



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

FIRST SECTION

CASE OF VLAHOVIĆ v. MONTENEGRO

(Application no. 62444/10)

JUDGMENT

Art 37 § 1 • New unilateral declaration submitted after restoration of application to Court's list for failure to fulfil undertaking in previous declaration did not provide appropriate redress • Request to strike out application dismissed

Art 6 § 1 (civil) • Access to court • Art 1 P1 • Peaceful enjoyment of possessions • Unjustified non-enforcement of final domestic judgment and two administrative decisions in respect of the removal of unlawful constructions on the applicant's plots of land

Art 46 • Execution of judgment • Individual measures

Prepared by the Registry. Does not bind the Court.

STRASBOURG

22 February 2024

FINAL

24/06/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Vlahović v. Montenegro,

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

Marko Bošnjak, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Péter Paczolay,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 62444/10) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Zoran Vlahović (“the applicant”), on 15 October 2010;

the decision to give notice to the Montenegrin Government (“the Government”) of the complaint concerning non-enforcement of a domestic judgment and decisions delivered in favour of the applicant;

the decision to strike the application out of its list of cases in view of the respondent State’s unilateral declaration by which they undertook to ensure the enforcement of the domestic judgment and decisions and to pay the applicant non-pecuniary damage (see *Vlahović v. Montenegro* [Committee], no. 62444/10, 22 November 2016);

the decision to restore the application to the Court’s list of cases on 19 November 2020 on the applicant’s request since the domestic judgment and decisions at issue had remained unenforced;

the decision to re-communicate to the Government the complaint concerning non-enforcement of the domestic judgment and decisions delivered in favour of the applicant and to declare the remainder of the application inadmissible;

the parties’ observations;

the Croatian Government’s decision not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

Having deliberated in private on 30 January 2024,

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

INTRODUCTION

1. The application concerns a complaint by the applicant, under Article 6 of the Convention and Article 1 of Protocol No. 1, of non-enforcement of a domestic judgment and decisions delivered in his favour in 2010.

THE FACTS

2. The applicant was born in 1964 and lives in Split, Croatia. He was granted leave to represent himself.

3. The Government were represented by their Agent, Ms. V. Pavličić.

4. The facts of the case may be summarised as follows.

5. The applicant is one of the co-owners of two plots of land, nos. 1084/4 and 1084/10, located in Herceg Novi. He owns one third and one half of the two plots respectively. At the relevant time a certain M.D. owned one eighteenth and one twelfth of the same plots. The land was registered as an uncategorised road.

6. In June 2005 M.D. constructed a sewage collection system on the two plots of land and paved the road in concrete. He did so without the prior approval of the other co-owners and without the authorisation of a competent body of the municipality of Herceg Novi (“the municipality”).

7. On an unspecified date thereafter the applicant and one of the other co-owners of the land instituted civil proceedings against M.D. for unlawfully building a sewage collection system and paving the road with concrete. The dispute was entered into the real estate registry (*zabilježba spora*) in November 2008.

8. In the course of the proceedings a witness who was a construction expert gave his findings. In particular, he found that the placement of the concrete on the ground to build the road had caused the flow of rainwater to accelerate along the roadway. He stated that the grating and the channel constructed on one part of the road were not sufficient to collect all the surface water from the newly created drainage basin (*slivna površina*). Therefore, in time, the unregulated drainage of surface water from the road paved in concrete would probably cause flooding and soil deposits (*zemljani nanosi*), thereby damaging the adjacent plots of land belonging to the claimants. Moreover, if the water from the paved road was not regulated, the water coming from the land of the respondent party would erode even the land on which the road had been constructed. The expert further stated that the sewage collection system had been constructed without the prior authorisation of the relevant administrative body, which also meant that it might not have been constructed in accordance with the relevant construction standards.

9. On 26 February 2010 the Herceg Novi Court of First Instance (*Osnovni sud*) found that M.D. had violated the applicant’s rights in respect of plots nos. 1084/4 and 1084/10 by unlawfully paving the entirety of the plots in concrete and constructing a sewage collection system on plot no. 1084/10. It ordered M.D. to remove the above-mentioned objects within fifteen days.

