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

FIRST SECTION

DECISION

Application no. 60956/12
Lorenc BEGAJ
against Albania

The European Court of Human Rights (First Section), sitting on 18 October 2016 as a Committee composed of:

Kristina Pardalos, *President,*
Pauliine Koskelo,
Tim Eicke, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 September 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Lorenc Begaj, is an Albanian national, who was born in 1962 and lives in Tirana. He was represented before the Court by Mr C. Meyer, a lawyer practising in Strasbourg.

2. The Albanian Government ("the Government") were represented by their Agent, Ms A. Hicka of the State Advocate's Office.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On an unspecified date the applicant instituted legal proceedings against the Pogradec municipality *(Bashkia Pogradec)* ("the municipality"), seeking the payment of damages resulting from an unlawful act, ordering the demolition of the applicant's construction.

5. On 17 November 2009 the Pogradec District Court allowed partly the applicant's action. It ordered the municipality to pay damages of 52,560,000 Albanian leks ("ALL") to the applicant.

6. On 21 September 2010 the Korça Court of Appeal upheld the Pogradec District Court's judgment.

7. On 8 November 2010 an enforcement writ was issued, pursuant to Articles 510 (a) and 511 (a) of the Code of Civil Procedure (see "Relevant domestic law and practice" below).

8. During 2011 the bailiff office unsuccessfully attempted to enforce the Korça Court of Appeal's judgment of 21 September 2010.

9. On an unspecified date the municipality lodged an appeal with the Supreme Court, contesting the Pogradec District Court's judgment of 17 November 2009 as upheld by the Korça Court of Appeal's judgment of 21 September 2010.

10. On 6 March 2014 the Supreme Court quashed the Korça Court of Appeal's judgment and remitted the case to the Administrative Court of Appeal.

11. On 30 September 2015 the Administrative Court of Appeal amended the Pogradec District Court's judgment of 17 November 2009. It ordered the municipality to pay damages of ALL 27,553,837 to the applicant. According to materials in the Court's possession, the proceedings are pending before the Supreme Court, following an appeal against the Administrative Court of Appeal's judgment of 30 September 2015 lodged by the municipality.

12. It would appear that on 24 July 2014 the authorities had paid the sum of ALL 171,000 to the applicant.

B. Relevant domestic law and practice

13. The relevant domestic law has been described in the case of *Gjyli v. Albania* (no. 32907/07, §§ 19-28, 29 September 2009).

COMPLAINTS

14. The applicant complained under Articles 6 § 1 of the Convention taken in conjunction with Article 13 and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of the Korça Court of Appeal's judgment of 21 September 2010.

15. In his observations of 20 April 2016 the applicant also complained about the unfairness of the proceedings before the Supreme Court and an alleged breach of legal certainty as a result of the quashing of the final judgment by means of an extraordinary appeal.

THE LAW

16. The Government argued that the applicant had failed to exhaust domestic remedies in relation to his complaint concerning the non-enforcement of the Korça Court of Appeal's judgment of 21 September 2010. They requested the Court to strike out the case of its list of cases.

17. The applicant contested the Government's submissions and argued that the Korça Court of Appeal's judgment was enforceable. An enforcement writ had been issued in 2010 and the proceedings before the Supreme Court had been initiated by an extraordinary appeal [against the final judgment].

18. In the present case, the Court notes that the Pogradec District Court's judgment of 17 November 2009, as upheld by the Korça Court of Appeal's judgment of 21 September 2010, obliged the municipality to pay damages to the applicant. An execution writ was issued in accordance with Articles 510 (a) and 511 (a) of the Code of Civil Procedure. In the meantime, the municipality filed an appeal with the Supreme Court against both lower courts' judgments (see paragraph 9 above).

19. In consequence, the appeal proceedings are pending before the Supreme Court. Even if an appeal to the Supreme Court does not have automatic suspensive effect and, apart from the power of the Supreme Court under Article 479 of the Code of Civil Procedure to suspend the enforcement of a court's judgment, the Court recalls that Article 6 protects the enforcement of final and binding judicial judgments, and not judgments which may be subject to subsequent control of a higher instance court and, eventually, quashed (see, for example, *Ouzounis and Others v. Greece*, no. 49144/99, § 21, 18 April 2002; *Ioannis Karahalios v. Greece* (dec.), no 62499/00, 26 September 2002; *Xheraj v. Albania*, no. 37959/02, § 70, 29 July 2008; and *Gjyli v. Albania*, no. 32907/07, §§ 33-34, 29 September 2009).

20. Having regard to the foregoing, the Court considers that this complaint is inadmissible as being premature and must be rejected under Article 35 §§ 1 and 4 of the Convention.

21. As regards the complaints concerning the unfairness of the proceedings before the Supreme Court and an alleged breach of the legal certainty as a result of the quashing of the Korça Court of Appeal's judgment of 21 September 2010, the Court notes that the applicant failed to raise them before the domestic courts. Accordingly, these complaints are inadmissible for non-exhaustion of domestic remedies and must be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 November 2016.

Renata Degener
Deputy Registrar

Kristina Pardalos
President