



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

FOURTH SECTION

CASE OF PUTO AND OTHERS v. ALBANIA

(Application no. 609/07)

JUDGMENT

STRASBOURG

20 July 2010

FINAL

22/11/2010

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

In the case of Puto and Others v. Albania,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 609/07) 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 six Albanian nationals, Mr Refat Puto, Ms Violeta Puto, Ms Saime Puto, Mr Pandi Allabashi, Ms Ermira Allabashi and Ms Roza Allabashi (“the applicants”), on 16 November 2006.

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

3. The applicants alleged that there had been a breach of Article 6 § 1 of the Convention as regards the lengthy non-enforcement of a final court decision. They also relied on Article 13 in conjunction with Article 6 § 1 of the Convention as regards the lack of an effective remedy and Article 1 of Protocol No. 1 to the Convention as regards a disproportionate interference with their right to property.

4. On 14 February 2008 the President of the Section to which the case was allocated 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. On 24 July 2008 the President of the Section ruled, pursuant to Rule 38 § 1 of the Rules of Court, that the Government's observations should not be included in the case file for consideration by the Court since they had been submitted outside the time-limit and neither an extension of time had been requested, nor had any reasons been given by the Government for non-compliance with the time-limit.

6. On 2 September 2008 the applicants submitted their observations together with their claims for just satisfaction, to which the Government responded.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1930, 1933, 1928, 1925, 1957 and 1959 respectively and live in Albania and Austria.

A. Restitution of property and the award of damages

8. On 22 June 1994 the Commission on Restitution and Compensation of Properties (*Komisioni i Kthimit dhe Kompensimit të Pronave* - “the Commission”) recognised the applicants' property title over a plot of land and a building on the land. As reconstruction works which had started on an unspecified date before 1990 had not been completed, the building had become uninhabitable. For that reason, the Commission also awarded damages to the applicants in the amount of 997,230 Albanian leks (“ALL”).

9. The applicants contested the amount of damages awarded by the Commission. On 14 March 1995 the Saranda District Court, relying on an expert report, awarded the applicants damages in the amount of ALL 4,600,000, approximately 33,065 euros (“EUR”). That judgment became final on 14 April 1995.

10. In a letter dated 11 November 1998, the Ministry of Finance informed the applicants that joint guidelines had to be issued by the Ministry of Finance and the Ministry of Justice concerning the enforcement of judicial decisions that had an impact on the State budget.

11. On 25 May 2000 the Saranda District Court issued an execution writ in respect of its 1995 judgment.

12. In a letter of 5 July 2000 the Ministry of Finance informed the applicants that they were to be compensated by means of State bonds.

13. In a letter of 7 November 2002 Mr Refat Puto requested the Saranda Bailiff's Office to execute the District Court's judgment.

14. In response to the applicants' letter, the Ministry of Justice's General Director for the Bailiff's Office requested the Saranda Bailiff's Office on 16 February 2002 to enforce the District Court's judgment. A similar letter was sent by the General Directorate of the Bailiff's Office to the Saranda's Bailiff's Office on 7 April 2004.

15. On 22 October 2005 and 3 March 2006 the applicants sent two letters to the Ministry of Justice. No response had been received by the date on which the application was introduced with this Court.

B. Transfer of the property's ownership

16. In their comments to the applicants' claims for just satisfaction, the Government submitted that on 25 April 2002 the applicants had sold the plot of land and the building thereon to third parties. The sale contract, concluded by a notary deed, was submitted in support.

17. By a letter of 4 July 2008 the Saranda Office for the Registration of Immovable Property (*Zyra Vendore e Regjistrimit te Pasurive te Paluajtshme Sarande*) certified that the applicants' property had been transferred to third parties by virtue of the sale contract of 25 April 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law and practice has been described in detail in *Gjyli v. Albania*, no. 32907/07, §§ 19–27, 29 September 2009 and *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, §§ 21–25, 18 November 2004.

THE LAW

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

19. The applicants complained that the prolonged non-enforcement of the District Court's judgment of 14 March 1995 had violated their “right to court” under Article 6 § 1, which, in so far as relevant, reads as follows:

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

A. Admissibility

20. In their further comments to the applicants' claim for just satisfaction, the Government submitted that the applicants had not disclosed either in the application form or in their observations the fact that they had sold their property to third parties in 2002. In their view, such a non-disclosure was relevant to the issue of whether the applicants continued to be a “victim” within the meaning of Article 34 of the Convention.

21. The Government further stated that the applicants had lodged their application with the Court beyond the time-limit prescribed under Article 35 § 1 of the Convention, which, in their opinion, started to run from the moment they had sold their property.

22. The Court recalls that the concept of “victim” must be interpreted as an autonomous concept and independently of concepts of domestic law (see *A.P.C.A., L.P.C.A., Abid and 646 Others c. Romania* (dec.), no. 34746/97, 10 July 2001). The word “victim” in the context of Article 34 denotes the person directly affected by the act or omission which is in issue, the existence of a violation being conceivable even in the absence of prejudice (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III and *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51). The Court further considers that the issue of whether an applicant may claim to be a “victim” within the meaning of Article 34 of the Convention does not turn on the substance or content of the right in issue, but solely on the question whether it is linked to the person who relies on it (*Gayduk and Others v. Ukraine* (dec.), nos. 45526/99, 46099/99, 47088/99, 47176/99, 47177/99, 48018/99, 48043/99, 48071/99, 48580/99, 48624/99, 49426/99, 50354/99, 51934/99, 51938/99, 53423/99, 53424/99, 54120/00, 54124/00, 54136/00, 55542/00 and 56019/00, ECHR 2002-VI (extracts)).