10. On 29 and 30 March 2010 the municipal police (*komunalna policija*) issued two decisions ordering M.D. to remove the unlawfully built sewage collection system and the concrete paving respectively. Those decisions were

upheld on 27 April 2010 by the municipality Chief Administrator, acting as the second-instance administrative body.

11. On 18 May 2010 M.D. transferred his ownership rights to the land at issue (see paragraph 5 *in fine* above) to the municipality free of charge.

12. On 9 December 2010 the municipality requested the Real Estate Administration (*Uprava za nekretnine*) to be allowed to expropriate the plots of land in question.

13. Between 28 December 2010 and 6 May 2019 the municipal police issued a number of decisions postponing the enforcement of its decisions of March 2010 (see paragraph 10 above) for various reasons; all of those decisions were quashed by the Chief Administrator.

14. On 8 February 2011 the Podgorica High Court (*Viši sud*) upheld the first-instance judgment of 26 February 2010 in so far as relevant (see paragraph 9 above), rendering that judgment final.

15. On 15 April 2011 the Court of First Instance issued an enforcement order in respect of its judgment. On 11 October 2011 the High Court quashed it on the grounds that M.D. was no longer a co-owner of the land in question and in view of ongoing expropriation proceedings (see paragraphs 11 and 12 above).

16. On 19 March 2012 the Court of First Instance dismissed the applicant's request that the municipality enforce the judgment, on the grounds that a final judgment had been delivered, not in respect of the municipality, but in respect of M.D. That decision was upheld on 24 May 2012 and the applicant was advised to initiate civil proceedings against the municipality.

17. On 17 April 2012 the Real Estate Administration rejected the municipality's expropriation request (see paragraph 12 above). On 12 November 2012 the municipality submitted another expropriation request to the Real Estate Administration, but, after a remittal, the proceedings were stayed (*prekida se postupak*) on 29 May 2015.

18. On 8 April 2015 the Court of First Instance issued an interim measure, on a request by M.D. and a private company, prohibiting the removal of the concrete paving of the road and the sewage collection system, as ordered by the municipal police (see paragraph 10 above), until the termination of the expropriation proceedings. The court also found that should the decisions of the municipal police be enforced, the parties who had requested an interim measure and other occupants would not be able to live in their flats, thereby suffering nearly irreparable damage (*teško nadoknadivu štetu*). Notably, there was no other access road to their homes except the one which would be affected by the enforcement of the decisions and the occupants would not be able to use the water supply or sewage infrastructure necessary for the normal functioning of their households and businesses. On 1 June 2015 the Court of First Instance, as the second-instance enforcement court, rejected the applicant's objection (*odbacuje se prigovor*) lodged in respect of the decision on the interim measure.

19. On 11 April 2017 the Supreme Court, while ruling on one of the claims for fair redress brought by the applicant in respect of lengthy enforcement proceedings, held, *inter alia*, that the expropriation proceedings could not be an obstacle for the enforcement of decisions ordering the removal of certain objects.

20. On 19 February 2021 the Real Estate and State Property Administration quashed the decision of 29 May 2015, which had stayed the expropriation proceedings (see paragraph 17 *in fine* above).

21. On 9 March 2021, after many unsuccessful attempts by the applicant to expedite enforcement of the decisions, the High Court ordered the urgent termination of the enforcement proceedings. It noted that the enforcement was considered final when the relevant decision had either been executed or the enforcement proceedings terminated.

22. On 27 April 2021 the Court of First Instance terminated the enforcement (*obustavlja se izvršenje*) of the judgment of 26 February 2010 and cancelled all the actions undertaken in that regard. The court found that there were circumstances entirely preventing enforcement (*postoje okolnosti koje u cjelosti sprječavaju sprovođenje rješenja o izvršenju*), notably that the respondent named in the judgment was no longer a co-owner of the land in question. The applicant was advised to exercise his right in respect of the municipality in separate civil proceedings, after which, if successful, he could initiate new enforcement proceedings. That decision was upheld on 13 September 2021.

