

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

THIRD SECTION

CASE OF TONA v. ALBANIA

(Application no. 78957/11)

JUDGMENT

STRASBOURG

4 July 2024

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



In the case of Tona v. Albania,

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

Peeter Roosma*, President*,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 13 June 2024,

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

PROCEDURE

1. The case originated in an application against Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 December 2011.

2. The applicant, Mr Llazi Tona (for further details and information relevant to the application see the appended table) was represented by Ms A. Theodhosi, a lawyer practising in Tirana. On 3 January 2018 Mr Ferdinand Tona, the applicant's heir, informed the Court of the applicant's death and expressed his wish to continue the proceedings on the applicant's behalf. The Court discerns no impediment to Mr Ferdinand Tona, the applicant's heir, continuing with the present application on behalf of the applicant and accepts that Mr Ferdinand Tona has standing in the present proceedings. The Court will, however, continue referring to Mr Llazi Tona as "the applicant" in the present judgment.

3. The Albanian Government ("the Government") were given notice of the application.

THE FACTS

I. DOMESTIC DECISIONS

A. 2006 Decision

4. On 4 July 2006 the Korça Property Commission ruled on the applicant's request for recognition and restitution of property nationalised during the communist era ("2006 Decision").

5. Under operative clause 1 the Commission found that the applicant's father had owned a plot of forestry land measuring 111.28 hectares which had been expropriated during the communist era.

6. Under clause 2, the Commission ordered that the above plot be returned to the applicant and his family members.

7. Under clauses 3 and 4 the Commission rejected the applicant's claims in respect of two additional plots.

B. 2008 Judgment

8. On an unspecified date the applicant sued a certain N. Gj. and the Immovable Property Registration Office ("IPRO"). The Forestry Directorate which was responsible for the disputed forestry plots was invited as a third party to the proceedings. The applicant challenged the 2006 Decision, alleging that the Commission had wrongly rejected his ownership claim in respect of the remaining forestry plots. He added that in parallel proceedings the Commission had erred while recognising N.Gj.'s title to those plots.

9. On 14 November 2008 the Pogradec District Court gave its decision on the matter ("2008 Judgment"). It annulled the Commission's decision confirming N.Gj.'s title and ordered that the defendants should "recognise the father of the claimant Llazi Tona, the former owner Mitri Tona, as the owner of the plots" listed in the judgment ("*detyrimin e te paditurve ta njohin atin e paditesit Llazi Tona, ish pronarin Mitri Tona*[,] *pronar mbi parcelat...*").

10. In addition, the judgment quashed clauses 2, 3 and 4 of the 2006 Decision. In absence of any appeal, that judgement became final on 27 January 2009.

11. On 5 March 2009 the Pogradec District Court supplemented the above judgement by adding reference to an expert report describing the boundaries of the plots and drawing the map. The report and the map were attached to the judgment.

12. On 10 June 2010 the IPRO refused to register the concerned plots under the applicant's name per 2006 Decision, as amended by the 2008 Judgment. It stated that under an internal regulation of the IPRO of 8 April 1999 the applicant was obliged to submit a transfer-of-possession record of the property (*process-verbal te dorezimit fizik te prones*) which showed that the Forestry Directorate had in fact handed the plots over to the applicant. In the IPRO's view, that record was to be drawn up by a bailiff.

II. ENFORCEMENT PROCEEDINGS

A. Enforcement writs

13. On 30 December 2010 the Pogradec District Court issued an enforcement writ in respect of the 2006 Decision, as amended by the 2008 Judgment.

14. It found that it was necessary to grant the enforcement writ "for the applicant to enjoy and dispose freely of the immovable properties to which he obtained the real ownership right" (*lëshimi i urdhrit të ekzekutimit* [...] *është i domosdoshëm për kërkuesin për efekt të gëzimit dhe disponimit te pasurive të paluajtshme mbi të cilat ka fituar të drejtën reale të pronesisë*). It further noted that "without the registration [in the IPRO] the applicant [,] although being the owner [,] could not transfer or dispose otherwise of the

immovable properties" (*pa u kryer regjistrimi kërkuesi edhe pse pronar nuk mund të tjetërsojë ose nuk mund të bëjë asnjë disponim tjetër mbi sendet e paluajtshme*).

15. On 15 September 2010 the State Attorney's Office responded to a request for guidance from the Ministry of Environment and informed them that it was unclear whether the 2006 Decision, as amended by the 2008 Judgment, had contained merely declarative findings that the applicant had owned the forestry plots in question or had, in addition, contained an order to restore those plots to the applicant. The State Attorney further advised that the authorities should abstain from handing over the plots to the applicant.

