



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

FOURTH SECTION

CASE OF HAMZARAJ v. ALBANIA (no. 1)

(Application no. 45264/04)

JUDGMENT

STRASBOURG

3 February 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Hamzaraj v. Albania (no. 1),

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. 45264/04) 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 Aferdita Hamzaraj (“the applicant”), on 27 November 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, Mrs S. Meneri.

3. The applicant alleged under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention a violation of her property rights in view of the authorities’ prolonged failure to enforce an administrative decision ordering compensation in kind or State bonds. She also complained about the length of the proceedings under Article 6 § 1 of the Convention.

4. On 25 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 1926 and lives in Vlore.

7. On 30 January 1995 the Lushnjë District Court recognised the existence of the applicant's father's property rights over a plot of land measuring 576 sq. m. situated in the city of Lushnjë (*vendim për vërtetim fakti*). The decision became binding and final on 13 February 1995.

8. The applicant, pursuant to the Property Restitution and Compensation Act (hereinafter "the Property Act"), lodged a request with the Lushnjë Commission on Property Restitution and Compensation (hereinafter "the Commission") seeking restitution of the original property.

9. By a decision of 21 March 1996 the Commission upheld the property rights of the applicant and the other five heirs of her father over the plot of land measuring 576 sq. m situated in the city of Lushnjë. On the basis of the documents in its possession the Commission held that restitution of the original property was impossible since it was occupied. Accordingly, the Commission decided that the applicant was to be compensated in kind or in the form of State bonds pursuant to section 16 of the Property Act. The Commission ordered the district authorities to take the necessary measures in order to enforce its decision.

10. In 2004, following the failure of the authorities to enforce the Commission decision, the applicant requested the district authorities to decide on the amount of compensation to be awarded to her in respect of her property.

11. The authorities have still not complied with their obligation.

II. RELEVANT DOMESTIC LAW

12. 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

13. The applicant complained of the authorities' failure to effectively enforce the Commission's decision awarding her compensation in kind or in the form of State bonds. She also raised a new complaint about the entire length of the non-enforcement proceedings. 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 within a reasonable time... by [a] ... tribunal ..."

A. Non-enforcement of the Commission decision of 21 March 1996

1. Admissibility

(a) The parties' submissions

14. The Government disputed the Court's competence *ratione temporis* to examine the applicant's claim in so far as the Commission decision was taken before the Convention's entry into force in respect of Albania. They also challenged the applicability of Article 6 § 1 of the Convention to the administrative proceedings as decided upon by the Commission decision of 21 March 1996.

15. The Government contended that the applicant had not exhausted all domestic remedies in respect of the non-enforcement of the Commission decision. They held that the applicant had neither petitioned the domestic authorities, nor lodged any 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), nor initiated any legal proceedings concerning the non-enforcement of the Commission decision.

16. The applicant maintained that the Commission decision, which upheld her property right, was akin to a court decision in terms of the consequences it created. She submitted that there existed no domestic remedy concerning the enforcement of Commission decisions awarding compensation *in lieu* of the original property. She stated that in 2004 she had unsuccessfully approached the district authorities about the amount of compensation payable to her by virtue of the Commission decision.

(b) The Court's assessment

17. The Court reiterates that it is competent to examine events from 2 October 1996 onwards, the date on which the Convention entered into force in respect of Albania. It may, however, have regard to facts prior to the date of ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (*Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 74, ECHR 2002-X).

18. In the present case, on 2 October 1996, the Commission's decision of 21 March 1996 had not been complied with. To date, and over twelve years since the date of its adoption, the Commission decision has still not been enforced. In so far as the applicant's complaints are directed against the acts and omissions of the Albanian State in relation to the implementation of an entitlement to a compensatory measure vested in him under Albanian law, an entitlement which continued to exist after 2 October 1996 and still exists today, the Court has temporal jurisdiction to entertain the application (see *Broniowski*, cited above, § 76). The Court therefore rejects the Government's objection about its incompatibility *ratione temporis*.

19. 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.

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

21. 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.

