



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

THIRD SECTION

CASE OF ISKRA DOO BEOGRAD v. SERBIA

(Application no. 53002/21)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Unlawful demolition of the applicant company's fence and seizure of land it had used for its business purposes for at least fifty years as part of the implementation of the Belgrade Waterfront project (Beograd na vodi) • Well-defined procedural legal framework designed to protect against arbitrariness entirely circumvented • Applicant company denied sufficient procedural guarantees against arbitrariness, including an opportunity to effectively challenge the impugned interference • Mere existence of special legislation enacted to implement the project could not negate the applicant company's right to due process, the special legislation itself providing for the application of general legislation in matters it did not specifically regulate

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 November 2025

FINAL

18/02/2026

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

In the case of Iskra DOO Beograd v. Serbia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović,

Canòlic Mingorance Cairat, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 53002/21) against 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 company, Iskra DOO Beograd (“the applicant company”), on 15 October 2021;

the decision to give notice to the Serbian Government (“the Government”) of the complaints concerning the destruction and seizure of the applicant company’s possessions, under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 14 October 2025,

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

INTRODUCTION

1. The application concerns the destruction and seizure of the applicant company’s possessions and the subsequent civil proceedings. The applicant company relied on Article 6 § 1 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant is a limited liability company (*društvo sa ograničenom odgovornošću*) based in Belgrade. It was represented by Ms A. Matić Alimpijević, a lawyer practising in the same city.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

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

I. THE RELEVANT CONTEXT

5. The applicant company was founded in 1946 as a State-owned company but had been transformed into a socially-owned company by 1964 (for more information on socially-owned companies, see *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, §§ 71-76, 15 January 2008).

6. In 1964 the applicant company erected a fence at 4-6 Hercegovačka Street, in the Savamala district of Belgrade, on land which it had already been using for its business purposes. The land in question was also socially-owned, and the applicant company had been using it on a continuous basis both before and after the erection of the fence. The applicant company obtained a permit for the construction work from the municipal authorities.

7. In 2010 the applicant company, along with all its assets, was sold to a private investor. The company continued to operate as a private limited liability company and to use the land in Hercegovačka Street, which had itself already been converted from socially-owned to State-owned property.

II. THE EVENTS OF 8 MAY AND 24 JUNE 2015 AND RELATED PROCEEDINGS

8. On 8 May 2015 the above-mentioned fence was demolished without prior notice to the applicant company.

9. On 8 June 2015 the applicant company lodged a civil claim for protection of possession (*smetanje državine*), within the meaning of the relevant Serbian law (see paragraph 22 below), with the Belgrade Court of First Instance (*Prvi osnovni sud u Beogradu*) against Millennium Team DOO and Beograd na vodi DOO, two limited liability companies based in Belgrade. The applicant company maintained, in particular, that Beograd na vodi DOO had commissioned Millennium Team DOO to demolish the fence. The applicant company therefore asked the court to find, among other things, that there had been an interference by the defendant companies with the enjoyment of its possession and, furthermore, to order the two companies to rebuild the fence in question and refrain from any further interference to the same effect.

10. On 24 June 2015 the employees of Millennium Team DOO occupied part of the land used by the applicant company in Hercegovačka Street. They also brought in the machinery needed for the erection of their own temporary fence and immediately began construction work.

11. On 22 July 2015 the applicant company amended the above-mentioned civil claim so as to include the events of 24 June 2015.

12. On 30 September 2016 the municipal authorities revoked the applicant company's permit for the erection of its fence (see paragraph 6 above). The applicant company then lodged an appeal against that decision; it would appear that the second-instance proceedings are still pending.

13. On 5 May 2017 the Belgrade Commercial Court (*Privredni sud u Beogradu*) ruled that the defendant companies had indeed interfered with the applicant company's possession of the land at issue on 8 May and 24 June 2015. However, it dismissed the claim seeking to order the defendant companies to refrain from any further interference and to restore the applicant company's possession to its previous condition.

14. On 13 July 2017 the Appellate Commercial Court (*Privredni apelacioni sud*) partially upheld the decision given at first instance, thus confirming the finding of an interference with the applicant company's possession. However, it quashed the ruling concerning the refusal to order the respondent companies to refrain from any further disturbance and to restore the applicant company's possession.

15. On 17 January 2019 the Belgrade Commercial Court ordered the respondent companies to refrain from any further interference with the possession at issue or face a fine, and to restore the applicant company's possession to its previous condition.

