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

THIRD SECTION

DECISION

Application no. 65774/14
Dashuri LLAGAMI and Others
against Albania

The European Court of Human Rights (Third Section), sitting on 6 December 2022 as a Committee composed of:

Georgios A. Serghides*, President*,
Jolien Schukking,
Darian Pavli*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 65774/14) 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 18 September 2014 by the applicants listed in the appended table ("the applicants") who were represented by Mr A. Kashahu, a lawyer practising in Tirana;

the decision to give notice of the complaint under Article 1 of Protocol No. 1 to the Convention concerning the amount of compensation for the expropriation of the applicants' property to the Albanian Government ("the Government"), represented by their then Agent, Ms B. Lilo and subsequently by Mr O. Moçka, State Advocate General, 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 a claim under Article 1 of Protocol No.1 to the Convention that compensation for expropriated land should be calculated on the basis of the value of the land at the end of the expropriation proceedings.

A. Circumstances of the case

2. In 2001 the Ministry of Transportation started expropriation proceedings in respect of a plot of land in Tirana belonging to the applicants. The purpose of the expropriation was to build a new ring road for the city and the price per square metre (sq.m) of expropriated land was determined by an internal commission of the Ministry at 5,000 Albanian lek (ALL). The total compensation for 11,240 sq.m. to be expropriated was ALL 56,200,000. The applicants were informed of the proceedings and did not contest any aspect thereof.

3. In August 2002 the authorities annulled the expropriation procedure on the grounds that, after an internal review, it had transpired that the applicants' ownership title over the plot was unlawful. It appears that the construction works for the road continued.

4. On 26 March 2004 the applicants started legal action against the Ministry of Transportation. They argued that the authorities had built a road on their land and sought "payment of the amount due to the claimants for the expropriation of their land".

5. On 14 April 2005 the applicants made additional submissions (*shpjegime per padinë*) to the court stating that their ownership title for the plot was lawful. In addition, they submitted that the initial evaluation of the land and the other acts related to its expropriation (see paragraph 2 above) complied with the applicable law. In their view the annulment of the expropriation procedure was unlawful and they asked the court to finalise the procedure by awarding them the "amount due to them for the expropriation".

6. On 5 July 2005 the District Court of Tirana rejected the claim on the grounds that legal action was open only to claimants in respect of whom the expropriation procedure had been completed by decision of the Council of Ministers. However, on 20 June 2006 the Tirana Court of Appeal quashed that judgment, stating that there had been a number of procedural violations.

7. After a retrial, on 5 October 2007 the District Court of Tirana rejected the action once again, relying essentially on the same grounds as its first decision (see above). The applicants appealed.

8. On an unspecified date the Tirana Court of Appeal appointed an expert to determine the exact surface area of the applicants' property that was occupied by the newly-built road.

9. Meanwhile, on 13 February 2008 the Council of Ministers adopted decision no. 139 ("CMD 139") on the value of properties in different regions which was published in the Official Journal of 25 February 2008 and entered into force on the last-mentioned date. According to the applicants (see paragraph 14 below), under CMD 139 the properties in the area where the applicants' property was located were valued at ALL 26,787 per sq.m.

10. Moreover, on 21 February 2008 the Council of Ministers adopted decision no. 206 ("CMD 206") by which it expropriated several plots

belonging to the applicants for the purpose of expanding the pavement of the newly-built road. Under CMD 206 the applicants were entitled to compensation at a rate of ALL 12,335 per sq.m. The applicants did not challenge the surface of land expropriated or the amount due under CMD 206.

11. On an unspecified date in February 2008 the expert delivered his report on the exact surface area of the applicants' property that had been used for the road. Following a request by the court that he deduct from his calculations the area expropriated under CMD 206, he submitted a "questions and answers" document which supplemented his report.

12. On an unspecified date the applicants delivered their closing statement before the Tirana Court of Appeal. They referred to CMD 206 to point out the alleged inconsistency of the authorities who had agreed to compensate them for part of their property that had served for the pavement of the road but refused such compensation for the construction of the road itself. They concluded that they should be compensated at the "market value" of the land that had been used for the construction of the road.

13. On 9 April 2009 the Tirana Court of Appeal overturned the first-instance judgment (see paragraph 7 above) and ruled in favour of the applicants. It ordered the Ministry to compensate them for the expropriated surface at a price of ALL 5,000 per sq.m.

14. On 8 May 2009 the applicants lodged a cassation appeal with the Supreme Court arguing that the Tirana Court of Appeal had failed to refer to the correct price per square metre in respect of their property as determined by CMD 139.

15. On an unspecified date the Ministry submitted its own cassation appeal.

16. On 21 February 2012 the Supreme Court rejected both cassation appeals as inadmissible by way of a *de plano* decision that did not include reasons.

17. On 21 March 2014 the Constitutional Court rejected the applicant's constitutional complaint as manifestly ill-founded. It held that the Tirana Court of Appeal's decision was sufficiently reasoned and, in view of the arguments submitted before the Supreme Court, that court had not erred in dismissing the appeals by way of a *de plano* decision.

