



FOURTH SECTION

**CASE OF MUQISHTA v. BOSNIA AND HERZEGOVINA**

*(Application no. 27994/19)*

JUDGMENT

STRASBOURG

31 August 2021

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



**In the case of Muqishta v. Bosnia and Herzegovina,**

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

Tim Eicke, *President*,

Faris Vehabović,

Pere Pastor Vilanova, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 27994/19) 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 a Serbian national, Ms Sabahete Muqishta (“the applicant”), on 17 May 2019;

the decision to give notice to the Government of Bosnia and Herzegovina (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 29 June 2021,

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

## INTRODUCTION

1. The application concerns the applicant’s unsuccessful attempt to obtain social benefits to which she is entitled under domestic law. The applicant invokes Articles 6 and 14 of the Convention, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12.

## THE FACTS

2. The applicant was born in 1974 and lives in Sarajevo. The applicant was represented by Vaša prava, a local non-governmental organisation.

3. The Government were represented by their Acting Agent, Ms Jelena Cvijetić.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant was granted refugee status in Bosnia and Herzegovina in 2004. She is illiterate and has been diagnosed with severe mental disability.

6. In 2011 the competent medical authorities established that the applicant was ninety percent incapacitated and that she needed help to carry out activities of daily living.

7. On 1 June 2011 the applicant applied for a disability allowance (*lična invalidnina*) and an attendance allowance, without relying on any specific provision.

8. On 8 June 2011 the competent administrative authorities dismissed her application because she was a foreigner, relying on the social care

legislation of the Federation of Bosnia and Herzegovina (see paragraph 15 below).

9. In her appeal of 28 June 2011 the applicant specifically invoked section 8(a) and (b) of the Rulebook on Social Care of Persons in Need of International Protection 2009 (“the 2009 Rulebook”), which provided that refugees with disabilities were entitled to a permanent allowance (*stalna novčana pomoć*) and an attendance allowance (see paragraph 14 below). In December 2011 the competent Ministry upheld the decision of 8 June 2011, ignoring the applicant’s claim under the 2009 Rulebook.

10. On 4 July 2013 the Sarajevo Cantonal Court quashed that decision and instructed the Ministry to take into consideration the 2009 Rulebook.

11. On 5 August 2013 the Ministry examined the case yet again under the social care legislation of the Federation of Bosnia and Herzegovina, which indeed did not provide for any benefits for refugees. It upheld the decision of 8 June 2011.

12. On 9 August 2016 the Sarajevo Cantonal Court upheld the decision of 5 August 2013. It relied on the fact that the applicant had expressly applied for a disability allowance and an attendance allowance – benefits provided for in the social care legislation of the Federation of Bosnia and Herzegovina and only available to citizens of Bosnia and Herzegovina (see paragraphs 7 above and 15 below).

13. In her constitutional appeal, the applicant complained about the length and the outcome of the proceedings described above. On 11 October 2018 the Constitutional Court dismissed her appeal. That decision was served on the applicant on 22 November 2018.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

14. In Bosnia and Herzegovina, refugees with disabilities are entitled to, *inter alia*, a permanent allowance (*stalna novčana pomoć*) and an attendance allowance (see section 8(a) and (b) of the Rulebook on Social Care of Persons in Need of International Protection 2009<sup>1</sup>, which was in force at the relevant time, and section 7(a) and (b) of the Rulebook on Social Care of Persons in Need of International Protection 2017<sup>2</sup> – “the 2017 Rulebook”, which has been in force since 2017).

15. The regime applicable to citizens of Bosnia and Herzegovina is set out in other pieces of legislation. Notably, under the social care legislation of the Federation of Bosnia and Herzegovina, persons with disabilities are

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<sup>1</sup> *Pravilnik o načinu ostvarivanja prava na socijalnu pomoć osoba kojima je priznata međunarodna zaštita u Bosni i Hercegovini*, Official Gazette of Bosnia and Herzegovina nos. 3/09 and 5/10.

<sup>2</sup> *Pravilnik o načinu ostvarivanja prava na socijalnu pomoć osoba kojima je priznata međunarodna zaštita u Bosni i Hercegovini*, Official Gazette of Bosnia and Herzegovina no. 43/17.

entitled to a disability allowance (*lična invalidnina*) and an attendance allowance (see section 18(a) of the Social Care Act 1999<sup>3</sup>).

