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

# THIRD SECTION

# DECISION

Application no. 52210/09
Ibrahim JAHJAGA
against Serbia

The European Court of Human Rights (Third Section), sitting on 9 February 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda, *judges,*

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 28 September 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant.

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Ibrahim Jahjaga, is a Serbian national who was born in 1946. He is of Albanian ethnic origin and lives in Kosovo[1]. The applicant is represented before the Court by Mr I. Olujić, a lawyer practising in Belgrade.

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

[1] All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

3. In 1990 A.A., formally registered as resident in Kosovo, had two foreign-currency accounts with the Kosovo branch of *Jugobanka AD*.

4. Following the financial collapse of numerous banks in Serbia, in 1998 and 2002 the Serbian Parliament enacted specific legislation providing that foreign-currency deposits held in those banks, including the bank at issue, would be added to the public debt. The legislature went on to set the time-frame (2016) and the amounts, including interest, to be paid back to the banks' former clients. The legislation also explicitly provided that any foreign currency-related judicial proceedings were to be discontinued.

5. As of 2002, A.A. appears to have had 34,067.07 euros (EUR) in one account and EUR 40,857.37 in another.

6. On 2 April 2004 the Serbian Government adopted a decree stating that anyone with foreign-currency savings in the Kosovo branch of *Jugobanka AD* would have the same rights as other savers, provided that they could prove that they had been resident in Serbia on 4 July 2002 and were Serbian taxpayers.

7. On 26 August 2004, A.A. formally authorised the applicant, by way of a court-certified document, to "take over all the rights concerning the foreign currency savings (withdrawal of money, its transfer and all other rights concerning the savings)".

8. As a resident of Kosovo, the applicant is currently not a Serbian taxpayer. As of 2004, however, both A.A. and the applicant had Serbian citizenship. They would appear not to have renounced it thereafter.

## COMPLAINT

9. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant essentially complains of the discriminatory nature of the Serbian authorities' refusal to release any of his foreign-currency savings, together with the interest due.

## THE LAW

10. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "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."

## A. The parties' submissions

11. The Government claimed that the applicant's complaint was inadmissible on various grounds. Notably, they contended that the application was incompatible *ratione personae* and that the applicant had failed to exhaust effective domestic legal remedies. They submitted that it was also manifestly ill-founded.

12. The Government further submitted that the applicant had failed to prove that the foreign-currency savings indeed belonged to him. In their view, the mere assertion to that effect by the applicant together with A.A.'s authorisation concerning the bank account did not amount to a transfer of property rights from A.A. to the applicant. The Government maintained that authorisation such as that given to the applicant only allowed him to manage the bank account on behalf of A.A. There was nothing in the authorisation document to indicate that A.A. had renounced his rights over the content of the account and ceded it to the applicant. According to the Government, for a valid transfer of ownership rights, a different legal form would have been required, such as a contract or a court order. Lastly, the Government submitted that A.A. was still the owner of the bank account and the funds deposited in it.

13. The applicant disagreed and repeated that the bank account and the funds deposited in it in fact belonged to him.

## B. The Court's assessment

14. The Court does not consider it necessary to examine all the admissibility objections raised by the Government, as the present case is in any event inadmissible for the following reasons.

15. An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. Where the proprietary interest is in the nature of a claim, it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled domestic case-law confirming it (see, amongst many authorities, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII; *Brosset-Triboulet and Others v. France* [GC], no. 34078/02, § 66, 29 March 2010; and *Maria Atanasiu and Others*

*v. Romania*, nos. 30767/05 and 33800/06, §§ 134 and 137, 12 October 2010).

16. Turning to the present case, the Court notes that on 26 August 2004 A.A. authorised the applicant to manage his bank account. That authorisation allowed the applicant to handle the account by actions such as withdrawing and transferring funds. However, there was nothing in the authorisation document to suggest that A.A. had ceded his ownership rights over the bank account to the applicant or that he had renounced his right to manage the account himself.

17. In view of the above considerations, the applicant clearly had neither possession of the bank account nor a legitimate expectation under the relevant domestic law, as applied and interpreted by the domestic authorities, that he would acquire an entitlement to collect the foreign-currency savings from the State. Consequently, the facts of the case do not fall within the ambit of Article 1 of Protocol No. 1.

18. It follows that the applicant's complaints under Article 1 of Protocol No. 1 and Article 14 of the Convention are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 3 March 2016.

Marialena Tsirli
Deputy Registrar

Luis López Guerra
President