



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

FOURTH SECTION

CASE OF NURI v. ALBANIA

(Application no. 12306/04)

JUDGMENT

STRASBOURG

3 February 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Nuri v. Albania,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 12306/04) 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 an Albanian national, Ms Tefta Nuri (“the applicant”), on 18 February 2004.

2. The applicant, who had been granted legal aid, was represented by Mr S. Puto, a lawyer practising in Tirana. The Albanian Government (“the Government”) were represented by their Agent, Ms S. Meneri.

3. The applicant alleged a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of a breach of her property rights caused by the authorities’ failure to enforce an administrative decision awarding her compensation in lieu of the physical restitution of her property.

4. On 5 June 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1948 and lives in Tirana.

7. On an unspecified date the applicant lodged an application with the Lushnja Property Restitution and Compensation Commission (*Komisioni i Kthimit dhe Kompensimit të Pronave* – “the Commission”), seeking to have the property of her deceased relative, confiscated in 1949, returned to her.

8. On 22 April 1994 the Commission upheld the application and recognised the applicant’s property rights over two villas and a three-storey building measuring 1,380 sq. m and a plot of land measuring 540 sq. m.

9. As regards the three-storey building and one of the villas, the Commission decided to return the property to the applicant. As regards the other villa, the Commission recognised the applicant’s co-ownership with its existing occupier. However, as it was impossible to allocate the original plot of land measuring 540 sq. m to the applicant, the Commission ordered the payment of compensation in State bonds equivalent to the value of the plot. Lastly, the Commission ordered the authorities to enforce the decision.

10. On an unspecified date the applicant lodged a civil action with the Lushnjë District Court challenging the part of the Commission’s decision that recognised one of the villas as being jointly owned and claiming full ownership thereof. Notice of the proceedings was given to the existing occupier and the Commission.

11. On 23 January 1996 the court upheld the applicant’s civil claim and granted her full ownership of the villa. The court did not rule on the part of the Commission’s decision relating to the compensation issue.

12. On 10 May 1996, following an appeal by the defendant party, the Tirana Court of Appeal upheld the District Court’s decision. As no appeal was lodged with the Supreme Court, that decision became final and binding.

13. On an unspecified date, following the enforcement of the court’s decision, the applicant took possession of the properties allocated to her, that is to say, the two villas and the three-storey building.

14. In 2004, as no State bonds had been issued, the applicant wrote a letter to the Commission seeking a solution to the compensation issue in respect of his plot of land measuring 540 sq. m. She did not receive a reply to her letter.

15. To date, the authorities have not provided compensation in respect of the plot of land measuring 540 sq. m, in spite of the Commission’s decision.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law has been described in detail in *Driza v. Albania* (no. 33771/02, §§ 33-44, ECHR 2007-... (extracts)) and *Ramadhi and Others v. Albania* (no. 38222/02, §§ 22-30, 13 November 2007).

THE LAW

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

17. The applicant complained of the authorities' failure to effectively enforce the Commission's decision awarding her compensation. She relied on Article 6 § 1 of the Convention which, in so far as relevant, reads:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. The parties' submissions

18. The Government challenged the applicability of Article 6 § 1 of the Convention to the administrative proceedings as indicated in the instant case.

19. They submitted that the applicant had not exhausted all domestic remedies in respect of the non-enforcement of the Commission's decision. They held that the applicant should have lodged a complaint with the State Committee for Property Restitution and Compensation (replaced by the Agency for the Restitution and Compensation of Property by virtue of the 2006 Property Act) and requested the enforcement of the Commission's decision. As part of the Commission's decision had been upheld by the domestic courts, the Government maintained that the applicant should have availed herself of the enforcement procedures in accordance with the Code of Civil Procedure.

20. In so far as the Government's objection regarding the non-exhaustion of domestic remedies is concerned, the applicant contended that the Property Act did not provide a remedy in the event of non-enforcement of a Commission decision concerning the award of compensation in lieu of the physical restitution of property.

2. *The Court's assessment*

21. As regards the Government's objection in relation to the applicability of Article 6 § 1 of the Convention, the Court notes that a similar objection was rejected in the Court's judgment *Ramadhi and Others v. Albania* (cited above, §§ 35-37). The Court sees no reason to reach a different conclusion in the present case. It therefore rejects the Government's objection.

22. As regards the Government's objection concerning the non-exhaustion of domestic remedies by the applicant, the Court recalls its findings in its judgment *Ramadhi and Others* (cited above, §§ 50-51), to the effect that there exists no effective remedy enabling the Commission's decisions to be enforced. It therefore dismisses the Government's objection.

23. The Court considers that this complaint is not manifestly ill-founded, nor is it inadmissible on any other grounds within the meaning of Article 35 of the Convention. It therefore declares it admissible.

B. Merits

1. *The parties' submissions*

24. The Government contended that the compensation process had been complex and that the difficulties with it were attributable to massive demographic movements, drastic changes to property titles during the previous communist regime, lack of experience and the transition process. They submitted that efforts were under way for the adoption of maps for property valuation. The Government failed to submit any figures as to the number of citizens who had benefited from the compensation process.

25. The applicant argued that the non-enforcement of the Commission's decision had breached her right of access to a court. She maintained that the authorities had never issued State bonds as a means of compensation to property owners, despite the issuance of treasury bonds by the State. The applicant alleged that she had not remained inactive in seeking enforcement of the Commission's decision. She pointed to her letter of 2004 to the Commission (see paragraph 14 above). Relying on the Court's case-law, she maintained that she was not required to resort to enforcement proceedings in respect of a decision against the authorities (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

2. *The Court's assessment*

26. The general principles under Article 6 § 1 of the Convention concerning the non-enforcement of Commission decisions are set out in the *Ramadhi and Others* judgment (cited above, §§ 45 et seq.).

