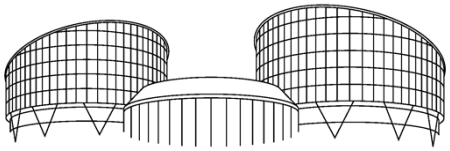

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF APOSTOLOVSKI AND OTHERS v. BOSNIA AND HERZEGOVINA

(Applications nos. 28704/11and 2 others)

JUDGMENT

STRASBOURG

18 January 2022

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

In the case of Apostolovski and Others 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 applications (nos. 28704/11, 45699/13 and 74240/13) 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 national of North Macedonia, Mr Laste Apostolovski, a national of Bosnia and Herzegovina, Mr Milan Knežević, and a national of Bosnia and Herzegovina and Croatia, Mr Ratko Popović, ("the applicants") on the various dates indicated in the appended table;

the decision to give notice of the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Government of Bosnia and Herzegovina ("the Government"), represented by Ms J. Cvijetić, their Acting Agent, and to declare inadmissible the remainder of the applications;

the parties' observations;

the written comments submitted by the Governments of North Macedonia and Serbia, who were invited to intervene by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

Having deliberated in private on 14 December 2021,

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

SUBJECT-MATTER OF THE CASE

1. When Bosnia and Herzegovina declared independence, the applicants were employed with the army of the Socialist Federal Republic of Yugoslavia ("SFRY"). Being stationed in the territory of Bosnia and Herzegovina, they were allocated military flats there. Mr Apostolovski bought his military flat shortly before the 1992-95 war (compare *Đokić v. Bosnia and Herzegovina*, no. 6518/04, 27 May 2010), whereas the other two applicants did not (compare *Mago and Others v. Bosnia and Herzegovina*, nos. 12959/05 and 5 others, 3 May 2012). All applicants left their flats when the war started and joined foreign armed forces. For that reason, their restitution claims were rejected after the war (pursuant to section 3a of the Restitution of Flats Act 1998). On 23 November 2012 and 25 April 2013, the Constitutional Court of Bosnia and Herzegovina found a breach of the right to the peaceful enjoyment of their pre-war flats in respect of Mr Knežević and Mr Popović, respectively. While reiterating that it was not disproportionate to reject restitution claims regarding military flats pursuant to section 3a of the Restitution of Flats Act 1998, the Constitutional Court held that the applicants had to be given fair

compensation should it be established that they had not acquired a military flat in another State. It appears that they have not yet received any compensation in this connection.

THE COURT'S ASSESSMENT

THE *LOCUS STANDI* OF THE APPLICANT'S SPOUSE IN THE CASE OF MR APOSTOLOVSKI

2. Following the applicant's death, his spouse, Mrs Branka Apostolovska, declared on 25 November 2019 her wish to pursue the application as his heir. The Government did not submit any observations in this connection.

3. Where the original applicant has died after lodging the application, the Court normally permits the next-of-kin to pursue an application, provided he or she has a legitimate interest (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000 XII, and *Murray v. the Netherlands* [GC], no. 10511/10, § 79, ECHR 2016, with further references).

4. Accordingly, the Court accepts that Mrs Apostolovska has standing to pursue the application on behalf of the late Laste Apostolovski.

JOINDER OF THE APPLICATIONS

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

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

6. The applicants complained under Article 1 of Protocol No. 1 to the Convention about their inability to have restored to them their pre-war flats in Bosnia and Herzegovina.

A. Admissibility

7. The Government's objection that the application of Mr Knežević had been lodged out of time, because it had been received by the Court more than six months from the date of delivery of the Constitutional Court's decision in his case, must be dismissed. 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). The present applicant sent a duly completed application form to the Court on 11 June 2013. Since the date of notification of the Constitutional Court's decision in his case is 14 December 2012, the application was clearly lodged within the six-month time-limit.

8. The Government's next objection that the application of Mr Knežević constituted an abuse of the right of petition, because the applicant had failed to inform the Court that he had lodged an application for a military flat in Serbia, must equally be dismissed. An application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information. The submission of incomplete and thus misleading information may constitute an abuse of the right of petition, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Stevančević v. Bosnia and Herzegovina* (dec.), no. 67618/09, § 26, 10 January 2017). Since there is no indication, let alone proof, that the applicant's right to a military flat has been established by the military authorities in Serbia, whether he has lodged an application for a military flat in Serbia or not is of no relevance.

9. The Court notes that the applications are otherwise neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It therefore declares them admissible.

