

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

FOURTH SECTION

CASE OF CALE v. ALBANIA

(Application no. 50933/07)

JUDGMENT

STRASBOURG

6 November 2012

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



In the case of Cale v. Albania,

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

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 16 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 50933/07) 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 an Albanian national, Mr Stefanaq Cale ("the applicant"), on 5 November 2007.

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

3. On 11 July 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1927 and lives in Korça.

5. On 9 May 2003 the Korça District Court ordered the Korça City Hall to pay the applicant and his two siblings 2,801,327 Albanian leks ("ALL") as compensation for the nationalisation of their house by the State in 1975. That decision became final on 23 June 2003, no appeal having been lodged against it.

6. On 24 September 2003 an enforcement writ was issued.

7. To date, the applicant has been paid only ALL 705,291.

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. 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).

THE LAW

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

9. The applicant complained that the non-enforcement of the Korça District Court's decision of 9 May 2003 breached his right of access to court under Article 6 § 1 of the Convention, which reads as follows, in so far as relevant:

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

A. Admissibility

10. The Government submitted that the application should be rejected as an abuse of the right of petition, within the meaning of Article 35 § 3 (a) of the Convention, regard being had to the initial non-disclosure by the applicant that his share concerned only one third of the domestic award, two thirds belonging to his siblings. They further maintained that this complaint was manifestly ill-founded.

11. The Court considers that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see, for example, *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). The Court does not consider that such is the case, the applicant's complaint that his right under the Convention was violated being based on facts which are undisputed by the Government. The Court considers that the Government's objection will be taken into account in the application of Article 41 of the Convention (see paragraph 21 below). It therefore decides to dismiss the objection.

12. The Court notes that the applicant's complaint 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

13. The applicant submitted that the final court decision in his favour remained unenforced.

14. The Government explained that, despite the authorities' measures, the decision had not been enforced owing to the lack of funds. To date, the applicant had been paid ALL 705,291 out of ALL 892,231 corresponding to his share and, a request for the allocation of additional funds in 2012 had been made to the responsible authorities.

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

16. The Court considers that the failure to fully enforce the final court decision in the applicant's favour for 9 years cannot be justified on the grounds of the State's alleged lack of funds. The Court has already rejected this argument in previous cases (see, *inter alia*, *Qufaj Co. Sh.p.k.*, cited above, § 44). No other reasons were advanced by the respondent Government for the authorities' failure to enforce the final court decision.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant submitted that he had represented his brothers in the domestic proceedings as a result of which the domestic court's decision was given in his name. He argued that he was entitled to the full award as ordered by the domestic court in respect of pecuniary damage. He did not make any claims in respect of non-pecuniary damage.

20. The Government submitted that the applicant is entitled to one third of the award as ordered by the domestic court, regard being had to the fact that he was not acting as a representative of his siblings in the proceedings before this Court. They further maintained that the applicant had not suffered from any non-pecuniary damage.

21. The Court notes that the domestic court awarded the amount to the applicant and his two siblings. In the proceedings before the Court the

applicant did not act on behalf of his siblings, no power of attorney being submitted for this purpose (see also *Hamzaraj v. Albania (no. 1)*, no. 45264/04, § 51, 3 February 2009). Furthermore, the enforcement of the domestic court decision was sought only in respect of the applicant's share. The Court accordingly awards the applicant EUR 1,650 in pecuniary damage, which corresponds to one third of the amount ordered by the domestic court less the money obtained to date.

22. Even if not the subject of a specific claim, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be sufficiently compensated by the sole finding of a violation. Making its assessment on an equitable basis and having regard to the particular circumstances of the case, the Court awards the applicant EUR 1,500 under this head (see, *mutatis mutandis*, *Garzičić v. Montenegro*, no. 17931/07, § 42, 21 September 2010; and, *Staroszczyk v. Poland*, no. 59519/00, §§ 141-143, 22 March 2007.

B. Costs and expenses

23. The applicant made no claims in respect of costs and expenses.

C. Default interest

24. The Court considers it appropriate that the default interest rate 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 a final domestic court's debt judgment;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,650 (one thousand six hundred and fifty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President