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

THIRD SECTION

DECISION

Application no. 4616/09
Janulla RRAPI
against Albania

The European Court of Human Rights (Third Section), sitting on 20 October 2022 as a Committee composed of:

Andreas Zünd*, President*,
Darian Pavli,
Frédéric Krenc*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 6 January 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The application was lodged with the Court on 6 January 2009 by an Albanian and American national, Janulla Rrapi ("the applicant"), who was born in 1944 and lives in New York and was self-represented in these proceedings.

The applicant complained that her property rights were breached following the authorities' failure to enforce her right of first refusal (*e drejta e parablerjes*) in respect of a two-storey building attributed to her by a decision of 22 September 2003 of the Saranda District Court (hereinafter - the District Court), as amended by the Gjirokastra Court of Appeal on 4 May 2004. The domestic courts were called to rule on competing rights claimed by opposing private parties in the context of the restitution and compensation laws adopted in Albania following the nationalisation of property during the communist regime.

On 8 February 1996 the Saranda Commission on Restitution and Compensation of Properties (hereinafter - "the Commission") confirmed the applicant's and other co-owners' title to a larger plot of land on which the aforementioned building was situated. However, the authorities had then sold

that building and adjacent land plot in a privatisation procedure to a third party, L., whose overlapping property rights over the same plot of land had also been upheld.

Following judicial proceedings related to the compensation and restitution of the relevant property, by a decision of 22 September 2003 the District Court clarified the issue of the overlapping property rights and decided that the sales contract benefiting the third party was to be declared null and void because it had been concluded in violation of the law. The Gjirokastra Court of Appeal upheld that decision on 4 May 2004, having also confirmed that the applicant had a right of first refusal to the building. The Supreme Court dismissed the defendants' appeal on 24 December 2004 and the decision became final. The applicant then asked the authorities to sell her the house in application of the right of first refusal as recognised by the domestic courts.

The authorities remained impassive, and the applicant lodged a claim with the District Court against the Municipality asking to evict the third party from the building and to force the authorities to conclude the sales contract with her. On 4 April 2007 the District Court ordered the Municipality to take a decision in respect of the applicant's request.

On 2 August 2007 the Municipality decided that the building would remain in their ownership to be used for public purposes.

The applicant sued seeking invalidation of the decision of 2 August 2007 and asking to force the authorities to start the privatisation proceedings. On 5 November 2012 the District Court ordered that the authorities should initiate the privatisation of the building in the wake of the decision of the Gjirokastra Court of Appeals of 4 May 2004. In the absence of any appeal, that decision became final.

On 30 May 2013 the authorities signed a sales contract with the applicant, transferring her title to the building.

THE LAW

The applicant complained under Article 1 of Protocol No. 1 that the authorities had failed to enforce her right of first refusal (*e drejta e parablerjes*) to the building in violation of the decision of 4 May 2004 of the Gjirokastra Court of Appeal.

The Court notes that the applicant's pre-emption rights in respect of the building were "claims" rather than "existing possessions" (see *Gavella v. Croatia* (dec.), no. 33244/02, ECHR 2006-XII (extracts)). The Court reiterates in this regard that where a proprietary interest is in the nature of a claim, it may be regarded as an "asset" and therefore a "possession" attracting the guarantees of Article 1 of Protocol No. 1 to the Convention only if there is a sufficient basis for that interest in national law, that is, when the claim is sufficiently established to be enforceable (see *Stran Greek Refineries*

and Stratis Andreadis v. Greece, 9 December 1994, § 59, Series A no. 301-B and *Mladost Turist A.D. v. Croatia* (dec.), § 53, 73035/14, 30 January 2018).

The Court observes that the domestic law, as interpreted by the Supreme Court Joint Benches in decision no. 23 of 1 April 2002 referred to by the Government in their observations, makes the realisation of the right of first refusal conditional on the event of privatisation of a property concerned by that right. Even upon recognition of a right of first refusal, it is the competent local authorities' decision to privatise and sell the building, or the competent domestic courts' decision to specifically order such an action that would lead to an enforceable claim in that respect.

In the present case, the Court notes that the applicant's right of first refusal to the building was confirmed by the Gjirokastra Court of Appeal on 4 May 2004. However, it was the full and sole discretion of the authorities to privatise and sell the building. Depending on whether the disputed property was to be kept for public use or not, the sale was therefore an event which, although possible, was not certain to materialise.

The Court doesn't overlook the fact that the disputed property had been sold by the authorities in an earlier privatisation procedure, which was found null and void in the same proceedings in which the applicant's right of first refusal was recognised. However, such circumstances did not compel the competent local authorities to necessarily proceed again with a fresh privatisation. In 2007 the applicant only obtained a decision by the District Court ordering the Municipality to clarify its position on the privatisation (compare with *Pintilie v. Romania*, 30680/03, §§ 7 and 27-31, 9 December 2008, where the administrative authorities had to implement the court's assessment on the merits of the property claim) and it was not until the final decision of 5 November 2012 that the District Court ordered the Municipality to conclude a sales contract with the applicant and the conditional right of first refusal became enforceable.

The applicant's grievance over the authorities' alleged failure to enforce her right of first refusal to the building thus only concerns the enforcement period which started on 5 November 2012, the date of the final decision of the District Court, and which ended on 30 May 2013 when the sales contract was signed. Such a delay of slightly over six months to enforce a final judicial decision concerning a building appears reasonable under the Court's case-law (see *Schiopu v. Romania* (dec.) [Committee], no. 32785/12, § 18, 2 February 2016).

In view of the above, the Court finds that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 November 2022.

Viktoriya Maradudina Acting Deputy Registrar	Andreas Zünd President