



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

FOURTH SECTION

CASE OF ŠAIN AND OTHERS v. BOSNIA AND HERZEGOVINA

(Application no. 61620/15 and 53 others - see appended list)

JUDGMENT

STRASBOURG

17 January 2019

This judgment is final but it may be subject to editorial revision.

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

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

Georges Ravarani, *President*,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Liv Tigerstedt *Acting Deputy Section Registrar*,

Having deliberated in private on 13 December 2018,

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

PROCEDURE

1. The case originated in applications 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”) on the various dates indicated in the appended table.

2. The applicants were represented by Mr M. Alić, a lawyer practising in Tešanj.

3. Notice of the applications was given to the Government of Bosnia and Herzegovina Government (“the Government”).

THE FACTS

4. The list of applicants and the relevant details of the applications are set out in the appended table.

5. The applicants complained of the non-enforcement or delayed enforcement of domestic decisions.

THE LAW

I. JOINDER OF THE APPLICATIONS

6. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

7. The applicants complained of the non-enforcement or delayed enforcement of domestic decisions given in their favour. They relied, expressly or in substance, on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“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.”

8. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a “hearing” for the purposes of Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, *Reports of Judgments and Decisions* 1997-II).

9. In the leading cases of *Spahić and Others v. Bosnia and Herzegovina*, nos. 20514/15 and 15 others, §§ 25-31, 14 November 2017, and *Kunić and Others v. Bosnia and Herzegovina*, nos. 68955/12 and 15 others, §§ 26-31, 14 November 2017, the Court already found a violation in respect of issues similar to those in the present case.

10. The Court further notes that the decisions in the present applications ordered specific action to be taken. The Court therefore considers that the decisions in question constitute “possessions” within the meaning of Article 1 of Protocol No. 1.

11. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the authorities did not deploy all necessary efforts to enforce fully and in due time the decisions in the applicants’ favour.

12. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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.”

14. Regard being had to the documents in its possession and to its case-law (see, in particular, *Spahić and Others v. Bosnia and Herzegovina*, nos. 20514/15 and 15 others, §§ 36-43, 14 November 2017, and *Kunić and Others v. Bosnia and Herzegovina*, nos. 68955/12 and 15 others, §§ 37-46, 14 November 2017), the Court considers it reasonable to award the sums indicated in the appended table.

15. The Court further notes that the respondent State has an outstanding obligation to enforce the judgments which remain enforceable.

16. The Court considers it appropriate that the default interest rate 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 these applications disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No.1 concerning the non-enforcement or delayed enforcement of domestic decisions;
4. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the pending domestic decisions referred to in the appended table;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State 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 amounts 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 17 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Georges Ravarani
President

APPENDIX

List of applications raising complaints under Article 6 § 1 of the Convention and Article 1 of the Protocol No. 1
(non-enforcement or delayed enforcement of domestic decisions)

No.	Application no. Date of introduction	Applicant's name Date of birth	Relevant domestic decision	Start date of non-enforcement period or date of entry into force of the Convention in respect of Bosnia and Herzegovina (12 July 2002)	End date of non-enforcement period Length of enforcement proceedings	Amount awarded for non-pecuniary damage per applicant (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
1.	61620/15 04/12/2015	Stjepan Šain 30/09/1979	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
2.	61621/15 04/12/2015	Mladenka Šain 29/12/1981	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
3.	61624/15 04/12/2015	Elvedin Kozlo 27/09/1971	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
4.	61631/15 04/12/2015	Faruk Berbić 17/12/1973	Zenica First Instance Court, 29/09/2006	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350

