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

SECOND SECTION

CASE OF ILIĆ v. SERBIA

(Application no. 30132/04)

JUDGMENT

STRASBOURG

9 October 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ilić v. Serbia,

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

Mrs F. TULKENS, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI,
Mr D. POPOVIĆ, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 30132/04) against the State Union of Serbia and Montenegro, succeeded by Serbia on 3 June 2006 (see paragraph 49 below), lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by, at that time, a citizen of the State Union of Serbia and Montenegro, Mr Aleksandar Ilić ("the applicant"), on 22 June 2004.

2. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia ("the Government") were represented by their Agent, Mr S. Carić.

3. On 4 May 2006 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was also decided that the merits of the application would be examined together with its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Belgrade, Serbia.

A. Administrative proceedings

5. On 23 March 1960 an apartment building owned by the applicant's father was nationalised by the Yugoslav communist authorities.

6. On 1 December 1960 the Palilula municipal authorities declared that one specific flat in the apartment building was to remain the property of the applicant's father.

7. Following his father's death, the applicant inherited the legal title to this flat. He could not, however, effectively enjoy it because the flat was subjected to a special "protected tenancy regime" and, as such, physically occupied by other persons whose rent was controlled by the public authorities.

8. In 1992 a new Housing Act made it possible, under certain conditions, for the owners of such flats to regain effective possession (see paragraphs 39-41 below).

9. On 19 January 1993 the Housing Department of the Palilula Municipality (*Odeljenje za komunalno-stambene poslove opštine Palilula*) accepted the applicant's eviction request and ordered the same Municipality to provide the "protected tenant" in question with adequate alternative accommodation by 31 December 1995, at the latest.

10. On 17 August 1994 the Housing Department of the Palilula Municipality adopted another decision to the same effect (360-440/93-II-01). In so doing, it confirmed its ruling of 19 January 1993 and explicitly ordered the protected tenant's eviction by 31 December 1995.

11. On 1 December 1994 the Housing Department of the City of Belgrade (*Sekretarijat za komunalne i stambene poslove grada Beograda*) rejected the appeal filed by the Municipal Attorney-General's Office (*Javno pravobranilaštvo opštine Palilula*) and the decision of 17 August 1994 thereby became final.

12. On 4 August 2006 the Housing Department of the Municipality of Palilula offered the original protected tenant's legal heir, Ms B.K., specific alternative accommodation but then went on to note that a "priority list" would nevertheless have to be considered.

13. Ms B.K. stated that she had continued living in the flat, following the former protected tenant's death, together with her son, her daughter-in-law and their minor child. She added that the flat offered was some

20 square meters smaller than the one she currently lived in, and stated that it was not located in the city centre.

14. On 10 August 2006 the Housing Department of the Municipality of Palilula reaffirmed its offer but Mr S.K., Ms B.K.'s son, stated that the flat in question was inadequate in terms of its overall size as well as the number of rooms available. He added, however, that he and his family would provide the municipality with their final answer within ten to fifteen days.

B. Civil proceedings

15. In 1996 the applicant filed a civil claim against the Municipality of Palilula with the First Municipal Court in Belgrade (*Prvi opštinski sud u Beogradu*). He sought compensation for the pecuniary damage sustained due to his continuing inability to use/lease the flat in question.

16. On 2 September 1996 the First Municipal Court in Belgrade ("the Municipal Court") ruled partly in favour of the applicant.

17. On 30 June 1997 the District Court in Belgrade (*Okružni sud u Beogradu*) quashed this decision on appeal and ordered a retrial.

