CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF BESHIRI AND OTHERS v. ALBANIA

(Application no. 7352/03)

JUDGMENT

STRASBOURG

22 August 2006

FINAL

12/02/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Beshiri and Others v. Albania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 11 July 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 7352/03) 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") by four siblings who are all Albanian nationals, Mr Njazi Beshiri, Ms Liri Kaba, Ms Xhilda Koka and Mr Sair Preza ("the applicants"), on 16 February 2003.

2. The applicants were represented by Mr A. Tartari, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their Agent, Mr S. Puto, of the Ministry of Foreign Affairs.

3. On 3 May 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1931, 1948, 1954 and 1944 respectively and live in Tirana (Albania) and Varese (Italy).

5. The applicants' father owned a villa with a surface area of 42.70 sq. m and two adjacent plots of land measuring approximately 46.70 sq. m and 48.55 sq. m respectively. From 1946 to 1978 the applicants' father rented the villa to B.N.'s father.

6. On an unspecified date, as the villa was uninhabitable, the State granted the applicants' father a compulsory loan of 16,204 leks (ALL) for renovation of the villa.

7. In 1976 B.N. constructed two additional buildings on the plot of land measuring 48.55 sq. m. By a decision of 23 February 1976 the Tirana District Court allocated the additional buildings to B. N.

8. As a result of the applicants' father's failure to repay the debt, the villa was nationalised by virtue of decision no. 133 of 14 July 1978. From 1978 onwards B.N.'s family continued to live in the villa as tenants of a State-owned property.

A. Proceedings regarding the restitution of property

9. In 1996, pursuant to the Property Restitution and Compensation Act ("the Property Act"), the applicants lodged a claim with the Tirana Commission on Property Restitution and Compensation (*Komisioni I Kthimit dhe Kompensimit te Pronave*).

10. On 22 May 1996 the Tirana Commission, holding that the nationalisation of the applicants' father's villa had been illegal, awarded the applicants the villa (with a surface area of 42.70 sq. m) and the plot of land measuring 46.70 sq. m, subject to the repayment of ALL 1,204 (representing the outstanding amount of their father's unpaid debt to the State which had led to the nationalisation of the properties). With regard to the plot of land measuring 48.55 sq. m, in view of B.N.'s investment in the additional building, the Commission upheld his right of first refusal on the purchase of the land.

B. Judicial proceedings

11. On an unspecified date in 1997, B.N., the tenant of the villa which had been allotted to the applicants, brought a civil action before the Tirana District Court, claiming property rights over the villa and the adjacent plot of land. Moreover, he alleged that the Commission's decision of 22 May 1996 should be declared null and void, in so far as it was in breach of section 13 of the Property Act.

12. On 15 July 1997 the Tirana District Court declared the Commission's decision of 22 May 1996 null and void. It found that according to an expert report, the outlays by the State and B.N.'s father on structural changes and annexes to the original building amounted to more than 85% of the property's original value. The Commission's decision was therefore held to have been in breach of section 13 of the Property Act.

13. On 7 November 1997 the Tirana Court of Appeal, having examined an appeal by the applicants alleging a violation of their property rights, upheld the District Court's decision and dismissed the appeal.

14. The applicants appealed to the Civil Division of the Supreme Court, which on 6 May 1998 quashed the decisions of the above courts. It held that the decisions had been based on an expert report which was illogical and contained incorrect calculations and accordingly sent the case back for rehearing.

15. On 11 April 2001 the Tirana Court of Appeal, rehearing the case, declared the Commission's decision null and void. Relying on a new expert report, it held that the nationalisation of the applicants' father's villa had been in accordance with substantive law requirements at the material time and that, consequently, the applicants could not benefit from the process of restitution of property. Moreover, the court upheld the applicants' property rights over the two adjacent plots of land and, pursuant to section 16 of the Property Act, decided on their right to receive compensation in one of the forms provided for by law.

16. On 15 February 2002 the Civil Division of the Supreme Court dismissed an appeal by the applicants as being ill-founded.

C. Proceedings before the Constitutional Court

17. The applicants lodged an appeal with the Constitutional Court on the basis of Article 131 (f) of the Constitution. They alleged that the Supreme Court's decision and the Court of Appeal's judgment had been unconstitutional.

