THIRD SECTION

DECISION

Application no. 47858/17
Pranvera DUHANXHIU
against Albania

The European Court of Human Rights (Third Section), sitting on 25 March 2025 as a Committee composed of:

Lətif Hüseynov, *President*,
Darian Pavli,
Úna Ní Raifeartaigh, *judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 47858/17) 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 29 June 2017 by an Albanian national, Ms Pranvera Duhanxhiu ("the applicant"), who was born in 1940, lives in Elbasan and was represented by Mr A. Hakani, a lawyer practising in Tirana;

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

the parties' observations;

the decision of 14 November 2023 to reject the unilateral declaration presented by the Government;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the reversal of a final judgment recognising the applicant's right to first refusal over a public library. It raises issues under Article 6 § 1 of the Convention about the principle of legal certainty.

2. In 1996 the Elbasan Restitution and Compensation of Properties Commission ("the Commission") recognised the applicant's and her family members' inherited property right over a plot of land of 80 sq. m. The plot

was not free to be restituted, so the Commission decided to award them the right to first refusal (*e drejta e parablerjes*) for a share of 21.6 sq. m of a building, which was occupied at the time by a public library. For the remaining part they would be compensated in state bonds.

3. In 1996 the Ministry of Economy, Commerce and Energy ("the Ministry"), who was the registered owner of the library built over the plot of land in question, initiated its privatisation. A former employee of the library, N.F., who was using it for her commercial activity through a lease contract, had partially paid the library's value through state bonds.

4. On 14 September 2004 the applicant brought civil proceedings against the Commission, asking the Elbasan District Court ("the District Court") to recognise her right to first refusal for the entire plot of 80 sq. m on the grounds that her property was entirely situated under the public library.

5. On 25 January 2005 the District Court assessed, on the basis of an expert report, that the applicant's share of the land where the library was built was larger than 21.6 sq. m. It decided, therefore, to increase her share of the right to first refusal over the library to 48 sq. m. The judgment was not appealed against and became final and binding on 9 February 2005.

6. In 2007 N.F. brought civil proceedings against the applicant, her family members, and the Commission's successor, the Agency for Restitution and Compensation of Property ("the Agency"), challenging the 1996 Commission's decision, as altered by the District Court's judgment of 2005. The Ministry joined the proceedings as a third party, requesting also the annulment of the 1996 Commission's decision.

7. On 27 November 2007 the District Court, on the basis of an expert report, annulled the applicant's and the other heirs' right to first refusal over 48 sq. m of the library. It held that in the first proceedings the assessment had not been based on maps or other evidence that could prove the exact position of the applicant's ancestor property. That created significant discrepancies between the borders of the property as specified in the Commission's decision and the accompanying map, which was an integral part of it. The District Court, therefore, concluded that the applicant's property was situated at a distance of six to seven metres from the library and there was no overlap with it.

8. It also held that the judgment of the District Court of 25 January 2005 had no effect on N.F. and on the third party since they had not been parties to those proceedings.

9. The applicant lodged an appeal with the Durrës Court of Appeal arguing that her ancestor's ownership on the contested land and its position had been recognised by the Commission's decision and the District Court's judgment. The applicant specifically complained about a violation of the principle of legal certainty, arguing that since her right to first refusal was resolved through a final judgment, its revision could not be requested by anyone, including N.F.

10. On 8 December 2009 the Durrës Court of Appeal dismissed the applicant's appeal and upheld the District Court's judgment, on the grounds that since N.F. and the Ministry were not parties in the 2005 proceedings, those proceedings had no effect on them.

11. On 12 April 2012 the Supreme Court dismissed *de plano* the applicant's appeal on points of law.

12. On 19 April 2013 the Constitutional Court accepted the applicant's constitutional complaint and quashed the Supreme Court's judgement on the ground that it had failed to provide adequate reasoning concerning the issues of legal certainty and *res judicata*, and had also failed to list the grounds raised by the applicant in the cassation appeal.

13. On 10 March 2016 the Supreme Court again dismissed the applicant's appeal on points of law on the grounds that the library was not built on the applicant's ancestor's former property and that the 2005 judgment did not have *res judicata* effect over N.F., since she had not been a party to those proceedings.

14. The applicant than lodged a constitutional complaint which was dismissed by the Constitutional Court on 1 March 2017.

THE COURT'S ASSESSMENT

15. The applicant complained that the domestic courts had acted in breach of the principle of legal certainty under Article 6 § 1 of the Convention, when they reversed the Commission's decision and the District Court's judgment which had recognised her right to first refusal on a part of a public library.

16. The Government submitted that the 1996 decision of the Property Commission and the 2005 judgment of the District Court had no effect on N.F. who was not a party to those proceedings. The applicant had failed to invite to the proceedings which ended with the District Court's judgment of 2005 any party who held the ownership title or possession of the library in question.

17. The Court reiterates that the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of the rule of law and legal certainty, encompasses the requirement that, where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Oferta Plus S.R.L. v. Moldova*, no. 14385/04, § 97, 19 December 2006; and *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, § 61, 12 January 2006).

18. The Court observes that in all legal systems the *res judicata* effects of judgments have limitations *ad personam* and as to material scope (see *Esertas v. Lithuania*, no. 50208/06, § 22, 31 May 2012). Turning to the present case, the Court notes that the applicant in 2005 brought civil proceedings against the Property Agency, but not against the Ministry, which was the owner, or

N.F., who continued to hold possession of the library and had begun to pay for its privatisation since 1996 (see paragraph 6 above). Hence, they had both the right to challenge the applicant's right to first refusal over the library and to claim State ownership of the plot where it was built, irrespective of the 2005 District Court's judgment.

19. The only remedy for N.F. to protect her claimed right over the library was to bring civil proceedings against the applicant and the other heirs. The District Court in 2007 did not re-examine a question already decided in the proceedings involving the same parties, but a dispute involving different parties. It therefore did not contradict the *ad personam* aspect of the principle of respect for the *res judicata* effect of judgments (compare *Podrugina and Yedinov. v. Russia* (dec.), no. 39654/07, 17 February 2009; *Guriţanu v. Moldova* (dec.) [Committee], no. 75732/12, § 21, 8 November 2022; and *Gurma v. Albania* (dec.) [Committee], no. 50249/13, § 14, 28 November 2022).

20. The Court also notes that the proceedings initiated in 2007 did not concern the recognition of the ownership title of the applicant's ancestor, but only the form of compensation that the applicant and the other heirs would receive for the recognised title.

21. It follows that this complaint must be declared inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 May 2025.

Olga Chernishova Deputy Registrar	Lətif Hüseynov President