

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

THIRD SECTION

CASE OF LAZARIS v. ALBANIA

(Application no. 48806/06)

JUDGMENT

STRASBOURG

20 June 2023

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



In the case of Lazaris v. Albania,

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

Georgios A. Serghides*, President*,
Darian Pavli,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 48806/06) 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") on 18 September 2006 by two nationals of the United States of America, Mr James Lazaris, also known as Dhimiter Llazari, born in 1925, who lived in Silver Spring, Maryland, United States, and Mr Peter Lazaris, also known as Panajot Llazari, born in 1938, who lived in Lyndhurst, New Jersey, United States ("the applicants"), represented by Mr A. Vgontzas, a lawyer practising in Athens;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their former Agents, Ms E. Hajro, Ms L. Mandia (Agent a.i.), Ms A. Hicka and, subsequently, by Mr O. Moçka of the State Advocate's Office;

the parties' observations;

Having deliberated in private on 30 May 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns a hearing *in absentia* in civil proceedings before the Supreme Court of Albania. Information about hearings held by the court was published in its premises and on its website. No summonses were served on the parties.

2. The first applicant passed away in 2012. His son and heir Mr Nicholas Lazaris expressed a wish to continue the proceedings in his stead. The second applicant passed away in 2021. His heirs, daughter Ms Amalia Lappas and son Mr Savva Lazaris, expressed a wish to continue the proceedings in his stead.

3. The applicants' deceased father had been the owner of a plot of land measuring 2,660 sq. m and a one-storey house measuring 101 sq. m, which were nationalised by the former communist regime. Subsequently an oil factory was constructed on that land. In 1994 the factory was sold to V.R. as a result of privatisation. In 1995 following the applicants' request the Vlora Commission on the Restitution and Compensation of Properties ("CRC") recognised the applicants' father's property rights over the land and ordered

that 335 sq. m and the house be restored to the applicants, while the remainder of the plot occupied by the oil factory be compensated for by State bonds.

4. The applicants brought civil proceedings against V.R., the CRC and the National Privatisation Agency (Vlora regional office) seeking to have the privatisation contract rescinded and the restitution of the plot of land occupied by the oil factory. According to a power of attorney of 2 July 2003 certified by A.D., a notary in Vlora, they authorised N.B. residing in Himara to be their general representative with a power to retain a lawyer to represent them. According to a power of attorney of 22 September 2003 certified by the same notary, N.B. authorised I.D., a lawyer practising in Albania, to represent the applicants at all stages of those proceedings.

5. On 26 April 2004 the Vlora District Court found for the applicants. On 19 November 2004 the Vlora Court of Appeal upheld the judgment. I.D. pleaded the applicants' case at hearings before both courts. N.B. was also present at the hearing before the Court of Appeal.

6. The respondents appealed against the judgments to the Supreme Court. On 21 December 2004 the Vlora District Court served the appeal on I.D., as confirmed by his signature on a receipt.

7. On 7 July 2005 the Supreme Court held a hearing in the absence of the applicants and their representatives. V.R.'s lawyer and the representative of the National Privatisation Agency made oral submissions requesting that their appeal be granted. The Supreme Court quashed the lower courts' judgments and dismissed the applicants' claims, finding that the privatisation had been lawful. It did not address the issue of the applicants' absence in its judgment.

8. According to the Government, a prior announcement about the hearing had been published in the Supreme Court's premises and on its website in compliance with Article 482 of the Code of Civil Procedure (see paragraph 10 below). It was not disputed between the parties that no personal notice of the hearing had been sent to I.D., N.B. or the applicants themselves.

9. On 28 March 2006 the Constitutional Court declared the applicants' complaint that they had not been notified of the Supreme Court's hearing held in their absence inadmissible without giving any reasons.

RELEVANT LEGAL FRAMEWORK

10. Under Article 482 of the Code of Civil Procedure, as in force at the material time, the lists of cases, in which cassation appeals were to be examined by the Supreme Court, had to be published not later than 15 days prior to the date of examination. No personal notifications were sent to the parties to a hearing before the Supreme Court.

11. According to the Constitutional Court's case-law (in particular, decisions no. 109 of 28 May 2002, no. 11 of 18 May 2005, no. 28 of 9 November 2005, no. 1 of 25 January 2008 and no. 2 of 5 February 2008), a hearing *in absentia* before the Supreme Court – if announced in accordance

with Article 482 of the Code of Civil Procedure (as in force at the material time) – could only constitute a violation if a claimant had not been notified of a cassation appeal lodged with the Supreme Court by an opposing party.

