CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF ZIT COMPANY v. SERBIA

(Application no. 37343/05)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 ZIT Company v. Serbia,

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

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI,
Mrs D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 37343/05) against the State Union of Serbia and Montenegro, succeeded by Serbia on 3 June 2006 (see paragraph 40 below), lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the ZIT Company ("the applicant") on 5 October 2005. It was represented before the Court by Ms D. Pavlović, its managing director.

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 13 July 2006 the Court decided to communicate the application to the Government. Under 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 is a company based in Šabac.

A. First set of proceedings

5. On 15 June 2000 the Municipal Court ("*Opštinski sud*") in Bačka Palanka formally confirmed an agreement reached between the applicant and one of its business partners, an agricultural cooperative called "Zadrugar" (hereinafter "the debtor"), whereby the latter agreed to pay the former a total of 3,248,567 Yugoslav Dinars by 31 July 2000. In addition and as security for this undertaking, a mortgage in favour of the applicant was established concerning a particular plot of land, at that time listed in the land register as being under the debtor's ownership.

6. On 21 March 2002 the applicant filed an enforcement request with the same Municipal Court, claiming that the debtor had failed to comply with the above agreement.

7. On 28 March 2002 the Municipal Court accepted the applicant's request. It ordered the valuation and sale of the land in question, as well as the payment of interest on the applicant's claim.

8. On 6 June 2003 the municipal authorities in Bačka Palanka reviewed the property status of the real estate in question.

9. On 28 August 2003, having apparently noted that this land was perhaps not owned by the debtor, the Municipal Court issued an amended enforcement order, stating, *inter alia*, that the applicant's claim should be settled through the process of evaluation and auctioning of a number of other plots at that time listed in the land register as being owned by the debtor.

10. On 22 September 2003 the Municipal Court stayed these proceedings until the debtor's ownership of this property had been formally established by the Land Registry (*Republicki geodetski zavod*).

11. On 20 February 2004 the Bačka Palanka Division of the Land Registry (*Služba za katastar nepokretnosti*) decided to suspend the proceedings concerning the debtor's title until the resolution of a separate, already pending, civil case concerning the same property.

12. It would appear that this civil case, brought by the State, was resolved by 29 September 2004 and that the applicant's co-ownership of the land in question was recognised.

13. On 21 October 2004 the applicant requested that the enforcement proceedings, stayed by the Municipal Court, be continued.

B. Second set of proceedings

14. On 9 December 2003 the Commercial Court ("*Trgovinski sud*") in Novi Sad ruled in favour of the applicant in another case, ordering the same debtor to pay a total of 2,336,720.80 Serbian Dinars ("CSD"), with interest, plus costs. By 9 January 2004 this judgment became both final and enforceable.

15. Based on the above judgment and in response to the applicant's request of 26 February 2004, on 28 October 2004 the Municipal Court in Bačka Palanka issued an enforcement order against the debtor for the above payment, plus interest as of 18 July 2003, as well as another CSD 172,234.40 for costs together with interest as of 9 January 2004. For this purpose a number of plots deemed to be owned by the debtor were to be evaluated and auctioned, with the applicant's claim being met from the proceeds.

C. Joinder of the two sets of proceedings

16. On 12 November 2004 the Municipal Court in Bačka Palanka decided to join the two sets of enforcement proceedings.

17. On 1 December 2004 it formally accepted the expert's opinion and valued the land in question.

18. On 13 December 2004 the Municipal Court scheduled a public auction for 2 February 2005.

19. On 27 December 2004 the Attorney General (*Republički javni pravobranilac*) requested, *inter alia*, that the State itself be allowed to take part in the proceedings, and noted that the auction should only be carried out in respect of the plots which were undisputedly owned by the debtor.

