SECOND SECTION

CASE OF BJELAJAC v. SERBIA

(Application no. 6282/06)

JUDGMENT

STRASBOURG

18 September 2012

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 Bjelajac v. Serbia,

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

Françoise Tulkens, *President,*
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 28 August 2012,

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

PROCEDURE

1. The case originated in an application (no. 6282/06) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Ms Milja Bjelajac ("the applicant"), on 2 February 2006.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicant alleged, in particular, that because of the failure of the State to enforce final domestic decisions, her property rights had been violated.

4. On 9 June 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. The applicant was born in 1935 and lives in Novi Sad.

7. The applicant is the owner of a loft in an apartment building in Novi Sad. For some time she experienced problems with a leaking roof, which

made her living conditions difficult. In addition, some neighbours had occupied the common premises of the building, including the basement, the waste disposal room and the roof terrace.

A. As regards the repairs to the roof

8. On 7 May 1999 the Secretariat for Inspection Affairs of the City of Novi Sad (*Sekretarijat za inspekcijske poslove Grada Novog Sada* – "the Secretariat") issued a decision ordering JKP Stan, a State-run public corporation ("the company"), to undertake all the necessary work to the roof above the applicant's flat.

9. When the decision of 7 May 1999 became final, the applicant sought its enforcement. The Secretariat failed to respond to her enforcement request, as did the second-instance administrative authority – the Executive Board of the City Assembly of Novi Sad (*Izvršni odbor Skupštine grada Novog Sada* – "the Executive Board"). Therefore the applicant filed an administrative complaint requesting the Municipal Court in Novi Sad ("the Municipal Court") to order the administrative authorities to enforce the decision of 7 May 1999.

10. The applicant also lodged a civil claim with the Municipal Court, requesting the company to perform the necessary repairs.

11. On 20 June 2002 the Municipal Court, in the civil proceedings, granted the applicant's request, ordering the company to carry out the necessary repairs. The court also ordered the company to pay to the applicant the amount of 11,447 Serbian dinars **(**RSD), with statutory interest, for the cost of painting the walls of her flat, and the amount of RSD 15,120 for the costs of the civil proceedings. That decision became final on a later, unspecified, date.

12. On 9 July 2003 the Municipal Court, in the proceedings following the administrative complaint, ordered the competent municipal authority to decide on the enforcement of the decision of 7 May 1999.

13. On 27 October 2003 the Secretariat issued an order (*zaključak*) for the enforcement of the decision of 7 May 1999, at the same time stating that the repairs should be paid for by the tenants' assembly (*skupština stanara*) of the applicant's building. It would appear, however, that no further steps have been taken to enforce the Secretariat's decision.

14. On 20 January 2004 the applicant filed a request with the Municipal Court requesting enforcement of the judgment of 20 June 2002.

15. On 8 February 2005 the Municipal Court partly granted the applicant's enforcement request. In the enforcement order, the court defined the repairs to be done, at the same time providing that should the company fail to carry out the repairs in a timely manner, the applicant was authorised to engage a third person to perform the repairs, at the company's expense.

The court also awarded the applicant the amount of RSD 1,458 for the costs of the enforcement proceedings.

16. However, it transpired that with her request for enforcement the applicant had supplied an incorrect bank account number, and therefore the transfer of the sums awarded could not be made. Hence, on 4 March 2005 the Municipal Court issued a request to the applicant for her correct bank details. On at least three occasions the court attempted to serve this request on the applicant, but to no avail.

17. Ultimately, the applicant provided her correct bank account number on 23 November 2005.

18. On 7 July 2006 the Municipal Court issued an order (*zaključak*) requesting the applicant to supply a specification of costs for the repairs to be done. On five occasions the court tried to serve this order on the applicant via bailiffs and the regular postal service. To this end the court requested the police to intervene and serve the applicant with the said order.

19. On 15 January 2007 the police found the applicant at her home and served her with the order of 7 July 2006.

20. On 30 January 2007 the applicant supplied a cost specification, and on 2 February 2007 the Municipal Court supplemented the decision of 8 February 2005 (see paragraph **Error! Reference source not found.** above), ordering the company to deposit the amount specified by the applicant to enable her to hire a third person to perform the repairs.

21. By 12 June 2007 the company had, however, performed the necessary repairs itself.

22. On 23 October 2007 the company paid the applicant the amount of RSD 24,000 (approximately EUR 300 at the relevant time), by way of "reimbursement" (*naknada)*. However, it is not clear what were the exact legal grounds for this reimbursement.

23. On 29 October 2007 an expert appointed by the Municipal Court confirmed that the enforcement had been performed as ordered by the judgment of 20 June 2002.