18. On 24 September 2002 the Constitutional Court, in accordance with section 31 of the Constitutional Court Organisation and Operation Act (Law no. 8577 of 10 February 2000), decided *de plano* to declare the applicants' complaint inadmissible as being "outside its jurisdiction".

D. Compensation

19. In a letter of 22 March 2004 the applicants informed the Registry that the authorities had failed to comply with the final decision of 11 April 2001 relating to the compensation issue.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

20. The Albanian Constitution reads as follows:

Article 41

"1. The right of private property is protected by law.

2. Property may be acquired by gift, inheritance, purchase, or any other ordinary means provided for by the Civil Code.

3. The law may provide for expropriations or limitations in the exercise of a property right only in the public interest.

4. Expropriations, or limitations of a property right that are equivalent to expropriation, shall be permitted only in return for fair compensation.

5. A complaint may be lodged with a court to resolve disputes regarding the amount/extent of compensation due."

Article 42 § 2

"In the protection of his constitutional and legal rights, freedoms and interests, and in defence of a criminal charge, everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial court established by law."

Article 142 § 3

"State bodies shall comply with judicial decisions."

Article 131

"The Constitutional Court shall decide on: ...

(f) final complaints by individuals alleging a violation of their constitutional rights to a fair hearing, after all legal remedies for the protection of those rights have been exhausted."

Article 181

"1. Within two to three years from the date when this Constitution enters into force, Parliament, guided by the criteria laid down in Article 41, shall pass laws for the just resolution of different issues relating to expropriations and confiscations carried out before the approval of this Constitution.

2. Laws and other normative acts relating to expropriation and confiscation that were passed before the entry into force of this Constitution shall be applied provided they are compatible with the latter."

B. Property Restitution and Compensation Act (Law no. 7698 of 15 April 1993, as amended by Law no. 8084 of 1996 and abrogated by law no. 9235 dated 29 July 2004)

21. The Property Restitution and Compensation Act (*Ligji për kthimin dhe kompensimin e pronës*) underwent several amendments during the past ten years.

22. The Property Act of 1993 (Law no. 7698 of 15 April 1993, as amended by Law no. 8084 of 1996), as in force at the time, in its relevant parts reads as follows:

Section 4(1)

"Former owners and their legal heirs have the right of ownership. A former owner shall have the right either to have allocated the original land or to be awarded compensation in kind if one of the following conditions is met:

(1) the alleged property was pasture, meadow, forestry land, or agricultural or non-agricultural land;

(2) the alleged property was not subject to Law no. 7501 of 19 July 1991;

(3) the alleged property is currently State-owned;

(4) the alleged property has been designated as suitable for construction and is situated within the boundaries of a city.

The restitution or compensation in kind shall not exceed 10,000 sq. m pursuant to section 1(4) of Decree no. 1359 of 5 February 1996, as amended by Law no. 8084 of March 7 1996."

Section 13

"Former owners shall be entitled to restitution of their former buildings without having to repay outlays made by the Government or other owners on structural alterations, annexes or floor additions to former private buildings, where such outlays amount to up to 20% of the building's value.

Former owners shall be entitled to restitution of their former buildings once they have repaid more than 20% of the value of outlays, where such outlays amount to between 20% and 50% of the building's value. The value of the outlays shall be calculated on the basis of construction prices at the time of the building's restitution. A building shall remain in co-ownership where the value of such outlays is more than 50% of the building's value. .... The courts shall have authority to resolve disputes between parties."

Section 16

"Where a building site or agricultural land that has been reclassified as a building site is occupied by a permanent construction, the former owners shall be compensated, within the limit fixed for expropriation, by one of the following methods:

(a) by means of State bonds, equivalent to the compensation owed, and with first option of acquiring shares in State enterprises being privatised by the Government or in other activities carried out through the granting of loans;

(b) by means of an equivalent plot of land or building site near to an urban area, in accordance with the general urban-development regulations;

(c) by means of an equivalent plot of land in a tourist zone, in accordance with the general urban-development regulations.

Any outstanding amount after the application of (b) and (c) above shall be compensated according to other methods established by this Act.

The Council of Ministers shall have the authority to define more detailed rules for determining the methods and deadlines for such compensation."

