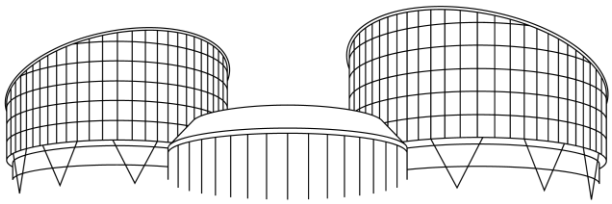

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MANUSHAQE PUTO AND OTHERS v. ALBANIA

(Applications nos. 604/07, 43628/07, 46684/07 and 34770/09)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 4 November 2014

STRASBOURG

31 July 2012

FINAL

17/12/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Manushaqe Puto and Others v. Albania,

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 10 July 2012,

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

PROCEDURE

1. The case originated in four applications (nos. 604/07, 43628/07, 34770/09) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty Albanian nationals, M. Puto, S. Puto, K. Puto, S. Puto and A. Puto (no. 604/07), B. Dani, F. Dani, Fi. Dani, B. Dani, Gj. Dani, V. Dani, A. Dani and Ad. Dani, (no. 43628/07), N. Ahmatas, M. Kreka, T. Kadiu, D. Kadiu, R. Kadiu and I. Kadiu (no. 46684/07) and Sh. Muka (no. 34770/09) on 16 November 2006, 4 October 2007, 9 October 2007 and 18 June 2009, respectively.

2. The applicants were represented by Messrs. S. Puto and A. Tartari, lawyers practising in Tirana. The Albanian Government ("the respondent Government") were represented by their then Agents, Ms S. Mëneri, Mrs. E. Hajro and, subsequently, by Ms L. Mandia of the State Advocate's Office.

3. The applicants alleged that there had been a breach of Articles 6 § 1 and 13 of the Convention and of Article 1 of Protocol No. 1 to the Convention as a result of the non-enforcement of final administrative decisions awarding them compensation *in lieu* of the restitution of their properties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Application no. 604/07: Manushaqe Puto

4. The applicants were born in 1925, 1925, 1929, 1958 and 1964. They all live in Albania.

5. On 27 July 1995 the Vlora Commission recognised the applicants' inherited property title to a plot of land measuring 5,000 sq. m. It further decided that the applicants would be compensated in one of the ways provided for by law.

6. The applicants sent various letters to the Commission in 1995, 1996 and 2002 about the issue of compensation but did not receive an official response.

7. On 30 March 2007 the Agency informed the applicants that it was in the process of determining the property valuation maps and allocating the appropriate funds. The outcome would pave the way for the establishment of the criteria for compensation claims.

8. On 6 October 2008 the Agency's director decided *proprio motu* to verify the lawfulness of the 1995 Vlora Commission decision. To date, no other decision has been taken and the 1995 Commission decision continues to remain unenforced.

B. Application no. 43628/07: Dani

9. The applicants were born in 1937, 1941, 1944, 1950, 1936, 1960, 1962 and 1968. They all live in Albania.

10. On 31 October 1994 the Lezhë Commission recognised the applicants' inherited title to a plot of land measuring 3,434 sq. m, out of which 713 sq. m were restored. The applicants would be compensated for the remaining 2,721 sq. m in one of the ways provided for by law.

11. On an unspecified date the applicants challenged the Commission decision before the court, claiming that a larger area should be restored to them.

12. On 10 December 1996 the Lezhë District Court decided that an additional plot of 1,187 sq. m should be restored to the applicants. Consequently, a total area of 1,900 sq. m was restored to the applicants.

13. However, to date they have not been provided with compensation in respect of the remainder of the property (1,534 sq. m).

C. Application no. 46684/07: Ahmatas and Others

14. The applicants were born in 1928, 1932, 1948, 1949, 1953 and 1957. They all live in Albania.

15. On 19 January 1996 the Korçë Commission recognised the applicants' inherited title to a plot of land measuring 4,000 sq. m. It decided that, since the plot of land was occupied, the applicants would be compensated in one of the ways provided for by law. To date, the applicants have not been provided with any compensation.

16. On 15 January 1999 the Korçë Commission recognised the applicants' inherited title over an agricultural plot of land measuring 59,546 sq. m. It decided that the applicants would be compensated in State bonds in the amount of 1,018,236 Albanian leks ("ALL"). To date, the applicants have not been awarded any State bonds or any other form of compensation.

