

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

FOURTH SECTION

CASE OF ELTARI v. ALBANIA

(Application no. 16530/06)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

10 June 2014

FINAL

10/09/2014

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



In the case of Eltari v. Albania,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 20 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 16530/06) 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, Ms Zamira Eltari, née Sharra, ("the applicant"), on 25 April 2006

2. In a judgment delivered on 8 March 2011 ("the principal judgment"), the Court held that there had been a breach of Articles 6 § 1 and 13 of the Convention as well as of Article 1 of Protocol No. 1 to the Convention on account of the authorities' failure to enforce the District Court's decision of 15 December 1999 as interpreted by the decision of 18 February 2005, which had awarded compensation to the applicant *in lieu* of the restitution of property (*Eltari v. Albania*, no. 16530/06, 8 March 2011).

3. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

4. On 15 September 2011 the principal judgment became final and the parties were invited to submit written observations concerning just satisfaction.

5. On 5 January 2012 the Court extended the deadline for the submission of the Governments' written observations on just satisfaction.

6. On 18 January 2012 the applicant submitted claims on just satisfaction. Under Article 41 of the Convention the applicant sought various sums by way of just satisfaction.

7. On 31 January 2012 the Government submitted a unilateral declaration.

8. On 4 April 2012 the applicant submitted comments on the Government's unilateral declaration.

9. On 31 July 2013 the Government submitted to the Court, as part of general information, the new property valuation maps which had been adopted by Council of Ministers' decision no. 187 of 6 March 2013.

THE LAW

10. In her claims for just satisfaction on 18 January 2012, the applicant sought compensation for the loss of her share of a plot of land measuring 521 sq. m. Since the plot of land was centrally located in the coastal city of Vlora, she submitted that the reference price was 600 euros ("EUR") per sq. m. She accordingly sought EUR 312,600 in respect of pecuniary damage. In respect of non-pecuniary damage she claimed EUR 15,000. As regards legal costs and expenses, the applicant claimed EUR 7,000 for costs and expenses incurred in the domestic proceedings and EUR 2,855 for those incurred in the Convention proceedings. From the latter sum, EUR 850, the legal aid received from the Council of Europe, had to be deducted.

11. Failing a friendly settlement between the parties, as provided for in paragraph 104 of the principal judgment, on 31 January 2012 the Government submitted a unilateral declaration, which reads, in so far as relevant, as follows (relevant extracts taken from the English version as submitted by the Government):

> "The Government of the Republic of Albania are prepared to pay (...) to Mrs Zamira Eltari (...) the amount of 3,000 euros (three thousand euros) to cover non-pecuniary damage and all costs and expenses, plus any tax that may be applicable to the applicant.
>
> Regarding pecuniary damage, the Government of the Republic of Albania are prepared to reward the applicant the sum of 6,252,000 (six million two hundred fifty two thousand) ALL such as compensation for 521 square meter own by the applicant, based on value maps[1] indicating that the price per square meter in the above-mentioned parcel is 12,000 (twelve thousand) ALL per square meter.
>
> The amount of 3,000 (three thousand) Euros will be converted into Albanian ALL at the applicable rate on the date of settlement.
>
> The abovementioned amounts will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay these sums within the said period of time, the Government shall undertake to pay simple interests on them, from the expiry of

[1]. The abovementioned value maps are provided by Council of Ministers Decision no. 1620 dated 26.11.2008 "For the adoption of land prices which are located in all city halls and in some municipalities".

> that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. It is understood that the abovementioned payment shall constitute the final resolution of the dispute."

12. In her comments on the Government's unilateral declaration on 4 April 2012, the applicant maintained that her claim corresponded to her share of the plot of land, that is 521 sq. m. She submitted that, pursuant to the Government's decision no. 1620 of 26 November 2008, the reference price was indeed ALL 12,000 per sq. m. However, that reference price had been halved compared to the reference price which was indicated in the Government's decision no. 555 of 29 August 2007, that is ALL 25,597 per sq. m (approximately EUR 179 according to the conversion rate on 4 April 2012). Such halving had taken place within one year and no justifying arguments had been advanced by the Government. She asked that the applicable reference price be ALL 25,597 per sq. m. She further sought EUR 15,000 in respect of non-pecuniary damage. The applicant withdrew her claim as regards legal costs and expenses incurred in the domestic proceedings owing to lack of substantiation, but maintained her claims as regards costs and expenses incurred in the Strasbourg proceedings, from which EUR 850 had to be deducted.

