

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

THIRD SECTION

CASE OF SHEHU v. ALBANIA

(Application no. 62977/09)

JUDGMENT

STRASBOURG

12 November 2024

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 (Third Section), sitting as a Committee composed of:

Ioannis Ktistakis*, President*,

Darian Pavli,

Andreas Zünd*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 62977/09) 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") on 26 November 2009 by an Albanian national, Mr Njazi Shehu ("the applicant"), who was born in 1948, lives in Peshkopi and was represented by Ms E. Kokona, a lawyer admitted to practice in Tirana;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their then Agent Ms B. Lilo and subsequently by Mr O. Moçka, State Advocate General;

the parties' observations;

Having deliberated in private on 15 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the non-enforcement of a domestic judgment in respect of which domestic revision proceedings are pending.

I. 1999 JUDGMENT

2. In 1992 the applicant purchased a plot of land from a State body.

3. Two years later a third party purchased an adjacent plot of land on which they built a gas station and a hotel.

4. Having believed that his land had been unlawfully occupied, in 1996 the applicant sued the owner of the adjacent plot to have it evicted and to obtain compensation for the use of his land.

5. In the end of 1996, the defendant transferred his land to another person.

6. On 22 December 1999 the Tirana District Court ruled in the applicant's favour ordering the defendant to vacate the applicant's land and to pay compensation ("the 1999 judgment"). The court relied on a court-appointed expert's report confirming that the defendant's construction was, in part, on the applicant's plot. On 26 October 2006 the Supreme Court upheld that judgment.

II. ENFORCEMENT PROCEEDINGS

7. On 29 December 2006 the Tirana District Court issued an enforcement writ. In April 2007 the Tirana Bailiff Office appointed an expert to clarify the actual situation with the plots.

8. On 24 May 2007 the Tirana Bailiff Office refused to enforce the 1999 judgment, having concluded that: (i) the judgment had incorrectly identified the defendant; (ii) the delineation of the applicant's property on the ground was impossible, and (iii) the defendant had meanwhile divided his land into two sub-plots and had transferred them to another person.

9. On 20 September 2007, upon the applicant's request, the Tirana District Court rectified the 1999 judgment in connection to the defendant's identification details.

10. On 15 November 2007, following the applicant's challenge to the bailiffs' refusal to enforce the 1999 judgment, the Tirana District Court ordered the bailiff to continue the enforcement proceedings. It found that it was not open to the bailiff to question the findings of the 1999 judgment or to defend the interests of the new owners of the land plot who could bring their own court action. On 21 May 2008 the Tirana Court of Appeal upheld that judgment.

11. On 14 April 2010 the Constitutional Court ruled that the bailiff had failed to take all necessary actions to enforce the 1999 judgment. It found that the bailiff had the lawful power to evict the third party from the part of the land belonging to the applicant and there were no legal or factual obstacles to enforce the 1999 judgment (see paragraph 8 above). The bailiff's failure to act in line with the law disclosed a violation of the applicant's right to a fair trial on account of the non-enforcement of the 1999 judgment. There is no information about any subsequent proceedings in relation to the execution of the 1999 judgment.

III. OTHER RELEVANT PROCEEDINGS

12. On 27 June 2012 the Tirana District Court found the applicant guilty of having falsified, among others, the 1992 purchase agreement through which he had acquired his land (see paragraph 2 above). The applicant's ordinary appeals against that judgment were dismissed by domestic courts.

13. In 2015 the applicant lodged a request for the revision of his criminal conviction. Following numerous remittals, the case is pending before the Court of Appeal.

14. On 7 December 2012 a third party lodged a request for revision of the 1999 judgment with the Supreme Court. In their submissions of 25 November 2021 the Government stated that these proceedings were pending before the Supreme Court. Their latest submissions of 19 September 2024 contained no update in this connection.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF 1999 JUDGMENT

15. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention the applicant complained of the non-enforcement of the 1999 judgment.

A. Admissibility

16. The Government submitted that the applicant had submitted a forged document before domestic courts, namely the 1992 purchase agreement, and had thus obtained the 1999 judgment unlawfully. Accordingly, in the Government's view the applicant acted in bad faith before the Court and the complaint should be declared manifestly ill-founded. The applicant replied that he had not forged any document and that the revision proceedings in respect of his conviction remained pending.

17. The Court considers that this matter is closely linked to the merits of the applicant's complaint and must therefore be joined to its examination. The complaint is also not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a "hearing" for the purposes of Article 6 § 1. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, *Reports of Judgments and Decisions* 1997-II; and in respect of Albania, *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, §§ 38-45, 18 November 2004; and *Gjyli v. Albania*, no. 32907/07, §§ 55-61, 29 September 2009).

19. The State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delays (see *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C, and *Bushati and Others v. Albania*, no. 6397/04, § 79, 8 December 2009).

20. In cases such as the present one, which necessitate actions by a defendant who is a private person, the State, as the possessor of the public force, has to act diligently in order to assist a successful claimant in the execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

21. Turning to the present case, the Court attaches a significant importance to the Constitutional Court's finding that the bailiff, a public authority, had failed to exercise its powers to enforce the 1999 judgment thereby violating the applicant's right to a fair hearing (see paragraph 11 above).

22. Although the applicant's criminal conviction for forgery and the third party's request for revision of the 1999 judgment may eventually have consequences for the validity of that judgment, the Court cannot speculate on the outcome of these proceedings, which moreover have been pending before domestic courts for a significant time, as confirmed by the parties' submissions of September 2024 (see paragraphs 13-14 above). The result is that to this date the 1999 judgment has not been revised. It appears therefore that it remains in force and enforceable (compare, *mutatis mutandis*, *Seceleanu and Others v. Romania*, no. 2915/02, § 40, 12 January 2010).

23. The complaint therefore discloses a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the bailiff's failure to act diligently and in due time in order to assist the applicant in the execution of the 1999 judgment.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicant also complained under Article 13 of the Convention of the absence of an effective remedy in respect of the non-enforcement of the 1999 judgment. Having regard to the facts of the case, the parties' submissions and its findings above, the Court considers that it has examined the main legal question raised in the present case. It thus finds that there is no need to give a separate ruling on these complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

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25. The applicant did not submit a claim for just satisfaction or cost and expenses. Accordingly, there is no call to award him any sum on that account.

26. The Court further notes that the respondent State has an outstanding obligation to enforce the 1999 judgment, for as long as it remains enforceable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the applicant's complaint concerning the non-enforcement of the 1999 judgment and *decides* that that there is no need to examine separately the applicant's complaint under Article 13 of the Convention;

2. *Holds* that the non-enforcement of the 1999 judgment discloses a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 12 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President