

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

THIRD SECTION

CASE OF ZYBERI v. ALBANIA

(Application no. 24267/16)

JUDGMENT

STRASBOURG

27 January 2026

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



In the case of Zyberi v. Albania,

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

Úna Ní Raifeartaigh*, President*,

Darian Pavli,

Mateja Đurović*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 24267/16) 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 25 April 2016 by an Albanian national, Ms Afërdita Zyberi ("the applicant"), who was born in 1936 and died in 2021, and was represented by Mr B. Asllani, a lawyer practising in Tirana;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by Mr O. Moçka, State Advocate General;

the parties' observations;

Having deliberated in private on 16 December 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns allegations of breaches of the rights to a fair trial and respect of property by domestic administrative and judicial authorities, in the context of property restitution.

2. With reference to a court decision issued in 1994, in 1995 the Vlora Commission for the Restitution and Compensation of Property recognised the ownership of 14,000 sq.m of land by several people, returning 10,000 sq.m and compensating in kind 4,000 sq.m. The applicant's ownership covered 1,096 sq.m. Her title to that parcel was registered in the Immovable Property Register.

I. FIRST SET OF PROCEEDINGS

3. The applicant sued V.M. and others, seeking the "release and handover" of plots of land occupied by their constructions.

4. In 2003 a court dismissed the applicant's claim. In 2005 the Vlora Court of Appeal set aside that judgment and discontinued the proceedings. In 2006 the Supreme Court quashed that appeal decision and remitted the case to the Court of Appeal. V.M. argued before the Court of Appeal that his house was not on the applicant's land and that the construction on her land belonged to his son, A.M. The court then appointed an expert to determine whether the above-mentioned parties had constructed on the applicant's land. The expert report established that A.M. occupied an area of 273 sq.m, including a

building covering 204 sq.m. One dwelling, which was outside the applicant's property, belonged to V.M. whereas the second dwelling, which was within the applicant's property, belonged to A.M. (*eshte e A.M.).* By a judgment of 16 February 2009, the Court of Appeal ordered V.M. "to vacate and hand over" to the applicant a plot of land measuring 273 sq.m. The court considered that the above expert finding contradicted V.M.'s statements in the proceedings pending since 2003. He had admitted to having built on the plot of 1,096 sq.m, claiming that the constructions had been made long before the land had been returned to the applicant. Similarly, in the report prepared by the police in 1998 regarding the suspension of construction by V.M., it was he himself who had signed the document.

5. On 10 April 2009 the Vlora District Court issued an enforcement order in respect of the judgment of 16 February 2009.

6. On 12 May 2011 the Supreme Court upheld the judgment of 16 February 2009.

II. V.M.'S LEGALISATION PROCEDURE AND SECOND SET OF PROCEEDINGS

7. In the meantime, V.M. started a legalisation procedure under Law no. 9482/2006 "On the legalisation, urbanisation, and integration of unauthorised constructions". By Decision no. 677 of 18 June 2009 "On the approval of the transfer of ownership of construction parcels in favour of holders of informal buildings", the Council of Ministers approved that transfer. As specified in that decision, it was based, among other provisions, on section 17 of Law no. 9482/2006 and section 4 (ç) of Law no. 7980/1995 concerning the transfer of land ownership from the State to private persons; the Council of Ministers directed the Agency for the Legalisation, Urbanisation, and Integration of Informal Zones/Constructions (ALUIZNI) to carry out the procedures for the transfer of ownership "from the State" to the holders of the unauthorised constructions.

8. Implementing the above-mentioned decision, on 24 September 2009 the Vlora Office of the Legalisation Agency signed a transfer-of-ownership contract with V.M. for a plot of land of 300 sq.m and granted him a legalisation permit of 25 April 2011 for that plot of land.

9. The applicant and others sued the Vlora Office of the Legalisation Agency, seeking the annulment of the procedures for the legalisation of third-party constructions without a permit (*anullimin e procedurave për legalizim të ndërtimeve pa leje të bëra nga persona e trete*), including V.M.'s legalisation permit of 25 April 2011. By a judgment of 20 July 2011, the Vlora District Court held that the Council of Ministers was competent to decide on the lawfulness of the legalisation requests and had the exclusive competence to authorise ALUIZNI to complete the procedures for transferring ownership of plots of land (unauthorised constructions). Thus,

the applicant should have challenged the Council of Ministers' decision. She had not challenged it, in those proceedings nor separately.

