

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

THIRD SECTION

CASE OF HAMITAJ v. ALBANIA

(Application no. 11254/11)

JUDGMENT

STRASBOURG

20 July 2023

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



In the case of Hamitaj v. Albania,

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

Ioannis Ktistakis*, President*,

Darian Pavli,

Oddný Mjöll Arnardóttir*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 29 June 2023,

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

PROCEDURE

1. The case originated in an application against Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 January 2011.

2. The Albanian Government ("the Government") were given notice of the application under Article 6 § 1 of the Convention, as regards alleged excessive length of proceedings, under Article 13 of the Convention as to the lack of an effective remedy to address the length of proceedings, as well as under Article 1 of Protocol No. 1 related to a violation of the applicant's property rights.

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

4. The applicant complained of the excessive length of civil proceedings, including those before the Supreme Court, under Articles 6 § 1 of the Convention. The applicant also raised other complaints under the Convention.

THE LAW

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

5. The applicant complained principally that the length of the civil proceedings in question had been incompatible with the "reasonable time" requirement (for further details see appended table). He relied on Article 6 § 1 of the Convention.

6. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France* [GC], no. 30979/96,

§ 43, ECHR 2000-VII; *Gazsó v. Hungary*, no. 48322/12, § 15, 16 July 2015; and *Topallaj v. Albania*, no. 32913/03, § 75, 21 April 2016).

7. In the leading cases of *Luli and Others v. Albania,* nos. 64480/09 and 5 others, 1 April 2014, and *Mishgjoni v. Albania,* no. 18381/05, 7 December 2010, the Court already found a violation in respect of issues similar to those in the present case.

8. Having examined all the material submitted to it, the Court has not found any fact or argument capable of justifying the overall length of the proceedings at the national level. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

9. This complaint is therefore admissible and discloses a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

10. The applicant also complained under Article 13 of the Convention about the lack of domestic remedies in respect of his complaint about the length of the proceedings. Having regard to the facts of the case, the submissions of the parties, and its findings in paragraph 9 above, the Court considers that it has examined the main legal question raised in the present application. It thus finds that there is no need to give a separate ruling on this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Habilaj v. Albania* [Committee], no. 2480/10, § 14, 15 September 2022).

III. REMAINING COMPLAINTS

11. The applicant also complained under Article 1 of Protocol No. 1 about the legalisation of third parties' illegal constructions on the applicant's property.

12. The Court reiterates the principles governing the victim status of an applicant. A decision or measure favourable to an applicant is not in principle sufficient to deprive the applicant of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Murray v. the Netherlands* [GC], no. 10511/10, § 41, 26 April 2016, and *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012). This acknowledgement and the redress are most often the result of the exhaustion of domestic remedies (see *Staykov v. Bulgaria*, no. 49438/99, § 89, 12 October 2006, and *C and D v. Croatia* (dec.), no. 43317/07, 14 October 2010).

13. Turning to the circumstances of the present case, the Court notes that the applicant lodged his application with the Court when the domestic proceedings were still pending. In the meantime, the national courts recognised the applicant's title to the plot and awarded him compensation in the amount of 3,135,000 Albanian lek. The applicant did not complain about the compensation amount, nor did he complain that he had been awarded compensation instead of demolition of the illegal constructions.

14. The Court notes that where an applicant accepts a sum of compensation in settlement of civil claims and renounces further use of domestic remedies, he or she will generally no longer be able to claim to be a victim in respect of those matters (see, *mutatis mutandis*, *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000 V).

15. The Court notes that the recognition of the applicant's property rights amounts to the acknowledgment of a violation. He was also awarded adequate compensation of which he did not complain. Therefore, he can no longer be considered a victim of the violation claimed. Accordingly, this complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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."

17. Regard being had to the documents in its possession and to its case-law (see, in particular, *Luli and Others,* cited above, and *Mishgjoni*, also cited above), the Court considers it reasonable to award the sum indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the length of the proceedings under Article 6 of the Convention, admissible, *finds* that there is no need to examine separately the complaint under Article 13 of the Convention, and *declares* the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention concerning the excessive length of the civil proceedings;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 20 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Ioannis Ktistakis President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (excessive length of civil proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Start of proceedings or date of entry into force of the Convention in respect of Albania (2 October 1996)	End of proceedings	Total length Levels of jurisdiction	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
11254/11 15/01/2011	**Frederik HAMITAJ** 1949	08/02/2006	14/05/2012	6 year(s) and 3 month(s) and 7 day(s) 3 level(s) of jurisdiction	600

[1] Plus any tax that may be chargeable to the applicant.