



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

FOURTH SECTION

CASE OF MULLAI AND OTHERS v. ALBANIA

(Application no. 9074/07)

JUDGMENT
(just satisfaction – striking out)

STRASBOURG

18 October 2011

FINAL

18/01/2012

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

In the case of Mullai 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,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 9074/07) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Albanian nationals, Mrs Nesime Mullai, Mr Astrit Daci, Mrs Mediha Hoti, Mrs Suzana Zereliu, Mrs Nermin Daci, Mrs Etleva Mullai and Mrs Eva Pinguli (“the individual applicants”), and a limited liability company, Teknoprojekt sh.p.k. (“the applicant company”), on 1 December 2006.

2. The applicants were represented by Mr S. Puto, a lawyer practising in Tirana. The Albanian Government (“the Government”) were represented by their then Agent, Ms E. Hajro.

3. In a judgment delivered on 2 March 2010 (“the principal judgment”), the Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). It held that there had been a breach of the principle of legal certainty under Article 6 § 1 of the Convention as regards the lack of consistent reasoning in the Supreme Court’s decision of 29 March 2001 regarding the lawfulness of the building permit granted to the applicant company. It further found a breach of Article 1 of Protocol No. 1 in that the authorities’ interference with the applicant company’s right and the proprietary rights of the individual applicants who demolished their three-storey villa on the strength of the building permit issued by the authorities was unlawful (see *Mullai and Others v. Albania*, no. 9074/07, 23 March 2010).

4. 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 that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 121, and point 5 of the operative provisions).

5. The applicants and the Government each filed observations.

THE LAW

A. The parties' submissions

6. The applicants submitted that the continuation of the construction work, combined with compensation for loss of profits, would put them in a situation equivalent to the one in which they would have been if there had not been a breach of the Convention. The individual applicants sought just satisfaction in the amount of 1,547,037.40 euros (EUR) and the applicant company claimed EUR 10,297,947 in respect of pecuniary damage. They submitted an expert's valuation report which made the above calculations on the assumption that the construction of the sixteen-storey building on a plot of land located in one of the most central and lucrative areas of Tirana would have been completed by 2002 and that the corresponding flats and commercial premises would all have been either sold or rented to third parties in the period between 2002 and 2007. The individual applicants further sought EUR 270,000, and the applicant company also claimed EUR 1,650,000, in respect of non-pecuniary damage. As regards legal costs and expenses, the applicants claimed EUR 32,400 for the costs and expenses incurred in the domestic proceedings and EUR 16,857 for those incurred in the proceedings before the Court.

7. The Government contested the amounts claimed by the applicant company. They submitted that the pecuniary damage suffered by the applicant company should be assessed at 23,280,000 Albanian leks ("ALL" – approximately EUR 161,503), on the basis of the demolition expenses and the costs of the construction work until 22 January 2000, the date on which the Minister of Public Works ordered the suspension of the work. In the Government's view, any claim for work carried out after 22 January 2000 should be dismissed as *male fide*. The Government contested the figures submitted by the applicant company, arguing that they were inflated. As regards loss of profits, the Government maintained that the figures were hypothetical and calculated on the basis of assumptions.

8. The Government submitted that the seven individual applicants should be awarded ALL 18,104,787 for the reconstruction of their villa. In addition, they argued that their loss of profits should be calculated on the

basis of the lease they had concluded with their then tenant until 31 August 1999, by which date they had been informed of the Prefect's notice suspending the work. In these circumstances, the loss of profits would amount to 56,000 United States dollars (USD). As regards the loss of profits after 31 August 1999, the Government contended that the applicants should bring a civil action against the applicant company.

The Government's unilateral declaration

9. On 22 November 2010, after failing to reach a friendly-settlement agreement with the applicants, the Government informed the Court that they proposed to issue the following unilateral declaration with a view to resolving the issue of just satisfaction (relevant extracts taken from the English version as submitted by the Government).

“...

3. The Albanian Government guarantees the continuing of the work according to the project and within the deadline of two years for the execution of the building permit no. 766, dated 22.2.1998, committing all the state institutions.

