

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

THIRD SECTION

CASE OF OSMANI v. ALBANIA

(Application no. 8706/18)

JUDGMENT

This version was rectified on 30 January 2024
under Rule 81 of the Rules of Court.

STRASBOURG

5 December 2023

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



In the case of Osmani 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. 8706/18) 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 12 February 2018 by an Albanian national, Mr Fiqiri Osmani ("the applicant"), who was born in 1960, lives in Vorë and was represented by Ms S. Mëneri, a lawyer practising in Tirana;

the fact that the applicant died in January 2022 and his heirs, Ms Xheje Osmani (wife), Ms Mirela Hysa (daughter) and Mr Orgest Osmani (son), expressed their wish to pursue the application before the Court[1];

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their Agents, Ms A. Hiçka, Mr A. Metani, and subsequently by Mr O. Moçka, General State Advocate;

the parties' observations;

Having deliberated in private on 14 November 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns a complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the domestic courts failed to give reasons in respect of the amount that the applicant was entitled to receive as compensation for the expropriation of his property.

I. PROCEEDINGS BEFORE THE DISTRICT AND APPELLATE COURTS

A. Background information

2. On 27 July 2010 the Vora Building Inspection Office ("Inspection Office" - *Inspektorati Ndertimor dhe Urbanisitik*) informed the applicant that a road was planned to be built nearby his property and asked him to free the "property that had been expropriated" from him for that purpose within five days.

[1] Rectified on 30 January 2024: this sentence did not appear in the original text and was added after the rectification.

3. Following the applicant's inquiry, on 4 August 2010 the General Road Directorate ("GRD"), which at the relevant time was the body responsible for the road infrastructure in the country, informed him that no property had been expropriated from him because the "road construction project had not been fully implemented".

4. On 11 August 2010 the Inspection Office informed the applicant that any perimeter fences and objects, built with or without authorisation, that hindered the road construction project, should be demolished voluntarily within five days.

5. On 6 September 2010 the inspection officers noted that the applicant had built without authorisation an additional extension to the building and a wall surrounding his property. On 7 September the authorities decided to demolish these constructions and on 8 September 2010 they implemented that decision.

B. Judicial proceedings

6. On 13 September 2010 the applicant lodged a court claim for damages against the municipality in respect of the demolished constructions which in his view had been erected in compliance with the relevant permits. He added that during the demolition process the authorities had also destroyed a number of decorative trees in his yard, a water well, a tent, household items etc. Lastly, he claimed compensation for an undetermined part of his land plot which had been *de facto* expropriated by the authorities to build the new road.

7. On 13 June 2011, upon request of the applicant, the GRD joined the proceedings as a third party.

8. On 16 November 2011 a court-appointed expert concluded that, in so far as relevant, 88 sq. m of the applicant's plot had been occupied by the new road. She stated that in view of the sale advertisement notices for comparable land, the market value of the property was 160 Euro ("EUR") per square meter.

9. The applicant disagreed and submitted that his land was worth at least EUR 200 per square meter.

10. It appears that on an unspecified date the GRD submitted to the court that formal expropriation proceedings had started in respect of the applicant.

11. On 29 January 2012 the GRD forwarded to the Ministry of Transport and Public Works a list of owners and their properties affected by the new road in question. In respect of the applicant the list indicated that 90 sq. m were subject to expropriation, for a compensation of 2,750 Albanian Lek ("ALL") per sq. m (approximately EUR 20 at the time). It appears that this list was included as evidence in the case file.

12. On 9 February 2012 the expert supplemented her report of 16 November 2011 by an addendum which stated that under the Council of Minister's Decision No. 1620 of 26 November 2008 ("CMD 1620") which

fixed the reference price of land per sq. m in the relevant zone in the context of the compensation proceedings for land expropriated during the communist regime (see *Çaush Driza v. Albania*, no. 10810/05, §§ 44-45, 15 March 2011), the applicant's plot was evaluated at ALL 12,000 per sq. m (approximately EUR 86 at the time). The expert left it to the court to rule on the appropriate amount.

13. On 23 November 2012 the District Court of Tirana rejected the claim. It relied on the GRD's submissions and the correspondence of 29 January 2012 (see paragraphs 10-11 above) to conclude that the land plot had been duly expropriated and for the calculation of the compensation due. It also ordered the applicant to bear the costs and expenses of the proceedings amounting to ALL 452,000 (approximately EUR 3,200 at the time).

14. On an unspecified date the applicant appealed arguing that the trial court's decision was ill-founded and reiterating his claim for a larger amount of compensation.

15. On 5 June 2014 the Tirana Administrative Court of Appeal upheld the trial court's decision and reasoning. It noted in particular that the relevant facts of the case had changed after the lodging of the claim because the land had been formerly expropriated on 29 January 2012.

