THIRD SECTION

DECISION

Application no. 44957/17
Nafija SINANOVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 25 March 2025 as a Committee composed of:

Peeter Roosma, *President*,
Diana Kovatcheva,
Mateja Đurović, judges,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 44957/17) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 12 June 2017 by a Serbian national, Ms Nafija Sinanović ("the applicant"), who was born in 1944, lives in Tutin and was represented by Mr S. Obrenić, a lawyer practising in Belgrade;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the dismissal of a request lodged by the applicant for the partial annulment of an expropriation decision in respect of land that had belonged to her predecessor. The applicant submitted that the dismissal had violated her rights under Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention.

2. On 22 October 1980 the land belonging to the applicant's predecessor was expropriated for the purpose of regulating the Vidrenjak River. The relevant compensation procedure was never initiated in that connection.

3. On 24 August 2004, on the basis that the land had not been used for the intended purpose, the applicant's predecessor submitted a request for the partial annulment of the expropriation decision, in accordance with the newly implemented Law on Construction and Planning (hereinafter "the Law"), seeking to regain ownership of the expropriated land in part. The Law provided for the annulment of expropriation decisions only when the land in its entirety had not been used for its intended purpose, and did not clarify what should happen in cases where only part of the land was being used for the stated purpose. The Law also stipulated that the division of a piece of land could be carried out only at the request of the owner or the holder of the right of use.

4. In application of this legislation, the domestic courts developed case-law addressing situations where the annulment in part of expropriation decisions had been sought, and established the circumstances in which the previous owners could regain ownership. Namely, in its decision of 22 December 2005, the Supreme Court affirmed that such annulment in part of expropriation decisions was possible, provided that the annulled section was clearly specified in the operative part of the decision and that the remaining expropriated land did not form an integral part of a larger land complex required for its intended purpose.

5. Pursuant to that decision, the Administrative Court continued to apply the same legal position, though in a more precise manner, in all cases where only part of a piece of expropriated land was used for its intended purpose. Specifically, it allowed for the annulment in part of expropriation decisions in situations where the section of land that had not been used for the purpose for which it had been expropriated formed a distinct and identifiable unit recorded in the cadastral records.

6. On 20 November 2012, after several remittals, the applicant's request was dismissed. The authorities held that an annulment in part could only be granted if the contested land had been previously divided in such a way that the unused portion formed a clearly identifiable and delineated plot.

7. On 23 July 2015 and 24 November 2016, respectively, the Administrative Court and the Constitutional Court upheld the said decision.

8. Following the final resolution of the annulment proceedings, the Municipality of Tutin initiated the division process and shortly thereafter sold the newly delineated plot of land to a third party.

9. Relying on Article 1 of Protocol No. 1 and Article 13 of the Convention, the applicant complained that the domestic authorities had placed an excessive individual burden on her, which had been impossible for her to fulfil as proceedings seeking the division of the land, a necessary prerequisite for the annulment in part of the expropriation and her regaining ownership, could only be initiated by the owner or holder of the right of use, who, at the time, was the Municipality of Tutin.

THE COURT'S ASSESSMENT

10. The Government submitted that the application should be rejected under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies because the applicant had failed to use two available domestic remedies: non-contentious proceedings for compensation and, alternatively, a separate civil action for damages. The Government further contended that the facts of the present case disclosed no legitimate expectation within the meaning of Article 1 of Protocol No. 1 to the Convention and consequently no violation of Article 13. The applicant disagreed and reaffirmed her complaint.

11. The Court considers that there is no need for it to examine the Government's objection as regards the exhaustion of domestic remedies since the applicant's complaint is in any event inadmissible *ratione materiae* (see, for illustrative purpose, *Momčilović v. Serbia* (dec.) [Committee], no. 44530/18, § 12, 5 March 2024).

12. In particular, to determine whether the applicant's complaint falls within the scope of Article 1 of Protocol No. 1, which provides for protection of property rights, the Court must establish whether she could have had a legitimate expectation of regaining possession of part of the expropriated land.

13. The Court has previously held that "possessions" can be existing possessions or assets, including claims, in respect of which an applicant can argue that he or she has at least a legitimate expectation that they will be realised, that is, that he or she will obtain effective enjoyment of a property right (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

14. The Court has pointed out in this regard that there is a difference between a mere hope of restitution, however understandable that hope may be, and a legitimate expectation, which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision (see *Gratzinger and Gratzingerova*, cited above, § 73).

15. The Court notes first of all that it is indisputable that the expropriated land was not fully used for the purpose of regulating the Vidrenjak River.

16. Secondly, the Court observes that domestic case-law has consistently maintained that the annulment in part of an expropriation decision is permissible under specific conditions, namely when the unused land constitutes a separate and identifiable unit recorded in the cadastral records. Therefore, the legitimate expectation could only arise if such conditions were fulfilled (see *Kopecký*, cited above, § 49).

17. Further, the Court notes that in the present case the expropriated land comprising two cadastral plots had not been previously subdivided to distinguish the portion not used for regulating the river as a separate cadastral plot or functional unit, which resulted in the dismissal of the applicant's request.

18. Also, the Court notes that domestic legislation did not impose an obligation on the holder of the right of use over expropriated land to undertake parcellation or division of the existing cadastral plots, but merely allowed it as a possibility.

19. Regarding the subsequent developments, particularly the division of the expropriated land initiated by the Municipality of Tutin after the dismissal of the applicant's request (see paragraph 8 above), which resulted in the formation of new cadastral plots and their subsequent sale, the Court does not believe that those actions are relevant to its assessment of the alleged infringement of the applicant's rights. This is especially relevant given that the applicant can exercise the right to seek monetary compensation for the expropriated land at its market value without any time-limit.

20. In these circumstances, the Court concludes that the applicant cannot claim to have had a legitimate expectation of regaining possession of part of the expropriated land and there was no sufficient basis in domestic law, as interpreted by the domestic courts, for the applicant's claim to qualify as "possession" for the purposes of Article 1 of Protocol No. 1.

21. It follows that the complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

22. The Court further notes that Article 13, which provides for the right to an effective remedy, can only be applied in combination with, or in the light of, one or more Articles of the Convention or the Protocols thereto of which a violation has been alleged. To rely on Article 13 the applicant must also have an arguable claim under another Convention provision (see *Zavoloka v. Latvia,* no. 58447/00, § 35, 7 July 2009).

23. It follows from the foregoing that the applicant does not have an arguable claim under Article 1 of Protocol No. 1 to the Convention. The complaint under Article 13 hence must be also rejected in accordance with Article 35 §§ 3 (a) and 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 May 2025.

Olga Chernishova Deputy Registrar	Peeter Roosma President