4. With reference to moral damages, the Albanian Government offers to pay *ex gratia* in total the sum amounting 15,000 (fifteen thousand) Euros, to the applicants ... The aforesaid sum shall be free from any applicable tax. The payment shall be made within three months from the date of notification of the judgment to be taken by the European Court in compliance with Article 37 § 1 of the European Convention. In case of non payment in due time of the sum concerning the resolution of the dispute in friendly manner, within three months' period, [the] Government shall pay a simple interest for the period from the expiry of the three-month period until the effective day of full payment of the amount, according to an interest at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

5. With reference to moral damages, the Albanian Government offers to pay *ex gratia* in total the sum amounting 5,000 (five thousand) Euros, to the applicant company “Teknoprojekt” sh.p.k. The aforesaid sum shall be free from any applicable tax. The payment shall be made within three months from the date of notification of the judgment to be taken by the European Court in compliance with Article 37 § 1 of the European Convention. In case of non payment in due time of the sum concerning the resolution of the dispute in friendly manner, within three months' period, [the] Government shall pay a simple interest for the period from the expiry of the three-month period until the effective day of full payment of the amount, according to an interest at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

6. As far as concern the judicial expenses, the Albanian Government does not consider to pronounce, meanwhile it has not been assessed from the Court in its [principal] judgment.

Acceptance of the Government's offer for the recommencement of the building work for the construction of the building with 16 floors, and payment of the

abovementioned sum amounting 15,000 and 5,000 Euros for the applicant parties as it has been mentioned above, shall constitute the final solution of this case.”

10. By letter of 10 January 2011 the applicants informed the Court that they considered the sums proposed in the Government’s declaration unacceptably low. They expressed the view that the two-year time-limit for the completion of the construction work constituted an obstacle, given that no time-limit had been specified in the original building permit. They maintained the observations and claims which they had previously submitted to the Court.

B. The Court’s assessment

11. The Court notes that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under paragraph 1 (a), (b) or (c). Article 37 § 1 (c) enables the Court to strike a case out of its list in particular if:

“(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.”

Article 37 § 1 *in fine* includes the following proviso:

“However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

12. The Court also notes that under certain circumstances, it may strike out an application, or part thereof, under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. Moreover, there is nothing to prevent a respondent Government from submitting a unilateral declaration relating, as in the instant case, to the reserved Article 41 procedure (see *Megadat.com SRL v. Moldova* (just satisfaction – striking out), no. 21151/04, § 10, 17 May 2011; and *Racu v. Moldova* (just satisfaction – striking out), no. 13136/07, § 17, 20 April 2010). To this end, the Court will examine the Government’s declaration carefully in the light of the general principles applicable in respect of Article 41 of the Convention (see, for example, *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 19-20, ECHR 2001-I).

13. Having regard to the above considerations, the Court understands the Government’s undertaking to mean that the validity of the applicant company’s building permit is to be extended by two years from the date on which this judgment becomes final. Furthermore, the authorities undertake to ensure that the applicant company’s construction work will continue uninterrupted during this period. The applicants argued that the resumption of the construction work should not be tied to a specific time-limit, having

regard to the absence of any mention of a time-limit in the building permit. However, the Court does not find the applicants' opposition to the time-limit persuasive. In this connection, the Court takes note of the agreement of 30 April 1998 concluded between the applicant company and the individual applicants, which stated that the construction work would be completed within twenty-four to thirty months. It further takes account of a building (sub-contract) agreement (*kontratë sipërmarrje*) of 21 June 2007 concluded between the applicant company and a third party for the completion of the construction work, according to which the prescribed time-limit was two years. Moreover, provisions seeking to minimise construction delays are not, of themselves, unreasonable (see section 52 of the Urban Planning Act 1998, which provides that "the time-limit of the building permit is defined in the decision taken by the Council for Territorial Planning"). In any event, the applicant company could seek an extension of the building permit's validity should the construction work not be completed in time, the decision resting with the authorities.

14. The Court observes that in the principal judgment it determined whether the domestic proceedings, particularly the manner in which the litigation was conducted, was Convention compliant. Accordingly, deeming it inappropriate to speculate on the lawfulness of the building permit, the matter remaining within the competence of the domestic authorities, the Court found a breach of the principle of legal certainty under Article 6 § 1 of the Convention on account of the Supreme Court's inconsistent interpretation. Relying extensively on the reasoning under Article 6 § 1 of the Convention and without addressing the issue of the lawfulness of the building permit, the Court further found a breach of Article 1 of Protocol No. 1 to the Convention.