13. The Court notes that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under its paragraph 1 (a), (b) or (c). Article 37 § 1 (c) enables the Court to strike a case out of its list in particular if:

> "(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application."

Article 37 § 1 in fine includes the proviso that:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

14. The Court also notes that under certain circumstances, it may strike out an application, or part thereof, under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration. Moreover, there is nothing to prevent a respondent Government from submitting a unilateral declaration relating, as in the instant case, to the reserved Article 41 procedure. To this end, the Court will examine the Government's declaration carefully in the light of the general principles applicable in respect of Article 41 of the Convention (see, amongst others, *Bushati and Others v. Albania* (just satisfaction – striking out), no. 6397/04, § 10, 14 February 2012).

15. The Court recalls its findings in the case of *Vrioni and Others v. Albania* (just satisfaction), nos. 35720/04 and 42832/06, §§ 33-39,

7 December 2010 that the calculation of pecuniary damage shall be based on the property valuation maps.

16. On 31 July 2013 the Government provided the Court with the 2013 property valuation maps (see paragraph 9 above). The Court notes that the property valuation maps were submitted for general information, out of time, after the closure of the written procedure. The Government did not make any explicit submissions as regards the use of such maps in respect of this application. They failed to specify the location of the plot of land in the respective cadastre zones in accordance with the 2013 property valuation maps and the reference price to be applied in respect of this application. Furthermore, the Government did not indicate whether the reference price reflected the real market value and was "interest and inflation indexed" (compare *Vrioni and Others* (just satisfaction), cited above, § 37). In these circumstances, the Court cannot base its calculation of pecuniary damage on the property valuation maps adopted by the Government in 2013.

17. In this connection, the Court notes that on the basis of the 2008 property valuation maps the reference price in respect of the applicant's plot of land was ALL 12,000 per sq. m. The applicant objected to the application of this reference price and proposed that the reference price indicated in the 2007 property valuation maps be applied, that is ALL 25,597 per sq. m (approximately EUR 179).

18. Having examined the 2008 property valuation maps, the Court notes that the reference price was reduced in respect of all plots of land in the coastal city of Vlora compared with the 2007 property valuation maps. Whereas the Government could have supplied reasons justifying such reduction, the applicant did not submit any expert's report or rely on another alternative as regards the calculation of the reference price. The Court further notes that the applicant was inconsistent in relation to her claim for pecuniary damage without good reason. She initially claimed a reference price of EUR 600 per sq. m without substantiating that figure by way of an expert's report. In her comments on the Government's unilateral declaration she was willing to accept a reference price reduced to EUR 179 per sq. m. In these circumstances, the Court rejects the applicant's proposal and it is prepared to accept the reference price indicated in the 2008 property valuation maps. The Court therefore accepts the Government's unilateral declaration as regards the award of pecuniary damage in the sum of EUR 44,000 (the equivalent of ALL 6,252,000).

19. The Court also examined the applicant's claim in respect of non-pecuniary damage and considers it to be excessive. In this connection, the Court is prepared to accept the Government's proposal to award her EUR 3,000 in respect of non-pecuniary damage.

20. As regards legal costs and expenses, the Court notes that on 4 April 2012 the applicant withdrew her claim as regards costs and expenses incurred in the domestic proceedings. In so far as costs and expenses

incurred in the Strasbourg proceedings are concerned, the Court notes that neither on 18 January nor on 4 April 2012 did the applicant submit an invoice in defense of that claim. The Court is satisfied that the applicant was granted EUR 850 by way of legal aid from the Council of Europe.

21. Having regard to the above considerations and to the amount of compensation proposed by the Government, which appears to be reasonable in the present case, the Court considers that it is no longer justified to continue the examination of the case (Article 37 § 1 (c)). In the light of all the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the case (Article 37 § 1 in fine). Accordingly, it should be struck out of the list as regards the reserved Article 41 procedure.

22. In accordance with Rule 43 § 3 of the Rules of Court, the present judgment will be forwarded to the Committee of Ministers in order to allow the latter to supervise, in accordance with Article 46 § 2 of the Convention, the execution of the Government's undertakings.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Takes note* of the terms of the respondent Government's declaration and, *directs* in consequence that:
   (a) the respondent State is to pay the applicant EUR 44,000 (forty four thousand euros), within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable on the date of payment;
   (b) the respondent State is to pay the applicant EUR 3,000 (three thousand euros), within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable on the date of payment;
   (c) 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;

2. *Decides*, unanimously, to strike the application out of its list of cases as regards the reserved Article 41 procedure.

Done in English, and notified in writing on 10 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President