

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

FIRST SECTION

CASE OF MOLLA v. ALBANIA

(Application no. 29680/07)

JUDGMENT

STRASBOURG

8 December 2016

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



In the case of Molla v. Albania,

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

Kristina Pardalos, *President,*
Robert Spano,
Pauliine Koskelo, *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. 29680/07) 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, Ms Frida Molla ("the applicant"), on 2 July 2007.

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

3. On 8 September 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Proceedings for termination of construction works, removal of high-voltage-line and restoration of the site to its previous state

4. The applicant was born in 1958 and lives in Korça.

5. On 14 July 1995 and 14 June 1996 the Korça Commission on Restitution and Compensation of Properties *(Komisioni i Kthimit dhe Kompensimit të Pronave)* ("the Commission") decided to recognise the applicant's inherited property title to two plots of land measuring 118 sq. m and restore them to the applicant.

6. On an unspecified date the Korça Regional Company for the Distribution of Electricity (*Ndërmarja zonale e shpërndarjes së energjisë elektrike)* ("the defendant"*)* started the construction of a high-voltage line on the applicant's plots of lands.

7. On an unspecified date the applicant sought an injunction to suspend the construction works.

8. On 13 January 2006 the Korça District Court ("the District Court") issued an injunction and ordered the construction to be suspended. On 8 March 2006 and 4 May 2007 the Korça Court of Appeal ("the Court of Appeal") and the Supreme Court respectively upheld that decision.

9. On 26 January 2006 the applicant brought an action against the defendant to bring the construction works to an end immediately, remove the high-voltage line and restore the site to its previous state.

10. On 30 January 2006 the bailiff in the case discontinued enforcement proceedings concerning the decision of 13 January 2006 on the grounds that the works had been suspended.

11. On 7 April 2006 the District Court ordered the immediate termination of the works on the applicant's plot of land, the removal of the high-voltage line and the restoration of the site to its former state *(ndalimin e punimeve si dhe duke detyruar ana e paditur të heqë kabllot, të dy linjat dhe ta kthejë pronën në gjendjen e mëparshme).* The District Court reasoned that the defendant had unlawfully constructed that line on the applicant's property.

On 27 June 2006 the Court of Appeal upheld that judgment. On an unspecified date the defendant lodged an appeal with the Supreme Court against the lower courts' judgments.

B. Enforcement proceedings

12. On 10 August 2006 the applicant requested that the bailiff enforce the judgment of 7 April 2006, as upheld by the Court of Appeal on 27 June 2006. However, as the proceedings on the merits of the case were pending before the Supreme Court (see paragraph 11 above), on 8 September 2006 the Supreme Court provisionally decided to stay the enforcement proceedings.

13. Subsequently, the applicant lodged a constitutional appeal against the Supreme Court's decision of 8 September 2006.

14. On 16 May 2007 the Constitutional Court dismissed the appeal on the grounds that an examination of the applicant's action on the merits was pending before the Supreme Court.

15. On 11 January 2008 the Supreme Court upheld in a final judgment the District Court's judgment of 7 April 2006 and the Court of Appeal's judgment of 27 June 2006.

16. On 22 February 2008, following the Supreme Court's judgment of 11 January 2008, the applicant again requested that the bailiff enforce the judgment of 7 April 2006.

17. From 2008 to 2011 the bailiff unsuccessfully sought to enforce the final judgment. In particular, on 29 February 2008 the bailiff sought to have the defendant comply voluntarily with the judgment. The bailiff further imposed a fine of 71,155 Albanian leks (ALL) on the defendant.

On 10 April 2008 the bailiff again ordered the defendant to pay a fine for failing to comply with the final judgment.

On 21 September 2011 and 25 November 2011 the defendant informed the bailiff that the applicant was prepared to solve the dispute with the authorities by way of a friendly settlement.

On 17 November 2014 the applicant informed the bailiff that the defendant had failed to reach a settlement with her. She requested the continuation of the enforcement proceedings.

18. On 8 April 2015 the bailiff imposed another fine on the defendant for failing to comply with the final judgment.

C. Other proceedings instituted by the applicant

1. Criminal complaint

19. On 20 May 2008 the applicant filed a criminal complaint against the bailiff and the Distributor Energy Operator *(Operatori i Shpërndarjes së Energjisë Elektrike)* ("DEC") for failure to comply with the judgment of 7 April 2006. It appears that on an unspecified date the Court of Appeal discontinued the proceedings by virtue of a final judgment.

