

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

FIRST SECTION

CASE OF BRAHIMAJ v. ALBANIA

(Application no. 4801/13)

JUDGMENT

STRASBOURG

6 October 2016

This judgment is final but it may be subject to editorial revision.



In the case of Brahimaj v. Albania,

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

Kristina Pardalos, *President,*
Aleš Pejchal,
Robert Spano, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 13 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 4801/13) 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, Mr Gëzim Brahimaj ("the applicant"), on 8 January 2013.

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

3. On 22 September 2014 the application was communicated to the Government.

4. The Government failed to submit any observations on the admissibility and merits of the case within the time-limit allowed.

5. The applicant failed to submit claims for just satisfaction within the time-limit allowed (Rule 60 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1968 and lives in Vlora.

7. On 30 May 2007 the Vlora District Court ordered the Vlora Construction Police *(Policia e Ndërtimit dega Vlorë)* to pay the applicant 2,795,956 Albanian leks ("ALL") for the unjustified destruction of his property.

8. On 11 June 2008 the decision was upheld by the Vlora Court of Appeal and became final.

9. On 11 September 2008 an enforcement writ was issued.

10. From 2009 to 2012 the bailiff unsuccessfully sought the enforcement of the decision from the Vlora Construction Police and the National Urban Construction Inspectorate *(Inspektorati Ndërtimor Urbanistik Kombëtar)*.

11. To date, the final decision has remained unenforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice has been described in the cases of *Qufaj Co. Sh.p.k. v. Albania* (no. 54268/00, §§ 21-26, 18 November 2004) and *Gjyli v. Albania* (no. 32907/07, §§ 19-28, 29 September 2009).

13. In addition to the Constitutional Court's case-law as regards the length of proceedings mentioned in the Court's judgment in the case of *Luli and Others v. Albania* (nos. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12 and 31355/09, §§ 63-64, 1 April 2014), the Constitutional Court has delivered three subsequent judgments finding a breach of the appellants' rights on account of the length of terminated court proceedings (decisions nos. 3/15 of 26 January 2015, 56 of 21 July 2015 and 69/15 of 17 November 2015). No award was made to the appellants in those judgments.

14. Furthermore, the Constitutional Court has reaffirmed its long-established practice of finding a breach of the appellants' rights on account of the length of non-enforcement proceedings (decisions nos. 9/14 of 27 February 2014; 16/14 of 21 March 2014; 32/14 of 26 May 2014; 46/14 and 47/14 of 30 July 2014; 14/15 of 30 March 2015; 24/15 of 27 April 2015; 25/15 of 22 May 2015; 52/15 of 20 July 2015; 61/15 of 23 September 2015; 72/15 of 27 November 2015). No award was made to the appellants in those judgments, nor was any other means of redress provided in relation to the continued non-enforcement.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

15. The applicant complained that the non-enforcement of Vlora District Court's decision of 30 May 2007, as upheld by the Vlora Court of Appeal's decision of 11 June 2008, breached his rights under Articles 6 § 1 and 13 of the Convention, which read as follows:

Article 6 § 1

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

Article 13

"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."

16. The Government failed to submit any observations on the admissibility and merits of the case within the time-limit allowed (see also paragraph 4 above).

A. Admissibility

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The Court recalls the general principles under Article 6 § 1 of the Convention concerning the non-enforcement of a final court decision, which are set out, *inter alia,* in *Qufaj Co. Sh.p.k.* (cited above, § 38) and in *Gjyli* (cited above, §§ 43-44).

19. In addition, the Court refers to its previous judgments holding that in Albania there exists no effective domestic remedy as regards the delayed enforcement or the non-enforcement of a final court judgment (see *Gjyli*, cited above, §§ 55-60; *Puto and Others* v. Albania, no. 609/07, §§ 33-35, 20 July 2010; and *Luli and Others,* cited above, §§ 77-84). Having regard also to the most recent case-law of the Constitutional Court as outlined above in paragraphs 13-14, the Court finds that there was, and still is, no effective remedy available to the applicant in respect of the length of non-enforcement proceedings.

20. Having regard to its well-established case-law on the subject (*Qufaj Co. Sh.p.k.*, cited above; *Gjyli*, cited above; *Puto and Others*, cited above; and *Luli and others*, cited above), the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the final decision and a violation of Article 13 of the Convention in that the applicant did not have an effective domestic remedy to redress the damage caused by non-enforcement.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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."

22. The applicant failed to submit claims for just satisfaction within the time-limit allowed. Accordingly, no pecuniary damage should be awarded. However, having regard to the nature of the Convention violation found, the respondent Government should ensure the enforcement of the final decision in the applicant's case, within three months in accordance with Article 28 § 2 of the Convention (see, for example, *Vukelić v. Montenegro*, no. 58258/09, § 107, 4 June 2013; *Mikhaylova and Others v. Ukraine*, no. 16475/02, § 40, 15 June 2006; and *Lisyanskiy v. Ukraine*, no. 17899/02, § 34, 4 April 2006).

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 final domestic decision;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of a remedy in respect of the failure to enforce that decision;

4. *Holds* that the respondent State must secure, by appropriate means, the enforcement of the final decision given in the applicant's favour, within three months in accordance with Article 28 § 2 of the Convention.

Done in English, and notified in writing on 6 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Kristina Pardalos President