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PRAKSA EUROPSKOG SUDA ZA LJUDSKA PRAVA U ODNOSU NA BOSNU I HERCEGOVINU

THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS IN RESPECT OF BOSNIA AND HERZEGOVINA

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PRAKSA EUROPSKOG SUDA ZA LJUDSKA PRAVA U ODNOSU NA BOSNU I HERCEGOVINU DO KRAJA 2015.

Praksa Europskog suda za ljudska prava u odnosu na Bosnu i Hercegovinu do kraja 2015.

U ovom dokumentu dat je pregled presuda i odabranih odluka o dopuštenosti koje je Europski sud za ljudska prava (u daljnjem tekstu: Sud) usvojio po aplikacijama protiv Bosne i Hercegovine nakon što je država 12. 07. 2002. ratifikovala Europsku konvenciju za zaštitu ljudskih prava i temeljnih sloboda (u daljnjem tekstu: Konvencija). Sud je do 31. decembra 2015. usvojio 43 presude i 67 odluka o dopuštenosti protiv tužene Bosne i Hercegovine.[1]

Ovaj dokument čine dva dijela. U prvom dijelu dat je narativni pregled slučajeva prema prirodi utvrđene povrede prava iz Konvencije. Drugi dio dokumenta čini tabela u kojoj je dat pregled pojedinačnih presuda, po članovima Konvencije, uz kratak opis pravnih pitanja na koja se odnose.

S obzirom na stalno rastuću potrebu da se praksa Suda prevede i približi pravosudnim, izvršnim i drugim institucijama država regiona Zapadnog Balkana, ovaj dokument je preveden na jedan od službenih jezika Bosne i Hercegovine.

Član 6 Konvencije i član 1 Protokola br. 1 uz Konvenciju: sistemski problem neizvršenja pravosnažnih presuda domaćih sudova

Najveći broj presuda koje je Sud usvojio protiv Bosne i Hercegovine odnosi se na zaštitu prava na imovinu iz člana 1 Protokola br. 1 uz Konvenciju i zaštitu prava na pravično suđenje iz člana 6 Konvencije, zbog neizvršenja izvršnih presuda domaćih sudova kojima su aplikantima dosuđene različite vrste potraživanja.[2] Do kraja 31. decembra 2015. godine, u odnosu na član 1 Protokola br. 1 uz Konvenciju usvojene su 25 presude, s tim da je u njih 20 utvrđena povreda prava na imovinu.[3] U istom periodu, 24 presude su usvojene temeljem člana 6 Konvencije, pri čemu je u 22 presude utvrđena povreda prava na pravično suđenje.[4]

Prva presuda Suda u odnosu na Bosnu i Hercegovinu donesena je u vodećem slučaju *Jeličić protiv BiH.* U ovom predmetu

1. U ovom dokumentu iznesen je detaljan prikaz presuda koje su usvojila Vijeća od sedam sudija i Veliko vijeće od 17 sudija. Presude koje su usvojili odbori od troje sudija ili sudije pojedinci (vidi članove 27 i 28 Konvencije) u tzv. „ponavljajućim slučajevima" navedene su samo radi informacije i nisu obuhvaćene posebnom analizom u drugom dijelu ovog dokumenta. Od ovih presuda Vijeće ili Veliko vijeće odlučivalo je u 35 slučajeva. U okviru odluka o dopustivosti Vijeće je odlučivalo u 40 predmeta.
2. Prema statistikama Suda, presude donesene protiv Bosne i Hercegovine odnose se u procentu 36% na povredu imovinskih prava, dok se 33% odnosi na povredu prava na pravično suđenje, Statistics on judgments by State ECtHR, 2013.
3. *Đurić i drugi protiv BiH,* presuda od 20. januara 2015; *Jeličić protiv BiH,* presuda od 10. oktobra 2006; *Pejaković i drugi protiv BiH,* presuda od 18. decembra 2007; *Kudić protiv BiH,* presuda od 09. decembra 2008; *Pralica protiv BiH,* presuda od 06. januara 2009; *Milisavljević protiv BiH,* presuda od 03. marta 2009; *Čolić i drugi protiv BiH,* presuda od 10. novembra 2009; *Đokić protiv BiH,* presuda od 27. maja 2010; *Suljagić protiv BiH,* presuda od 03. novembra 2009; *Šekerović i Pašalić protiv BiH,* presuda od 8. marta 2011; *Runić i drugi protiv BiH,* presuda od 15. novembra 2011; *Bobić protiv BiH,* presuda od 03. maja 2012; *Mago i drugi protiv BiH,* presuda od 03. maja 2012; *Murtić i Ćerimović protiv BiH,* presuda od 19. juna 2012; *Đukić protiv BiH,* presuda od 19. juna 2012; *Ignjatić i drugi protiv BiH,* presuda od 15. januara 2013; *Janjić i drugi protiv BiH,* presuda od 15. januara 2013; *Momić i drugi protiv BiH,* presuda od 15. januara 2013; *Tomić i drugi protiv BiH,* presuda od 15. januara 2013; *Ćosić i drugi protiv BiH,* presuda od 22. januara 2013; *Bokan i drugi protiv BiH,* presuda od 22. jula 2014; *Ališić i drugi protiv BiH,* presude od 06. novembra 2012. i 16. 07. 2014. (nije utvrđena povreda u odnosu na Bosnu i Hercegovinu); *Mišković protiv BiH,* presuda od 08. jula 2014; *Milinković protiv BiH,* presuda od 17. juna 2014. godine.
4. *Jeličić protiv BiH,* presuda od 10. oktobra 2006; *Karanović protiv BiH,* presuda od 20. novembra 2007; *Pejaković i drugi protiv BiH,* presuda od 18. decembra 2007; *Kudić protiv BiH,* presuda od 9. decembra 2008; *Pralica protiv BiH,* presuda od 06. januara 2009; *Milisavljević protiv BiH,* presuda od 03. marta 2009; *Čolić i drugi protiv BiH,* presuda od 10. novembra 2009; *Đokić protiv BiH,* presuda od 27. maja 2010; *Šekerović i Pašalić protiv BiH,* presuda od 08. marta 2011; *Runić i drugi protiv BiH,* presuda od 15. novembra 2011; *Bobić protiv BiH,* presuda od 03. maja 2012; *Đukić protiv BiH,* presuda od 19. juna 2012; *Murtić i Ćerimović protiv BiH,* presuda od 19. juna 2012; *Ignjatić i drugi protiv BiH,* presuda od 15. januara 2013; *Janjić i drugi protiv BiH,* presuda od 15. januara 2013; *Momić i drugi protiv BiH,* presuda od 15. januara 2013; *Tomić i drugi protiv BiH,* presuda od 15. januara 2013; *Ćosić i drugi protiv BiH,* presuda od 22. januara 2013; *Avdić i drugi protiv BiH,* presuda od 19. novembra 2013; *Milinković protiv BiH,* presuda od 17. juna 2014; *Mišković protiv BiH,* presuda od 08. jula 2014; *Bokan i drugi protiv BiH,* presuda od 22. jula 2014; *Lončar protiv BiH,* presuda od 25. februara 2014. (nije utvrđena povreda).

Sud je prvo donio značajnu odluku o dopustivosti,[5] koja je razjasnila krucijalna pitanja koja se odnose na uvjete iscrpljivanja domaćih pravnih lijekova u Bosni i Hercegovini. U ovom slučaju aplikantica je podnijela predstavku Domu za ljudska prava, koji je ustanovljen za Bosnu i Hercegovinu Anexom 6 uz Dejtonski sporazum iz 1995. godine. Sud je trebalo da utvrdi da li Dom za ljudska prava jeste ili nije „međunarodno" tijelo u okviru značenja člana 35 stav 2 (b). Sud je zaključio da bi trebalo da se postupci pred Domom za ljudska prava smatraju „domaćim" pravnim lijekom u okviru značenja člana 35 stav 1 Konvencije i da je, u slučaju postojanja više pravnih lijekova koji pojedincu stoje na raspolaganju, pojedinac ovlašten da izabere koji pravni lijek će iskoristiti za svoju žalbu. Drugim riječima, kada je jedan pravni lijek iskorišten, korištenje drugog pravnog lijeka,[6] koji ima u suštini isti cilj, nije neophodno. U presudi *Jeličić*[7], koja je uslijedila, Sud je utvrdio povredu prava aplikantice iz čl. 1 Protokola br. 1 i čl. 6 Konvencije zbog neizvršenja presude domaćeg suda kojom je aplikantici priznato potraživanje „stare" devizne štednje položene u domaćoj komercijalnoj banci sa sjedištem na teritoriji BiH. Izvršenje tih presuda je bilo spriječeno u Republici Srpskoj od 1996. godine u skladu sa instrukcijama Vlade Republike Srpske i relevantnog zakonodavstva. Sud je našao da je situacija u kojoj se našla aplikantica bila značajno drugačija u odnosu na većinu štedišta „stare" devizne štednje koji nisu ishodovali pravomoćnu presudu kojom se nalaže isplata njihovih sredstava. Sud je također utvrdio da su presude kojima se nalaže isplata „stare" devizne štednje prije izuzetak nego pravilo i da isplata naknade koju su naložili domaći sudovi u ovom slučaju, čak i sa akumuliranim zakonskim kamatama, ne bi predstavljala značajan teret za državu, a posebno ne bi uzrokovala ekonomski kolaps, kao što je Vlada isticala. Imajući ove okolnosti u vidu, Sud je smatrao da nije bilo opravdano toliko dugo odlagati izvršenje pravomoćne i izvršne presude ili zakonskim putem sprječavati izvršenje presuda kojima se nalaže isplata „stare" devizne štednje. Sud je utvrdio da propust nadležnih domaćih vlasti da izvrše pravomoćnu sudsku presudu u korist aplikantice predstavlja uplitanje u pravo na mirno uživanje imovine, kao što je navedeno u prvoj rečenici prvog paragrafa člana 1 Protokola br. 1. Nakon presude *Jeličić protiv BiH* uslijedio je niz presuda u sličnim predmetima, kao što su *Pralica protiv BiH, Kudić protiv BiH, Pejaković protiv BiH* (gore citirani).

Nadalje, Sud je presudi *Čolić* i drugi također utvrdio povredu prava aplikanata iz čl. 1 Protokola br. 1 i čl. 6 Konvencije zbog propusta tužene BiH da izvrši pravosnažne presude domaćih sudova kojima su aplikantima dosuđena potraživanja ratne štete. Slučaj koji je sličan, iako ne identičan, slučaju *Jeličić* odnosi se na zakonsko obustavljanje izvršenja jedne cijele kategorije pravomoćnih presuda zbog obima javnog duga koji proizilazi iz ovih presuda. U svjetlu mnogih tužbi koje su podnesene na osnovu odredbi propisa o naknadi štete, u 2005. godini Republika Srpska je izradila generalni plan za naknadu ratne štete i obustavila parnične postupke. Prema ovoj šemi, naknada se trebala isplatiti Vladinim obveznicama. U ovoj presudi Sud je naglasio da, iako je situacija takva da jedan značajan broj tužbenih zahtjeva koji se odnose na ratnu štetu, a koji još nisu okončani, mogu dovesti do potrebe da se oni zamijene jednim generalnim planom za naknadu štete, ovo nikako ne utiče na obavezu tužene države da izvrši presude koje su postale pravomoćne prije izrade takvog plana. Ova presuda ukazala je na ogromne razmjere problema, naročito u Republici Srpskoj, koja je u takvoj situaciji suočena s ogromnim unutrašnjim dugom.

Praksa Suda je u tom pogledu evoluirala u presudi *Runić i drugi.* U ovom slučaju Sud je naglasio da niko od aplikanata u predmetu *Čolić i drugi,* za razliku od aplikanata u tom predmetu, nije prihvatio Vladine obveznice i da se mora napraviti razlika između ovog predmeta i prakse u predmetu *Čolić i drugi.* Sud je zaključio, s obzirom na činjenicu da su mnogi aplikanti u *Runić i drugi* već prodali svoje obveznice na berzi i da su im dosuđeni troškovi postupka bili u gotovini isplaćeni, da su predmetne presude izvršene. Međutim, Sud je utvrdio da je čak i u slučaju kada su domaće presude u cjelosti izvršene, zbog kašnjenja u izvršenju koje je trajalo od 3 do 8 godina, došlo do povrede čl. 1 Protokola br. 1 i člana 6 Konvencije. Sud je o istom pitanju kasnije odlučivao u brojnim ponavljajućim slučajevima *Ignjatić i drugi, Janjić i drugi, Tomić i drugi, Ćosić i drugi, Mišković* itd. (gore citirani).

Presuda *Đurić i drugi*[8] je donesena nakon što je Republika Srpska uvela novi plan za sprovođenje generalnih mjera

5. *Jeličić protiv BiH,* odluka o dopustivosti od 15. novembra 2005.
6. Apelacija Ustavnom sudu Bosne i Hercegovine.
7. *Jeličić protiv BiH,* presuda od 10. oktobra 2006.
8. *Đurić i drugi protiv BiH,* presuda od 20. januara 2015. godine.

naloženih presudom *Čolić i drugi.* Ovaj Akcioni plan je predvidio isplatu pravomoćnh presuda kojima je dosuđena naknada ratne štete u gotovini (za one koji ne prihvataju Vladine obveznice) u roku od 13 godina, počev od 2013. godine. Republika Srpska se obavezala da će platiti 50 eura na ime nematerijalne štete. U julu 2013. godine vremenski rok za izvršenje je produžen na period od 20 godina, počevši od 2013. godine. Sud je prihvatio da može nastati potreba da se odgodi izvršenje pravomoćnih presuda u izuzetnim slučajevima i da postoji značajan javni dug i podržao namjeru da plan izmirenja predviđa i naknadu. Međutim, Sud je smatrao da je plan protivan članu 6 i članu 1 Protokola br. 1 iz razloga što je predugo odlaganje u svjetlu prethodnih dešavanja, te da nedostatak sredstava nije opravdanje za neizmirenje duga utvrđenog sudskom presudom i da takva odgoda predstavlja individualno i pretjerano opterećenje za povjerioce o kojima je riječ. Sud je zbog toga smatrao da tužena država treba izmijeniti plan izmirenja. U tom pogledu, Sud je našao da je vremenski period predviđen prvobitnim planom izmirenja, od 13 godina, bio daleko razumniji u vrijeme kada je donesen. Sud je utvrdio da su u slučajevima u kojima je već postojala odgoda od više od deset godina presude trebale biti izvršene bez daljnjeg odlaganja i da se tužena država trebala obavezati na plaćanje zakonskih zateznih kamata u slučaju kašnjenja u izvršenju presuda u skladu sa planom izmirenja kako bude izmijenjen nakon ove presude.

Sud je u izolovanim slučajevima kao što su *Milisavljević protiv BiH, Šekerović i Pašalić protiv BiH, Bobić protiv BiH,* utvrdio povredu čl. 1 Protokola br. 1 i čl. 6 Konvencije zbog neizvršenja odluka Doma za ljudska prava BiH, odnosno Ustavnog suda BiH.[9]

Član 1 Protokola br. 1 uz Konvenciju: sistemski problem povrata stare devizne štednje:

U predmetu *Suljagić*[10], koji se odnosi na pitanje „stare" devizne štednje deponovane u domaćim bankama[11] (devizna štednja deponovana prije raspada Socijalističke Federativne Republike Jugoslavije), Sud je donio svoju prvu pilot-presudu protiv Bosne i Hercegovine, u kojoj je utvrdio povredu člana 1 Protokola br. 1 uz Konvenciju. Iako je Sud utvrdio da je domaće zakonodavstvo kao takvo u skladu sa članom 1 Protokola br. 1, složio se sa aplikantom da je stanje provođenja zakona nezadovoljavajuće. S obzirom na manjkavo provođenje zakona o „staroj" deviznoj štednji, Sud je zaključio da aplikant još uvijek može tvrditi da je žrtva u svrhu člana 34 Konvencije. Iz istog razloga, Sud je našao da je došlo do kršenja člana 1 Protokola br. 1 uz Konvenciju. S obzirom da se kršenje koje je utvrđeno u predmetnom slučaju odnosilo na veliki broj ljudi[12] i da je ovo predstavljalo ozbiljnu prijetnju budućoj djelotvornosti mehanizama Konvencije, Sud je primijenio proceduru pilot-presude i naložio Bosni i Hercegovini da osigura, u roku od šest mjeseci od dana konačnosti presude, da se u Federaciji Bosne i Hercegovine izdaju obveznice, da se zaostale rate isplate i da se Federacija Bosne i Hercegovine obaveže da isplati zateznu kamatu po zakonskoj stopi u slučaju kašnjenja u isplati bilo koje naredne rate.

Drugi veliki slučaj koji se odnosi na pitanje „stare" devizne štednje jeste *Ališić i drugi protiv Bosne i Hercegovine, Hrvatske, Srbije, Slovenije i Bivše Jugoslovenske Republike Makedonije.*[13] U ovom slučaju Sud je primijenio proceduru pilot-presude iz razloga što se povreda koju je Sud utvrdio odnosila na veliki broj ljudi[14]. Ovaj slučaj se odnosio na nemogućnost aplikanata da povrate svoju „staru" deviznu štednju sa svojih računa otvorenih u sarajevskoj filijali *Ljubljanske banke Ljubljana* i tuzlanske filijale *Investbanke* nakon raspada Socijalističke Federativne Republike Jugoslavije. U ovom slučaju Sud je utvrdio da su *Ljubljanska banka Ljubljana* i *Investbanka* još odgovorne za „staru" deviznu štednju u svojim filijalama u Bosni i Hercegovini. Sud je uz to utvrdio da je Slovenija odgovorna za dug *Ljubljanske banke,* a da je Srbija odgovorna za dug *Investbanke.* Sud je zaključio da vlasti Slovenije i Srbije, bez obzira na široko polje procjene u ovoj oblasti, nisu uspostavile

9. *Milisavljević protiv BiH,* presuda od 03. marta 2009; *Šekerović i Pašalić protiv BiH,* presuda od 08. marta 2011; *Bobić protiv BiH,* presuda od 03. maja 2012.
10. *Suljagić protiv BiH,* pilot-presuda od 03. novembra 2009.
11. Iako se obje presude odnose na nemogućnost aplikanata da povrate „staru" deviznu štednju, osnovna razlika između predmeta *Suljagić protiv BiH* i *Jeličić protiv BiH* leži u činjenici da je aplikantica Jeličić ishodovala pravomoćnu presudu kojom se nalaže isplata njene devizne štednje, dok aplikant *Suljagić* nije bio u posjedu takve presude, nego je osporavao zakonitost domaćeg zakonodavstva, koje je predviđalo generalni plan izmirenja devizne štednje putem Vladinih obveznica.
12. Prema Međunarodnom monetarnom fondu više od četvrtine stanovništva Bosne i Hercegovine je imalo „staru" deviznu štednju. Osim toga, već je pred Sudom bilo više od 1.350 sličnih aplikacija podnesenih u ime više od 13.500 aplikanata.
13. *Ališić i drugi protiv Bosne i Hercegovine i drugih,* presuda Velikog vijeća od 16. jula 2014.
14. Ima više od 1.850 sličnih aplikacija pred Sudom u ime više od 8.000 aplikanata. Pored toga, postoji više hiljada potencijalnih aplikanata.

pravičnu ravnotežu između javnog interesa zajednice i imovinskih prava aplikanata, na koje je bio stavljen pretjeran teret. U skladu s tim Sud je utvrdio da su Slovenija i Srbija prekršile član 1 Protokola br. 1 i član 13 Konvencije, a da druge tužene države nisu prekršile nijedan od tih članova. Sud je istakao da je propust Slovenije i Srbije da uključe aplikante i sve ostale koji se nalaze u njihovoj situaciji u svoje planove isplate „stare" devizne štednje predstavljao sistemski problem. Sud je naredio da Srbija mora poduzeti sve neophodne mjere, uključujući i zakonodavne izmjene, u roku od jedne godine i pod nadzorom Komiteta ministara kako bi dozvolila g. Šahdanoviću i svim drugima u njegovoj situaciji da povrate „staru" deviznu štednju pod jednakim uslovima kao i oni koji su imali štednju u domaćim filijalama srbijanske banke. Sud je također naredio da Slovenija treba da poduzme sve neophodne mjere, uključujući zakonodavne izmjene, u roku od jedne godine i pod nadzorom Komiteta ministara kako bi se gđi Ališić, g. Sadžaku i svima drugima u takvoj situaciji da povrate „staru" deviznu štednju pod jednakim uslovima kao i oni koji su imali takvu štednju u domaćim filijalama slovenačke banke.

Član 1 Protokola br. 1 uz Konvenciju: sistemski problem povrata vojnih stanova

U presudi *Đokić protiv BiH* Sud je utvrdio povredu prava na imovinu iz člana 1 Protokola br. 1 u slučaju u kojem je aplikant bezuspješno pokušavao ostvariti povrat svog prijeratnog vojnog stana za koji je imao valjan kupoprodajni ugovor. Aplikant je u ovom slučaju ispunio zakonske uslove za dodjelu prava zakupa nad vojnim stanom u Srbiji, ali stan još nije bio dodijeljen. Što se tiče mogućnosti da aplikant stekne stanarsko pravo u Srbiji, Sud je utvrdio da bi aplikant mogao steći pravo zakupa ograničenog trajanja, koje Vrhovni sud Federacije Bosne i Hercegovine nije smatrao ekvivalentnim stanarskom pravu u smislu relevantnog zakonodavstva o povratu stanova. Iako je Sud prihvatio da su sporne mjere koje je tužena država preduzela bile usmjerene unapređenju socijalne pravde, te da stoga slijede opravdani cilj, te prihvatajući da države uživaju široko polje procjene, Sud je zaključio da u predmetnom slučaju nije postignuta pravična ravnoteža između zahtjeva javnog interesa i zaštite imovinskih prava aplikanta.[15]

Presuda *Mago i drugi protiv BiH* također se odnosi na nemogućnost aplikanata da vrate u posjed svoje prijeratne vojne stanove u Federaciji BiH. Međutim, za razliku od slučaja *Đokić,* gdje je postojao valjan ugovor o kupoprodaji vojnog stana, aplikanti *Mago i drugi* nikada nisu zaključili takav ugovor i ostali su nosioci stanarskog prava na stanu. U ovom slučaju Vlada je tvrdila da je srbijanska Vlada pogrešno obavijestila Sud, tvrdeći u predmetu *Đokić* da pripadnici njihovih oružanih snaga više nisu imali pravo na sticanje prava na zakup stana neograničenog trajanja – pravo koje je ekvivalentno ranijem stanarskom pravu. Sud je prihvatio ovaj argument i istakao da za sticanje prava zakupa neograničeng trajanja nad stanovima u Srbiji i Crnoj Gori osoba treba da se odrekne ekvivalentnih prava nad svojim prijeratnim stanovima u Sarajevu. U tijeku postupka pred Sudom, utvrđeno je da su tri aplikanta stekla pravo zakupa, odnosno hipotekarni kredit u Republici Srbiji iz istog vojno-stambenog fonda. Sud je istakao da činjenica da je osoba stekla imovinsko pravo u jednoj državi obično nije dovoljna sama po sebi da opravda oduzimanje te imovine u drugoj državi. Međutim, u izuzetnim okolnostima raspada SFRJ i ratova u tom regionu, Sud je odlučio da tužena BiH nije bila obavezna prema članu 1 Protokola br. 1 isplatiti naknadu aplikantima za otkaz njihovih stanarskih prava, uzimajući u obzir da su oni u međuvremenu stekli ekvivalentna prava u drugim bivšim republikama SFRJ.[16] Sud je ovaj pristup kasnije dosljedno primijenio u nizu odluka kojima je proglasio neprihvatljivim aplikacije prijeratnih nosilaca stanarskih prava na vojnim stanovima u BiH koji su stambeno obezbijeđeni u Republici Srbiji i Crnoj Gori.[17]

U slučaju *Aleksić protiv BiH*[18], koji je skoro identičan predmetu *Đokić,* aplikantu nije bio dodijeljen vojni stan u Srbiji, ali je nadležni organ Ministarstva odbrane Srbije utvrdio njegovo pravo na dodjelu stana. Sud je uzeo drugačiji pristup u predmetu istom kao slučaj *Đokić* i, na temelju činjenica utvrđenih u presudi *Mago i drugi,* našao da je zahtjev aplikanta očigledno neosnovan i odbacio predstavku kao nedopustivu. U ovom slučaju Sud je istakao da je trenutno pravo aplikanta na vojni stan u Srbiji ustanovljeno od strane nadležnih vojnih organa u Srbiji i činjenica da aplikantu još nije bio dodijeljen stan u Srbiji nije od značaja.

