

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

FIRST SECTION

CASE OF GJERMENI v. ALBANIA

(Application no. 57065/14)

JUDGMENT

STRASBOURG

8 December 2016

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



In the case of Gjermeni v. Albania,

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

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

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 15 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 57065/14) 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 Ylli Gjermeni ("the applicant"), on 8 August 2014.

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

3. On 15 December 2015 the complaint about the non-enforcement of a final court judgment was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Tirana.

5. On 18 June 2009 the applicant, who worked as General Deputy Director of State Social Service *(Zëvendës Drejtor i Përgjithshëm i Shërbimit Social Shtetëror)* at the Ministry of Work, Social Affairs and Equal Opportunities *(Ministria e Punës, Çështjeve Sociale dhe Shanseve të Barabarta)* ("the Ministry") was dismissed.

6. On 27 January 2010 the Tirana District Court accepted in part the applicant's action against his dismissal. It ordered the applicant's reinstatement and the payment of damages corresponding to five months' salaries. By final judgment of 23 November 2010 the Tirana Court of Appeal upheld the Tirana District Court's judgment.

7. On 6 May 2011 an enforcement writ was issued.

8. From 2011 to 2014 the bailiff office unsuccessfully attempted the enforcement of the final judgment.

9. On 9 December 2014 the authorities finally paid the damages to the applicant.

10. On 8 April 2016 the State Social Service requested the Ministry to examine the applicant's reinstatement. On the same day the State Social Service addressed a letter to the Department of the Public Administration, stating that the position of the Deputy Director was available.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law 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

12. The applicant complained that the non-enforcement of the Tirana Court of Appeal's judgment of 23 November 2010 breached his rights under Article 6 § 1 of the Convention, which in so far as relevant, reads, as follows:

Article 6 § 1

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

A. Admissibility

13. The Court notes that this 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

14. The applicant submitted that the Tirana Court of Appeal's judgment of 23 November 2010 had not been enforced in full. The applicant had not been reinstated to his previous position.

15. The Government submitted that the matter had been resolved. The applicant had been paid the damages and the applicant's reinstatement was

in due process. They subsequently requested the Court to strike out the application under Article 37 § 1 (b) of the Convention.

16. 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).

17. The Court notes that the judgment in the applicant's favour concerning the payment of damages was finally enforced on 9 December 2014, four years after it became final on 23 December 2010 (see *Gjyli*, cited above, § 33). The Government provided no justification for this delay. The Court also notes that, in the light of the material in its possession, the applicant has not been reinstated, at least by 8 April 2016 (see paragraph 10 above). The Government did not provide any plausible reasons for this failure (see *Gjyli*, cited above, § 33).

18. Having regard to its well-established case-law on the subject (*Qufaj Co. Sh.p.k.*, cited above; and *Gjyli*, cited above), the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the partial non-enforcement of the final judgment.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed 30,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. As regards pecuniary damage he submitted that he had borrowed money from a bank and also from private third parties. No other specific arguments were raised by the applicant concerning the pecuniary damage.

21. The Government contested the applicant's claim.

22. The Court's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the non-enforcement of the final judgment; it therefore rejects this claim. On the other hand, making an assessment on equitable basis, it awards the applicant EUR 3,300 in respect of non-pecuniary damage.

B. Default interest

23. 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 partial non-enforcement of the Tirana Court of Appeal's judgment of 23 November 2010;

3. *Holds* that the respondent State must secure, by appropriate means, the enforcement of the remaining part of the Tirana Court of Appeal's judgment of 23 November 2010, within three months;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Kristina Pardalos President