17. The Government submitted that in 2009 the applicants applied for and received compensation in the amount of ALL 2,000,000 in respect of 200 sq. m from the Financial Compensation Fund ("FCF"). No supporting document was submitted.

D. Application no. 34770/09: Muka

18. The applicant was born in 1926 and lives in Albania.

19. On 7 June 1995 the Tirana Commission recognised the applicant's inherited title to two plots of land measuring 63 sq. m and 597 sq. m, respectively. It further decided that, since the plots of land were occupied, the applicant would be compensated in one of the ways provided for by law. The Commission recognised the applicant's right to first refusal of two buildings located on the land.

20. On 16 August 1995 the Commission recognised the applicant's inherited title to another plot of land measuring 800 sq. m, of which 178 sq. m were restored. It decided that, since 622 sq. m were occupied, the applicant would be compensated in one of the ways provided for by law.

21. On an unspecified date the applicant lodged a claim for compensation with the Agency in respect of the Commission decision of 7 June 1995.

22. On 23 February 2009 the Agency dismissed the claim for compensation on the ground that the applicant had already benefited from the restitution of a plot of land measuring 178 sq. m. No appeal was lodged with the Tirana District Court within the statutory 30 days' period.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

23. The relevant provisions of the Albanian Constitution have been described, *inter alia*, in the judgment of *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, § 21, 18 November 2004.

B. The Property Acts

1. The 1993 Property Act as amended

24. The first law on property restitution and compensation was enacted in 1993 (Law no. 7698 of 15 April 1993 – "the 1993 Property Act", as amended). The 1993 Property Act has been described in detail in the judgments of *Gjonbocari and Others v. Albania*, no. 10508/02, §§ 36-43, 23 October 2007, *Driza v. Albania*, no. 33771/02, §§ 36-43, 13 November 2007, *Ramadhi and Others v. Albania, no. 38222/02*, §§ 23-30, 13 November 2007. The 1993 Property Act was repealed by the 2004 Property Act.

2. The 2004 Property Act as amended

25. The 2004 Property Act aimed at the restitution of urban, immovable property, which had been expropriated, nationalised or confiscated prior to 29 November 1944. In the impossibility of restoring the original property, it provided for the grant of compensation (sections 1, 2, 3 and 5).

26. Under Article 13 compensation was to be determined on the basis of the property's market value. The 2004 Property Act, as amended, provided for six forms of compensation: (a) property of the same kind; (b) public property located in tourist areas; (c) property of any other kind; (d) shares in State-owned companies; (e) the value of a State-owned property in the course of privatisation, and (f) a sum of money corresponding to the value attributed to the property at the time of the decision (section 11 as amended).

27. The 2004 Property Act initially instituted local Commissions, whose decisions were amenable to appeal to the State Committee on Property Restitution and Compensation (sections 15-17). In 2006 those institutions were replaced by the Agency for Restitution and Compensation of Properties ("the Agency") and its regional offices. Decisions of regional Agency offices were open to appeal before the central Agency. Regional Agency offices were subsequently abolished. At present, the Agency is the

sole administrative body competent to decide on restitution and compensation claims.

28. Section 23 of the 2004 Act provided for the establishment of a ten-year Financial Compensation Fund, whose aim was to provide financial compensation. It further recognised the former owner's right to receive default interest covering the period running from the recognition of the property right until the award of the financial compensation, calculated at the annual median interest rate of the Bank of Albania. Section 28, as amended, provided for the establishment of the In-kind Compensation Fund ("IkCF").

29. The 2004 Property Act has been amended at least seven times between 2004 and 2010; deadlines have been repeatedly extended. It has been described in further detail in *Eltari v. Albania*, no. 16530/06, §§ 27-45, 8 March 2011 and in *Çaush Driza v. Albania*, no. 10810/05, §§ 18-36, 15 March 2011.

30. Statistics concerning the property restitution and compensation process, as provided for by the Government, are annexed to this judgment.

C. Relevant domestic case-law concerning the 2004 Property Act as amended

31. In the context of the review of the constitutionality of the legislation after its entry into force, the Constitutional Court has been called upon, on several occasions, to rule on whether some of the 2004 Property Act provisions were compatible with the Constitution.