23. The new Property Act enacted in 2004 provides for two forms of restitution of property, namely the return, under certain circumstances, of the original property and compensation in the event of the impossibility for the authorities to return the original property. The Act provides for five forms of compensation: (a) a property of the same kind; (b) a property of any other kind; (c) shares in State-owned companies; (d) the value of a State-owned property in the privatisation process, (e) a sum of money (section 11).

24. The Act instituted the State Committee for Property Restitution and Compensation (*Komiteti Shteteror per Kthimin dhe Kompensimin e Pronave*), composed of five members elected by Parliament. Its role is to decide on the lawfulness of district committees' decisions. At district level decisions on restitution and compensation claims are to be taken by District Committees for Property Restitution and Compensation (section 15).

25. In accordance with the Act, the persons entitled to claim restitution or compensation have to lodge an application for such purpose with the District Committee by 31 December 2007 (section 19). The Act grants the committee discretion to decide which one of the forms of compensation should be granted. The entitled persons have to express in writing their preferences regarding the form of compensation to be awarded. The District Committee's decision may be appealed against to the State Committee (section 11).

26. In order to comply with the committees' decisions awarding payment of pecuniary compensation, section 23 of the above-mentioned Act provides for the establishment of a ten-year Property Compensation Fund, whose aim is to provide financial support for such awards.

27. The above-mentioned Act was scrutinised by both the Constitutional Court and the Supreme Court.

28. On 24 March 2005 the Supreme Court, Joint Colleges, concluded that the Property Act of 2004 had no retroactive effect and that its provisions could therefore not have any impact on property rights recognised by administrative or court decisions given before its entry into force.

29. In November 2005 the Government (as newly elected on 3 July 2005) introduced in Parliament a new bill on the Property Restitution and Compensation Act, which proposes several amendments to the Property Act of 2004. The bill, which is currently pending before Parliament, will be discussed in the coming months.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

30. The Government contended that the application was inadmissible as having been lodged outside the six-month period provided for in Article 35 § 1 of the Convention. Thus, owing to the discretionary character of proceedings in the Constitutional Court and the latter's *de plano* inadmissibility decision in the present case, the final effective remedy within the meaning of that provision was in fact the Supreme Court's decision of 15 February 2002, whereas the applicants had lodged the application on 16 February 2003.

31. The applicants submitted in reply, with reference to Article 131 (f) of the Constitution and the practice of the Constitutional Court, that in order to exhaust all domestic remedies, individuals had to lodge a complaint with the Constitutional Court if and when they alleged a breach of the right to a fair hearing. Moreover, the applicants' complaint relating to the claimant's lack of legal standing in the proceedings concerned was connected to the concept of a fair hearing as established by the case-law of the Constitutional Court. The latter had the jurisdiction and the obligation to consider the case and to decide it, if necessary by means of a judgment. Accordingly, the applicants claimed that they had lodged their application with the Court in time, as the Constitutional Court's decision was dated 24 September 2002, even if it was a *de plano* inadmissibility decision.

32. The Court reiterates its findings in the *Balliu v Albania* decision (no. 74727/01, 30 September 2004), in which it held that a complaint to the Albanian Constitutional Court could be considered an effective remedy which had to be used for the purposes of Article 35 of the Convention where fair-trial issues arose. It considers that there are no reasons for it to depart from that finding in the circumstances of the present case.

33. The applicants did in fact avail themselves of this remedy. The Constitutional Court's decision is dated 24 September 2002 and the applicants lodged their application on 15 February 2002. They have therefore complied with the six-month time-limit prescribed in Article 35.

34. For these reasons, the Court dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

35. The applicants complained of a breach of Article 6 § 1 of the Convention in several respects. They also contended that they had no effective domestic remedy in respect of the alleged violations (Article 13 of the Convention).

Article 6 § 1, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal..."

Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

1. As to the fairness of the proceedings

36. The applicants complained under Article 6 § 1 of the Convention about the unfairness of the proceedings, on the ground that B.N. should not have had standing in the domestic proceedings to contest their property rights.

37. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 290, § 33). The Court's role is confined to ascertaining whether the proceedings considered as a whole were fair (see, *mutatis mutandis*, *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

38. Turning to the present case, the Court considers that the proceedings before the domestic courts fully satisfied the requirements of Article 6 § 1 of the Convention, allowing the applicants to effectively use all their procedural rights. The national courts carefully examined the restitution claims and delivered reasoned judgments addressing the arguments submitted by the applicants. The Court does not find any indication of a violation of Article 6 § 1 of the Convention under this head.