1. Plus any tax that may be chargeable to the applicants.

2. Plus any tax that may be chargeable to the applicants.

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5.	61635/15 04/12/2015	Mirnesa Kulović 11/04/1972	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	30/10/2008 25/02/2009	pending More than 10 year(s) and 24 day(s) pending More than 9 year(s) and 8 month(s) and 29 day(s)	1,000	350
6.	61640/15 04/12/2015	Drago Ćorić 28/01/1961	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	17/11/2008 19/03/2009	pending More than 10 year(s) and 6 day(s) pending More than 9 year(s) and 8 month(s) and 4 day(s)	1,000	350
7.	61644/15 04/12/2015	Mario Zakušek 06/10/1978	Zenica Cantonal Court, 02/12/2013	30/01/2014	pending More than 4 year(s) and 9 month(s) and 24 day(s)	1,000	350
8.	61648/15 04/12/2015	Sakib Kikić 14/02/1968	Zenica Cantonal Court, 05/06/2008 Zenica Cantonal Court, 02/12/2013	30/10/2008 30/01/2014	pending More than 10 year(s) and 24 day(s) pending More than 4 year(s) and 9 month(s) and 24 day(s)	1,000	350

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9.	61652/15 04/12/2015	Nijaz Hardauš 13/05/1971	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007 Zenica First Instance Court, 07/12/2012	30/10/2008 18/11/2008 21/10/2013	pending More than 10 year(s) and 24 day(s) pending More than 10 year(s) and 5 day(s) pending More than 5 year(s) and 1 month(s) and 2 day(s)	1,000	350
10.	7029/16 29/01/2016	Fadil Čolak 01/04/1971	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
11.	7033/16 29/01/2016	Šaban Kobilica 13/03/1957	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
12.	7036/16 29/01/2016	Damir Hrustić 31/10/1973	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
13.	7039/16 29/01/2016	Osman Kićo 25/01/1975	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350

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14.	7043/16 29/01/2016	Mukades Lopo 16/11/1974	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
15.	7045/16 29/01/2016	Edin Habibović 02/09/1971	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
16.	7048/16 29/01/2016	Amir Lušija 03/01/1970	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
17.	7062/16 29/01/2016	Mijo Šain 20/02/1953	Zenica First Instance Court, 29/09/2006	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
18.	7063/16 29/01/2016	Elvedin Lopo 10/09/1968	Zenica Cantonal Court, 05/06/2008	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
19.	14630/16 29/02/2016	Majda Jovičić 21/07/1966	Tešanj First Instance Court, 19/05/2010 Tešanj First Instance Court, 14/02/2014	13/12/2011 17/03/2015	pending More than 6 year(s) and 11 month(s) and 10 day(s) pending More than 3 year(s) and 8 month(s) and 6 day(s)	1,000	350

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20.	14632/16 29/02/2016	Hamzaliya Kaloševac 01/08/1961	Tešanj First Instance Court, 19/05/2010 Tešanj First Instance Court, 14/02/2014	13/12/2011 17/03/2015	pending More than 6 year(s) and 11 month(s) and 10 day(s) pending More than 3 year(s) and 8 month(s) and 6 day(s)	1,000	350
21.	14634/16 29/02/2016	Edina Ajanović 17/12/1967	Tešanj First Instance Court, 19/05/2010 Tešanj First Instance Court, 14/02/2014	13/12/2011 17/03/2015	pending More than 6 year(s) and 11 month(s) and 10 day(s) pending More than 3 year(s) and 8 month(s) and 6 day(s)	1,000	350
22.	14635/16 29/02/2016	Emina Bilić 10/11/1977	Tešanj First Instance Court, 19/05/2010 Tešanj First Instance Court, 14/02/2014	13/12/2011 17/03/2015	pending More than 6 year(s) and 11 month(s) and 10 day(s) pending More than 3 year(s) and 8 month(s) and 6 day(s)	1,000	350
23.	14638/16 29/02/2016	Delveta Avdić 10/01/1962	Tešanj First Instance Court, 19/05/2010 Tešanj First Instance Court, 14/02/2014	13/12/2011 17/03/2015	pending More than 6 year(s) and 11 month(s) and 10 day(s) pending More than 3 year(s) and 8 month(s) and 6 day(s)	1,000	350