32. In decisions nos. 27 of 26 May 2010 and 43 of 6 October 2011 the Constitutional Court repealed as incompatible with the Constitution a number of the 2004 Property Act provisions, as amended, which empowered the central Agency's director to re-examine, annul and repeal *ex officio* Commission decisions. Having regard, *inter alia*, to this Court's judgments in the cases of *Ramadhi and Others*, cited above, and *Hamzaraj v. Albania ((no. 1)* (no. 45264/04, 3 February 2009)), the Constitutional Court reaffirmed that "Commission decisions were capable of conferring on individuals legal expectations equal to that created by virtue of a court decision which recognises an individual's property rights". Consequently, those decisions, which were not administrative acts within the meaning of that legal notion, were directly amenable to judicial review. Moreover, since such decisions had become "final and enforceable", they could not be subject to review by the Agency's director, who did "not embody the characteristics of a judicial body or *quasi* judicial body".

The nature of Constitutional Court's decisions

33. The Constitutional Court's Act (law no. 8577 of 10 February 2000) provides that its decision is *erga omnes* and binding (section 72 § 7). The

decision enters into force on the date of its publication in the Official Journal, save as decided otherwise (section 26). As a general rule, the Constitutional Court's decision, which repealed an act as incompatible with the Constitution or international agreements, produces effect from its date of entry into force (section 76 § 1). The decision applies retrospectively only: (a) in respect of a criminal punishment even while it is being executed, if it is directly connected with the implementation of the repealed act; (b) in respect of cases that are being examined by domestic courts, as long as no final decision has been taken; and (c) in respect of consequences, yet to be produced, of the repealed act.

D. Principal implementing by-laws concerning the 2004 Property Act as amended

34. Pursuant to the 2004 Property Act, as amended, the Government have adopted a number of by-laws, by way of Council of Ministers' Decisions ("CMDs") as described below.

1. CMDs on financial compensation awards

35. Between 2005 and 2011 the authorities issued 6 CMDs in respect of the award of financial compensation to former owners (see *Çaush Driza*, cited above, §§ 38-43). In 2005 financial compensation was awarded in respect of compensation claims arising out of the Tirana Commission decisions. In 2006 financial compensation was awarded in respect of compensation claims arising out of the decisions of the Tirana and Kavaja Commissions. In 2007 the group of beneficiaries was expanded to include former owners who were in possession of a Commission decision issued with respect to cities for which a property valuation map had been approved and issued. In 2008, 2009 and 2011 all former owners, who were entitled to compensation, following a Commission / regional Agency decision, were eligible to apply for financial compensation. It would appear that no decision was adopted in 2010.

36. According to the CMDs adopted between 2005 and 2009, a claimant, whose right to compensation had been recognised in respect of the entire property, was required to lodge a standard application for financial compensation with the central Agency in Tirana, furnishing, *inter alia*, the Commission / regional Agency decision that recognised his right to compensation. The 2009 CMD further provided that a former owner was entitled to financial compensation on the condition that s/he had not benefited from: a) previous compensation; b) partial restoration/restitution of the property; c) the right to first refusal; d) the implementation of the Act on the Distribution of Land (Law no. 7501 of 19 July 1991). The 2011 CMD stated that a claimant, holding a final and enforceable decision, in

respect of which no compensation had ever been awarded, was entitled to benefit from the award of compensation.

37. Applications would be examined in chronological order on the basis of the Commission/regional Agency decision date and number. The amount of financial compensation, which was to be calculated on the basis of property valuation maps, was limited to a maximum of 200 sq. m during the period between 2005 and 2009. The 2011 CMD established a tiered system according to which the amount of compensation was to be as follows: (a) the equivalent of 200 sq. m in respect of properties measuring up to 1,500 sq. m; (b) the equivalent of 300 sq. m in respect of properties measuring between 1,500 and 3,000 sq. m; (c) the equivalent of 400 sq. m in respect of properties measuring between 3,000 and 5,000 sq. m; (d) the equivalent of 500 sq. m in respect of properties measuring between 5,000 and 10,000 sq. m; (e) the equivalent of 600 sq. m in respect of properties measuring above 10,000 sq. m.

38. The lodging of an application entailed the payment of a processing fee. Claimants who had been unsuccessful in their application for financial compensation in a preceding year were to re-submit their application in the following year(s) once they had paid the processing fee. The 2011 CMD dispensed claimants from re-paying the processing fee in the event they re-submitted their claim for compensation.