16. On 10 April 2019 the Appellate Commercial Court varied the decision of 17 January 2019. The court did not accept the argument presented by Beograd na vodi DOO that there was no evidence linking the company to the interference with the applicant company's possession. On the contrary, the court recognised, albeit only in its reasoning, that both defendant companies had in fact interfered with the applicant company's possession. However, it dismissed the applicant company's request to the effect that the respondent companies should refrain from any further interference and restore the possession to its previous state – that is, as it had been before the events of 8 May and 24 June 2015 (see paragraphs 8 and 10 above). The court explained that usually, the legal consequence of an established interference with one's possession is to order the cessation of any further interference and the restoration of that possession to its original state. However, when this was not possible for legal or factual reasons, such a request would be dismissed. Consequently, the court found that returning to the previous state in the applicant company's case had become impossible as it would be contrary to the law. Specifically, the 1964 permit had been revoked (see paragraph 12 above), making the rebuilding of the fence a violation of that decision. Furthermore, returning the land to the applicant company's possession would contradict the Belgrade Waterfront Spatial Planning Decree, in which the land had been designated for public use (see paragraph 47 below). In its reasoning, the court also relied on Article 363 of the Enforcement Procedure Act (see paragraph 32 below), which provided that the enforcement of an obligation that did not depend solely on the will of the debtor could not be requested. Since restoring the property to its previous state in the applicant company's case would also be against the established public interest (see paragraph 42 below), it did not depend solely on the will of the respondent companies, making restoration legally impossible.

17. On 5 June 2019 the applicant company lodged an appeal with the Constitutional Court against the Appellate Commercial Court's decision of 10 April 2019, relying on the right to a fair trial, the "right to judicial protection of human rights" and the right to the peaceful enjoyment of property under the Serbian Constitution.

18. On 3 December 2020 the Constitutional Court dismissed the applicant company's appeal, finding that the guarantees of a fair trial had been respected. Moreover, the court ruled that there had been no violation of the applicant company's property rights, since the applicant company had not claimed that its property had been expropriated without compensation.

III. THE EVENTS OF 25 APRIL 2016 AND RELATED DEVELOPMENTS

19. On 25 April 2016, a large number of structures in the Savamala neighbourhood, including several buildings used by the applicant company were demolished.

20. The investigation into those events appears to be still ongoing.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION OF THE REPUBLIC OF SERBIA (*USTAV REPUBLIKE SRBIJE*; PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA ("OG RS") No. 98/06)

21. Article 58 of the Constitution guarantees, *inter alia*, the "peaceful enjoyment of personal property and other property rights acquired under law".

II. PROPERTY ACT (*ZAKON O OSNOVAMA SVOJINSKOPRAVNIH ODNOSA*; PUBLISHED IN THE OFFICIAL GAZETTE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA ("OG SFRY") NOS. 6/80 AND 36/90; THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA ("OG FRY") No. 29/96; AND IN OG RS No. 115/05)

22. Article 70 of this Act defines "possession" (*državina*) as actual control over an asset.

23. Article 75 provides that those in possession of assets or rights have the right to protection against interference with or the deprivation of their possession.

24. Article 78 provides that a court of law must protect possession in accordance with the last state of possession and any interference that has occurred, without regard to the right to possession, the legal grounds for possession or the good faith of the possessor. A possessor who has obtained

possession by force, secretly or by abuse of trust also enjoys the protection of his possession except against the person from whom he acquired possession in such a way.

25. Article 79 provides that, when a court of law rules on an application for the protection of a possession, it must, on pain of a fine, prohibit further interference with the possession in question and order the return of the possession taken. It may also impose any other measures that may be regarded as necessary in order to prevent further interference.

III. OBLIGATIONS ACT (*ZAKON O OBLIGACIONIM ODNOSIMA*; PUBLISHED IN OG SFRY Nos. 29/78, 39/85, 45/89, 57/89; OG FRY No. 31/93; AND IN OG RS 18/20)

26. Article 154 of this Act defines the various grounds for claiming civil compensation.

27. Article 156 provides that anyone may require another person to eliminate a source of danger which may cause significant damage to him or others, or to refrain from an activity which causes nuisance, danger or damage.

28. Article 185 provides that the person responsible is obliged to restore the situation which existed before the damage occurred or to pay compensation if such restoration is not possible.

IV. CIVIL PROCEDURE ACT 2004 (*ZAKON O PARNIČNOM POSTUPKU*; PUBLISHED IN OG RS Nos. 72/11, 49/13, 55/14 AND 87/18)

29. Articles 448-54 of this Act regulate the specific details of the civil procedure for the protection of possession.

30. Article 449 provides that proceedings for the protection of possession are to be conducted as a matter of urgency.

31. Article 450 prohibits the consideration of the legal grounds for possession and excludes any award of damages in related proceedings.