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24.	14640/16 29/02/2016	Nermina Mahmutović 17/08/1980	Tešanj First Instance Court, 19/05/2010 Tešanj First Instance Court, 14/02/2014	13/12/2011 17/03/2015	pending More than 6 year(s) and 11 month(s) and 10 day(s) pending More than 3 year(s) and 8 month(s) and 6 day(s)	1,000	350
25.	21723/16 12/04/2016	Elvir Hrusto 05/12/1971	Zenica First Instance Court, 29/12/2006	17/11/2008	pending More than 10 year(s) and 6 day(s)	1,000	350
26.	21731/16 12/04/2016	Adnan Begovac 03/07/1972	Zenica First Instance Court, 29/12/2006	17/11/2008	pending More than 10 year(s) and 6 day(s)	1,000	350
27.	21738/16 12/04/2016	Ibro Begić 11/01/1972	Zenica First Instance Court, 29/12/2006	17/11/2008	pending More than 10 year(s) and 6 day(s)	1,000	350
28.	21966/16 12/04/2016	Jasmina Nokto 22/12/1965	Zenica First Instance Court, 29/12/2006	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
29.	21971/16 12/04/2016	Mensudin Brkić 26/10/1968	Zenica First Instance Court, 29/12/2006	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350

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30.	22089/16 12/04/2016	Faruk Silajdžić 05/12/1967	Zenica First Instance Court, 29/12/2006	05/11/2008	pending More than 10 year(s) and 18 day(s)	1,000	350
31.	22102/16 12/04/2016	Grga Hrgota 17/09/1974	Zenica First Instance Court, 29/12/2006	17/11/2008	pending More than 10 year(s) and 6 day(s)	1,000	350
32.	22108/16 12/04/2016	Dragica Čulum 07/02/1951	Zenica First Instance Court, 29/12/2006	17/11/2008	pending More than 10 year(s) and 6 day(s)	1,000	350
33.	22109/16 12/04/2016	Tamara Delibašić 29/11/1973	Zenica First Instance Court, 29/12/2006	05/11/2008	pending More than 10 year(s) and 18 day(s)	1,000	350
34.	22110/16 12/04/2016	Huso Duraković 01/01/1976	Zenica First Instance Court, 29/12/2006	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350
35.	23532/16 22/04/2016	Mandica Šain 02/08/1963	Zenica First Instance Court, 29/12/2006	30/10/2008	pending More than 10 year(s) and 24 day(s)	1,000	350

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36.	23726/16 22/04/2016	Indira Hardauš 31/08/1970	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	17/11/2008 19/06/2009	pending More than 10 year(s) and 6 day(s) pending More than 9 year(s) and 5 month(s) and 4 day(s)	1,000	350
37.	23727/16 22/04/2016	Almir Subašić 01/07/1970	Zenica First Instance Court, 29/12/2006	05/11/2008	pending More than 10 year(s) and 18 day(s)	1,000	350
38.	23728/16 22/04/2016	Hamida Vekić 09/05/1956	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	05/11/2008 15/12/2008	pending More than 10 year(s) and 18 day(s) pending More than 9 year(s) and 11 month(s) and 8 day(s)	1,000	350
39.	23732/16 22/04/2016	Džafer Smaka 10/01/1968	Zenica First Instance Court, 29/12/2006	17/11/2008	pending More than 10 year(s) and 6 day(s)	1,000	350
40.	24391/16 22/04/2016	Emsad Begić 09/03/1968	Zenica First Instance Court, 29/12/2006	17/11/2008	pending More than 10 year(s) and 6 day(s)	1,000	350

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41.	24393/16 22/04/2016	Milica Tubić 02/12/1958	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	05/11/2008 15/12/2008	pending More than 10 year(s) and 18 day(s) pending More than 9 year(s) and 11 month(s) and 8 day(s)	1,000	350
42.	24419/16 22/04/2016	Mahira Letić 05/05/1970	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	30/10/2008 09/04/2010	pending More than 10 year(s) and 24 day(s) pending More than 8 year(s) and 7 month(s) and 14 day(s)	1,000	350
43.	24559/16 22/04/2016	Fadil Kubat 04/01/1963	Zenica First Instance Court, 29/12/2006	10/11/2008	pending More than 10 year(s) and 13 day(s)	1,000	350
44.	24564/16 22/04/2016	Emira Čaluk 19/11/1977	Zenica First Instance Court, 29/12/2006	05/11/2008	pending More than 10 year(s) and 18 day(s)	1,000	350