15. *Đokić protiv BiH,* tačka 59–64, presuda od 27. maja 2010.
16. *Mago i drugi protiv BiH,* tačka 94–105, presuda od 03. maja 2012.
17. *Mandić i drugi protiv BiH,* odluka od 19. juna 2014; *Ćaldović i drugi protiv BiH,* odluka od 04. novembra 2014.
18. *Aleksić i drugi protiv BiH,* odluka od 03. februara 2015. godine.

Član 6: pravo na pristup sudu

Vrijedi spomenuti presudu *Avdić i drugi protiv BiH,* kojom je Sud utvrdio povredu prava na pristup sudu iz čl. 6 Stav 1 Konvencije zbog nemogućnosti Ustavnog suda BiH da postigne većinu glasova sudija prilikom odlučivanja o ustavnim apelacijama aplikanata. Iako je Ustavni sud BiH formalno donio konačne odluke po apelacijama, Sud je smatrao da je Ustavni sud praktično odbio odlučiti o njihovoj dopuštenosti i/ili meritumu, tako da ove odluke nisu uključivale konačno „odlučivanje" o građanskim pravima i obavezama aplikanata. Sud je zaključio da ukoliko nema stvarnog „odlučivanja" o građanskim pravima i obavezama, pravo pristupa sudu ostaje iluzorno.

U presudi *Lončar protiv BiH*[19] Sud nije utvrdio povredu prava na pristup sudu, iako se aplikant žalio da mu je odbacivanjem tužbe zbog zastare u Federaciji Bosne i Hercegovine uskraćen pristup sudu suprotno članu 6 stav 1 Konvencije. Sud je podsjetio da uvjet podnošenja tužbe sudu u zakonskom roku nije sam po sebi protivan članu 6 stav 1 Konvencije, s obzirom na to da ovaj uvjet služi legitimnom cilju pravilnog funkcioniranja pravosuđa, te naročito svrsi poštivanja principa pravne sigurnosti. Sud je stoga utvrdio da, uzimajući u obzir slobodu procjene koja je data državama u pogledu reguliranja pristupa sudu, nije došlo do nesrazmjenog ograničenja prava aplikanta na pristup sudu u smislu člana 6 stav 1 Konvencije. Sud je također naglasio da različita praksa u Republici Srpskoj koja se odnosi na računanje vremenskih rokova nije relevantna za predmetni slučaj, s obzirom na to da svaki entitet ima svoj vlastiti pravosudni sistem iz oblasti građanskog prava i različite zakone koji ih uređuju.

Član 14 Konvencije i član 1 Protokola br. 12 uz Konvenciju: diskriminirajuće ustavno-pravno ustrojstvo u uživanju izbornih prava u BiH

Prva presuda Suda protiv Bosne i Hercegovine u kojoj su razmatrane žalbe o navodnoj diskriminaciji jeste *Sejdić i Finci protiv BiH.*[20] Sud je utvrdio da postoji diskriminacija aplikanata u uživanju njihovog pasivnog biračkog prava za člana Predsjedništva BiH i delegate Doma naroda Parlamentarne skupštine BiH zbog njihove pripadnosti jevrejskoj i romskoj nacionalnoj manjini u BiH. Imajući u vidu aktivno učešće aplikanata u javnom životu, Sud je zaključio da bi bilo potpuno opravdano da su aplikanti razmišljali da se kandiduju za Dom naroda ili Predsjedništvo, pa stoga mogu tvrditi da su žrtve navodne diskriminacije. Sud je također uzeo u obzir činjenicu da je Ustav Bosne i Hercegovine aneks Dejtonskom sporazumu, koji je po svojoj prirodi međunarodni ugovor, ali da je ovlaštenje za izmjene u nadležnosti Parlamentarne skupštine Bosne i Hercegovine, koja je bez sumnje domaći organ. U nastavku, Sud je utvrdio da ovlaštenja međunarodnog administratora za Bosnu i Hercegovinu (Visoki predstavnik) ne obuhvata Ustav države. U tim okolnostima, ostavljajući po strani pitanje da li se tužena država može smatrati odgovornom za donošenje spornih ustavnih odredbi, Sud je smatrao da se ona svakako može smatrati odgovornom što se one još uvijek održavaju na snazi.

U razmatranju navodne diskriminacije po članu 14 Konvencije Sud je, prije svega, utvrdio da izbori za Dom naroda državnog parlamenta potpadaju pod član 3 Protokola br. 1, tako da je in concreto član 14 primjenljiv u vezi s članom 3 Protokola br. 1 uz Konvenciju. Iako je Sud u presudi prihvatio stav tužene BiH da nijedna odredba Konvencije ne traži potpuno napuštanje mehanizama podjele vlasti koji su svojstveni ustavno-pravnom ustrojstvu Bosne i Hercegovine i da možda još uvijek nije sazrelo vrijeme za politički sistem koji bi bio samo odraz principa vladavine većine, Sud je podsjetio da je Bosna i Hercegovine 2002. godine, kada je postala članica Vijeća Europe i bezrezervno ratificirala Konvenciju i njene protokole, pristala po vlastitoj želji da poštuje relevantne standarde. Bosna i Hercegovina se posebno obavezala da „u roku od godinu dana, uz pomoć Europske komisije za demokratiju kroz pravo (Venecijanske komisije), preispita izborni zakon u svjetlu normi Vijeća Europe i izvrši izmjene tamo gdje je to potrebno". Sud je stoga zaključio da dugotrajna nemogućnost aplikanata da se kandiduju za Dom naroda Pralamentarne skupštine BiH nema objektivno i razumno opravdanje i stoga krši član 14 u vezi s članom 3 Protokola br. 1.

U pogledu izbora za člana Predsjedništva BiH, Sud je istakao da član 1 Protokola br. 12 uz Konvenciju proširuje obim

19. *Lončar protiv BiH,* presuda od 25. februara 2014.

20. *Sejdić i Finci protiv BiH,* presuda od 22. decembra 2009.

zaštite u uživanju „svakog prava koje zakon predviđa" i na taj način uvodi generalnu zabranu diskriminacije. Stoga, nemogućnost aplikanata da se kandiduju za člana Predsjedništva BiH, koje „pravo je predviđeno zakonom" (čl. 1.4 i 4.19 Izbornog zakona BiH iz 2001), potpada u okvir primjene člana 1 Protokola br. 12 uz Konvenciju. Sud je također utvrdio da je značenje pojma diskriminacije u članu 1 Protokola br. 12 identično tumačenju iz člana 14, bez obzira na razlike u širini obima između odredbi. Stoga, zaključeno je da se ustavne odredbe koje aplikante čine nepodobnim da se kandiduju na izborima za Predsjedništvo BiH također moraju smatrati diskriminatorskim i kao takve predstavljaju povredu člana 1 Protokola br. 12 uz Konvenciju.

Praksu utvrđenu presudom *Sejdić i Finci protiv BiH* Sud je primijenio na identičan način u presudi *Zornić protiv BiH*[21], koja se također odnosi na nemogućnost aplikantice da se kandiduje za člana Predsjedništva BiH i delegata u Domu naroda Parlamentarne skupštine BiH, jer se ne izjašnjava kao pripadnica niti jednog od tri konstitutivna naroda u BiH. Aplikantica se jednostavno izjašnjava kao građanka Bosne i Hercegovine. Sud je ponovio svoj stav da, principijelno gledano, nijedna razlika u tretmanu koja je zasnovana isključivo ili u odlučujućoj mjeri na nečijem etničkom porijeklu ne može biti objektivno opravdana u savremenom demokratskom društvu koje je izgrađeno na principima pluralizma i poštivanja različitih kultura.

Sud je također u presudi *Šekerović i Pašalić protiv BiH*[22] razmatrao žalbe o navodnoj diskriminaciji interno raseljenih lica, u vezi sa neizvršenjem odluke Doma za ljudska prava BiH kojom je Federaciji BiH naloženo da osigura prenos prava aplikanata, ukoliko tako žele, na mirovinu sa Fonda PIO Republike Srpske na Zavod PIO/MIO Federacije BiH. Sud je utvrdio kao nesporno da činjenice predmeta spadaju „u domen" člana 1 Protokola br. 1 Konvencije, što čini član 14 u vezi sa tom odredbom primjenjivim. Sud je istakao da je odlukom Doma za ljudska prava BiH utvrđena diskriminacija aplikanata i drugih penzionera koji su se nakon rata vratili iz Republike Srpske u Federaciju BiH u odnosu na ostale penzionere koji su u toku rata ostali u Federaciji BiH, bez ikakvog objektivnog i razumnog opravdanja. Sud nije našao razlog zbog kojeg bi odstupio od domaće prakse, te je utvrdio da se diskriminacija nastavlja samo na osnovu aplikantovog statusa bivšeg interno raseljenog lica. S obzirom na veliki broj potencijalnih aplikanata, što predstavlja prijetnju budućoj učinkovitosti mehanizma Konvencije, Sud je smatrao da tužena država treba da izmijeni relevantno zakonodavstvo kako bi se omogućilo aplikantima i svima u takvoj situaciji da, ako to žele, podnesu zahtjev za penziju Zavodu PIO/MIO Federacije BiH.

Član 5 Konvencije: zaštita prava na slobodu i sigurnost ličnosti neuračunljivih počinilaca krivičnih djela i tražilaca azila u BiH

Sud je usvojio sedam presuda koje se odnose na član 5 Konvencije, a u vezi sa dva osnovna pitanja: obavezan smještaj u Forenzičko-psihijatrijskom odjelu zatvora u Zenici i lišenje slobode tražilaca azila u Bosni i Hercegovini.[23]

Sud je u presudi *Tokić i drugi protiv BiH*[24] utvrdio da smještaj podnosilaca prijave na Forenzičko-psihijatrijskom odjelu zatvora u Zenici nakon usvajanja novog krivičnog zakonodavstva Federacije BiH u augustu 2003. godine nije bio „u skladu sa zakonom propisanim postupkom" u smislu člana 5 stav 1 Konvencije. S obzirom da su podnosioci prijave prisilno smješteni na psihijatrijskom odjelu na temelju odluke upravnog organa, a ne nadležnog građanskog suda, Sud je utvrdio da je njihovo lišenje slobode nezakonito zbog propusta vlasti da ispoštuju osnovne proceduralne zahtjeve iz člana 5 st. 1 Konvencije. Sud je ovu praksu potvrdio u slučaju *Halilović protiv BiH,* za koji je utvrđeno da je skoro identičan slučaju *Tokić i drugi protiv BiH.*

Iako u presudama *Tokić i drugi protiv BiH* i *Halilović protiv BiH* Sud nije smatrao potrebnim da razmatra da li je odjel forenzike zeničkog zatvora predstavljao odgovarajuću ustanovu za smještaj duševno oboljelih pacijenata, ovo pitanje je razmatrano kasnije u presudi *Hadžić i Suljić protiv BiH*[25]. Oslonivši se na nalaze Ustavnog suda BiH i Europskog komiteta

21. *Zornić protiv BiH,* presuda od 15. jula 2014.
22. *Šekerović i Pašalić protiv BiH,* presuda od 08. marta 2011.
23. Prema statistikama Suda, presude Suda protiv Bosne i Hercegovine u vezi sa pravom na slobodu i sigurnost ličnosti procentualno dosežu 9%, *Statistics on judgments by State ECtHR,* 2013.
24. *Tokić i drugi protiv BiH,* presuda od 08. jula 2008.

za sprečavanje mučenja i nečovječnog ili ponižavajućeg postupanja ili kažnjavanja (CPT), Sud je utvrdio da Forenzičko-psihijatrijski odjel zeničkog zatvora ne predstavlja odgovarajuću ustanovu za smještaj duševno oboljelih pacijenata i da je to privremeno rješenje postalo stalno isključivo usljed nedostatka sredstava, te je utvrdio povredu člana 5 st. 1 Konvencije.

U odnosu na postupanje nadležnih organa Bosne i Hercegovine prema tražiocima azila u BiH, lišenim slobode iz razloga nacionalne sigurnosti, Sud je u presudama *Al Husin protiv BiH* i *Al Hamdani protiv BiH*[26] utvrdio povredu člana 5 st. 1 u odnosu na početni period lišenja slobode aplikanata, prije nego što su nadležne vlasti BiH donijele rješenja o protjerivanju. Sud se pozvao na svoju ustaljenu praksu i ponovio da nikakav preventivni pritvor iz razloga nacionalne sigurnosti nije legitiman u smislu člana 5 st. 1 Konvencije. U odnosu na drugi period pritvora aplikanata, koji se računa od dana donošenja rješenja o protjerivanju, Sud je potvrdio zakonitost pritvora u svrhu osiguranja protjerivanja u smislu član 5 stav 1 (f) Konvencije.

Sud nije utvrdio povredu člana 5 Konvencije u slučaju u kojem je razmatrao proceduralne obaveza Bosne i Hercegovine da istraži nestanak i smrt supruga aplikantice.[27] Sud je utvrdio da su nadležne vlasti u Bosni i Hercegovini provele brzu i efikasnu istragu, tako da nije utvrdio kršenje Konvencije (više o presudi *Palić protiv BiH* vidjeti pod čl. 2 i 3 Konvencije dole).

U nedavnoj prošlosti je Sud utvrdio povredu člana 5 stav 1 u slučaju kada su aplikanti bili zadržani u ustanovi socijalnog zbrinjavanja zbog svog psihofizičkog stanja, bez ispitivanja od strane nadležnog suda.[28]

Član 2 i član 3 Konvencije: zabrana mučenja, nehumanog i ponižavajućeg postupanja i kažnjavanja u kontekstu provođenja efikasne istrage o nestalim osobama i tražilaca azila u BiH

Presuda *Palić protiv BiH* prva je presuda u kojoj je Sud testirao da li je tužena Bosna i Hercegovina izvršila svoje proceduralne obaveze u provođenju istrage o okolnostima nestanka supruga aplikantice u toku rata u Bosni i Hercegovini. Sud je utvrdio da su domaći organi identifikovali posmrtne ostatke g. Palića i proveli neovisnu i efikasnu krivičnu istragu o njegovom nestanku i smrti, te da od 2005. nije bilo perioda znatne neaktivnosti domaćih organa. Nadalje, Sud je uzeo u obzir da je aplikantica na temelju odluke Doma za ljudska prava BiH primila znatan novčani iznos na ime obeštećenja za nestanak supruga, tako da je zaključio da u okolnostima predmetnog slučaja, te imajući u vidu specijalne okolnosti koje su vladale u Bosni i Hercegovini do 2005. godine, nije bilo povrede člana 2 Konvencije. Iako je aplikantica pretrpila patnje zbog okolnosti nestanka supruga, Sud je utvrdio da se reagovanja relevantnih organa u BiH ne mogu svrstati u nečovječno i ponižavajuće postupanje u smislu člana 3 Konvencije.

Sud je u toku 2014. godine usvojio niz odluka koje se odnose na proceduralne obaveze u provođenju istrage o sudbini nestalih osoba u toku rata u Bosni i Hercegovini u periodu 1992–1995. godine.[29] Sud je utvrdio da, s obzirom na posebne okolnosti koje su u Bosni i Hercegovini vladale do 2005. godine, te veliki broj predmeta ratnih zločina pred lokalnim sudovima, nije pokazano da je u sprovođenju istrage povrijeđen minimum standarda koje zahtijeva član 2 Konvencije. U vezi sa žalbama na navodne povrede prava iz člana 3 Konvencije, Sud je priznao težinu fenomena nestanaka i patnju aplikanata, ali je, posebno ispitujući okolnosti svakog pojedinog predmeta, utvrdio da reakcije vlasti ne dosežu nivo postupanja koji bi se mogao smatrati neljudskim ili ponižavajućim postupanjem protivnim obavezama iz člana 3 Konvencije.[30]

Nadalje, Sud je usvojio tri presude u vezi sa navodnim povredama prava tražilaca azila u Bosni i Hercegovini prema članu 3

25. *Hadžić i Suljić protiv BiH,* presuda od 07. juna 2011.
26. *Al Hamdani protiv BiH,* presuda od 07. februara 2012; *Al Husin protiv BiH,* presuda od 07. februara 2012.
27. *Palić protiv BiH,* presuda od 15. februara 2011.
28. *Hadžimejlić i drugi protiv BiH,* presuda od 03. novembra 2015.
29. *Mujkanović i drugi protiv BiH,* odluka od 03. juna 2014; *Fazlić i drugi protiv BiH,* odluka od 03. juna 2014; *Šeremet protiv BiH,* odluka od 08. jula 2014; *Hamidović protiv BiH,* odluka od 02. septembra 2014; *Žerajić i Gojković protiv BiH,* odluka od 13. novembra 2014.
30. *Ibidum.*

Konvencije. Sud je u presudi *Al Husin protiv BiH* utvrdio da bi u slučaju prisilnog protjerivanja aplikanta u zemlju porijekla, Siriju, došlo do povrede njegovih prava zaštićenih članom 3 Konvencije.[31] Međutim, u druga dva slučaja tražilaca azila, gdje se radilo o zemljama porijekla Iraku i Tunisu, Sud nije utvrdio da bi u slučaju prisilnog protjerivanja aplikanata došlo do povrede člana 3 Konvencije.[32]

Također, u presudi *Rodić protiv BiH* aplikanti osuđeni za ratne zločine protiv bošnjačkih civila iznijeli su dvije žalbe po članu 3 Konvencije.[33] U prvoj su se aplikanti žalili da ih vlasti nisu zaštitile od zlostavljanja drugih zatvorenika od njihovog dolaska u KPZ Zenica sve dok nisu smješteni odvojeno u bolničkom odjelu zatvora Zenica. Druga žalba se odnosila na uslove pritvora u bolničkoj jedinici KPZ Zenica. Sud je zaključio da fizički integritet aplikanata nije bio adekvatno zaštićen od dana kada su stigli u zatvor Zenica do njihovog zasebnog smještaja u bolničku jedinicu zatvora. Sud je utvrdio da su nevolje koje su aplikanti trpjeli, posebno stalnu psihičku anksioznost zbog prijetnje i iščekivanja fizičkog nasilja, morale preći neizbježan nivo koji postoji u zatvorima, tako da je njihova patnja prešla prag surovosti prema članu 3 Konvencije. Međutim, u pogledu zatvorskih uvjeta, Sud je utvrdio da nakon premještaja aplikanata u bolničku jedinicu zeničkog zatvora zatvorski uslovi nisu dostigli dovoljnu granicu surovosti da bi bili obuhvaćeni članom 3 Konvencije.

Član 8: pravo na porodični život i obaveza omogućavanja ponovnog spajanja roditelja i djece

Sud je usvojio jednu presudu temeljem člana 8 Konvencije u vezi sa pravom aplikantice na poštivanje privatnog i porodičnog života.[34] Sud je podsjetio da državni organi imaju pozitivnu obavezu da omoguće ponovno spajanje roditelja i djece, ali da ta obaveza nije apsolutna. U svakom pojedinom slučaju adekvatnost mjere procjenjuje se prema brzini njenog provođenja, jer protok vremena može imati nepopravljive posljedice na odnos između djece i roditelja koji ne živi s njima. Iako je Sud prihvatio da se spajanje roditelja i djeteta koje živi s drugim roditeljem ne može provesti momentalno i bez prethodne pripreme, u konkretnom slučaju je utvrdio da nadležne vlasti u BiH nisu pružile dokaz da je kašnjenje nastupilo usljed preduzimanja pripremnih radnji, zbog čega je utvrdio povredu čl. 8 Konvencije.

Član 10: sloboda izražavanja

Sud je donio presudu prema članu 10 prvi put u predmetu *Medžlis Islamske zajednice Brčko i drugi protiv BiH*[35], u kojem nije utvrdio povredu. Aplikanti su u ovom slučaju stupili u privatnu korespondenciju sa lokalnim organima vlasti, žaleći se na drugu osoba koja je urednik zabavnog programa na javnoj radio-stanici i koja je bila kandidat za mjesto direktora te stanice. Aplikanti su se također žalili zbog postupka izbora. Oni su tvrdili da im je namjera bila da nadležni organ obavijeste o nepravilnostima u pitanjima od javnog interesa. Iako je istina da su sporne izjave naknadno bile objavljene, Sud je istakao da u domaćem postupku nije bilo dokaza da su aplikanti učestvovali u njihovom objavljivanju. Utvrđeno je da su aplikanti odgovorni za klevetu i određeno je da isplate naknadu štete.

Sud je istakao da može biti neophodno da se zaštite državni službenici od agresivnih, uvrjedljivih i klevetničkih napada, poduzetih kako bi se oni omeli u vršenju svoje dužnosti i kako bi se narušilo povjerenje javnosti u njih i funkciju koju obavljaju. Sud je također prepoznao pravo aplikanata da prijavljuju nepravilnosti u ponašanju službenika organu koji je nadležan da razmatra takve pritužbe. Da građani treba da imaju mogućnost da obavijeste nadležne državne dužnosnike o ponašanju državnih službenika koje njima izgleda nepravilno ili nezakonito, jedno je od načela vladavine prava.