V. ENFORCEMENT PROCEDURE ACT (*ZAKON O IZVRŠENJU I OBEZBEĐENJU*; PUBLISHED IN OG RS Nos. 106/15, 106/06 AND 113/17)

32. Article 363 of this Act states that if an action that can only be performed by the enforcement debtor is not within his exclusive control, the enforcement creditor may not demand the execution of that particular action but may only claim compensation for damage.

VI. GENERAL ADMINISTRATIVE PROCEDURE ACT (*ZAKON O OPŠTEM UPRAVNOM POSTUPKU*; PUBLISHED IN OG FRY Nos. 33/97 AND 31/01; AND IN OG RS No. 30/10)

33. Articles 192-209 of this Act set out the procedure for issuing rulings regarding rights and obligations in the form of decisions (*rešenja*).

34. Article 213 provides that a party to administrative proceedings has the right to lodge an appeal against a decision given by a first-instance court.

35. Articles 261-278 set out the exact procedure to be followed in the enforcement of final administrative decisions.

36. Article 261 § 2 provides that a final administrative decision will be executed once it becomes enforceable (*kada postane izvršno*). Article 261 § 3 (1-4) provides that a first-instance administrative decision becomes enforceable: (i) upon expiry of the period in which an appeal against it may be lodged, if no appeal has in fact been lodged; (ii) on the date when the decision has been delivered, should an appeal not be allowed; (iii) on the date when the decision has been delivered when an appeal does not postpone enforcement; or (iv) on the date when the decision by which the appeal has been dismissed or rejected has been delivered. Pursuant to Article 261 § 5, the statutory fifteen-day voluntary enforcement period, used by default if the decision does not set out any other enforcement period, starts running from the date on which the decision becomes enforceable.

37. Article 266 § 1 provides that the enforcement of non-pecuniary obligations (administrative enforcement) is to be carried out by administrative bodies themselves. Article 267 § 1 states that administrative enforcement is to be conducted by the administrative authority that gave the first-instance decision.

38. Articles 274-78 provide that the enforcement of non-pecuniary obligations, such as demolition, is carried out through third parties (*preko drugih lica*) and by coercive means (*prinudom*).

VII. ADMINISTRATIVE DISPUTES ACT (*ZAKON O UPRAVNIM SPOROVIMA*; PUBLISHED IN OG RS No. 111/09)

39. Article 4 of this Act provides that an administrative act is an individual legal act by which the competent public authority, by direct application of the regulations, decides on a certain right or obligation of a natural or legal person, that is, another party to the administrative matter.

40. Article 11 § 1 provides that a natural, legal or other person can bring an administrative dispute before a court of law if it is believed that its rights or interests, based on the law, have been violated by an administrative act.

VIII. PLANNING AND CONSTRUCTION ACT (*ZAKON O PLANIRANJU I IZGRADNJI*; PUBLISHED IN OG RS No. 72/09)

41. This Act lays down, among other things, the procedure for the removal or demolition of objects, including when based on an administrative decision.

IX. THE BELGRADE WATERFRONT ACT (*ZAKON O UTVRĐIVANJU JAVNOG INTERESA I POSEBNIM POSTUPCIMA EKSPROPRIJACIJE I IZDAVANJA GRAĐEVINSKE DOZVOLE RADI REALIZACIJE PROJEKTA BEOGRAD NA VODI*; PUBLISHED IN OG RS Nos. 34/15, 103/15 AND 153/20)

42. Article 1 of this Act establishes the existence of a public interest for the expropriation of the property needed for the implementation of the Belgrade Waterfront project – a project of particular significance for the Republic of Serbia and the City of Belgrade.

43. Articles 1-9 regulate the procedure for the expropriation of the property needed for the purposes of the Belgrade Waterfront project.

44. Article 1 also provides that the Expropriation Act, the Planning and Building Act and the General Administrative Procedure Act will apply, *mutatis mutandis*, unless otherwise specified in this Act.

45. This law was passed by the Serbian Parliament and entered into force on 15 April 2015.

46. The draft law, prior to its enactment, was also supplemented by an explanatory memorandum prepared by the government. According to that memorandum, the company Beograd na vodi DOO had been established by the government in order to assume complete managerial control of the Belgrade Waterfront Project “on behalf and in the interest of the Republic of Serbia”. That arrangement enabled the Republic of Serbia to exercise its “full control” over the company’s operations and to “oversee and influence the implementation of the Belgrade Waterfront project”.