18. On 26 June 2001 the Municipal Court ruled against the applicant.

19. On 27 December 2001 this judgment was upheld by the District Court in Belgrade ("the District Court").

20. On 18 March 2002 the applicant filed an appeal on points of law (*revizija*).

21. On 9 October 2003 the Supreme Court (*Vrhovni sud Srbije*) quashed the judgments adopted at first and second instance and ordered a retrial before the Municipal Court. It held, *inter alia*, that the Municipality of Palilula was, indeed, obliged to enforce the decision of 17 August 1994, ordering the protected tenant's eviction, and, moreover, that the deadline for so doing had already expired. The court concluded that the applicant's claim thus had to be reconsidered on its merits and then went on to state that there was no legal avenue at the applicant's disposal which could have compelled the said municipality to honour "its own final and enforceable decision" of 17 August 1994.

22. The applicant received the decision of the Supreme Court on 17 December 2004.

23. On 29 December 2004 the applicant filed a submission with the Municipal Court, attempting to reformulate his original claim. In particular, he requested that the protected tenant be evicted from his flat and provided with adequate alternative accommodation.

24. On 20 January 2005 the Municipal Court rejected the applicant's request (*nije dozvolio preinačenje tužbe*).

25. The applicant subsequently appealed against this decision, but on 28 September 2005 the District Court declared his appeal inadmissible.

26. The proceedings before the Municipal Court therefore continued based on the applicant's initial claim for damages.

27. On 12 April 2006 the Municipal Court ruled in favour of the applicant. It ordered the Municipality of Palilula to pay him 5,318,300 Serbian Dinars ("RSD"), together with statutory interest as of 23 February 2006, in respect of the pecuniary damage suffered, as well as RSD 28,350 in legal costs. The court explained that the damage awarded was equivalent to the difference between the market price of the applicant's flat while "burdened" with a protected tenant and its estimated market value without this burden. It further referred to Article 1 of Protocol No. 1 and stated that the municipality was under a legal obligation to enforce the final eviction order at issue. The Municipality had had, over the years, sufficient funds and available flats in order to provide the applicant's protected tenant with adequate alternative accommodation (see paragraphs 33 and 35 below). Finally, there was no other legal avenue at the applicant's disposal by means of which he could have compelled the municipality to honour its own decision of 17 August 1994.

28. On 14 August 2006 the Municipality of Palilula filed an appeal with the District Court.

29. On 29 November 2006 the District Court quashed the impugned judgment and ordered a retrial at first instance. In its reasoning, *inter alia*, it explained that the applicant's rights were indeed breached but that he had not actually sold the flat in question which is why he was not entitled to the compensation awarded.

30. On 6 March 2007 the applicant reformulated his claim and sought compensation for the market rent which he could otherwise have earned while leasing the flat out to third parties. The applicant also proposed that the Municipal Court appoint an expert whose task would be to carry out the necessary calculation.

31. On 7 June 2007 the Municipal Court ruled partly in favour of the applicant. It ordered the Municipality of Palilula to pay him RSD 3,749,200, together with statutory interest as of 26 April 2007, in respect of the pecuniary damage sought, as well as RSD 28,000 in legal costs. In its reasoning, as regards the failure of the respondent to enforce its own eviction order of 17 August 1994, the Municipal Court reaffirmed its views expressed previously. There is, however, no evidence in the case file that this judgment has become final.

C. Criminal proceedings

32. On 28 June 2002 the applicant filed a criminal complaint with the First Municipal Public Prosecutor's Office in Belgrade (*Prvom opštinskom javnom tužilaštvu*). He alleged that from 1996 to 2000 members of the Executive Council of the Palilula Municipality had mismanaged the

available funding, earmarked for the "resettlement of protected tenants", and misallocated the flats already available for this purpose.

33. On 7 April 2003 the Ministry of Internal Affairs (*Ministarstvo unutrašnjih poslova*) informed the First Municipal Public Prosecutor's Office ("the Public Prosecutor's Office") that from 1994 to 2000 a total of 275 social flats had been "given" to persons in need by the Municipality of Palilula.

34. On 19 May 2003 the Public Prosecutor's Office rejected the applicant's criminal complaint. In so doing, *inter alia*, it explained that: i) no crime had been committed; ii) only two social flats comparable to the applicant's had been available but that they had been given to persons in greater need; and iii) in any event, the Municipality of Palilula did not have the funding needed to secure adequate alternative accommodation for all protected tenants, irrespective of whether or not there was a formal eviction order already issued.