Sud je napravio razliku između činjeničnih tvrdnji i vrijednosnih sudova, navodeći da čak i vrijednosni sud koji nije potkrijepljen bilo kakvom činjeničnom osnovom može biti pretjeran. Ništa u spisu predmeta nije ukazalo na to da aplikanti nisu imali stvarnu mogućnost izvođenja dokaza kojima bi potkrijepili svoje navode i na taj način dokazali njihovu istinitost. Sud

31. *Al Husin protiv BiH,* presuda od 07. februara 2012.
32. *Al Hanchi protiv BiH,* presuda od 15. novembra 2011; *Al Hamdani protiv BiH,* presuda od 07. februara 2012.
33. *Rodić i drugi protiv BiH,* presuda od 27. maja 2008.
34. *Šobota-Gajić protiv BiH,* presuda od 06. novembra 2007.
35. *Medžlis Islamske zajednice Brčko i drugi protiv BiH,* presuda od 13. oktobra 2015.

je utvrdio da su domaći sudovi pravilno zaključili da su aplikanti postupili nemarno u prijavljivanju neprimjerenog ponašanja, jednostavno prenoseći informacije koje su dobili bez razumnog nastojanja da provjere njihovu tačnost. Aplikanti su također propustili da informiraju relevantne organe o povlačenju svojih izjava usprkos naredbi Apelacionog suda.

Sud je našao da su domaći sudovi uspostavili pravičnu ravnotežu između suprotstavljenih interesa i razloga za donošenje njihovih odluka koji su bili „relevantni i dostatni" i koji su ispunili „nužnu društvenu potrebu". Naknada štete dosuđena protiv aplikanata nije bila nesrazmjerna. U skladu s tim, nije bilo povrede.

Član 13: pravo na djelotvoran pravni lijek u domaćem pravu

Sud je u presudi *Rodić protiv BiH* razmatrao pravo na djelotvoran pravni lijek zajamčen čl. 13 u vezi sa čl. 3 Konvencije.[36] U svjetlu predočenih dokaza, Sud je utvrdio da aplikanti nisu imali efektivan pravni lijek na raspolaganju za njihove žalbe po članu 3 Konvencije, što je dovelo do povrede člana 13 Konvencije.

U presudi *Đokić protiv BiH* Sud je istakao da je aplikant imao na raspolaganju mogućnost pokretanja domaćeg postupka, što je on i učinio. Sama činjenica da je aplikant izgubio u postupku ne čini domaći sistem neučinkovitim, u skladu s čim je Sud odbacio pritužbu aplikanta po članu 13 Konvencije kao očigledno neosnovanu.

Dalje, u presudi *Ališić i drugi protiv BiH* Sud je analizirao niz pravnih sredstava i zaključio da aplikanti nisu imali na raspolaganju djelotvorno pravno sredstvo za svoje žalbe. Sud je utvrdio da je došlo do povrede čl. 13 od strane Slovenije u odnosu na aplikante Ališić i Sadžak, te od strane Srbije u odnosu na g. Šahdanovića. U odnosu na Bosnu i Hercegovinu i druge tužene države, Sud je utvrdio da nije došlo do kršenja tog člana.[37]

Član 7 Konvencije: retroaktivna primjena krivičnog zakonodavstva

Sud je u presudi *Maktouf i Damjanović protiv BiH* utvrdio povredu člana 7 Konvencije, koji jamči da se niko ne može smatrati krivim za djelo koje u vrijeme izvršenja nije predstavljalo krivično djelo prema nacionalnom ili međunarodnom pravu. Aplikanti su se žalili da je sud BiH primijenio na njih stroži Krivični zakon Federacije BiH iz 2003. godine, iako je u vrijeme izvršenja krivičnog djela bio na snazi blaži Zakon SFRJ iz 1976. godine.[38] Sud BiH je g. Maktoufa osudio na zatvorsku kaznu od pet godina, što je najniža moguća kazna prema Zakonu iz 2003. godine. Suprotno tome, prema Zakonu iz 1976. godine, on je mogao biti osuđen na kaznu zatvora u trajanju od jedne godine. Što se tiče g. Damjanovića, on je osuđen na kaznu zatvora u trajanju od 11 godina, što je malo iznad minimalne kazne od deset godina, iako mu je prema Zakonu iz 1976. bilo moguće izreći kaznu zatvora od samo pet godina.

Sud je u ovoj presudi prvo istakao da njegova zadaća nije da razmotri in abstracto da li je retroaktivna primjena Zakona iz 2003. godine na predmete ratnih zločina sama po sebi nekompatibilna sa članom 7 Konvencije, već je cijenio svaki predmet pojedinačno, uzimajući u obzir konkretne okolnosti svakog predmeta i, posebno, da li su domaći sudovi primijenili zakon čije su odredbe najpovoljnije za optuženog.

Sud je priznao da su kazne aplikanata u ovom predmetu bile unutar raspona propisanog u oba zakona, Zakonom iz 1976. i Zakonom iz 2003. godine, tako da se ne može sa sigurnošću tvrditi da bi ijedan od ovih aplikanata dobio manju kaznu da je primjenjen Zakon iz 1976. godine. Međutim, ono što je bilo od ključnog značaja za Sud jeste da je ipak postojala mogućnost da aplikanti dobiju niže kazne da je u njihovim slučajevima primijenjen Zakon iz 1976. godine. Sud je stoga zaključio da postoji realna mogućnost da je retroaktivna primjena Zakona iz 2003. bila na štetu aplikanata u pogledu izricanja kazne, zbog čega im nije osigurana djelotvorna zaštita od nametanja veće kazne, što je dovelo do povrede njihovih prava iz člana 7 Konvencije.

36. *Rodić i drugi protiv BiH,* presuda od 27. maja 2008.
37. *Ališić i drugi protiv Bosne i Hercegovine, Hrvatske, Srbije, Slovenije i Bivše Jugoslovenske Republike Makedonije,* presuda Velikog vijeća od 16. jula 2014.
38. *Maktouf i Damjanović protiv BiH,* presuda Velikog vijeća od 18. jula 2013.

U slučaju *Šimšić protiv BiH*[39] aplikant se žalio prema članu 7 Konvencije da zločini protiv čovječnosti, za koje je bio osuđen, nisu predstavljali krivično djelo prema domaćem zakonu tokom rata od 1992–95. Sud je primijetio da je aplikant osuđen 2007. godine za progon kao zločin protiv čovječnosti u odnosu na djela počinjena 1992. godine. Kako ova djela nisu predstavljala zločin protiv čovječnosti prema domaćem zakonu sve do stupanja na snagu Krivičnog zakona 2003. godine, evidentno je da su ova djela, u vrijeme kada su počinjena, predstavljala zločin protiv čovječnosti prema međunarodnom pravu. U tom smislu, Sud je naveo da su svi sastavni elementi zločina protiv čovječnosti bili ispunjeni u ovon slučaju: pobijana djela su bila počinjena u kontekstu šireg i sistematičnog napada usmjerenog protiv civilnog stanovništva i aplikant je bio svjestan ovog napada.

Aplikant je tvrdio da nije mogao predvidjeti da su njegova djela mogla predstavljati zločin protiv čovječnosti prema međunarodnom pravu. Konstatovano je, međutim, da je aplikant ova djela izvršio kao policijski službenik. Sud je smatrao da osobe koje obavljaju profesionalnu dužnost moraju postupati sa visokim stepenom opreza kada obavljaju svoje zanimanje i od njih se očekuje da postupaju s posebnom pažnjom u ocjeni rizika koje takve aktivnosti povlače za sobom. Nadalje, uzimajući u obzir očitu nezakonitu prirodu njegovih djela, koja uključuju ubistva i mučenje Bošnjaka u kontekstu šireg i sistematičnog napada usmjerenog protiv bošnjačkog civilnog stanovništva općine Višegrad, čak je i površna reakcija aplikanta trebala ukazati na to da postoji rizik da ova djela predstavljaju zločin protiv čovječnosti za koja bi se on mogao smatrati krivično odgovornim. Sud je zaključio da su aplikantova djela, u vrijeme kada su izvršena, predstavljala krivična djela definisana sa dovoljno dostupnosti i predvidivosti prema međunarodnom pravu i odbacio je aplikantovu žalbu kao očigledno neosnovanu.

Član 4 Protokola br. 7 uz Konvenciju: *ne bis in idem*

Sud je u na temelju Protokola br. 7 razmatrao samo jednu aplikaciju, *Muslija protiv BiH,* i utvrdio povredu člana 4 Protokola br. 7 uz Konvenciju.[40] Podnosilac prijave se žalio da je oglašen krivim za isti incident i iste činjenice kako u prekršajnom, tako i u krivičnom postupku, te da je time, bez obzira na dvije različite klasifikacije djela prema domaćem zakonu, povrijeđeno njegovo pravo da mu se ne sudi i da ne bude kažnjen dva puta za isto djelo, u suprotnosti sa principom *ne bis in idem.*

Sud je, prije svega, podsjetio na svoja tri kriterija koja su opće poznata kao „Engelovi kriteriji" (vidi *Engel i drugi protiv Nizozemske,* presuda od 08. 06. 1976, Serija A br. 22), koja treba razmotriti pri utvrđivanju da li se radi o „optužbi za krivično djelo". Engelovi kriteriji su: pravna kvalifikacija djela prema domaćem pravu, priroda djela i stepen težine kazne koja bi se mogla izreći osobi o kojoj je riječ. Na temelju postavljenih kriterija, Sud je u konkretnom slučaju utvrdio da je „osuda" aplikanta u prekršajnom postupku temeljem Zakona o javnom redu iz 2000. u autonomnom značenju ovog termina izjednačena sa „krivičnim postupkom" u smislu člana 4 Protokola br. 7. Sud je podsjetio na svoje relevantne kriterije iznesene u slučaju *Sergey Zolotukhin protiv Rusije*[41]. U tom slučaju Sud je zauzeo stav da se član 4 Protokola 7 mora tumačiti tako da zabranjuje krivično gonjenje ili suđenje za drugo „djelo" ukoliko ono proizlazi iz identičnih činjenica ili činjenica koje su po svojoj suštini iste. Stoga je Sud zaključio da se postupak koji je pokrenut protiv aplikanta na osnovu krivičnog zakonodavstva odnosio, u biti, na isto djelo za koje je aplikant već bio pravosnažno osuđen na osnovu Zakona o javnom redu iz 2000, što je dovelo do kršenja člana 4 Protokola br. 7 uz Konvenciju.

Član 46: obvezujuća snaga presuda, izvršenje presuda, generalne mjere

Mnoge presude Suda donesene u odnosu na Bosnu i Hercegovinu otkrile su postojanje sistemskog problema, usljed čega je Bosna i Hercegovina obvezana na poduzimanje generalnih mjera izvršenja pod nadzorom Komiteta ministara Vijeća Europe sa ciljem ispravljanja sistemskog kršenja ljudskih prava.

Sud je također u predmetu *Suljagić protiv BiH*[42] primijenio pilot-proceduru i ovu presudu proglasio pilot-presudom u vezi

39. *Šimšić protiv BiH,* odluka od 10. aprila 2012. godine.
40. *Muslija protiv BiH,* presuda od 14. januara 2014.
41. *Sergey Zolotukhin protiv Rusije,* presuda Velikog vijeća od 10. februara 2009.

sa ostvarenjem prava na povrat stare devizne štednje položene u domaćim bankama.

Nadležni organi na različitim nivoima vlasti u Bosni i Hercegovini usvajaju akcione planove za provedbu generalnih mjera sa ciljem da se isprave postojeće i spriječe buduće povrede prava. Dosadašnje generalne mjere koje su uspješno implementirane odnosile su se na obavezu potpunog izvršenja pravosnažnih presuda domaćih sudova u vezi sa starom deviznom štednjom; obavezu da se u potpunosti provede domaće zakonodavstvo koje se odnosi na povrat stare devizne štednje u Federaciji BiH; obavezu da se adekvatno osigura blagostanje zatvorenika i da se uspostavi i na raspolaganje stavi efektivno pravno sredstvo za njihove žalbe prema članu 3; obavezu ostvarenja prava na penziju svih interno raseljenih lica u Zavodu PIO/MIO Federacije BiH; obavezu u cilju osiguranja da je prisilni smještaj na psihijatrijskom odjelu moguć samo na temelju odluke građanskog suda; izmjenu Zakona o strancima u BiH u cilju osiguranja zakonitog pritvaranja stranaca.

Generalne mjere koje još nisu u potpunosti provedene uključuju obavezu da se izmijeni relevantno zakonodavstvo koje se odnosi na povrat vojnih stanova na teritoriji Federacije BiH; obavezni smještaj u ustanovama socijalnog zbrinjavanja samo na osnovu sudske odluke; osnivanje specijalizovane ustanove za smještaj duševno oboljelih počinilaca krivičnih djela; obavezu usvajanja izmjena i dopuna Ustava BiH radi otklanjanja diskriminatornih odredaba iz Ustava i izbornog zakonodavstva BiH; reviziju postupaka za ratne zločine pred sudom BiH kako bi se osiguralo poštivanje načela *nullum crimen, nulla poena sine lege;* izmjene relevantnog krivičnog i prekršajnog zakonodavstva kako bi se osigurala primjena principa *ne bis in idem.*

42. *Suljagić protiv BiH,* presuda od 03. novembra 2009.

43. Osnovna razlika između presuda *Suljagić protiv BiH* i *Jeličić protiv BiH,* iako se obe odnose na nemogućnost povrata stare devizne štednje, jeste u tome što je aplikantica *Jeličić* ishodovala pravosnažnu presudu domaćeg suda kojom joj je priznato potraživanje devizne štednje, za razliku od aplikanta *Suljagića,* koji nije ishodovao presudu domaćeg suda, već je osporavao zakonitost domaćeg zakonodavstva kojim je propisan opći plan izmirenja potraživanja devizne štednje putem vladinih obveznica.

Praksa Suda po članovima Konvencije

ČLAN 2 – PRAVO NA ŽIVOT

1. Pravo na život svake osobe zaštićeno je zakonom. Niko ne može biti namjerno lišen života, osim prilikom izvršenja presude suda kojom je osuđen za zločin za koji je ova kazna predviđena zakonom.
2. Lišenje života se ne smatra protivnim ovom članu ako proistekne iz upotrebe sile koja je apsolutno nužna:
   a. radi odbrane nekog lica od nezakonitog nasilja;
   b. da bi se izvršilo zakonito hapšenje ili spriječilo bjekstvo lica zakonito lišenog slobode;
   c. prilikom zakonitih mjera koje se preduzimaju u cilju suzbijanja nereda ili pobune.

Predmeti u kojima nije utvrđena povreda

1. *Palić protiv Bosne i Hercegovine,* presuda od 15. februara 2011.
- Potrebna zvanična istraga;
- Mora biti nezavisna i djelotvorna;
- Mora biti u stanju da dovede do identifikacije i kažnjavanja odgovornih;
- Javni nadzor;
- Mora biti dostupna porodici žrtve;
- Mora biti sprovedena blagovremeno i ekspeditivno;
- Značaj posebnih okolnosti u Bosni i Hercegovini u to vrijeme;
- Presuda usvojena i u pogledu: člana 3 [nema povrede], člana 5 [nema povrede].

ČLAN 3 – ZABRANA MUČENJA

Niko ne smije biti podvrgnut mučenju, ili nečovečnom ili ponižavajućem postupanju ili kažnjavanju.

Predmeti u kojima je utvrđena povreda

1. *Al Husin protiv Bosne i Hercegovine,* presuda od 07. februara 2012.
- U vezi sa protjerivanjem u Siriju;
- Da li bi proterivanjem bila povrijeđena Konvencija;
- Apsolutna zabrana; ne može se uzimati u obzir ponašanje podnosilaca prijave;
- Potrebno je sprovesti rigoroznu ocjenu;
- Potrebno je takođe uzeti u obzir historijsku situaciju u državi;
- Presuda usvojena i u pogledu člana 5 [povreda u pogledu prvog perioda provedenog u pritvoru; nema povrede u pogledu drugog perioda provedenog u pritvoru nakon što je doneseno rješenje o protjerivanju].

2. *Rodić i drugi protiv Bosne i Hercegovine,* presuda od 27. maja 2008.
- Apsolutna zabrana;
- Minimalni nivo surovosti;
- Uslovi u zatvoru;
- Psihičko zdravlje zatvorenika;
- Prijetnja fizičkim nasiljem koja je izazivala tjeskobu;
- Značaj društvenih tenzija za ocjenu prikladnosti uslova smještaja zatvorenika;
- Strukturni nedostaci ne oslobađaju državu obaveze da obezbijedi dobrobit zatvorenika;
- Presuda usvojena i u pogledu: člana 13 [povreda].

Predmeti u kojima nije utvrđena povreda

1. *Al Hanchi protiv Bosne i Hercegovine,* presuda od 15. novembra 2011.
- Da li bi protjerivanje u Tunis predstavljalo povredu Konvencije;
- Relevantni su sadašnji uslovi u državi u koju lice može biti protjerano;
- Nema naznaka ili dokaza da su islamisti kao grupa na meti nakon promjene režima;
- Tunis je pristupio Fakultativnim protokolima uz Konvenciju protiv mučenja i drugog surovog, nečovječnog ili ponižavajućeg postupanja ili kažnjavanja i Međunarodnom paktu o građanskim i političkim pravima;
- Ne postoji stvarna opasnost da će podnosilac prijave biti zlostavljan.

2. *Palić protiv Bosne i Hercegovine,* presuda od 15. februara 2011.
- Efekat prisilnog nestanka na srodnike;
- Faktori koji se razmatraju prilikom ocjene efekta;
- Obaveza sprovođenja istrage;
- Presuda usvojena i u pogledu: člana 2 [nema povrede]; člana 5 [nema povrede].

Predmeti u kojima nije utvrđena povreda

3. *Rodić i drugi protiv Bosne i Hercegovine,* presuda od 27. maja 2008.

- Posebna zaštita lica lišenih slobode;
- Mogućnost da gledaju televiziju i dobijaju materijal za čitanje bez ograničenja;
- Mogućnost da svaki dan provedu određeno vrijeme izvan bolničkog odjeljenja;
- Presuda usvojena i u pogledu: člana 13 [zajedno sa članom 3, povreda u pogledu određenog perioda provedenog u zatvoru].

ČLAN 4 – ZABRANA ROPSTVA I PRINUDNOG RADA

1. Niko se ne smije držati u ropstvu ili ropskom položaju.
2. Ni od koga se ne može zahtijevati da obavlja prinudni ili obavezni rad.
3. Za svrhe ovog člana izraz „prinudni ili obavezni rad" ne obuhvata:
   a. rad uobičajen u sklopu lišenja slobode određenog u skladu sa odredbama člana 5 ove Konvencije ili tokom uslovnog otpusta;
   b. službu vojne prirode ili, u zemljama u kojima se priznaje prigovor savjesti, službu koja se zahtijeva umjesto odsluženja vojne obaveze;
   c. rad koji se iziskuje u slučaju kakve krize ili nesreće koja prijeti opstanku ili dobrobiti zajednice;
   d. rad ili službu koji čine sastavni dio uobičajenih građanskih dužnosti.

U pogledu ovog člana nije izrečena nijedna presuda.

ČLAN 5 – PRAVO NA SLOBODU I SIGURNOST

1. Svako ima pravo na slobodu i sigurnost ličnosti. Niko ne može biti lišen slobode osim u slijedećim slučajevima i u skladu sa zakonom propisanim postupkom:
   a. u slučaju zakonitog lišenje slobode na osnovu presude nadležnog suda;
   b. u slučaju zakonitog hapšenja ili lišenja slobode zbog neizvršenja zakonite sudske odluke ili radi obezbjeđenja ispunjenja neke obaveze propisane zakonom;
   c. u slučaju zakonitog hapšenja ili lišenja slobode radi privođenja lica pred nadležnu sudsku vlast zbog opravdane sumnje da je izvršilo krivično djelo, ili kada se to opravdano smatra potrebnim kako bi se osiguralo izvršenje krivičnog djela ili bjekstvo po njegovom izvršenju.
   d. u slučaju lišenja slobode maloljetnog lica na osnovu zakonite odluke u svrhu vaspitnog nadzora ili zakonitog lišenja slobode radi njegovog privođenja nadležnom organu.
   e. u slučaju zakonitog lišenja slobode da bi se spriječilo širenje zaraznih bolesti, kao i zakonitog lišenja slobode duševno poremećenih lica, alkoholičara ili uživalaca droga ili skitnica.
   f. u slučaju zakonitog hapšenja ili lišenja slobode lica da bi se spriječio njegov neovlašteni ulazak u zemlju, ili lica protiv koga se preduzimaju mjere u cilju deportacije ili ekstradicije.
2. Svako ko je uhapšen biće odmah i na jeziku koji razumije obaviješten o razlozima za njegovo hapšenje i o svakoj optužbi protiv njega.
3. Svako ko je uhapšen ili lišen slobode shodno odredbama iz stava 1 c ovog člana biće bez odlaganja izveden pred sudiju ili drugo službeno lice zakonom određeno da obavlja sudske funkcije i imaće pravo da mu se sudi u razumnom roku ili da bude pušten na slobodu do suđenja. Puštanje na slobodu može se usloviti jemstvima da će se lice pojaviti na suđenju.
4. Svako ko je lišen slobode ima pravo da pokrene postupak u kome će sud hitno ispitati zakonitost lišenja slobode i naložiti puštanje na slobodu ako je lišenje slobode nezakonito.
5. Svako ko je bio uhapšen ili lišen slobode u suprotnosti s odredbama ovog člana ima utuživo pravo na naknadu.

Predmeti u kojima je utvrđena povreda

1. *Hadžimejlić i drugi protiv Bosne i Hercegovine,* presuda od 3. novembra 2015.

- Aplikanti su bili smješteni u ustanovi Drin, ustanovi socijalnog zbrinjavanja;
- Nije sporno da je smještaj aplikanata predstavljao lišenje slobode;
- Ustavni sud je utvrdio da su aplikanti bili lišeni slobode i smješteni u psihijatrijsku ustanovu bez odluke nadležnog građanskog suda;
- Kao posljedica, potrebu pritvaranja dva aplikanta preispitali su nadležni građanski sudovi i na temelju nalaza vještaka medicinske struke bilo je utvrđeno da zdravlje aplikanata nije takvo da opravdava kontinuirano lišavanje slobode; međutim, aplikanti su ostali u socijalnoj ustanovi;
- Za trećeg aplikanta, Sud je istakao da je još uvijek smješten u socijalnoj ustanovi na temelju odluke upravnog organa i da prinudni smještaj, duži od 15 godina, nadležni sud nije nikad ispitao.

