



Demolition of flats in an Albanian coastal town, in breach of an interim order by national courts, violated the European Convention

In today's Chamber judgment¹ in the case of [Sharxhi and Others v. Albania](#) (application no. 10613/16) the European Court of Human Rights held, unanimously, that there had been:

violations of Article 6 § 1 (right to a fair trial), Article 8 (right to respect for private and family life and the home) and Article 1 of Protocol No. 1 (protection of property) alone and in conjunction with Article 13 (right to an effective remedy) of the European Convention on Human Rights.

The case concerned the demolition of flats and business premises in an Albanian coastal town, Vlora. The applicants, owners of the flats, complained in particular about the seizure, expropriation and subsequent demolition of their properties within a period of one month in 2013, despite a court order telling the authorities to refrain from taking any action that could breach their property rights.

Like the domestic courts, the European Court found that there had clearly been no legal basis for the police cordoning off and seizing the applicants' building, then refusing them access unless they showed proof of ownership and their ID. Similarly, the whole procedure to expropriate and demolish the building, carried out hastily and in complete disregard of a court order, had been unlawful. The Court emphasised that the authorities' actions were not compatible with the rule of law in a democratic society and did not respect the fundamental rights and freedoms guaranteed under the European Convention.

Despite the applicants having made use of the domestic remedies available to them, they have still not received any compensation. They have not been awarded any compensation at all for the unlawful seizure of their building and, although awarded 11,639,800 euros in a decision by the Administrative Court of Appeal for the unlawful expropriation and demolition, the proceedings for enforcement of that decision have been suspended before the Supreme Court since 2015. The applicants have thus not had an effective remedy for their complaints before the domestic courts.

As concerned **just satisfaction under Article 41** and, even though domestic proceedings were still pending, the Court concluded that the applicants should be awarded the amount of compensation decided by the Court of Appeal, plus interest, namely 13,098,600 euros for pecuniary damage.

Principal facts

The applicants are 18 Albanian nationals and one Italian national born between 1939 and 1986.

In August 2010 the local authorities gave permission to build a residential building ("the Jon Residence/the residence") on a plot of land in Vlora. Two of the applicants, by virtue of their ownership of this plot of land, became owners of some of the flats and shops constructed in the residence; the remaining applicants became owners of flats via purchase agreements. Upon completion of the construction works, the majority of the flats and shops were furnished and several of the applicants moved into their flats.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

However, on 3 November 2013, without prior notice, the urban construction inspectorate authorities – supported by the police – surrounded the residence and cordoned it off with yellow police tape marked “crime scene – no entry”. The applicants were initially prevented from entering their flats and retrieving their belongings. They were told that the authorities were seizing their residence in order to evaluate the legality of the construction permit and other relevant documents. They were later allowed to return to their flats, on presentation of a certificate of ownership and valid ID to the authorities.

The applicants lodged a claim with the administrative courts and, on 7 November 2013, an interim order was issued ordering the authorities to refrain from any actions that could breach the applicants’ property rights. In a subsequent decision on the merits of the case in January 2014 the administrative court found that the authorities’ actions carried out on 3 November 2013 had been unlawful.

Despite the interim order, the entire residential building was demolished between 4 and 8 December 2013.

In the meantime, on 27 November 2013 the Government had adopted a decision ordering the expropriation of the applicants’ properties in the public interest and the payment of compensation. The applicants, however, challenged the compensation amount on the ground that the expropriation procedure had been carried out in flagrant breach of the law. Those proceedings are still pending before the Supreme Court, which, on 15 January 2015, decided to stay the enforcement of the lower court’s decision awarding the applicants 1,580,712,321 Albanian leks (approximately 11,639,800 euros) in compensation.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Article 8 (right to respect for private and family life and the home) and Article 1 of Protocol No. 1 (protection of property), the applicants complained in particular about the seizure, expropriation and subsequent demolition of their properties, including their personal belongings, despite the administrative court’s interim order. They further complained under Article 13 (right to an effective remedy) that there had been no effective remedy for them to bring these complaints before the domestic courts.

The application was lodged with the European Court of Human Rights on 19 February 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Ledi **Bianku** (Albania),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Concerning the failure to comply with the interim order

The Court found that the interim order had been issued with a view to preventing the demolition of the applicants’ building. Under domestic law, that interim order had been directly enforceable and binding and was to remain in place until a decision was given on the merits of the case. However,

the enforcement of the interim order and the main administrative proceedings on the merits of the case had become redundant as, by the time the administrative courts were meant to be examining the merits of the case, the Government had already decided that the residence should be expropriated in the public interest and the building had been demolished.

Like the domestic courts, the Court therefore considered that the national authorities had failed to comply with the decision of 7 November 2013 ordering the authorities to refrain from any actions that could breach the applicants' property rights. Article 6 § 1 had therefore been deprived of any useful effect and there had been a violation of this Article.