D. Other relevant facts

35. On 2 December 2003, within a subsequent judicial investigation (*istraga*) apparently concerning the same matter, the Municipality of Palilula informed the Municipal Court that from 1992 to September 2003 it had sold 4,018 municipal flats for RSD 24,522,352.01.

36. Secondly, the funds thus obtained were used in accordance with Article 27 of the Housing Act, and the Municipality did not adopt a special programme aimed at building new social housing (see paragraph 39 below).

37. Thirdly, there were 14 "protected tenants" in respect of whom final municipal eviction orders had already been issued but were yet to be enforced.

38. Finally, during the period in question, there were no "adequate" flats needed for the resettlement of the "protected tenants", as required by Article 42 of the Housing Act, which is why the evictions ("resettlement") could not have been carried out (see paragraph 40 below.)

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Housing Act (Zakon o stanovanju; published in OG RS nos. 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98, 26/01 and 101/05)

39. Under Article 27 §§ 1 and 2 funds obtained through the sale of State-owned flats ("*sredstva od stanova prodatih putem otkupa*") shall, "unless the [Housing Act] provides otherwise", be used "solely" for the purpose of providing various social housing loans. Exceptionally, municipalities, as but

one emanation of the State, may also use "a portion" of these funds "for their own development".

40. Article 42 states, *inter alia*, that, by 31 December 2000, municipalities were obliged to ("*opštin[e] ... [su bile] ... dužn[e da]*") secure alternative accommodation ("*obezbed[e] stan za preseljenje*") to all those individuals with the status of a "protected tenant" ("*nosioc[ima] stanarskog prava na stanu u svojini građana*"), namely to individuals who had continued living in flats owned by other private persons whose property had been placed under this regime by the former communist authorities. In other words, the owners, or their legal heirs, could take possession of their flats and the tenants would be moved to other accommodation. For this to occur, however, the owner, or his or her legal heir, would have to have filed a request to this effect and proved that the flat at issue was acquired "as habitable" prior to 26 December 1958. Further, "priority" in securing alternative housing was to be granted to "owners in need" and the alternative accommodation to be given to the protected tenants had to be "adequate". Finally, the municipalities had to treat this issue as a "priority", both in terms of managing the flats already available and as regards channelling the public funds obtained through the sale of State-owned flats into additional housing projects.

41. The deadline referred to above (31 December 2000) was initially 31 December 1995, but had subsequently been extended by the amendments to the Housing Act adopted in 1995.

B. General Administrative Proceedings Act (Zakon o opštem upravnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 55/96, 33/97 and 31/01)

42. Articles 261-278 set out the details concerning the enforcement of final decisions adopted by the respondent State's administrative bodies.

43. In addition, the Supreme Court has consistently held that, pursuant to Article 274 § 3 of the former General Administrative Proceedings Act, as well as Article 264 § 3 of the current General Administrative Proceedings Act, enforcement of eviction orders was to be carried out *ex officio*, in view of the compelling public interest in this respect, and even in the absence of a formal enforcement request filed by the claimant personally (see, for example, *Vrhovni sud Srbije*, *Ubr. 6613/95*).

C. Civil Procedure Act (Zakon o parničnom postupku; published in OG RS no. 125/04)

44. The relevant provisions of this Act read as follows:

Article 10

"The parties have the right to obtain a court decision in respect of their claims and proposals within a reasonable period of time.

It is incumbent upon the court to conduct the proceedings without undue delay and economically."

D. Relevant constitutional provisions

45. Article 25 of the Serbian Constitution (*Ustav Republike Srbije*) published in OG SRS no. 1/90 provided as follows:

"Everyone shall be entitled to compensation for any pecuniary and non-pecuniary damages suffered due to the unlawful or improper conduct of a State official, a State body or a public authority, in accordance with the law.

