



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

THIRD SECTION¹

CASE OF QUFAJ CO. SH.P.K. v. ALBANIA

(Application no. 54268/00)

JUDGMENT

STRASBOURG

18 November 2004

FINAL

30/03/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

¹ In its composition before 1 November 2004.

In the case of Qufaj Co. Sh.p.k. v. Albania,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEŖ,
Mr B. ZUPANČIČ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 2 October 2003 and 26 October 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 54268/00) 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 an Albanian company, Qufaj Co. Sh.p.k. (“the applicant company”), on 26 July 1999.

2. The applicant company is acting before the Court through its President and Managing Director, Mr Avenir Ballvora. The Albanian Government (“the Government”) were represented by their Agent, Mr Sokol Puto.

3. The applicant company alleged, in particular, that the failure of the Albanian authorities to comply with a final decision had infringed Article 6 § 1 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 2 October 2003, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant company, “Qufaj Co. sh.p.k.”, is an Albanian company, established by decision no. 5883 of the Tirana District Court on 20 July 1992, with the object of investing in the construction business.

8. The Municipality of Tirana sold the applicant company 15,788 square metres of land in a residential area in Tirana by decision no. 165 dated 9 June 1992.

9. By decision no. 174 of 15 June 1992, the Municipality granted the applicant company planning permission to build five hundred flats. A building permit was also required before the project could start, but the Municipality failed to decide the matter for a considerable length of time, thus preventing the building works from getting under way.

10. After the Municipality had refused to grant a building permit, the applicant company brought proceedings in the Tirana District Court seeking compensation of 60,000,000 leks (ALL) for its loss. Its claim was dismissed by judgment no. 4064 of 23 June 1995.

11. On appeal, the Tirana Court of Appeal quashed the first-instance judgment and ordered the Municipality to pay the applicant ALL 60,000,000 (decision no. 1197 of 23 February 1996).

12. In the absence of an appeal by the Municipality to the Court of Cassation, the Court of Appeal’s judgment became final and enforceable.

13. On 16 July 1996 the President of the Court of Cassation, in a document addressed to the Municipality, stated that, after the entry into force of the new Code of Civil Procedure, he no longer had the right to initiate a supervisory review of the legality of lower court decisions.

14. On 16 July 1997 the applicant company requested the Tirana District Court to issue a warrant for the execution of the compensation award.

15. On 25 June 1998 the Tirana District Court rejected a request by the Municipality to review the merits of decision no. 5492 of 20 December 1994, there being no basis in either law or fact for it to do so.

16. On 23 July 1997, in a document no. 704/gj dated 23 July 1997, the Enforcement Office notified the Municipality that it should execute the Court of Appeal decision by paying the applicant company ALL 60,000,000. However, the Municipality repeatedly refused to comply, arguing that it had no budget for the execution of judicial decisions.

17. At the same time, the Enforcement Office requested the Exchequer and Budget Department of the Ministry of Finance (the ultimate financial institution responsible for such payments) to comply with the decision by providing the necessary funding (Article 589, paragraph 2, of the Code of Civil Procedure).

18. By documents nos. 2018/3 of 19 September 1997, 2018/5 of 7 November 1997, and 4670 of 22 September 1999, the Ministry of Finance rejected the requests of the Enforcement Office, arguing that either Article 589 of the Code of Civil Procedure was not applicable, or that central funding was not possible under the State Budget Law. It added that the Municipality should contact the “District of Tirana Branch of the Treasury”, specifying the fund from which the debt should be paid and the part of the Municipality’s budget to which it should be allocated.

19. As the judgment was not executed, the applicant company brought proceedings in the Constitutional Court, claiming that local governmental institutions were obliged to guarantee the enforcement of final judicial decisions, not to impede them.

20. The Constitutional Court rejected the applicant company’s complaint, stating that the “complaint [could] not be taken into consideration because the enforcement of court decisions is outside the jurisdiction of the Constitutional Court”.

II. RELEVANT DOMESTIC LAW

A. The Constitution

21. The relevant parts of the Albanian Constitution read as follows:

Article 42 § 2

“In the protection of his constitutional and legal rights, freedoms and interests, or in defending a criminal charge, everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial court established by law.”

Article 142 § 3

“State bodies shall comply with judicial decisions.”

Article 131

“The Constitutional Court shall decide: ...

(f) in a ruling that shall be final complaints by individuals alleging a violation of their constitutional rights to a fair hearing, after all legal remedies for the protection of those rights have been exhausted.”

Article 142 § 3

“State bodies shall comply with judicial decisions.”

B. The Civil Code

22. According to Article 450 of the Civil Code “Compensation for damage caused by delay in the payment of a specific sum of money shall take the form of interest which shall accrue from the day the debtor falls into arrears in the official currency of the country where payment is to be made. The rate of interest shall be prescribed by law.”

