



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

SECOND SECTION

DECISION

Application no.45599/08
Milomir ŠEJIĆ against Serbia
and 2 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 17 September 2013 as a Chamber composed of:

Guido Raimondi, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*

and Stanley Naismith, *Section Registrar*,

Having regard to the above applications lodged between 15 September 2008 and 15 December 2008,

Having regard to the decision of 9 October 2012,

Having deliberated, decides as follows:

THE FACTS AND PROCEDURE

The cases originated in three separate applications against Serbia (see list appended), lodged with the Court on a basis of Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).

The person stated as the applicants in the application forms were Mr Milomir Šejić, (application no. 45599/08), Mr Petar Perović (application no. 46827/08) and Mr Borivoje Đurašević (application no. 13092/09). They were all Serbian nationals who were born in 1947, 1952 and 1957, respectively. Ms D. Todorović, a lawyer practising in Kraljevo, claimed to

have represented the applicants before the Court. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

The applications were lodged on 15 September 2008, 22 September 2008 and 15 December 2008 respectively in the names of Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević. Enclosed with the application forms were the powers-of-attorney dated 30 September 2008, 19 September 2008 and 11 December 2008 and signed “*Šejić Milomir*”, “*Perović Petar*” and “*Đurašević Borivoje*” authorising Ms Todorović to represent them before the Court. The powers-of-attorney were also signed by Ms Todorović and stamped with her stamp.

Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević have obtained final court judgments ordering one socially/State-owned company to pay them certain sums on account of salary arrears and other employment-related benefits as well as legal costs. Those decisions remained unenforced at the time of lodging the applications.

On the basis of signed declarations according to which the Government undertook to pay to each applicant 5,500 euros in respect of non-pecuniary damages and legal costs plus the sums awarded in the final domestic decisions, on 10 January 2012 and 14 February 2012, respectively the Court decided to strike the applications out its list of cases.

By letters of 7 May 2012 and 15 June 2012 the Government notified the Court that the Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević had died on 26 February 2002, 12 April 2003 and 30 October 2007 respectively, that is before the applications had been lodged on 15 September 2008, 22 September 2008 and 15 December 2008 respectively.

In her replies of 5 May 2012, 4 June 2012, 20 June 2012 and 25 June 2012, respectively Ms Todorović did not contest the fact that Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević had died before the applications were lodged but stated that their respective wives had signed the impugned powers-of-attorney by putting the names of their deceased husbands. In support of her explanations Ms Todorović submitted written statements signed by the wives of Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević in which they confirmed her assertions.

On 9 October 2012 the Court decided to restore the application to its list of cases.

THE LAW

The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

The Court reiterates that an application cannot be brought in the name of a deceased person, since a deceased person is unable, even through a representative, to lodge an application with the Court (see *Yaşa v. Turkey*, no. 22495/93, Commission's report of 8 April 1997, § 88, *Reports of Judgments and Decisions* 1998-VI). As it is undisputed that Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević had died before their representative introduced the applications in their names, it follows that none of the cases here at issue has been brought by a person who can be regarded as an applicant for the purposes of Article 34 of the Convention (see, *mutatis mutandis*, *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009). Therefore, the present applications, as far as they concern Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević, are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 (see *Kaya and Polat v. Turkey* (dec.), nos. 2794/05 and 40345/05, 21 October 2008).

As regards the question as to whether the wives of Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević as their legal successors can pursue the applications introduced in the name of their deceased husbands, the Court considers that, because Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević had died before their respective applications were introduced, the present cases should be distinguished from cases in which an applicant's heir has been permitted to pursue an application which has already been introduced. In other words, the wives of Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević as their respective heirs cannot pursue the application in their place because they had actually never taken part in proceedings before the Court (see *Dupin v. Croatia* (dec.), no. 36868/03, 7 July 2009). Finally, the Court observes that the wives of Mr Milomir Šejić, Mr Petar Perović and Mr Borivoje Đurašević as heirs should have lodged applications in that capacity, namely in their own names, but they have failed to do so.

It follows that the applications are incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth
1.	45599/08	15/09/2008	Milomir ŠEJIĆ 01/01/1947
2.	46827/08	22/09/2008	Petar PEROVIĆ 01/01/1952
3.	13092/09	15/12/2008	Borivoje ĐURAŠEVIĆ 02/01/1957