Predmeti u kojima je utvrđena povreda	**2. *Al Hamdani protiv Bosne i Hercegovine,* presuda od 07. februara 2012.**
	▪ St. (f): postupak protjerivanja mora biti pokrenut i ažurno se sprovoditi;
	▪ Zakonitost lišenja slobode;
	▪ Značenje izraza „zakonom propisani postupak";
	▪ Izbjegavanje proizvoljnosti;
	▪ St. (c): ovaj stav ne dozvoljava opštu prevenciju usmjerenu prema osobi koja se smatra opasnom;
	▪ St. (c) samo obezbjeđuje sredstvo za sprječavanje dijela koja su konkretna i određena u pogledu mjesta i vremena izvršenja i žrtava;
	▪ Lišenje slobode mora za cilj imati izvođenje lica lišenog slobode pred nadležni sudski organ;
	▪ Vlasti nisu pomenule konkretno i određeno delo.
	
	3. *Al Husin protiv Bosne i Hercegovine,* presuda od 07. februara 2012.
	▪ Stav (f): jedino što ovaj stav iziskuje jeste da je postupak protjerivanja u toku i da se ažurno sprovodi;
	▪ Lišenje slobode mora biti zakonito;
	▪ Stav (c): ovaj se stav može koristiti samo radi sprječavanja dijela koja su konkretna i određena u pogledu mjesta i vremena izvršenja i žrtava;
	▪ Mora imati za cilj izvođenje lica lišenog slobode pred nadležni sudski organ;
	▪ Vlasti nisu navele nijedno konkretno i određeno djelo u pogledu jednog perioda lišenja slobode u kojem nije bio niti pokrenut postupak protjerivanja, tako da je taj period lišenja slobode u suprotnosti s garancijama iz Konvencije.
	
	4. *Hadžić i Suljić i drugi protiv Bosne i Hercegovine,* presuda od 07. juna 2011.
	▪ Opšta načela vezana za nezakonitost lišenja slobode ponovljena u predmetu *Tokić i drugi;*
	▪ Mora postojati veza između osnova za dozvoljeno lišenje slobode i mjesta i uslova lišenja slobode;
	▪ Lišenje slobode duševno oboljelog pacijenta – zakonito samo ako je lice smješteno u bolnicu, kliniku ili drugu odgovarajuću instituciju;
	▪ Prvi podnosilac prijave je bio zatvoren skoro tri godine; drugi podnosilac prijave je bio zatvoren skoro pet godina – u neodgovarajućoj ustanovi.
	
	5. *Halilović protiv Bosne i Hercegovine,* presuda od 24. novembra 2009.
	▪ Sud je utvrdio da je ovaj predmet skoro identičan predmetu *Tokić i drugi,* u kojem je utvrdio povredu;
	▪ Država nije pružila nikakve argumente koji bi Sudu omogućili da napravi razliku između ova dva predmeta;
	▪ Smještaj na psihijatrijskom odjelu je određen odlukom upravnog organa, a ne građanskog suda;
	▪ Lišenje slobode nije bilo zakonito jer nisu poštovani osnovni procesni uslovi.
	
	6. *Tokić i drugi protiv Bosne i Hercegovine,* presuda od 08. jula 2008.
	▪ Lišenje slobode mora biti u skladu sa zakonom propisanim postupkom;
	▪ Pozivanje na materijalna i procesna pravila nacionalnog prava;
	▪ Lišenje slobode takođe mora biti u skladu sa ciljem člana 5 – sprečavanje proizvoljnog lišenja slobode;
	▪ Tri minimalna uslova za lišenje slobode duševno oboljelih lica:
	  ▪ mora se pouzdano dokazati da je to lice duševno oboljelo;
	  ▪ vrsta ili stepen duševnog oboljenja iziskuje lišenje slobode;
	  ▪ zakonitost daljeg lišenja slobode zavisi od trajnosti takvog oboljenja;
	▪ Mora postojati veza između osnova za lišenje slobode i mjesta i uslova lišenja slobode;
	▪ Lišenje neke osobe slobode kao duševno oboljelog pacijenta zakonito je ako je ona smještena u bolnici, klinici ili drugoj odgovarajućoj ustanovi;
	▪ Nepoštovanje zahtjeva vezanog za zakonitost;
	▪ Nema potrebe razmatrati da li je Forenzičko-psihijatrijski odjel zeničkog zatvora predstavljao odgovarajuću ustanovi.

Predmeti u kojima nije utvrđena povreda	**1. *Al Hamdani protiv Bosne i Hercegovine,* presuda od 07. februara 2012.** ▪ Ovaj period lišenja slobode bio je u potpunosti u skladu sa domaćim pravom; ▪ Nema dokaza o lošim namjerama; ▪ Nema dokaza o proizvoljnosti; ▪ Uslovi lišenja slobode su bili prikladni. **2. *Al Husin protiv Bosne i Hercegovine,* presuda od 07. februara 2012.** ▪ U pogledu drugog perioda lišenja slobode – u potpunosti u skladu sa domaćim pravom; ▪ Nije bilo loših namjera; ▪ Uslovi lišenja slobode nisu bili neprikladni; ▪ Nije bilo proizvoljnosti. **3. *Palić protiv Bosne i Hercegovine,* presuda od 15. februara 2011.** ▪ Član 5 vlastima nalaže da sprovedu blagovremenu i djelotvornu istragu o spornoj tvrdnji da neka osoba nije viđena otkad je lišena slobode; ▪ Presuda usvojena i u pogledu: člana 2 [nema povrede]; člana 3 [nema povrede].

ČLAN 6 – PRAVO NA PRAVIČNO SUĐENJE

1. Svako, tokom odlučivanja o njegovim građanskim pravima i obavezama ili o krivičnoj optužbi protiv njega, ima pravo na pravičnu i javnu raspravu u razumnom roku pred nezavisnim i nepristrasnim sudom, uspostavljenim na temelju zakona. Presuda se izriče javno, ali se mediji i javnost mogu isključiti s cijelog ili s dijela suđenja u interesu morala, javnog reda ili nacionalne bezbijednosti u demokratskom društvu, kada to zahtijevaju interesi maloljetnika ili zaštita privatnog života stranaka, ili u mjeri koja je, po mišljenju suda, nužno potrebna u posebnim okolnostima kada bi javnost mogla da šteti interesima pravde.
2. Svako ko je optužen za krivično djelo smatraće se nevinim sve dok se ne dokaže njegova krivica na osnovu zakona.
3. Svako ko je optužen za krivično djelo ima sljedeća minimalna prava:
   a. da u najkraćem mogućem roku, podrobno i na jeziku koji razumije, bude obaviješten o prirodi i razlozima za optužbu protiv njega;
   b. da ima dovoljno vremena i mogućnosti za pripremanje odbrane;
   c. da se brani lično ili putem branioca koga sam izabere ili, ako nema dovoljno sredstava da plati za pravnu pomoć, da ovu pomoć dobije besplatno kada interesi pravde to zahtijevaju;
   d. da ispituje svjedoke protiv sebe ili da postigne da se oni ispitaju i da se obezbijedi prisustvo i saslušanje svjedoka u njegovu korist pod istim uslovima koji važe za one koji svjedoče protiv njega;
   e. da dobije besplatnu pomoć prevodioca ako ne razumije ili ne govori jezik koji se upotrebljava na sudu.

Predmeti u kojima je utvrđena povreda

1. *Đurić i drugi protiv Bosne i Hercegovine,* presuda od 20. januara 2015.
- Ispitana adekvatnost plana izmirenja Republike Srpske za izvršenje pravomoćnih domaćih presuda kojima se dosuđuje ratna šteta;
- Prijedlog od 20 godina je predug rok u svjetlu već pretjerano dugog odlaganja;
- Nedostatak sredstava nije opravdanje za neizmirenje obaveze po presudi;
- Takvo daljnje odlaganje predstavlja individualni i pretjerani teret za povjerioce o kojima je riječ;
- Naknada za nematerijalnu štetu ima za cilj da se postupi u skladu sa presudama i naređena je od strane Suda;
- Bez obzira, plan izmirenja predstavlja kršenje;
- presuda donesena i u smislu člana 1 Protokola br. 1 [povreda].

2. *Avdić i drugi protiv Bosne i Hercegovine,* presuda od 19. novembra 2013.
- Nije bilo meritornog odlučivanja o građanskim pravima i obavezama na nacionalnom nivou;
- Osporen pristup sudu.

3. *Đukić protiv Bosne i Hercegovine,* presuda od 19. juna 2012.
- Obaveza vezana za izvršenje pravosnažne sudske presude;
- Pravna izvijesnost;
- Zahtjev da podnosilac prijave pokrene druge parnične postupke nakon što je već ishodovao pravosnažnu presudu u svoju korist predstavljalo bi pretjeran teret za podnosioca prijave;
- Više od šest godina otkad je presuda postala pravosnažna;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

4. *Murtić i Ćerimović protiv Bosne i Hercegovine,* presuda od 19. juna 2012.
- Izvršenje kao sastavni dio postupka;
- Kašnjenje izvršenja preko pet godina;
- Takvo je kašnjenje ranije smatrano pretjeranim;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

5. *Bobić protiv Bosne i Hercegovine,* presuda od 03. maja 2012.
- Opšta načela o neizvršenju domaćih presuda izložena u predmetu *Jeličić;*
- Zahtjev vezan za izvršenje;
- Izvršenje je kasnilo više od četiri godine;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

6. *Runić i drugi protiv Bosne i Hercegovine,* presuda od 15. novembra 2011.
- Državni organi ne mogu se pozivati na nedostatak sredstava kao izgovor za neisplaćivanje duga po presudi;
- Kašnjenje izvršenja u trajanju od tri do skoro osam godina;
- Takva su kašnjenja ranije smatrana pretjeranim;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

***7. Šekerović i Pašalić protiv Bosne i Hercegovine,* presuda od 08. marta 2011.**
- Neizvršenje odluke Doma za ljudska prava BiH;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda]; člana 14 zajedno sa članom 6 i članom 1 Protokola br. 1 [povreda]; člana 46.

Predmeti u kojima je utvrđena povreda

8. *Čolić i drugi protiv Bosne i Hercegovine,* presuda od 10. novembra 2011.
- Vodeći slučaj u vezi sa problemom neizvršenje pravosnažnih domaćih sudskih presuda kojima su dosuđena ratna potraživanja;
- Neizvršenje presude više od četiri godine;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda]; člana 46.

9. *Milisavljević protiv Bosne i Hercegovine,* presuda od 03. marta 2009.
- Neizvršenje odluke Doma za ljudska prava BiH;
- Izvršenje nije sprovedeno duže od pet godina;
- Nije predočeno nikakvo opravdanje za kašnjenje;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

10. *Pralica protiv Bosne i Hercegovine,* presuda od 27. januara 2009.
- Predmet analogan predmetu *Jeličić;*
- Izvršenje nije sprovedeno više od šest godina nakon ratifikacije;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

11. *Kudić protiv Bosne i Hercegovine,* presuda od 09. decembra 2008.
- Predmet analogan predmetu *Jeličić;*
- Izvršenje nije sprovedeno više od pet godina nakon ratifikacije;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

12. *Pejaković i drugi protiv Bosne i Hercegovine,* presuda od 18. decembra 2007.
- Predmet analogan predmetu *Jeličić;*
- Država nije potkrijepila tvrdnju da bi izvršenjem presuda bila ugrožena makroekonomska stabilnost i fiskalna održivost države;
- Državni organi ne mogu se pozivati na nedostatak sredstava kao izgovor za neisplaćivanje duga po presudi;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

13. *Karanović i drugi protiv Bosne i Hercegovine,* presuda od 20. novembra 2007.
- Izvršenje nije sprovedeno više od četiri godine i nije isplaćena naknada;
- Presuda usvojena i u pogledu: člana 46.

14. *Jeličić protiv Bosne i Hercegovine,* presuda od 10. oktobra 2006.
- Vodeći slučaj u vezi sa problemom neizvršenje pravosnažnih domaćih sudskih presuda kojima su dosuđena potraživanja stare devizne štednje položene u domaće banke;
- Značaj izvršenja;
- Državni organi ne mogu se pozivati na nedostatak sredstava kao izgovor za neizvršenje duga po presudi;
- Isplata ne bi predstavljala značajno opterećenje za državu;
- Isplata ne bi dovela do urušavanja privrede države;
- Podnositeljica prijave ne bi trebalo da bude spriječena da ostvari izvršenje presude donesene u njenu korist zbog navodnih finansijskih teškoća sa kojima se država suočava;
- Izvršenje nije sprovedeno više od četiri godine nakon ratifikacije;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 1 [povreda].

Predmeti u kojima nije utvrđena povreda

1. *Lončar protiv Bosne i Hercegovine,* presuda od 25. februara 2014.
- Zakonski rok zastarijevanja za podnošenje tužbe teži ostvarenju legitimnog cilja;
- Države imaju polje slobodne procjene u pogledu uređenja pristupa sudu na ovaj način;
- Okolnosti ovog predmeta nisu uključivale nesrazmjerno ograničavanje pristupa sudu.

ČLAN 7 – KAŽNJAVANJE SAMO NA OSNOVU ZAKONA

1. Niko se ne može smatrati krivim za krivično djelo izvršeno činjenjem ili nečinjenjem koje, u vrijeme kada je izvršeno, nije predstavljalo krivično delo po unutrašnjem ili međunarodnom pravu. Isto tako, ne može se izreći stroža kazna od one koja je bila propisana u vrijeme kada je krivično djelo izvršeno.
2. Ovaj član ne utiče na suđenje i kažnjavanje nekog lica za činjenje ili nečinjenje koje se u vrijeme izvršenja smatralo krivičnim djelom prema opštim pravnim načelima koja priznaju civilizovani narodi.

Predmeti u kojima je utvrđena povreda	**1. *Maktouf i Damnjanović protiv Bosne i Hercegovine,* presuda Velikog vijeća od 18. jula 2013.** ▪ Primijenjeni su stroži krivičnopravni propisi od onih koji su bili na snazi u vrijeme izvršenja dijela o kojima je riječ; ▪ Član 7 pruža djelotvornu zaštitu od proizvoljnog gonjenja, osude i kažnjavanja; ▪ Nije ograničen na zabranu retroaktivne primjene krivičnog prava na štetu optuženog, ali obuhvata i načelo da krivično djelo i kazna za njega moraju biti propisani zakonom; ▪ Djelo mora biti jasno definisano zakonom; ▪ Osoba mora da bude u stanju da iz formulacije relevantne odredbe shvati za koje činjenje ili nečinjenje krivično odgovara, po potrebi uz pomoć advokata ili suda; ▪ Zakon mora da bude dostupan i predvidljiv.

ČLAN 8 – PRAVO NA POŠTOVANJE PRIVATNOG I PORODIČNOG ŽIVOTA

1. Svako ima pravo na poštovanje svog privatnog i porodičnog života, doma i prepiske.
2. Javne vlasti neće se miješati u vršenje ovog prava osim ako to nije u skladu sa zakonom i neophodno u demokratskom društvu u interesu nacionalne sigurnosti, javne sigurnosti ili ekonomske dobrobiti zemlje, radi sprječavanja nereda ili kriminala, zaštite zdravlja ili morala, ili radi zaštite prava i sloboda drugih.

Predmeti u kojima je utvrđena povreda	**1. *Šobota-Gajić protiv Bosne i Hercegovine,* presuda od 06. novembra 2007.** ▪ Odnos između majke i sina kao „porodični život"; ▪ Zahtjev vezan za sprječavanje proizvoljnosti; ▪ Obaveza državnih organa da omoguće ponovno spajanje; ▪ Ta obaveza nije apsolutna; ▪ Možda će biti potrebne pripreme radi olakšavanja ponovnog spajanja – koje ovdje nisu sprovedene; ▪ Obaveza primjene prinude je ograničena slobodama svih o kojima je reč; ▪ Državni organi treba da uspostave pravičnu ravnotežu; ▪ Potreba za brzim sprovođenjem mjera koje se preduzimaju; ▪ Situacija je trajala više od četiri i po godine nakon ratifikacije; ▪ Odgovornost se u ovom predmetu nije mogla pripisati podnositeljici prijave; ▪ Lokalna policija je odbila da pruži pomoć.

ČLAN 9 – SLOBODA MISLI, SAVJESTI I VJEROISPOVIJESTI

3. Svako ima pravo na slobodu misli, savjesti i veroispovijesti; ovo pravo uključuje slobodu promjene vjere ili uvjerenja i slobodu čovjeka da, bilo sam ili zajedno s drugima, javno ili privatno, ispoljava vjeru ili uvjerenje molitvom, propovijedi, običajima i obredom.
4. Sloboda ispovijedanja vjere ili ubjeđenja može biti podvrgnuta samo onim ograničenjima koja su propisana zakonom i neophodna u demokratskom društvu u interesu javne sigurnosti, radi zaštite javnog reda, zdravlja ili morala, ili radi zaštite prava i sloboda drugih.

U pogledu ovog člana nije usvojena nijedna presuda.

ČLAN 10 – SLOBODA IZRAŽAVANJA

1. Svako ima pravo na slobodu izražavanja. Ovo pravo uključuje slobodu posjedovanja vlastitog mišljenja, primanja i saopštavanja informacija i ideja bez miješanja javne vlasti i bez obzira na granice. Ovaj član ne spriječava države da zahtjevaju dozvole za rad televizijskih, radio i filmskih preduzeća.
2. Pošto korištenje ovih sloboda povlači za sobom dužnosti i odgovornosti, ono se može podvrgnuti formalnostima, uslovima, ograničenjima ili kaznama propisanim zakonom i neophodnim u demokratskom društvu u interesu nacionalne sigurnosti, teritorijalnog integriteta ili javne sigurnosti, radi sprječavanja nereda ili kriminala, zaštite zdravlja ili morala, zaštite ugleda ili prava drugih, sprječavanja otkrivanja obavještenja dobivenih u povjerenju, ili radi očuvanja autoriteta i nepristrasnosti sudstva.

Predmeti u kojima je utvrđena povreda	**1. *Medžlis Islamske Zajednice Brčko i drugi protiv Bosne i Hercegovine,* presuda od 13. oktobra 2015:** ▪ Aplikanti su namjeravali da obavijeste nadležne organe o određenim nepravilnostima u pitanjima od javnog značaja kako bi se pokrenuo postupak; ovo pismo, poslato privatnim putem, naknadno je objavljeno (bez njihovog znanja) i utvrđeno je da su aplikanti odgovorni za klevetu, te su isplatili naknadu; ▪ Odluke domaćih sudova i dosuđivanje isplate naknade štete protiv aplikanata predstavljalo je miješanje; ovo miješanje je propisano domaćim zakonom i slijedilo je legitimni cilj (zaštita ugleda); ključno pitanje je bilo da li je takva mjera neophodna u demokratskom društvu;

Predmeti u kojima je utvrđena povreda

- Sud je prethodno primijetio da može biti neophodno da se zaštite državni službenici od agresivnih, uvrjedljivih i klevetničkih napada poduzetih kako bi se oni ometali u vršenju svoje dužnosti i kako bi se narušilo povjerenje javnosti u njih i funkciju koju obavljaju; u ovom slučaju Sud je bio spreman da prihvati da kandidat za mjesto direktora javne radio-stanice može biti takva kategorija službenika;
- Međutim, pritužbe su bile podnesene u privatnom svojstvu, tako da se uslovi zaštite nisu odnosili na zaštitu štampe, nego na pravo aplikanata da prijavljuju nepravilnosti u ponašanju državnih službenika tijelu nadležnom da ispita takve pritužbe;
- Da građani treba da imaju mogućnost da obavijeste nadležne državne dužnosnike o ponašanju državnih službenika koje se njima čini nepravilnim ili nezakonitim, jedno je od načela vladavine prava;
- Povučena je razlika između činjenica i vrijednosnih sudova, ali je istaknuto da čak i vrijednosni sudovi bez činjeničnog osnova mogu biti pretjerani;
- Domaći sudovi su pravilno zaključili da su aplikanti postupali nemarno prilikom prijavljivanja navodnog neprimjerenog ponašanja;
- Aplikanti su jednostavno prenijeli informacije koje su primili, bez razumnog nastojanja da provjere njihovu tačnost;
- Sud je utvrdio da su odluke domaćih sudova uspostavile pravičnu ravnotežu između suprotstavljenih interesa tužiteljice i aplikanata i razloga za donošenje njihovih odluka bili „relevantni i dovoljni" i da su ispunili „nužnu društvenu potrebu".

ČLAN 11 – SLOBODA OKUPLJANJA I UDRUŽIVANJA

1. Svako ima pravo na slobodu mirnog okupljanja i slobodu udruživanja s drugima, uključujući pravo da osniva sindikat i učlanjuje se u njega radi zaštite svojih interesa.
2. Za vršenje ovih prava neće se postavljati nikakva ograničenja, osim onih koja su propisana zakonom i neophodna u demokratskom društvu u interesu nacionalne sigurnosti ili javne sigurnosti, radi sprječavanja nereda ili kriminala, zaštite zdravlja ili morala, ili radi zaštite prava i sloboda drugih. Ovim se članom ne sprječava zakonito ograničavanje vršenja ovih prava pripadnicima oružanih snaga, policije ili državne uprave.

U pogledu ovog člana nije usvojena nijedna presuda.

ČLAN 12 – PRAVO NA SKLAPANJE BRAKA

Muškarci i žene odgovarajućeg uzrasta imaju pravo da stupaju u brak i zasnivaju porodicu u skladu s unutrašnjim zakonima koji uređuju vršenje ovog prava.

U pogledu ovog člana nije usvojena nijedna presuda.

Predmeti u kojima je utvrđena povreda

1. *Maktouf i Damnjanović protiv Bosne i Hercegovine,* presuda Velikog vijeća od 18. jula 2013.

- Primijenjeni su stroži krivičnopravni propisi od onih koji su bili na snazi u vrijeme izvršenja dijela o kojima je reč;
- Član 7 pruža djelotvornu zaštitu od proizvoljnog gonjenja, osude i kažnjavanja;
- Nije ograničen na zabranu retroaktivne primjene krivičnog prava na štetu optuženog, ali obuhvata i načelo da krivično djelo i kazna za njega moraju biti propisani zakonom;
- Djelo mora biti jasno definisano zakonom;
- Osoba mora da bude u stanju da iz formulacije relevantne odredbe shvati za koje činjenje ili nečinjenje krivično odgovara, po potrebi uz pomoć advokata ili suda;
- Zakon mora da bude dostupan i predvidljiv.

