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

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Court endorses new Albanian scheme for compensating former owners as an effective remedy

The case of **Beshiri v. Albania (application no. 29026/06) and 11 other applications** concerned complaints about a prolonged lack of enforcement of final decisions awarding compensation for property expropriated during the communist era.

In its decision in the case the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The Court in particular examined in detail the new domestic scheme for dealing with the many outstanding claims over decades-old compensation decisions which had not been enforced.

That scheme, which was brought into effect by the 2015 Property Act, was a response to the Court's pilot judgment in 2012 in the case of *Manushaqe Puto and Others v. Albania*, which had found violations of Article 6 § 1 (right to a fair trial), Article 1 of Protocol No. 1 (protection of property) to the Convention and Article 13 (right to an effective remedy) and had given general recommendations on the steps needed to deal with the long-standing issue in question, one which had generated many cases in Strasbourg.

The Court concluded that the mechanism introduced by the 2015 Property Act was an effective remedy which the applicants had to use, even if their applications had been lodged before the Act had come into force. It declared their applications inadmissible for non-exhaustion of domestic remedies, as premature, or because the applicants were no longer victims of a violation of their rights.

The Court added a key proviso: it noted that the property valuations used by the 2015 Property Act might result, in some cases, in much lower levels of compensation than under previous legislation. To avoid such an excessive burden on this category of former owners, compensation under the new remedy therefore had to be at least equal to 10% of the value to which former owners would be entitled if the financial evaluation were to be carried out by reference to the current cadastral category of the expropriated property.

Principal facts

The case concerned the application Agim Beshiri and Others against Albania and 11 other applications (application nos. 29026/06, 3165/08, 56956/10, 29127/11, 6311/12, 8904/12, 5915/14, 53846/14, 57152/14, 67059/14, 72755/14, and 537/15). The applicants are all Albanian nationals, with the exception of three U.S. nationals in one of the applications.

The applicants have all received final administrative decisions recognising their right to compensation in lieu of the restitution of properties which were confiscated or nationalised by the former communist regime. However, those final decisions have never been enforced in full.

Facing many similar applications, the Court in 2012 issued a pilot judgment in the case of *Manushaqe Puto and Others v. Albania*, finding a breach of Article 6 § 1 and Article 1 of Protocol No. 1, owing to the prolonged non-enforcement of final compensation decisions. It also held, under Article 13, that there was no effective domestic remedy for adequate and sufficient redress.

Under Article 46 (binding force and enforcement) of the Convention, the Court recommended measures which Albania had to take to deal with the issues it had found in the pilot judgment. In

2015 Albania's Parliament passed the Treatment of Property and Finalisation of the Property Compensation Process Act ("the 2015 Property Act"). The Act was intended, among other things, to finalise the examination of claims related to confiscated property and to regulate and award compensation.

In an explanatory report to the Act, the Government stated that only 2.5% of the process of restitution and compensation had been completed since 1993. It also estimated that given the budget funding and the provisions of the previous law, it would take an extremely long time and around 814 billion Albanian leks (ALL) (about 6.5 billion euros (EUR)) to resolve the more than 26,000 decisions where the right to compensation had been recognised but nothing had been paid.

The 2015 Property Act was therefore aimed at creating a feasible and workable scheme to ensure equal treatment of property owners and solve the long-standing issue. Among other things, the law created the Agency for Treatment of Property ("the ATP") to deal with former owners' claims, determine the size of compensation, and provide a mechanism of appeal to a court. The process of compensation is to be completed over 10 years.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 and Article 13 of the Convention as well as Article 1 of Protocol No. 1 to the Convention, the applicants complained about the authorities' failure to award them compensation in accordance with final domestic decisions and of the lack of an effective remedy for that issue.

The applications were lodged with the European Court of Human Rights between 2006 and 2015.

The decision was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,
Marko Bošnjak (Slovenia),
Valeriu Griţco (the Republic of Moldova),
Ivana Jelić (Montenegro),
Arnfinn Bårdsen (Norway),
Darian Pavli (Albania),
Peeter Roosma (Estonia)

and also Stanley Naismith, *Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1 and Article 13

The Government submitted that the 2015 Property Act provided an adequate and accessible domestic remedy for the applicants. The Government had allocated significant resources to the Compensation Fund, which was established under the Act and provided compensation to former owners, and had worked steadily through the claims after the law had come into effect, the ATP having completed the financial evaluation of more than 25,000 property decisions.

