BOSNIA AND HERZEGOVINA – ECHR: Serbian Orthodox church must be removed

Bosnia and Herzegovina must enforce decisions ordering removal of church built on Srebrenica genocide survivors' land.

Registrar of the Court (01.10.2019) – https://bit.ly/2orGEtV – In today's Chamber judgment 1 in the case of **Orlović and Others v. Bosnia and Herzegovina (application no. 16332/18)** the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned a church built by the Serbian Orthodox Parish on the applicants' land after they had had to flee their property during the 1992-95 war.

The Court found in particular that the authorities' failure to comply with final and binding decisions of 1999 and 2001 ordering full repossession of the land by the applicants, without any justification on the part of the Government for such inaction, had seriously frustrated their property rights.

It also held, by six votes to one, under Article 46 (binding force and implementation) that the respondent State had to

ensure enforcement of the two decisions in the applicants' favour, including in particular the removal of the church from the applicants' land, at the latest within three months of this judgment becoming final.

Principal facts

The applicants are a family of 14 citizens of Bosnia and Herzegovina, born between 1942 and 1982. They live in Konjević Polje and Srebrenik, in Bosnia and Herzegovina. They survive the first applicant's husband and more than 20 other relatives who were killed in the Srebrenica genocide in 1995.

During the 1992-95 war they were forced to flee from their home in Konjević Polje. The property belonged to the first applicant's husband and his brother and consisted of several individual and agricultural buildings, fields and meadows.

In 1998 a church was built on their land following expropriation proceedings in favour of the Drinjača Serbian Orthodox Parish. The applicants were never informed of those proceedings.

The General Framework Agreement for Peace in Bosnia and Herzegovina ("the Dayton Peace Agreement") put an end to the 1992-95 war. In order to implement Annex 7 to the agreement, which guaranteed the free return of refugees to their homes of origin and restitution of their property, the Republika Srpska (one of the two constituent entities of Bosnia and Herzegovina) enacted the Restitution of Property Act in 1998.

The applicants brought restitution proceedings for their property under that Act. They were granted full restitution in a decision by the Commission for Real Property Claims of Displaced Persons and Refugees ("the CRPC") in 1999, followed by another decision by the Ministry for Refugees and Displaced Persons in 2001. The decisions were both final and enforceable.

The land was subsequently returned to the applicants, except for a plot on which the church had been built. The applicants sought full repossession in the following years, without success.

The applicants also brought civil proceedings against the Serbian Orthodox Church seeking to recover possession of the plot of land and to have the church removed. In 2010 they modified their claim, asking the courts to recognise the validity of an out-of-court settlement. The lower courts dismissed the claim, finding that no agreement had been concluded between the parties, which was then confirmed by the Supreme Court in 2014 and the Constitutional Court in 2017.

In the meantime in 2004, there were other developments including the construction inspectorate authorities issuing an order banning the use of the church, which the local deputy mayor opposed, and the Serbian Orthodox Parish requesting and obtaining planning permission for the church.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained that they had been prevented from effectively using their property because the unlawfully built church had not yet been removed from their land.

They also relied on Article 6 § 1 (right to a fair trial) to complain about the domestic court decisions concerning their civil claim.

The application was lodged with the European Court of Human Rights on 30 March 2018.

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

Jon Fridrik Kjølbro (Denmark), President, Faris Vehabović (Bosnia and Herzegovina), Paul Lemmens (Belgium), Iulia Antoanella Motoc (Romania), Carlo Ranzoni (Liechtenstein), Jolien Schukking (the Netherlands), Péter Paczolay (Hungary), and also Andrea Tamietti, Deputy Section Registrar.

Decision of the Court

It was not in dispute that the applicants were the owners of the property in question and that, as internally displaced persons, they had been entitled under Annex 7 to the Dayton

Peace Agreement to have the land restored to them.

Furthermore, the Court noted that the applicants' right to full restitution had been established in the decisions of 1999 and 2001 and that the authorities had been required to take practical steps to ensure enforcement. However, instead of implementing the decisions, the authorities had initially in 2004 – done the opposite by effectively authorising the church to remain on the applicants' land.

Indeed, the applicants were still being prevented from full repossession of their property 17 years after ratification of the Convention and its protocols by Bosnia and Herzegovina. The Government had not given any justification for the authorities' inaction. The Court considered that such a long delay clearly amounted to a refusal to enforce the decisions, which had left the applicants in a state of uncertainty.

As a result of the authorities' failure to comply with the final and binding decisions, the applicants had suffered a serious frustration of their property rights and had been made to bear a disproportionate and excessive burden.

The Court therefore concluded that there had been a violation of Article 1 of Protocol No. 1.

Given that finding, the Court considered that there was no need to examine the applicants' complaint under Article 6.

Binding force and implementation (Article 46)

The Court reiterated that, in order to help a State comply with its obligations under Article 46, it might exceptionally indicate individual and/or general measures that could be taken to put an end to the violation of the Convention it had found.

In the particular circumstances of the applicants' case, the Court considered that the respondent State had to take all the necessary measures to ensure enforcement of the CRPC's decision of 1999 and the Ministry for Refugees' decision of 2001, including in particular the removal of the church from the applicants' land, without further delay and at the latest within three months of this judgment becoming final.

Just satisfaction (Article 41)

The Court held, unanimously, that Bosnia and Herzegovina was to pay 5,000 euros (EUR) to the first applicant and EUR 2,000 to each of the remaining applicants in respect of pecuniary damage.

Separate opinion

Judge Jon Fridrik Kjølbro expressed a partly dissenting opinion, which is annexed to the judgment.