20. On 11 July 2008 the applicant lodged a criminal complaint against the Albanian Electricity Corporation *(Korporata Elektroenergjetike Shqiptare)* ("AEC") and the Korça municipality for "destruction of private property". On 14 July 2011 the prosecutor's office discontinued the criminal proceedings in a final decision.

2. Civil action for damages

21. On an unspecified date the applicant brought a civil action against C.E.Z Shpërndarje sh.a, which had privatised DEC, claiming damages and loss of profit.

22. On 7 May 2012 the District Court decided to stay the proceedings and await the conclusion of the civil proceedings instituted by AEC against the administrative decisions of 14 July 1995 and 14 June 1996 (see paragraph 24 below), which had recognised the applicant's property rights.

23. On 6 December 2012 the Court of Appeal amended that decision and decided that the proceedings could continue. It appears that the case is still pending before the domestic courts.

D. Proceedings instituted by the State authorities

24. On 6 February 2007 AEC brought a civil action against the applicant to annul the administrative decisions of 14 July 1995 and 14 June 1996 on the grounds that the plots of land had belonged to and had been used by AEC since 1960.

25. On 24 January 2008 the District Court ordered the freezing of the title to the applicant's plots of land *(vendim për marrjen e masës së sigurimit të padisë duke bllokuar pronën në Zyrën e Regjistrimit të Pasurive të Paluajtshme)*. On 12 December 2008 and 26 January 2012 the Court of Appeal and the Supreme Court lifted the freezing order.

26. On 31 July 2008 the District Court decided, at the applicant's request, to stay the proceedings and await the conclusion of other civil and criminal proceedings instituted by the applicant. On 6 January 2009 and 17 October 2013 the Court of Appeal and the Supreme Court respectively upheld that decision.

27. On 5 March 2014 the District Court discontinued its examination of the case on the grounds that AEC had failed to attend a hearing without good reason. It would appear that AEC did not appeal against that judgment and it became final on an unspecified date.

28. On two other occasions AEC and DEC brought civil actions against the applicant to annul the administrative decisions of 14 July 1995 and 14 June 1996. On 17 April 2012 and 22 December 2014, respectively, the District Court discontinued its examination of the actions on the grounds that AEC and DEC had failed to attend hearings for no good reason. It appears that they did not appeal against either judgment and they became final on an unspecified date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. The relevant domestic law and practice has been described in the cases of *Qufaj Co. Sh.p.k. v. Albania* (no. 54268/00, §§ 21-25, 18 November 2004) and *Gjyli v. Albania* (no. 32907/07, §§ 19-27, 29 September 2009).

30. The relevant parts of the Code of Civil Procedure read as follows:

Article 451 – Final judgments

"A court judgment becomes final when:

(a) no further appeals lie against it;

(b) no appeal has been filed against it within the time-limits prescribed by law or when the appeal has been withdrawn;

(c) the appeal has not been accepted;

(d) it was upheld, amended or the case was dismissed (*pushuar*) in appeal proceedings."

Article 479 – Suspension of the enforcement of a [court] judgment

"The Supreme Court can decide to suspend a judgment where:

(a) its immediate enforcement would result in serious, irreparable damage;

(b) the party filing an appeal submits a financial guarantee that ensures enforcement of the judgment."

Article 510 – Execution titles

"Compulsory execution can be carried out only on the basis of an execution title. Execution titles include:

(a) civil court judgments which have become final. ..."

Article 511 – Execution writs

"An execution title is enforced at the request of the creditor. An execution writ is issued for that purpose:

(a) by the court which gave the judgment in the cases provided for in [Article 510 (a)];

..."

31. Article 526 of the Civil Code ("the CC") provides that where the execution of an obligation by a debtor is objectively impossible that obligation ceases to exist without fault. In such cases the debtor should return any benefit to which he was not entitled to the creditor.

THE LAW

I. SCOPE OF THE CASE

32. In her original application to the Court, the applicant alleged a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention after the Supreme Court's decision of 8 September 2006 to stay the enforcement proceedings. On 30 May 2008 the applicant complained implicitly about the non-enforcement of the Supreme Court's judgment of 11 January 2008, which was a final decision to terminate the construction work and restore the site to its previous state.

