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

THIRD SECTION

DECISION

Application no. 1541/13
Jorgo QIQI
against Albania

The European Court of Human Rights (Third Section), sitting on 21 January 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. 1541/13) 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 29 December 2012 by an Albanian and Greek national, Mr Jorgo Qiqi ("the applicant"), who was born in 1949, lives in Tirana and was represented by Mr F. Caka, a lawyer practising in Tirana;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their then Agent, Mrs A. Hicka;

the parties' observations;

the notification of the Greek Government of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court) and their decision not to exercise their right to do so;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns a hearing *in absentia* before the Supreme Court of Albania. It also concerns the demolition of a building constructed by the applicant on the territory of a hospital and the dismissal of the applicant's claim for compensation.

2. In 1990 the applicant erected a building on the territory of Hospital no. 1 in Tirana, based on the consent of the then head of the hospital, and then used it for operating a kebab restaurant.

3. On 6 August 1992 the Tirana District Court found that the building had been erected without a construction permit and ordered the applicant to remove it in proceedings brought by the Tirana University Hospital Centre. On 15 October 1992 the Tirana Court of Appeal quashed the District Court's judgment and discontinued the proceedings on the applicant's appeal (*ndryshimin e vendimit dhe pushimin e gjykimit të çështjes*), finding that the applicant had been exercising his restaurant activity in compliance with the relevant regulations and there were no reasons to discontinue that activity.

4. In 1994 the building was registered at the Real Estate Registration Office. In 1996 a contract was signed with the municipality of Tirana, according to which the applicant purchased a plot of land measuring 189 sq.m, on which the building had been erected. The plot of land was registered at the Real Estate Registration Office.

5. In 1999 the Tirana Construction Police ordered the building's demolition. In 2000 it suspended the demolition works.

6. In 2001 the Construction Police again ordered the building's demolition on the grounds that it occupied a public territory. On 28 January 2002 the Tirana District Court declared the order null and void in proceedings brought by the applicant. On 11 June 2002 the Tirana Appeal Court upheld the District Court's judgment, stating that the applicant had purchased the plot of land and, as long as his title to the plot of land was not disputed, there were no legal grounds for the demolition of the building. The Tirana University Hospital Centre lodged an appeal with the Supreme Court. On 27 January 2004 the Supreme Court quashed the lower courts' judgments on the grounds that the applicant had failed to exhaust an administrative remedy. The applicant lodged a complaint with the Constitutional Court, arguing that he had not been notified of the appeal of the University Hospital Centre to the Supreme Court and had not therefore participated in the hearing before the Supreme Court. On 20 July 2012 the Constitutional Court dismissed the applicant's complaint, finding that the applicant had not demonstrated "an interest to challenge" the Supreme Court's decision on the basis that the 2001 demolition order of the Construction Police had become moot, due to its non-enforcement, and had been superseded by the 2005 demolition order (see below), which was still subject to ongoing proceedings.

7. On 16 March 2005 the Tirana Construction Police found that the applicant had erected the building without a construction permit. The applicant unsuccessfully challenged that finding before the Construction Police. On 19 March 2005 the Construction Police issued a new demolition order, which was executed on 22 May 2006. The applicant brought proceedings for compensation of the damage sustained on account of the demolition and lost profit. On 17 April 2007 the Tirana District Court granted

the applicant's claims partially, ordering the Construction Police to pay 9,828,000 Albanian lek to the applicant. The Construction Police appealed, arguing that the construction had been carried out without a building permit; the demolition had been in compliance with a request of the Ministry of Health; and the assessment of the value of the building, which had been dilapidated, had been erroneous. On 8 April 2008 the Tirana Appeal Court dismissed the appeal and upheld the judgment.

8. On 20 November 2012 the Supreme Court, in cassation appeal proceedings brought by the Construction Police, dismissed the applicant's claims. It found that the applicant had constructed the building on the territory of the hospital without a construction permit by an authorised body, in contravention to Decree no. 5747 of the Presidium of the People's Assembly of 29 June 1978, and had used it for a long time. The actions of the Construction Police for the demolition of the illegal construction were not unlawful, and no damages should be awarded.