23. In the instant case, the Court notes that the award of damages by the District Court's judgment of 14 March 1995, which became final on 14 April 1995, constituted compensation for the depreciation of the applicants' building situated on the resituated land. To date, that judgment remains unenforced. That the applicants later sold the building, subsequent to that judgment, does not change their prior right to compensation for the damage to their building. They, accordingly, remain victims of a failure to execute that judgment. The Court therefore rejects the Government's objection.

24. Moreover, since the District Court's judgment of 14 March 1995 remains unenforced to date, the alleged violation is a continuing one so that the six-month rule does not apply (see *Bushati and Others v. Albania*, no. 6397/04, § 72, 8 December 2009).

25. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover finds that no other grounds for declaring these complaints inadmissible have been established and therefore declares them admissible.

B. Merits

26. The general principles under Article 6 § 1 of the Convention concerning the non-enforcement of a final court judgment are set out in *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, § 38, 18 November 2004.

27. The Court notes that the District Court's judgment of 14 March 1995 was final and binding, and that, to date, it has not been enforced.

28. The Court has moreover found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see, for example, *Gjyli v. Albania*, no. 32907/07, §§ 43-47, 29 September 2009 and *Qufaj Co. Sh.p.k.*, cited above, §§ 39-45). It sees no reason to depart from those findings in the present case.

29. Having regard to its case-law on the subject, the Court finds that the domestic authorities' failure to comply with the District Court's judgment of 14 March 1995 in the applicants' favour has impaired the essence of their right to a court.

30. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

31. The applicants complained under Article 13 of the Convention about the lack of effective domestic remedies as regards the failure to enforce the District Court's judgment of 14 March 1995.

Article 13 of the Convention provides that:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

32. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

33. The Court notes that the Government did not mention the existence of a domestic effective remedy for the enforcement of a final court decision. Moreover, in its judgment in the case of *Gjyli*, cited above, the Court found the following as regards the effectiveness of the constitutional remedy concerning the non-enforcement of a final court decision.

“58. The Court notes that the Constitutional Court judgments (see paragraphs 21–27 above) recognised that there had been a violation of the appellants' right of access to court on account of the non-enforcement of domestic courts' judgments. However, their findings were declaratory so that the Constitutional Court did not offer any adequate redress. In particular, it did not make any awards of pecuniary and/or non-

pecuniary damage, nor could it offer a clear perspective to prevent the alleged violation or its continuation.

59. Furthermore, the Court notes that the bailiff's actions were not effective in the present case. Moreover, the Government did not contend the existence of any other alternative preventive remedy which, in the circumstances of the case, could have been relied upon by the applicant.

60. The Court concludes that there has accordingly been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention.”

34. The Court sees no reason to reach a different conclusion in the circumstances of the instant case, which are similar to those in *Gjyli*. The applicants had no remedy to either prevent the continuation of the violation of their rights guaranteed under Article 6 § 1 of the Convention or to obtain the compensation awarded to them.

35. Accordingly, there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention.

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

36. The applicants complained that there has been a breach of their right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the District Court's judgment of 14 March 1995.

Article 1 of Protocol No. 1 to the Convention reads as follows:

“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

37. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

39. The District Court's judgment of 14 March 1995 provided the applicants with an enforceable claim to compensation for the damage to their building. The decision became final on 14 April 1995.

40. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a final judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

41. In the instant case, the Court considers that the impossibility for the applicants to obtain the execution of their judgment constitutes an interference with their right to the peaceful enjoyment of their possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1. By failing to comply with the District Court's judgment of 14 March 1995, the national authorities have prevented the applicants from receiving the money to which they were entitled by virtue of a *res judicata* judgment in their favour. The Government did not advance any objective justification for the delay in complying with the domestic court judgment.

42. In sum, there has also been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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. Damage

44. The applicants sought EUR 61,036 in respect of pecuniary damage, which consisted of the amount awarded by the District Court's judgment of 14 March 1995 and the loss of the bank interest, assuming that the money had been deposited in a savings account. They claimed EUR 10,000 in respect of non-pecuniary damage.

45. The Government contested the applicants' claims.

46. The Court considers that in the circumstances of the present case payment of the amount owed by the State pursuant to the final judgment of the District Court of 14 March 1995 would restore the applicants as far as possible to the situation in which they would have been had the Albanian authorities complied with that judgment.

47. Consequently, the Court notes that the sum awarded by the national courts was ALL 4,600,000, approximately EUR 33,065. It further notes that the prolonged failure to pay the amount awarded by the domestic court and the years of uncertainty must inevitably have caused the applicants pecuniary damage that has, in part at least, to be made good. The Court considers it reasonable that they would have attempted to invest the sum of money awarded on 14 March 1995 (see, *mutatis mutandis*, *Prodan v. Moldova*, no. 49806/99, §§ 71-75, ECHR 2004-III (extracts)).

48. As regards non-pecuniary damage, the Court accepts that the applicants suffered distress that would have been avoided had the authorities complied with the final decision.

49. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants a lump sum of EUR 65,000 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

50. The applicants claimed EUR 3,670 for the costs incurred before this Court. They provided one single invoice, containing a detailed breakdown of the costs claimed.

51. The Government contested the applicants' costs as they had not submitted receipts for every item of expense alleged to have been incurred.

52. The Court notes that the case was not complex. Having regard to the details of the claim submitted by the applicants, the Court awards them, in respect of the Strasbourg proceedings, EUR 2,000.

C. Default interest

53. 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 on account of the non-enforcement of the District Court's judgment of 14 March 1995;
3. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention as regards the lack of an effective remedy concerning the non-enforcement of the District Court's judgment of 14 March 1995;
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 District Court's judgment of 14 March 1995;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 65,000 (sixty five thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President