X. THE BELGRADE WATERFRONT SPATIAL PLANNING DECREE (*UREDBA O UTVRĐIVANJU PROSTORNOG PLANA PODRUČJA POSEBNE NAMENE UREĐENJA DELA PRIOBALJA GRADA BEOGRADA – PODRUČJE PRIOBALJA REKE SAVE ZA PROJEKAT BEOGRAD NA VODI*; PUBLISHED IN OG RS No. 7/15)

47. The decree states that the aim of the Spatial Plan for the Belgrade Waterfront project is to “completely rebuild” that area of the city of Belgrade and turn it into “an elite part of the city and a new modern city centre”. The plan also provides that part of the area will be used for public purposes, such as squares and roads.

48. This decree entered into force on 31 January 2015.

XI. DECISION TO ESTABLISH LIMITED LIABILITY COMPANY
BEOGRAD NA VODI (*ODLUKA O OSNIVANJU DRUŠTVA SA
OGRANIČENOM ODGOVORNOŠĆU BEOGRAD NA VODI*;
PUBLISHED IN OG RS No. 66/14)

49. This decision, adopted by the Serbian Government on 26 June 2014, established the company named Beograd na vodi DOO as a government-founded entity fully owned by the State. It also outlined the initial financial capital of the company and appointed its director.

XII. DECISION ON CAPITAL INCREASE

50. This decision, adopted by Beograd na Vodi DOO on 28 July 2015, introduced a new shareholder to Beograd na Vodi DOO: the United Arab Emirates-registered company, Belgrade Waterfront Capital Investment L.L.C. This company acquired a 68% ownership stake in Beograd na Vodi, while the remaining 32% remained under Serbian ownership.

XIII. DOMESTIC CASE-LAW REFERRED TO BY THE GOVERNMENT

51. The Government provided the Court with three decisions given by the Belgrade High Court (*Viši sud u Beogradu*) in civil proceedings for the protection of possession in which that court found that the plaintiffs' possession had been disturbed but dismissed their requests for the restoration of the possession to its previous state.

52. In judgment GŽ br. 2127/14 of 15 May 2014 the Belgrade High Court denied the plaintiff company's request to revert the possession of a construction site to its former condition. The court reasoned that the factual circumstances had changed significantly by the time of the decision, as the site had since been developed into a finished building. Consequently, restoring it to its previous state as a construction site was regarded as impractical.

53. In judgment GŽ br. 10833/13 of 4 December 2014 the Belgrade High Court dismissed the plaintiffs' request for the public electricity company to restore possession to its previous state by removing the electrical cables installed beneath it. The court held that removing the cables would cause irreparable harm to the public utility company and found that it would not be economically justifiable, given that the damage caused to the plaintiffs had been disproportionately low and could be compensated for, and that there had been a public interest in installing the electrical cables.

54. In judgment GŽ br. 11997/21 of 22 December 2021 the Belgrade High Court dismissed the plaintiff's request to restore her possession of a flat. The court reasoned that doing so would prevent the rightful owner from using the flat and would grant possession to someone without a legitimate claim to it.

THE LAW

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

55. The applicant company complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention that the seizure and destruction of its possessions had violated its property rights and that the subsequent civil proceedings had not been fair and had not afforded any protection. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers that this complaint falls to be examined under Article 1 of Protocol No. 1 (see *Nikolay Kostadinov v. Bulgaria*, no. 21743/15, § 44, 8 November 2022), 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. Scope of the complaint

56. In their observations, the Government submitted that the applicant company had failed to inform the Court that it had brought civil proceedings seeking damages concerning the events of 25 April 2016, and that those proceedings were still pending (see paragraphs 19 and 20 above). The Government argued that, in any event, the complaint relating to those events was premature and that the Court could only examine it after the conclusion of the domestic proceedings. Moreover, the Government maintained that the applicant company had abused its right of individual application by not disclosing those civil proceedings to the Court.

57. The applicant company disagreed and maintained that it had exhausted all domestic remedies regarding its claim for protection of possession (see paragraphs 9-16 above).

58. The Court observes that the applicant company included the events of 25 April 2016 only in the “facts” section of the application form, omitting them from the “complaints” section. In addition, and as specifically stated by the applicant company in the application form itself, this “supplementary information” was merely provided in order to help the Court “better understand the situation in which the applicant company [had] found itself”.

59. The Court is therefore of the opinion that, although the facts concerning the events of 25 April 2016 may be relevant for reasons of context, they do not fall within the scope of the applicant company’s

complaint (see, *mutatis mutandis*, *Wiegandová v. the Czech Republic*, no. 51391/19, § 51, 11 January 2024; see also, *mutatis mutandis*, *S.W. v. the United Kingdom*, no. 87/18, § 43, 22 June 2021). The Court will therefore only examine the complaint relating to the events of 8 May and 24 June 2015, together with the related proceedings (see paragraphs 8-18 above).