24. On 16 January 2008 the court decided to discontinue the enforcement proceedings, as the judgment of 20 July 2002 had been enforced. It would appear that the applicant did not file an appeal against that decision.

B. As regards the common premises

25. On 16 and 18 June 1999 the Secretariat issued several decisions whereby the applicant's neighbours S.M, M.P., M.Š., B.O., A.V., Đ.S. and M.S. were ordered to vacate the common premises of the building.

26. On 14 July 1999 the tenants' assembly decided, *inter alia*, to authorise S.M., M.P., B.O., A.V. and Đ.S. to use the former garbage shaft access rooms (*"bivši slivnici za đubre"*), Đ.S. and M.S. to use small

compartments in the common basement (*"boksovi u skloništu"*), while S.M and M.Š. were authorised to use niches at the common terrace, adjacent to their respective bathrooms (*"deo prostora na zajedničkoj terasi-krovu u udubljenju ispred njihovih kupatila"*). The right to use the premises was not transferable, while the authorisation was given against the obligation of the persons concerned to pay a certain fee.

27. However, regardless of that authorisation, on 17 January 2000 the Executive Board upheld the Secretariat's decisions of 16 and 18 June 1999.

28. On 26 August 1999 and 3 September 1999 the applicant filed separate administrative requests seeking enforcement of the decisions of 16 and 18 June 1999.

29. As the Secretariat and the Executive Board failed to respond to the applicant's requests, on 9 July 2003 the Municipal Court in Novi Sad issued a judgment ordering the competent municipal authority to rule on the applicant's enforcement requests. At the same time the Municipal Court refused the applicant's claim in respect of damage suffered due to the non-enforcement, and instructed her to lodge a separate civil claim in that regard.

30. As it appeared that the municipal authority had still not decided on the applicant's request for enforcement, on 6 August 2004 the Municipal Court issued an enforcement order regarding the judgment of 9 July 2003, that is, ordering the municipal authority to rule on the applicant's enforcement requests.

31. Subsequently it transpired that the Secretariat had decided on the applicant's request and ordered the said enforcements on 27 October 2003. Therefore, on 13 September 2004 the Municipal Court discontinued the proceedings for the enforcement of the judgment of 9 July 2003, as the necessary decisions had been adopted.

32. It would appear that no further action has been taken in order to evict the tenants from the common premises of the building, which they continue to occupy.

C. As regards the applicant's pension

33. On 21 October 2005, 25 May 2006 and 21 November 2008 the Municipal Court in Novi Sad issued decisions whereby part of the applicant's pension was to be withheld on account of her failure to pay monthly common charges for the maintenance of the building in question.

34. The decisions of 21 October 2005 and 25 May 2006 have become final, as the applicant did not appeal against them. The decision of 21 November 2008, according to the information in the case file, is yet to become final, as it appears that it could not be served on the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant provisions concerning enforcement in civil proceedings

35. The relevant provisions of domestic legislation regarding the enforcement of judgments are cited in *EVT Company v. Serbia* (no. 3102/05, 21 June 2007) and *Ilić v. Serbia* (no. 30132/04, 9 October 2007).

B. Relevant provisions concerning ownership of common premises

36. According to Article 19 of the Property Act (*Zakon o osnovama svojinskopravnih odnosa*, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 6/80 and 36/90, as well as in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 29/96 and the Official Gazette of the Republic of Serbia – OG RS – no. 115/05), the common parts of a building are owned mutually and indivisibly by the owners of the flats in the building.

37. Article 14 of the Buildings Maintenance Act (*Zakon o održavanju stambenih zgrada*, published in OG RS nos. 44/95, 46/98, 1/01 and 101/05), provides that the tenants' assembly decides, *inter alia,* on the use of common premises in a building. Article 17 § 1 of the Act provides that the tenants' assembly may pass decisions if more than half of its members are present. Decisions concerning regular maintenance of the building are adopted by a simple majority of members present. Article 17 § 3 provides that decisions concerning investments in the building must be adopted by a majority of the tenants who own more than half of the total surface area of the flats and other separate parts of the building. Article 18 § 1 of the Act provides that the tenants owning the majority of the surface area of the building can decide to undertake repairs to the flat roof, while Article 21 states that such a majority may decide that the common premises may be transformed for purposes other than those they were originally planned for.

38. In a decision of 17 March 2011 the Constitutional Court found the provisions of Articles 18 § 1, 21 § 3 and 22 § 2 of the Buildings Maintenance Act not to be in conformity with the protection of property guaranteed by the Constitution. The court found that decisions regarding issues which concern changes in the use of common premises could only be adopted by a unanimous vote of all the owners of the flats in the building, and found that allowing the owners of the majority of the surface area to make such decisions was not in conformity with the Serbian Constitution, or with the provisions of Article 1 of Protocol No. 1 to the European Convention on Human Rights.