33. The Court notes that the new complaint of 30 May 2008 was related to the previous complaints already included on the application form. It was lodged immediately after she had become aware of the Supreme Court's judgment of 11 January 2008. Consequently, the Court considers that it is the new complaint that should be examined in the present case. The scope of the case before the Court is thus related to the non-enforcement of the final domestic judgment of 11 January 2008, as communicated to the Government on 8 September 2014, pursuant to Rule 54 § 2 (b) of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

34. The applicant complained that the domestic judgments ordering the immediate termination of the construction works had never been enforced,

which had led to a breach of her right to the peaceful enjoyment of her property as guaranteed by Article 1 of Protocol No. 1 to the Convention and to a breach of Article 6 § 1 of the Convention. Those provisions read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

35. The Government argued that the different submissions by the applicant raised a problem related to the six-month time-limit in respect of her complaints.

36. The Court notes that the applicant's complaints relate to the non-enforcement of a final judgment, which constitutes a continuing situation that still obtains at the present time. In any event, the applicant's additional complaint of 30 May 2008 was submitted within the six-month time-limit, which had started to run from the Supreme Court's judgment of 11 January 2008. The Court therefore rejects the Government's objection.

37. The Court further considers that as this application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. The parties' submissions

38. The applicant maintained that there had been a breach of her right to the peaceful enjoyment of her property as a result of the unlawful occupation of her property by the authorities. The authorities had failed to enforce the final judgment of 11 January 2008.

39. The Government contended that the enforcement of the final judgment had been objectively impossible because the high-voltage cable was used in the public interest. The applicant had also failed to be diligent and request an alternative way to execute the final judgment. Moreover, the

proceedings instituted by the applicant for compensation were pending before the domestic authorities. Finally, the construction work had been completed before the Court of Appeal's judgment of 27 June 2006 had become final on 11 January 2008. There had therefore been no fault on the part of the authorities under Article 526 of the CC.

2. The Court's assessment

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

41. The Court cannot accept the arguments put forward by the Government to justify the non-enforcement of the final judgment. The Court notes that once the applicant became aware that there had been an interference with her property rights by the authorities, she had sought an injunction. The domestic courts found in her favour. They also found in her favour as to the merits of the case; on 27 June 2006 the Court of Appeal confirmed the first-instance judgment ordering that the construction work on her property be terminated, the high-voltage line be removed and the site be restored to its previous state (see paragraph 11 above). However, those proceedings were halted as, on 8 September 2006, the Supreme Court decided to stay the enforcement proceedings (see paragraph 12 above).

On 11 January 2008 the Supreme Court gave the final judgment in the applicant's favour and upheld the lower court's judgments (see paragraph 15 above). By the time the judgment of 27 June 2006 became final, it appears that the authorities had finished the construction works. As a result, the part of the final judgment of 27 June 2006, as upheld by the Supreme Court on 11 January 2008, ordering the immediate termination of the construction work on the applicant's plot of land, became ineffective.

42. However, that judgment also ordered that the high-voltage line be removed and the site be restored to its previous state. This part of the judgment still remains unenforced. In that regard, the Court reiterates that any omissions or mistakes found in an enforcement writ must be borne by the State and not be remedied at the expense of the individual concerned (see *Gjyli*, cited above, § 45). Consequently, the Court cannot accept the argument that the applicant should have found alternative ways to execute the final judgment; indeed, a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

In the present case the State authorities concerned failed to enforce the judgment despite the bailiff's repeated requests to do so over a period of eight yearst (see *Gjyli*, cited above, § 33).

43. Having regard to its well-established case-law on the subject (*Qufaj Co. Sh.p.k.* and *Gjyli*, both cited above), the Court finds that there

has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the Court of Appeal's judgment of 27 June 2006, as upheld by the Supreme Court's judgment of 11 January 2008.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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."

45. The Court notes that the applicant claimed pecuniary and non-pecuniary damages with a view to a friendly settlement of the case, but failed to make any specific claim in the contentious procedure.

46. The Court also notes the fact that the proceedings for compensation and loss of profit are still pending before the domestic courts (see paragraphs 21-23 above). Accordingly, the Court will not make any award in respect of pecuniary or non-pecuniary damage (see Rule 60 of the Rules of Court).

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 and Article 1 of Protocol No.1 to the Convention on account of the non-enforcement of the Supreme Court's final judgment of 11 January 2008;

3. *Holds* that the respondent State must secure, by appropriate means, the enforcement of the Supreme Court's final judgment of 11 January 2008;

4. *Dismisses* the applicant's claim for pecuniary and non-pecuniary damage.

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