9. The applicant also brought proceedings against the Real Estate Registration Office, which had rejected, in 2008 and 2009, his requests for certifying and registering his ownership of the plot of land, on which the applicant's building had once stood. By the Tirana District Court's judgment of 19 July 2012, upheld by the Tirana Appeal Court on 7 October 2013, his claims were dismissed. On 27 July 2020 the applicant's cassation appeal was rejected as inadmissible by the Supreme Court.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 § 1 of the Convention

10. The applicant complained that he had not been notified of the appeal of the University Hospital Centre to the Supreme Court and had not therefore participated in the hearing before the Supreme Court on 27 January 2004.

11. The Court recalls that, for Article 6 to apply, the outcome of the proceedings must be directly decisive for the civil right in question (see *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII). Proceedings on the question whether or not a claim or an appeal is admissible on procedural grounds are not proceedings determining a dispute on civil rights and obligations. The Court notes that the Constitutional Court found in respect of the Supreme Court's 2004 judgment that the subject matter of the proceedings challenging the 2001 demolition order had become moot as that demolition order had not been enforced and had been later superseded by the 2005 demolition order. Furthermore, in its judgment of 27 January 2004 the Supreme Court quashed the lower courts' judgments, finding that the applicant had failed to exhaust an administrative remedy. The subject matter was therefore confined to issues of admissibility of the applicant's action. The proceedings at issue did not involve the determination of the applicant's civil

rights and obligations and Article 6 did not apply (see, among others, *Nicholas v. Cyprus* (dec.), no. 37371/97, 14 March 2000; and *Neshev v. Bulgaria* (dec.), no. 40897/98, 13 March 2003).

12. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

B. Alleged violation of Article 1 of Protocol No. 1

13. The applicant complained under Article 1 of Protocol No. 1 to the Convention that his right to the peaceful enjoyment of his possessions had been violated. He emphasised that his complaint related to the building which he had erected, and not to the plot of land.

14. The Court recalls that Article 1 of Protocol No. 1 does not guarantee the right to acquire property. This provision does no more than enshrine the right of everyone to the peaceful enjoyment of "his" possessions, and that consequently it applies only to a person's existing possessions. Where a person actually possessed a property and was considered its owner for all legal purposes he or she can be said to have had a "possession" within the meaning of Article 1 of Protocol No. 1. "Possessions" can also be assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1. A "legitimate expectation" must be of a nature more concrete than a mere hope, and must be based on a legal provision or a legal act such as a judicial decision. A person who complains of a violation of his or her right to property must first show that such a right existed (see *Zhigalev v. Russia*, no. 54891/00, § 131, 6 July 2006, with further references).

15. Since 1992 there had been a dispute over the applicant's right to the building, which he had erected on the territory of the hospital and used for commercial purposes, resulting in repeated actions on the part of the Tirana University Hospital Centre and the Construction Police to have the building demolished. In the judgment of 20 November 2012 the Supreme Court found that the applicant had constructed the building on the territory of the hospital without a construction permit being issued by an authorised body, in contravention to the relevant legislation, that the demolition had not been unlawful and that no damages should consequently be paid (see paragraph 8 above). The Court cannot but note that the finding that the building was an unauthorised construction built without a construction permit had been first made by the Tirana District Court twenty years earlier. Even though that judgment was quashed on appeal, the appeal court's assessment related to the lawfulness of the applicant's restaurant activity, and not the lawfulness of the

construction (see paragraph 3 above). It could not therefore be considered a basis for the applicant's legitimate rights to the building (compare and contrast *Zela v. Albania*, no. 33164/11, § 78 *et seq*., 11 June 2024).

16. The Court concludes that the applicant cannot, for the purposes of Article 1 of Protocol No. 1, be deemed to have had "existing possessions" or a claim amounting to a "legitimate expectation" in the sense of the Court's case-law (see also *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). The applicant had a hope of having such a "possession" which had too imprecise a basis on which to found a legally-protected legitimate expectation which could give rise to "possessions" within the meaning of Article 1 of Protocol No. 1.

17. Accordingly, this complaint is also incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Alleged violation of Article 13 of the Convention

18. Lastly, the applicant complained under Article 13 of the Convention that he had had no effective remedy for his complaints concerning the demolition of his building as he had received no compensation.

19. Having regard to its findings in paragraph 17 above, the Court finds that the applicant has no arguable claim under Article 13. It follows that this complaint is also incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (see, for instance, *Gavella v. Croatia* (dec.), no. 33244/02, ECHR 2006-XII (extracts)) and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 February 2025.

Olga Chernishova Deputy Registrar	Lətif Hüseynov President