

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

THIRD SECTION

DECISION

Application no. 21636/05
Zhaneta XHACKA against Albania
and 3 other applications
(see appended table)

The European Court of Human Rights (Third Section), sitting on 10 November 2022 as a Committee composed of:

Ioannis Ktistakis*, President*,

Darian Pavli,

Andreas Zünd*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

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

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

The list of applicants and the relevant details are set out in the appended table.

The applicants complained that there had been a breach of Article 6 § 1 and Article 13 of the Convention and of Article 1 of Protocol No. 1, on account of the authorities' failure to enforce final decisions establishing their right to receive compensation *in lieu* of the restitution of properties (see the Appendix for details).

## THE LAW

### A. Joinder of the applications

Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

## B. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Article 13 of the Convention

### *1. Applications nos. 21636/05 and 14250/07*

The applicant in application no. 21636/05 complained about the non-enforcement of the final decision upholding her right to compensation *in lieu* of the restitution of a land plot. The applicants in application no. 14250/07 complained about the non-enforcement of the final administrative decision recognising their rights to first refusal (*të drejtën e parablerjes*) and to payment of compensation in State bonds in respect of two plots of land (see the Appendix for details).

The Court observes that in 2012 it adopted a pilot judgment concerning issues similar to the complaints described above (see *Manushaqe Puto and Others v. Albania,* nos. 604/07 and 3 others, 31 July 2021*)*, having found a breach of Article 6 § 1 of the Convention, as well as of Article 1 of Protocol No. 1 on account of the prolonged non-enforcement of final decisions awarding compensation, and a violation of Article 13 of the Convention owing to the lack of an effective domestic remedy in this regard. In response to that pilot judgment domestic authorities introduced a new remedy in the 2015 Property Act and the Court found that new compensatory remedy effective (see *Beshiri and Others v. Albania* (dec.), nos. 29026/06 and 11 others, §§ 30-109 and §§ 178-215, 17 March 2020, and *Ruçi and Bejleri v. Albania* (dec.) [Committee], nos. 56937/10 and 191 others, §§ 7-14 and 21 et seq., 20 April 2021). Furthermore, the Court held that the remedy introduced by the 2015 Property Act was effective and was applicable to individuals who had lodged applications with the Court before the entry into force of this Act (see *Beshiri and Others*, cited above, §§ 215-22; *Ruçi and Bejleri*, cited above, §§ 22-24).

No specific issues were raised by the applicants in the present case that would call into question the effectiveness of the remedy provided for by the 2015 Property Act and the conclusions of the above-mentioned case-law, including paragraph 222 of *Beshiri and Others* (cited above), referring to the conditions which the authorities ought to satisfy in order for the remedy to continue to remain effective.

Turning to the present applications, it appears from the documents provided to the Court that the applicants did not apply before the domestic authorities for the enforcement of their respective final decisions and did not seek financial evaluation of their rights and the form of compensation based on the 2015 Property Act. The Court recalls in that respect that according to the provisions of the Property Act, final decisions that do not specify the quantum of the compensation to be paid in lieu of restitution should be subject to financial evaluation and administrative decisions in that respect could be challenged in court (see *Beshiri and Others*, cited above, §§ 47 et seq.).

The applicants were or are, accordingly, required, under Article 35 § 1 of the Convention, to avail themselves of the new domestic remedies introduced by the 2015 Property Act in compliance with the relevant domestic rules. The applicants have either failed to exhaust domestic remedies or failed to inform the Court of any action they had taken in this regard. As regards the latter, the Court recalls that it has considered that even if the applicants applied to the Agency for the Treatment of Property (ATP), but the latter did not carry out a financial evaluation due to the lack of required documentation or on account of other reasons, the applicants were similarly required to follow the relevant domestic procedures. The Court found no exceptional circumstances capable of exempting the applicants from the obligation to exhaust domestic remedies in the aforementioned cases (see *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.

The Court therefore considers that the applicants' complaint under Article 13 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

It follows that the applicants' complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

*2. Applications nos. 58058/08 and no. 22225/09*

The applicants in applications nos. 58058/08 and 22225/09 complained about a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. They argued that the authorities had recognised their property rights, having acknowledged the legal fact of their ancestors' ownership right in the final judicial decisions taken pursuant to Article 388 of the Civil Procedure Code ("CPC"). In application no. 22225/09 the applicant also complained in substance that his title to a plot of land (533 sq. m) had been confirmed by a decision of the Vlora Regional Commission and that he was to be compensated in one of the forms provided for by the domestic law.

The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision.

As to the claims of non-enforcement of the final court decisions acknowledging the existence of the legal fact of the ancestors' property rights, but not providing for restitution or compensation, the Court has already held that such court decisions, taken pursuant to Article 388 of the CPC, are of a declaratory nature and do not confer on a claimant property rights, a 'legitimate expectation' to the restitution of the property in question or, in general, any other rights whatsoever (see *Bici v. Albania,* no. 5250/07, §§ 51-52, 3 December 2015, and *Ruçi and Bejleri*, cited above, § 30).

Turning to the circumstances of the present case, the Court notes that following the above-mentioned court decisions, the proceedings concerning

the recognition of the applicants' own property rights are still pending before the domestic authorities, including in application no. 22225/09, after the re-opening initiated by the applicants with respect to one plot of land (see Appendix for details). No enforceable final decision has yet been adopted in these proceedings. Until then, the combination of the aforementioned judicial decisions of a declaratory nature and of the pending administrative proceedings cannot confer on the applicants any rights protected under Article 1 of Protocol No.1 (see *Gjergo and Babicenko and Others v. Albania* (dec.) [Committee], nos. 13618/10 and 76 others, § 26, 8 September 2020).