II. PROCEEDINGS BEFORE THE SUPREME AND CONSTITUTIONAL COURTS

16. On 21 October 2014 the applicant lodged a cassation appeal arguing, in so far as relevant, that the lower courts had violated his right to property and to a reasoned decision as they had not given reasons for approving the GRD's assessment of the value of the expropriated land per sq. m against the calculations of the court-appointed expert, CMD 1620 and the applicant's submissions.

17. Meanwhile, on 8 April 2015 the Council of Ministers adopted decision no. 303 ("CMD 303") by which it expropriated 105 sq. m from the applicant at ALL 3,081 per sq. m (approximately EUR 22 at the time).

18. On 1 March 2017 the Supreme Court ruled that the proceedings had been fair and rejected the applicant's cassation appeal as inadmissible. It did not address the question of the amount of the compensation.

19. On 28 June 2017 the applicant lodged a constitutional appeal complaining, in so far as relevant, of numerous breaches of Article 6 § 1 of the Convention, including the "reasonable time" requirement and the right to a reasoned decision with respect to the amount of compensation for the expropriated part of his land. He also complained about a violation of his right to property under Article 1 of Protocol No. 1 to the Convention.

20. On 18 December 2017 the Constitutional Court found a violation of the applicant's right to a trial within a reasonable time and rejected the other complaints. The court addressed the applicant's claims in relation to the

demolition of a part of his property without compensation which had been treated by the authorities as an illegal construction, but was silent on the calculation method for the compensation in expropriation proceedings and the amount of compensation due to the applicant.

RELEVANT LEGAL FRAMEWORK

21. A general description of the expropriation procedure under the Expropriation Act (Law no. 8561 of 22 December 1999 "On Expropriations and Temporary Use of Private Property in the Public Interest") is set out in *Sharxhi and Others v. Albania* (no. 10613/16, § 63, 11 January 2018). In so far as relevant, under section 17 of the Act, the value of the expropriated property is determined by a special commission set up by the Ministry in charge of the expropriation. Subsequently, the same Ministry forwards a proposal to the Council of Ministers which ultimately decides whether to carry out the expropriation. Should the proposal be accepted, the Council of Ministers issues a decision setting out, *inter alia*, the expropriated property, its owner and the amount of compensation due to him or her (section 21). Within 30 days of the Council of Minister's decision to expropriate, the affected parties may start court proceedings to challenge the compensation amount for their expropriated properties (section 24(1)).

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No.1 TO THE CONVENTION ON ACCOUNT OF THE DOMESTIC JUDGMENTS' LACK OF REASONS REGARDING THE AMOUNT OF COMPENSATION

22. The applicant died after lodging the present application and on 10 March 2022 his heirs informed the Court of his death and expressed their wish to continue the proceedings. The Court discerns no impediment to the heirs' continuing with the present application on their family member's behalf. The text of the judgment shall continue referring to Mr Fiqiri Osmani as "the applicant" albeit with the understanding that his heirs are now to be regarded as having the status of applicants before the Court (see *Isayeva v. Azerbaijan*, no. 36229/11, § 62, 25 June 2015)[2].

23. The applicant complained under Article 6 § 1of the Convention and Article 1 of Protocol No. 1 to the Convention that domestic courts had failed to give reasons in respect of the amount of compensation for his land and the rejection of his claims as to the quantum. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35

[2] Rectified on 30 January 2024: new paragraph 22 added.

§ 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

24. The general principles concerning the duty under Article 6 § 1 of the Convention for a court to give reasons have been summarised in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, § 84, 11 July 2017). The applicable principles under Article 1 of Protocol No. 1 of the Convention have been summarized in *Vistiņš and Perepjolkins v. Latvia* ([GC], no. 71243/01, §§ 95-99 and 108-14, 25 October 2012).

25. It was not disputed before domestic courts that a part of the applicant's land had been taken by the authorities for the purposes of building a new road. Having established that point, the main question for determination by domestic courts was the amount per square meter which was due to the applicant as compensation. The Court will consider the question at the core of the applicant's complaint before it, namely whether the compensation afforded to him was adequate. While the domestic courts are normally in a better position to determine the existence and quantum of pecuniary damage (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 203, ECHR 2006-V), the Court has jurisdiction to assess whether the compensation was appropriate and sufficient within the meaning of Article 1 of Protocol No. 1 to the Convention.

26. It first notes that, as it appears from the GRD's letter to the applicant (see paragraph 3 above) and their submissions before the trial court (see paragraph 10 above), that at the time when the construction works for the new road started, the expropriation procedure had not been completed. In fact, the formal expropriation procedure came to an end only in 2015 (see paragraph 17 above). In this context, it appears that when the construction works started in 2010 the applicant's property was taken by authorities through a *de facto* expropriation procedure, and therefore no considerations of "public interest" could apply in the instant case. Accordingly, it was not unreasonable for the applicant to have expected full compensation for the resulting damage (compare *Khizanishvili and Kandelaki v. Georgia*, no. 25601/12, § 54, 17 December 2019).