The applicants argued, among other things, that they should not have to use a remedy which had been introduced several years after they had applied to the Court. They also submitted that the retroactive application of the 2015 Property Act had breached the principle of legal certainty. In their view, the expected compensation would also be much lower than under previous legislation as it would be based on cadastral categories at the time of expropriation rather than the current cadastral category of the property.

The Court noted that the applications were the first to be examined after the introduction of the new remedy in the 2015 Property Act. It therefore had to carry out a detailed examination of the

Government's measures to determine whether the Act was an effective remedy which the applicants had to use. The term "effective" meant that a remedy had to be adequate and accessible.

Appropriateness of the form of redress

The Court observed that States had wide discretion ("wide margin of appreciation") on the scope of property restitution and that it should not attempt to impose an obligation on the respondent State to return all properties which had been expropriated, nationalised or confiscated.

As directed in *Manushaqe Puto and Others*, the Government had provided for "alternative forms of compensation". The 2015 Property Act had also taken account of the fact that unauthorised buildings had been constructed on expropriated land and had made provision for the recognition of former owners' right to compensation where restitution was impossible. If appropriate compensation was paid in line with the Court's case-law, there was in general no unfair balance between the parties' interests.

Furthermore, under the 2015 Property Act individuals could take court action related to various aspects of the decision-making process, including ATP decisions on property rights and the right to compensation; any failure by the ATP to determine a pending property claim or financial compensation within a three-year time-limit; and against ATP decisions on the amount of compensation.

However, the Court emphasised that, given the reasonable-time requirement, consistent judicial practice and expeditious processes were required to deal with almost 7,000 pending property claims.

The Court also noted that the ATP could not call into question the finality of decisions where no compensation had been set, which would be subject to a financial evaluation to determine the actual amount. Decisions where a sum had been set were upheld under the law and indexed.

As the right to compensation thus remained unchallengeable and indisputable, the Court did not accept the argument that the 2015 Property Act gave rise to a breach of the principle of legal certainty as far as the right to compensation was concerned.

The Court concluded by reiterating that domestic authorities enjoyed a wide margin of appreciation in the choice of forms of redress for breaches of property rights. It found that the effectiveness of the remedy was not affected by the form of redress provided for by the 2015 Property Act.

Adequacy of the compensation

The Court noted that the method of calculation of compensation under the new law could lead to considerably lower levels of compensation than under previous legislation for certain categories of former owners as its calculation was based on cadastral classification at the time of expropriation rather than on the current cadastral classification of the property. That could be seen as a significant interference with the prior expectations to receive full compensation and the Court had to examine whether that was justified.

It observed that Albania had been dealing with the issue of property restitution and compensation for a long time. Furthermore, the Constitutional Court had found that the new scheme pursued the public interest of resolving property issues within a reasonable time-frame of 10 years at a sensible cost, and at establishing "social peace".

The scheme was also aimed at implementing the Court's 2012 pilot judgment and to resolve a structural problem which had lasted since 1993 and affected at least 26,000 claims for compensation. The old system, according to the available information, would have required a very long time and great cost to complete the restitution and compensation process. The approach taken by the authorities thus did not appear unreasonable or disproportionate.

The Court held that using the original cadastral category of the expropriated property as a basis for financial evaluation was not *per se* arbitrary. However, the new remedy could only be considered effective if the aggregate amount of compensation – irrespective of its form – amounted to at least 10% of the value calculated by reference to the current cadastral category of the expropriated property.

The Court also rejected the applicants' arguments that the new scheme amounted to discrimination given that other people had received higher compensation under the previous legislation or under Court judgments. Indeed, the difference in treatment had been due to an intervening change in legislation, itself due to the Court's pilot judgment, and could not therefore be regarded as discriminatory.

Nor had the Court been made aware that the Government's decision to reduce the cap on financial compensation to ALL 10 million (EUR 81,100) from ALL 50 million (EUR 403,763) had resulted in a situation of significant legal uncertainty or a general difference in treatment. However, it noted that frequent changes to legislation, including implementing decisions, could contribute to a general lack of legal certainty, which would be taken into account in assessing the State's conduct in the future.

It added that as the payment of compensation was staggered over 10 years, the amount ought to be indexed to inflation until final payment in order for the remedy to continue to remain effective.

The Court concluded that subject to compliance with the 10% minimum threshold for the amount of compensation, no issues arose as regards the adequacy of compensation provided for by the 2015 Property Act that would put into question the effectiveness of the remedy in that respect.

Accessibility and efficiency of the remedy

Government statistics showed that progress had been made in enforcing decisions, evaluating compensation and examining new claims; the Government had allocated significant budget resources for financial compensation; and it had enlarged the Land Fund used to compensate former owners, even if further use of land rather than financial resources would reduce the final bill and allow owners to benefit from increases in value.