23. On 12 August 2021, after a remittal, the Real Estate and State Property Administration delivered a decision expropriating the land in question in favour of the municipality so that an access road could be built in accordance with the Detailed Urban Plan. On 14 November 2022, after another remittal, the Ministry of Finance, as the second-instance body, quashed that decision. On 19 December 2022 the applicant contested the Ministry of Finance decision before the Administrative Court.

24. In the meantime, on 20 January 2022 the Constitutional Court dismissed a constitutional appeal lodged by the applicant on 31 May 2017 in respect of the non-enforcement. The court upheld, in substance, the reasoning given by the courts in the enforcement proceedings (see paragraphs 15 and 16 above).

25. On 27 May 2022 the State Prosecutor's Office, while dismissing one of the criminal complaints lodged by the applicant in relation to the expropriation proceedings, held that the administrative (expropriation) proceedings could not in any way obstruct the enforcement of the final court judgment of 2010 ordering the removal of the unlawfully constructed objects.

26. Over several years the applicant repeated his request for enforcement on several occasions, both against M.D. and the municipality, but to no avail. In doing so he relied on section 28 of the Enforcement Act (see paragraphs 29 and 30 below). In one of its decisions, that of 9 August 2019, the Court of

First Instance noted that the applicant had relied on that provision, but nevertheless upheld the previous findings, namely that the municipality had neither been a party to the civil proceedings nor been obliged by the relevant judgment to take any action. It dismissed all the applicant's other submissions as unfounded.

27. On 16 June 2023 the Constitutional Court ruled in favour of the applicant and quashed the decision of 9 August 2019 (see the preceding paragraph). In particular, the Constitutional Court found that the Court of First Instance had failed to address the application of section 28 of the Enforcement Act on which the applicant had explicitly relied. The Constitutional Court found a violation of Article 6 of the Convention due to a lack of sufficient and relevant reasons in the decision of the Court of First Instance.

28. On 12 December 2023 the expropriation proceedings were pending before the Administrative Court (see paragraph 23 above), the interim measure was still in force (see paragraph 18 above) and the judgment and the two administrative decisions delivered in favour of the applicant (see paragraphs 9, 13 and 14 above) remained unenforced.

RELEVANT LEGAL FRAMEWORK

29. Section 23 of the Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*, published in the Official Gazette of the Republic of Montenegro – no. 023/04) provided that enforcement could also be ordered on a request by a person who was not named as a claimant (*povjerilac*) in the enforceable decision, if he or she could prove that the relevant claim (*potraživanje*) had been transferred to him or her. It also specified that the same was applicable in the event that an enforcement was ordered against a person who was not named in the enforceable decision as a respondent (*dužnik*).

30. The Enforcement Procedure Act 2004 was in force until 25 September 2011, when it was replaced by the Enforcement Act 2011 (*Zakon o izvršenju i obezbjeđenju*, published in the Official Gazette of Montenegro – nos. 036/11, 028/14, 020/15, 022/17, 076/17 and 025/19). Section 28 of the new Act corresponds to section 23 of the previous Act.

31. Section 17 of the Enforcement Act 2011 provides that enforcement must be ordered on the basis of an enforceable document unless otherwise prescribed by law. Section 18 provides that, *inter alia*, an enforceable court judgment is an enforceable document. Section 22 provides that an enforceable document is suitable for the enforcement if it specifies the claimant and the respondent party, as well as the object, form and scope of the claim and the time-limit for fulfilling it. If the enforceable document does not specify a time-limit for the voluntary fulfilment of the claim, that time-limit is to be defined by an enforcement order.

32. Section 77 provides that in addition to other conditions under which an enforcement can be terminated, which are provided in the Act, an enforcement may also be terminated by a court of its own motion when an enforceable document has been quashed, overturned, declared null and void, that is, if a certificate of enforceability has been revoked. A decision on termination of enforcement annuls all the enforcement actions which were carried out, as long as doing so will not affect the acquired rights of third parties.