It follows that these complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention,

Consequently, the complaints under Article 6 § 1 of the Convention about the non-enforcement of the domestic decisions of a declaratory nature are manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see *Ruçi and Bejleri*, cited above, §§ 29-30).

As for the remaining part of the complaint concerning the land plot (533 sq. m) in application no. 22225/09, in respect of which the right for compensation was upheld by the administrative decision and which was not concerned by the pending proceedings reopened by the applicants, the applicant, for the same reasons as explained above for applications nos. 21636/05 and 14250/07, is 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. It follows that this part of application no. 22225/09 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### C. Remaining complaints

As to the other complaints raised by the applicants, the Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that these complaints must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Decides* to join the applications;

*Declares* the applications inadmissible.

Done in English and notified in writing on 1 December 2022.

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| Viktoriya Maradudina<br>Acting Deputy Registrar | Ioannis Ktistakis<br>President |

# APPENDIX

## List of applications raising complaints under Article 6 § 1 of the Convention (non-enforcement or delayed enforcement of domestic decisions)

| No. | Application no.<br>Date of introduction | Applicant's name<br>Year of birth<br><br>Representative's name and location | Description of final domestic decisions | Enforcement details |
|---|---|---|---|---|
| 1. | 21636/05<br>25/05/2005 | **Zhaneta XHACKA**<br>1934<br><br>Rakipi Arben<br>Tirana | By decision no. 7 of 03/04/1997, the Tirana Restitution and Compensation Commission ("Tirana Commission") recognised the applicant's and two other heirs' property right over a plot of land measuring 1,299 sq. m. Having considered that this plot of land was occupied, it decided that this property right should be compensated in one of the forms provided for by Article 16 of the 1993 Property Act.<br><br>By judgment no. 3820 of 07/10/2002, the Tirana District Court granted the applicant's petition and annulled the above decision of the Tirana Commission. It decided that a part of the plot of land, measuring 365 sq. m., since it was occupied, should be compensated. This judgement was upheld by decision no. 794 of the Tirana Appeal Court on 22/06/2004 and by final decision no. 404 of the Supreme Court on 28/02/2005. | According to information in the file, the applicant did not apply to the Agency for Treatment of Property established by the 2015 Property Act (ATP). Even assuming the contrary, the ATP has not carried out the financial evaluation of the decision. |
| 2. | 14250/07<br>26/03/2007 | **Adriana QAMA (Çollaku)**<br>1954<br><br>**Xhevair QAMA**<br>1955 | By decision no. 33 of 26/12/1995, the Skrapar Restitution and Compensation Commission has recognised the applicants' property right over two plots of land measuring 1,500 sq. m. and 1900 sq. m. respectively. Since the land plots were considered occupied, the Commission decided to award the right of first refusal for the first plot of land, which was occupied by an electric power centre and later, since 2003, by the hydropower of Bogova. For the second plot of land measuring 1,900 sq. m., the Commission decided that compensation in the amount of 25,650 ALL to be paid to the applicants in State bonds. | According to information in the file, the applicants have not applied to the ATP. Even assuming the contrary, the ATP has not carried out the financial evaluation of the decision. |
| 3. | 58058/08<br>30/01/2007 | **Ilir JELLA**<br>1971<br><br>**Zamira JELLA** | By a decision of 30/05/1997, the District Court recognised, as a legal fact, the existence of the applicants' ancestors' property rights over a plot of land measuring 290,700 sq. m (*vendim për vërtetim i faktit juridik*). | According to information in the file, the applicants' application is still pending before the ATP. |

| No. | Application no.<br>Date of introduction | Applicant's name<br>Year of birth<br><br>Representative's name and location | Description of final domestic decisions | Enforcement details |
|---|---|---|---|---|
| | | 1952<br><br>**Xhemali NOVA**<br>1949<br><br>**Besnik JELLA**<br>1975<br><br>**Firdes ÇIÇIKU**<br>1946<br><br>Enise Kurteshi<br>Tirana | The applicants lodged an application with the regional Agency for Restitution and Compensation of Property ("the Agency") on 26 September 2007, seeking restitution of their ancestors' original property. Their application was registered by the Agency. | |
| 4. | 22225/09<br>21/04/2009 | **Virjon BEQARAJ**<br>1965 | By a decision of 4 May 1995, the Vlora District Court recognised, as a legal fact, the existence of inherited property rights over a plot of land measuring 1,120 sq. m (*vërtetim fakti juridik*).<br><br>On 14 June 1995 the Vlora Restitution and Compensation Commission ("the Regional Vlora Commission") recognised the applicant's property rights in respect of a plot of land measuring 680 sq. m (147 sq. m of which were restored, while for 533 sq. m, he had to be compensated); no other decision was taken in respect of the remaining plot of land (440 sq. m).<br>The applicant requested the reopening of the administrative procedure, in particular as regards this remaining plot of land of 440 sq. m. A decision of 23 October 2008 issued by the Commission was annulled by the Property Restitution and Compensation Agency on 9 October 2009, and the case was sent for fresh examination before the Regional Vlora Commission. | According to information in the file, the applicant's application is still pending before the ATP. |