



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

FOURTH SECTION

CASE OF VRIONI AND OTHERS v. ALBANIA

(Applications nos. 35720/04 and 42832/06)

JUDGMENT
(Just satisfaction)

STRASBOURG

7 December 2010

FINAL

11/04/2011

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

In the case of Vrioni and Others v. Albania,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi,

Vincent Anthony de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 November 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 35720/04 and 42832/06) against the Republics of Albania and Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Albanian nationals, Mr Shahin Vrioni and Mr Oliver Vrioni and two Italian nationals, Mr Dario La Francesca and Mr Gherardo La Francesca. The applicants complained that there had been violations of Article 6 § 1 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 13 taken in conjunction with Article 1 of Protocol No. 1.

2. The applicants were represented by Ms L. Sula, a lawyer practising in Tirana. The Albanian Government (“the Government”) were represented by their Agent, Mrs E. Hajro.

3. In a judgment delivered on 29 September 2009 (“the principal judgment”), the Court held that there had been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the Albanian authorities' failure to enforce a final court decision which had awarded compensation to the applicants *in lieu* of the restitution of property. The Court further found a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 (*Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, §§ 48-85, 29 September 2009). The Court rejected the applicants' complaints against Italy as being incompatible *ratione personae*.

4. Under Article 41 of the Convention the applicants sought various sums by way of just satisfaction.

5. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it in whole and invited the

Government and the applicants to submit, within three months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they might reach (*ibid.*, §§ 88-91, and point 9 of the operative provisions).

6. The applicants and the Government each filed observations within the extended time-limits allowed to them. No basis was found on which a friendly settlement could be secured.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 18 March 1996 and 14 December 1999 the Tirana Property Restitution and Compensation Commission (*Komisioni i Kthimit dhe Kompensimit të Pronave* – “the Commission”), recognised the applicants' title to two plots of land measuring 1,100 sq. m and 537 sq. m, respectively. The Commission held that it was impossible for the applicants to have the whole of the original plot of land allocated to them. It decided to restore to the applicants a vacant plot of land (*një truall i lirë*) measuring 1,456 sq. m., which was situated within the grounds occupied by the Italian Embassy, and ordered the authorities to pay compensation in respect of a plot of land measuring 181 sq. m. Moreover, it ordered that the applicants' title to the property be entered in the Tirana Property Register.

8. The applicants lodged a civil action in view of their impossibility to recover the plot of 1,456 sq. m. By virtue of the Court of Appeal's decision of 29 October 2002 it was decided that the applicants should receive compensation *in lieu* of the original property in one of the forms provided for by law in respect of the plot of land measuring 1,456 sq. m. The Court of Appeal found that, in so far as that plot of land was an integral part of the Italian Embassy's premises, it could not be considered vacant and thus recoverable by the applicants. This decision was upheld by the Supreme Court on 15 June 2004. Consequently, the applicants were to receive compensation in accordance with the Property Act for the totality of the 1,637 sq. m. of land (see §§ 24-25 of the principal judgment).

9. Further details are set out in the principal judgment.

II. RELEVANT DOMESTIC LAW

A. Act on the price of land to be compensated (Law no. 7832 of 16 June 1996 - *Ligji për çmimin e truallit që kompensohet*), “The 1994 Act”

10. The 1994 Act contained the criteria to be employed for assessing the financial compensation to be awarded to former landowners. According to the 1994 Act, Tirana was to be divided into three zones A, B and C. The price reference for the property located in zone A was fixed at 1,600 Albanian leks (ALL) per square metre.

B. Council of Ministers Decisions (“CMDs) on property valuation maps (CMD no. 555 of 29 September 2007; CMD no. 653 of 29 August 2007; CMD no. 139 of 13 February 2008 and CMD no. 1620 of 26 November 2008)

11. By virtue of three decisions, two of which were adopted in 2007 and one in 2008, the Government approved and issued property valuation maps as listed above. The maps, which were to be used in the determination of the award of financial compensation by the competent authorities, included the reference price per square metre throughout the country.

12. The first decision fixed the price of land for the regions of Berat, Gjirokastrë, Vlorë and Dibër; the second decision fixed the price of land for the regions of Lezhë, Dibër, Korçë and Kukës; the third decision fixed the price of land for the regions of Fier, Elbasan, Tirana, Vlorë, Durrës and Shkodër. The fourth decision contained an updated price list for certain cities. According to that decision, the reference price per square metre for the area in which the applicants' property was located was valued at ALL 180,000.