2. CMDs on property valuation maps

39. Between 2007 and 2008 the Government approved and issued property valuation maps, which included the reference price per square metre throughout the country (see *Çaush Driza*, cited above, §§ 44-45). These maps are relied upon to calculate the value of expropriated properties and subsequently the amount of financial compensation to be awarded (compare with paragraph 26 above).

3. CMDs on in-kind compensation of former owners

40. The 2004 Property Act, as amended, provided for the establishment of the IkCF (see paragraph 28 above). Between 2007 and 2008 the Government have adopted a number of CMDs on the procedures for the allocation of properties covered by the IkCF (see *Çaush Driza*, cited above, §§ 46-52).

E. Action Plan

41. In decision no. 350 of 29 April 2011 the Council of Ministers approved an Action Plan to address the issues identified by this Court in its *Driza* and *Ramadhi and Others* judgments. The Action Plan attributed the non-enforcement of final decisions to the following:

"... the issues faced to date relate to the lack of inter-institutional coordination concerning the exchange of information and the inter-operability of archives of those institution (...). The property legislation is fragmented and needs to be consolidated and simplified in order to provide for simple and transparent compensation procedures. The nationwide process of the first registration of immovable properties has yet to be concluded. There is no unified, national, property map. The Agency lacks a unified database of decisions (...). The process of legalisation has yet to be completed and the identification of properties that would become part of the In-kind Compensation Fund has not finished.

`... the [Government] having regard to the legitimate expectations of owners for so many years, expresses their intention to provide the compensation amount at 100 per cent."

42. The Action Plan described two schemes of compensation.

1. The transitional compensation scheme

43. The transitional compensation scheme (*skema kalimtare*) would apply in 2011 (see paragraph 37 above for more details).

2. The final compensation scheme

44. The final compensation scheme (*skema definitive*) would become operational in 2013, upon the estimation of the total financial bill. The final scheme would rely on digital cartographic and juridical data as produced by the Agency for Preparation of Standard Maps. A claimant possessing a final, enforceable decision would have to submit an application form to apply for compensation. The registration of the submitted application form into an electronic database would be in chronological order on the basis of the Commission's / Agency's decision date. A claimant holding more than one final, enforceable decision shall have them ranked chronologically. The compensation amount would be paid in full and in instalments.

45. The authorities would retain discretion as regards the type of compensation to be awarded. Claimants would not have the right to choose one type of compensation over another. If a claimant refused the type of compensation awarded, he would forfeit his right to compensation as regards the concerned instalment. Compensation would be automatically carried out by the authorities. In-kind compensation would take priority over financial compensation. Until the total allocation of properties to the IkFC, which would be completed by 2018, in-kind compensation would be distributed as it becomes available.

46. A new directorate, which would coordinate different State bodies, would be established within the Ministry of Justice.

47. The Action Plan did not contain time-limits as regards its implementation.

F. The Special Compensation Fund Act

48. On 25 February 2010 Parliament enacted the Special Compensation Fund Act (Law no. 10239), which is a special fund within the meaning of the budget act. The Special Compensation Fund beneficiaries are two-fold: (1) former owners whose right to compensation was recognised on account of the 1993 and/or 2004 Property Act; and (2) former owners whose right to compensation was recognised on the strength of the Legalisation Act (see "The Legalisation Act" section below).

49. The revenue of the Special Compensation Fund would consist of: (a) annual allocations from the State budget in accordance with the 2004 Property Act as amended; (b) proceeds deriving from the sale at auction of State properties in respect of which no decision on restitution or compensation has been adopted; (c) income generated during the process of the legalisation of unauthorised constructions (see paragraph 51 below); (d) income generated as a result of the implementation of other laws and by-laws; and (e) donations.

50. The Special Compensation Fund will be administered by the Agency.

G. The Legalisation Act (Law no. 9482 of 3 March 2006 on the Legalisation, Urban Planning and Integration of Unauthorised Buildings; as amended by laws nos. 9786 of 19 July 2007; 9895 of 9 June 2008; 10099 of 19 March 2009; and, 10169 of 22 October 2009)

51. On 3 March 2006 Parliament enacted the Legalisation Act in order to regularise illegal constructions and extensions that had been constructed on public and private land in the 1990s and early 2000s as a result of rapid, profound, internal demographic movements. The Act provided for the transfer of ownership of the plot of land on which unauthorised buildings were constructed, from the original land owner through the State to the owner of the unauthorised building, against the payment of a sale price (sections 19-21) in cash or by way of privatisation vouchers (section 17/1). The formal land owner would receive full compensation in respect of the expropriated plot of land in accordance with the 2004 Property Act. The proceeds obtained by the legalisation process would be transferred to the financial compensation fund as provided for by the 2004 Property Act (section 32 as amended).

