant company that Serbian courts were competent to decide its case only in so far as Serbia's liability was concerned. Furthermore, the applicant company did not refer to any legal provision in Serbian or international law that would justify its expectation to have its claim lodged initially against the SFRY granted in full. Nor did it demonstrate that Serbia had voluntarily accepted joint and several liability over the tort attributable to the SFRY. On the contrary, the Court notes, in this connection, that, as pointed out the Supreme Court of Cassation, Serbia was only one of six successor States to the now dissolved SFRY. As regards the SFRY's assets, the successor States determined their respective shares in the Succession Agreement they signed. They used the same principle when determining their respective liability, each assuming a share of the SFRY's debts. In the present case the domestic courts did no more than interpret and apply the Succession Agreement, in so far as Serbia was concerned, as the only respondent party, and the applicant did not submit anything that such an interpretation ran counter any established domestic practice. They held Serbia liable for its tortious acts and granted the applicant company's claims in part, as per Serbia's "equitable share" of the former SFRY's tort obligations provided under the applicable regulation (see paragraph 7 above) .

19. Lastly, the Court finds that the argument advanced by the applicant company that Dunav Insurance had been awarded damages in full in 2003 is without merit. That fact preceded the Succession Agreement and Serbia's accession to the Convention in 2004 and has no bearing on the above finding.

20. Accordingly, the Court concludes that the applicant company could have no "legitimate expectation" of recovering full compensation for damage in its civil dispute against Serbia and that its claim, in the part concerning the amount of the compensation it was allegedly entitled to, did not constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

21. It follows that to the extent that this complaint concerns the domestic authorities' refusal to grant the applicant company's claims in full, it is incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

B. Remaining complaints

22. The applicant company also raised complaints under Article 6 of the Convention, some of which in its observations of 21 April 2022, or to be examined under Article 1 of Protocol No. 1, Article 14 and Article 1 of

Protocol No. 12 in connection with the civil proceedings it had been a party to.

23. The Court has examined these complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Simeon Petrovski Deputy Registrar	Anne Louise Bormann President