10. According to the Government, the Vlora Court of Appeal upheld that court decision. It appears that the appeal decision was issued on 16 December 2013, but was then quashed on 7 June 2023 by the Supreme Court and these proceedings are still pending.

III. ENFORCEMENT OF THE 2009 JUDGMENT AND THIRD SET OF PROCEEDINGS

11. In December 2011 the applicant submitted the enforcement order of 10 April 2009 to the Bailiff Service, which initiated enforcement proceedings in respect of the judgment of 16 February 2009 (see paragraph 5 above). They ordered V.M. to vacate the relevant plot of land.

12. V.M. brought proceedings against the applicant and the bailiffs before the Vlora District Court, seeking to block enforcement. The court considered that he raised two claims. First, he challenged the enforcement order under Article 609 of the Civil Procedure Code. It allowed a judgment debtor to challenge – based on facts that occurred after the issuance of the court decision and within thirty days after becoming aware of the enforcement procedure – an enforcement order issued by a court as invalid, or to argue that the obligation did not exist or had become extinguished. Second, V.M. challenged the bailiffs' order of December 2011 under Article 610 of the Code, which regulated challenges to bailiffs' decisions or (in)action.

13. By a judgment of 23 February 2012, the District Court granted his claims, holding as follows:

(a) When the enforcement order was issued, V.M. did not have ownership documents over the land and residence in dispute. Subsequently, he had become the owner through a lawful act and procedure, and the registration of his property rights in the Immovable Property Register was in progress. V.M. was in the same legal position as the applicant. Those facts had occurred after the issuance of the original judgment; the conditions for the implementation of that judgment had changed, and the execution of the enforcement order could not infringe the rights of a lawful owner.

(b) In December 2011 the bailiff requested V.M. to release and hand over his land and residence. However, it was proven that the enforcement order did not concern the land and residence he currently possessed (*qe disponon aktualisht*) but "the area occupied by his son A.M." (*por per siperfaqen e zone nga djali i tij A.M.*). This was also evident from the content of the court decision and the expert report, as well as from an expert report obtained for the court decision of 20 July 2011 (see paragraph 9 above). Thus, the bailiff's request went beyond the enforcement order.

The District Court provisionally suspended the enforcement order and the bailiffs' actions, pending an eventual appeal against its decision.

14. On 3 May 2013 the Vlora Court of Appeal upheld the above-mentioned judgment. On 3 June 2015 the Supreme Court upheld the above-mentioned judgments in a summary manner. On 11 December 2015 the Constitutional Court considered that they neither dealt with a similar subject matter, nor addressed the same issues as previously tried and decided by the final judgments; therefore, there had been no violation of legal certainty.

THE COURT'S ASSESSMENT

15. Referring to Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained that the legalisation procedure in favour of V.M. and the third set of proceedings adversely affected her property rights, the enforcement of the 2009 judgment and violated the principle of legal certainty.

I. LOCUS STANDI

16. The applicant died in 2021. In 2025 her daughters and heirs, Fatmira Xhaxho and Silvana Pavaci, expressed a wish to pursue the complaints before the Court. The Government noted that they had only informed the Court of the applicant's death in 2025. A (deceased) applicant's representative or, where appropriate, next of kin should inform the Court without undue delay about all circumstances relevant to the application. The delay is regrettable but entails no legal consequences in the present case. These persons have standing to pursue these complaints (see *Ramaj v. Albania*, no. 17758/06, § 79, 10 December 2024). The Court will continue to refer to Ms A. Zyberi as "the applicant".

II. ALLEGED ABUSE OF THE RIGHT OF APPLICATION

17. The Government alleged that the applicant failed to inform the Court about certain proceedings related to the 1994 court decision and the original restitution decision of 1995, which are still pending (see paragraph 2 above). The applicant disagreed.

18. It has not been established that the applicant withheld information in a deliberate attempt to mislead the Court, or that that information was crucial to determining the admissibility and merits of her complaints. The outcome of those proceedings had no bearing on the outcome of the third set of proceedings. The Court dismisses the Government's objection (see *B.T. and B.K.Cs. v. Hungary*, no. 4581/16, § 50, 10 June 2025).

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION REGARDING THE JUDGMENT OF 16 FEBRUARY 2009

19. The applicant alleged that the third set of court proceedings violated legal certainty in respect of the judgment of 16 February 2009 and prevented its enforcement.