THE LAW

I. PRELIMINARY ISSUE

33. The Government submitted a unilateral declaration on 30 November 2021 and requested that the application should be struck out of the list of cases in accordance with Article 37 of the Convention. They acknowledged a violation of Article 6 of the Convention. They also undertook to ensure that all the necessary steps were taken to speedily enforce the decisions in question after the completion of the expropriation proceedings or, if the land were expropriated, that prompt actions would be taken to bring the infrastructure in question in line with the relevant construction standards.

34. The applicant invited the Court to reject the Government's unilateral declaration. He submitted that in their first unilateral declaration of 6 June 2016, the Government had already undertaken to take all the necessary steps to ensure the enforcement in question, without referring to expropriation, even though the expropriation proceedings had already been pending for more than three years at the time. They had failed to fulfil that undertaking. In their new unilateral declaration they proposed to wait for the completion of the expropriation proceedings and, furthermore, for the resolution of the case without any assurance that the enforcement would take place. In addition, the applicant submitted that the Government had proposed no compensation.

35. The Court notes that the relevant principles concerning unilateral declarations are set out in *Tahsin Acar v. Turkey* ((preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI). In particular, the Court considered that, under certain circumstances, it might be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It would, however, depend on the particular circumstances whether the unilateral declaration offered a sufficient basis for finding that respect for human rights as defined in the Convention did not require the Court to continue its examination of the case (Article 37 § 1 *in fine*) (ibid., § 75).

36. The Court further observes that the present application concerns non-enforcement of domestic decisions and that there have been a number of similar cases in respect of the respondent State (see, among many others, *Boucke v. Montenegro*, no. 26945/06, §§ 74-75, 79 and 89-94, 21 February 2012; *Milić v. Montenegro and Serbia*, no. 28359/05, §§ 63-65 and 68, 11 December 2012; *Vukelić v. Montenegro*, no. 58258/09, §§ 98-102, 4 June 2013; and *Mijanović v. Montenegro*, no. 19580/06, §§ 81-87, 17 September 2013).

37. Concerning the present application, the Court stresses that it already struck it out of the list of cases once on the basis of the Government's undertaking to ensure the speedy enforcement of the judgment and decisions in question (see the procedure part above). However, this undertaking was not fulfilled for which reason the Court restored the application to its list of cases. It also observes that, in their new unilateral declaration, the Government do not propose to ensure the enforcement without delay but rather to await the conclusion of the expropriation proceedings first and then to further proceed depending on their outcome. It notes in this connection that the expropriation proceedings were first initiated in 2010 and that there is no indication as to when they might be concluded. Moreover, the Government's proposal also includes an option not to enforce the decisions at all. Furthermore, the unilateral declaration neither contains any acknowledgment of a violation of Article 1 of Protocol No. 1 to the Convention nor provides for any compensation.

38. In view of the above the Court considers that the Government's unilateral declaration does not provide appropriate redress to the applicant and the Court therefore rejects the Government's request to strike the application out of its list.

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

39. The applicant complained, under various Articles of the Convention, about the non-enforcement of the judgment and the administrative decisions relating to his property delivered in his favour (see paragraphs 9-10 and 14 above). The Court considers that the applicant's complaint falls to be examined under Article 6 of the Convention and Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). The relevant parts of the Articles in question read as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a ... 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 possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. The parties’ submissions

40. The Government did not dispute that the enforcement proceedings had lasted a long time and had become even more complex on account of the change of ownership of part of the land, which had been the reason why the relevant judgment could not be enforced and why the applicant had to institute new civil proceedings against the municipality as the new owner. The municipal police’s decisions could not be enforced because of the interim measure issued in 2015, which was to remain in force until the expropriation proceedings were terminated.