2. Merits

(a) The parties' submissions

22. The Government contended that the property restitution and compensation process had been fraught with difficulties, particularly when the expropriated property had been used for public purposes. The conclusion of such a complex process has been conditioned by and intertwined with the conclusion of other processes regulating the property right. They argued that the applicant had remained passive in her efforts to

have the Commission decision enforced and that she had not exhausted all domestic remedies as provided for in the Property Act.

23. The applicant maintained that the non-enforcement of the Commission decision entailed a breach of her right of access to court. She contended that she was never offered the possibility of compensation in kind or in the form of State bonds, despite the clear terms of the Commission decision of 21 March 1996. The applicant added that in 2004 she unsuccessfully contacted the domestic authorities about the matter of compensation. She, nevertheless, pointed to the fact that a person who had obtained an enforceable judgment against the State as a result of successful litigation should not be required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

(b) The Court's assessment

24. 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.).

25. The Court notes that the Commission decision of 21 March 1996 ordered compensation in kind or State bonds to be paid *in lieu* of the original plot of land. That decision has never been challenged before any courts and is still in force.

26. 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 decision in the applicant's favour (see *Ramadhi and Others*, cited above, § 49).

27. 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.

B. Length of proceedings

1. Admissibility

28. On 13 December 2006 the applicant introduced a new complaint under Article 6 § 1 about the length of the proceedings, particularly as concerned the non-enforcement of the 1996 Commission decision.

29. The Government submitted that the applicant had never initiated any legal proceedings before the domestic courts concerning this complaint.

30. The Court recalls the findings in its judgment in *Gjonbocari and Others v. Albania* (no. 10508/02, §§ 80-82, 23 October 2007), where it found that there were no effective remedies in the domestic legal system in

relation to a complaint about the length of proceedings. Therefore, the applicant is absolved from exhausting domestic remedies.

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 moreover finds that no other grounds for declaring this part of the application inadmissible have been established and therefore declares it admissible.

2. Merits

32. The applicant complained about the unreasonable length of the enforcement proceedings, which have lasted more than twelve years. She attributed this delay to the domestic authorities, which have failed to provide her compensation *in lieu* of the original property.

33. The Court considers that the complaint has already been addressed in the context of its reasoning and decision under the head of non-enforcement and finds that there is no need to examine these facts again through the prism of the “reasonable length” requirement of Article 6 § 1 of the Convention.

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

34. 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

35. 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*

36. The Government maintained that there had been no violation of the applicant's right to property as the State had not disproportionately interfered with it. They maintained their position that the applicant should have exhausted all domestic remedies concerning her right to compensation.

37. The applicant contended that the non-enforcement of the Commission decision, which had recognised her right to compensation *in lieu* of the original property, entailed a violation of her right to property. She maintained that the Commission decision, which had not been challenged and had become final, should be considered an asset and therefore a property right.

2. *The Court's assessment*

38. 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).

39. The Court observes that the applicant had her right to compensation recognised by virtue of the 1996 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.

40. It notes that this complaint is linked to the one examined under Article 6 § 1 in relation to the failure to enforce the Commission decision (see paragraphs 24-27 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, *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).

41. 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.

42. 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.

43. 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

44. 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.”

45. 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

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.”

1. Damage

47. The applicant claimed 137,100 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 68,550, and estimated the loss of profits since 1996 at EUR 68,550.

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

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

50. The Court considers, in the circumstances of the case, that payment of compensation corresponding to the value of the plot of land measuring

576 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, had there not been a breach of the Convention.

51. Noting that in the proceedings before the Court the applicant did not act on behalf of the other five heirs and in the absence of any evidence that she is the sole heir of the property, and 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 12,500 in respect of pecuniary damage.

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

2. Costs and expenses

53. 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.

54. 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.

3. Default interest

55. 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 21 March 1996;

3. *Holds* that it does not consider it necessary to examine separately the complaint about the length of the proceedings under Article 6 § 1 of the Convention;
4. *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 21 March 1996;
5. *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 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, 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;
6. *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