B. Admissibility

1. Applicability of Article 1 of Protocol No. 1

60. The Court observes that the Government did not raise any plea of inadmissibility before it regarding the complaint's compatibility *ratione materiae* with the Convention and the Protocols thereto. However, the Court considers that this question concerns a matter which goes to its jurisdiction and that, as such, it is not prevented from examining it of its own motion (see, for example, *Ramiz Jafarov v. Azerbaijan*, no. 40424/12, § 34, 16 June 2022). The Court has further established that the question of the applicability of a particular provision of the Convention or its Protocols is an issue of the Court's jurisdiction *ratione materiae*, and that the relevant analysis should therefore be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). No such reason exists in the present case.

(a) Responsibility of the State

61. The Court notes, at the outset, that proceedings concerning a civil-law dispute between private parties do not by themselves engage the responsibility of the State under Article 1 of Protocol No. 1 to the Convention (see, for example, *Theo National Construct S.R.L. v. the Republic of Moldova*, no. 72783/11, § 69, 11 October 2022, and the authorities cited therein). The mere fact that the State, through its judicial system, provides a "forum" for the determination of a private-law dispute does not give rise to an interference by the State with property rights under Article 1 of Protocol No. 1, even if the substantive result of a judgment given by a civil court results in the loss of certain "possessions" (*ibid.*, § 69, with further references). Conversely, when the subject matter of the dispute and the substantive provisions applied comprised significant elements of public law and involved the State in its regulatory capacity (see, for example, *Gladysheva v. Russia*, no. 7097/10, §§ 57-59, 6 December 2011), or when court orders in proceedings between private parties pursued the public interest (see *Zhidov and Others v. Russia*, nos. 54490/10 and 3 others, §§ 94-95, 16 October 2018), the Court has found that Article 1 of Protocol No. 1 was applicable.

62. Turning to the present case, the Court observes that it is undisputed by the parties that the events in question resulted from a major development project, namely the Belgrade Waterfront project, which the Serbian government designated as a strategic priority and a project of special interest for the Republic of Serbia (see paragraph 42 above). To facilitate that project, the respondent State also enacted special legislation and decrees and founded the company Beograd na vodi DOO, the aim being to exercise full control over the execution of the project (see paragraph 46 above). In addition, it is clear that the government maintained full control over the functioning of the company from its establishment (see paragraphs 46 and 49 above). Consequently, the Court concludes that at the relevant time the company Beograd na vodi DOO did not enjoy “sufficient institutional and operational independence from the State”, and that as such its actions can be attributed to the State (see, *mutatis mutandis*, *R. Kačapor and Others*, cited above, §§ 98-99; see also *Mykhaylenko and Others v. Ukraine*, nos. 35091/02 and 9 others, § 44, ECHR 2004-XII). It is also undisputed, and has been established by the domestic courts, that the demolition of the applicant company’s fence and the subsequent seizure of the land were carried out by Beograd na vodi DOO through an intermediary (see paragraphs 13, 15 and 16 above). Lastly, when dismissing the applicant company’s request to reinstate its possession, the domestic courts themselves explicitly relied on the public interest, as established by the respondent State’s authorities (see paragraph 16 above *in fine*).

63. In the light of the above, the Court is unable to conclude that the events complained of and the related proceedings in the present case could be regarded as a resolution of a dispute between parties under private law. Article 1 of Protocol No. 1 is therefore applicable in this context.

(b) Whether the applicant company had a “possession” within the meaning of Article 1 of Protocol No. 1

(i) The parties’ submissions

64. The Government contended that the applicant company was not the owner of the land which it had used for its business purposes, and which was subsequently occupied by others (see paragraphs 6 and 7 above). It therefore could not have had a legitimate expectation that it would receive compensation in any future expropriation proceedings under the applicable domestic legislation (see paragraph 43 above).

65. The applicant company disagreed and maintained that it had used the land in question for decades.

(ii) The Court's assessment

66. The Court considers that the above arguments concern the issue of whether the applicant company had a “possession” within the meaning of Article 1 of Protocol No. 1 and therefore whether that Article is applicable.

67. The Court reiterates, in that connection, that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned events or decisions relate to his or her “possessions” within the meaning of that provision. The concept of “possessions” referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-I).

68. The fact that the domestic laws of a State do not recognise a particular interest as a “right” or even a “property right” does not necessarily prevent the interest in question, in some circumstances, from being regarded as a “possession” within the meaning of Article 1 of Protocol No. 1 (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 129, ECHR 2004-XII, and *Depalle v. France* [GC], no. 34044/02, § 68, ECHR 2010). Importantly, even a long-standing tolerance on the part of the authorities can also confer property rights (see *Kosmas and Others v. Greece*, no. 20086/13, §§ 68-71, 29 June 2017, and *Arnavutköy Greek Orthodox Taksiarhis Church Foundation v. Türkiye*, no. 27269/09, §§ 45-46, 15 November 2022).