41. The Government also submitted that there had been no violation of Article 1 of Protocol No.1 to the Convention. They acknowledged that there had been an interference with the applicant’s right to peaceful enjoyment of his possessions. They maintained, however, that the interference had been necessary in a democratic society and had been aimed at meeting the general interest of the community, notably by way of providing an access road to other houses, which was possible only by building it on plot no. 1084/4, as well as building the necessary water and sewage systems infrastructure.

42. The Government submitted that the expropriation, the aim of which was to build an access road on plot no. 1084/4, and in which there was a public interest, was a preliminary question. Following the termination of the expropriation proceedings, the municipality would initiate urgent repair of the road and the infrastructure so as to bring it in line with the relevant construction standards. The Government stated that that would be the only possible solution in the present case, bearing in mind the amount of time that had passed from the time when the relevant decisions had been delivered in the applicant’s favour and the present condition at the site. In that event the applicant would be entitled to compensation equivalent to the market value of the expropriated property.

43. The applicant contested the Government’s arguments and reiterated his complaint. In particular, he submitted that it would be absurd if enforcement could be avoided by transferring property from one person to another and if a claimant would be required to initiate new proceedings against every new owner, as in that way any enforcement could be obstructed endlessly.

B. The Court's assessment

1. Admissibility

44. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

45. The general principles concerning enforcement of judgments have been summarised in *Hornsby v. Greece* (19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II), *Immobiliare Saffi v. Italy* ([GC], no. 22774/93, § 59, ECHR 1999-V), *Sabin Popescu v. Romania* (no. 48102/99, §§ 68-76, 2 March 2004), *Matheus v. France* (no. 62740/00, §§ 58 and 71, 31 March 2005) and *Fuklev v. Ukraine* (no. 71186/01, § 84, 7 June 2005).

46. Turning to the present case, the Court notes that M.D., one of the co-owners of the land in question at the time, constructed a sewage collection system and paved the road in concrete on the land co-owned by the applicant, not only unlawfully, but also while apparently not respecting the relevant construction standards (see paragraphs 8, 9 and 10 above). Even though the applicant obtained a court judgment and two administrative decisions in his favour ordering M.D. to remove the constructions in question, they have never been enforced on account of (a) there being a new co-owner of the property – the municipality, rather than M.D. (see paragraphs 15-16 and 25 above), and (b) the ongoing expropriation proceedings (see paragraph 18 above). More specifically, the domestic authorities and courts dismissed all the applicant's requests for enforcement on the grounds that the relevant judgment had been delivered in respect of M.D. and not the municipality. It also issued an interim measure in favour of M.D., prohibiting the enforcement of the municipal police's decisions pending the conclusion of the expropriation proceedings.

47. As regards the change of ownership, the Court notes that the High Court upheld the first-instance decision ordering M.D. to remove the objects that he had unlawfully constructed (see paragraphs 11 and 14 above) regardless of the change of ownership, which had taken place in the meantime. However, even assuming that the change of ownership was relevant for the purposes of the enforcement, the Court notes that the relevant provisions of both of the Enforcement Acts consistently provided that an enforcement could also be requested against those who were not specified as respondents in the enforceable decisions if the relevant obligation was transferred to them (see paragraphs 29-30 above). It is noted in this regard that the dispute between the applicant and M.D. over the constructions on the land in question was duly entered in the real estate registry in 2008, that is,

long before the transfer of ownership took place (see paragraphs 7 *in fine* and 11 above; compare and contrast *Rodić v. Bosnia and Herzegovina* (dec.), no. 38636/17, § 31, 9 November 2020). The municipality, therefore, could not have been unaware of the dispute in question and could be expected to have also been aware of the first-instance judgment in that connection, which had been delivered by that time (see paragraphs 9 and 11 above). It therefore could be legitimately expected that M.D.'s transfer of his part of the land to the municipality also entailed the transfer of the obligation related to the objects unlawfully built on it. If that were not the case, claimants could indeed find themselves in situations where respondents could repeatedly transfer the ownership of the relevant property, obliging the claimants to initiate one set of civil proceedings after another, thus endlessly obstructing the enforcement in respect of the property in question. However, regardless of the relevant legal provision, the domestic courts held that the applicant should have initiated separate civil proceedings against the municipality, even though it had not been the municipality which had unlawfully built the objects in question and even though the applicant had already initiated one set of civil proceedings in that regard and obtained decisions in his favour. In doing so, the lower courts failed to address the applicability of the relevant legal provision as pointed out by the Constitutional Court when it quashed the decision of the Court of First Instance (see paragraph 27 above).