The law had established the ATP to examine property claims and recognise property rights, including the right to compensation. Indeed, it had determined the financial evaluation for almost every application in the present case. The new system also included a second, fully judicial procedure which could result in a legally binding court decision.

It found the applicants' arguments that such court procedures would be overly long to be speculative, while noting that any excessive length of proceedings could be subject to its review in the future and have a bearing on the overall assessment of the effectiveness of the remedy.

Furthermore, the applicants could have complied with the requirements of the 2015 law rather than automatically questioning its effectiveness. The Court found that it would not be fair and reasonable to dispense them from using the remedy, which could otherwise lead to an unjustified difference in treatment compared with former owners who had complied with the new requirements.

The 10-year time-limit to pay compensation in full was also acceptable in the exceptional circumstances of the case and would not by itself call into question the effectiveness of the remedy or contravene the Convention's reasonable-time requirement. There was also a potential separate remedy under the Code of Civil Procedure for distress and frustration caused by long delays in enforcing final decisions, although a simplified scheme for awards for non-pecuniary damage to former owners might be more appropriate.

The Court held that no issues thus arose over the accessibility and efficiency of the new remedy.

Conclusion on effectiveness

Having regard to its considerations on the matter and the adoption of a resolution by the Committee of Ministers of the Council of Europe to close the examination of the *Manushaqe Puto and Others* pilot judgment, the Court found that the remedy introduced by the 2015 Property Act was effective, within the meaning of Article 35 § 1 and Article 13 of the Convention.

Obligation to use the domestic remedy

The Court noted that the 2015 Property Act was a response to *Manushaqe Puto and Others* and that it would be in line with the spirit and logic of that judgment that applicants had first to seek redress that way.

Furthermore, the Act applied to all individuals who had lodged an application with the Court before the law had come into force. Lastly, the Court's task would not be best achieved by deciding on such cases in the place of the authorities or considering them in parallel with domestic proceedings.

The Court concluded that the applicants in application nos. 29026/06, 3165/08, 56956/10, 29127/11, 5915/14, 53846/14, and 537/15 were required to use the domestic remedies of the 2015 Property Act. There were no exceptional circumstances to exempt them from the obligation to exhaust domestic remedies and their complaint under Article 1 of Protocol No. 1 had to be rejected.

It also held that it would be premature to deal with the complaints by the applicants in applications nos. 8904/12, 6311/12, 67059/14 and 72755/14 as domestic court proceedings were still ongoing. Their complaint under Article 1 of Protocol No. 1 had thus also to be rejected. It found that the applicants in application no. 57152/14 could no longer claim to be victims of breaches of their Convention rights as they had received full compensation.

In view of those findings the Court held that the applicants' complaint under Article 13 of the Convention was manifestly ill-founded and had to be rejected.

It noted that it could review its position in the future depending, in particular, on the authorities' capacity to demonstrate that the new remedies continued to comply with the Convention requirements in practice, including their ability to deal with almost 7,000 pending property claims in an effective manner; pay compensation of no less than 10% of the value of the property calculated by reference to the current cadastral category of the expropriated property; and provide for indexation of compensation until final payment.

Article 6

The applicants complained of a breach of Article 6 § 1 on account of the authorities' failure to enforce final decisions on receiving compensation, and owing to the retroactive application of the 2015 Property Act to final decisions which were *res judicata*.

The Court considered that given that the 2015 Property Act provided the applicants with a right to an effective remedy and that the applicants have or had access to a court or obtained full compensation, their complaint of an alleged failure to enforce the final compensation decisions was manifestly ill-founded and had to be rejected.

The Court also found in particular that a final decision issued under the old system which had provided for compensation "by one of the ways provided by law" could not be said to have produced a *res judicata* effect on either the precise form of compensation or the amount.

Furthermore, the retroactive effect of the 2015 Property Act was not aimed at particular individual applications, but had been a global response to the Court's pilot judgment, which was aimed at a lasting solution to previous long-standing failings to enforce final decisions. The Court thus considered that the 2015 Property Act's retroactive effect had a clear public interest justification. The second complaint under Article 6 thus also had to be rejected as manifestly ill-founded.

Lastly, the Court unanimously decided to join the applications and declare them inadmissible.

The decision is available only in English.

Press contacts
Journalists can continue to contact the Press Unit via echrpress@echr.coe.int

Patrick Lannin
Tracey Turner-Tretz
Denis Lambert
Inci Ertekin