Such damages shall be covered by the Republic of Serbia or the public authority [in question]."

46. This Constitution was repealed on 8 November 2006, which is when the new Constitution (published in OG RS no. 98/06) entered into force.

47. The substance of Article 35 § 2 of the "new" Constitution corresponds, in its relevant part, to the above-cited text of Article 25 of the previous Constitution.

E. Judges Act (Zakon o sudijama; published in OG RS nos. 63/01, 42/02, 60/02, 17/03, 25/03, 27/03, 29/04, 61/05 and 101/05)

48. The relevant provisions of this Act read as follows:

Article 40a §§ 1 and 2

"The Supreme Court of Serbia shall set up a Supervisory Board ["*Nadzorni odbor*"] ("the Board").

This Board shall be composed of five Supreme Court judges elected for a period of four years by the plenary session of the Supreme Court of Serbia."

Article 40b

"In response to a complaint or *ex officio*, the Board is authorised to oversee judicial proceedings and look into the conduct of individual cases.

Following the conclusion of this process, the Board may initiate, before the High Personnel Council, proceedings for the removal of a judge based on his or her unconscientious or unprofessional conduct, or propose the imposition of other disciplinary measures."

F. The Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro

49. The relevant provisions concerning the Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 12, 13 and 16-25, 19 September 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

50. Under Article 1 of Protocol No. 1, the applicant complained about the non-enforcement of the final eviction order adopted within the administrative proceedings.

51. Article 1 of Protocol No. 1 read as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] 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. Admissibility

1. Compatibility ratione temporis

52. The Government noted that the administrative proceedings were concluded by 1994 but that the respondent State had only ratified the Convention on 3 March 2004. The applicant's complaint was thus incompatible *ratione temporis*.

53. The applicant stated that the final eviction order of 17 August 1994 has yet to be enforced, which is why the violation complained of is clearly of a continuing nature.

54. Given the relevant domestic law and jurisprudence, as well as the undisputed facts of the present case, the Court finds that the respondent State was, and indeed still is, under an *ex officio* obligation to enforce the said eviction order and notes that it had actually attempted to do so on two

separate occasions in 2006 (see paragraphs 5-14 and 43 above). The Government's objection must therefore be dismissed.

2. Compatibility ratione personae

55. In addition or in the alternative, the Government pointed out that on 12 April 2006 and 7 June 2007, respectively, the Municipal Court had accepted the applicant's claim for the recovery of the pecuniary damage sustained as a result of the impugned non-enforcement. The applicant was hence deprived of his "victim status", within the meaning of Article 34 of the Convention.

56. The applicant contested these submissions.

57. The Court recalls that a decision or a measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention complained of (see, for example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

58. Since the proceedings here at issue would appear to be still pending (see paragraph 31 above), the applicant has yet to obtain a "final acknowledgment" of the violations allegedly suffered or be paid compensation for the pecuniary damage sought (see paragraphs 27-31 above). The Court therefore finds that the applicant has retained his victim status and dismisses the Government's objection in this regard.

3. Exhaustion of domestic remedies

(a) Arguments of the parties

59. The Government submitted that the applicant had not exhausted all effective domestic remedies. In the first place, he had failed to complain about the delay in question to the Supreme Court's Supervisory Board (see paragraph 48 above). Secondly, he had not made use of the complaint procedure before the Court of Serbia and Montenegro, while it existed (see paragraph 49 above). Finally, the applicant had failed to bring a separate civil lawsuit under Article 25 of the Constitution (see paragraphs 45-47 above).

60. The applicant maintained that none of the remedies referred to by the Government could be considered effective within the meaning of Article 35 § 1 of the Convention.

(b) Relevant principles

61. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule contained in Article 35 § 1 of the

Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11–12, § 27, and *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, pp. 87-88, § 38). Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine,* no. 40679/98, § 107, 29 April 2003).