THE LAW

13. 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

1. *The parties' submissions*

a. The applicants

14. The applicants claimed 3,916,200 euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage.

15. The applicants submitted that compensation should be awarded in respect of the totality of the plot of land measuring 1,637 sq. m, including the plot of 182 sq. m. They stated that their right to compensation in respect of the whole of this surface area had been recognised by the Commission decisions of 1996 and 1999.

16. The applicants contended that pecuniary damage should be calculated on the basis of the market value of the land at issue. They disagreed with the Government's proposal to apply the criteria stated in this Court's judgment in the case of *Guiso-Gallisay v. Italy* (just satisfaction) ([GC] judgment, no. 58858/00, §§ 103-105, 22 December 2009), arguing that they had never been dispossessed of their property as had the applicants in *Guiso-Gallisay v. Italy*, no. 58858/00, §§ 78-97, 8 December 2005.

17. During the negotiations with the Government, the applicants had submitted three methods for the calculation of pecuniary damage. They finally proposed that the reference price per square metre for the calculation of pecuniary damage should be 1,500 euros (EUR). In their view, this corresponded to the reference price per square metre found in CMD no. 1620 of 26 November 2008. Relying on that CMD, the applicants contested the Government's proposal to apply the reference price of ALL 1,600 per square metre as stipulated in the 1994 Act (see paragraph 10 above).

18. The applicants further requested that loss of profits be added to the amount of pecuniary damage. They contended that the location of their property would have attracted property developers to construct high-rise buildings, as had been the case with an adjacent plot of land. As a result, they would have obtained high profits. The applicants submitted an investment contract that they had concluded on 17 May 2010 with a building company. In addition, the loss of profits should include the rent they would have obtained by leasing the property. Finally, the applicants submitted that an interest rate should be applied starting from 1996, the year on which they had instituted legal proceedings.

19. In sum, the applicants' estimates for pecuniary damage were as follows:

A plot of land measuring 1,456 sq. m x 1,500 EUR / sq. m	EUR 2,184,000
Estimated rent for the period 1 June 1996 – 1 June 2006	EUR 535,500
Estimated rent for the period 1 June 2006 – 1 June 2010	EUR 274,200
A plot of land measuring 181 sq. m	EUR 271,500
Bank interest on the estimated rent for the period 1 June 1996 – 1 June 2010	EUR 651,000
Total	EUR 3,916,200

b. The Government

20. The Government submitted that the applicants were entitled to compensation in respect of a plot of land measuring 1,456 sq. m, as decided by the national courts. They opposed the applicants' claim to be compensated also in respect of the plot of 181 sq. m, which, in their view, had not been the object of the Court's examination in its principal judgment.

21. The Government advanced two methods for calculating pecuniary damage. According to the first method of calculation, they proposed the use of the reference price per square metre as provided for by the CMDs on property valuation maps (see paragraphs 11 and 12 above).

22. The second method of calculation, which they favoured, was based on this Court's judgment in the case of *Driza v. Albania*, no. 33771/02, § 137, ECHR 2007-XII (extracts), which referred to the “prices on the ... property market at the time of the relevant [domestic] judgments”. The Government further relied on the recently established principle adopted by the Grand Chamber of the Court in *Guiso-Gallisay v. Italy* (just satisfaction), cited above, according to which “the date to be taken into consideration in assessing the pecuniary damage should not be that on which the Court's judgment is delivered, but the date on which [the applicants] lost ownership of the land” (see § 103 of the judgment).

23. Consequently, referring to the 1994 Act which continued to apply even when the applicants' right to compensation was finally recognised by the Supreme Court's decision of 15 June 2004, the Government submitted that the reference price should be ALL 1,600 per square metre (see paragraph 10 above). They rejected the application of the reference prices contained in the 2008 property valuation maps, which had been adopted as a consequence of the general measures indicated by the Court in the *Driza* judgment (see paragraph 126 of the judgment). However, they added that such maps were currently used to calculate the award of financial compensation to former owners and they reflected the real market value which had been both interest- and inflation-indexed.

24. The Government considered the applicants' claim regarding the construction of a high-rise building on the plot of land and the loss of corresponding profits hypothetical. In the first place, they argued that the applicants' property had been sold to the Italian Embassy. Secondly, the construction of a building would be conditional on the issuance of a building permit and there were no guarantees that one would be granted.

25. The Government further maintained that loss of profit should be calculated on the basis of an annual bank interest rate applied to the compensation awarded. However, they disagreed with the applicants as to the calculation of the rent they would have obtained had they leased the property out.

26. The Government proposed that the applicants be awarded EUR 21,000 in respect of non-pecuniary damage.

2. The Court's assessment

a. Applicable principles

27. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

28. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 20, ECHR 2001-I).