69. It is not disputed by the parties that the fence erected in 1964 and demolished on 8 May 2015 was the property of the applicant company.

70. Nor do the parties dispute that, prior to the events at issue, the applicant company had “possession” (*državina*) of the land in question within the meaning of the Serbian Property Act, which defines possession as actual control over an asset (see paragraph 22 above). In this respect, the Court observes that it is not called upon to answer in the abstract whether the concept of “possession” under Serbian law aligns with the one contained in Article 1 of Protocol No. 1. Instead, its task is to examine whether the specific circumstances of this case, taken as a whole, vested in the applicant a substantive interest protected under that Article (see *Anheuser-Busch Inc.*, cited above, § 63). In this regard, the Court takes note of the Government’s argument that, under the applicable national law, the applicant company was not the owner of the land in question. It also notes, however, that the applicant company had used the land for its business purposes for decades prior to the events complained of, that is to say, since at least 1964, when the applicant company fenced in the land with the approval of the relevant authorities

(see paragraph 6 above). Moreover, when it was founded, the applicant company was State-owned and it subsequently became socially-owned until its privatisation in 2010 (see paragraphs 5 and 7 above). Consequently, the Court is able to conclude that the national authorities not only tolerated the existence of the applicant company on the land in question, but actually established it there in the first place (see, *mutatis mutandis*, the case-law cited in paragraph 68 above *in fine*).

71. The Court therefore considers that, in the specific circumstances of the present case, the time that elapsed, that is the continuous and uninterrupted recognition by the State of the applicant company's *de facto* possession of the land in question, for a period of at least fifty years, gave rise to a proprietary interest that was sufficiently established and weighty to amount to a "possession" within the meaning of the rule expressed in the first sentence of Article 1 of Protocol No. 1, which is therefore applicable to the complaint under consideration (see *Öneryıldız*, cited above, §§ 125-29, and, *mutatis mutandis*, *The J. Paul Getty Trust and Others v. Italy*, no. 35271/19, § 265-66, 2 May 2024).

2. Exhaustion of domestic remedies

(a) The parties' submissions

72. The Government argued that the applicant company had pursued a legal remedy that had not been effective, yet, at the same time, had failed to exhaust available and effective domestic remedies, such as a civil claim for damages or civil proceedings to eliminate the risk of possible damage (see paragraphs 26-27 above).

73. In particular, the Government contended that the remedy pursued by the applicant company in the present case could not ensure the "full protection of its property interests". While in such proceedings courts could provide protection regardless of the legal basis for the possession in question and the possessor's own good faith, the courts could also determine that, owing to legal or factual reasons, a restitution of the possession to the plaintiff and the prohibition of any further disturbances were simply not feasible, as had been the case in the applicant company's situation. To that effect, the Government also submitted case-law in which domestic courts had dismissed requests for restitution of a possession on legal or factual grounds (see paragraphs 51-53 above).

74. The applicant company disagreed and maintained that it had properly exhausted the legal avenue pursued and was not required to bring any additional proceedings concerning the same underlying issue. The applicant company further argued that the case-law submitted by the Government consisted of isolated examples and exceptions rather than an established practice of the national courts.

(b) The Court's assessment*(i) Relevant principles*

75. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to firstly use the remedies provided by the national legal system. Consequently, States are exempted from answering for their acts before an international body before they have had an opportunity to put matters right domestically (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

76. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (*ibid.*, § 71).

77. To be effective, a remedy must likewise be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see, for example, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009, and *Vučković and Others*, cited above, § 74).

78. An applicant's failure to make use of an available domestic remedy or to make proper use of it (that is to say, by bringing a complaint at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law) will result in an application being declared inadmissible by the Court (see *Vučković and Others*, cited above, § 72).

79. The Court has, however, also frequently emphasised the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (*ibid.*, § 76, with further references). It would, for example, be unduly formalistic to require applicants to pursue a remedy which even the highest court of their country would not oblige them to use (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117-18, ECHR 2007-IV).

80. In legal systems which provide constitutional protection for fundamental human rights and freedoms, such as the one in Serbia, it is incumbent on the aggrieved individual to test the extent of that protection (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009).

81. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact pursued, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others*, cited above, § 77, with further references).

