

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

FIRST SECTION

CASE OF SHEHU v. ALBANIA

(Application no. 33704/09)

JUDGMENT

STRASBOURG

6 October 2016

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



In the case of Shehu v. Albania,

The European Court of Human Rights ((First Section)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 13 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 33704/09) 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 Përparime Shehu ("the applicant"), on 19 May 2009.

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

3. On 10 July 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Tirana.

5. By a final judgment of 21 June 1996 the Tepelenë District Court ordered the Tepelenë District Council *(Këshilli i Rrethit)* to pay the applicant 530,941 Albanian leks (ALL) as compensation for the nationalisation of her house by the State in 1967. The judgment became final on an unspecified date in 1996.

6. On 15 July 1998 an enforcement writ was issued.

7. By a final judgment of 25 April 2008 the Gjirokastër District Court ordered the Gjirokastër Regional Council *(Këshilli i Qarkut)* to pay the applicant ALL 1,237,336 as compensation for the delayed enforcement of the Tepelenë District Court decision of 21 June 1996. The judgment became final on 25 May 2008.

8. On 27 June 2008 an enforcement writ was issued.

9. From 1996 to 2009 the applicant had continuously addressed letters to the authorities for the enforcement of the final judgments. She also instituted enforcement proceedings before a bailiff.

10. On 23 January 2009 the Constitutional Court acknowledged that there had been a breach of the fair trial as a result of the non-enforcement of the final judgments.

11. On 8 December 2009 both judgments were enforced and the sums were paid to the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice 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. SCOPE OF THE CASE

13. In her original application to the Court, the applicant alleged breaches of Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in relation to the length of enforcement proceedings of the final judgments of 21 June 1996 and 25 April 2008. On 21 June 2013 the applicant submitted her claims on just satisfaction together with additional complaints about the non-enforcement of a final domestic decision of 24 January 2009 awarding her compensation in lieu of the restitution of her inherited property.

14. The Court notes that the applicant's new complaint of 21 June 2013 has not been communicated to the parties as it was not included in the application form. The scope of the case before the Court is thus limited to the length of enforcement proceedings as communicated to the Government on 10 July 2012, under Rule 54 § 2 (b) of the Rules of Court.

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

15. The applicant complained that the length of the enforcement proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

16. The Government relied on the fact that there had been a disagreement between the State authorities about their responsibility to enforce the judgment and that the applicant had failed to pay in due time the bailiff tax. They argued that there had been no breach of Article 6 § 1 of the Convention.

A. Admissibility

17. 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

18. The Court notes that the period to be taken into consideration began on an unspecified date in 1996 when the Tepelenë District Court's judgment of 21 June 1996 became final (see *Gjyli v. Albania*, cited above, § 33). It ended on 8 December 2009 when it was fully enforced. The enforcement proceedings thus lasted thirteen years and mostly six months. The final judgment of 25 April 2008 recognised the accrued interest as a result of the non-enforcement of the final judgment of 21 June 1996 and it was enforced after one year and six months.

19. The Court further notes that the Government did not provide any convincing explanations for such an excessive period of inactivity and delay in the enforcement of the final judgment of 21 June 1996. Indeed, in contrast to their submissions (see paragraph 16 above), the delay in the enforcement proceedings seems to have been caused by the conduct of the authorities, and not by the fact that the applicant had failed to pay in due time the bailiff tax. There is no indication that the inactivity and delay was due to the complexity of the case or the applicant's conduct. On the contrary, on many occasions the applicant requested the enforcement of the final judgment in her favour (see paragraph 9 above).

20. The Court has already found violations of Article 6 § 1 of the Convention in cases of civil proceedings raising issues similar to the one in the present case (see *Luli and Others v. Albania*, nos. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12 and 31355/09, 1 April 2014; and *Gjyli*, cited above, §§ 43-47).

21. In the light of all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, it accordingly holds that the length of the enforcement proceedings in respect of the final judgment of 21 June

1996 was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

22. The applicant also complained about the length of the enforcement proceedings under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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."

23. The Government submitted that since the sums awarded by the final judgments had been paid in full, the complaint under Article 1 of Protocol No. 1 was ill-founded.

24. Having regard to the fact that the sums awarded under the final judgments had been paid, and to its finding under Article 6 § 1 of the Convention (see paragraph 21 above), the Court considers that it is not necessary to examine the case under Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 200,000 euros (EUR) in respect of pecuniary damage as regards the value of the house which had been nationalised in 1967 and EUR 300,000 in respect of non-pecuniary damage.

27. The Government contested these claims.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, it therefore rejects this claim. On

the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,300 under that head.

B. Costs and expenses

29. The applicant also claimed EUR 100,000 for the costs and expenses incurred before the domestic courts and the Strasbourg Court.

30. The Government contested the claim.

31. Given that the applicant failed to submit supporting documents in respect of costs and expenses, the Court makes no award under this head.

C. Default interest

32. 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 length of enforcement proceedings;

3. *Holds* that it is not necessary to examine the case under Article 1 of Protocol No. 1 to the Convention;

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 6 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Kristina Pardalos President