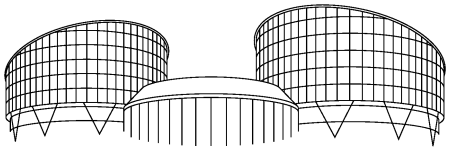

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ISENI v. SERBIA

(Application no. 43326/11)

JUDGMENT

STRASBOURG

9 October 2018

This judgment is final but it may be subject to editorial revision.

In the case of Iseni v. Serbia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 18 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 43326/11) 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, Mr Mitat Iseni ("the applicant"), on 18 July 2011.

2. The Serbian Government ("the Government") were represented by their Agent, Ms N. Plavšić.

3. On 10 March 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in the former Yugoslav Republic of Macedonia.

5. In 1990 the local authorities expropriated a flat in Belgrade belonging to the applicant. The size of the flat was 31.80 square metres.

6. On 16 December 2010 the Constitutional Court of Serbia ordered the local authorities in question to allocate the applicant a suitable replacement flat or to pay him compensation not lower than the market value of the flat in accordance with the Expropriation Act 1995[1]. The decision entered into force on 23 February 2011 (see paragraph 8 below).

7. Whilst a number of steps have been taken (notably, the tax authorities estimated the market value of the flat at 209,015 Serbian dinars (RSD) per square metre on 3 February 2017 and the applicant accepted that assessment

[1] *Zakon o eksproprijaciji*; published in the Official Gazette of the Republic of Serbia nos. 53/95, 23/01, 20/09, 55/13 and 106/16.

on 1 June 2017), the Constitutional Court's decision in question has not yet been enforced.

II. RELEVANT DOMESTIC LAW

8. Pursuant to Article 171 of the Constitution of Serbia, the decisions of the Constitutional Court are final and binding. Pursuant to section 89 of the Constitutional Court Act[2], the decisions of the Constitutional Court finding a breach of human rights enter into force when they are served on the parties to the proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

9. The applicant complained about the non-enforcement of the decision of the Constitutional Court mentioned in paragraph 6 above 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."

A. Admissibility

10. The Government did not raise any admissibility objections. As this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, it must be declared admissible.

B. Merits

11. The Court has frequently found violations of Article 1 of Protocol No. 1 in cases raising issues similar to those raised in the present case (see

[2] *Zakon o Ustavnom sudu*; published in the Official Gazette of the Republic of Serbia nos. 109/07, 99/11, 18/13, 40/15 and 103/15.

Milisavljević v. Bosnia and Herzegovina, no. 7435/04, 3 March 2009; *Krstić v. Serbia*, no. 45394/06, 10 December 2013; and *Rafailović and Stevanović v. Serbia*, nos. 38629/07 and 23718/08, 16 June 2015).

12. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject and the fact that the final decision under consideration in the present case has not been enforced for more than seven years, the Court finds that there has been a breach of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

13. The applicant maintained that there was a violation of Articles 6 and 13 of the Convention, relying essentially on the same grounds.

14. The Government contested that argument.

15. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

16. Having regard to its finding under Article 1 of Protocol No. 1 (see paragraph 12 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Articles 6 and 13 (see, for example, *Krstić*, cited above, § 88, with further references).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed 296,742 euros (EUR) in respect of pecuniary damage and EUR 300,000 in respect of non-pecuniary damage.

19. The Government considered the amounts claimed to be excessive.

20. The Court considers that the most appropriate form of redress in this case is to ensure the full enforcement of the domestic decision in question (see, *mutatis mutandis*, *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, § 53, ECHR 2006-XII; *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, § 126, 15 January 2008; and *Krstić*, cited above, §§ 92-94). Having regard to the size of the flat in issue (see paragraph 5 above) and the market value of the flat per square metre assessed by the competent authorities and accepted by the applicant (see paragraph 7 above), the Court

awards the applicant EUR 56,000 in respect of pecuniary damage, less any sums which may have already been paid in that regard at the domestic level.

21. The Court further awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

22. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

23. The Court considers it appropriate that the default interest rate 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 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine separately the complaints under Articles 6 and 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months the following amounts, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 56,000 (fifty six thousand euros), less any amounts which may have already been paid in that regard at the domestic level, in respect of pecuniary damage;

(ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 9 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Pere Pastor Vilanova President