62. The Court notes that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69).

63. Finally, the Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning procedural delay is whether or not there is a possibility for the applicant to be provided with direct and speedy redress, rather than the indirect protection of the rights guaranteed under Article 6 (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 195, ECHR 2006, and *Sürmeli v. Germany* [GC], no. 75529/01, § 101, 8 June 2006). In particular, a remedy shall be "effective" if it can be used either to expedite the proceedings at issue or to provide the litigant with adequate redress for delays which have already occurred (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, §§ 157-159, ECHR 2000-XI, *Mifsud v. France* (dec.), [GC], no. 57220/00, § 17, ECHR 2002-VIII, and *Sürmeli v. Germany* [GC], cited above, § 99).

(c) The Court's assessment

64. The Court considers that the applicant could not have been expected to file a complaint with the Supreme Court's Supervisory Board in order to expedite the impugned administrative proceedings, given the fact that the relevant provisions of the Judges Act referred to judicial proceedings only.

65. Further, a separate claim for damages based on Article 25 of the Constitution would have been just as ineffective. In particular, even assuming that the applicant could have obtained compensation for the past delay, the Government have failed to show that such proceedings would have been speedier than any other "ordinary" civil suit, which could have lasted for years and gone through several levels of jurisdiction, or, indeed, that they could have been capable of expediting the enforcement in question

(see, *mutatis mutandis*, *Merit v. Ukraine*, no. 66561/01, § 59, 30 March 2004, and *Scordino v. Italy (no. 1)*, cited above, § 195). On the contrary, the applicant filed a civil claim of this sort in 1996 but has yet to obtain a final judgment in his favour (see paragraphs 15-31 above).

66. Lastly, concerning the Government's submission that the applicant should have filed a complaint with the Court of Serbia and Montenegro, the Court recalls that it has already held that this particular remedy was unavailable until 15 July 2005 and, further, that it remained ineffective until the break up of the State Union of Serbia and Montenegro (see *Matijašević v. Serbia*, cited above, §§ 34-37). The Court sees no reason to depart in the present case from this finding and concludes, therefore, that the applicant was not obliged to exhaust this particular avenue of redress.

67. In view of the above, the Court finds that the applicant's complaint cannot be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention. Accordingly, the Government's objection in this respect must be dismissed.

4. Conclusion

68. The Court considers that the applicant's complaint is also not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. The complaint must therefore be declared admissible.

B. Merits

1. Arguments of the parties

69. The Government recalled that "protected tenancy regimes" were complex and well-known in comparative law, while the usual reason for their introduction, that is a pressing lack of affordable housing, clearly "required time" for its ultimate eradication.

70. The Government stated that the applicant's property rights were limited or controlled, but that he had not been deprived of his ownership of the flat in question or placed under an excessive personal burden in view of the fact that the relevant housing legislation targeted an entire category of owners.

71. Finally, the Government pointed out that the respondent State had every intention of facilitating a just resolution of this longstanding situation and added that the domestic courts have been willing to grant pecuniary damages to other individuals in the applicant's situation, within a separate set of civil proceedings.

72. The applicant noted that the eviction order had become final on 1 December 1994. More than twelve years later, however, it has yet to be

enforced. The applicant added that he has thus been left with no more than a bare property title in respect of the flat at issue.

2. Relevant principles

73. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all Articles of the Convention (see the *Amuur v. France* judgment of 25 June 1996, *Reports* 1996-III, pp. 850-51, § 50) and entails a duty on the part of the State to comply with all judicial as well as other decisions rendered against it (see, *mutatis mutandis*, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 511, § 41). It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 26, § 69) becomes relevant only if and when it has been established that the interference in question has satisfied the requirement of lawfulness and was not arbitrary (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

