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

THIRD SECTION

DECISION

Application no. 78961/11
Xhevrije HYSENAJ
against Albania

The European Court of Human Rights (Third Section), sitting on 27 September 2022 as a Committee composed of:

Andreas Zünd, *President,*
Darian Pavli,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 78961/11) 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 15 December 2011 by an Albanian national, Ms Xhevrije Hysenaj, who was born in 1962 and lives in Tirana ("the applicant") who was represented by Mr D. Matlija, a lawyer practising in Tirana;

the decision to give notice of the complaint concerning the applicant's right of access to a court to the Albanian Government ("the Government"), represented by their then Agent, Ms Alma Hicka and subsequently by Mr O. Moçka, State Advocate General, and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Roma Rights Centre, who was granted leave to intervene by the President of the Section;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant is of Roma origin. In February 2011 her dwelling was set on fire and burned down by two individuals, B.V. and D.V. In March 2011

the prosecutor opened an investigation against B.V. and D.V. On 21 March 2011 the applicant, through a lawyer, sent a request to Prosecutor General's Office, expressing a wish to be informed of the progress of the investigation and to lodge a civil claim against the suspected perpetrators. The Prosecutor General's Office forwarded the applicant's request to the competent prosecutor's office and informed the applicant of it by a letter of 22 April 2011. However, the prosecutor did not inform the applicant of the progress of the criminal case, nor was she summoned to the trial.

2. The accused, B.V. and D.V., were found guilty and sentenced to four months' imprisonment by a judgment adopted by the Tirana District Court on 7 June 2011.

3. The applicant learned of the trial and the judgment on 16 June 2011.

THE COURT'S ASSESSMENT

4. The applicant, relying on Article 6 § 1, as well as Articles 13 and 14 of the Convention, complained that, because she had not been informed of the criminal trial against B.V. and D.V., she was not able to file a civil claim and had thus been denied her right of access to a court. She also claimed that that occurred because of her Roma origin contrary to Article 14 of the Convention and that she had no effective remedy for her compensation claim.

5. The Government argued that, irrespective of the criminal proceedings, the applicant could have brought a civil claim for compensation against B.V. and D.V. in a civil court.

6. The right of access to a court guaranteed by Article 6 was established in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84, 29 November 2016, with further references).

7. As regards the criminal proceedings, the Court accepts that by not being informed of the trial against the accused, the applicant was in practice prevented from having her civil claim examined in the context of these proceedings.

8. The Court reiterates that the right of access to a court does not guarantee that a specific court examines an applicant's civil claim, but more generally, that an applicant has a possibility of bringing his or her civil claim before a court of law (see, *mutatis mutandis*, *Gobec v. Slovenia*, no. 7233/04, § 160, 3 October 2013).

9. In cases where civil-party claims made in the context of criminal proceedings have not been examined, the Court has had regard to the

availability of other channels through which the applicants could vindicate their civil rights. In cases where the applicants had at their disposal accessible and effective avenues for their civil claims, it found that their right of access to a court had not been infringed (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 198, 25 June 2019, and the cases cited therein).

10. In the present case, at the time when the applicant learned of the judgment adopted in the criminal proceedings against B.V. and D.V., and that her civil claim had not been examined in the context of these proceedings, she could have brought separate civil proceedings against B.V. and D.V. (compare *Nicolae Virgiliu Tănase*, cited above, § 199). In this connection the Court notes that the damage to the applicant's property occurred in February 2011 and the first-instance judgment finding B.V. and D.V. guilty was adopted on 7 June 2011, of which the applicant learned on 16 June 2011, mere three and half months after the criminal offence took place. This alternative remedy of bringing a civil action was thus immediately available to the applicant (compare *Nikolov v. Bulgaria* (dec.), no. 39672/03, 28 September 2010). In this respect the present case crucially differs from the cases in which, owing to the long duration of the criminal proceedings or their termination, the Court held that the applicants had not enjoyed effective access to a court and that this could not be cured by the possibility of bringing fresh claims for the determination of their compensation claims in the civil courts (see *Atanasova v. Bulgaria*, no. 72001/01, 2 October 2008; *Dinchev v. Bulgaria*, no. 23057/03, 22 January 2009; and *Tonchev v. Bulgaria*, no. 18527/02, 19 November 2009; *Boris Stojanovski v. the former Yugoslav Republic of Macedonia*, no. 41916/04, §§ 56-57, 6 May 2010; *Korkolis v. Greece*, no. 63300/09, §§ 21-25, 15 January 2015; and *Petrella v. Italy*, no. 24340/07, § 53, 18 March 2021). In the present case the criminal conviction against the perpetrators left the separate civil remedy not only fully available, but also more likely to prevail.

11. In her civil claim the applicant could have relied on the guilty verdict adopted in the criminal proceedings against B.V. and D.V. The Court also notes that civil courts in Albania are vested with full jurisdiction to decide questions of both fact and law and that civil responsibility is broader than the criminal because under section 70 of the Criminal Procedure Act, as in force at the material time, a final decision adopted in criminal proceedings is binding on the [civil] court that examines the civil consequences of the offense only in terms of whether the criminal offense has been committed and if committed by the defendant. Besides, under section 608 of the Civil Code, a right to claim damages is an independent and justiciable right, therefore, in case of damage, everyone is entitled to judicial protection and compensation (compare also *Pundurs v. Latvia* (dec.), no. 43372/02, § 35, 20 September 2011).

12. Even if the civil proceedings might have been stayed pending the outcome of the criminal proceedings (under section 297 of the Civil

Procedure Act a civil court may stay the proceedings when a case cannot be decided before another penal, civil or administrative case is resolved), the Court notes that the applicant could have obtained a determination of the merits of her civil claims on the conclusion of the criminal proceedings (compare *Nicolae Virgiliu Tănase*, cited above, §§ 199 and 200).

13. The Court accepts that the applicant's inability to have her civil claim determined in the context of the criminal proceedings against B.V. and D.V. might have created a degree of inconvenience and possibly further costs for a vulnerable victim of crime. However, it has not been shown that this situation would restrict or reduce the applicant's right to access to court in such a way or to such an extent that the very essence of the right is impaired (compare *Balogh v. Hungary*, no. 47940/99, § 72, 20 July 2004). Therefore, it cannot be said that the applicant was denied access to court for a determination of her civil rights.

14. As to the applicant's complaint under Article 14 of the Convention, the Court notes that it is unsubstantiated and not supported by any evidence.

15. Accordingly, the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 20 October 2022.

Olga Chernishova Deputy Registrar	Andreas Zünd President