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Meeting: 1172 DH meeting (4-6 June 2013)

Item reference: Action report (04/03/2013)

Communication from Albania concerning the case of Mullai and others against Albania (Application No. 9074/07)

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Réunion : 1172 réunion DH (4-6 juin 2013)

Référence du point : Bilan d'action

Communication de l'Albanie relative à l'affaire Mullai et autres contre Albanie (requête n° 9074/07)
(*anglais uniquement*).



ACTION REPORT

Execution of the judgment of the European Court of Human Rights
Mullai v. Albania (9074/07), judgment of 23 March 2010, final on 23 June 2010,
Judgment on "just satisfaction"- (striking out) of 18/10/2011.

I. Case description

1. The case concerned a violation of the principle of legal certainty in that the applicants, who are owners of a plot of land in Tirana and a property development company with which they have a contractual relationship, could not obtain a conclusive judicial determination of the validity of a building permit which had been granted, then annulled and reinstated successively in several series of proceedings (violation of Article 6§1).

2. The case also concerned a violation of the applicants' right to the peaceful enjoyment of their possessions in that they had demolished a villa situated on the plot of land so as to develop the site, on the basis of the initial building permit which was subsequently rescinded (violation of Article 1 of Protocol No. 1).

3. The European Court found that the manner in which the domestic authorities proceeded was not consistent with the state's obligation to deal with the applicants' situation in as clear and coherent a manner as possible, and that there had been a continuous lack of clarity and certainty. With respect to the applicants' property rights, the Court concluded that the interference with the rights of the applicant company and of the individual applicants, who had demolished the villa on the strength of the building permit issued by the authorities, could not be considered lawful within the meaning of Article 1 of Protocol No.1.

II. Individual measures

1) Payment of just satisfaction Tekno projekt

Pecuniary damage	Non Pecuniary damage	Costs and expenses	Total
	5 000 euro	14 000 euro	19 000 euro
Paid on dated 1/07/2009 ¹			

2) Payment of just satisfaction Mullai & others

Pecuniary damage	Non Pecuniary damage	Costs and expenses	Total
	15 000 euro		15 000 euro
Paid on dated 1/07/2009 ²			

¹Based on the Decision of Council of Ministers no. 318, date 16.05.2012, by Payment Order no.336, date 28.05.2012

²Idem footnote 1

2) Other individual measures

4. In its judgment on just satisfaction of 18/10/2011, the European Court took note of the Government's unilateral declaration that the respondent State should extend the validity of the applicant company's building permit by two years from the date on which this judgment becomes final and that it should ensure the uninterrupted continuation of construction work during that period.

5. The Albanian authorities issued the Decision of Council of Ministers no.318, 16.05.2012 'For the execution of ECtHR judgment on the case "Mullai & others v Albania". Complying with the decision, Municipality of Tirana came up with the Order no.8, 27.08.2012 to grant the extension for two years of building permission validity as approved by decision no.766, date 22.12.1998 of the Council of Regulation of Territory of Tirana Municipality. The building permit granted the right for construction of an 16 floor building, located in the street "Donika Kastrioti", over the property of Mullai family and in favor of the constructing company "Tekno-Project". According to the terms set out in the Order no.8/2012, the urban conditions shall remain those as determined in the building permission as approved by the Council of Regulation of Territory of Municipality of Tirana. The Supervising Directory of Territory Development shall supervise the construction carried out during the granted period. The approved building plan attached to this permission shall be applied without making any changes, only if the Municipality decides so, according to the legal criteria into force. The General Department for Planning and Development of the Territory shall be in charge to attend the implementation of this Order.

III. General measures

6. The Court noted that the Contracting States have the obligation to organize their legal system so as to allow the courts to identify related proceedings and, where necessary, avoid the adoption of discordant judgments. It considers that the underlying problem in the present case has resulted from the multiplicity of legal proceedings, which could have been better managed so as to contribute to the speedy clarification of the issues involved. For the Court, the existence of multiple parallel and interrelated proceedings raising substantially the same legal issue cannot be considered to be in compliance with the rule of law. By giving a number of contradictory decisions at several levels of jurisdiction the Albanian authorities demonstrated a shortcoming in the judicial system for which they are responsible (similarities with Gjonbocari and Marini cases). Moreover, the manner in which the other domestic authorities (the construction police) proceeded was far from consistent with the State's obligation to deal with the applicants' situation in as clear and coherent a manner as possible and with utmost consistency.