3. The Court's assessment

74. Firstly, the Court notes that the final eviction order of 17 August 1994 provided for the applicant's repossession of his flat by 31 December 1995 (see paragraph 10 above). Secondly, in 1995 the Serbian Parliament adopted amendments to the Housing Act, postponing all such repossessions until 31 December 2000 (see paragraphs 40 and 41 above). Thirdly, on 3 March 2004 the respondent State ratified Protocol No. 1, meaning that the impugned non-enforcement has thus been within this Court's competence *ratione temporis* for a period of three years and six months. Fourthly, the domestic courts have themselves held that the Municipality of Palilula was not only under a legal obligation to enforce the order at issue but also had had sufficient funds and available flats in order to provide the applicant's protected tenant with adequate alternative accommodation (see paragraphs 21, 27 and 31 above). Lastly, the said courts noted that there were no legal means by which the applicant could have compelled the Municipality to honour its own eviction order of 17 August 1994 (see paragraphs 21 and 27 above).

75. The Court considers that the applicant's repossession claim is therefore "sufficiently established" so as to amount to a "possession" within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). Further, as of 31 December 2000, when the said deadline had expired and no other had been provided, the respondent State's interference has clearly been in breach of the relevant domestic legislation and, as such, it is incompatible with the applicant's right to the peaceful enjoyment of his possessions. Finally, the Court notes that this conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community, on the one hand, and the requirements of the protection of the individual's fundamental rights on the other (see *Iatridis v. Greece* [GC], cited above, § 58). There has, accordingly, been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

76. Under Article 6 § 1 of the Convention, the applicant complained about the length, overall fairness and impartiality of the separate civil suit for damages, as well as, again, the non-enforcement of the final eviction order adopted within the administrative proceedings.

77. Article 6 § 1 of the Convention, in its relevant part, reads as follows:

> "In the determination of his [or her] civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

A. As regards the length of the civil suit for damages

1. Admissibility

78. The Government and the applicant both relied on the arguments already summarised at paragraphs 59 and 60 above, in response to which the Court reaches the same conclusions (paragraphs 65-67 above).

79. Further, the Court finds that a complaint to the Supreme Court's Supervisory Board to speed up the civil proceedings at issue would, at best, have amounted to no more than mere information submitted to a higher instance with full discretion to make use of its powers as it saw fit. In addition, even if this board had instituted proceedings in response to the applicant's complaint, they would have taken place exclusively between the board itself and the judge/court concerned. The applicant would not have been a party to such proceedings and would, at best, have only been informed of their outcome (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII). A complaint of this sort cannot therefore

be considered effective within the meaning of Article 35 § 1 of the Convention.

80. In conclusion, the Court finds that the applicant's complaint about the length of the civil suit for damages is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Arguments of the parties

81. The Government recalled that the respondent State had ratified the Convention on 3 March 2004. The proceedings complained of have thus been within this Court's competence *ratione temporis* for some three years only, during which time the domestic courts were active and several decisions were adopted.

82. The Government further recognised the importance of what was at stake for the applicant, but noted that his case was particularly complex, given that it involved sensitive tenancy issues.

83. Finally, the Government submitted that the applicant had personally contributed to the length of the proceedings in question, having attempted to reformulate his original claim filed with the Municipal Court.

84. The applicant noted that the civil proceedings had been brought in 1996.

(b) Relevant principles

85. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, as well as the importance of what is at stake for the applicant (see, among other authorities, *Mikulić v. Croatia*, no. 53176/99, § 38, ECHR 2002-I).

86. A chronic backlog of cases is not a valid explanation for excessive delay, and the repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in the respondent State's judicial system (see *Probstmeier v. Germany*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1138, § 64, and *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005, respectively).

87. In any event, it is for the Contracting States to organise their courts in such a way as to guarantee everyone's right to a determination of their civil rights and obligations "within a reasonable time" (see, among other authorities, *G.H. v. Austria*, no. 31266/96, § 20, 3 October 2000).

(c) Period to be taken into account

88. The Court observes that the impugned proceedings were brought in 1996 and recalls that the respondent State ratified the Convention on 3 March 2004. It follows that the civil suit in question has been within the Court's competence *ratione temporis* for three years and six months.