52. Statistics concerning the legalisation process, as provided for by the Government, have been annexed to this judgment.

III. COUNCIL OF EUROPE MATERIAL

53. In its latest decision of 6 June 2012 concerning the supervision of the execution of this Court's judgments, at its 1144th meeting, the Committee of Ministers, *inter alia*, "took note of the elaboration by the Albanian authorities of [a] draft global strategy on property rights." It further insisted that the Albanian authorities should make concrete progress in order to "establish a list of final decisions, finalise the land value map, calculate the cost of the execution of decisions in order to be able to define the resources needed, adopt the final execution mechanism and execute the decisions at issue."

THE LAW

I. JOINDER OF THE APPLICATIONS

54. Given that the four applications raise the same issue, the Court decides that they should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ADMISSIBILITY OF THE COMPLAINTS

55. The applicants alleged that there had been a breach of Articles 6 § 1 and 13 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of final administrative decisions awarding them compensation *in lieu* of the restitution of their properties.

Article 6 § 1 of the Convention, insofar as relevant, reads as follows:

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

Article 13 of the Convention reads as follows:

> "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."

Article 1 of Protocol No. 1 to the Convention reads as follows:

> "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."

A. As regards application no. 604/07: Manushaqe Puto

56. On 6 October 2010 the Government requested the Court to stay the examination of this application, having regard to the review proceedings that had been instituted *proprio motu* by the central Agency's director.

57. The applicants submitted that the central Agency's director's power to review Commission decisions *proprio motu* had been repealed by the Constitutional Court. They requested the Court to continue the examination of their application. Alternatively, they complained of a breach of legal certainty under Article 6 § 1 of the Convention.

58. The Court notes that on 6 October 2008, in accordance with the provisions of the 2004 Property Act, as amended, the central Agency's director decided *proprio motu* to review the Commission decision of 27 July 1995 in the applicants' favour. It further notes that on 26 May 2010 and 6 October 2011, respectively, the Constitutional Court repealed those provisions as incompatible with the Constitution (see paragraph 32 above). Having regard to the unconstitutionality of those provisions, to the legal nature of the Constitutional Court's decisions (see paragraph 33 above), the Court considers that the review proceedings have become devoid of legal basis as a matter of domestic law. In those circumstances, it is not for the Court to question the finality of the Commission decision of 27 July 1995, which has never been quashed by the authorities. In conclusion, the Court therefore rejects the Government's objection.

B. As regards the remaining applications

59. The Government contended that the applicants had not availed themselves of the remedies that had been introduced between 2005 and 2011.

60. The applicants contended that the remedies were not effective.

61. The Court considers that the question of the existence of effective remedies as regards the non-enforcement of final administrative decisions, and, in particular, of the remedies offered by the 2004 Property Act (introduced after the adoption of this Court's judgments in the cases of *Driza* and *Ramadhi and Others*, cited above) should be joined to the merits of, and examined in conjunction with, the applicants' complaint under Article 13 (see paragraphs 63-84 below). In this connection, the Court considers that, since the applicants' complaint under Article 6 § 1 of the

Convention is "arguable", Article 13 is therefore applicable (see, amongst others, *Eltari*, cited above, § 80).

62. The Court considers that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Not being inadmissible on any other grounds, the complaints must therefore be declared admissible.

III ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. The parties' submissions

1. The applicants

63. The applicants submitted that no effective measures were taken to secure the enforcement of decisions awarding compensation. The Agency's procedure for the award of financial compensation was excessively long and uncertain. The selection of beneficiaries was made through random drawing of lots and compensation could not exceed the value of a plot of land measuring 200 sq. m. Furthermore, the property valuation maps did not reflect the market value. Their calculation lacked transparency and did not provide for any default interest in the event of delay in payment.

64. As regards compensation by means of State bonds, as ordered by the Commission in application no. 46687/07 (*Ahmatas and Others*), the applicants submitted that the Government had never, in fact, issued State bonds for the purpose of compensation. Furthermore, whereas this form of compensation was provided for under the 1993 Property Act, it was omitted in the current 2004 Property Act.