20. On 2 February 2005 the auction was postponed by the Municipal Court. It was re-scheduled for 16 February 2005.

21. On 16 February 2005 the Attorney General repeated the request of 27 December 2004.

22. On 16 February 2005 the auction was postponed and re-scheduled for 23 March 2005.

23. On 16 March 2005 the Municipal Court informed the parties that the auction was again postponed for 30 days because the Municipal Public Prosecutor had urged the Chief Public Prosecutor "to file a Request for the Protection of Legality" (*zahtev za zaštitu zakonitosti*).

24. On 19 August 2005 the Municipal Court accepted the debtor's motion that the value of the land at issue needed to be re-assessed.

25. On 17 March 2006 the Municipal Court held a public auction and recognised the applicant as the new co-owner of a number of plots formerly co-owned by the debtor.

26. Several days later, the applicant's representatives saw these plots and concluded that they were still being used by the debtor.

27. On 4 April 2006 the Municipal Court ordered that the land be handed over to the applicant and, further, that the applicant's newly acquired ownership be entered in the land register.

28. On 7 April 2006 the Municipal Court rectified a minor textual error in its decision of 4 April 2006.

29. In a separate decision issued on 7 April 2006, the Municipal Court ordered the transfer to the applicant's bank account of the remaining proceeds from its pecuniary claim, and the applicant waived its right to file an appeal against that decision.

D. Other relevant facts

30. Notwithstanding the Municipal Court's decision of 4 April 2006 the debtor refused to provide the applicant with access to and use of the plots of land in question.

31. On 8 May 2006 the applicant filed a civil trespass claim, seeking possession of this land.

32. On 15 September 2006 the Municipal Court ruled against the applicant, stating that it had no possession to begin with, which is why none could be restored.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 28/00, 73/00 and 71/01)

33. Article 2 provides that enforcement proceedings shall be instituted at the request of the creditor, but may, exceptionally, also be instituted by the court *ex officio* when "the law so provides".

34. Article 4 § 1 states that all enforcement proceedings are to be conducted urgently.

35. Articles 134-176 regulate enforcement through the auctioning of the debtor's real estate. They do not, however, contain specific provisions in respect of situations where a debtor refuses to comply with a judicial decision to transfer property to the buyer.

36. Articles 232-237 set out the details concerning "court-sanctioned mortgages" (*založno pravo na nepokretnim i pokretnim stvarima na osnovu sporazuma stranaka*). Article 237, in particular, states that all such mortgages constitute valid enforcement titles.

B. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

37. This Act entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act 2000. In accordance with Article 304,

however, all enforcement proceedings instituted prior to 23 February 2005 are to be concluded pursuant to the earlier legislation.

C. Relevant jurisprudence

38. A buyer of real estate auctioned by a court in enforcement proceedings shall have the right to request the eviction of the former owner, based on the decision adopted by the enforcement court, there being no need to bring a separate civil suit in this regard (see *Gzz. 55/89*, adopted by the Supreme Court of Vojvodina).

D. Relevant provisions of the Judges Act and the Obligations Act, as well as the relevant criminal provisions

39. These provisions are set out in the *V.A.M. v. Serbia* (no. 39177/05, §§ 67-72, 13 March 2007) and the *EVT Company v. Serbia* judgments (no. 3102/05, §§ 29-31, 21 June 2007), respectively.

E. The succession of the State Union of Serbia and Montenegro

40. The relevant provisions concerning the succession of the State Union of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 22-25, 19 September 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

41. The applicant complained under Article 6 § 1 of the Convention, as well as Article 1 of Protocol No. 1, about the length of the enforcement proceedings in question.

The relevant provisions of these Articles read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"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 personae

42. The Government noted that the enforcement proceedings had ended by 7 April 2006 and submitted that the applicant had thereby been deprived of its "victim status" within the meaning of Article 34 of the Convention.