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45.	39661/16 30/06/2016	Jasmin Tulić 29/04/1966	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007 Zenica Cantonal Court, 02/10/2013	05/11/2008 20/03/2009 09/12/2013	pending More than 10 year(s) and 18 day(s) pending More than 9 year(s) and 8 month(s) and 3 day(s) pending More than 4 year(s) and 11 month(s) and 14 day(s)	1,000	350
46.	39772/16 30/06/2016	Mirnes Selimović 16/01/1971	Zenica Cantonal Court, 05/06/2008 Zenica Cantonal Court, 02/12/2013	30/10/2008 30/01/2014	pending More than 10 year(s) and 24 day(s) pending More than 4 year(s) and 9 month(s) and 24 day(s)	1,000	350
47.	39879/16 30/06/2016	Mijo Tomić 15/03/1966	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	05/11/2008 16/12/2008	pending More than 10 year(s) and 18 day(s) pending More than 9 year(s) and 11 month(s) and 7 day(s)	1,000	350

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48.	39882/16 30/06/2016	Tomislav Tomić 20/12/1964	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007	17/11/2008 25/02/2009	pending More than 10 year(s) and 6 day(s) pending More than 9 year(s) and 8 month(s) and 29 day(s)	1,000	350
49.	39900/16 30/06/2016	Elvedin Mušinović 12/11/1971	Zenica Cantonal Court, 05/06/2008 Zenica Cantonal Court, 02/12/2013	30/10/2008 30/01/2014	pending More than 10 year(s) and 24 day(s) pending More than 4 year(s) and 9 month(s) and 24 day(s)	1,000	350
50.	39903/16 30/06/2016	Jozo Jozanović 29/03/1965	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007 Zenica Cantonal Court, 02/10/2013	05/11/2008 19/06/2009 09/12/2013	pending More than 10 year(s) and 18 day(s) pending More than 9 year(s) and 5 month(s) and 4 day(s) pending More than 4 year(s) and 11 month(s) and 14 day(s)	1,000	350

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51.	39913/16 30/06/2016	Dano Ćorić 30/04/1968	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007 Zenica Cantonal Court, 02/10/2013	17/11/2008 23/06/2009 09/12/2013	pending More than 10 year(s) and 6 day(s) pending More than 9 year(s) and 5 month(s) pending More than 4 year(s) and 11 month(s) and 14 day(s)	1,000	350
52.	39917/16 30/06/2016	Elvis Fejzić 24/05/1973	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007 Zenica Cantonal Court, 02/10/2013	05/11/2008 16/12/2008 09/12/2013	pending More than 10 year(s) and 18 day(s) pending More than 9 year(s) and 11 month(s) and 7 day(s) pending More than 4 year(s) and 11 month(s) and 14 day(s)	1,000	350

No.	Application no. Date of introduction	Applicant's name Date of birth	Relevant domestic decision	Start date of non-enforcement period or date of entry into force of the Convention in respect of Bosnia and Herzegovina (12 July 2002)	End date of non-enforcement period Length of enforcement proceedings	Amount awarded for non-pecuniary damage per applicant (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
53.	39924/16 30/06/2016	Nusret Talić 07/04/1971	Zenica First Instance Court, 29/12/2006 Kakanj First Instance Court, 26/10/2007 Zenica Cantonal Court, 02/10/2013	30/10/2008 29/12/2008 09/12/2013	pending More than 10 year(s) and 24 day(s) pending More than 9 year(s) and 10 month(s) and 25 day(s) pending More than 4 year(s) and 11 month(s) and 14 day(s)	1,000	350
54.	39949/16 30/06/2016	Senad Gadžun 17/10/1969	Zenica Cantonal Court, 05/06/2008 Zenica Cantonal Court, 02/12/2013	30/10/2008 30/01/2014	pending More than 10 year(s) and 24 day(s) pending More than 4 year(s) and 9 month(s) and 24 day(s)	1,000	350