39. It follows that this complaint is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

40. As to the applicants' submission that they had no effective remedy at their disposal in respect of the above complaint, the Court reiterates that

Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23,§ 52). The Court has found above that the applicants' complaint under Article 6 § 1 is manifestly ill-founded. The applicants do not have an arguable claim and Article 13 is therefore not applicable to the case.

41. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. As to the length of the proceedings

42. The applicants also alleged a violation of Article 6 § 1 maintaining that five years to decide on their property claims could not be considered a reasonable length of proceedings.

43. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the established case-law, in particular the complexity of the case and the conduct of the applicants and of the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

44. The Court observes that the period to be taken into consideration began on an unspecified date in 1997 when proceedings were instituted by B.N. before the Tirana District Court and ended on 24 September 2002, when the Constitutional Court decision was deposited with the registry. It therefore lasted approximately five years and eight months in total for six levels of jurisdiction. It considers that the case concerned a complex factual situation and that the court had to ascertain the applicants' property rights on the basis of complex expert reports.

45. In these circumstances, the total period at each level of jurisdiction cannot be considered unreasonably long. Moreover, the applicants failed to demonstrate any period of substantial inactivity that could be attributable to the judicial authorities during the conduct of the proceedings.

46. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

47. In so far as the applicants' submissions under Article 13 can be understood as a complaint about the lack of an effective remedy in respect of the length of their civil proceedings, the Court, for the same reasons given at paragraph 40 above, finds that Article 13 is not applicable.

48. It follows that this complaint is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

3. As to the alleged failure to enforce a court decision

49. Under Articles 6 § 1 and 13 of the Convention, the applicants complained about the authorities' failure to comply with the Tirana Court of Appeal's judgment of 11 April 2001 relating to the compensation issue.

50. The Government contested that argument. They maintained that the applicants were challenging the outcome of the proceedings that had led to the judgment of 11 April 2001. That being so, they had failed to initiate enforcement proceedings before the Tirana District Court in order to request the issuing of a writ for the enforcement of the judgment in question. Moreover, in the Government's submission the applicants had also failed to make use of the remedies introduced by the new Property Act (Law no. 9235 of 29 July 2004) in relation to the issue of compensation. Hence, the applicants' claim under this head should be declared inadmissible for failure to exhaust domestic remedies.

51. The applicants challenged the effectiveness of the remedies referred to by the Government. As regards the remedy introduced by the new Property Act, they argued that it could not provide an effective remedy within the meaning of the Convention. They further observed that their property rights had been determined in a final judgment and that an administrative body could not therefore re-examine the same issue. Lastly, they maintained that, had the domestic court awarded compensation in one of the forms provided for by law, the bailiffs would not have been able to enforce that decision. It was up to the Government to adopt effective measures, either by classifying the State properties available for compensation in kind or by providing sufficient budgetary funds for pecuniary compensation, in order to make such a means of redress feasible. In conclusion, the applicants maintained that the Government had so far failed to take effective steps to find solutions relating to the issue of compensation.

52. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27; *Aksoy v. Turkey*, no. 21987/93, §§ 51-52, *Reports* 1996-VI; and *Akdivar and Others v. Turkey*, no. 21893/93, §§ 65-67, *Reports* 1996-IV).

53. The Court finds that the remedies referred to by the Government were inadequate to secure redress for the alleged breach.

54. In particular, as to the Government's argument relating to the applicants' failure to initiate enforcement proceedings, the Court reiterates

that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 89, ECHR 2006; *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; and *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005).

55. Moreover, as to the objection relating to the applicants' failure to make use of the remedies introduced by the new Property Act, the Court observes that the Government did not provide any evidence to substantiate their effectiveness. They did not prove that the new Act could effectively have offered redress to the applicants and that the State could have effectively complied with its obligation to pay compensation for the original property, as determined by the final decision in the applicants' favour.

56. Accordingly, the Court dismisses the Government's objections relating to the applicants' failure to exhaust domestic remedies.

57. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

58. The Government repeated that the authorities could not be held responsible for the non-enforcement of the judgment delivered in the applicants' favour since its execution depended upon their taking the appropriate steps, namely by bringing an action seeking its enforcement. The Government referred to their earlier arguments on exhaustion of domestic remedies.

59. The applicants contested that argument.

60. The Court reiterates its case-law to the effect that the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see, *inter alia*, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, pp. 510-11, §§ 40 et seq., and *Metaxas*, cited above, § 25).

61. The Court considers that the problems involved in the applicants' case are part of the process of transition from the former communist legal order and its property regime to one compatible with the rule of law and the market economy. Such a process, in the very nature of things, is fraught with difficulties. The Court has held in this connection that the Convention cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they had

ratified the Convention (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, and *von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V). Nor is there any general obligation under the Convention to establish legal procedures in which restitution of property may be sought. However, once a Contracting State decides to establish legal procedures of such a kind, it cannot be exempted from the obligation to honour all relevant guarantees provided for by the Convention, in particular in Article 6 § 1.

62. The Court notes that Albanian legislation at the material time left the determination of the appropriate form of compensation, when restitution of the original property was impossible, to the discretion of the administrative authorities. Thus, the judgment of the Court of Appeal in the instant case can be interpreted as ordering the authorities to offer the applicants a form of compensation which would indemnify them in lieu of restitution of their property rights.

63. The Court does not accept the Government's view regarding the applicants' lack of interest in the enforcement of the judgment. In fact the applicants challenged the outcome of the proceedings that had led to the judgment of 11 April 2001 and sought restitution of the original property instead of receiving a form of compensation in its stead.

64. On the facts of the case, the Court observes that following the delivery of the judgment in 2001 the authorities failed to offer the applicants the option of receiving appropriate compensation, in compliance with the final court decision (see, by contrast, *Užkurėlienė and Others v. Lithuania*, no. 62988/00, § 36, 7 April 2005). Thus, the applicants did not even have the possibility of considering an offer of compensation as opposed to the restitution of the original property.

65. Moreover, the Court considers that the respondent Government did not provide any explanation as to why the judgment of 11 April 2001 in the applicants' favour has still not been enforced for more than five years after it was delivered. It does not appear that the bailiffs or the administrative authorities have taken any measures to comply with the judgment.

66. The foregoing considerations are sufficient to enable the Court to conclude that by failing to take the necessary measures to comply with the judgment of 11 April 2001, the Albanian authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

67. There has accordingly been a violation of Article 6 § 1 of the Convention.

68. The Court has examined above the applicants' complaint about the failure of the authorities to comply with the final decision that awarded them a form of compensation. It notes that the applicants' complaint under Article 13 is essentially based on the same lack of procedural protection which has already been found to have given rise to a violation of Article 6 (see, *mutatis mutandis, British-American Tobacco Company Ltd. v. the*

Netherlands, judgment of 20 November 1995, Series A no. 331, p. 29, § 91). In these circumstances, the Court considers that it is not necessary to examine the complaint separately under Article 13.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

69. The applicants complained of a violation of their rights over their father's property. They relied on Article 1 of Protocol No. 1 to the Convention, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

70. Invoking Article 14 of the Convention, the applicants complained that their property rights had been infringed in the restitution proceedings on account of their social status. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. The parties' submissions

71. The Government contested the applicants' complaints under this head. They maintained that since the Commission's decision allocating the applicants their father's property had been overturned by court decisions, the applicants could not claim property rights over the villa. Accordingly, having regard to the court decision that had determined their property claims, the applicants were entitled to the guarantees offered by Article 1 of Protocol No. 1 only in respect of the plots of land measuring 48.55 sq. m and 46.70 sq. m respectively.

72. In accordance with the provisions of domestic law, it being impossible to return the original property to them, the court had upheld the applicants' rights to compensation in one of the forms provided for by section 16 of the Property Act of 1993.

73. They submitted that, like numerous former owners of property in Albania who had received binding court decisions determining the issue of compensation, the applicants could not blame the State for their inactivity to initiate enforcement proceedings either in the Albanian courts or by means of the new remedies introduced by the Property Act of 2004, in order to recover their property and to seek redress.

74. The applicants contested the Government's submissions.

2. The Court's assessment

(a) Recapitulation of the relevant principles

75. The Court reiterates the following principles established in its case-law under Article 1 of Protocol No. 1 (see *von Maltzan and Others*, cited above, and *Kopecký*, cited above, § 35).