23. No legislation prescribing the statutory rate of interest has yet been passed.

C. Instruction no. 1 issued by the Ministry of Finance on 13 June 1997 pursuant to the Finance no.1 Act of 13 October 1997

24. The relevant part of this Instruction reads as follows:

Paragraph 7

“Payments deriving from judicial decisions relating to the normal activity of budgetary institutions shall be authorised by the Head of the Central Institution. At the same time, where the damage for which the State is liable is the consequence of public officers acting *ultra vires* or failing to act in accordance with their powers, the Head of the Central Institution shall take administrative measures and institute civil proceedings against them according to the degree of their responsibility.”

D. The Decision of the Council of Ministers no. 335 of 9 June 1998

25. The relevant part of the Decision provides:

Paragraph 2 (e)

“The Ministry of Finance, through funds allocated to it in the annual budget, shall comply with judicial decisions directly related to the State’s budgetary obligations but not to the obligations of budgetary institutions. Such decisions shall include: ...

(e) Judicial decisions expressly determining the liability of the State for other reasons provided for by law.”

E. The Commercial Register and Companies Registration Act no. 7667/93

26. Article 64 of the Companies Registration Act provides:

“Commercial companies registered before the entry into force of this Act whose registered particulars and forms do not comply herewith shall re-register no later than six months after the entry into force of this Act. Any such company that fails to request the re-registration or to present the requisite documents shall be automatically unregistered from that date on. They may apply for a three-month extension of time in

which to comply with this obligation. Re-registered companies shall retain all the rights they enjoyed before re-registration.”

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

27. The Government repeated the argument made at the admissibility stage that the application should be rejected as the applicant company was not the company entitled to execute the relevant judgment. They maintained that the applicant company had not complied with the registration formalities prescribed by the legislation at the material time. Consequently, as the “old” company had ceased to exist in 1993, the applicant company had no standing as a “victim”, as required by Article 34 § 3 of the Convention.

28. The Government further submitted that the Managing Director of the company, Mr Ballvora, had no authority to represent an unregistered company before either the Albanian authorities or the Court.

29. The applicant company relied in its memorial on the same arguments it had advanced in reply to the Government’s observations at the admissibility stage.

30. The Court notes that the Government set out this preliminary objection in detail at the admissibility stage.

31. In its decision on admissibility of 2 October 2003, the Court determined that the applicant was a “victim”, within the meaning of Article 34 of the Convention. It considers that there are no reasons for it to depart from that decision.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant company submitted that the failure to comply with the judgment of the 23 February 1996 had infringed Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... by a tribunal ...”

A. The parties’ submissions

33. The Government submitted that, under the Albanian Constitutional Court’s case-law, the execution of judicial decisions was not regarded as

forming part of the concept of a fair trial, within the meaning of Articles 42 and 131/f of the Albanian Constitution. Consequently, the Constitutional Court considered that problems relating to the execution of judicial decisions were outside its jurisdiction.

34. The Government added that the failure to execute the final judgment was the result of objective circumstances such as a lack of funds, confusion over areas of competence, and social, legislative and political turmoil in Albania.

35. The applicant company claimed that the Government's statements were unsubstantiated.

36. It argued that the authorities' refusal to comply with the judgment of the Tirana Court of Appeal of 23 February 1996 had hindered the effective enforcement of its rights, and thus rendered the requirement of Article 6 § 1 meaningless.

37. The applicant company questioned the willingness of the State to honour its financial obligations promptly. It further alleged that the only way to ensure the amount awarded was paid was to provide for the appropriate expenditure in the Albanian State Budget.

B. The Court's assessment

38. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510-511, § 40; and *Burdov v. Russia*, no. 59498/00, § 34-35, ECHR

2002-III; see also *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003).

39. As to the circumstances of the present case, in order to secure compliance with the judgment of the Tirana Court of Appeal, the applicant company was obliged to resort to the relevant enforcement proceedings (see paragraphs 14-17 above) and subsequently lodged an appeal with the Constitutional Court.

40. The Court notes that the Albanian legal system affords a remedy - in the form of an application complaining of a breach of the right to a fair trial - which was available to the applicant company in theory. The company unsuccessfully attempted to avail itself of that remedy and its appeal to the Constitutional Court was dismissed.

41. In the light of the foregoing considerations, the Court holds that the fair trial rules in Albania should have been interpreted in a way that guaranteed an effective remedy for an alleged breach of the requirement under Article 6 § 1 of the Convention.

42. In the Court's opinion, therefore, the Constitutional Court was competent to deal with the applicant company's complaint relating to non-compliance with a final decision as part of its jurisdiction to secure the right to a fair trial.

43. The Court observes that at the material time the reason advanced by the national authorities for their failure to comply with the judgment was that they were experiencing financial difficulties.

44. In the Court's opinion, the applicant company should not have been prevented from benefiting from the judgment in its favour, which concerned compensation for damage caused by the local authority's refusal to grant a building permit, on the grounds of the State's alleged financial difficulties.

45. For the foregoing reasons, the Court considers that there has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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. Damages

47. The applicant company sought an order requiring compliance with the domestic court's decision and an award of compensation for pecuniary

and non-pecuniary damage. It relied on an expert's report in assessing the value of its loss.