B. Forced execution

16. On 2 June 2011 the Pogradec bailiff office ordered the IPRO to register the plots under the applicant's name. The latter refused as the bailiff had not submitted a transfer-of-possession record of the property (*process-verbal të dorëzimit fizik të pronës*).

17. In a subsequent correspondence with the applicant the bailiff noted that the final decisions made no reference to handover of the plots, therefore the bailiff's tasks were limited to transferring the property title to the applicant without addressing the issues of the plots' physical handover. On 19 July 2011 the Central Bailiff Office confirmed that view.

18. By a decision of 4 August 2011, the bailiff noted that the IPRO had to register the plots under the applicant's name. Having made that finding, the bailiff considered that the enforcement was completed and decided to discontinue the proceedings.

19. On 19 July 2012 the IPRO responded to the bailiff and the applicant by requesting once again a copy of the handover-record for the purpose of registering the plots under the applicant's name.

THE LAW

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

20. The applicant complained of the non-enforcement of the 2006 Decision as amended by the 2008 Judgment. He relied, in substance, on Article 6 § 1 of the Convention.

21. 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).

22. In the leading cases of *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), the Court already found a violation in respect of issues similar to those in the present case.

23. The Court firstly notes that in their initial observations the Government submitted that the domestic authorities had taken every possible measure to enforce the domestic decisions. However, the Court is unable to agree as the domestic authorities have neither registered the plots under the applicant's name nor physically ensured the transfer of those plots to him.

24. The Government further submitted that the applicant had become an obstacle to the enforcement of the final domestic decisions because he had not pre-paid to the Pogradec Bailiff Office some amounts necessary for the forced execution and had made a number of unreasonable requests regarding the itemisation of the trees on the forestry plots. However, the casefile does not contain any evidence of an obstacle created by the applicant in the process of the enforcement of the final decisions. In particular, it does not appear that the Pogradec Bailiff Office discontinued the proceedings on the basis of any failure attributed to the applicant (see paragraph 18 above).

25. The Government also argued that the final domestic decisions in the applicant's favour had confirmed his legal title to the plots, but it was not clear whether the domestic courts had also ordered that the plots be physically transferred into the applicant's possession. The Court finds that this statement is not supported by evidence, in particular, by the rulings of the District Court of Pogradec which in issuing an enforcement writ in the applicant's favour clearly referred to his right to possess and dispose of the plots in question (see paragraph 14 above). The IPRO, which was a party to the proceedings (see paragraph 8 above), had relied on an internal regulation in order to justify its refusal, as an administrative body, to comply with the clear instructions of the relevant court to proceed with the registration of the applicant's tittle.

26. The Court therefore finds that the domestic authorities failed to deploy all necessary efforts to enforce the final domestic decisions in the applicant's favour. The applicant's complaints to that effect are therefore admissible. The Court also concludes that there has been a breach of the applicant's rights under Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Regard being had to the documents in its possession and to its case-law (see, in particular, *Qufaj Co. Sh.p.k,* cited above, §§ 46-48 and *Gjyli,* also cited above, §§ 62-76), the Court considers it reasonable to award the sum indicated in the appended table.

28. The Court further notes that the respondent State has an outstanding obligation to enforce the 2006 Decision, as amended by the 2008 Judgment.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* that Mr Ferdinand Tona, the applicant's heir, has standing to continue the present proceedings in his stead;

2. *Declares* the applicant's complaint concerning the non-enforcement of the final domestic decisions in his favour admissible;

3. *Holds* that there had been a breach of Article 6 § 1 of the Convention in view of the authorities' failure to enforce the final domestic decisions in the applicant's favour;

4. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the final domestic decisions in question, as described in the appended table;

5. *Holds*
   (a) that the respondent State is to pay the applicant's heir, Mr Ferdinand Tona, within three months, the amount indicated in the appended table, 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;

Done in English, and notified in writing on 4 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Peeter Roosma
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (non-enforcement or delayed enforcement of domestic decisions)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Relevant domestic decisions	Details of enforcement writ	Amount awarded for non-pecuniary damage and costs and expenses (in euros)[1]
78957/11 01/12/2011	**Llazi TONA** Born in 1939 Died in December 2017 **Ferdinand TONA** 1963	Theodhosi Afërdita Tirana	Korça Commission's decision of 4 July 2006, as amended by the Pogradec District Court's judgment of 14 November 2008	Pogradec District Court's decision of 30 December 2010	4,700

[1] Plus any tax that may be chargeable to the applicant.