65. Lastly, the applicants stated that the authorities had taken no action to provide in-kind compensation. The authorities' promises for future actions, including a draft strategy on property rights, should be considered abusive and would further delay the restitution and compensation process.

2. The Government

66. The Government submitted that financial compensation was being awarded annually on a country-wide scale since 2007. Until 2009 the award of financial compensation was limited to the value of a plot of 200 sq. m on the basis of the property valuation maps. Former owners, who had been awarded other forms of compensation, were not entitled to receive financial compensation. The goal of such scheme was to treat equally former owners who had never received any compensation, whether by way of partial restitution of their plots of land or by way of other types of compensation. Starting from 2010 the financial compensation scheme would be based on a

percentage scale, whose details would be determined by a working group which had been set up for that purpose.

67. On the basis of previous experience, the Government stated that, in the event of a successful claim for financial compensation, the Agency paid the compensation amount within 10 to 15 days of the announcement of the results. As regards the payment of default interest, the Government contended that such interest was absorbed in the prices of property valuation maps which were regularly updated. The prices reflected the current market value and were several times higher than the price given at the time of the recognition of the property rights. In the event of an unsuccessful claim for financial compensation, the claimant had to re-apply the following year by submitting a template request and declaration.

68. As regards the possibility of awarding in-kind compensation, the Government submitted that no in-kind compensation was ever effected. The Agency was working for the establishment and verification of State properties which would be distributed as in-kind compensation. Furthermore, former owners would be invited to become shareholders in State-owned enterprises as a means to obtain compensation. The proceeds generated from the privatisation of State-owned companies would be used for the awards of financial compensation to former owners. The Government reiterated their intention to award compensation in full to former owners.

B. The Court's assessment

1. General principles

69. The Court recalls that Article 13 gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal system. It therefore requires that the States provide a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

70. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under

domestic law may do so (see *Kudła*, cited above, §§ 157-158, and *Wasserman v. Russia* (no. 2), no. 21071/05, § 45, 10 April 2008).

71. In cases concerning non-enforcement of final decisions, any domestic means to prevent a violation by ensuring timely enforcement is, in principle, of greatest value. However, where a final decision is delivered in favour of an individual against the State, the former should not, in principle, be compelled to bring separate enforcement proceedings (see, mutatis mutandis, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

2. Application of those principles to the present case

72. The Court notes that the present applications concern the non-enforcement of Commission decisions which awarded the applicants compensation *in lieu* of the restoration of property. The Court first examined the question of the effectiveness of the enforcement of such administrative decisions in the case of *Ramadhi and Others* (cited above, §§ 45-53), where it found a breach of Article 13 in conjunction with Article 6 § 1 of the Convention. The Court further found as follows:

> "50. The Court notes that none of the Property Acts or any related domestic provision governed the enforcement of the Commission's decisions. In particular, the Property Acts did not provide either for any statutory time-limit for appealing against such decisions before the domestic courts or for any specific remedy for their enforcement. The Court further notes that the Property Acts left the determination of the appropriate form and manner of compensation to the Council of Ministers, which was to define the detailed rules and methods for such compensation. To date no such measures have been adopted (...) and the Government proffered no explanation for this.
>
> 51. That the authorities are committed, as the Government maintained, to the restitution of property and the payment of appropriate compensation did not lead to the enforcement of the decisions in the applicants' favour, now unenforced for 12 and 11 years, respectively. Moreover, the Government have not submitted any evidence that relevant measures are imminent.
>
> 52. The foregoing considerations are sufficient to enable the Court to conclude that, by failing to take the necessary measures to provide for the means to enforce the Commission's decisions, the applicants were deprived of their right to an effective remedy enabling them to secure the enforcement of their civil right to compensation. (...)"

73. The Court observes that, since the adoption of the judgment in *Ramadhi and Others*, the Government have enacted a significant number of legal acts as regards the award of financial compensation, the adoption of property valuation maps, the establishment of the IkFC and the adoption of the Action Plan.

74. The Court notes that the Commission decided that the present applicants should be compensated in one of the forms provided for by law (see also paragraph 26 above). The Court will now examine, having regard

to the parties' submissions, whether implementing measures have been taken to make awards in one of the compensation forms provided for by law and whether the measures can be considered to amount to an effective remedy within the meaning of Article 13 of the Convention.

(a) In-kind compensation

75. The Court notes the Government's submission that, to date, this form of compensation has never been awarded (see paragraph 68 above). It, moreover, reiterates its findings in the case of *Çaush Driza* (cited above, §§ 78-83), to the effect that this form of compensation is not an effective remedy.