89. The Court notes that, in order to determine the reasonableness of the delay complained of, regard must also be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII) and observes that on 3 March 2004 the proceedings at issue had already been pending for approximately eight years.

(d) The Court's assessment

90. The Court notes that, following the respondent State's ratification of the Convention, the Municipal Court and the District Court have rendered a total of three decisions on the merits of the applicant's claim.

91. There has, however, been at least one significant period of judicial inactivity within the Court's competence *ratione temporis*, from 3 March 2004 to 17 December 2004 (see paragraphs 21 and 22 above). Moreover, according to the information submitted by the parties, the proceedings in question have yet to be concluded (see paragraph 31 above).

92. Finally, Serbian courts took almost nine months to reject the applicant's attempt to have his original claim reformulated (see paragraphs 23-26 above) although, following the District Court's decision of 29 November 2006, the applicant had practically no choice but to reformulate his claim along the lines of the one initially specified in 1996 (see paragraphs 29, 30 and 15 above).

93. Having regard to the criteria laid down in its jurisprudence and the relevant facts of the present case, including its complexity and status on the date of ratification, as well as the conduct of parties and of the authorities, the Court considers that the length of the proceedings complained of has failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

B. As regards the fairness and impartiality of the civil suit for damages

94. Given that the proceedings at issue are apparently still pending, the Court finds that the applicant's complaints are premature and, as such, inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

C. As regards the non-enforcement of the final eviction order

95. Having regard to its finding in respect of Article 1 of Protocol No. 1 (see paragraphs 64-68, 74 and 75 above), the Court declares this complaint admissible but does not find it necessary to examine separately the same issue under Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

96. Finally, the applicant submitted that he had obtained no criminal redress for the violations suffered and had no effective domestic remedy at his disposal in order to expedite the separate civil suit for damages or the enforcement of the final eviction order.

97. Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] 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."

A. As regards the civil suit for damages

1. Admissibility

98. The Court notes that the applicant's complaints raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It also considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and cannot be declared inadmissible on any other grounds. The complaints must therefore be declared admissible.

2. Merits

(a) Arguments of the parties

99. The Government maintained that there had been no violation of Article 13. They also pointed out that the Municipal Court had ruled in favour of the applicant on several occasions. Finally, they repeated their arguments described at paragraph 59 above.

100. The applicant reaffirmed his complaint and noted that the domestic remedies referred to could not be considered effective within the meaning of Article 13.

(b) Relevant principles

101. The Court notes that Article 13 guarantees an effective remedy before a national authority for an alleged breach of all rights and freedoms

guaranteed by the Convention, including the right to a hearing within a reasonable time under Articles 6 § 1 (see, *inter alia*, *Kudła v. Poland*, cited above, § 156).

102. It recalls, further, that a remedy concerning length is "effective" if it can be used either to expedite the proceedings before the courts dealing with the case, or to provide the litigant with adequate redress for delays which have already occurred (see *Sürmeli v. Germany* [GC], cited above, § 99).

103. Finally, the Court emphasises that the best solution in absolute terms is indisputably, as in many spheres, prevention. Where the judicial system is deficient with regard to the reasonable-time requirement of Article 6 § 1 of the Convention, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation, since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*. Some States have fully understood the situation by choosing to combine these two types of remedy (see *Sürmeli v. Germany* [GC], cited above, §100).

(c) The Court's assessment

104. The Court notes that the Government have already suggested in their preliminary objection that there were remedies available for the applicant's complaint about length made under Article 6 § 1 of the Convention and considers that, in so far as they rely on the same reasoning by way of their response to the Article 13 complaint, their arguments must, just like their objection, be rejected on the grounds described at paragraphs 78 and 79 above.

105. The Court finds, therefore, that there has been a violation of Article 13 taken together with Article 6 § 1 of the Convention on account of the lack of an effective remedy under domestic law for the applicant's complaint concerning the length of his civil case.