16. The conditions are the same under both regimes (see section 14 of the 2009 Rulebook and section 13 of the 2017 Rulebook). Notably, the applicant must be at least ninety percent incapacitated (see section 18(b) of the Social Care Act 1999). The same administrative authorities deal with all applications for benefits, regardless of whether an application has been filed by a refugee or a citizen of Bosnia and Herzegovina (see section 17 of the 2009 Rulebook and section 16 of the 2017 Rulebook).

17. The amounts provided under the legislation applicable to refugees have always been higher than those provided under the legislation applicable to citizens. Notably, in 2011, when the applicant in this case applied for benefits (see paragraph 7 above), the total monthly amount of a permanent allowance and an attendance allowance under the 2009 Rulebook was 559 convertible marks (BAM), whereas the total monthly amount of a disability allowance and an attendance allowance under the legislation of the Federation of Bosnia and Herzegovina was BAM 220.

18. Pursuant to section 5 of the Administrative Procedure Act 1998 of the Federation of Bosnia and Herzegovina<sup>4</sup>, the administrative authorities must ensure that the parties are aware of their rights and that they are granted the rights for which they are eligible.

19. Section 264a of the Civil Procedure Act 2003<sup>5</sup>, to which section 55 of the Administrative Disputes Act 2005<sup>6</sup> refers, reads as follows:

“(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by Bosnia and Herzegovina, a party may, within ninety days of the judgment of the European Court of Human Rights becoming final, file an application with the first-instance court which originally adjudicated the proceedings resulting in the decision violating the human right or fundamental freedom, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions in relation to reopening proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom.”

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<sup>3</sup> *Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice sa djecom*, Official Gazette of the Federation of Bosnia and Herzegovina nos. 36/99, 54/04, 39/06, 14/09, 45/16 and 40/18.

<sup>4</sup> *Zakon o upravnom postupku*, Official Gazette of the Federation of Bosnia and Herzegovina nos. 2/98 and 48/99.

<sup>5</sup> *Zakon o parničnom postupku*, Official Gazette of the Federation of Bosnia and Herzegovina nos. 53/03, 73/05, 19/06 and 98/15.

<sup>6</sup> *Zakon o upravnim sporovima*, Official Gazette of the Federation of Bosnia and Herzegovina no. 9/05.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

20. The applicant complained under Article 6 § 1 of the Convention about the fairness and length of the administrative proceedings outlined above. The relevant part of that Article reads as follows:

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

#### A. Admissibility

21. The Government submitted that the application had been lodged out of time in view of the fact that more than six months had passed between the service of the Constitutional Court’s decision on the applicant (see paragraph 13 above) and the date of receipt of the present application by the Court on 23 May 2019.

22. The applicant disagreed with the Government and emphasised that she had introduced the application on 17 May 2019.

23. The purpose of the six-month rule is to promote legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (see, among other authorities, *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 39, 29 June 2012).

24. The date of introduction of an application for the purposes of Article 35 § 1 of the Convention is the date of the postmark when the applicant dispatched a duly completed application form to the Court (see Rule 47 § 6 (a) of the Rules of Court), and not the date of receipt of the application by the Court (see *Brežec v. Croatia*, no. 7177/10, § 29, 18 July 2013). In other words, applicants cannot be held responsible for any delays that may affect their correspondence with the Court in transit; to hold otherwise would mean unjustifiably shortening the six-month period set forth in Article 35 § 1 of the Convention and negatively affecting the right of individual petition (see, *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, § 70, 4 July 2013).

25. Turning to the present case, the Court notes that the applicant sent a duly completed application form to the Court on 17 May 2019. In accordance with the case-law outlined in paragraph 24 above, 17 May 2019 is therefore the date of introduction of the application for the purposes of Article 35 § 1 of the Convention. Since the date of notification of the Constitutional Court’s decision is 22 November 2018 (see paragraph 13 above), the application was clearly lodged within the six-month time-limit.

26. Accordingly, the Government's objection must be dismissed.

27. The Court notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. As concerns the fairness of the proceedings*

28. The applicant claimed that the domestic decisions rendered in her case were clearly contrary to the domestic legislation. She also submitted domestic decisions granting a permanent allowance and an attendance allowance under the 2009 Rulebook to another refugee in a similar situation.

29. The Government maintained that the Court was not a court of fourth instance. It should therefore not question the interpretation of domestic law by national courts. In any event, the domestic decisions rendered in this case were not arbitrary: the applicant had applied for a disability allowance and an attendance allowance – benefits provided for in the social care legislation of the Federation of Bosnia and Herzegovina and only available to citizens of Bosnia and Herzegovina (see paragraphs 7 and 15 above).