48. As regards the expropriation proceedings, the Court notes that in spite of an alleged public interest, the expropriation proceedings have been pending for several years. It also notes that even though they were already ongoing at the time, the Government nevertheless undertook to enforce the judgment and decisions in question, and it was in view of that assurance that the Court struck the case out of the list of cases in 2016 (see the procedure part above). The Court further observes that the domestic bodies, including the Supreme Court, explicitly held that the expropriation proceedings could not be an obstacle for the enforcement of the decisions (see paragraphs 19 and 25 above). The Government submitted that the relevant decisions would be enforced if the land was not expropriated (see paragraph 33 above), meaning that enforcement was still possible. The Court is therefore not convinced that the expropriation proceedings were a preliminary issue, as argued by the Government (see paragraph 42 above).

49. In view of the above, the Court considers that the failure of the State to enforce the final judgment and the relevant decisions amounts to a violation of Article 6 § 1 of the Convention (see *Boucke*, §§ 74-75, 79 and 89-94; *Milić*, §§ 63-65 and 68; *Vukelić*, §§ 98-102; and *Mijanović*, §§ 81-87, all cited above).

50. It also considers that the non-enforcement at issue constitutes an interference with the applicant's right to the peaceful enjoyment of his possessions, which was not justified in the present case. There has,

accordingly, been a separate violation of Article 1 of Protocol No. 1 (see *Mijanović*, cited above, §§ 88-91).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The Court notes that, after the application was restored and re-communicated to the respondent Government, the applicant repeated other complaints he had initially lodged under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 thereto concerning: (a) real estate administration officials not being prosecuted and sentenced following his criminal complaints, and (b) the length of the expropriation proceedings and not having an effective domestic remedy in that respect.

52. The Court reiterates that on 14 April 2021 the Government was notified of some of the applicant's complaints, while the remainder of the application, including the complaints mentioned in the preceding paragraph, was declared inadmissible. That being so, the Court no longer has jurisdiction to examine them (see *KIPS DOO and Drekalović v. Montenegro*, no. 28766/06, § 139, 26 June 2018).

53. The applicant also implicitly complained that some real estate administration officials had not been prosecuted and sentenced following his criminal complaints lodged in May 2021 and June 2022. This complaint is incompatible *ratione materiae* and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

54. The applicant also complained about the outcome of various other legal remedies he had used in order to have the judgment and the decisions in question enforced and, in particular, about the length of the proceedings before the Constitutional Court (see paragraph 24 above). Having regard to its findings in paragraph 49 above, the Court considers that it is not necessary to examine separately the admissibility or the merits of the applicant's complaints in this regard (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and the authorities cited therein; see, also, *mutatis mutandis*, *Hajnal v. Serbia*, no. 36937/06, § 137, 19 June 2012).

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

55. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, 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 by the Court and to redress as far as possible the effects (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). It is primarily for the

State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (*ibid.*; see also *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

56. However, exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court may propose various options and leave the choice of measure and its implementation to the discretion of the State concerned or the nature of the violation found may be such as to leave no real choice as to the measures required to remedy it and the Court may decide to indicate only one such measure (see *Öcalan*, cited above, § 210). The specific remedial measures, if any, required of a respondent State in order to discharge its obligations under Article 46 of the Convention must depend on the particular circumstances of the individual case and be determined in the light of the terms of the Court's judgment in that case, and with due regard to the above case-law of the Court (*ibid.*).