43. The applicant disagreed.

44. The Court notes that the impugned proceedings have not been discontinued (see paragraphs 38, 35, and 27-29 above, in that order; see also paragraph 54 below), which is why the Government's objection must be dismissed (see, *mutatis mutandis*, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

2. Exhaustion of domestic remedies

45. The Government submitted that the applicant had not exhausted all available, effective domestic remedies. In particular, it had failed to complain about the delay in question to the President of the Municipal Court, the President of the District Court and the Supreme Court's own Supervisory Board, respectively. Further, the applicant had not brought a separate civil lawsuit under Articles 199 and 200 of the Obligations Act. Finally, the Government maintained that the applicant had failed to lodge a criminal complaint under Articles 242, 243 and 245 of the Criminal Code 1977 or a complaint under Article 340 of the Criminal Code 2005 (see paragraph 39 above).

46. The applicant contested the effectiveness of these remedies.

47. The Court has already held that the above remedies could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see, *mutatis mutandis*, *V.A.M. v. Serbia*, cited above, §§ 85-88 and 119, 13 March 2007). It sees no reason to depart from those findings in the present case and concludes, therefore, that the Government's objection must be rejected.

3. Conclusion

48. The Court considers that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. The complaints must therefore be declared admissible.

B. Merits

1. Arguments of the parties

49. The Government noted that the respondent State had ratified the Convention and Protocol No. 1 on 3 March 2004 and reaffirmed that the impugned enforcement proceedings had ended by 7 April 2006. They were, therefore, within this Court's competence *ratione temporis* for a period of two years only.

50. The Government further observed that there had been two parallel sets of enforcement proceedings until 12 November 2004, and submitted that all procedural delay prior to 21 October 2004 was solely imputable to the applicant, who had requested the auctioning of plots which had not been formally recognised as the debtor's property.

51. Finally, the Government argued that the length of proceedings from 21 October 2004 to 7 April 2006, some eighteen months in all, did not amount to a violation of the Convention or its Protocol.

52. The applicant stated that it had done everything in its power to expedite the proceedings in question, and maintained that the State had been responsible for the delays.

53. The applicant also pointed out that, following the adoption of the Municipal Court's decision of 4 April 2006, it had had no option but to file a separate civil claim in order to obtain possession of the disputed land.

54. The Government disagreed and, in so doing, maintained that the applicant should instead have requested the execution of this decision pursuant to Article 2 of the Enforcement Procedure Act 2000.

2. Relevant principles

55. The Court recalls that the enforcement of a final judgment given by a court of law must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgements and Decisions* 1997-II, p. 510, § 40). A delay in the execution of a judgment may, however, be justified in particular circumstances but this delay may not be such as to impair the essence of the right protected by Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

56. Further, irrespective of whether a debtor is a private or a State actor, it is up to the State to take all necessary steps to enforce a final court judgment, as well as to ensure the effective participation of its entire apparatus. Failure to do so might fall short of the requirements of Article 6 § 1 (see, *mutatis mutandis*, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 174-189, ECHR 2004-V (extracts); see also *mutatis mutandis*, *Hornsby*, cited above, p. 511, § 41).

57. These obligations are also reflected in Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). The Court reiterates that under this provision the State is required to make use of all available legal means at its disposal in order to enforce a final judgment, even in cases involving litigation between private parties (see, *mutatis mutandis*, *Fuklev v. Ukraine*, no. 71186/01, §§ 89-91, 7 June 2005; see also *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII).

3. The period to be taken into account

58. The Court notes that, according to the information available in the case file as submitted by the parties, the enforcement entitlements at issue in the present case have yet to be fully executed (see paragraph 27 above). The impugned proceedings have thus been ongoing for some three years and eight months since the Serbian ratification of the Convention and Protocol No. 1 on 3 March 2004 (the period which falls within this Court's competence *ratione temporis*), until the date of adoption of the present judgment.

59. The Court further observes that, in order to determine the reasonableness of the delay in question, 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 notes that, on 3 March 2004, the first set of the enforcement proceedings complained of had already been pending for approximately two years, whilst the second set had just begun.

