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

THIRD SECTION

DECISION

Application no. 4607/09
Faik TOSHKËZI
against Albania

The European Court of Human Rights (Third Section), sitting on 2 July 2024 as a Committee composed of:

Ioannis Ktistakis*, President*,
Darian Pavli,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 4607/09) 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 13 January 2009 by an Albanian national, Mr Faik Toshkëzi ("the applicant"), who was born in 1965 and lives in Tirana;

the decision to give notice of the complaint under Article 6 § 1, concerning the length of non-enforcement of a final court decision to the Albanian Government ("the Government"), represented by their then Agent, Mrs A. Hicka, 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 the length of execution of a domestic judgment.

2. On 20 March 1995 the Lushnja Restitution and Compensation of Properties Commission ("the Commission") dismissed the applicant's brother's claim for the recognition and restitution of their grandfather's property on the grounds that the land in question was agricultural land.

3. The applicant's brother challenged that decision and on 16 January 1996 the Lushnja District Court ("the District Court") recognised a property

title of the applicant and other heirs of the applicant's grandfather, and ordered the Commission to recognise them as co-owners of a plot of land measuring 40,000 square meters (sq. m) situated in Golem, Kavaja. Those proceedings were based on Law no. 7698/1993 On property restitution and compensation, although no decision was taken as regards the exact manner of restitution of or compensation for the land. On 7 June 1996 the District Court's decision became final.

4. On 30 April 2002 the District Court issued enforcement writ for its 1996 decision. The applicant requested the bailiff's office to enforce it with the Immovable Property Registration Office and the Commission. On 26 September 2002 the bailiff's office terminated the enforcement proceedings since the claimed title could not be registered in the Land Registry.

5. On 1 November 2002 the District Court partially allowed the applicant's claim against the bailiff's office. It held that the 1996 decision did not provide for the restitution of the plot of land in question, therefore it could not be registered in the Land Registry in the name of the applicant and the other heirs. Nevertheless, the District Court allowed the claim in the part concerning the enforcement proceedings regarding the Commission's obligation to recognise their property right and ordered the bailiff to act on it.

6. On 7 April 2004 the bailiff's office dismissed another request of the applicant, of unknown date, on the grounds that the District Court's decision was non-enforceable. The applicant did not appeal against that decision.

7. Neither the applicant nor the other heirs have submitted any requests for the enforcement of the 1996 District Court's decision, either to the Commission or its succeeding institutions, the Restitution and Compensation of Properties Agency (RCPA) and the Agency for the Treatment of Property (ATP) as provided under Law no. 9235/2004 and Law no. 133/2015.

8. On an unspecified date in 2004 the applicant and the other heirs brought a civil claim seeking the annulment of the privatisation of a brick factory, built partly on the plot of land in question. On 28 October 2004 the Tirana District Court dismissed that claim, finding that the plaintiffs did not have legal standing, since they did not have an ownership title to the plot. That court held that there was no decision of the Commission to restore the land to the plaintiffs. That decision was upheld by the Tirana Court of Appeal and the Supreme Court on 15 March and 23 December 2005, respectively.

9. On 13 November 2011 the District Court dismissed the request for interpretation of its 1996 decision seeking recognition of the ownership title over the 40,000 sq. m plot of land and/or the heirs' right to first refusal, finding that the 1996 decision did not address such issues. That decision was upheld by the Vlora Court of Appeal and the Supreme Court on 4 December 2012 and 15 October 2015, respectively.

10. According to the parties, there have been no new developments in the case after that.

RELEVANT DOMESTIC LAW

11. The relevant domestic law concerning the restitution and compensation of property has been described in detail in, *inter alia*, the judgments of *Gjonbocari and Others v. Albania* (no. 10508/02, §§ 36-43, 23 October 2007) and *Manushaqe Puto and Others v. Albania* (nos. 604/07 and 3 others, §§ 23-53, 31 July 2012).