27. At least five different submissions were made before domestic courts in respect of the amount of compensation for the land that had been taken from him. The court-appointed expert concluded that the market price per sq. m of the applicant's land was EUR 160, whereas under CMD 1620 it was EUR 86 (see paragraphs 8 and 12 above). The applicant contended that the market price was actually EUR 200 (see paragraph 9 above). A working document of the GRD had retained the figure of compensation at EUR 20 (see paragraph 11 above). Finally, CMD 303 set the figure at about EUR 22 (see paragraph 17 above).

28. The trial and appellate courts relied on the figure advanced by the GRD in its working document without giving any reason as to what elements led them to adopt that stance and discard the other submissions before them,

in particular the expert's proposals. It follows that those courts failed to properly engage with or provide a specific and explicit reply to the applicant's main plea, which was decisive for the outcome of the proceedings (compare *Ruiz Torija v. Spain*, 9 December 1994, § 30, Series A no. 303-A; *Buzescu v. Romania*, no. 61302/00, § 67, 24 May 2005; and, for the evaluation of proportionality of interference with the right to property, *Vistiņš and Perepjolkins*, §§ 111-14, and *Khizanishvili and Kandelaki*, §§ 58-59, both cited above).

29. The applicant complained of that alleged failure in the superior courts (see paragraphs 16 and 19 above). Although his complaint about the lack of reasons by lower courts concerned a potential breach of his rights guaranteed by the Convention, which the national courts were required to examine with particular rigour and care (see *Fabris v. France* [GC], no. 16574/08, § 72, ECHR 2013 (extracts)), the Supreme Court and the Constitutional Court rejected his appeals, without addressing his claims regarding the calculation of the amount of compensation.

30. There has accordingly been a violation of Article 6 § 1 and of Article 1 of Protocol No. 1 to the Convention on account of the domestic courts' failure to give reasons regarding the amount of compensation and the resulting fact that the applicant has not been awarded an adequate compensation for the property that had been taken from him by domestic authorities.

II. OTHER COMPLAINTS

31. Having regard to the facts of the case, the parties' submissions, and its findings under Article 6 § 1 of the Convention, the Court considers that in the present case there is no need to give a separate ruling on the admissibility and merits of the complaints under Articles 6 § 1 and Article 8 of the Convention (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. The applicant claimed 154,000 EUR in respect of pecuniary and non-pecuniary damage. He also claimed 3,233 EUR which were imposed on him by the first instance court as costs and expenses of the domestic proceedings. Lastly, in respect of costs and expenses incurred before the Court, he claimed 66,000 ALL (approximately 523 EUR) which were incurred to retain the services of two property evaluation experts.

33. The Government contested the amounts as unreasonable.

34. The Court has found that the violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 stemmed from the domestic courts' failure to justify properly the amount of the compensation due. In the light of the procedural character of the violation found, the Court is unable to speculate

about the correct amount of pecuniary damages and finds that a reopening of the domestic proceedings and a re-examination of the matter at the national level would constitute, in principle, the most appropriate means to remedy the violation (see, for similar approach, *Gereksar and Others v. Turkey*, nos. 34764/05 and 3 others, § 75, 1 February 2011; *Kravchuk v. Russia*, no. 10899/12, §§ 55-56, 26 November 2019; *Kostov and Others v. Bulgaria*, nos. 66581/12 and 25054/15, § 105, 14 May 2020; and *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 322, 13 July 2021). Given that Article 494 §(ë) of the Code of Civil Procedure provides for such possibility, an appropriate form of redress for the violation of the applicant's right would be to reopen the proceedings, should the applicant request such reopening, and to re-examine the case in a manner that is in keeping with the requirements of the Convention (see *Pálka and Others v. the Czech Republic*, no. 30262/13, § 69, 24 March 2022, and *Khizanishvili and Kandelaki*, § 63, cited above). It further awards the applicant 4,700 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

35. As regards costs and expenses before the first instance court, the Court found a procedural violation of Article 6 § 1 of the Convention, without making any determination as to whether the applicant should have been successful in those proceedings or made to bear their costs. Accordingly, it rejects this claim. The applicant having lodged no claim for costs and expenses before the appellate and upper courts, no award is made under this head.

36. As regards the experts' fees related to the proceedings before it, such expenses were not necessary to support the violation found by the Court, as long as those concerned the domestic courts' reasoning (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, 28 November 2017), therefore no award is made under this head either.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the domestic courts failure to give reasons for their decisions admissible;

2. *Holds* that there has been a violation of Article 6 § 1 and of Article 1 of Protocol No. 1 to the Convention on account of the domestic courts' failure to give reasons for their decisions;

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints under Articles 6 § 1 and Article 8 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant's heirs[3], within three months, EUR 4,700 (four thousand seven 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 amounts 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 5 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President

[3] Rectified on 30 January 2024: the text was "the applicant".