4. The Court's assessment

60. The Court notes that, when the applicant filed its enforcement requests, the land which was proposed for auction was formally registered in the debtor's name (see paragraphs 5 and 9 above). Secondly, the enforcement was partially completed by means of a bank transfer on 7 April 2006 (see paragraph 29 above). Thirdly, the applicant cannot be blamed for relying on the accuracy of the information contained in the respondent State's own land registers. Fourthly, it would appear that the applicant did not request the enforcement of the Municipal Court's decision of 4 April 2006 (see paragraph 27 above), in accordance with the relevant

domestic law, but instead resorted to an apparently ineffective civil suit (see paragraphs 30-32 and 38 above).

61. In these circumstances, the Court considers that the Serbian authorities have failed to conduct effectively the impugned enforcement proceedings until 4 April 2006, but that they cannot be held accountable for any delay thereafter (see paragraphs 27-32 above). The Court thus finds that the respondent State has, during the said interval, impaired the essence of the applicant's "right to a court" and prevented it from obtaining the comprehensive property-related redress which it had legitimately expected to obtain. There has accordingly been a violation of Article 6 § 1 of the Convention and a separate violation of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Kolyada v. Russia*, no. 31276/02, § 25, 30 November 2006).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

62. The applicant also pointed out that it had no effective domestic remedy at its disposal in order to expedite the enforcement proceedings at issue. The Government disagreed.

The Court considers that this complaint falls to be examined under Article 13, which reads 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. Admissibility

63. The Court finds that this complaint raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. Moreover, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and it cannot be declared inadmissible on any other ground. This part of the application must therefore be declared admissible.

B. Merits

64. The Court recalls having dismissed the Government's preliminary objection about effective remedies (paragraph 44 above). Insofar as they rely on the similar arguments in response to the applicant's Article 13 complaint, the Court rejects them for the same reasons.

65. The Court considers, therefore, that there has been a violation of Article 13, taken together with Article 6 § 1 of the Convention and Article 1 of Protocol No.1, on account of the lack of an effective remedy under

domestic law for the applicant's complaints about the length of the enforcement case at issue (see, *mutatis mutandis*, *Tomić v. Serbia*, no. 25959/06, §§ 111-116, 26 June 2007).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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."

A. Damage

67. The applicant claimed 21,000 euros (EUR) for the non-pecuniary damage suffered plus another EUR 128,000 in Serbian Dinars ("RSD"), with statutory interest, in respect of pecuniary damages. These amounts included compensation for the severe disruption of its business operations, the mental distress suffered by the applicant's owner and its employees, the value of the plots obtained by the applicant on 4 April 2006, as well as its inability to use this land thereafter.

68. The Government contested these claims.

69. The Court accepts that the applicant has suffered some non-pecuniary damage which would not be sufficiently compensated by the finding of the violations alone (see, *mutatis mutandis*, *Comingersoll v. Portugal* [GC], no. 35382/97, §§ 35-37, ECHR 2000-IV, and *Teltronic-CATV v. Poland*, no. 48140/99, §§ 67, 68 and 60, 10 January 2006). Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 1,200 under this head.

70. Finally, the Court does not discern any causal link between the violations found and the pecuniary damage alleged, and notes that the applicant could still request the enforcement of the Municipal Court's decision of 4 April 2006 (see paragraphs 27 and 38 above). The Court, therefore, rejects the applicant pecuniary claim in its entirety.

B. Costs and expenses

71. The applicant also claimed approximately EUR 750 in RSD for the costs and expenses incurred in relation to the separate civil claim filed on 8 May 2006 (see paragraphs 30-32 above) and an unspecified amount, to be determined by the Court, for those incurred in the course of its "Strasbourg case".

72. The Government contested these claims.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

74. The Court considers that the applicant is not entitled to the recovery of the costs and expenses incurred domestically, given that they concern proceedings in respect of which no violation of the Convention has been found. The Court also notes that the applicant's claim for the costs and expenses incurred in the proceedings before this Court has not been substantiated. It must, therefore, be rejected.

C. Default interest

75. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;

3. *Holds* that there has been a violation of Article 13 of the Convention.

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros) in respect of the non-pecuniary damage suffered, plus any tax that may be chargeable;
(b) 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;

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

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President