48. It explained that it had suffered pecuniary damage because of the loss of the use of the land as a result of the authorities' refusal to grant a building permit and also a loss of opportunity from 23 June 1996, including bank interest from that date onwards. Alternatively, the sum awarded by the national court, plus bank interest at a national rate from 23 June 1996 (the date the judgment was served) onwards, should have yielded the company substantial profits.

49. Overall, the applicant company claimed compensation for pecuniary loss amounting to 2,500,000 US dollars.

50. It claimed an unspecified separate award for non-pecuniary loss.

51. The Government considered that the applicant company's claims were exaggerated as there was no causal link between the alleged violations and the amounts claimed for pecuniary damage. They argued also that any just satisfaction that might be granted to the applicant company had already been awarded by the Tirana Court of Appeal, the only purpose of the application to the Court being to complain about the failure to comply with that judgment.

52. Moreover, the Government submitted that there was no evidence that the applicant company had suffered any non-pecuniary damage.

53. At the outset, the Court observes that the applicant company's claim for pecuniary damage related to the Albanian authorities' refusal to grant a building permit is *ultra petita* and consequently rejects it.

54. Overall, the Court reiterates that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which it finds a breach imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. If, on the other hand, national law or in particular the interpretation *strictu sensu* of the "fair trial" concept in the meaning of Article 6 § 1 of the Convention by the national courts, 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. It follows, *inter alia*, that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers of the Council of Europe, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see, *mutatis mutandis*, *Maestri v. Italy* [GC], no. 39748/98, § 47, 17

February 2004; *Mentes and Others v. Turkey* (Article 50), judgment of 24 July 1998, *Reports* 1998-IV, p. 1695, § 24; and *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

55. 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.

56. The Court has already accepted that, if rights are to be effectively protected and the rule of law established, administrative authorities must be under an implied duty to comply with final decisions. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see *Hornsby* cited above, pp. 510-511, § 40 et seq.; *Metaxas v. Greece*, no. 8415/02, §§ 25 and 26, 27 May 2004).

57. More specifically, the Court reiterates that, as regards the execution of judgments that impose payment of money to a State, a person who has obtained a judgment debt against the State should not be required to bring enforcement proceedings in order to recover the sum due (see *Metaxas*, cited above § 19).

58. In this particular case, the Court observes that, while national legislation allows reparation, it is the Constitutional Court's case law establishing interpretation *strictu sensu* of the "fair trial" concept in the meaning of Article 6 § 1 of the Convention that precludes any reparation due to a failure to enforce the judgment debt.

59. In the circumstances of the present case payment of the debt due by the State pursuant to the final judgment of the Tirana Court of Appeal would restore the applicant company as far as possible to the situation in which it would have been if the Albanian authorities had complied with the final decision. It is for the Albanian Government to take appropriate measures to make reparation for any past or future damage caused to the applicant company by the breach of the Convention which the Court has found.

60. Consequently, the Court considers that the respondent State must pay to the applicant company the entire sum awarded by the national court, that is ALL 60,000,000.

61. Moreover, the Court considers that the prolonged failure to pay the amount awarded by the domestic court and the years of uncertainty must inevitably have caused the applicant company damage that has, in part at least, to be made good.

62. However, the Court cannot speculate on the profit the applicant company would have made by investing the sum awarded by the domestic court, had it been able to use the money in accordance with its plans and expectations (*Pialopoulos and Others v. Greece* (just satisfaction), no. 37095/97, § 17, 27. June 2002). Consequently, the Court considers it fair to award the applicant company an amount determined on an equitable basis for the pecuniary damage.

63. As regards the non-pecuniary damage, the Court accepts that the applicant company suffered distress that would have been avoided had the authorities complied with the final decision. In this connection, it reiterates that a commercial company may be awarded compensation for non-pecuniary damage (*Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV, § 35).

64. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant company a lump sum of EUR 70,000 in respect of pecuniary and non-pecuniary damage. That amount is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement.

B. Costs and expenses

65. For costs and expenses the applicant company claimed to have incurred considerable expense in obtaining legal advice and legal and surveyor's documents for use in the domestic proceedings and before the Court. It said that it was not possible to provide a detailed breakdown. It furnished only one invoice, that being an account of EUR 2,000 for a surveyor's report which it had produced to the Court with its written observations on just satisfaction. Consequently, the applicant company left the amount to the Court's discretion.

66. The Government maintained that the applicant company, which was not represented by a lawyer before the Court, was not entitled to any costs or expenses.

67. The Court notes that the applicant company has not furnished any details of the fees and expenses incurred in the domestic proceedings. As to the fees for the proceedings in Strasbourg, the amount set out in the bill produced by the applicant company (EUR 2,000 in total) appears reasonable to the Court, which awards that sum in full.

C. Default interest

68. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) the amount determined by the Tirana Court of Appeal, i.e. ALL 60,000,000 (sixty million leks);
 - (ii) EUR 70,000 (seventy thousand euros) in respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;
 - (iii) EUR 2,000 (two thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;
 - (iv) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 18 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President