ČLAN 13 – PRAVO NA DJELOTVORAN PRAVNI LIJEK

Svako kome su povrijeđena prava i slobode predviđeni u ovoj Konvenciji ima pravo na djelotvoran pravni lijek pred nacionalnim vlastima, bez obzira jesu li povredu izvršila lica koja su postupala u službenom svojstvu.

Predmeti u kojima je utvrđena povreda

1. *Ališić i drugi protiv Bosne i Hercegovine, Hrvatske, Srbije, Slovenije i Bivše Jugoslovenske Republike Makedonije,* presuda Velikog vijeća od 16. jula 2014.

- Član 13 zajedno sa članom 1 Protokola br. 1 i članom 46; nije utvrđena povreda u pogledu Bosne i Hercegovine;

2. *Rodić i drugi protiv Bosne i Hercegovine,* presuda od 27. maja 2008.

- Povreda člana 13 zajedno sa članom 3.

ČLAN 14 – ZABRANA DISKRIMINACIJE

Uživanje prava i sloboda predviđenih u ovoj Konvenciji obezbjeđuje se bez diskriminacije po bilo kom osnovu, kao što su spol, rasa, boja kože, jezik, vjeroispovijest, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, veza s nekom nacionalnom manjinom, imovno stanje, rođenje ili drugi status.

Predmeti u kojima je utvrđena povreda

1. *Zornić protiv Bosne i Hercegovine,* presuda od 15. jula 2014.
- Zabrana podnositeljici prijave da se kandiduje za Dom naroda Parlamentarne Skupštine BiH jer se nije izjasnila kao pripadnica konstitutivnog naroda već kao građanka BiH;
- Presuda usvojena i u pogledu člana 3 Protokola br. 1 [povreda]; člana 1 Protokola br. 12 [povreda].

2. *Šekerović i Pašalić protiv Bosne i Hercegovine,* presuda od 08. marta 2011.
- U vezi s članom 6 i članom 1 Protokola br. 1;
- Značenje diskriminacije;
- Različito postupanje prema osobama u sličnoj situaciji bez objektivnog i razumnog opravdanja;
- Nepostojanje legitimnog cilja i razumnog odnosa proporcionalnosti između primijenjenog sredstva i cilja kojem se teži jeste najznačajnije;
- Predmet se ticao interno raseljenih lica u BiH;
- Presuda usvojena i u pogledu: člana 6 [povreda]; člana 1 Protokola br. 1 [povreda]; člana 46.

3. *Sejdić i Finci protiv Bosne i Hercegovine,* presuda od 22. decembra 2009.
- Zajedno sa članom 3 Protokola br. 1;
- Predmet se odnosio na pripadnike romske i jevrejske manjine u BiH koji su željeli da se kandiduju za člana Predsjedništva BiH i/ili delegata Doma naroda Parlamentarne skupštine BiH;
- Značenje diskriminacije;
- Različito postupanje prema osobama u sličnoj situaciji bez objektivnog i razumnog opravdanja;
- Znači da razlikovanje ne teži ostvarenju legitimnog cilja i da ne postoji razuman odnos proporcionalnosti između primijenjenog sredstva i cilja kojem se teži;
- Polje slobodne procjene zavisi od okolnosti, materije i historijata;
- Etnicitet i rasa su srodni pojmovi;
- Rasa: biološka klasifikacija ljudskih bića u podvrste na osnovu morfoloških odlika kao što su boja kose ili crte lica;
- Etnicitet: društvene grupe koje dijele istu nacionalnost, vjeroispovijest, zajednički jezik ili kulturno i tradicionalno porijeklo i historiju;
- Rasna diskriminacija kao posebno notorni oblik diskriminacije;
- Objektivno i razumno opravdanje rasne ili etničke diskriminacije mora biti tumačeno na najstroži mogući način;
- Savremeno demokratsko društvo je izgrađeno na načelima pluralizma i poštovanja različitih kultura;
- Član 14 ne sprječava različito postupanje kako bi se eliminisala faktična nejednakost;
- Konvencija može biti prekršena i ako se različitim postupanjem ne pokuša ispraviti neka nejednakost;
- Presuda usvojena i u pogledu: člana 1 Protokola br. 12.

Predmeti u kojima nije utvrđena povreda

1. *Ališić i drugi protiv Bosne i Hercegovine, Hrvatske, Srbije, Slovenije i Bivše Jugoslovenske Republike Makedonije,* presuda od 06. novembra 2012.
- Zajedno sa članom 1 Protokola br. 1;
- Nije utvrđena povreda člana 1 Protokola br. 1 u pogledu Bosne i Hercegovine;
- Presuda usvojena i u pogledu: člana 13 [nema povrede].

ČLAN 1 PROTOKOLA BR. 1 – ZAŠTITA IMOVINE

Svako fizičko i pravno lice ima pravo na neometano uživanje svoje imovine. Niko ne može biti lišen svoje imovine, osim u javnom interesu i pod uslovima predviđenim zakonom i opštim načelima međunarodnog prava.
Prethodne odredbe, međutim, ni na koji način ne utiču na pravo države da primjenjuje zakone koje smatra potrebnim da bi regulisala korišćenje imovine u skladu s opštim interesima ili da bi osigurala naplatu poreza ili drugih dažbina ili kazni.

Predmeti u kojima je utvrđena povreda

1. *Đurić i drugi protiv Bosne i Hercegovine,* presuda od 20. januara 2015.
- Ispitana adekvatnost plana izmirenja Republike Srpske za izvršenje pravomoćnih domaćih presuda kojima se dosuđuje ratna šteta;
- Prijedlog od 20 godina je predug rok u svjetlu već pretjerano dugog odlaganja;
- Nedostatak sredstava nije opravdanje za neizmirenje obaveze po presudi;
- Takvo daljnje odlaganje predstavlja individualni i pretjerani teret za povjerioce o kojima je riječ;
- Naknada za nematerijalnu štetu ima za cilj da se izvrše presude i naređena je od strane Suda;
- Bez obzira, plan izmirenja predstavlja kršenje;
- Presuda također donesena i u smislu člana 6 [povreda].

2. *Ališić i drugi protiv Bosne i Hercegovine, Hrvatske, Srbije, Slovenije i Bivše Jugoslovenske Republike Makedonije,* presuda Velikog vijeća od 16. jula 2014.
- Nemogućnost podnosilaca prijave da ostvare povrat svoje stare devizne štednje položene u poslovnicama *Ljubljanske banke d.d. Ljubljana* i *Investbanke a.d. Beograd* na teritoriji današnje Federacije BiH;
- Nije utvrđena povreda ovog člana u odnosu na Bosnu i Hercegovinu;
- Presuda usvojena i u pogledu člana 13; člana 46.

3. *Đukić protiv Bosne i Hercegovine,* presuda od 19. juna 2012.
- Neizvršenje pravosnažne sudske presude predstavljalo je zadiranje u imovinsko pravo;
- Pravosnažna presuda je stvorila „legitimno očekivanje" zaštićeno članom 1 Protokola br. 1 da će biti izvršena;
- Presuda usvojena i u pogledu: člana 6 [povreda].

4. *Murtić i Ćerimović protiv Bosne i Hercegovine,* presuda od 19. juna 2012.
- Neizvršenje odluke Doma za ljudska prava BiH je predstavljalo zadiranje u imovinsko pravo;
- Presuda usvojena i u pogledu: člana 6 [povreda].

5. *Bobić protiv Bosne i Hercegovine,* presuda od 03. maja 2012.
- Neizvršenje odluke Ustavnog suda BiH je predstavljalo zadiranje u imovinsko pravo;
- Presuda usvojena i u pogledu: člana 6 [povreda].

6. *Mago i drugi protiv Bosne i Hercegovine,* presuda od 03. maja 2012.
- Izložena opšta načela vezana za član 1 Protokola br. 1;
- Svako zadiranje državnih organa u mirno uživanje imovine mora biti zakonito;
- Propisi na kojima je zadiranje zasnovano treba da budu u skladu sa domaćim pravom države, uključujući njen Ustav;
- Oduzimanje privatne imovine isključivo s ciljem da drugo lice ostvari privatnu korist od toga, ne može biti u javnom interesu.

7. *Runić i drugi protiv Bosne i Hercegovine,* presuda od 15. novembra 2011.
- Opšta načela o neizvršenju domaće sudske presude kojom su dosuđena ratna potraživanja izložena u vodećem predmetu *Čolić;*
- Čak i u slučaju potpunog izvršenja domaćih sudskih presuda, kašnjenje u izvršenju od 3 do 8 godina predstavlja zadiranje u imovinsko pravo;
- Presuda usvojena i u pogledu: člana 6 [povreda].

8. *Šekerović i Pašalić protiv Bosne i Hercegovine,* presuda od 08. marta 2011.
- Neizvršenje odluke Doma za ljudska prava predstavlja zadiranje u imovinsko pravo;
- Presuda usvojena i u pogledu: člana 6 [povreda], člana 14 zajedno sa članom 6 i člana 1 Protokola br. 1 [povreda]; člana 46.

9. *Đokić protiv Bosne i Hercegovine,* presuda od 27. maja 2010.
- Legitimni cilj;
- Uspostavljanje pravične ravnoteže;
- Imovina se ne može oduzeti kako bi neko lice od nje imalo privatnu korist; to nije u javnom interesu;
- Međutim, to može biti u javnom interesu i ako zajednica u cjelini nema neposredne koristi od oduzete imovine ili ne uživa u njoj.

Predmeti u kojima je utvrđena povreda	**10. *Čolić i drugi protiv Bosne i Hercegovine,* presuda od 10. novembra 2011.** ▪ Neizvršenje pravosnažne domaće sudske odluke predstavlja zadiranje u imovinsko pravo; ▪ Presuda usvojena i u pogledu: člana 6 [povreda]; člana 46. **11. *Suljagić protiv Bosne i Hercegovine,* presuda od 03. novembra 2009.** ▪ Tri posebna pravila; ▪ Zakonitost; ▪ Pravična ravnoteža; ▪ Polje slobodne procjene; ▪ Poređenje sa načinima na koje su druge države izlazile na kraj sa sličnom situacijom (finansijskom krizom); ▪ Presuda usvojena i u pogledu: člana 46. **12. *Milisavljević protiv Bosne i Hercegovine,* presuda od 03. marta 2009.** ▪ Neizvršenje odluke Doma za ljudska prava predstavlja zadiranje u imovinsko pravo; ▪ Presuda usvojena i u pogledu: člana 6 [povreda]. **13. *Pralica protiv Bosne i Hercegovine,* presuda od 27. januara 2009.** ▪ Neizvršenje predstavlja zadiranje u imovinsko pravo; ▪ Presuda usvojena i u pogledu: člana 6 [povreda]. **14. *Kudić protiv Bosne i Hercegovine,* presuda od 09. decembra 2008.** ▪ Neizvršenje predstavlja zadiranje u imovinsko pravo; ▪ Presuda usvojena i u pogledu: člana 6 [povreda]. **15. *Pejaković i drugi protiv Bosne i Hercegovine,* presuda od 18. decembra 2007.** ▪ Neizvršenje predstavlja zadiranje u imovinsko pravo; ▪ Presuda usvojena i u pogledu: člana 6 [povreda]. **16. *Jeličić protiv Bosne i Hercegovine,* presuda od 10. oktobra 2006.** ▪ Neizvršenje predstavlja zadiranje u imovinsko pravo; ▪ Presuda usvojena i u pogledu: člana 6 [povreda].
Predmeti u kojima nije utvrđena povreda	**1. *Ališić i drugi protiv Bosne i Hercegovine, Hrvatske, Srbije, Slovenije i Bivše Jugoslovenske Republike Makedonije,* presuda od 06. novembra 2012.** ▪ Banke sa sjedištem u Srbiji i Sloveniji su bile odgovorne za staru deviznu štednju u svojim podružnicama bez obzira gdje se one nalazile; ▪ Presuda usvojena i u pogledu: člana 13 [nema povrede]; člana 14 [nema povrede].

ČLAN 4 PROTOKOLA BR. 7 – PRAVO DA SE NE BUDE SUĐEN ILI KAŽNJEN DVAPUT U ISTOJ STVARI

1. Nikome se ne može ponovo suditi niti se može ponovo kazniti u krivičnom postupku u nadležnosti iste države za djelo zbog koga je već bio pravosnažno oslobođen ili osuđen u skladu sa zakonom i krivičnim postupkom te države.
2. Odredbe prethodnog stava ne sprječavaju ponovno otvaranje postupka u skladu sa zakonom i krivičnim postupkom date države, ako postoje dokazi o novim ili novootkrivenim činjenicama, ili ako je u ranijem postupku došlo do bitne povrede koja je mogla da utiče na njegov ishod.
3. Ovaj se član ne može staviti van snage na osnovu člana 15 Konvencije.

Predmeti u kojima je utvrđena povreda	**1. *Muslija protiv Bosne i Hercegovine,* presuda od 14. januara 2014.** ▪ Sud je zaključio da se postupak protiv podnosioca prijave u suštini odnosio na isto djelo za koje je već bio osuđen; ▪ Pravna kvalifikacija postupka prema domaćem zakonu ne može biti isključivi kriterijum od značaja za primjenu načela ne *bis in idem;* ▪ Kriteriji Engel se koriste za utvrđivanje postojanje optužbe za krivično djelo: pravna kvalifikacija djela prema domaćem pravu, sama priroda djela i stepen težine kazne koju ono nosi; ▪ Garancija ljudskog dostojanstva i javnog reda predstavljaju vrijednosti i interese koji obično potpadaju pod krivično zakonodavstvo; ▪ Odredba je bila usmjerena na sve građane, a ne samo na grupu sa posebnim statusom; ▪ „Trivijalnost" određenih djela ne znači nužno da ne mogu biti klasifikovana kao „krivična"; ▪ Primarni ciljevi kod utvrđivanja djela o kojem je riječ su kažnjavanje i odvraćanje, a to su priznate karakteristike krivičnih sankcija.

ČLAN 1 PROTOKOLA BR. 12 – OPŠTA ZABRANA DISKRIMINACIJE

1. Uživanje bilo kojeg prava propisanog zakonom osigurat će se bez diskriminacije po bilo kom osnovu kao npr. spolu, rasi, boji kože, jeziku, vjeroispovijesti, političkom i drugom uvjerenju, nacionalnom ili društvenom porijeklu, povezanosti s nacionalnom manjinom, imovini, rođenju ili drugom statusu.
2. Javne vlasti neće ni prema kome vršiti diskriminaciju po osnovima navedenim u stavu 1.

Predmeti u kojima je utvrđena povreda

1. *Zornić protiv Bosne i Hercegovine,* presuda od 15. jula 2014.
- Zahtjev da se podnositeljica prijave izjasni samo kao pripadnica „konstitutivnog naroda" ali ne i kao građanka BiH kako bi mogla biti delegirana u Dom naroda Bosne i Hercegovine suprotan je Konvenciji;
- Presuda usvojena i u pogledu člana 14 [povreda]; člana 3 Protokola br. 1 [povreda].

2. *Sejdić i Finci protiv Bosne i Hercegovine,* presuda od 22. decembra 2009.
- Ovim se članom uvodi opšta zabrana diskriminacije;
- Odnosi se na „bilo koje pravo zaštićeno zakonom";
- Ovo je bio prvi put da je Sud razmatrao ovu odredbu;
- Sud primjenjuje definiciju diskriminacije iz člana 14;
- Presuda usvojena i u pogledu: člana 14 zajedno sa članom 3 Protokola br. 1 [povreda].

ČLAN 46 – OBAVEZNOST I IZVRŠENJE PRESUDA

1. Visoke strane ugovornice se obavezuju da se povinuju konačnoj presudi Suda u svakom predmetu u kome su stranke.
2. Konačna presuda Suda se dostavlja Komitetu ministara koji nadgleda njeno izvršenje.
3. Ako Komitet ministara smatra da tumačenje konačne presude ometa nadziranje njenog izvršavanja, Komitet može proslijediti to pitanje Sudu da donese rješenje o tumačenju. Da bi se navedeno pitanje proslijedilo, potrebni su glasovi dvotrećinske većine zastupnika koji imaju pravo sudjelovanja u radu Komiteta.
4. Ako Komitet ministara smatra da neka visoka strana ugovornica odbija da se povinuje pravosnažnoj presudi u predmetu u kojem je stranka, on može, nakon što zvanično obavijesti tu visoku stranu ugovornicu, a na osnovu odluke usvojene dvotrećinskom većinom glasova predstavnika koji sjede u Komitetu, da se Sudu obrati pitanjem da li je ta visoka strana ugovornica propustila da ispuni svoju obavezu iz stava 1.
5. Ako Sud utvrdi da postoji povreda stava 1, upućuje predmet Komitetu ministara radi razmatranja mjera koje treba preduzeti. Ako Sud utvrdi da stav 1 nije prekršen, vratiće predmet Komitetu ministara koji zaključuje raspravu o predmetu.

Predmeti u kojima se Sud eksplicitno pozvao na član 46

1. *Ališić i drugi protiv Bosne i Hercegovine, Hrvatske, Srbije, Slovenije i Bivše Jugoslovenske Republike Makedonije,* presuda Velikog vijeća od 16. jula 2014.
- Sud je Sloveniji i Srbiji naložio da isplate naknadu podnosiocima prijave jer nisu mogli da ostvare povrat stare devizne štednje;
- Presuda usvojena i u pogledu člana 13 [povreda]; člana 1 Protokola br. 1 [povreda].

2. *Šekerović i Pašalić protiv Bosne i Hercegovine,* presuda od 08. marta 2011.
- Sud je zahtijevao izmjenu domaćeg zakonodavstva kako bi se omogućio prenos izvršenja prava podnosilaca prijave na penziju u Zavodu PIO/MIO Federacije;
- Tužena država je trebalo da preduzme korake u roku od šest mjeseci od dana konačnosti presude [16. 03. 12];
- Presuda usvojena i u pogledu: člana 6 [povreda]; člana 1 Protokola br. 1 [povreda]; člana 14 u vezi s članom 6 i članom 1 Protokola br. 1.

3. *Čolić i drugi protiv Bosne i Hercegovine,* presuda od 10. novembra 2011.
- Sud je otkrio postojanje sistemskog problema u BiH u vezi neizvršenja domaćih sudskih presuda kojima su dosuđena ratna potraživanja, te s tim u vezi veliki broj sličnih prijava pred Sudom; od države je zahtijevao da riješi probleme koji su doveli do povrede, osigura potpuno izvršenje postojećih odluka i isplati naknadu podnosiocima prijava;
- Presuda usvojena i u pogledu: člana 6 [povreda]; člana 1 Protokola br. 1 [povreda].

4. *Suljagić protiv Bosne i Hercegovine,* presuda od 03. novembra 2009.
- Pilot-presuda;
- Potrebno je preduzeti generalne mjere na nacionalnom nivou;
- Država mora izdati obveznice i isplatiti dospjele rate;
- Država mora da sprovede korake u roku od šest meseci od dana konačnosti presude [03. 08. 2010];
- Presuda usvojena i u pogledu člana 1 Protokola br. 1 [povreda].

5. *Karanović protiv Bosne i Hercegovine,* presuda od 20. novembra 2007.
- Tužena država mora osigurati potpuno izvršenje odluke Doma za ljudska prava i omogućiti prihvat podnosioca prijave na isplatu penzije kod Penzionog Fonda FBiH, te mu isplatiti iznos od 2.000 eura i 1.500 eura na ime nematerijalne štete;
- Ovi koraci moraju biti sprovedeni u roku od tri meseca od dana konačnosti presude [20. 05. 2008];
- Presuda usvojena i u pogledu člana 6 [povreda].

THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS WITH RESPECT TO BOSNIA AND HERZEGOVINA UP UNTIL THE END OF 2015

The case law of the European Court of Human Rights with respect to Bosnia and Herzegovina up until the end of 2015

This document sets out the judgments and selected decisions handed down by the European Court of Human Rights (hereinafter: the Court) in respect of Bosnia and Herzegovina, since the State's ratification of the European Convention of Human Rights and Fundamental Freedoms (hereinafter: "Convention") on 12 July 2002. As of 31 December 2015, the Court has handed down 43 judgments and 67 admissibility decisions in respect of Bosnia and Herzegovina.[1]

The document consists of two parts. The first part contains a narrative overview of the cases relating to the particular nature of the human rights violation found. The second part contains a table, broken down by Article, listing the cases in which judgment has been rendered with a brief description of the legal issues raised in the case.

Concerning the evolving necessity to translate the case-law of the Court and to bring it closer to judiciary, executive and other relevant institutions of the countries in the region of Western Balkan, this document is translated into the official language of Bosnia and Herzegovina.

Article 6 and Article 1 of Protocol No. 1 to the Convention: systemic problem of non-enforcement of domestic court judgments

By far the highest number of judgments have been handed down in respect to property rights under Article 1 of Protocol No. 1 and the right to a fair trial under Article 6 of the Convention due to the failure of the state authorities to enforce domestic court judgments awarding applicants different kind of claims[2]. As of 31 December 2015, the Court had handed down 25 judgments regarding Article 1 of Protocol No. 1 and violations were found in 20 cases[3]. The Court also handed down 24 judgments in relation to Article 6 and violations were found in 22 cases[4].

1. This document includes a detailed overview of judgments adopted by a Chamber of seven judges and a Grand Chamber of seventeen judges. Judgments rendered by Committees of three members or individual judges (see ECHR Articles 27 and 28), adopted in the so called "repetitive cases", are not included in the separate detailed analyses in part two of this document. Of the judgments, 35 cases were decided by a Chamber or Grand Chamber. Of the admissibility decisions, 40 cases were decided by a Chamber.

2. According to the Court's statistics, out of all judgments delivered against Bosnia and Herzegovina, 36% relate to violation of property rights, while 33% relate to violation of the right to a fair trial, *Statistics on judgments by State,* ECtHR 2013

3. *Đuric and others v. BiH,* judgment of 20 January 2015; *Jeličić v. BiH,* judgment of 10 October 2006; *Pejaković and others v. BiH,* judgment of 18 December 2007; *Kudić v. BiH,* judgment of 9 December 2008; *Pralica v. BiH,* judgment of 6 January 2009; *Milisavljević v. BiH,* judgment of 3 March 2009; *Čolić and others v. BiH,* judgment of 10 November 2009; *Đokić v. BiH,* judgment of 27 May 2010; *Suljagić v. BiH,* judgment of 3 November 2009; *Šekerović and Pašalić v. BiH,* judgment of 8 March 2011; *Runić and others v. BiH,* judgment of 15 November 2011; *Bobić v. BiH,* judgment of 3 May 2012; *Mago and others v. BiH,* judgment of 3 May 2012; *Murtić and Ćerimović v. BiH,* judgment of 19 June 2012; *Đukić v. BiH,* judgment of 19 June 2012; *Ignjatić and others v. BiH,* judgment of 15 January 2013; *Janjić and others v. BiH,* judgment of 15 January 2013; *Momić and others v. BiH,* judgment of 15 January 2013; *Tomić and others v. BiH,* judgment of 15 January 2013; *Ćosić and others v. BiH,* judgment of 22 January 2013; *Bokan and others v. BiH,* judgment of 22 July 2014; *Ališić and others v. Bosnia and Herzegovina and others* (no violation found in respect of BiH), judgments of 6 November 2012 and 16 July 2014; *Mišković v. BiH,* judgment of 8 July 2014; *Milinković v. BiH,* judgment of 17 June 2014.