1) Information on training of judges is needed.

7. The judges are provided initial and continuous training organized by the School of Magistrates of Albania on periodical basis. Such training has been programmed for the period 2012-2015 and intends to provide a broad coverage of the problematic according to the ECtHR judgments, including the right for a fair trial under article 6 of the European Convention.

8. The judgment "Mullai v. Albania", has been subject of discussions in other events as

round tables, seminars organized by the State Advocacy, in cooperation with other stakeholders.

2) Dissemination of the judgment

9. The judgment "Mullai v. Albania", has been translated in official language, published in the official gazette and disseminated to all the relevant institutions like as to the Albanian Supreme Court and other lower courts, as well as to the Municipality of Tirana.

3) Information on other general measures envisaged is awaited.

10. Many of the issues raised in the judgment of ECtHR on case Mullai have found redress in the Decision of Constitutional Court no. 29, dated 12.6.2006, like as:

a) The review and approval of building permits, which is regarded as planning and urban management issue, falls under the full and exclusive competence of local government;

b) CRT is a specialized body exercising its functions and powers of decision-making in the field of planning and urban management under the authority of local government

c) The right to repeal against illegal acts issued by CRTs is competence of judicial bodies;

d) The right to decide to demolish the volume of works constructed outside the approved project falls under the competencies of CRT local government.

e) Control over enforcement of technical standards of territory is under the jurisdiction of the Construction Police acting as an independent body from the central government, but under the authority of the local government.

f) It declared as incompatible with the constitution the article 9, 10, 19, 54 of the provisions of Law no. 8405, dated 17.09.1998 "On Urban Planning"³.

4) The new legal framework

11. Upon entry into force, dated 30.09.2011, of Law no. 10119, dated 23.04.2009 "On Territorial Planning", as amended, was repealed in its entirety Law no. 8405 nr. datë 17.09.1998 "On urban planning" (*which entered into force on 16.10.1998 , currently abrogated*), as amended.

³ More specifically, Article 19 of Law no. 8405 provides for the composition of the CRT of the Municipality of Tirana with a qualified majority (2/3) of representatives of the central government and the minority of 1/3-s of local government members. This composition has been made because of jurisdictional dispute between central and local government.; Further, Article 9, Law no. 8405, reads as CRTA competence, the approval of building permits for important areas in city centers, urban studies ; Article 10 of Law 8405, entitles CRT to revoke the unlawful decisions of municipal CRTs. This competence was seen as interference in the competence of local government, which had approved building permission in this case.

Also, due to the dispute that represented the conception of the Construction Police as a body under the central government (Ministry of Public Works at the time), but also it exercises some of the powers of local government bodies in the field of control over the territory. More specifically, while article 20 of law no. 8405, dated 17.09.1998 "On Urban Planning" recognizes to the CRT the rights decide declaration as illegal and demolition of increased volume of works on the subject, also it provides in the Article 54 of the same law the same decision-making under the authority of Construction Police.

12. The new law provides new terms for the building permit approval, the bodies in charge to supervise and approve their enforcement, the remedies for their appeal. The law finds solution to the issues whereas there are conflicts of competencies between local and central government. Thus it provides: the establishment of a legal mechanism in charge to resolve the disputes between central and local authorities; provides a clear division of powers in the field of territorial planning; provides legal remedies to challenge the development instruments. Thus, it resolves the issue of overlapping of powers between the bodies in charge for the issuance of development permits and of the building permits, which constitute executive acts on planning policy.

5) On the management of judicial procedures

13. With regard to the general measures concerning the management of the domestic Court's procedures reference is made in the Action Plan on the case "Mishgjoni v. Albania", in the paragraphs 4 -14.