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

THIRD SECTION

DECISION

Application no. 50249/13
Kiço GURMA
against Albania

The European Court of Human Rights (Third Section), sitting on 28 November 2023 as a Committee composed of:

Georgios A. Serghides*, President*,
Darian Pavli,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 50249/13) 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 2 August 2013 by an Albanian national, Mr Kiço Gurma ("the applicant"), who was born in 1931, lives in Saranda, and was represented by Mr A. Hajdari, a lawyer practising in Tirana;

the decision to give notice of the complaints concerning the principle of legal certainty, the length of proceedings and an effective remedy in that respect and the applicant's right to peaceful enjoyment of his possessions to the Albanian Government ("the Government"), represented by their then Agent, Ms E. Muçaj, and subsequently by Mr O. Moçka, General State Advocate, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns, principally, issues of fairness and length of civil proceedings and of property rights.

2. In 1994 the Saranda Restitution and Compensation of Properties Commission ("the Commission") recognised the applicant's and his family members' inherited property rights on a plot measuring 50,000 square metres

(the first plot), and in 2003 an additional plot measuring 6,205 square metres (the second plot).

3. On 2 May 1996 A.C. bought a plot of land measuring 910 square metres from the Saranda Municipality. In reality that land was part of the above-described second plot. This agreement was duly registered with the Immovable Property Register of Saranda ("IPR").

4. On 12 November 2002 the applicant and his relatives brought a civil action in the Saranda District Court, against the Municipality of Saranda, asking that court to specify the exact borders of the first plot, and to supplement the restitution decision by granting them an additional plot.

5. In a judgement of 27 January 2003, the Saranda District Court specified the exact borders of the first plot and, after it assessed, on the basis of an expert report, that the second plot was unoccupied, restituted it to the claimants.

6. On 21 January 2004 the applicant brought civil proceedings against A.C., asking her to give him the possession of the contested plot of land, and on 19 January 2006 he brought another claim against A.C., challenging her ownership of a plot measuring 910 square metres and arguing that it had been restored to him by the Saranda District Court's decision in 2003. These proceedings were joined in 2006.

7. In 2006 A.C. brought parallel civil proceedings against the applicant, challenging the Commission's decision, as supplemented by the Saranda District Court's decision of 2003. After a remittal by the Supreme Court to the Appeal Court, both proceedings were joined before the Gjirokastra Appeal Court which, by a judgment of 25 October 2010 rejected the applicant's claim and accepted A.C.'s counterclaim. It held that the Commission decision, as supplemented by the Saranda District Court's decision, was invalid in so far as it concerned A.C.'s plot measuring 910 square metres.

The Appeal Court held that the Commission's decision was based on incomplete and inaccurate documents. There was no evidence that the property in question had been nationalised, expropriated, or subjected to any other form of appropriation by the State after 29 November 1944. A note from 1943 concerning that property indicated that the applicant's ancestor had acquired possession of only a part measuring 25,056 square metres of the plot measuring 50,000 square metres in total. The heirs could not have inherited more land than their ancestor had.

The Appeal Court further found that the applicant's plot of land measuring 6,205 square metres (the second plot) overlapped with the A.C.'s plot of 910 square metres. The Appeal Court held that, since the restitution in kind of 6,205 square metres to the plaintiff had been unlawful because the decision on restitution was based on incomplete and inaccurate documents, there were no grounds to claim the possession of that plot of land.

The Appeal Court also held that the decision of the Saranda District Court of 27 January 2003 had no effect on A.C. since she had not been a party to these proceedings. It found that the evidence presented proved A.C.'s ownership on the contested plot.

8. The applicant lodged an appeal with the Supreme Court arguing that his ownership on the contested plot had been recognised by the Commission's decision and the Saranda District Court's decision. The sale contact between A.C. and the Saranda Municipality should have been annulled because the buyer had not fulfilled the legal criteria as outlined in the Urban Planning Act. Furthermore, it should not have been possible for the Saranda Municipality to sale the contested plot to A.C. because the transfer of public property had not been allowed at the time, until the process of restitution and compensation of property was terminated, unless in exceptional circumstances.

9. On 11 July 2012 the Supreme Court rejected *de plano* the applicant's cassation appeal.

10. The applicant then lodged a constitutional complaint which was dismissed by the Constitutional Court on 10 December 2012.