4. *Đurić and others v. BiH,* judgment of 20 January 2015; *Jeličić v. BiH,* judgment of 10 October 2006; *Karanović v. BiH,* judgment of 20 November 2007; *Pejaković and others v. BiH,* judgment of 18 December 2007; *Kudić v. BiH,* judgment of 9 December 2008; *Pralica v. BiH,* judgment of 6 January 2009; *Milisavljević v. BiH,* judgment of 3 March 2009; *Čolić and others v. BiH,* judgment of 10 November 2009; *Đokić v. BiH,* judgment of 27 May 2010; *Šekerović and Pašalić v. BiH,* judgment of 8 March 2011; *Runić and others v. BiH,* judgment of 15 November 2011; *Bobić v. BiH,* judgment of 3 May 2012; *Đukić v. BiH,* judgment of 19 June 2012; *Murtić and Ćerimović v. BiH,* judgment of 19 June 2012; *Ignjatić and others v. BiH,* judgment of 15 January 2013; *Janjić and others v. BiH,* judgment of 15 January 2013; *Momić and others v. BiH,* judgment of 15 January 2013; *Tomić and others v. BiH,* judgment of 15 January 2013; *Ćosić and others v. BiH,* judgment of 22 January 2013; *Avdić and others v. BiH,* judgment of 19 November 2013; *Milinković v. BiH,* judgment of 17 June 2014; *Mišković v. BiH,* judgment of 8 July 2014; *Bokan and others v. BiH,* judgment of 22 July 2014; *Lončar v. BiH* (no violation found), judgment of 25 February 2014.

The first decision and judgment in respect of Bosnia and Herzegovina was delivered in the leading case *Jeličić v. BiH.* In this case the Court rendered first an important admissibility decision[5] which clarified crucial issues concerning the requirements of the exhaustion of domestic remedies in Bosnia and Herzegovina. In this case, the applicant pursued an appeal before the Human Rights Chamber set up for Bosnia and Herzegovina by Annex 6 to the 1995 Dayton Agreement. The Court was required to determine whether the Human Rights Chamber was or was not an "international" body within the meaning of Article 35 § 2 (b).The Court concluded that proceedings before the Human Rights Chamber should be considered a "domestic" remedy within the meaning of Article 35 § 1 of the Convention and that, in the event of there being a number of remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy[6] which has essentially the same objective is not required. In the *Jeličić* judgement[7] which followed the Court held that there had been a violation of the applicant's rights under Article 1 of Protocol No. 1 and Article 6 due to the non-enforcement of a final domestic court judgment awarding the applicant her claim to release "old" foreign currency savings deposited at a domestic commercial bank seated on the territory of BiH. Enforcement of such judgments has been prevented in the Republika Srpska since 1996 in accordance with the instructions of the government of the Republika Srpska and relevant legislation. The Court found that the situation of the applicant in the present case was significantly different from that of the majority of "old" foreign-currency savers who have not obtained any judgment ordering the release of their funds. It also found that judgments ordering the release of "old" foreign-currency savings were the exception rather than the norm and that payment of the award made by the domestic courts in the present case, even with the accumulated default interest, would not be a significant burden for the State, let alone result in the collapse of its economy as suggested by the Government. Against this background, the Court considered that it was not justified to delay for so long the execution of a final and enforceable judgment, or to statutory prevent enforcement of judgments ordering the release of "old" foreign-currency savings. The Court found that the impossibility of obtaining the execution of a final judgment in the applicant's favour had constituted an interference with her right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1. Following this judgment the Court delivered judgments in repetitive cases *Pralica v. BiH, Kudić v. BiH* and *Pejaković v. BiH* (cited above).

Further, in the judgment of *Čolić and others v. BiH* the Court also held that there had been a violation of Article 1 of Protocol 1 and Article 6 of the Convention due to the non-enforcement of final domestic court judgments awarding the applicants compensation in respect of war damage. This case which is similar, although not identical, to *Jeličić* concerns the statutory suspension of the enforcement of an entire category of final judgments on account of the size of public debt arising from these judgments. In view of many civil actions brought under the ordinary rules of tort law, in 2005 the Republika Srpska created a general compensation scheme for war damage and extinguished the pending civil actions. Compensation awarded under this scheme was to be paid in government bonds. In this judgment the Court emphasized that while a situation where a significant number of war-related civil claims are pending may call for their replacement by a general compensation scheme, this is of no relevance to the obligation of the respondent State to enforce judgments which became final before the creation of such a scheme. The judgment indicated the huge extent of the problem particularly in the entity of the Republika Srpska, which is now faced with an enormous public debt.

The case-law of the Court evolved in the subsequent judgment of *Runić and others.* In this case, the Court emphasised that none of the applicants in *Čolić* and the others case, unlike the present applicants, had accepted government bonds and that it must be distinguished from the *Čolić* and others jurisprudence. The Court concluded that given the fact that many of the applicants in *Runić* and others had already sold their bonds on the Stock Exchange and that the legal costs awarded to them had been paid in cash, the Court considered the impugned domestic judgments to have been enforced. Nevertheless, the Court held that even in cases where the judgments had been fully enforced in government bonds, the delays in enforcement ranging between 3 and 8 years, had violated Article 6. The Court delivered judgments on the issue

5. *Jeličić v. BiH,* admissibility decision of 15 november 2005.
6. An appeal to the Constitutional Court of Bosnia and Herzegovina.
7. *Jeličić v. BiH,* judgment of 10 October 2006.

in many repetitive cases, such as Ignjatić and others, Janjić and others, *Momić and others* judgment, *Tomić and others, Ćosić and others, Bokan and others* etc. (cited above).

Đurić and others[8] was heard after the Republika Srpska introduced an Action Plan to enforce general measures ordered in *Čolić and others.* This Action Plan, envisaged the enforcement of final judgments ordering payment of war damages in cash (for those who do not want to accept Government bonds) within 13 years starting from 2013. The Republika Srpska also undertook to pay €50 in respect of non-pecuniary damage. In July 2013 the time-frame for the enforcement was extended to 20 years starting from 2013. The Court acknowledged that there can be a need to stagger enforcement of final judgments in exceptional circumstances, that there was significant public debt, and commended the intention that the settlement plan provide compensation. However, the Court held that the plan was in violation of Article 6 and Article 1 of Protocol No. 1 on the basis that it was too lengthy a delay in light of what had already occurred, that lack of funds was not an excuse not to honour a judgment debt and that such a delay would impose an individual and excessive burden on the creditors concerned. The Court therefore considered that the respondent State should amend the settlement plan. In that respect, the Court found that the interval proposed by the initial settlement plan, 13 years, was far more reasonable, at the time it was introduced. The Court considered that in the cases in which there had already been a delay of more than ten years, the judgments needed to be enforced without further delay and that the respondent State should also undertake to pay default interest at the statutory rate in the event of a delay in the enforcement of judgments in accordance with the settlement plan as amended following this judgment.

In some isolated cases such as *Milisavljević v. BiH, Šekerović and Pašalić v. BiH, Bobić v. BiH,* the Court held that there had been a violation of Article 1 of Protocol No. 1 and Article 6 due to the non-enforcement of final decisions of the Human Rights Chamber for BiH and the Constitutional Court of BiH.[9]

Article 1. of Protocol No. 1 to the Convention: systemic problem of return of old foreign currency savings

In the case *Suljagić*[10], which relates to the issue of "old" foreign-currency deposits in domestic banks[11] (foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia), the Court rendered its first pilot judgment against Bosnia and Herzegovina a finding of a violation of Article 1 of Protocol No. 1 to the Convention. Although the Court found the current domestic legislation as such compatible with Article 1 of Protocol No. 1, it agreed with the applicant that its state of implementation was unsatisfactory. In view of the deficient implementation of the domestic legislation on "old" foreign-currency savings, the Court concluded that the applicant may still claim to be a victim for the purposes of Article 34 of the Convention. For the same reason, the Court found that there had been a violation of Article 1 of Protocol No. 1 to the Convention. Since the violation which the Court found in the present case affected many people[12] and this represented a serious threat to the future effectiveness of the Convention machinery, the Court applied the pilot judgment procedure and ordered Bosnia and Herzegovina to ensure, within six months from the date on which the judgment becomes final, that government bonds are issued in the Federation of Bosnia and Herzegovina, that any outstanding instalments are paid and that the Federation of Bosnia and Herzegovina undertakes to pay default interest at the statutory rate in the event of late payment of any forthcoming instalment.

Another major case which relates to the issue of "old" foreign-currency savings is *Ališić and others v. Bosnia and*

8. *Đurić v. others v. BiH,* judgment of 20 January 2015.
9. *Milisavljević v. BiH,* judgment of 3 March 2009; *Šekerović and Pašalić v. BiH,* judgment of 8 March 2011; *Bobić v. BiH,* judgment of 3 May 2012
10. *Suljagić v. BiH,* pilot judgement of 3 November 2009.
11. Although both judgments relate to the applicants' impossibility to withdraw the "old" foreign currency savings, the main difference between *Suljagić v. BiH* and *Jeličić v. BiH* lies in the fact that the applicant *Jeličić* received a final domestic court judgment awarding her foreign currency savings claim, while the applicant *Suljagić* did not receive such a judgment, but challenged the lawfulness of the domestic legislation providing for the general settlement scheme for foreign currency savings my means of government bonds.
12. According to the International Monetary Fund, more than a quarter of the population of Bosnia and Herzegovina had "old" foreign-currency savings. Moreover, there were already more than 1,350 similar applications, submitted on behalf of more than 13,500 applicants, pending before the Court.

Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia[13]. In this case the Court applied the pilot judgment procedure because the violations which the Court had found in this case affect many people[14]. This case concerned applicant's inability to withdraw their "old" foreign-currency savings from their accounts at the Sarajevo branch of *Ljubljanska Banka Ljubljana* and the Tuzla branch of *Investbanka* since the dissolution of the Socialist Federal Republic of Yugoslavia. In this case the Court found that *Ljubljanska Banka Ljubljana* and *Investbanka* were and still are liable for "old" foreign-currency savings in their Bosnian-Herzegovinian branches. The Court also found that Slovenia is responsible for *Ljubljanska Banka Ljubljana's* debt and that Serbia is responsible for *Investbanka's* debt. The Court concluded that the authorities of Slovenia and Serbia, notwithstanding their wide margin of appreciation in this area, had not struck a fair balance between the general interest of the community and the property rights of the applicants, who were made to bear a disproportionate burden. Accordingly, the Court found that there had been a violation of Article 1 of Protocol No. 1 and Article 13 of the Convention by Slovenia and Serbia, and that there had been no violation of those Articles by any of the other respondent States. The Court noted that the failure of the Serbian and Slovenian Governments to include the applicants and all others in their position in their respective schemes for the repayment of "old" foreign-currency savings represented a systemic problem. The Court ordered that Serbia must make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Committee of Ministers in order to allow Mr Šahdanović and all others in his position to recover their "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks. The Court also ordered that Slovenia must make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Committee of Ministers, in order to allow Ms Ališić, Mr Sadžak and all others in their position to recover their "old" foreign-currency savings under the same conditions as those who had such savings in domestic branches of Slovenian banks.

Article 1. of Protocol No. 1 to the Convention : systemic problem of repossession of military flats

In the judgment *Đokić v. BiH* the Court held that there had been a violation of Article 1 of Protocol No. 1. The case concerned the applicant's inability to repossess his pre-war military flat in Sarajevo and to be registered as its owner, regardless of a legally valid purchase contract. The applicant in this case fulfilled the statutory requirements for the allocation of a tenancy right on a military flat in Serbia, but no flat had yet been allocated. As regards the possibility for the applicant to acquire a tenancy right in Serbia the Court found that the applicant could only acquire such a right of limited duration, which the Supreme Court of the Federation of Bosnia and Herzegovina did not consider to be equivalent to occupancy right for the purposes of the restitution legislation. Although the Court was prepared to accept that the contested measures were aimed at enhancing social justice, that they pursued a legitimate aim and that States enjoy a wide margin of appreciation in this sphere, the Court nonetheless considered that a fair balance had not been struck in the particular circumstances of the case.[15]

The judgment *Mago and others* also concerned the applicants' inability to repossess their pre-war military flats in the Federation of BiH. Unlike in *Đokić v. BiH,* the applicants in *Mago* and others failed to purchase their flats before the war and they remained occupancy right holders. In this case the Government maintained that the Serbian Government had misled the Court when claiming in Đokić that members of their armed forces no longer had the right to acquire a tenancy right of unlimited duration – a right equivalent to the erstwhile occupancy right. The Court accepted this argument and noted that in order to qualify for tenancy rights of unlimited duration on flats in Serbia and Montenegro, a person had to renounce the equivalent rights on their pre-war flats in Sarajevo. In the course of the proceedings before the Court, it was established that three of the applicants had been allocated tenancy rights of unlimited duration on flats, or had obtained a mortgage loan to purchase a flat in Serbia and Montenegro respectively. However, the fact that a person has acquired a property right in one State is normally not sufficient in itself to justify a taking of his or her property in another State. That being said and having regard to the exceptional circumstances of the dissolution of the SFRY and the wars in the region,

13. *Ališić and others v. Bosnia and Herzegovina and others,* GC judgment of 16 July 2014.

14. There are more than 1,850 similar applications, introduced on behalf of more than 8,000 applicants, pending before the Court. In addition, there are many thousands of potential applicants.

15. *Đokić v. BiH,* para. 59–64, judgment of 27 May 2010.

the Court considered that the respondent Bosnia and Herzegovina had not been required under Article 1 of Protocol No. 1 to pay compensation to the applicants for the cancellation of their occupancy rights given that they had meanwhile been granted equivalent rights in other former Republics of the SFRY.[16] The Court has consistently applied this approach in its subsequent decisions versus BiH declaring inadmissible many applications of the pre-war occupancy right holders on military apartments who had acquired an equivalent housing right in Serbia or Montenegro.[17]

In the case *Aleksić v. Bosnia and Herzegovina*[18], which is almost identical to the *Đokić* case, the applicant had not yet been allocated a military flat in Serbia, but his right to such allocation had been established by the competent body of the Serbian Ministry of Defense. Taking the different approach in the same situation as in *Đokić* case, and following the findings in the judgment *Mago and others,* the Court found that the applicant's claim was manifestly ill-founded and rejected it as inadmissible. In this case the Court noted that the present applicant's right to a military flat in Serbia was established by the competent military authorities in Serbia and the fact that the applicant had not yet been allocated a flat in Serbia was of no relevance.

Article 6: the right of access to court

Worth mentioning is the judgment *Avdić and others v. BiH* where the Court held that there had been a violation of the applicants' right to access to court due to the failure of the Constitutional Court of BiH to reach majority decisions on their constitutional appeals. While the Constitutional Court took formal decisions on the applicants' appeals, the Court noted that it effectively declined to decide on their admissibility and/or merits, and that situation had left the applicants without any final determination of their civil rights and obligations. The Court recalled that where there is no real "determination" of civil rights and obligations, the right of access to court remains illusory in breach of Article 6 § 1 of the Convention.

In the judgment *Lončar v. BiH,*[19] the applicant complained that the rejection of his claim as statute barred in the Federation of Bosnia and Herzegovina denied him access to court contrary to Article 6 § 1 of the Convention. The Court firstly noted that the requirement to lodge a judicial claim within a statutory time-limit was not, in itself, incompatible with Article 6 § 1 of the Convention as such a requirement pursue a legitimate aim of proper administration of justice and of compliance, in particular, with the principle of legal certainty. Having regard to the margin of appreciation accorded to States in regulating the right of access to court, the Court considered that the applicant had not suffered a disproportionate restriction on his right of access to court and found no violation of Article 6 § 1 of the Convention. The Court also emphasised that the different practice in the Republika Srpska concerning the calculation of time-limits was of no relevance for the present case since each Entity has its own judicial system for civil law disputes and different legislation governing it.

Article 14 and Article 1 of Protocol No. 12: discriminatory constitutional provisions in the enjoyment of the electoral rights in BiH

The first judgment in respect of BiH addressing alleged discrimination is *Sejdić and Finci v. BiH.*[20] The Court held that the applicants had been discriminated against in enjoyment of their rights to stand for election to the Presidency of BiH and the House of Peoples of the BiH Parliament on grounds of their Jewish and Roma origin. Given the applicants' active participation in public life, the Court concluded that it would be entirely coherent that they would in fact consider running for the House of Peoples or the Presidency, so the applicants could therefore claim to be victims of the alleged discrimination. The Court also took into consideration the fact that the Constitution of Bosnia and Herzegovina was an annex to the Dayton Agreement, itself an international treaty, but the power to amend it was, however, vested in the Parliamentary Assembly of Bosnia and Herzegovina, which is clearly a domestic body. In addition, the Court found that the powers of the international

16. *Mago and others v. BiH,* para. 94-105, judgment of 3 May 2012.
17. *Mandić and others v. BiH,* dec. of 19 June 2014; Ćaldović and others v. BiH, dec. of 4 November 2014.
18. *Aleksić v. BiH,* dec. of 03. February 2015.
19. *Lončar v. BiH,* judgment of 25 February 2014.
20. *Sejdić and Finci v. BiH,* judgment of 22 December 2009.

administrator for Bosnia and Herzegovina (the High Representative) did not extend to the State Constitution. In those circumstances, leaving aside the question whether the respondent State could be held responsible for putting in place the contested constitutional provisions, the Court considered that it could nevertheless be held responsible for maintaining them.

Having regard to the guarantees against differential treatment provided by Article 14, the Court primarily determined that the elections to the House of Peoples of Bosnia and Herzegovina fell within the scope of Article 3 of Protocol No. 1. It accordingly found Article 14 taken in conjunction with Article 3 of Protocol No. 1 applicable. The Court agreed that there was no requirement under the Convention to abandon totally the power-sharing mechanisms peculiar to Bosnia and Herzegovina and that the time might not be ripe for a political system which would be a simple reflection of majority rule. The Court nevertheless recalled that by becoming a member of the Council of Europe in 2002 and by ratifying the Convention and the Protocols thereto without reservations, Bosnia and Herzegovina had voluntarily agreed to meet the relevant standards. Bosnia and Herzegovina had specifically undertaken to "review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission) the electoral legislation in the light of Council of Europe standards, and to revise it where necessary". The Court accordingly held that the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacked an objective and reasonable justification and therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1.

Relating to elections to the Presidency of BiH, the Court noted that Article 1 of Protocol No. 12 extends the scope of protection to "any right set forth by law", introducing a general prohibition of discrimination. It was thus concluded that the applicants' ineligibility to be elected to the Presidency of BiH which is a right set forth by law (see Section 1.4. and 4.19 of the BiH Election Act of 2001) made Article 1 of Protocol 12 applicable. Notwithstanding the difference in scope between those provisions, the Court accepted that the meaning of discrimination in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14. The Court therefore found that the constitutional provisions which rendered the applicants ineligible for election to the Presidency of BiH must also be considered discriminatory and a breach of Article 1 of Protocol No. 12 to the Convention.

Following the judgment *Sejdić and Finci,* the Court consistently applied its case-law in the judgment *Zornić v. BiH*.[21] The applicant Zornić complained of her ineligibility to stand for election to the House of Peoples and the Presidency of BiH because of her refusal to declare affiliation with any of the "constituent people". The applicant simply declared her affiliation as a citizen of Bosnia and Herzegovina. The Court repeated that no difference in treatment based exclusively or to a decisive extent on a person's ethnic origin could objectively be justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.

Furthermore, in the judgment *Šekerović and Pašalić v. BiH*[22] the Court examined the alleged discrimination of the applicant who is an internally displaced person. The case concerned the non-enforcement of the Human Rights Chamber's decision ordering the Federation of BiH to secure the amendment of the relevant legislation in order to render the applicants and others in that situation eligible to apply, if they so wished, for FBH Fund pensions. The Court held as undisputed that the facts of the case had fallen "within the ambit" of Article 1 of Protocol No. 1 to the Convention, making Article 14 taken in conjunction with that provision, applicable. The Court further noted that the domestic Human Rights Chamber held that the applicant and other pensioners returning from the Republika Srpska to the Federation after the war were discriminated against in comparison to pensioners who had stayed in what is today the Federation during the war in the absence of any objective and reasonable justification for such differential treatment. The Court found no reason to depart from that ruling and it held that the applicant continued to be discriminated against solely on account of her status as a formerly internally displaced person. Given the large number of potential applicants, which represents a threat to the future effectiveness of the Convention machinery, the Court considered that the respondent State is to secure the amendment of the relevant legislation in order to render the applicants and others in that situation eligible to apply, if they so wish, for FBH Fund pensions.

21. *Zornić v. Bosnia and Herzegovina,* judgment of 15 July 2014.

22. *Šekerović and Pašalić v. BiH,* judgment of 8 March 2011.

Article 5: right to liberty and security of mentally ill offenders and asylum seekers in BiH

The Court delivered judgments in seven cases on Article 5 concerning two main issues: mandatory psychiatric detention in the Zenica Prison Forensic Psychiatric Annex and the detention of asylum seekers in Bosnia and Herzegovina.[23]

In the judgment *Tokić and others v. Bosnia and Herzegovina*[24], the Court found that following the introduction of new criminal legislation of the Federation of BiH in August 2003, the applicants' detention in Zenica Prison Forensic Psychiatric Annex had not been carried out "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention. Considering that the applicants had been held in psychiatric detention pursuant to an administrative decision, as opposed to a decision of the competent civil court, the Court considered the detention to be unlawful having regard to the authorities' failure to comply with an essential procedural requirement amounting to a breach of Article 5 § 1 of the Convention. The Court found the case *Halilović v. BiH* to be nearly identical to *Tokić and others.*

Although, in *Tokić and others v. BiH* and *Halilović v. BiH* the Court did not consider it necessary to examine whether the Psychiatric Annex was an appropriate institution for the detention of mental health patients, it dealt with the problem in the following *Hadžić and Suljić v. BiH* judgment.[25] Relying on the findings of the Constitutional Court of BiH and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Court found that Zenica Prison Forensic Psychiatric Annex was not an appropriate institution for the detention of mental health patients and that it was an interim solution which became permanent only because of lack of resources, which amounted to a violation of Article 5 § 1 of the Convention.