57. The violation which the Court has found in the present case is still affecting the applicant – he is in a situation where the relevant judgment and decisions delivered in his favour as early as in 2010 have never been enforced and where the domestic courts, after more than ten years of not enforcing the decisions in question, terminated the enforcement proceedings, thus allowing the objects, which had not only been constructed unlawfully but also not in compliance with the relevant standards, to remain on the property co-owned by the applicant.

58. The Court has already held that the right of access to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see *Hornsby*, cited above, § 40). However, the Court cannot ignore the domestic courts' findings that the objects in question, unlawfully constructed as they were and not in compliance with the relevant standards, provided the only access to the surrounding houses and their connection to the sewage system (see paragraph 18 above). The Court also observes that the land was registered as an uncategorised road even before the time of the events (see paragraph 5 *in fine* above). The Government submitted that there was therefore a public interest in expropriating the land in question. The Court reiterates that it is not for it to speculate whether or not there is public interest in expropriating the land in question. This question should be resolved in the expropriation proceedings. Having regard to the specific circumstances of the present case, the fact that the expropriation proceedings were initiated in 2010 and the alleged public interest in having an access road and sewage collection system on the relevant plots of land, the Court finds it particularly important that appropriate arrangements be made in order to ensure that the expropriation proceedings are conducted and concluded without any further unnecessary delays, at the latest within one year from the date when this judgment becomes final. Should the expropriation proceedings not be

completed within that time-limit or should the land not be expropriated, the judgment and the decisions delivered in favour of the applicant should be enforced within three months after that date, at the latest.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 16,200 euros (EUR) in respect of pecuniary and non-pecuniary damage. It would appear that the pecuniary damage related to the damage allegedly caused to the applicant's adjacent plots of land (see paragraph 8 above). The applicant submitted that he could not engage an expert witness to assess the exact amount of that damage, for which reason he made a joint claim for both pecuniary and non-pecuniary damage.

61. The Government argued that the requested amount was excessive, especially bearing in mind that the applicant had contributed to a large extent to the length of the proceedings complained of, as he had filed numerous petitions and voluminous submissions. They also submitted that the domestic judicial system had not been operating in its full capacity, as many judges had retired, which had also affected the conduct of various proceedings.

62. The Court notes that the applicant failed to specify the amount of pecuniary damage that he allegedly suffered due to the violation established by the Court and it therefore rejects this claim. However, it accepts that the applicant must have suffered non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Making its assessment on an equitable basis, the Court awards him EUR 4,700 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

63. The applicant also claimed EUR 1,025 for the costs and expenses incurred before the domestic courts and before the Court.

64. The Government contested the applicant's claim.

65. 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 were actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award

the entire sum claimed covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT

1. *Rejects*, unanimously, the Government's request to strike the application out of the list;
2. *Declares*, unanimously, the complaint, under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, about non-enforcement of a final domestic judgment and two administrative decisions admissible;
3. *Holds*, unanimously, that there is no need to examine separately the complaints about the outcome of various other legal remedies used in order to have the judgment and the decisions in question enforced and the length of the proceedings before the Constitutional Court;
4. *Declares*, unanimously, the remainder of the application inadmissible;
5. *Holds*, unanimously, that there has been a violation of Article 6 of the Convention;
6. *Holds*, unanimously, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
7. *Holds*, by six votes to one, that the respondent State shall ensure that the expropriation proceedings in respect of plots of land nos. 1084/4 and 1084/10 are concluded within one year at the latest as of the date when this judgment becomes final;
8. *Holds*, by six votes to one, that, if the expropriation proceedings are not concluded within one year as of the date when this judgment becomes final or if the land in question is not expropriated, the respondent State shall ensure the enforcement of the final domestic decisions delivered on 26 February and 29 and 30 March 2010 within three months after the expiry of the one-year period envisaged in respect of the conclusion of the expropriation proceedings;
9. *Holds*, unanimously,
 - (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, the following amounts:
 - (i) EUR 4,700 (four thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 1,025 (one thousand twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (iii) 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;

10. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Marko Bošnjak
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Krzysztof Wojtyczek is annexed to this judgment.