(ii) Application of those principles to the present case

82. Turning to the present case, the Court notes that the core of the applicant company's complaint revolves around the protection of its possession. In this context, it was not unreasonable, on the face of it, for the applicant company to seek redress through civil proceedings specifically designed to urgently restore possession to its previous holder, without the need to delve into the legal basis for doing so (see paragraphs 24, 29, 30 and 73 above). The fact that in the present case the domestic courts, in what would appear to have been a departure from the general rule, still went on to examine the legal grounds for the applicant company's possession cannot, in the Court's view, be construed as an *ex post facto* justification to the effect that the applicant company's choice of legal avenue was therefore unreasonable.

83. The domestic courts themselves also partly ruled or reasoned in favour of the applicant company, finding that its right to enjoy its possessions had been violated (see paragraph 14 above). The first-instance court thus ordered, in its decision of 17 January 2019, the defendant companies to cease their interference and the restoration of the previous state of affairs, while the second-instance court confirmed, albeit in its reasoning only, that the restoration order would typically be the expected outcome for a successful plaintiff in a case of this sort (see paragraphs 15 and 16 above).

84. With the above in mind, the Court concludes that the case-law submitted by the Government is itself very fact-specific (see paragraphs 51-54 above) and, moreover, clearly an exception from the general rules governing possessory protection (see paragraph 16 above). It cannot therefore serve as a sound basis for discounting the applicant company's reasonable choice of legal redress.

85. In these circumstances, it is evident that the applicant company had no reason to believe, at the outset, that the civil proceedings which it had decided to pursue lacked a reasonable prospect of success or were an "obviously futile" avenue of redress (see paragraphs 77 and 83 above), all the more so since no legal proceedings were ever undertaken against it before the impugned occupation and demolition (see paragraphs 5-18 and 33-46 above).

86. The Court further notes that the Constitutional Court itself, importantly, did not reject the applicant company's complaints on the

grounds of its having failed to make use of any other prior effective legal remedies, including the various types of civil proceedings for damages, as it could have done (see paragraph 18 above; see also *Negovanović and Others v. Serbia*, nos. 29907/16 and 3 others, § 67, 25 January 2022). It would thus be unduly formalistic for the Court to now hold otherwise (see paragraph 79 above *in fine*; see also, *mutatis mutandis*, *Dragan Petrović v. Serbia*, no. 75229/10, §§ 55-57, 14 April 2020).

87. In view of the foregoing, the Government's objection as to the non-exhaustion of domestic remedies, within the meaning of Article 35 § 1 of the Convention, must be dismissed, it being understood that even where more than one potentially effective remedy is available the applicant is only required to use one remedy of his or her own choosing (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Nada v. Switzerland* [GC], no. 10593/08, § 142, ECHR 2012; *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014; and *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-11, ECHR 2014 (extracts)).

3. Conclusion

88. 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.

C. Merits

1. The parties' submissions

89. The applicant company maintained that the demolition of its fence and the taking of the land from its possession had been carried out in violation of Article 1 of Protocol No. 1 to the Convention.

90. The Government reiterated that there had been no violation of Article 1 of Protocol No. 1, as the applicant company had not owned the land in question and had not been deriving any profit from it at the time of its occupation. Consequently, the applicant company's proprietary interests were not sufficiently established in domestic law and case-law to create a legitimate expectation that it would receive any compensation in expropriation proceedings.

2. The Court's assessment

91. Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst

other things, to control the use of property in accordance with the general interest. These rules are not, however, unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, among many other authorities, *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 72, 13 December 2016; *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 289, 28 June 2018; and *Aktiva DOO v. Serbia*, no. 23079/11, § 76, 19 January 2021).

92. The Court also reiterates that in order for an interference to be lawful, it must be accompanied by sufficient procedural guarantees against arbitrariness including an opportunity to effectively challenge the measure in question (see, for example, *Project-Trade d.o.o. v. Croatia*, no. 1920/14, § 82, 19 November 2020, with further references cited therein, and *Capital Bank AD v. Bulgaria*, no. 49429/99, § 134, ECHR 2005-XII (extracts)). In particular, in the case of *Capital Bank AD* (cited above, § 134, references omitted) the Court held:

“The requirement of lawfulness, within the meaning of the Convention, presupposes, among other things, that domestic law must provide a measure of legal protection against arbitrary interferences by the public authorities with the rights safeguarded by the Convention ... Furthermore, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights be, in certain cases, subject to some form of adversarial proceedings before an independent body competent to review the reasons for the measures and the relevant evidence ... It is true that Article 1 of Protocol No. 1 contains no explicit procedural requirements and the absence of judicial review does not amount, in itself, to a violation of that provision ... Nevertheless, it implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures ...”