B. As regards the eviction

106. Since the Court has already considered this complaint under Article 1 of Protocol No. 1 and having regard to its findings under this provision (see paragraphs 74 and 75 above), it does not find it necessary to examine separately the same issue under Article 13 of the Convention (see, *mutatis mutandis*, *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 125-127, 9 June 2005).

C. As regards criminal redress

107. The Court notes that there is no right under Article 13 taken together with Article 6 of the Convention or, indeed, Article 1 of Protocol No. 1, to have criminal proceedings brought against a third person (see, *mutatis mutandis*, *Rekasi v. Hungary* (dec.), no. 31506/96, 25 November 1996). It follows that the applicant's complaint about the failure of the domestic authorities to provide him with an adequate criminal remedy for the violations suffered is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

108. The relevant provisions of these Articles read as follows:

Article 41

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

Article 46

"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."

A. Damage

109. The applicant claimed RSD 5,318,300 (approximately EUR 65,650) for the pecuniary loss suffered (see paragraph 27 above) plus RSD 4,000,000 (approximately EUR 49,380) in non-pecuniary compensation, together with statutory interest.

110. The Government contested those claims. In particular, concerning the former, they maintained that the Municipal Court had already ruled in favour of the applicant while, as regards the latter, they described the amount sought as excessive and argued that any financial compensation awarded would have to be consistent with the Court's case-law in other similar matters and take into account the respondent State's economic situation.

111. The Court sees no reason to doubt that the applicant suffered distress as a result of the breach of his rights secured under Articles 6 and 13 of the Convention, as well as Article 1 of Protocol No. 1, which is why a finding of a violation of those provisions alone would clearly not constitute sufficient just satisfaction. Having regard to the above and on the basis of equity, as required by Article 41, the Court awards the applicant EUR 3,700 under this head.

112. The Court further points out that, under Article 46 of the Convention, the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found and to redress, in so far as possible, the effects thereof (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Court considers, therefore, taking into account the fact that there is apparently still no final domestic judgment concerning the pecuniary damage sought, that the applicant's claim must be met by the Government ensuring, through appropriate means, the speedy enforcement of the final eviction order of 17 August 1994 (see, *mutatis mutandis*, *Mužević v. Croatia*, no. 39299/02, § 91, 16 November 2006; see also paragraphs 10 and 11 above).

B. Costs and expenses

113. The applicant also claimed RSD 28,300 (approximately EUR 350) for the costs and expenses incurred before the domestic courts plus another RSD 50,000 (approximately EUR 620) for the costs and expenses incurred in the proceedings before this Court.

114. The Government contested those claims and added that the applicant had failed to provide any supporting evidence.

115. In view of the information contained in the case file, the Court notes that the applicant has indeed neglected to itemise his claims for costs and expenses or offer any evidence in their support. It finds therefore no reason to disagree with the Government, and makes no award in this regard.

C. Default interest

116. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention (the length of the civil suit for damages and the non-enforcement of the final eviction order), as well as the related complaint under Article 13 of the Convention taken together with Article 6 § 1 and Article 1 of Protocol No. 1, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the civil suit for damages;

4. *Holds* that there has been a violation of Article 13 of the Convention, taken together with Article 6 § 1, as regards the absence of an effective domestic remedy for procedural delay;

5. *Holds* that it is not necessary to examine separately the complaint under Article 6 of the Convention, as regards the non-enforcement of the final eviction order, as well as the related complaint under Article 13 of the Convention taken together with Article 1 of Protocol No. 1;

6. *Holds*
   (a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the enforcement of the decision adopted by the Housing Department of the Municipality of Palilula on 17 August 1994;
   (b) that the respondent State is to pay the applicant, within the same three month period, EUR 3,700 (three thousand seven hundred euros) in respect of non-pecuniary damage, which sum is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;
   (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELENS-PASSOS
Deputy Registrar

F. TULKENS
President