29. Among the matters which the Court takes into account when assessing compensation are pecuniary damage (the loss actually suffered as a direct result of the alleged violations) and non-pecuniary damage (reparation for the anxiety, inconvenience and uncertainty caused by the violation) and other non-pecuniary loss (see, among other authorities, *Ernestina Zullo v. Italy*, no. 64897/01, § 25, 10 November 2004). In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

30. The Court notes that the respondent Government raised two principal strands of argument. The first concerns the plots of land to be compensated and the second relies on the method of calculation of pecuniary damage. The Court will therefore consider both issues below.

b. Scope of the case

31. The Court notes that in the principal judgment it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the authorities' failure to pay compensation to the applicants *in lieu* of the restitution of property, notwithstanding a final domestic court decision in the applicants' favour (see paragraph 3 above). The Court further notes that the final domestic court decision recognised the applicants' right to compensation only in respect of 1,456 sq. m. Their right to compensation in respect of the plot measuring 181 sq. m, as accepted by the Commission decisions of 1996 and 1999, remained unaffected.

32. The Court will therefore examine the calculation of pecuniary damage in respect of the plot measuring 1,456 sq. m in accordance with its findings in the principal judgment, no complaint having been made as regards the authorities' failure to pay the applicants compensation in respect of the plot of land measuring 181 sq. m.

c. Method of calculation

33. The Court notes that in the present case *restitutio in integrum* cannot be effected in view of the findings of the domestic courts. It is for this reason that the domestic courts ordered compensation to be paid to the applicants in accordance with the Property Act. The Court will therefore make an award of compensation.

34. The Court cannot accept the respondent State's proposal to apply the method of calculation of pecuniary damage as adopted by the Grand Chamber of the Court in the case of *Guiso-Gallisay* (just satisfaction), cited above. It notes that in the *Guiso-Gallisay* judgment (merits) of 8 December 2005 and other similar Italian cases of constructive expropriation, a public authority had occupied land for the purpose of carrying out public works without having completed the formal expropriation process. As a result, ownership passed to the public authority automatically, either when the public works were completed or after a lapse of time, depending on the circumstances. Contrary to *Guiso-Gallisay* (merits), the present case does not relate to such constructive expropriation.

35. The Court notes that it is the failure to pay compensation and not the inherent unlawfulness of the taking of land, as in *Guiso-Gallisay*, that was at the origin of the violation found under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in the instant case (see, *mutatis mutandis*, *Scordino (no. 1)*, cited above, § 255).

36. In calculating the amount of pecuniary damage, the Court considers that, given the particular circumstances of the Albanian context, it is desirable to depart from the method of calculation described in *Driza* (cited above, § 137) according to which the amount of compensation should correspond to the value of the plot of land at the time of the domestic authorities' decisions. The Court notes that at the relevant time the property valuation maps did not exist. It was precisely for the purpose of calculating the amount of financial compensation to be awarded and for avoiding any speculation that the Court indicated under Article 46 of the Convention that the respondent State should adopt such maps as a matter of urgency (see *Driza*, cited above, § 126).

37. The Court notes with interest that the authorities have adopted property valuation maps in respect of the entire territory of Albania. The reference price, as stated by the Government, reflects the real market value and was interest-and inflation-indexed at the time of adoption of the maps. The Court will therefore base its findings for the calculation of pecuniary damage on the property valuation maps adopted in respect of the Tirana region in 2008.

38. The Court rejects the applicants' claim for compensation for the damage resulting from the impossibility of using and enjoying the plot of land. It notes that the domestic courts' findings were clear as regards the applicants' entitlement to compensation *in lieu* of the restitution of land and the applicants cannot interpret those judgments as giving rise to an expectation that they would lease the plot of land or construct a building on it.

39. Having regard to those factors, and ruling on an equitable basis, the Court considers it reasonable to award the applicants EUR 1,900,000 in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

40. The applicants claimed a lump sum of EUR 18,000 for costs and expenses incurred in the domestic and Strasbourg proceedings. However, they failed to submit any supporting documents.

41. The Government submitted that the amounts claimed were baseless.

42. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Gjyli v. Albania*, no. 32907/07, § 72, 29 September 2009). To this end, Rule 60 §§ 2 and 3 of the Rules of Court stipulates that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court "may reject the claims in whole or in part".

43. In the present case, noting that the applicants have failed to produce any documents – such as itemised bills or invoices – in support of their claim, the Court does not award any sums for costs and expenses.

C. Default interest

44. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,900,000 (one million nine hundred thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. Dismisses the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President