93. Turning to the present case, the Court notes that in the domestic civil proceedings it was established by the national courts themselves that there had been an interference with the applicant company’s right to the peaceful enjoyment of its possessions (see paragraph 14 above). The Court sees no reason to disagree with this conclusion, for the reasons already given above (see paragraphs 61-63 and 66-70 above) and within the meaning of Article 1 of Protocol No. 1.

94. Regarding the question of which rule under this provision should be applied to the impugned interference (see paragraph 91 above), the Court is of the opinion that this particular matter need not be resolved in the specific circumstances of the present case, for the specific reasons set out below (see, for example and *mutatis mutandis*, *Aktiva DOO*, cited above, § 78, *in fine*).

95. The Court notes, in this context, that under the relevant domestic legislation, any demolition must be carried out in conformity with a well-defined procedure, including the delivery of an appropriate decision in administrative proceedings and adherence to the relevant rules for the enforcement of such a decision (see paragraphs 33-41 above). These proceedings, including the right to an appeal and/or the right to bring an administrative dispute before a court of law, are part of a procedural legal framework designed to protect against arbitrariness. As is evident from the facts of the present case, however, this legal framework was entirely circumvented. The applicant company has therefore been denied sufficient procedural guarantees against arbitrariness, including an opportunity to effectively challenge the interference in question (*ibid.*).

96. The Court acknowledges the existence of special legislation enacted for the implementation of the Belgrade Waterfront project and takes note of the Government's argument that the applicant company had no right to compensation under the provisions of that legislation (see paragraphs 43, 64 and 90 above). However, the mere existence of this special legislation cannot, by the nature of things, negate the applicant company's right to due legal process when confronted with demolition. In fact, the special legislation itself provides for the application of general legislation in matters not specifically regulated by it (see paragraph 44 above).

97. The foregoing considerations are sufficient to enable the Court to conclude that the interference at issue, namely the demolition of the applicant company's fence and the taking from its possession of the land that it had been using, was not lawful, which in turn makes it unnecessary to examine whether it had a legitimate aim and was proportionate (see, *mutatis mutandis*, *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

98. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

99. The applicant company also complained that it had not had an effective domestic remedy for its complaint under Article 1 of Protocol No. 1. Notice of this complaint was given to the Government under Article 13 of the Convention, 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.”

100. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the complaint under Article 13 of the Convention (see *Podchasov v. Russia*, no. 33696/19, § 82, 13 February 2024).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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.”

102. The applicant company claimed compensation for pecuniary and non-pecuniary damage and the reimbursement of legal costs and expenses.

A. Pecuniary damage

103. The applicant company claimed 4,434,497 euros (EUR) in respect of pecuniary damage. It contended that, until the occupation of the land in question, it had leased the property as a parking lot to a transport company at a monthly rate of EUR 1,000, thus generating regular profit.

104. The Government challenged this claim, arguing that it was unsubstantiated, not directly linked to the alleged violation, and excessive in nature. Specifically, the Government submitted a letter from the transport company indicating that the lease agreement had ended prior to the events in question.

105. In its response, the applicant company argued that the transport company had only terminated the lease after the applicant company had been effectively displaced from the property.

106. The Court notes that the applicant company did not own the land in question. The Court also accepts that the applicant company was deriving profit from the continuous use of the land, that is by leasing it as a parking lot. However, considering that the principal reason for the finding of a violation was the failure to follow the relevant procedures, the Court concludes that there is no causal link between the pecuniary damage claimed and the violation found, the latter being specifically related to the procedural guarantees inherent in Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Džinić v. Croatia*, no. 38359/13, §§ 80 and 86, 17 May 2016).

B. Non -pecuniary damage

107. The applicant company claimed EUR 220,000 in respect of non-pecuniary damage.

108. The Court is of the opinion that the applicant company has undoubtedly suffered some non-pecuniary damage. Given the nature of the violation found in the present case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant company the amount of EUR 3,000 under this head, plus any tax that may be chargeable (see, among other relevant examples, *G.I.E.M. S.r.l.*

and Others v. Italy (just satisfaction) [GC], nos. 1828/06 and 2 others, § 69, 12 July 2023; *Jewish Community of Thessaloniki v. Greece*, no. 13959/20, § 89, 6 May 2025; and *Pintar and Others v. Slovenia*, nos. 49969/14 and 4 others, § 121, 14 September 2021).

C. Costs and expenses

109. The applicant company also claimed EUR 11,873 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

110. The Government contested this claim.

111. The Court reiterates that 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 were also reasonable as to their quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 186, 20 April 2021). 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 sum of EUR 3,000 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that there is no need to examine the admissibility or the merits of the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;

(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 company's claim for just satisfaction.

Done in English, and notified in writing on 18 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Ioannis Ktistakis
President