B. Domestic law and case-law

18. Under Article 459 of the Code of Civil Procedure ("CCP"), as in force prior to the 2017 amendments, a plaintiff was considered as having waived the claims and arguments which were not taken into consideration in the first-instance judgment and were not resubmitted through an appeal to the second-instance court.

19. In decision no. 1283 of 22 October 1999 the Supreme Court considered that a given argument submitted before it had been submitted only in general terms before the court of appeal. Accordingly, the court considered that within the meaning of Article 459 of the CCP the argument in question had not been properly submitted before the court of appeal; therefore the Supreme Court could not examine it.

20. In many subsequent cases the Supreme Court relied on Article 459 of the CCP to decline to examine claims and arguments that had not been taken into consideration in the first-instance judgment and had not been resubmitted to the court of appeal (see, for example, decision of the plenary formation (*kolegjet e bashkuara*) no. 10 of 15 November 2011; decision no. 366 of 30 September 2010).

THE COURT'S ASSESSMENT

21. The applicants complained of a violation of their right to property under Article 1 of Protocol No.1 to the Convention on account of the Tirana Court of Appeal's failure to award them compensation for their expropriated property at the price of ALL 26,787 per sq.m. which was in force on the date of that court's decision.

22. The relevant principles on exhaustion of domestic remedies are summarised in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014.

23. The Government submitted that the applicants had not complained about the price per square metre before the courts of first and second instance. In the Government's view the applicants had raised that issue for the first time in their cassation appeal, which was not the appropriate avenue to exhaust domestic remedies.

24. The Court is unable to disregard the Government's argument to that effect. It notes that throughout the proceedings before the first and second-instance courts the applicants had relied exclusively on the initial evaluation of their property made by the authorities (see paragraph 5 above). Moreover, they had not requested the appointment of an expert to make a fresh revaluation of their property at market value. Nor had they asked that the expert appointed by the Tirana Court of Appeal proceed to such revaluation. In fact they relied on the initial expert report unreservedly. In absence of any such submissions during the trial phase of the proceedings, the applicants'

mere reference in their closing statement before the Tirana Court of Appeal to the "market value" of their property (see paragraph 12 above) provided no valid basis for reconsidering the quantum of their compensation claim. That conclusion is moreover reinforced by the fact that even in their closing statement, they did not clarify what was the property's market value or how it should be calculated. The Court considers that it was open to the applicants to make detailed submissions about the supposedly increased value of their land, depending on the actual time of expropriation, even in the absence of a Government decision regulating that matter.

25. With regard to CMD 139, the Court notes that between 25 February 2008, when that act was published and entered in force (see paragraph 9 above), and 9 April 2009, when the Tirana Court of Appeal handed down its decision, it was open to the applicants to argue that it ought to be applied to the expropriation in question, and thus raise their complaint under the Convention with the Tirana Court of Appeal. However, there is no record that they ever referred to CMD 139 during the trial or, for that matter, in their closing statements before that court (see paragraph 12 above). Instead, they raised this argument for the first time before the Supreme Court (see paragraph 14 above).

26. In that connection, the Court notes, in the first place, that under domestic law claims that were not taken into account by the first-instance court and were not resubmitted before the court of appeal were considered as being waived (see paragraphs 18 to 20 above). Secondly, the applicants did not explain in their cassation appeal or their subsequent submissions why they had not made any submissions related to the calculation method before the first and second instance courts.

27. Accordingly, the applicants' complaint based on the alleged failure of the domestic courts to apply CMD 139 remained unexamined on the merits by those courts as it had not been submitted in compliance with domestic rules (see *Vučković*, cited above, § 72).

28. Lastly, the applicants' submission before the Court may also be understood more broadly as a complaint regarding the effect of the authorities' delay in paying them compensation for their expropriated property. Indeed, the Court has held that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable or abnormally lengthy delays (see *Frendo Randon and Others v. Malta*, no. 2226/10, § 55, 22 November 2011). However, the applicants' right to receive adequate compensation which took account of the passage of time and other circumstances was dependent on the submission of a court claim that addressed these matters appropriately in the request for relief. For example, it was in principle open to the applicants to seek a higher amount per square metre (depending on the value at the moment of actual expropriation), interest for late payment, compensation for any damage or loss of earnings or to lodge any other similar

claim. The Court notes, however, that the applicants have not sought any such relief from the domestic courts.

29. Against this background, the Court considers that it is not necessary to rule on the other objections submitted by the Government and concludes that the applicants' complaint regarding the amount of compensation for their expropriated property must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2023.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President

Appendix

Application no. 65774/14

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Dashuri LLAGAMI	1949	Albanian	Tirana
2.	Suzana HAVERI (LLAGAMI) deceased in 2015 Heirs: Miranda NOSI (LLAGAMI) Etleva BELIU (LLAGAMI) Bedar LLAGAMI	1927		
3.	Meleqe KODRA (LLAGAMI)	1931		
4.	Bardhyl LLAGAMI	1942		
5.	Dylbere LLAGAMI	1955		
6.	Fatri LLAGAMI died in 2014 Heirs: Bedar LLAGAMI Etleva BELIU (LLAGAMI)	1933		
7.	Qemal LLAGAMI	1928		