In relation to the procedure used by the state authorities in relation to asylum seekers in BiH that have been detained on security grounds, in the judgments *Al Husin v. BiH* and *Al Hamdani v. BiH*[26] the Court held that there had been violation of Article 5§1 on account of an initial detention period before a deportation order had been issued against the applicants. Relying on its well-established case-law the Court repeated that no preventive detention on security grounds is legitimate within the meaning of Article 5§1 of the Convention. As regards the subsequent period of the applicant's detention, the Court held that the applicant was lawfully detained as a person against whom action was being taken with a view to deportation under the second limb of Article 5 § 1 (f) of the Convention.

The Court did not find any violation of Article 5 of the Convention in a case concerning the procedural obligation of Bosnia and Herzegovina to investigate the disappearance and death of the applicant's husband.[27] The Court found that the domestic authorities had carried out an independent and effective criminal investigation in accordance with the guarantees of the Convention (for more details about *Palić v. BiH* judgment, see the title *Article 2* and *Article 3* below).

Most recently, the Court found a violation of Article 5§1 in a case where applicants had been detained in a social care home, on the basis of their psychiatric state, without an assessment being undertaken by the competent civil court.[28]

Article 2 and Article 3: the right to life and prohibition of torture, with particular focus on the obligation to conduct an effective investigation and the application of the Convention in deportation cases and to individuals deprived of their liberty

In the judgment *Palić v. BiH* the Court examined for the first time whether Bosnia and Herzegovina met its procedural

23. According to the Court's statistics, 9% of all judgments delivered against Bosnia and Herzegovina relate to violations of the right to liberty and security of person, *Statistics on judgments by State* ECtHR 2013.
24. *Tokić and others v. BiH,* 8 July 2008.
25. *Hadžić and Suljić v. BiH,* judgment of 7 June 2011.
26. *Al Hamdani v. BiH,* judgment of 7 February 2012; *Al Husin v. BiH,* judgment of 7 February 2012.
27. *Palić v. BiH,* judgment of 15 February 2011.
28. *Hadžimejlić and others v. BiH,* judgment of 3 November 2015.

obligations to conduct an effective and independent criminal investigation into an arguable claim that a person has disappeared during the war activities in BiH. The Court established that the domestic authorities eventually had identified the mortal remains of Mr Palić and had carried out an independent and effective criminal investigation into his disappearance and death. The Court further held that there had been no substantial period of inactivity after 2005 on the part of the domestic authorities. Furthermore, it was noted that the applicant received substantial compensation in connection with her husband's disappearance on the basis of a decision of the Human Rights Chamber. The Court concluded that, taking into account the special circumstances prevailing in Bosnia and Herzegovina up until 2005 and indeed the particular circumstances of the present case, there had been no violation of Article 2 of the Convention. The Court further accepted that the applicant suffered because of her situation, however, it found that the authorities' reactions could not be categorised as inhuman and degrading treatment within the meaning of Article 3 of the Convention.

The Court has delivered a number of the decisions in relation to the alleged non-compliance with the state authorities' positive obligation to investigate the destiny of persons who disappeared during the war activities in Bosnia and Herzegovina in the period 1992–1995.[29] The Court found that taking into account the special circumstances prevailing in Bosnia and Herzegovina up until 2005 and the large number of war crimes cases pending before local courts, the investigations had not been shown to have infringed the minimum standard required under Article 2. As to the alleged violation of Article 3 of the Convention, the Court acknowledged the gravity of the phenomenon of disappearances and the suffering of the applicants, but it held that, in the circumstances of each and particular case, the authorities' reactions could not be regarded as inhuman or degrading treatment contrary to Article 3 of the Convention.[30]

Further, the Court delivered three judgments in relation to the alleged human rights violation of asylum seekers under Article 3 of the Convention. In the judgment *Al Husin v. BiH* the Court found that there would be a violation of Article 3 of the Convention in the event of the applicant's deportation to Syria.[31] However, relating to other countries of the applicants' origin, such as Iraq and Tunis, the Court considered that there would be no real risk that the applicants, if deported, would be subjected to ill-treatment in breach of Article 3 of the Convention.[32]

In the case *Rodić and others v. BiH* the applicants, who were convicted of war crimed perpetrated against Bosniac civilians, raised two distinct complaints under Article 3.[33] First, they complained that the authorities had failed to protect them from persecution by their fellow prisoners in the period from their arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit. Secondly, they complained about the conditions of their detention in the hospital unit. The Court held that the applicants' physical well-being had not been adequately secured in the period from their arrival in Zenica Prison until they had been provided with separate accommodation in the Zenica Prison hospital unit. The Court noted that the hardship the applicants had endured, in particular the constant mental anxiety caused by the threat of physical violence and the anticipation of such violence must have exceeded the unavoidable level inherent in detention and the resulting suffering had gone beyond the threshold of severity amounting to breach of Article 3 of the Convention. However, in relation to the conditions of the detention, the Court did not found that the conditions of the applicants' detention in the Zenica Prison hospital unit attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

Article 8: family life and positive obligation to facilitate reunion of a parent and a child

One judgment has been handed down in respect of Article 8 concerning the applicant's right to respect for her private and family life.[34] The Court held that state authorities were under a positive obligation to facilitate reunion between parents

29. *Mujkanović and others v. BiH,* dec. of 3 June 2014; *Fazlić and others v. BiH,* dec. of 3 June 2014; *Šeremet v. BiH,* dec. of 8 July 2014; *Hamidović v. BiH,* dec. of 2 September 2014; *Žerajić and Gojković v. BiH,* dec. of 13 November 2014.
30. *Ibidum.*
31. *Al Husin v. BiH,* judgment of 7 February 2012.
32. *Al Hanchi v. BiH,* 15 November 2011 and *Al Hamdani v. BiH,* judgment of 7 February 2012.
33. *Rodić and others v. BiH,* judgment of 27 May 2008.

and children, although, the national authorities' obligation to take measures to facilitate reunion is not absolute. The Court held that in the particular case, the adequacy of a measure was to be judged by the swiftness of its implementation as the passage of time could have irremediable consequences for relations between the children and the parent who does not live with them. The Court accepted that the reunion of a parent with a child who has lived for some time with the other parent, could not take place immediately and without necessary preparations. However, the Court found that there was no evidence that any such preparatory work explained the delays by the BiH authorities, amounting to the breach of Article 8 of the Convention.

Article 10: freedom of expression

The Court rendered judgment under Article 10 for the first time in *Medžlis Islamske zajednice Brčko and others v. BiH,*[35] finding that no violation had occurred. The applicants in this case entered into private correspondence with local authorities complaining about another individual who was an editor of the entertainment programme at a public radio station and was a candidate for the post of director at that station. The applicants also complained about the selection process. They stated that their intention was to inform the competent authority about irregularities in a matter of public interest and to prompt an investigation. While it is true that the impugned statements were subsequently made public, the Court noted that there was no evidence in the domestic proceedings that the applicants had participated in their publication. The applicants were ultimately found liable for defamation, and damages were awarded against them.

The Court noted that it may be necessary to protect public servants from offensive, abusive and defamatory attacks calculated to affect their performance of duties and damage public confidence in them and the office they hold. The Court also recognized the applicants' right to report irregularities in the conduct of an official to a body competent to deal with such complaints. That citizens should be able to notify competent State officials about the conduct of civil servants which to them appears irregular or unlawful is one of the precepts of the rule of law.

The Court distinguished statements of fact from value judgments, while noting that even a value judgment without any factual basis to support it may be excessive. There was nothing in the case-file to indicate that the applicants did not have an effective opportunity to adduce evidence in support of their allegations and to thereby establish their truthfulness. The Court found that the domestic courts had correctly concluded that the applicants had acted negligently in reporting the misconduct, having passed on the information they received without any reasonable effort to verify accuracy. The applicants also failed to inform the relevant bodies about the retraction of their statements despite an order by the Appellate Court.

The Court found that the domestic courts struck a fair balance between competing interests and the reasons justifying their decisions were "relevant and sufficient" and met a "pressing social need". The damages award was not disproportionate. Accordingly, there was no violation.

Article 13: the provision of an effective legal remedy in domestic law

In the judgment *Rodić v. BiH,* the Court examined the applicants' complaints under Article 13 of the Convention in relation to Article 3.[36] The Court found that the applicants had had no effective domestic remedy at their disposal for their Article 3 complaints, amounting to a breach of Article 13 of the Convention.

In the judgment *Đokić v. BiH,* the Court noted that it was open to the applicant to pursue domestic proceedings, which he did. The mere fact that he ultimately lost does not render the domestic system ineffective, accordingly the Court rejected applicant's complaint with regard Article 13 of the Convention as manifestly ill-founded.

34. *Šobota-Gajić v. BiH,* judgment of 6 November 2007.
35. *Medžlis Islamske zajednice Brčko and others v. Bosnia and Herzegovina*, judgment of 13 October 2015.
36. *Rodić and others v. BiH*, judgment of 27 May 2008.

Further, in the judgment *Ališić and others v. Bosnia and Herzegovina and others,* the Court analysed a number of legal remedies and it concluded that the applicants had no an effective legal remedy at their disposal. The Court held that there had been a breach of Article 13 by Slovenia in respect of the applicants Ališić and Sadžak and by Serbia in respect of the applicant Šahdanović. It had been found no breach of Article 13 by Bosnia and Herzegovina, nor other respondent States.[37]

Article 7: the rule of non-retroactivity of criminal legislation

In the judgment *Maktouf and Damjanović v. BiH* the Court found a violation of Article 7 of the Convention, which guarantees that no one shall be held guilty of any criminal offence on account of any act which did not constitute a criminal offence under national or international law at the time when it was committed. The applicants complained that the BiH State Court had applied the 2003 Criminal Code which was more stringent criminal law to them than the 1976 Criminal Code which had been applicable at the time of the commission of the criminal offences.[38] The State Court sentenced Mr Maktouf to five years' imprisonment, the lowest possible sentence under the 2003 Code. In contrast, under the 1976 Code he could have been sentenced to one year's imprisonment. As regards Mr Damjanović, he was sentenced to 11 years' imprisonment, slightly above the minimum of ten years. Under the 1976 Code, it would have been possible to impose a sentence of only five years.

The Court firstly pointed out that it was not its task to review in abstracto whether the retroactive application of the 2003 Criminal Code in war crimes cases was, per se, incompatible with Article 7 of the Convention. The Court found that that matter should be assessed on a case-by-case basis, taking into consideration the specific circumstances of each case and, notably, whether domestic courts applied the law most favourable to the defendant.

The Court admitted that the applicants' sentences in the instant case were within the latitude of both the 1976 Criminal Code and the 2003 Criminal Code. It could thus not conclude with certainty that either applicant would have received lower sentences had the former Code been applied. However, the Court found it crucial that the applicants could have received lower sentences had the 1976 Code been applied in their cases and that there had existed a real possibility that the retroactive application of the 2003 Code operated to the applicants' disadvantage as concerned the sentencing. The Court consequently found that they had not been afforded effective safeguards against the imposition of a heavier penalty, amounting to breach of Article 7 of the Convention.

In the case *Šimšić v. BiH*[39] the applicant complained under Article 7 of the Convention that crimes against humanity, of which he had been held guilty, had not constituted a criminal offence under national law during the 1992–95 war. The Court observed that the applicant was convicted in 2007 of persecution as a crime against humanity with regard to acts which had taken place in 1992. While the impugned acts had not constituted a crime against humanity under domestic law until the entry into force of the 2003 Criminal Code, it was evident that the impugned acts constituted, at the time when they were committed, a crime against humanity under international law. In that regard, the Court noted that all the constituent elements of a crime against humanity were satisfied in this case: the impugned acts were committed within the context of a widespread and systematic attack targeting a civilian population and the applicant was aware of that attack.

The applicant argued that he could not have foreseen that his acts could have constituted a crime against humanity under international law. It is noted, however, that the applicant committed those acts as a police officer. The Court held that persons carrying on a professional activity must proceed with a high degree of caution when pursuing their occupation and

37. *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and „the Former Yugoslav Republic of Macedonia"*, Grand Chamber judgment of 16 July 2014.

38. *Maktouf and Damnjanović v. BiH,* Grand Chamber judgment of 18 July 2013.

39. *Šimšić v. BiH*, decision of 10 April 2012.

can be expected to take special care in assessing the risks that such activity entails. Furthermore, having in mind the flagrantly unlawful nature of his acts, which included murders and torture of Bosniacs within the context of a widespread and systematic attack against the Bosniac civilian population of the Višegrad Municipality, even the most cursory reflection by the applicant would have indicated that they risked constituting a crime against humanity for which he could be held criminally accountable. The Court concluded that the applicant's acts, at the time when they were committed, constituted an offence defined with sufficient accessibility and foreseeability by international law and rejected applicant's complaint as manifestly ill-founded.

Article 4 of Protocol No. 7: *ne bis in idem*

The Court examined one application, *Muslija v. BiH,* under Article 4 of Protocol No. 7 to the Convention.[40] The applicant alleged that he had been tried and punished twice for the same offence in respect of the same incident and the same facts in both minor-offences proceedings and criminal proceedings. He complained that, irrespective of the different classification of the two offences under domestic law, this had amounted to a breach of his right not to be tried and punished twice for the same offence contrary to the rule of *ne bis in idem.*

The Court recalled its relevant criteria, commonly known as the *"Engel criteria"* (see *Engel and others v. the Netherlands,* 8 June 1976, Series A no. 22) necessary to be considered in determining whether or not there was a "criminal charge". These criteria are: the legal classification of the offence under national law, the nature of the offence and the degree of severity of the penalty that the person concerned risks incurring. Within the meaning of the Engel criteria, the Court found that the applicant was "convicted" in minor-offences proceedings under the Public Order Act 2000 which were to be assimilated to "criminal proceedings" within the autonomous Convention meaning of this term. The Court also recalled its relevant criteria set out in the *Sergey Zolotukhin*[41] case. In this case the Court took the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same. Accordingly, the Court held that the criminal proceedings instituted against the applicant concerned essentially the same offence as that of which he had already been convicted by a final decision under the Public Order Act 2000, amounting to violation of Article 4 of Protocol No. 7 to the Convention.

Article 46: binding force and execution of the judgments, general measures

Many of the judgments in respect of Bosnia and Herzegovina revealed systemic problems and there has accordingly been imposed an obligation on Bosnia and Herzegovina to adopt general measures under the supervision of the Committee of Ministers of the Council of Europe in order to remedy these systemic human rights violations.

In *Suljagić v. BiH*[42], the Court applied its pilot judgment procedure, declaring this case to be a pilot judgment on the issue of "old" foreign currency savings deposited with the domestic banks.[43]

Relevant authorities in Bosnia and Herzegovina adopt action plans for implementation of general measures with an aim to remedy existing and prevent future human rights violations in similar cases. General measures successfully implemented so far include the obligation to secure full enforcement of domestic court judgments concerning old foreign currency savings; obligation to fully implement domestic legislation concerning return of old foreign currency savings in Federation of BiH; obligation to adequately secure the well-being of prisoners and to set up effective domestic remedy at their disposal

40. *Muslija v. BiH,* judgment of 14 January 2014.

41. *Sergey Zolotukhin v. Russia,* Grand Chamber judgment of 10 February 2009.

42. *Suljagić v. BiH,* judgment of 3 November 2009.

43. Although both judgments relate to the applicants' impossibility to withdraw the "old" foreign currency savings, the main difference between *Suljagić v. BiH* and *Jeličić v. BiH* lies in the fact that the applicant *Jeličić* received final domestic court judgment awarding her foreign currency savings claim, while the applicant *Suljagić* did not receive domestic court judgment, but challenged the lawfulness of the domestic legislation providing for the general settlement scheme for foreign currency savings my means of government bonds.

for their Article 3 complaints; obligation to enable all internally displaced persons to apply to the FBH pension fund; obligation to secure compulsory confinement of a mentally disabled offender only after a civil court decision; statutory amendments of the BiH Aliens Act in order to secure lawful detention of aliens.

General measures that are still not fully implemented include obligation to amend relevant legislation concerning repossession of the military apartments on the territory of FBH; compulsory detention in the social care homes only after a civil court decision; establishment of a specialised hospital for the mentally disabled offenders; obligation to adopt constitutional amendments in order to eliminate discriminatory provisions of the BiH Constitution and electoral legislation of BiH; revision of all the proceedings before the Court of BiH for war crimes with a view to secure the principle of *nullum crimen, nulla poena sine lege;* statutory amendments of the relevant criminal legislation and misdemeanor legislation with a view to secure the principle of *ne bis in idem.*

Jurisprudence broken down by Article

ARTICLE 2 – RIGHT TO LIFE

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
   a. in defence of any person from unlawful violence;
   b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
   c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Cases where no violation was found

1. *Palić v. Bosnia and Herzegovina,* judgment of 15 February 2011:
- official investigation required;
- must be independent and effective;
- must be capable of leading to the identification and punishment of those responsible
- public scrutiny;
- must be accessible to the victim's family;
- must be carried out with reasonable promptness and expedition;
- relevance of the special circumstances in Bosnia and Herzegovina at the time;
- judgment also rendered in respect of: Article 3 [no violation], Article 5 [no violation].

ARTICLE 3 – PROHIBITION OF TORTURE

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Cases where a violation was found

1. *Al Husin v. Bosnia and Herzegovina,* judgment of 7 February 2012:
- concerning deportation to Syria;
- question of whether deportation would be in violation;
- absolute prohibition; conduct of applicants cannot be taken into account;
- rigorous assessment required;
- need to take into account current as well as historical situation in the State;
- judgment also rendered in respect of Article 5 [violation for the initial period of time in detention; no violation for the second period of time covered with the deportation order].

2. *Rodić and others v. Bosnia and Herzegovina,* judgment of 27 May 2008:
- absolute prohibition;
- minimum level of severity;
- conditions of prison;
- mental health of prisoners;
- threat of physical violence causing anxiety;
- relevance of social tensions to assessment of whether a prisoner is being kept in appropriate conditions;
- structural shortcomings do not absolve State of obligation to secure well-being of prisoners;
- judgment also rendered in respect of: Article 13 [violation].

Cases where no violation was found

1. *Al Hanchi v. Bosnia and Herzegovina,* judgment of 15 November 2011:
- whether deportation to Tunisia would be in violation;
- present conditions in the State to which deportation may occur are relevant;
- no indication or proof that Islamists as a group have been targeted after the regime change;
- Tunisia's accession to the Optional Protocols to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights;
- no real risk of ill-treatment.

2. *Palić v. Bosnia and Herzegovina,* judgment of 15 February 2011:
- effect of disappearances on relatives;
- factors considered in assessing effect;
- investigatory obligation;
- judgment also rendered in respect of: Article 2 [no violation]; Article 5 [no violation].

Cases where no violation was found

3. *Rodić and others v. Bosnia and Herzegovina,* judgment of 27 May 2008:
- special protection accorded to detainees;
- ability to watch television and obtain reading materials without restriction;
- appropriate amount of daily time outside the hospital unit afforded;
- judgment also rendered in respect of: Article 13 [in conjunction with an Article 3 violation in respect of a distinct period of detention].

ARTICLE 4 – PROHIBITION OF SLAVERY AND FORCED LABOUR

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
   a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
   b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
   c. any service exacted in case of an emergency or calamity threatening the life or well being of the community;
   d. any work or service which forms part of normal civic obligations.

No judgments were rendered under this Article.

ARTICLE 5 – RIGHT TO LIBERTY AND SECURITY

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
   a. the lawful detention of a person after conviction by a competent court;
   b. the lawful arrest or detention of a person for non compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
   c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
   d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
   e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
   f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Cases where a violation was found

1. *Hadžimejlić and others v. Bosnia and Herzegovina,* judgment of 3 November 2015:
- applicants had been placed in Drin, a social care home;
- it was uncontested that this constituted a deprivation of liberty;
- the Constitutional Court had found that the applicants had been held in psychiatric detention without a decision of the competent civil court;
- as a result, the necessity of detention for two of the applicants was then examined by the competent civil court and based on a medical expert report, it was established that the applicants' health did not warrant continued compulsory confinement, however, the applicants remained in the social care home;
- for a third applicant, the Court noted that he was still detained in the care home on the basis of an administrative decision and that his compulsory admission, more than 15 years, had never been examined by the competent court.

2. *Al Hamdani v. Bosnia and Herzegovina,* judgment of 7 February 2012:
- para. (f): deportation proceedings need to be in progress and prosecuted with due diligence;
- lawfulness of detention;
- meaning of a 'procedure prescribed by law';

Cases where a violation was found

- avoidance of arbitrariness;
- para. (c): this paragraph does not permit general prevention directed against a person perceived as dangerous;
- para. (c) only gives a means of preventing offences which are concrete and specific as regards place and time of commission and victims;
- detention must be effected for purpose of bringing detainee before a competent legal authority
- authorities had not mentioned a concrete and specific offence.

3. *Al Husin v. Bosnia and Herzegovina,* judgment of 7 February 2012:
- para. (f): under this paragraph, all that is required is that deportation proceedings be in progress and prosecuted with due diligence;
- deprivation must be lawful;
- para. (c): this paragraph may only be used to prevent offences that are concrete and specific as regards place and time of commission and victims;
- must be with view to bringing detainee before competent legal authority;
- no concrete and specific offence was stated by the authorities in relation to the initial period of detention so that period of detention was in violation.

4. *Hadžić and Suljić and others v. Bosnia and Herzegovina,* judgment of 7 June 2011:
- general principles in relation to unlawfulness of detention restated in *Tokić and others;*
- must be a relationship between ground of permitted deprivation of liberty relied on and place and condition of detention;
- detention of mental health patient – only lawful if effected in hospital, clinic or other appropriate institution;
- first applicant detained almost three years; second applicant detained almost five years – inappropriate institutions.

5. *Halilović v. Bosnia and Herzegovina,* judgment of 24 November 2009:
- case found to be nearly identical to *Tokić and others,* where Court found violation;
- no argument to distinguish this;
- psychiatric detention was pursuant to an administrative decision, not a civil court decision;
- detention unlawful for failure to comply with essential procedural requirement.

6. *Tokić and others v. Bosnia and Herzegovina,* judgment of 8 July 2008:
- detention must take place in accordance with a procedure prescribed by law;
- reference to the substantive and procedural rules of national law;
- detention must also be in keeping with aim of Article 5 – prevention of arbitrary detention;
- three minimum conditions for depriving liberty due to unsoundness of mind;
- must be reliably shown to be unsound of mind;
- mental disorder must be of a kind or degree warranting compulsory confinement;
- validity of continued confinement depends on the persistence of such a disorder;
- need a relationship between ground of deprivation and place and condition of detention;
- detention of person as mental health patient only lawful if effected in hospital, clinic or other appropriate institution;
- failure to comply with the lawfulness requirement;
- not necessary to examine whether the Zenica Forensic Psychiatric Annex was an appropriate institution.