A. Admissibility

20. In 2009 the applicant obtained a judgment, which was enforceable under national law and was confirmed by the Supreme Court in May 2011. Thereafter, the applicant could complain under the Convention in relation to the enforcement of that judgment (compare *Gjyli v. Albania*, no. 32907/07, § 33, 29 September 2009, and *Kural v. Türkiye*, no. 84388/17, § 27, 19 March 2024). The 2009 judgment was subject to enforcement between December 2011 and February 2012, when the district court in the third case (hereinafter, "the district court") suspended its enforcement. The judgment permanently ceased to be enforceable in 2015 (see paragraph 14 above).

21. The complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

22. The applicant maintained her claims.

23. The Government indicated that under the concept of legal certainty, as recognised in Albanian law, a final judgment was binding. However, the first and third sets of proceedings had different subject-matters, parties, and causes of action. The court in the first set had ordered repossession against V.M. because he had been the head of the household who had occupied land together with his children; A.M. had not been a party to the proceedings. The courts in the third case did not question the applicant's ownership over the land. They relied on new facts such as V.M.'s legalisation procedure and the outcome of the second case, corrected mistakes and protected V.M.'s rights.

2. The Court's assessment

(a) General principles

24. The general principles concerning the Contracting Parties' responsibility under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention in the context of enforcement of a final judgment against a private party are summarised in *Immobiliare Saffi v.*

Italy ([GC], no. 22774/93, §§ 49, 54, 64, 69 and 74, ECHR 1999-V) and *Fuklev v. Ukraine* (no. 71186/01, §§ 84 and 90-91, 7 June 2005).

25. Thus, a stay of execution of a judgment for such period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances (see *Immobiliare Saffi*, cited above, § 69; see also *Fomenko and Others v. Russia* (dec.), nos. 42140/05 and 4 others, §§ 184-85, 24 September 2019). A court decision that renders enforcement of a prior final ruling permanently impossible may violate Article 6 of the Convention or Article 1 of Protocol No. 1 when that decision is unjustified – for instance, when it is issued in breach of the principle of legal certainty (see *Margushin v. Russia*, no. 11989/03, §§ 31-40, 1 April 2010).

26. As to the principle of legal certainty, it is implicit in all the Articles of the Convention (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 238, 1 December 2020, with further references). It manifests itself in different forms and contexts, such as requiring that once courts have finally determined an issue, their ruling should not be called into question. This aspect of legal certainty presupposes, in general, respect for *res judicata*. Departures from legal certainty and *res judicata* are justified only in circumstances of a substantial and compelling character, for instance, due to the need to correct fundamental defects or a miscarriage of justice. Challenging the resolution of a dispute in separate proceedings, when the original judgment has not been formally set aside, may also violate the principle of legal certainty (ibid, see also *Decheva and Others v. Bulgaria*, no. 43071/06, § 39, 26 June 2012).

(b) Application of the principles in the present case

27. The applicant obtained title to the land based on legislation providing for the restoration/restitution of property confiscated by a previous regime. Her ownership was registered in the Immovable Property Register, and since 1998 she took consistent action to obtain repossession of her land (compare *Ramaj v. Albania*, no. 17758/06, cited above, §§ 134-37, 10 December 2024).

28. According to the 2009 judgment, V.M. and his family had had no lawful basis to use the applicant's land, and the Vlora Court of Appeal ordered him to vacate it. In 2012, the district court blocked enforcement because V.M. had in 2011 legalised a construction. The district court considered V.M.'s legalisation permit – issued while the cassation proceedings against the 2009 judgment had been pending – as a "new fact" arising after that judgment; this despite the fact that V.M.'s legalisation permit had been challenged in the second set of proceedings that were pending at the time before a court of appeal (see paragraphs 9, 10 and 12 above). The district court's reasoning appears to be contradictory. If the construction legalised by V.M. was different from the one situated on the

applicant's land, then the legalisation would appear unrelated to the 2009 judgment and the enforcement order, which required V.M. to vacate the applicant's land.

29. Furthermore, the Council of Ministers' decision of 18 June 2009 relied on legislation concerning the transfer of ownership of State-owned land to private persons and appeared to treat the applicant's registered plot of land as State-owned land (see paragraph 7 above). Despite the existence of the repossession judgment in the applicant's favour, in April 2011 an administrative authority processed V.M.'s application under legislation allowing the legalisation of unlawful constructions and, notably, the transfer of ownership to the underlying plot from the original landowner (the State or a private person as in the present case), with payment of compensation as relevant (see, for a general context, *Beshiri and Others v. Albania* (dec.), nos. 29026/06 and 11 others, §§ 110-11 and 118, 17 March 2020). That intervening administrative procedure had the effect of directly affecting the applicant's repossession under the 2009 judgment, that is, her legitimate expectation to benefit from the outcome of her lengthy litigation to vindicate her property rights (compare *Ramaj*, cited above, § 111, and *Gaba v. Albania,* no. 33369/17, § 79, 17 December 2024).