C. Relevant provisions concerning administrative proceedings

39. Article 208 § 1 of the General Administrative Proceedings Act (*Zakon o opštem upravnom postupku*, published in OG FRY nos. 33/97 and 31/01) provides, *inter alia*, that in simple matters an administrative body is obliged to issue a decision within one month of the date the claimant lodged his or her request. In all other cases, the administrative body must render a decision within two months thereof.

40. Article 208 § 2 enables a claimant whose request has not been decided within the periods established in the previous paragraph to lodge an appeal as if his or her request had been refused. Where an appeal is not allowed, the claimant has the right to directly lodge an administrative complaint with the competent court of law.

41. Article 274 states that enforcement of non-monetary obligations, should the debtor refuse to comply with a decision him- or herself, is conducted by compulsion – by means of engaging, at the debtor's expense, a third person to undertake the necessary measures for enforcement. Article 267 § 1 states that enforcement is to be conducted before the first-instance administrative body, unless otherwise provided by law, while Article 267 § 3 provides that the police must assist the enforcement, if required. Article 271 provides that an administrative enforcement must be discontinued should it be established: that the obligation has been fully complied with; that the enforcement has not been allowed; that it was ordered against a person who was not under any obligation to comply; that the claimant has withdrawn his or her request; or that the administrative enactment which is being enforced has been annulled or quashed.

42. In addition, the Supreme Court has held that, pursuant to Article 264 § 3 of the General Administrative Proceedings Act, enforcement of eviction orders is to be carried out of the court's own motion in view of the compelling public interest in this regard, even in the absence of a formal enforcement request filed by the claimant personally (see, for example, *Vrhovni sud Srbije*, *Ubr. 6613/95*).

THE LAW

43. The applicant complained of a breach of her property rights in connection with the failure of the respondent party: to enforce the judgment of the civil court; to enforce the administrative decisions; and in relation to the seizure of her pension. The Court considers that these complaints fall to be examined under Article 1 of Protocol No. 1 to the Convention, which 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."

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION CONCERNING THE NON-ENFORCEMENT OF THE JUDGMENT OF THE CIVIL COURT

A. Admissibility

44. The Government submitted that since the repairs had been fully done, and the applicant had been paid an amount for pecuniary damage (see paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** above), she could no longer claim to be a victim.

45. The Court reiterates that "a decision or 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" (see *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

46. The Court observes that the mere fact that the authorities complied with the judgment after a substantial delay cannot be viewed in this case as automatically depriving the applicant of her victim status under the Convention. Even assuming that the amount paid to the applicant on 27 October 2007 covers the entirety of the pecuniary damage suffered by the applicant due to the prolonged non-enforcement of the judgment of 20 June 2002, neither the Government nor the other domestic authorities have acknowledged that the applicant's Convention rights were unjustifiably restricted by the non-enforcement of that judgment and no redress has been offered to the applicant for the delays, as required by the Court's case-law (see, for example, *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

47. Accordingly, the Court rejects the Government's objection as to the loss of victim status.

48. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

49. The applicant maintained that the civil court judgment constituted a "possession" within the meaning of Article 1 of Protocol No. 1. The Government reiterated that since the decision of 27 October 2003 had ordered the costs of the repairs to be covered by the tenants of the building (see paragraph **Error! Reference source not found.** above), the applicant could not have had a legitimate expectation within the meaning of this provision.

50. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B), and this was undoubtedly the case here, since both the administrative decision and the court judgment ordered the repairs to the roof to be carried out, while the issue of who was to pay for the repairs was never raised during the enforcement proceedings before the Municipal Court as a result of which the applicant finally managed to have the roof above her flat repaired.

51. The applicant filed a request for enforcement on 20 January 2004, while the Convention entered into force in respect of Serbia on 3 March 2004. From the date of ratification until the final enforcement of the judgment on 12 June 2007, when the company finally undertook all the repairs, three years and three months passed. Two significant periods of inactivity were attributable to the applicant – from 8 February 2005 until 23 November 2005, and from 7 July 2006 until 15 January 2007, when the applicant was not available to the courts to be served with decisions. However, the failure to act in the periods from 3 March 2004 to 8 February 2005, from 23 November 2005 to 7 July 2006, and from 15 January to 12 July 2007, which amounts to two years of inactivity, cannot be said to be attributable to the applicant.

52. It follows that the impossibility for the applicant to have the judgment enforced for a substantial period of time, given that two years of inactivity were not attributable to her, constituted an interference with her right to peaceful enjoyment of her possessions, as set forth in Article 1 of Protocol No. 1.