12. Following amendments to Article 482 of the Code of Civil Procedure, in addition to publishing the lists of cases to be examined by the Supreme Court, personal notifications by electronic means have been sent to the parties so wishing (since 2017), and summonses have been served on the parties to a public hearing before the Supreme Court (since 2021).

13. Article 494 § (ë) of the Code of Civil Procedure provides that a party may request the revision of a judgment that has become final in the event that the European Court of Human Rights finds a violation of the Convention or those of its protocols that have been ratified by Albania.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The applicants complained that the Supreme Court had not notified them of the hearing in their civil case and held it in their absence, in breach of Article 6 § 1 of the Convention.

15. The Government explained the lack of personal notifications of hearings before the Supreme Court by the ongoing process of putting in place an accurate system of postal addresses in Albania, which was to be completed in 2009. In view of the nature of proceedings before the Supreme Court which only dealt with legal issues, the attendance of the parties was not indispensable. Though no reasons had been given by the Constitutional Court, its decision in the applicants' case had been in line with its prior case-law (see paragraph 11 above). According to the Government, it had not been possible to notify I.D. of the hearing because his address had not been available in the case file due to his failure to declare it. Given the applicants' residence abroad, the notification of the hearing by way of the public announcement had been in accordance with the domestic law and had enabled the opposing party to appear before the Supreme Court.

16. The applicants stated that in reply to inquiries by their lawyer the Supreme Court's registry had informed him repeatedly that, in view of its high workload, their case would not be examined before September 2005. Its examination in July 2005, within a period of time unusually short for the Supreme Court and without informing them of the date of the hearing, had deprived them of their right of access to court and fair hearing, including the possibility to defend their case and present their arguments at the last instance, like their opponents had done. Even assuming that there had been a prior public announcement of the hearing, such practice would not have provided for the necessary guarantees of a fair trial. The applicants' own, as well as their lawyer's, names and addresses had been known to the lower courts,

which had easily notified their lawyer of the dates of the hearings before them and of the appeal to the Supreme Court.

A. Admissibility

17. The Court takes note of the death of the original applicants and of the wish expressed by their children to continue the application before the Court in their stead (see paragraph 2 above). The Government did not oppose their wish. The Court accepts that the late applicants' children have a legitimate interest in pursuing the application (see, for example, *Şamat v. Turkey*, no. 29115/07, § 43, 21 January 2020). For practical purposes, reference will still be made to the applicants throughout the ensuing text.

18. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

19. The Court reiterates that where an oral hearing is to be held, the parties have the right to be present. The right to a fair hearing as guaranteed by Article 6 § 1 of the Convention includes the right of the parties to the hearing to submit any observations that they consider relevant to their case. Each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent or opponents, including the opportunity to comment on all observations filed with a view to influencing the court's decision (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 96, ECHR 2009). Where courts of appeal or of cassation exist, the proceedings before them must comply with the guarantees of Article 6 (ibid., § 97).

20. In the present case, at the hearing on 7 July 2005 in the applicants' civil proceedings the Supreme Court examined the cassation appeal lodged by the opposing party and heard that party's oral submissions. It quashed the judgments delivered by the courts of two instances and dismissed the applicants' claims. The Court notes that no personal notice was given to the parties of the hearing at the Supreme Court. The Code of Civil Procedure did not directly envisage personal notifications of hearings before the Supreme Court.

21. The Court reiterates that Article 6 of the Convention cannot be construed as providing for a specific form of service of court mail and it is not the Court's task to indicate the preferred ways of communicating with the litigants; the domestic courts are better placed to assess the situation in the light of practical circumstances. The Court's role is confined to ascertaining whether the effects of the implementation and interpretation of procedural

rules were compatible with the Convention (see *Gankin and Others v. Russia*, nos. 2430/06 and 3 others, §§ 28 and 35, 31 May 2016).

22. The Court observes that the Supreme Court's judgment of 7 July 2005 is silent on the issue of the applicants' absence at the hearing. It does not state whether the Supreme Court examined if a prior due notice of the hearing had been made, what the reasons were, if any, for considering that the applicants had been apprised of the hearing, or why the hearing should not have been adjourned pending their due notification. Nor did the Constitutional Court give reasons for its decision of 28 March 2006 to dismiss the applicants' complaint about the Supreme Court's failure to notify them of the hearing and holding it in their absence. This silence in itself does not sit well with the domestic courts' responsibilities under Article 6 (ibid., §§ 36 and 42; and *Aždajić v. Slovenia*, no. 71872/12, §§ 53-72, 8 October 2015). The lack of reasons in domestic decisions as regards the notification of hearings or the need for the parties' presence in view of the nature of proceedings cannot be corrected *ex post facto* in the Court proceedings (see *Gankin and Others*, cited above, §§ 41-42).