12. An overview of relevant domestic law and practice concerning Law no. 133/2015 of 5 December 2015 On the Treatment of Property and Finalisation of the Property Compensation Process ("the 2015 Property Act") is presented in the case of *Beshiri and Others v. Albania* ((dec.), nos. 29026/06 and 11 others, §§ 29-109, 17 March 2020).

THE COURT'S ASSESSMENT

13. The applicant complained under Article 6 § 1 of the Convention about the length of enforcement of the District Court's decision of 16 January 1996, claiming that to date the Commission had not issued any decision in his case.

14. The Government contended that for the applicant to obtain a final decision on his recognised ownership rights, he had to institute administrative proceedings before the Commission. The Commission would subsequently decide whether to grant him restitution of the land in full or in part, or any other form of compensation as provided for by law. The Government argued that the applicant failed to follow the proper legal procedure for enforcing the decision at issue.

15. The applicant claimed that he had exhausted all available courts' proceedings.

16. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a "hearing" for the purposes of Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Stoyanov and Tabakov v. Bulgaria (no. 2)*, no. 64387/14, § 47, 7 December 2021).

17. The general principles on exhaustion of domestic remedies have been summarised in *Vučković and Others v. Serbia* (preliminary objection) ([GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), and *Gherghina v. Romania* ((dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015).

18. In the above-cited case of *Beshiri and Others*, the Court held that the 2015 Property Act had been designed to address the issue of enforcing former owners' right to compensation in an effective and meaningful manner, taking account of the Convention requirements, and that the 2015 Property Act applied to all individuals who had lodged an application with the Court before the entry into force of the 2015 Property Act (see, in particular, §§ 215

and 217; see also *Ruçi and Bejleri v. Albania* (dec.) [Committee], nos. 56937/10 and 191 others, §§ 7-14 and 21 et seq., 20 April 2021).

19. The Court notes that the District Court's decision of 16 January 1996 recognised the applicant's inherited rights over the 40,000 sq. m plot of land, but did not take any position about the exact form of restitution or compensation of that property. According to the legal provisions in force at the time, former owners of properties expropriated by the Communist regime, or their legal heirs, were entitled to claim ownership of the original properties. Once ownership was determined they were entitled to either have the original immovable property restituted, or to be awarded compensation in kind (maximum of 10,000 sq. m), or in value, if certain conditions were met (see *Gjonbocari and Others*, cited above, § 37). It was the Commission's duty to verify if these conditions were met and to decide respectively.

20. The Court has previously accepted that a successful litigant may be required to take certain procedural steps in order to recover the judgment debt (see *Shvedov v. Russia*, no. 69306/01, § 32, 20 October 2005). The case materials do not indicate that the applicant has taken effective steps to ensure the enforcement of the court decision. In particular, he had not lodged a request with the Commission for the restitution of or compensation for the property at issue, in the 28 years since the District Court's decision. As the domestic court decision did not indicate a method of restitution or compensation for the land, such request would have given the domestic authorities an opportunity to determine the proper method of execution. Taking into consideration the specifics of the property restitution legislation, requiring the applicant's active participation by applying to the Commission did not place on him an excessive or unreasonable burden. The Court considers that the applicant failed to provide any justifiable reason for his omission to submit such a request.

21. Finally, the applicant was required, under Article 35 § 1 of the Convention, to avail himself of the new domestic remedies introduced by the 2015 Property Act in compliance with the relevant domestic rules. The applicant has either failed to exhaust domestic remedies or failed to inform the Court of any action he might have taken in this regard. The Court found no exceptional circumstances capable of exempting the applicants from the obligation to exhaust domestic remedies in the cases of *Beshiri and Others* (cited above, §§ 216-18) and *Ruçi and Bejleri* (cited above, §§ 27-28), and equally sees no reasons to depart from that conclusion in the present case.

22. Accordingly, the application 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 5 September 2024.

Olga Chernishova
Deputy Registrar

Ioannis Ktistakis
President