30. The Court agrees with the Government that it is not its task to take the place of domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. That being said, the Court may find a violation of Article 6 § 1 of the Convention if the national court's findings are arbitrary or manifestly unreasonable, resulting in a "denial of justice" (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, §§ 83-85, 11 July 2017, and *Lazarević v. Bosnia and Herzegovina*, no. 29422/17, § 30, 14 January 2020).

31. In the present case, the Court notes that in 2011 the competent medical authorities established that the applicant was ninety percent incapacitated and that she needed help to carry out activities of daily living (see paragraph 6 above). Having a refugee status (see paragraph 5 above), she was thus entitled to a permanent allowance and an attendance allowance pursuant to section 8(a) and (b) of the 2009 Rulebook (see paragraphs 14 and 16 above). Indeed, at least one other refugee in a similar situation has been granted those benefits (see paragraph 28 above).

32. Nevertheless, the applicant's application for those benefits was eventually dismissed for the sole reason that she had expressly applied for a disability allowance and an attendance allowance – benefits provided for in the social care legislation of the Federation of Bosnia and Herzegovina and only available to citizens of Bosnia and Herzegovina (see paragraph 12 above). The administrative authorities completely disregarded the legal provisions pursuant to which the applicant was entitled to other, similar benefits (namely a permanent allowance and an attendance allowance),

despite the fact that she had specifically invoked those provisions in her appeal (see paragraph 9 above).

33. The administrative authorities also disregarded their statutory duty to ensure that the applicant was aware of her rights and that she was granted the rights for which she was eligible (see paragraph 18 above).

34. The foregoing considerations are sufficient to enable the Court to conclude that the administrative authorities and the Sarajevo Cantonal Court did not give the applicant's case a fair hearing, and that this was not remedied by the Constitutional Court.

There has accordingly been a violation of Article 6 § 1 of the Convention.

*2. As concerns the length of the proceedings*

35. As regards the period to be taken into consideration, the Court notes that the administrative proceedings were instituted on 1 June 2011. However, the period to be taken into consideration began only on 28 June 2011 when the applicant appealed against the decision dismissing her application (see paragraph 9 above). It was then that a "dispute" within the meaning of Article 6 § 1 arose (see *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001). The period to be taken into consideration ended on 9 August 2016 (see paragraph 12 above and, *mutatis mutandis*, *Simić v. Serbia*, no. 29908/05, § 16, 24 November 2009). It thus lasted more than five years and one month.

36. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that special diligence is necessary in a case where the applicant's disability benefits made up the bulk of his or her resources, like in the present case (see *Mocie v. France*, no. 46096/99, § 22, 8 April 2003).

37. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of justifying the length of the proceedings in the instant case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a violation of Article 6 § 1 of the Convention.



## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicant further complained that the outcome of the proceedings complained of was contrary to Article 14 of the Convention, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12.

39. The Government contested that argument.

40. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

41. Having regard to its finding under Article 6 § 1 (see paragraph 34 above), the fact that refugees in Bosnia and Herzegovina are entitled to disability benefits under the same conditions as citizens of Bosnia and Herzegovina (see paragraph 16 above) and the fact that the amounts provided under the legislation applicable to refugees have always been higher than those provided under the legislation applicable to the citizens (see paragraph 17 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 14 of the Convention, Article 1 of Protocol No. 1 or Article 1 of Protocol No. 12.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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.”

43. The applicant claimed 19,097.70 euros (EUR) in respect of pecuniary damage on account of the benefits claimed in the domestic proceedings. She also claimed EUR 10,000 in respect of non-pecuniary damage.

44. The Government contested the applicant's claims as unfounded.

45. The Court notes that the present judgment allows the applicant to seek re-examination of her case (see paragraph 19 above). Having regard to the foregoing, the Court considers that there is no call to award the applicant any sum on account of pecuniary damage. As regards her claim for non-pecuniary damage, the Court accepts that the applicant suffered distress as a result of the violations found. Making its assessment on an equitable basis, as required by the Convention, the Court awards her EUR 4,700 under this head, plus any tax that may be chargeable.

46. The applicant did not claim any compensation in respect of costs and expenses. There is therefore no call to award her any sum on that account.

47. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as a result of the arbitrariness of the administrative decisions;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as a result of the excessive length of the administrative proceedings;
4. *Holds* that there is no need to examine the complaints under Article 14 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 1 of Protocol No. 12 to the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, EUR 4,700 (four thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 August 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth  
Deputy Registrar

Tim Eicke  
President