Whether there was a remedy available to challenge the non-enforcement of the interim order

The Court was not convinced by the Government's arguments that the applicants could have made claims for damages under the relevant domestic law. Unlike the applicants' case, the examples given by the Government referred to claims in cases where illegal buildings had been demolished and where legalisation was still ongoing. There was no information as to whether the decisions in those cases had become final at domestic level, and if so, whether the authorities had enforced them. Nor had the authorities proceeded with any subsequent expropriation in the public interest. Besides, the applicants had not complained of a lack of compensation for the non-enforcement of the interim order, but rather of the authorities' failure to enforce the interim order, which had made it impossible for them to have the merits of their case properly examined. Lastly, the Constitutional Court could only make a declaratory finding where final court decisions were not enforced, and did not therefore offer any means of redress for the applicants' situation.

The Court therefore found that there had been, and still was, no effective remedy available to the applicants as concerned the non-enforcement of the interim order, in violation of Article 13 in conjunction with Article 6 § 1.

Concerning the seizure of the applicants' building and their right to respect for their home

Two of the applicants' complaints concerning the seizure of the building were rejected as inadmissible because they had not submitted any documentary evidence to prove that they had actually been using them as their homes or business premises. The remaining 17 applicants, however, who were owners of flats under purchase agreements, had submitted evidence showing that their flats had been furnished and used as holiday homes. Some of those applicants had actually already started to make regular use of and lived in their flats. The Court therefore considered that the flats qualified as "homes" for the purposes of Article 8.

After the seizure of their building, the applicants had been allowed to gain access to their homes, but only if they showed the authorities a certificate of ownership and valid ID. The police intervention in surrounding the building and preventing access to and use of the applicants' homes had therefore constituted an interference by a public authority with their right to respect for their homes.

Like the domestic courts once again, the Court found that there had clearly been no legal basis for the police surrounding and seizing the applicants' building, which had taken place without informing the owners or the construction company and without any order prohibiting the applicants from entering their flats. There had therefore been a violation of the right to respect for the home under Article 8 as regards the seizure of the building in respect of 17 of the applicants.

The Court held that there had also been a violation of Article 13 in conjunction with Article 8 in respect of those 17 applicants as regards the seizure of their building. The applicants had brought complaints about the seizure and cordoning off of the building before the domestic courts, which had found that the applicants' rights had been violated, without any award for compensation having

been made. Nor had any claim for compensation referred to by the Government been an effective remedy, on the same grounds as found above under Article 13 in conjunction with Article 6 § 1.

Lastly, it found that there was no need to examine the complaint under Article 8 taken alone and in conjunction with Article 13 as concerned the expropriation and demolition of the building, considering it more appropriate to examine it under Article 1 of Protocol No. 1 (below).

Concerning the seizure, expropriation and demolition of the applicants' building and their right to protection of property

The Court declared admissible all 19 of the applicants' complaints as concerned their property rights, as they had all purchased the flats in good faith.

As concerned the seizure of the applicants' building, the Government had not provided any legal justification whatsoever for refusing the applicants access to their building for one month from 3 November to 4 December 2013. Indeed, the seizure and surrounding of the Jon Residence with yellow police tape had been in complete disregard of an interim order issued by the domestic courts.

Similarly, in their decisions the domestic courts concluded that both the authorities' failure to comply with the interim order, and the demolition of the Jon Residence had been unlawful. The Court therefore concluded, like the domestic courts, that the whole procedure to expropriate and demolish the building, in spite of the interim order, had been carried out hastily and had thus not been in accordance with domestic law. As a result, the demolition had been incompatible with the applicants' right to the peaceful enjoyment of their possessions.

The Court therefore held that there had been a violation of Article 1 of Protocol No. 1 both as concerned the seizure as well as the expropriation and demolition of the building.

Lastly, the Court noted that the applicants had not been awarded any compensation by the domestic courts concerning the seizure of the building. Nor had they to date been compensated for what the domestic courts had found to be an unlawful or *de facto* expropriation. The applicants had already made use of the remedies available to them. They had brought proceedings both to request the authorities to refrain from demolishing their building as well as to complain of the unlawfulness of the expropriation proceedings. The Court found it difficult to see how the applicants could have lodged any other claims which would have been successful in providing redress for their situation. It was also difficult to imagine how and when the applicants could have moved their belongings when, on the day that they had been told to do so, the authorities had continued with the demolition. The Court therefore held that there had been a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention as concerned the lack of an effective remedy both to challenge the seizure as well as the expropriation and demolition of the building.

Just satisfaction (Article 41)

The Court held that Albania was to pay all the applicants 13,098,600 euros (EUR) in respect of pecuniary damage. In respect of non-pecuniary damage, it held that the first two applicants should be awarded EUR 7,800 each and the remaining 17 applicants EUR 13,000 each. Lastly, it awarded EUR 112,100 in total for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.