76. (*a*) Deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

77. (*b*) Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48, and *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II).

78. (*c*) An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82 and 83, ECHR 2001-VIII, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

79. *(d)* Where the proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it or whether it takes the form of a final enforceable judgment in an applicant's favour (see *Draon v. France* [GC], no. 1513/03, § 68, 6 October 2005 and *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

80. (*e*) Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention. Nor does

Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).

81. In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova*, cited above, §§ 70-74).

82. On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (see *Broniowski v. Poland* [GC], 31443/96, § 125, ECHR 2004-V).

(b) Application of the relevant principles

83. The Court observes that under this head the applicants complained about two different matters. Firstly, they complained of a violation of their property rights over the villa. Secondly, they complained of a breach of their property rights in so far as the authorities had failed to execute the court judgment of 11 April 2001. The Court will examine each of these complaints separately.

(i) Property claims over the villa

84. As regards the alleged violation of Article 1 of Protocol No. 1 relating to the villa, the Court recalls that there is no right to restitution under the Convention and its case-law.

85. Since the villa in question was expropriated in 1978, it is clear that it could not be said that the applicants had "existing possessions" within the meaning of Article 1 of Protocol No. 1.

86. It thus remains to be examined whether the applicants could have any "legitimate expectation" of realising their claim to restitution on the basis of the provisions of the Property Act.

87. The Court observes that the proceedings complained of concerned the question of whether or not the requirements set forth in the Property Act had been fulfilled. The judicial authorities found that this was not the case with regard to the applicants' claims in respect of the villa.

88. The applicants' complaint therefore essentially amounts to an objection to the outcome of the proceedings before the domestic courts and to the errors of interpretation and application of domestic law allegedly committed by those authorities.

89. The Court notes in this connection that the fact that the State, through its judicial system, provided a forum for the determination of the applicants' rights and obligations does not automatically engage its responsibility under Article 1 of Protocol No. 1. While the State could be held responsible for losses caused by such determinations if the court decisions amounted to an arbitrary and disproportionate interference with possessions, this is not the case here. Referring to its above findings under Article 6 § 1 of the Convention (in relation to a fair hearing) that the national courts proceeded in accordance with domestic law, dealing with the applicants' case in detail and giving full reasons for their decisions, the Court finds that the assessment made by the domestic courts cannot be regarded as having been arbitrary or manifestly unreasonable.

90. The Court finds that the applicants could therefore have had no "legitimate expectation", based either on the provisions of the Property Act or on the Commission's decision of 1996 recognising their title to the villa, of realising their claim for restitution of the villa. It follows that this part of the complaint is 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.

91. Having regard to the fact that Article 14 of the Convention is not autonomous and to the conclusion that Article 1 of Protocol No. 1 is not applicable under this head, the Court considers that Article 14 cannot apply with respect to this complaint (see, *mutatis mutandis*, *Polacek and Polackova v. the Czech Republic* (dec.) [GC], no. 38645/97, §§ 61-70, 10 July 2002).

92. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(ii) Property claims over the plots of land

93. The Court observes that the complaint under this head is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover observes that no other grounds for declaring this part of the application inadmissible have been established and therefore declares it admissible.

94. As to the applicants' complaint that their property rights over the plots of land had been infringed on account of their social status in breach of Article 14, the Court finds no indication that the applicants have been discriminated against on any ground specified in Article 14 of the Convention. Accordingly, the applicants' complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (related to their

claims over the plots of land) is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

95. The Government maintained that the fact that the applicants were not satisfied with the outcome of the court proceedings relating to their claims to their father's properties in general, and their claim for restitution of the original property in particular, could not engage the State's responsibility.

96. The Government added that the failure to execute the final judgments that awarded compensation in the framework of the restitution and compensation of properties process was due to objective circumstances such as the lack of funds and its impact on the general interest of the community.

97. The applicants claimed that the Government's statements were unsubstantiated. They submitted that the State was liable for the outstanding debts due to them as compensation and that, having failed to pay those debts for a long time, the State had deprived them of the actual possession of their property, in violation of Article 1 of Protocol No. 1.

98. The Court notes that this complaint is linked to the one examined under Article 6 § 1 in relation to the failure to enforce a final decision.