M.B.
I.F.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I respectfully disagree with the approach adopted in points 7 and 8 of the operative part of the present judgment.

2. In the instant case, the applicant complained under Article 6 about the non-enforcement of a judgment and administrative decisions delivered in his favour in a civil-law dispute with a private party about property rights. At the same time, the applicant has not substantiated his claim that he has suffered material damage and has failed to quantify it (see paragraph 62). In these circumstances, the instant case could raise the preliminary question whether the applicant has really suffered any significant disadvantage.

In cases concerning civil-law litigation between private parties about property rights (raised under Article 6 and/or Article 1 of Protocol No. 1), it is preferable that the applicants show and quantify the specific material damage they have suffered so that it cannot be objected that the disadvantage they have suffered is not significant. I agree nonetheless that – in the circumstances of the instant case – the doubt in this respect should be decided in favour of the applicant.

3. Furthermore, the instant case touches upon the rights of two classes of persons who were not parties to the proceedings before the Court: (i) the co-owners of plots of land nos. 1084/4 and 1084/10 mentioned in paragraph 5, and (ii) the owners of the adjacent plots. The majority rightly point to this feature of the case by stating the following in paragraph 58: “the Court cannot ignore the domestic courts’ findings that the objects in question, unlawfully constructed as they were and not in compliance with the relevant standards, provided the only access to the surrounding houses and their connection to the sewage system.” I note in this context that the co-owners of plots nos. 1084/4 and 1084/10 and the owners of the adjacent plots may have divergent interests and views in connection with the prospect of removing the sewage system as well as paving the road.

4. The enforcement of domestic civil-law judgments deciding upon property rights is often a delicate issue involving conflicting legitimate interests of private parties. The majority have decided nonetheless to order specific individual measures ensuring the implementation of the instant judgment. The approach chosen triggers several objections. First, the impugned measures have been ordered by the Court of its own motion whereas the applicant did not submit any request in this respect. The Court has adjudicated on these questions *ultra petita*. Secondly, neither the applicant nor any of the co-owners of plot nos. 1084/4 and 1084/10 or the owners of the adjacent plots have been given the possibility to present their views about the optimal method of providing redress to the applicant. It is not certain that the measures ordered reflect the applicant’s preferences. Thirdly, before ordering the enforcement of a domestic judgment or administrative decision, it is necessary to verify that there are no legal or factual obstacles to

its enforcement in domestic law; this is especially so in the present case when we take into account that almost fourteen years have elapsed since the decisions were handed down. Fourthly, the nature of the violation of the Convention in the instant case is not such as to leave no real choice as to the measures required to remedy it. It is debatable whether the measures ordered are a better solution than leaving some freedom of choice to the respondent State and the Committee of Ministers of the Council of Europe. The respondent State, exercising this freedom, could for instance decide to propose, as a possible manner of implementing the present judgment, pecuniary compensation for the material damage suffered. I further note in this context that although the possible expropriation (envisaged in point 8 of the operative part) should entail compensation corresponding to the current value of the expropriated plot, it will not bring compensation for any other possible type of material damage suffered (for instance a possible *lucrum cessans*, if any). In any event, expropriation will not ensure the enforcement of the domestic judgment and administrative decisions in favour of the applicant.

5. In conclusion, I would like to stress that the instant case raises once again important issues of procedural justice. The Court has ordered measures which may have a far-reaching impact upon the rights of other persons whereas none of those persons was granted the right to be heard before the Court.

In the circumstances presented above, it would have been preferable to refrain from ordering any specific implementation measures and to ensure that the respondent State – acting under the supervision of the Committee of Ministers – retained the possibility of proposing the optimal manner of implementing the present judgment, ensuring the best balance between the – possibly – conflicting interests of the persons concerned. In any event, a rational choice of the optimal implementing measures would have required establishing all the relevant current factual circumstances concerning the plots in question as well as the neighbouring plots, including the current preferences of the applicant and the other persons concerned.