



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

FOURTH SECTION

CASE OF BUSHATI AND OTHERS v. ALBANIA

(Application no. 6397/04)

JUDGMENT
(just satisfaction-striking out)

STRASBOURG

14 February 2012

FINAL

14/05/2012

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

In the case of Bushati and Others v. Albania,

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

Lech Garlicki, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges*,
Markelian Koca, *ad hoc judge*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 24 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 6397/04) 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 Mrs Ixhlale Bushati, Mr Skender Bushati and Mr Genc Bushati, Albanian nationals (“the applicants”), on 8 January 2004.

2. Mr Ledi Bianku, the judge elected in respect of Albania, was unable to sit in the case (Rule 28). The Government accordingly appointed Mr Markelian Koça to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1 as in force at the time).

3. In a judgment delivered on 8 December 2009 (“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 violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the authorities’ failure to enforce a decision of the Supreme Court of 2 April 2001 in the period between 28 June 2001 and 14 February 2003 (*Bushati and Others v. Albania*, no. 6397/04, 8 December 2009).

4. As 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 that they might reach (*ibid.*, p. 16, § 99, and point 5 of the operative provisions).

5. The applicants and the Government each filed observations.

THE LAW

6. The applicants sought just satisfaction of 2,252,000 euros (“EUR”) in respect of pecuniary damage, which consisted of the market value of their plot of land, measuring 3,616 sq. m and with a value of EUR 452,000, and of the loss of profits resulting from the fact that they had been unable to pursue any construction development plans, such losses totalling EUR 1,800,000. They further claimed EUR 80,000 in respect of non-pecuniary damage. As regards legal costs and expenses, the applicants claimed EUR 5,542 for costs and expenses incurred in the domestic proceedings and EUR 2,853 for those incurred in the Convention proceedings.

7. The Government contested the amounts claimed by the applicants. They maintained that the applicants’ claims should be limited to the period between 28 June 2001 and 14 February 2003, in respect of which the Court had found breaches of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. They further submitted that the applicants should not be awarded compensation for pecuniary damage in respect of the totality of their plot of land as, in their view, the relevant court decision had concerned an order for the eviction of unlawful occupiers from an area of land measuring 203.4 sq. m.

8. In their observations, the Government proposed to pay the applicants a lump sum of EUR 11,500, free of any tax. The above sum would be payable from 8 June 2010, the date on which the Government submitted their original observations to the Court. Failing payment, the Government undertook to pay simple interest on it, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points. The Government further undertook to take general legal and administrative measures to secure the applicants’ peaceful enjoyment of their property and the enforcement of the final court decisions in the matter. They asked the Court to accept the unilateral declaration.

The relevant parts of the Government’s observations read as follows.

“[The] Government’s position

...

The Government therefore propose that the applicant party should be paid the sum ...[of] 11,500 euros (eleven thousand five hundred euros) , which is to be paid within three months from the date of 8 June 2010, including any tax that may be chargeable. Should the said three month time-limit expire, the Government offer to pay simple interest at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

With regard to the general measures, the Government has described those measures in the case of *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06.

Conclusions

As a conclusion, the Albanian Government ... [while] undertaking [to adopt] all the necessary legal and administrative measures ... in order to guarantee the respect of the fundamental rights of the individuals to enjoy peacefully the right of property, the enforcement of judicial decisions in time, express their full confidence that the European Court will admit their observations and the unilateral declaration [contained] in this document.

9. 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 its 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 proviso that:

“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.”

10. 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).

11. The Court recalls that in the principal judgment it found a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the authorities’ failure to enforce the Supreme Court’s decision of 2 April 2001 for the period between 28 June 2001 and 4 February 2003. The Court further recalls that the Supreme Court’s decision of 2 April 2001 ordered the cessation of occupation of the applicants’ plot of land by M., B. and D. Having regard to a friendly settlement between the applicants and B., the enforcement proceedings were directed against the vacation of the plot of land occupied by M. and D.

12. The Court cannot accept the applicants’ claim for compensation in respect of 3,616 sq. m, namely the total area of the plot of land, as there was no evidence – either before the domestic courts or before this Court – that the unenforced decision of the Supreme Court concerned the totality of the plot of land. Furthermore, the applicants failed to submit an expert valuation report concerning the calculation of the market value of the occupied land.

13. The applicants suggested that they would have constructed buildings on their plot of land, had the occupiers been evicted. In this connection, the Court notes that the applicants failed to submit any construction plans. Even assuming such plans existed, they would have needed permits and authorisations for their implementation. There is a great degree of conjecture in any attempt to predict how long it would have taken to obtain such permits and whether it would have been possible to obtain them at all. Speculation also arises as regards the calculation of the loss of profits in the absence of an expert valuation report.

14. The Court considers the applicants' claim for non-pecuniary damage excessive, having regard to the length of the period of non-enforcement (22 months). It is of the view that the Government's proposal as regards the payment of compensation for non-pecuniary damage is equitable in the present case. The Court understands the Government's undertaking to pay compensation referred to in paragraph 8 above to mean that they shall pay the above sums within three months from the date on which this judgment becomes final. Failing payment, 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.

15. As regards their legal costs and expenses, the applicants failed to substantiate them. They did not submit any supporting receipts and invoices. The Court therefore rejects them.

16. Finally, the Government made a general undertaking to the effect that it would take legal and administrative measures to secure to all individuals in the applicants' situation the right to peaceful enjoyment of their property and the enforcement of the final court decisions in their favour. The Court observes that the measures in question are being examined by the Committee of Ministers, following the adoption of the Court's judgments in the cases of *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, 29 September 2009; *Hamzaraj v. Albania (no. 1)*, no. 45264/04, 3 February 2009; *Nuri v. Albania*, no. 12306/04, 3 February 2009; *Driza v. Albania*, no. 33771/02, ECHR 2007-V (extracts); and, *Ramadhi and Others v. Albania*, no. 38222/02, 13 November 2007;

17. Having regard to the above considerations and to the amount of compensation proposed by the Government, the Court considers that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the case as regards the reserved Article 41 procedure. Accordingly, it should be struck out of the list (Article 37 § 1 (c)).

18. 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 undertaking referred to in paragraphs 8, 14 and 16 above and, *directs* in consequence:
 - (a) that the respondent State is to pay the applicants jointly EUR 11,500 (eleven thousand five hundred 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;
 - (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. *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 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President