99. The Court reiterates that "possessions" can be "existing possessions" or assets, including, in certain well-defined situations, claims. For a claim to be capable of being considered an "asset" falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it or whether there is a final court judgment in the claimant's favour. Where that has been done, the concept of "legitimate expectation" can come into play (see *Draon,* cited above, § 65 and *Burdov* cited above).

100. In the present case, it has already found that the authorities had an obligation under the judgment of 11 April 2001 to offer the applicant a form of compensation in lieu of restitution of the two plots of land. Therefore, the applicants had enforceable claims deriving from the judgment in question.

101. The Court considers that the failure of the authorities to enforce the judgment in the applicants' favour amounts to an interference with their right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

102. By failing to comply with the judgment of the Tirana Court of Appeal, the national authorities left the applicants in a state of uncertainty with regard to the chances of reacquiring their property rights. Furthermore, for a considerable period of time, they prevented them from having their compensation paid and from enjoying the possession of their money. As to the justification advanced by the Government for this interference, the Court

recalls that lack of funds cannot justify a failure to enforce a final and binding judgment debt owed by the State (see *Pasteli and Others v. Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02, § 30, 15 June 2004, *Voytenko v. Ukraine*, no. 18966/02, § 55, 29 June 2004; *Shmalko v. Ukraine*, no. 60750/00, § 57, 20 July 2004).

103. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention with regard to the matter of compensation.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

105. The applicants claimed 564,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. They relied on an expert's valuation report for the purposes of determining the overall value of their father's properties and the loss of profits.

106. The Government contested the applicants' claims since in their view the application was inadmissible. They did not submit any arguments relating to the amounts claimed for pecuniary and non-pecuniary damage.

107. The Court finds that the applicants' claim for damage relating to properties other than those allocated to them by the domestic courts are *ultra petita* and consequently dismisses this claim.

108. The Court refers to its findings in the *Qufaj v Albania* case, in which it held that the Albanian authorities had to take the appropriate measures in order to comply with a final judgment and to make reparation for any past or future damage caused to the individuals by that failure. It further held that in the execution of judgments in which the State was ordered to make a payment, a person who had obtained a judgment debt against the State should not be required to bring enforcement proceedings in order to recover the sum due (see *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, § 54-59, 18 November 2004, and also *Metaxas*, cited above, § 49).

109. The Court considers that there are no reasons to depart from the above finding in relation to final judgments that order restitution of and/or compensation for properties.

110. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation under the Convention to

put an end to the breach and make reparation for its consequences. If the domestic law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission that has led to the finding of a violation of the Convention. The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest.

111. Among the matters which the Court takes into account when assessing compensation are pecuniary damage, that is, the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, that is, reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss (see, among other authorities, *Ernestina Zullo v. Italy*, no. 64897/01, § 25, 10 November 2004).

112. In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

113. The Court considers, in the circumstances of the case, that by failing to take the appropriate measures to award the applicants compensation for the impossibility of returning the original property to them, the State is to pay the applicants, in respect of pecuniary damage, an amount corresponding to the current value of the property concerned – that is, the plots of land measuring 48.55 sq. m and 46.70 sq. m.

114. Moreover, the Court considers that the events in question entailed a serious interference with the applicants' right to the peaceful enjoyment of their possessions, in respect of which a sum of money would represent fair compensation for the non-pecuniary damage sustained.

115. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants a lump sum of EUR 120,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

116. The applicants also claimed EUR 36,000 for the costs and expenses incurred before the domestic courts and before the Court. They did not provide a detailed breakdown to substantiate their claim costs and expenses.

117. The Government contested the claim.

118. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

119. The costs claimed have not been substantiated, as the applicants failed to submit itemised particulars of all the various amounts incurred in

respect of court fees, postage, telephone calls and the photocopying of documents.

120. Having regard to the information in its possession and to the criteria set out above, the Court considers it reasonable to award the sum of EUR 6,000 covering costs under all heads.

C. Default interest

121. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

2. *Declares* the complaints concerning Article 6 § 1 (as regards the non-enforcement of a final decision), Article 13 and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable:

(i) EUR 120,000 (one hundred and twenty thousand euros) in respect of pecuniary and non-pecuniary damage;

(ii) EUR 6,000 (six thousand euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President