23. In the absence of personal notifications, the applicants, including through their lawyer, could only learn of the hearing by taking the initiative to visit the court or to consult its website. In the Court's view, the applicants could not be reasonably expected to do that for each and every notice of hearings published by the Supreme Court during about half a year elapsed after they had learnt of the appeal (see *Neshev v. Bulgaria*, no. 40897/98, §§ 38-39, 28 October 2004). The Court reiterates that, even if the parties demonstrate a certain lack of diligence, the consequences attributed to their behaviour by the domestic courts must be commensurate to the gravity of their failings and take heed of the overarching principle of fair hearing (see *Gankin and Others*, cited above, § 27).

24. As regards the Government's reference to the change in the system of postal addresses or the alleged unavailability of I.D.'s address as a reason for not notifying him of the hearing, the Court observes that there is no indication that any efforts aimed at notifying the applicants' lawyer of the hearing were made. The identity of the lawyer was known, and the courts were in possession of the notary certified power of attorney by which I.D. had been authorised to represent the applicants. There had been no difficulty to notify him of the previous hearings where he represented the applicants, or to serve on him the judgments of those courts or the appeal lodged by the opposing party to the Supreme Court. Furthermore, the identity of the applicants' representative N.B. was also known and the relevant power of attorney was available to the courts (see paragraphs 4-5 above). Obviously, the applicants' own identities and places of their residence in the US had to be known by the courts. In view of the above, it cannot be said that the Supreme Court had no possibility to effectively apprise the applicants or their representatives of the hearing (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05,

§ 85, 4 March 2014). Given what was at stake for the applicants, that is to say the determination of their own civil claim about ownership of the land plot, as well as pecuniary implications, particular diligence on the part of domestic authorities was required to ensure that Article 6 guarantees were fully respected (see *Aždajić*, §§ 70-71, cited above; and *Schmidt v. Latvia*, no. 22493/05, § 95, 27 April 2017).

25. As to the Government's argument that the public notice of the hearing had enabled the opposing party to appear before the Supreme Court and plead their case, it may well be that the public notice of hearings may achieve the result of appearance of the parties before a court. In the other eventuality, however, the same requirement of diligence calls on the court to take steps to ensure that the party's right to be present is respected, and it may adjourn the hearing pending due notification (see *Gankin and Others*, cited above, § 38, and *Gyuleva v. Bulgaria*, no. 38840/08, § 41, 9 June 2016).

26. The Court concludes that the Supreme Court deprived the applicants of the opportunity to present their case effectively and to enjoy equality of arms with the opposing side, falling short of its obligation to respect the principle of a fair hearing. This shortcoming was not corrected once the applicants had learned of the Supreme Court's decision.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicants claimed the restitution of their property. They also claimed 448,595 euros (EUR) which corresponded to the value of the property as an "ancillary" claim, as well as EUR 1,603,956 for loss of profit. They claimed EUR 100,000 in respect of non-pecuniary damage. Lastly, they claimed EUR 35,000 in respect of costs and expenses for their legal representation before the domestic courts and before the Court.

29. The Government contested the claims as unreasonable, lacking in detail and supporting evidence, in particular receipts for legal representation.

30. The Court cannot speculate on what the outcome of the applicants' civil proceedings would have been had the requirements of Article 6 § 1 of the Convention been complied with and it does not discern any causal link between the procedural violation found and the pecuniary damage alleged; it therefore rejects those claims. The Court accepts that the applicants must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award EUR 3,600 to each of the applicants under this head, plus any tax that may be chargeable. The Court observes that the applicants did not submit documents showing that they had paid or were under a legal obligation to pay the fees claimed for their legal representation. In the absence of the basis to find that the costs and expenses claimed have actually been incurred those claims must be rejected.

31. The Court finally notes that domestic law provides for the possibility of a reopening of the proceedings, should the applicants request such reopening in order to have their case re-examined in a manner that is keeping with the requirements of Article 6 § 1 of the Convention (see paragraph 13 above).

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;

3. *Holds*
   a) that the respondent State is to pay, within three months, EUR 3,600 (three thousand and six hundred euros) to each applicants' heirs, 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 applicants' claim for just satisfaction.

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

Olga Chernishova Deputy Registrar	Georgios A. Serghides President