



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

FOURTH SECTION

CASE OF GJYLI v. ALBANIA

(Application no. 32907/07)

JUDGMENT
(Just satisfaction)

STRASBOURG

7 December 2010

FINAL

07/03/2011

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

In the case of Gjyli v. Albania,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

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 an application (no. 32907/07) against Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Albanian national, Mr Ali Gjyli (“the applicant”), on 13 July 2007. The applicant complained about the non-enforcement of two court judgments.

2. In a judgment delivered on 29 September 2009 (“the principal judgment”), the Court held unanimously that there had been a violation of Article 6 § 1 of the Convention as regards the non-enforcement of the Durrës District Court’s judgment of 27 September 2005. It further found a violation of Article 13 in conjunction with Article 6 § 1 of the Convention in respect of the lack of effective remedies for a failure to enforce the Durrës District Court’s judgment of 27 September 2005 (see *Gjyli v. Albania*, no. 32907/07, 29 September 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction in respect of pecuniary damage sustained as a result of non-payment of salary arrears.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved it and invited the Government and the applicant 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 that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 67 and point 6 of the operative provisions).

5. The applicant 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

THE CIRCUMSTANCES OF THE CASE

1. Events prior to the adoption of the principal judgment

6. On 9 July 2005 the applicant was dismissed from work. Considering his dismissal arbitrary, he challenged it before the Durrës District Court (“the District Court”). The applicant did not seek an award of pecuniary damage.

7. By a judgment of 27 September 2005, which became final, the District Court found the dismissal void due to a flawed procedure and ordered the applicant’s reinstatement. That judgment was never enforced.

8. In separate proceedings, which were pending before the domestic courts by the time this Court adopted the principal judgment, the applicant sought payment of salary arrears since 9 July 2005.

2. Events after the adoption of the principal judgment

9. By a decision of 10 November 2009, the Supreme Court found in the applicant’s favour as regards his request for payment of salary arrears. Since the employer had paid the applicant salary arrears for the period between 9 July 2005 and 31 December 2006, the Supreme Court found that the employer had to pay the applicant salary arrears for the period between 1 January 2007 and 23 January 2009, the date on which the applicant had retired.

10. Until 24 March 2010 the applicant had been paid salary arrears in the amount of 931,728 Albanian leks (ALL) for the period between 1 January 2007 and 31 March 2008. To date, the remainder of salary arrears (ALL 1,000,000 for the period between 1 April 2008 and 23 January 2009) has not been paid to the applicant.

THE LAW

11. In the operative part of the principal judgment the Court made an award to the applicant in respect of non-pecuniary damage, and costs and expenses. However, it decided to reserve the application of Article 41 of the Convention, in respect of pecuniary damage, which Article reads as follows.

“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. Pecuniary damage

1. The parties' submissions

12. The applicant requested the payment of salary arrears from 9 July 2005 until his retirement on 23 January 2009. He claimed ALL 2,724,965, approximately 19,318 euros (EUR), which was made up of the principal income and the social insurance contributions.

13. The Government submitted that the domestic courts had recognised the applicant's right to payment of salary arrears. Consequently, the execution of the salary arrears had started and would be completed for the unpaid remainder. The Government acknowledged that there had been a breach of the applicant's right of access to court on account of the non-enforcement of a final court decision and requested this Court to rule that the finding of a violation was sufficient just satisfaction to the applicant.

2. The Court's assessment

14. 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 (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 72, 28 November 2002). If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI).

15. The Court has first to determine whether national law allows for reparation to be made for the consequences of the violation found by the principal judgment (see *Vajagić v. Croatia* (just satisfaction), no. 30431/03, § 23, 20 July 2006). It notes in this connection that on 10 November 2009 the Supreme Court upheld the applicant's civil action for the payment of salary arrears and ordered his employer to pay the applicant the salary arrears for the period between 31 December 2006 and 23 January 2009. The Court also takes note of the fact that on an unspecified date the applicant was paid ALL 931,728 as salary arrears for the period between 1 January 2007 and 31 March 2008. However, the remainder of salary arrears in the amount of ALL 1,000,000 has not yet been paid to the applicant.

16. That being so, the Court cannot but conclude that despite partial compensation paid to the applicant, the domestic authorities have not fully complied with the Supreme Court's decision of 10 November 2009. The Court considers that it has to afford the applicant just satisfaction, corresponding to the outstanding amount of salary arrears as calculated by the authorities, in the absence of a different detailed breakdown submitted by the applicant.

17. The Court further notes that the applicant, as before the domestic courts, did not make any submission in respect of interest to be added to the award in order to compensate for loss of value of the award over time. It therefore makes no award under this head (contrast *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 20, 17 July 2008).

18. The Court, making its assessment on an equitable basis, awards the applicant the sum of EUR 7,200.

B. Default interest

19. 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,200 (seven thousand two hundred euros) in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable on the date of payment;
- (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 applicant's 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