15. Having regard to the above considerations and without prejudice to other possible measures remedying at the domestic level the violations of the applicants' rights under the Convention and bearing in mind the Government's undertaking, the Court considers that the most appropriate form of redress would be to have the construction work resumed. Indeed, the Government's undertaking to extend the building permit's validity by two years would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had been no breaches of the Convention.

16. As regards the applicants' claims for pecuniary damage, the Court notes that they were based on assumptions and involved a significant degree of speculation. Even taking for granted the development of the area in which the building would be situated, the assumption that the property would have been sold and/or rented at the expected prices is open to question, having regard to the fluctuation of the prices in the property market. In addition, under Article 498 of the Code of Civil Procedure ("CCP"), as amended on 29 December 2008, a final domestic court decision

may be reviewed, at the interested party's request, when this Court finds a breach of the Convention and its Protocols, as ratified by the respondent State. More importantly, the Court reiterates that it has never pronounced on the lawfulness of the building permit issued to the applicants. Having regard to the nature of the violations found in the principal judgment and the reasons for such findings (see paragraph 14 above), and in the light of Article 498 of the CCP, the Court considers that the applicants' claims for pecuniary damage must be rejected (see *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, § 61, 1 December 2009). Moreover, the Court considers that the Government's undertaking may be considered sufficient to cover any prior loss of opportunities.

17. The Court further considers the applicants' claims in respect of non-pecuniary damage to be excessive. It is of the view that the Government's proposal as regards the award for non-pecuniary damage is equitable in the present case.

1. Costs and expenses

18. As regards legal costs and expenses, the Court notes that it has a discretion to award legal costs when it strikes out an application (see Rule 43 § 4 of the Rules of Court and, for example, *M.C.E.A. Voorhuis v. the Netherlands* (dec.), no. 28692/06, 3 March 2009; *Shevanova v. Latvia* (striking out) [GC], no. 58822/00, §§ 52-56, 7 December 2007; *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 130-133, ECHR 2007-I; and *Meriakri v. Moldova* (striking out), no. 53487/99, § 33, 1 March 2005). The Court has no reason to doubt that the applicants' expenses were actually incurred since it is in possession of the corresponding vouchers. As to whether they were necessarily incurred and were reasonable as to quantum, the Court finds that the amount of the costs and fees is high. For example, the invoices submitted by the applicants in respect of the domestic proceedings contained lump sums, without a detailed breakdown of expenses for different items. The Court considers that the expenses incurred during the Convention proceedings were not reasonable as to quantum. Making its own estimate based on the information contained in the case file, the Court considers it reasonable to award EUR 14,000 in respect of legal costs and expenses.

19. The Court would point out that in the event that the Government fail to pay the sum referred to in paragraph 18 above, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, simple interest will be payable at a rate equal to the

marginal lending rate of the European Central Bank during the default period plus three percentage points.

2. The Court's conclusion

20. In the light of all the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the remainder of the case. Accordingly, it should be struck out of the list.

21. In accordance with Rule 43 § 3 of the Rules of Court, the present judgment will be forwarded to the Committee of Ministers in order to allow the latter to supervise, in accordance with Article 46 § 2 of the Convention, the execution of the Government's undertakings.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the respondent Government's unilateral declaration and of the arrangements for ensuring compliance with the undertakings referred to in paragraphs 9 and 13 above and, *directs* in consequence:

(a) that the respondent State shall extend the validity of the applicant company's building permit by two years from the date on which this judgment becomes final and that it shall ensure the uninterrupted continuation of construction work during that period;

(b) that the respondent State is to pay the individual applicants jointly EUR 15,000 (fifteen thousand euros) and the applicant company EUR 5,000 (five thousand euros), within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, in respect of non-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;

(c) 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. 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 14,000 (fourteen thousand euros) in respect of costs and expenses, 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.

3. *Decides* to strike the application out of its list of cases as regards the reserved Article 41 procedure.

Done in English, and notified in writing on 18 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President