30. The district court in the third set of proceedings merely held that V.M. and the applicant – who manifestly had conflicting claims to the land – were in the "same legal situation". In addition, the judgment issued in July 2011 in the second set of proceedings challenging V.M.'s legalisation permit was subject to review on appeal (see paragraphs 9 and 10 above). No final decision had yet been issued in those proceedings when the district court, in the third case, accepted the validity of V.M.'s title and ordered the termination of the enforcement proceedings.

31. Lastly, the district court referred to V.M.'s lack of responsibility for the unlawful construction on the applicant's land. That argument was considered as relevant to V.M.'s objection against the enforcement proceedings (see paragraphs 12 and 13 above). The contradictory nature of the district court's reasoning also affected this aspect of the case – specifically, as to who and when had constructed, used, or formalised ownership of the construction, and how any potential changes in those circumstances had influenced the enforcement actions under the 2009 judgment (compare *Vlahović v. Montenegro*, no. 62444/10, §§ 45-50, 22 February 2024). The courts failed to clarify whether V.M. or A.M. had formal ownership over the impugned unlawful constructions in the legalisation proceedings, while at the same time challenging the Court of Appeal's findings from February 2009.

32. It is noted that the third set of proceedings concerned the enforcement stage of the first set of proceedings. Both proceedings involved the same parties (the applicant and V.M.), albeit in reversed roles. In the first case, the matter of V.M.'s responsibility for the unlawful construction on the

applicant's land had been crucial and had been determined in adversarial proceedings, with V.M. fully participating before the Court of Appeal and Supreme Court (see *Decheva and Others*, cited above, §§ 41-42). In the third case, the district court reassessed both prior and newly submitted evidence and reached a different conclusion on the same issue. The district court effectively conducted a substantive review of an essential factual element from that final judgment, engaging therefore in its *de facto* substantive revision under the pretext of assessing the legality of the bailiff's decision.

33. For the reasons stated above, the district court failed to provide any compelling reasons for the permanent blocking of the enforcement of the 2009 judgment. Nor did the higher courts remedy the shortcomings in the district court's decision. The impossibility of obtaining enforcement against a private person was fully attributable to those court decisions. They were based on an administrative decision intervening with the process of enforcement and contained contradictory and insufficient reasoning, in breach of legal certainty. Thus, it cannot be said that the respondent State acted in such a manner as to strike a fair balance between the applicant's and V.M.'s interests in the circumstances of the case (compare *Lasku and Others v. Albania* [Committee], no. 6045/14, §§ 27 and 34, 18 November 2025).

34. There have therefore been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in the present case (ibid., §§ 27 and 32-35; *Margushin*, §§ 37-40; and *Decheva and Others*, §§ 45 and 56-58, both cited above).

IV. OTHER COMPLAINTS

35. In so far as the applicant may be understood as complaining under Article 1 of Protocol No. 1 that she had been deprived of her ownership over the plot of land (see paragraphs 7-10 above), the Court has determined the main legal issues in the present case, and there is no need to examine this matter separately (compare *Ramaj*, cited above, § 140).

36. Lastly, the Court reaches the same conclusion as regards the applicant's references to the lack of the State's assistance in 1998 in vacating her land from unlawful constructions, the lack of reasoning in the Supreme Court's decision in June 2015 and, more generally, to the lack of effective remedies (Articles 6 and 13).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. The applicant claimed unspecified and undetailed costs and expenses. The Court rejects this claim.

38. No claim for just satisfaction on account of any pecuniary or non-pecuniary damage has been submitted to the Court. Accordingly, it is not called to make an award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that Fatmira Xhaxho and Silvana Pavaci have standing to pursue the present proceedings in the applicant's stead;

2. *Dismisses* the Government's objection as to the alleged abuse of the right of application;

3. *Declares* the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in relation to the third set of proceedings admissible;

4. *Holds* that there have been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;

5. *Holds* that there is no need to examine the other complaints;

6. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 January 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Úna Ní Raifeartaigh President