27. The Court notes that the Commission's decision of 22 April 1994 ordered compensation to be paid in respect of the plot of land measuring 540 sq. m. That decision has never been challenged and is still in force.

28. The Court observes that, irrespective of whether the final decision to be executed takes the form of a court judgment or a decision by an administrative authority, domestic law as well as the Convention require that it be enforced. No steps have been taken to enforce the Commission's decision in the applicant's favour (see *Ramadhi and Others*, cited above, § 49).

29. The Court therefore concludes that there has been a violation of the applicant's right of access to a court under Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

30. The applicant complained that the failure to pay her compensation entailed a breach of Article 1 of Protocol No.1 to the Convention, which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

31. The Court considers that the complaint under this head is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that no other grounds have been established for declaring this part of the application inadmissible, and therefore declares it admissible.

B. Merits

1. The parties' submissions

32. The Government contended that the applicant had never had effective possession of the property. Consequently, there had never been a breach of her right of property. They admitted that the process of restitution

and compensation could not occur overnight and spontaneously, and that the delays associated therewith were related to the transition process the country was going through.

33. The Government maintained that the applicant had never complained that the delays in execution had caused her financial or social difficulties. Since the rest of the Commission's decision had been enforced, the non-enforcement of the compensation claim had not aggravated her situation or imposed a disproportionate burden on her.

34. The applicant stressed the fact that the non-enforcement of the Commission's decision concerning compensation for the plot of land measuring 540 sq. m, which had not been challenged, infringed her right to property.

2. The Court's assessment

35. The general principles under Article 1 of Protocol No. 1 to the Convention have been set out in the *Ramadhi and Others* judgment (cited above, §§ 67-71 and §§ 75-79).

36. The Court observes that the applicant had her right to compensation recognised by virtue of the 1994 Commission decision which was final. Hence, for the purposes of the examination of the complaint it considers the applicant's claim sufficiently established in domestic law to qualify as an enforceable "asset" under Article 1 of Protocol No. 1 (see, for example, *Ramadhi and Others*, cited above, § 71).

37. It notes that this complaint is linked to the one examined under Article 6 § 1 in relation to the failure to enforce the Commission's decision (see paragraphs 26-29 above). On the basis of its established case-law, the Court finds that the interference falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1, which lays down the principle of peaceful enjoyment of property in general terms (see, for example, see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003; *Sabin Popescu v. Romania*, no. 48102/99, § 80, 2 March 2004; and *Beshiri and Others v. Albania*, no. 7352/03, § 99, 22 August 2006; *Ramadhi and Others v. Albania*, cited above, § 77).

38. The Court must therefore establish whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In the circumstances of the instant case, the Court is called upon to determine whether the length of time during which the domestic authorities failed to pay the applicant compensation disturbed that balance and whether it placed an excessive burden on her.

39. The Court notes that it has already examined this issue in its judgment in the case of *Ramadhi and Others*, cited above, §§ 79-84. Noting that the Government have not produced any convincing evidence to justify

the failure of the domestic authorities over so many years to determine the final amount of compensation due to the applicant, the Court sees no reason to reach a different conclusion in the circumstances of the instant case.

40. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention in this case.

III. APPLICATION OF ARTICLES 46 and 41 OF THE CONVENTION

A. Article 46 of the Convention

41. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

42. The Court reiterates its findings in *Ramadhi and Others* (cited above, §§ 90 – 94) in respect of Article 46 of the Convention. It urges the respondent State to adopt general measures as indicated in paragraphs 93 and 94 of the said judgment.

B. Article 41 of the Convention

43. The applicant claimed 141,910 euros (EUR) in respect of pecuniary damage and EUR 40,320 in respect of non-pecuniary damage. As regards the claim for pecuniary damage, the applicant submitted an expert valuation of the property which assessed its current value at EUR 64,500, and estimated the loss of profits since 1994 at EUR 77,410.

44. The Government did not submit any arguments relating to the amounts claimed.

45. The Court recalls the general principles set out in the judgment *Ramadhi and Others* (cited above, §§ 98-101) as regards Article 41 claims.

46. The Court considers, in the circumstances of the case, that payment of the compensation corresponding to the value of the plot of land measuring 540 sq. m, together with a measure of interest to reflect the intervening loss of use of the said plot of land, would put the applicant as far as possible in a situation equivalent to the one in which she would have been if there had not been a breach of the Convention.

47. Having regard to the material in its possession and making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 71,500 in respect of pecuniary damage.

48. As regards non-pecuniary damage, the Court, ruling on an equitable basis, awards the sum of EUR 5,000 to the applicant.

1. Costs and expenses

49. The applicant, who received EUR 850 in legal aid from the Council of Europe in connection with the presentation of her case, sought EUR 4,000 for the legal expenses incurred in the domestic proceedings and the Strasbourg proceedings. She did not provide a detailed breakdown to substantiate her claim for costs and expenses.

50. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. 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". In the present case, noting that the applicant failed to produce any documents – such as itemised bills or invoices – in support of her claim, the Court does not make any award under this head.

2. Default interest

51. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the failure to enforce the Commission decision of 22 April 1994;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the Commission decision of 22 April 1994;
4. *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, the following amounts to be converted

into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 71,500 (seventy one thousand five hundred euros) in respect of pecuniary damage;
- (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President