B. Merits

10. The general principles concerning this issue have been summarized in *Đokić*, cited above, §§ 55-64; *Mago and Others*, cited above, §§ 94-105; and *Aleksić v. Bosnia and Herzegovina* (dec.), no. 38233/05, § 26, 3 February 2015.

11. Contrary to *Aleksić*, cited above, the present applicants' right to a flat has not been established by the military authorities in any successor State of the former SFRY. Furthermore, as in *Đokić*, cited above, § 60, and *Mago and Others*, cited above, § 103, there is no indication, let alone proof, that the applicants participated, as part of foreign armed forces, in any war crimes in the territory of Bosnia and Herzegovina. Lastly, they have not been given any of the compensation recognised as due to them by the Constitutional Court for the loss of their military flats in Bosnia and Herzegovina.

12. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

13. Mr Apostolovski and Mr Knežević complained about their inability to have restored to them their pre-war military flats in Bosnia and Herzegovina also under Article 8 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that the complaint is admissible but that it is not necessary to examine separately whether there has also been a violation of that provision of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. As regards the case of Mr Apostolovski, no claim for just satisfaction was submitted. Accordingly, the Court considers that there is no call to award any sum on that account.

15. Mr Knežević claimed 35,000 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 1,880 in respect of costs and expenses incurred before the Court. In the leading case concerning this matter (see *Mago and Others*, cited above, § 121), the Court awarded in respect of pecuniary damage the market value of the flats at issue (assessed, at the time, at EUR 1,000 per square meter for flats in Sarajevo and Mostar), plus any tax that may be chargeable. However, the Court's case-law has evolved since then. Notably, in *Stevančević*, cited above, §§ 21 and 28, the Court considered that compensation in the amount of EUR 21,496 for a flat situated in Sarajevo was adequate. In accordance with its case-law, the Court awards Mr Knežević EUR 22,200 for a flat measuring seventy-four square meters in Bihać, plus any tax that may be chargeable, in respect of pecuniary damage. As concerns non-pecuniary damage, the Court awards the amount claimed by the applicant plus any tax that may be chargeable (see *Mago and Others*, cited above, § 123). Lastly, as to costs and expenses incurred before the Court, the applicant failed to submit evidence that he had actually paid, or was bound to pay, pursuant to a legal or contractual obligation, the amount claimed (see *Mago and Others*, cited above, § 126), save for translation costs in the amount of EUR 345. Since the sum claimed in that respect is reasonable, the Court awards EUR 345 under this head plus any tax that may be chargeable to the applicant.

16. Mr Popović claimed EUR 32,000 in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 1,022 in respect of costs and expenses incurred before the Court. In accordance with its case-law mentioned in paragraph 15 above, the Court awards Mr Popović EUR 19,200 for a flat measuring sixty-four square meters in Bihać, plus any tax that may be chargeable, in respect of pecuniary damage. As to non-pecuniary damage, the Court awards the amount claimed by the applicant plus any tax that may be chargeable (see *Mago and Others*, cited above, § 123). Lastly, as to costs and expenses incurred before the Court, the applicant submitted a bill of costs,

based on the tariff fixed by the local bar association. Since the sum claimed is reasonable, the Court awards EUR 1,022 under this head plus any tax that may be chargeable to the applicant.

17. The Court further 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. *Holds* that Mrs Apostolovska may pursue the application on behalf of the late Laste Apostolovski;

2. *Decides* to join the applications;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds* that there is no need to examine the complaints under Article 8 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay Mr Knežević, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 22,200 (twenty-two thousand two hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 345 (three hundred and forty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that the respondent State is to pay Mr Popović, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 19,200 (nineteen thousand two hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,022 (one thousand and twenty-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(c) 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;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 18 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President

APPENDIX

List of Applications

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	28704/11	Apostolovski v. Bosnia and Herzegovina	17/01/2011	**Laste APOSTOLOVSKI** **1952** **Kumanovo** **North Macedonia**	Sulejman HADŽIBEGOVIĆ
2.	45699/13	Knežević v. Bosnia and Herzegovina	11/06/2013	**Milan KNEŽEVIĆ** **1947** **Dragočaj** **Bosnia and Herzegovina**	Rafaela LJUBOJEVIĆ-ĐURIĆ
3.	74240/13	Popović v. Bosnia and Herzegovina	17/10/2013	**Ratko POPOVIĆ** **1964** **Belgrade** **Bosnia and Herzegovina + Croatia**	Nebojša MILANOVIĆ