Cases where no violation was found

1. *Al Hamdani v. Bosnia and Herzegovina,* judgment of 7 February 2012:
- this period of detention was conducted in strict compliance with domestic law;
- no evidence of bad faith;
- no evidence of arbitrariness;
- detention was in suitable conditions.

2. *Al Husin v. Bosnia and Herzegovina,* judgment of 7 February 2012:
- in respect of second period of detention – was conducted in in compliance with national law
- no bad faith;
- not detained in unsuitable conditions;
- no arbitrariness.

3. *Palić v. Bosnia and Herzegovina,* judgment of 15 February 2011:
- Article 5 requires authorities to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and not seen since;
- judgment also rendered in respect of: Article 2 [no violation]; Article 3 [no violation].

ARTICLE 6 – RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
   a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   b. to have adequate time and facilities for the preparation of his defence;
   c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Cases where a violation was found

1. *Đurić and others v. Bosnia and Herzegovina,* judgment of 20 January 2015:
- examined the adequacy of the Republika Srpska's settlement plan for the enforcement of final domestic judgments awarding war damages;
- the proposal of 20 years too long in light of the already lengthy delay;
- lack of funds not an excuse for not honouring a judgment debt;
- such further delay imposes an individual and excessive burden on the creditors concerned;
- compensation for non-pecuniary damage is intended to constitute compliance and is commended by the Court;
- nevertheless, the settlement plan in violation;
- judgment also rendered in respect of Article 1 of Protocol No. 1 [violation].

2. *Avdić and others v. Bosnia and Herzegovina,* judgment of 19 November 2013:
- no merits determination of civil rights and obligations at national level;
- failure to provide access to court.

3. *Đukić v. Bosnia and Herzegovina,* judgment of 19 June 2012:
- obligation to enforce final domestic court decision;
- legal certainty;
- requiring applicant to pursue another set of civil proceedings [to enforce] after he has already obtained a final judgment in his favour is placing an excessive burden on applicant;
- more than 6 years since judgment became final;
- judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation].

4. *Murtić and Ćerimović v. Bosnia and Herzegovina,* judgment of 19 June 2012:
- enforcement as integral part of hearing;
- more than 5 years delay in enforcing;
- such delay in past had been considered excessive;
- judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation].

5. *Bobić v. Bosnia and Herzegovina,* judgment of 3 May 2012:
- general principles on non-enforcement of domestic judgments set out in *Jeličić;*
- requirement of enforcement;
- more than 4 years delay in enforcing;
- judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation].

6. *Runić and others v. Bosnia and Herzegovina,* judgment of 15 November 2011:
- State authorities cannot cite lack of funds as excuse for failure to honour judgment debt;
- non-enforcement of between 3 and almost 8 years;
- such delays in the past were considered excessive;
- judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation].

7. Šekerović and Pašalić v. Bosnia and Herzegovina, judgment of 8 March 2011:
- non-enforcement of the decision of Human Rights Chamber of BiH;
- judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation]; Article 14 in conjunction with Article 6 and Article 1 of Protocol No. 1 [violation]; Article 46.

Cases where a violation was found	**8. *Čolic and others v. Bosnia and Herzegovina,* judgment of 10 November 2009:** ▪ Leading case in relation to the problem of non-enforcement of final domestic court decisions awarding claims for war damage; ▪ more than 4 years passed without enforcement; ▪ judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation]; Article 46. **9. *Milisavljević v. Bosnia and Herzegovina,* judgment of 3 March 2009:** ▪ non-enforcement of the decision of Human Rights Chamber of BiH; ▪ more than 5 years without enforcement; ▪ no justification provided for the delay; ▪ judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation]. **10. *Pralica v. Bosnia and Herzegovina,* judgment of 6 January 2009:** ▪ analogised to *Jeličić;* ▪ more than 6 years of non-enforcement post-ratification; ▪ judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation]. **11. *Kudić v. Bosnia and Herzegovina,* judgment of 9 December 2008:** ▪ analogised to *Jeličić;* ▪ more than 5 years of non-enforcement post-ratification; ▪ judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation]. **12. *Pejaković and others v. Bosnia and Herzegovina,* judgment of 18 December 2007:** ▪ analogised to *Jeličić;* ▪ Government failed to substantiate their claim that the enforcement of the judgments would endanger macroeconomic stability and the fiscal sustainability of the State; ▪ State authorities cannot cite lack of funds as excuse for not honouring judgment debt; ▪ judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation]. **13. *Karanović and others v. Bosnia and Herzegovina,* judgment of 20 November 2007:** ▪ more than 4 years of non-enforcement and no payment of compensation; ▪ judgment also rendered in respect of: Article 46. **14. *Jeličić v Bosnia and Herzegovina,* judgment of 10 October 2006:** ▪ leading case in relation to the problem of non-enforcement of the final domestic court decisions awarding the "old" foreign currency savings deposited in the domestic banks; ▪ importance of enforcement; ▪ inability of State authorities to cite lack of funds as excuse not to honour a judgment debt; ▪ payment would not be a significant burden for the State; ▪ payment would not result in collapse of State economy; ▪ applicant should not be prevented from benefitting from the success of her litigation on the ground of alleged financial difficulties experienced by the State; ▪ more than 4 years of non-enforcement post-ratification; ▪ judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation].
Cases where no violation was found	**1. *Lončar v. Bosnia and Herzegovina,* judgment of 25 February 2014:** ▪ statutory time-limits for bringing a claim have a legitimate aim; ▪ margin of appreciation is accorded to States in regulating access in this way; ▪ the circumstances of this case did not involve a disproportionate restriction on access.

ARTICLE 7 – NO PUNISHMENT WITHOUT LAW

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Cases where a violation was found

1. *Maktouf and Damnjanović v. Bosnia and Herzegovina,* Grand Chamber judgment of 18 July 2013:
- more stringent criminal law applied than the one applicable at the time of the commission of the offences in question;
- Article 7 provides effective safeguards against arbitrary prosecution, conviction and punishment;
- not confined to prohibiting the retrospective application of criminal law to the accused's disadvantage but also embodies the principle that only the law can define a crime or prescribe a penalty;
- offence must be clearly defined in law;
- individual must be able to know from the wording of the relevant provision, with assistance from lawyers or court if need be, the acts and omissions making him criminally liable;
- law needs to be accessible and foreseeable.

ARTICLE 8 – RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Cases where a violation was found

1. *Šobota-Gajić v. Bosnia and Herzegovina,* judgment of 6 November 2007:
- mother-son relationship as constituting 'family life';
- requirement of prevention of arbitrariness;
- obligation on State authorities to facilitate reunion;
- obligation not absolute;
- may need preparation to facilitate reunion – not done here;
- obligation to apply coercion limited by freedoms of all concerned;
- national authorities to strike a fair balance;
- need for swiftness of implementation of measures taken;
- situation lasted more than 4 and a half years after ratification;
- responsibility not attributable to the applicant here;
- local police refused to provide assistance.

ARTICLE 9 – FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

No judgments have been rendered in respect of this Article.

ARTICLE 10 – FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Cases where no violation was found	
	1. *Medžlis Islamske zajednice Brčko and others v. Bosnia and Herzegovina,* judgment of 13 October 2015: ▪ the applicants had intended to inform those in authority about certain irregularities on matters of public interest to prompt an investigation; this letter, sent privately, was subsequently published (without their knowledge) and the applicants were held liable for defamation and paid damages; ▪ the decisions of the domestic courts and award of damages against the applicants was an interference, this interference was prescribed by domestic law and that it pursued a legitimate aim (protection of reputation); the key question was whether the measure was necessary in a democratic society; ▪ the Court has previously observed that it may be necessary to protect public servants from offensive, abusive and defamatory attacks calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold; in this case, the Court was ready to accept that a candidate for the position of a director of a public radio may be that category of official; ▪ however, the grievances were submitted in a private capacity so the requirements of protection were not about the freedom of the press but against the applicants' right to report irregularities in the conduct of an official to a body competent to deal with such complaints; ▪ that citizens should be able to notify competent state officials about the conduct of civil servants which appears irregular or unlawful is one of the precepts of the rule of law; ▪ a distinction was drawn between facts and value judgments but it was noted that even value judgments without any factual basis can be excessive; ▪ the domestic courts correctly concluded the applicants had acted negligently in reporting alleged misconduct; ▪ the Applicants had simply passed on information they had received without making a reasonable effort to verify accuracy; ▪ the Court found that the solution of the domestic courts struck a fair balance between the competing interests of the claimant and applicants and the reasons given to justify the decision were "relevant and sufficient" and met a "pressing social need"; the award of damages was not disproportionate.

ARTICLE 11 – FREEDOM OF ASSEMBLY AND ASSOCIATION

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

No judgments have been rendered in respect of this Article.

ARTICLE 12 – RIGHT TO MARRY

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

No judgments have been rendered in respect of this Article.

ARTICLE 13 – RIGHT TO AN EFFECTIVE REMEDY

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Cases where a violation was found	
	1. *Alisic and others v. Bosnia and Herzegovina,* Croatia, Serbia, Slovenia and Macedonia (GC), judgment of 16 July 2014: ▪ Article 13 in conjunction with Article 1 of Protocol No. 1 and Article 46; violation not found in respect of Bosnia and Herzegovina; **2. *Rodić and others v. Bosnia and Herzegovina,* judgment of 27 May 2008:** ▪ Violation of Article 13 in conjunction with Article 3.

ARTICLE 14 – PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Cases where a violation was found

1. *Zornić v. Bosnia and Herzegovina,* judgment of 15 July 2014:
- prohibition on an applicant running for the House of Peoples for failure to declare affiliation with a constituent peoples, but as a citizen of BiH;
- judgment also rendered in respect of Article 3 of Protocol No. 1 [violation]; Article 1 of Protocol No. 12 [violation].

2. *Šekerović and Pašalic v. Bosnia and Herzegovina,* judgment of 8 March 2011:
- in conjunction with Article 6 and Article 1 of Protocol No. 1;
- meaning of discrimination;
- treating different, without an objective and reasonable justification, persons in similar situations;
- lack of legitimate aim and reasonable relationship of proportionality between means employed and aim sought to be realised is most relevant;
- concerned a formerly internally displaced person;
- judgment also rendered in respect of: Article 6 [violation]; Article 1 of Protocol No. 1 [violation]; Article 46.

3. *Sejdić and Finci v. Bosnia and Herzegovina,* judgment of 22 December 2009:
- in conjunction with Article 3 of Protocol No. 1;
- concerned Roma and Jewish individuals wishing to submit candidacy for the Presidency of BiH and the House of People of the Parliamentary Assembly of BiH;
- meaning of discrimination;
- treating differently without an objective and reasonable justification, persons in similar situations;
- means that distinction does not pursue a legitimate aim and there is no reasonable relationship of proportionality between the means employed and the aims sought to be realised;
- margin of appreciation varies according to circumstances, subject matter and background;
- ethnicity and race are related concepts;
- race: biological classification of human beings into subspecies on the basis of morphological features such as skin colour or facial characteristics;
- ethnicity: societal groups marked in particular by common nationality, religious faith, shared language or cultural and traditional origins and backgrounds;
- racial discrimination as a particularly egregious form of discrimination;
- objective and reasonable justification for race and ethnic discrimination must be interpreted as strictly as possible;
- contemporary democratic society built on principles of pluralism and respect for different cultures;
- Article 14 does not prevent differential treatment to tackle factual inequalities;
- failure to attempt to correct inequality through different treatment may itself breach Convention;
- judgment also rendered in respect of: Article 1 of Protocol No. 12.

Cases where no violation was found

1. *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia,* judgment of 6 November 2012:
- in conjunction with Article 1 of Protocol No. 1;
- no violation had been found against Bosnia for Article 1 of Protocol No. 1;
- judgment also rendered in respect of: Article 13 [no violation].

PROTOCOL 1, ARTICLE 1 – PROTECTION OF PROPERTY

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.

Cases where a violation was found

1. *Đurić and others v. Bosnia and Herzegovina,* judgment of 20 January 2015:
- examined the adequacy of the Republika Srpska's settlement plan for the enforcement of final domestic judgments awarding war damages;
- the proposal of 20 years too long in light of the already lengthy delay;
- lack of funds not an excuse for not honouring a judgment debt;
- such further delay imposes an individual and excessive burden on the creditors concerned;
- compensation for non-pecuniary damage is intended to constitute compliance and is commended by the Court;
- nevertheless, the settlement plan in violation;
- judgment also rendered in respect of Article 6 [violation].

2. *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia* (GC), judgment of 16 July 2014:
- failure to allow applicants to withdraw their "old" foreign currency savings deposited in the foreign banks *Ljubljanska bank d.d. Ljubljana* and *Investbank a.d. Belgrade;*
- no violation was found under this Article in respect of Bosnia and Herzegovina;
- judgment also rendered in respect of Article 13; Article 46.

3. *Đukić v. Bosnia and Herzegovina,* judgment of 19 June 2012:
- inability to obtain execution of final judgment as an interference;
- final judgment created a 'legitimate expectation' protected by Article 1 of Protocol No. 1 that it would be enforced;
- judgment also rendered in respect of: Article 6 [violation].

4. *Murtić and Ćerimović v. Bosnia and Herzegovina,* judgment of 19 June 2012:
- non-enforcement of the decision of the Human Rights Chamber of BiH as an interference;
- judgment also rendered in respect of: Article 6 [violation].

5. *Bobić v. Bosnia and Herzegovina,* judgment of 3 May 2012:
- non-enforcement of the decision of the Constitutional Court of BiH as an interference;
- judgment also rendered in respect of: Article 6 [violation].

6. *Mago and others v. Bosnia and Herzegovina,* judgment of 3 May 2012:
- general principles on Article 1 of Protocol No. 1 laid out;
- any interference by state authorities with peaceful enjoyment of possessions must be lawful;
- law upon which the interference is based should be in accordance with the domestic law of the state including its constitution.
- deprivation of property for no reason other than to confer a private benefit on other private party cannot be in the public interest.

7. *Runić and others v. Bosnia and Herzegovina,* judgment of 15 November 2011:
- general principles on non-enforcement of the domestic court decisions awarding claims for war damage set out in Čolić;
- non-enforcement as an interference;
- judgment also rendered in respect of: Article 6 [violation].

8. *Šekerović and Pašalić v. Bosnia and Herzegovina,* judgment of 8 March 2011:
- non-enforcement of the decision of the Human Rights Chamber of BiH as an interference;
- judgment also rendered in respect of: Article 6 [violation]; Article 14 in conjunction with Article 6 and Article 1 of Protocol No. 1 [violation]; Article 46.

9. *Đokic v. Bosnia and Herzegovina,* judgment of 27 May 2010:
- legitimate aim;
- striking a fair balance;
- cannot deprive to confer a private benefit on a private party; that is not in the public interest;
- however, can be public interest even if the community at large has no direct use or enjoyment of the property.

10. *Čolic and others v. Bosnia and Herzegovina,* judgment of 10 November 2009:
- non-enforcement of the final domestic court decision as an interference;
- judgment also rendered in respect of Article 6 [violation]; Article 46.

Cases where a violation was found	**11. *Suljagić v. Bosnia and Herzegovina,* judgment of 3 November 2009:** ▪ three distinct rules; ▪ lawfulness; ▪ fair balance; ▪ margin of appreciation; ▪ comparison made with how other States handled similar situation (financial crisis); ▪ judgment also rendered in respect of: Article 46. **12. *Milisavljević v. Bosnia and Herzegovina,* judgment of 3 March 2009:** ▪ non-enforcement of the decision of the Human Rights Chamber as an interference; ▪ judgment also rendered in respect of Article 6 [violation]. **13. *Pralica v. Bosnia and Herzegovina,* judgment of 6 January 2009:** ▪ non-enforcement as interference; ▪ judgment also rendered in respect of: Article 6 [violation]. **14. *Kudić v. Bosnia and Herzegovina,* judgment of 9 December 2008:** ▪ non-enforcement as interference; ▪ judgment also rendered in respect of Article 6 [violation]. **15. *Pejaković and others v. Bosnia and Herzegovina,* judgment of 18 December 2007:** ▪ non-enforcement as interference; ▪ judgment also rendered in respect of: Article 6 [violation]. **16. *Jeličić v. Bosnia and Herzegovina,* judgment of 10 December 2006:** ▪ non-enforcement as interference with the right to peaceful enjoyment of possessions; ▪ judgment also rendered in respect of: Article 6 [violation].
Cases where no violation was found	**1. *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia,* judgment of 6 November 2012:** ▪ banks based in Serbia and Slovenia remained liable for 'old' foreign currency savings in their branches, irrespective of their location; ▪ judgment also rendered in respect of: Article 13 [no violation]; Article 14 [no violation].

ARTICLE 4 OF PROTOCOL NO. 7 – RIGHT NOT TO BE TRIED OR PUNISHED TWICE

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.

Cases where a violation was found	**1. *Muslija v. Bosnia and Herzegovina,* judgment of 14 January 2014:** ▪ the proceedings against the applicant were found to concern essentially the same offence of which he had already been convicted; ▪ legal characterisation of an offence under national law is not determinative; ▪ Engel criteria: these determine whether there is a criminal charge – national law classification, nature of the offence, degree of severity of the penalty; ▪ guaranteeing human dignity and public order are values and interests normally falling within criminal law; ▪ the provision was directed towards all citizens not just a group with special status; ▪ the "minor" nature of the acts does not necessarily exclude its classification as "criminal"; ▪ primary aims in establishing the offence were punishment and deterrence which are recognised as characteristic features of criminal penalties.

ARTICLE 1 OF PROTOCOL NO. 12 - GENERAL PROHIBITION OF DISCRIMINATION

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Cases where a violation was found

1. *Zornić v. Bosnia and Herzegovina,* judgment of 15 July 2014:
- the requirement that the applicant could only declare her affiliation with a "constituent people" but could not declare that she was a citizen of BiH in order to run for the House of Peoples in Bosnia and Herzegovina, was a violation.;
- judgment also rendered in respect of Article 14 [violation]; Article 3 of Protocol No. 1 [violation].

2. *Sejdić and Finci v. Bosnia and Herzegovina,* judgment of 22 December 2009:
- this Article introduces a general prohibition on discrimination;
- this concerns 'any right set forth by law';
- first time that this provision was considered by the Court;
- the Court applies the definition of discrimination as in Article 14;
- judgment also rendered in respect of: Article 14 in conjunction with Article 3 of Protocol No. 1 [violation].

ARTICLE 46 – BINDING FORCE AND EXECUTION OF JUDGMENTS

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Cases where Article 46 was explicitly raised

1. *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia* (GC), judgment of 16 July 2014:
- the Court required Slovenia and Serbia to pay compensation due to the applicants resulting from their inability to use their foreign currency savings;
- judgment also rendered in respect of Article 13 [violation]; Article 1 of Protocol No. 1 [violation].

2. *Šekerović and Pašalić v. Bosnia and Herzegovina,* judgment of 8 March 2011:
- the Court required amendment to domestic legislation to enable applicants to apply for FBH Fund pensions;
- action to be taken within six months from the date on which the judgment becomes final [16. 03. 12];
- judgment also rendered in respect of: Article 6 [violation]; Article 1 of Protocol No. 1 [violation]; Article 14 in conjunction with Article 6 and Article 1 of Protocol No. 1.

3. *Čolić and others v. Bosnia and Herzegovina,* judgment of 10 November 2009:
- the Court noted the large volume of similar claims that were brought and required the state to remedy the underlying situation as well as ensure enforcement of the current decisions and ensure redress to the applicants;
- judgment also rendered in respect of: Article 6 [violation]; Article 1 of Protocol No. 1 [violation].

4. *Suljagić v. Bosnia and Herzegovina,* judgment of 3 November 2009:
- pilot judgment;
- general measures at national level called for;
- government bonds must be issued and outstanding instalments paid;
- actions to be completed within six months from the date on which the judgment becomes final [03. 08. 2010];
- judgment also rendered in respect of: Article 1 of Protocol No. 1 [violation].

Cases where Article 46 was explicitly raised

5. *Karanović v. Bosnia and Herzegovina,* judgment of 20 November 2007:

- the State must secure the enforcement of the Human Rights Chamber's decision at issue by way of transferring the applicant to the FBH Pension Fund as well as paying the applicant EUR 2,000 as well as EUR 1,500 in respect of non-pecuniary damage;
- action to be completed within three months from the date on which the judgment becomes final [20. 05. 2008];
- judgment also rendered in respect of: Article 6 [violation].

AIRE Centar

AIRE Centar je nevladina organizacija koja unapređuje svijest o pravima zajemčenim evropskim pravom i pruža podršku žrtvama povreda ljudskih prava. Tim međunarodnih pravnika pruža informacije, podršku i savjete o pravnim standardima Evropske unije i Savjeta Evrope. Tim ima bogato iskustvo u zastupanju podnosilaca predstavki pred Evropskim sudom za ljudska prava u Strazburu i do sada je učestvovao u više od 150 postupaka pred tim sudom. AIRE centar je tokom poslednjih 20 godina sproveo i učestvovao u brojnim seminarima u Centralnoj i Istočnoj Evropi, koji su organizovani za advokate, sudije, državne službenike i nevladine organizacije.

AIRE centar se naročito usredsređuje na zemlje Zapadnog Balkana, u kojima više od 15 godina sprovodi niz dugoročnih programa unapređenja vladavine prava, u partnerstvu sa nacionalnim institucijama i sudovima. Svi naši programi imaju za cilj da unaprijede primjenu Evropske konvencije o ljudskim pravima na nacionalnom nivou, da doprinesu procesu evropskih integracija zemalja regiona putem jačanja vladavine prava i punog priznanja ljudskih prava u njima, kao i da podstiču regionalnu saradnju sudija i pravnih stručnjaka.

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The AIRE Centre is a non-governmental organisation that promotes awareness of European law rights and provides support for victims of human rights violations. A team of international lawyers provides information, support and advice on European Union and Council of Europe legal standards. It has particular experience in litigation before the European Court of Human Rights in Strasbourg and has participated in over 150 cases. Over the last 20 years the AIRE Centre has conducted and participated in a number of seminars in Central and Eastern Europe for the benefit of lawyers, judges, government officials and non-governmental organisations.

The AIRE Centre has been focusing on the countries of Western Balkans in particular, where it has been for over decade and a half conducting a series of long-term rule of law programmes in partnership with domestic institutions and courts. Our aim throughout these programmes has been to promote the national implementation of the European Convention on Human Rights, assist the process of European integration by strengthening the rule of law and full recognition of human rights, and encourage regional cooperation amongst judges and legal professionals.

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