THE COURT'S ASSESSMENT

ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

1. The principle of legal certainty

11. The applicant complained that the decisions of domestic courts had not respected the principle of legal certainty and *res judicata* when they reversed the Commission's and the Saranda District Court's decisions which had recognised his ownership of the contested plot of land, and that thus his right to a fair trial and to peaceful enjoyment of his possessions, guaranteed under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, were violated.

12. The Court notes that the ownership of the contested plot of land was finally decided in civil proceedings before the Gjirokastra Appeal Court, entirely separate from the proceedings in which the judgment of 27 January 2003 was adopted, and between different parties.

13. It is of paramount importance that A.C. was not a party to the first set of these proceedings and that, therefore, she had the right to challenge the applicant's property on the contested plot and to claim the ownership of that plot, irrespective of the Saranda District Court's decision. 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). Indeed, it appears that already in 1996, before the applicant instituted proceedings against the Municipality of Saranda, A.C.

had obtained title to the contested plot, and that after that date, the Municipality of Saranda was not the owner of the contested plot. However, the applicant brought a civil action against the Municipality of Saranda, and not A.C., even though the agreement between A.C. and the Municipality of Saranda was registered in the IPR (see paragraph 3 above)

14. Therefore, the only remedy for A.C. to protect her claimed right to the contested plot of land were the civil proceedings against the applicant. The Gjirokastra Appeal Court 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; *Tantilovi v. Bulgaria* (dec.), no. 39351/05, § 36, 13 January 2015; and *Guriţanu v. Moldova* (dec.) [Committee], no. 75732/12, § 21, 8 November 2022).

15. 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.

2. Reasoning of the Supreme Court's decision

16. The Court observes that the applicant's cassation appeal to the Supreme Court challenged the decision of the Appeal Court. The Court considers that the limited reasons given by the Supreme Court in its inadmissibility formula implicitly indicated that the applicant had not raised one of the points of law provided for by Article 472 of the CCP. The Court observes that where a Supreme Court refuses to accept a case on the basis that it did not raise legal grounds of appeal, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see *Marini v. Albania*, no. 3738/02, § 106, ECHR 2007 (extracts)). In that connection the Court also notes that the Appeal Court gave detailed and comprehensive reasons for its decision.

17. Thus, reviewing the proceedings as a whole, the Court finds that the applicant's right to have his case properly examined by domestic courts and its obligation to provided adequate reasons for their decision was satisfied.

18. 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.

3. Length of proceedings and a remedy in that respect

19. The general principles concerning the length of proceedings have been summarised in *Frydlender v. France* ([GC], no. 30979/96, § 43, ECHR 2000-VII).

20. The proceedings complained of commenced on 21 January 2004 and were concluded with the Constitutional Court's decision of 10 December 2012, they thus lasted eight years, ten months and nineteen days before four levels of jurisdiction. Due to a remittal, decisions were rendered on six instances (compare *Šeliga v. Slovenia* (dec.), no. 33578/02, 30 November 2006).

21. The Court finds the case quite complex since it involved the applicant's claims, a counterclaim of the opposing party, and concerned complex issues of property restitution and overlapping property titles.

22. The Court finds that no delay may be attributable to the applicant's conduct.

23. As to the conduct of the domestic courts the Court observes that it did not take any of the instances more than three years to deliver their decision. Having regard to the latter and the Court's case-law (see, for example, *L.Z. v. Slovakia* (dec.), no. 27753/06, 27 September 2011, and *Lyszczyna v. Germany* (dec.), no. 34863/04, 4 January 2008), the Court considers that the overall length of eight years, ten months and nineteen days before four levels of jurisdiction, and at six instances, did not exceed what could be considered reasonable in the circumstances (compare *Ekholm v Finland* (dec.), no. 5952/03, 10 July 2007 and *Steiner v. Austri*a (dec.), no. 32637/96, 22 November 2001).

24. The Court therefore finds that this part of the application is manifestly ill-founded and must be rejected under Article 35 § 4 of the Convention.

25. As to the Article 13 complaint, the Court notes that it is inextricably linked to the one examined above and must therefore likewise be declared inadmissible (see *Ljubičić v. Croatia* (dec.), no. 17338/05, 10 May 2007).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2024.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President