53. The Court further notes that the Government, while providing a justification for a certain part of the period of non-enforcement, failed to provide justification for the two years of inactivity not attributable to the

applicant. On the other hand, the Court itself cannot find any information which would justify such a delay. 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 and *Ilić v. Serbia*, no. 30132/04, § 75, 9 October 2007). Consequently, it must be concluded that the interference with the applicant's right to peaceful enjoyment of her possessions was not justified (see *Prodan v. Moldova*, no. 49806/99, § 61, ECHR 2004-III (extracts)), and that there has, accordingly, been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION CONCERNING THE NON-ENFORCEMENT OF THE ADMINISTRATIVE DECISIONS

54. The applicant also complained of a breach of her property rights because of the failure to enforce the administrative decisions of 16 June and 18 June 1999.

55. The Court considers that, prior to examining whether the final administrative decisions in the applicant's favour have been enforced, it must first determine whether this complaint is admissible under Article 35 § 3 (b) of the Convention, which reads as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (...)
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

56. Hence, the Court will examine of its own motion whether: (i) the applicant has suffered a significant disadvantage; (ii) whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits; and (iii) whether the case was duly considered by a domestic tribunal.

57. The Court has previously held that the "significant disadvantage" criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010; *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010; and *Gaftoniuc v. Romania*, cited above). Further, the

level of severity shall be assessed in the light of the financial impact of the matter in dispute and the importance of the case for the applicant.

58. In the circumstances of the present case, the Court notes from the outset that, according to the domestic law, the applicant, together with the owners of all other flats in the building, has a share of the ownership of all common premises. However, the nature of those common premises is such that some of their parts were equally used by all the tenants, while some others have been used by only some or none of them. As it transpires from the decision of 14 July 1999 (see paragraph **Error! Reference source not found.Error! Reference source not found.Error! Reference source not found. Error! Reference source not found.** above) allocation of the common areas to the tenants concerned was done in relation to small and limited parts of the common premises, apparently without prejudice or disturbance to other tenants, including the applicant herself – indeed, the allocation of some of these surfaces appeared to have been aimed at securing more privacy for certain tenants (i.e. niches adjacent to certain tenants' bathrooms), while some others would appear to have no longer been used for their original purpose (garbage shaft). Furthermore, the right of use was made strictly personal, not allowing the tenants concerned to transfer this right in case of transfer of possession over their respective flats. Finally, the applicant has never claimed that the apparent restriction in the use of these particular areas has ever been to her disadvantage or discomfort, nor has she sought to demonstrate that the enjoyment of her property rights over her own flat, or the common premises which she actually used, has in any way been impaired by the fact that a portion of the common premises has been occupied by any particular tenant.

59. The Court has already held that the limitation of property rights must not be measured in abstract terms and must be assessed against a person's individual circumstances and the economic situation of the country or region in which he or she lives (see e.g. *Fedotov v. Moldova* (dec) § 19, 24 May 2011). However, while taking into account such varying circumstances, the Court considers it to be beyond doubt that a portion of the common premises, allocated to certain tenants for their sole use, and in no way interfering with the applicant's enjoyment of her own flat or causing any financial impact on the applicant herself, could not have represented a significant disadvantage.

60. Moreover, the Court observes that a complaint of non-enforcement of a final domestic decision, already subject of the Court's well-established case-law, does not concern an important question of principle, which might justify examining it any further.

61. Lastly, noting that the applicant's claims have been thoroughly examined, in both administrative and judicial proceedings, and that furthermore the Constitutional Court undertook to strengthen the protection of ownership rights over common premises of buildings, by determining

that the change in the use of common premises required approval of each owner (see paragraph **Error! Reference source not found.** above), it may not be said that the applicant suffered a denial of justice by the actions of the respondent State. The Court, thus, concludes that the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b).

62. Consequently, this complaint must be rejected inadmissible in accordance with Article 35 §§ 3 (b) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. Lastly, the applicant complained of a violation of her property rights through the seizure of her pension.

64. The Court notes that the applicant has not appealed against any of the decisions regarding the seizure of her pension, the one of 21 November 2008 not yet being served upon her. The Court sees no special circumstances absolving the applicant from the obligation to use available and effective domestic remedies (see *Akdivar and Others v. Turkey*, 16 September 1996, § 67, *Reports* 1996-IV). Therefore, this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

> "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."

66. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Declares* the complaints concerning the non-enforcement of final domestic judgment of 20 June 2002 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the protracted enforcement of the civil court judgment.

Done in English, and notified in writing on 18 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Françoise Tulkens
Deputy Registrar	President