(b) Compensation by way of State-owned shares and proceeds from the privatisation process

76. The Court notes that the Government did not provide any evidence to show that this type of compensation has already been awarded in previous cases.

(c) State bonds

77. The Court notes that the 2004 Property Act, as amended, does not envisage compensation by way of State bonds and the Government did not explain how it was envisaged to enforce Commission decisions that awarded State bonds to applicants as compensation.

(d) Financial compensation

78. The Court notes that the bulk of the parties' submissions focused on the authorities' award of financial compensation to former owners between 2005 and 2009 in respect of which the Court makes the following observations.

79. In the first place, the authorities' decisions (see paragraphs 35-37 above) recognised a claimant's right to financial compensation only if the Commission had awarded compensation in respect of the entire property. Accordingly, as submitted by the Government and as also evidenced by the list of claimants who had applied for financial compensation between 2005 and 2008 (see the attached Annex), if a claimant obtained partial restitution of the property or other forms of compensation, he would not be eligible to obtain financial compensation. This is the position in two applications (nos. 43628/07 (*Dani*) and 34770/09 (*Muka*)). The applicants in those cases would not be entitled to obtain financial compensation because they had been previously allocated a plot of land.

80. Secondly, the authorities' decisions provided for a maximum amount of financial compensation equal to the value of 200 sq. m. It is true that legislation does not cap the ultimate compensation amount which should be at the market value, that the Government have repeatedly committed itself

to the award of full compensation (see paragraphs 44 and 68 above) and, that the present applicants were all awarded compensation in respect of plots of land above 200 sq. m. However, financial compensation is the sole form of compensation currently awarded. Had the applicants therefore applied for and been awarded financial compensation in respect of 200 sq. m, their right to have the remainder of their decisions enforced would have been uncertain. In fact, even though the applicants in application no. 46684/07 (*Ahmatas and Others*) received financial compensation, to date, the remainder of the decision in their favour remains unenforced. Moreover, the Court is not convinced that the award of financial compensation equal to the value of 200 sq. m, irrespective of the plot of land recognised for the purpose of compensation, would ensure effective equality of treatment of claimants as contended by the Government. Persons, whose situations are significantly different, should be treated differently (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

81. Thirdly, whereas a claimant may be required to take certain procedural steps to apply for financial compensation, the Court cannot accept that an unsuccessful claimant in a preceding given year should be required to re-submit another application in the subsequent year(s). The burden to comply with a final decision against the State lies primarily with the State authorities, which should use all means available in the domestic legal system in order to speed up the enforcement, thus preventing violations of the Convention (*Burdov v. Russia (no. 2)*, no. 33509/04, § 98, ECHR 2009). It is for the respondent State to organise their legal system in such a way that it is able to cope with the technical and logistical infrastructure for processing the large number of claims. This is of major importance for ensuring that the compensation scheme is at all times "effective and expeditious" (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V).

82. Fourthly, it would be ineffective if the award of financial compensation did not take account of the non-pecuniary damage incurred as a result of excessively long non-enforcement (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 203-4, ECHR 2006-V; *Burdov (no. 2)*, cited above, §§ 100 and 111). In the instant case, the Court is unable to see how the authorities' decisions account for and calculate non-pecuniary damage.

83. The Court therefore concludes that this form of compensation is not effective.

(e) Conclusion

84. Having regard to the above findings, the Court concludes that there was no effective domestic remedy that allowed for adequate and sufficient redress on account of the prolonged non-enforcement of Commission decisions awarding compensation. There is accordingly a violation of Article 13 of the Convention. Consequently, the Court dismisses the

Government's objection that the applicants failed to exhaust effective domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

A. The parties' submissions

1. The applicants

85. The applicants complained that the final administrative decisions in their favour remained unenforced. Even though certain applicants received partial financial compensation, the remainder of the Commission decisions continued to remain unenforced. The Government's argument as to the lack of funds had already been rejected by the Court in the case of *Beshiri and Others v. Albania* (no. 7352/03, § 102, 22 August 2006)

86. The applicants argued that, by virtue of final Commission decisions, they have a "claim" and, therefore, "possessions" within the meaning of Article 1 of Protocol No. 1. The non-enforcement of such final decisions for a long period of time, without justification, has resulted in a breach of Article 1 of Protocol No. 1 to the Convention.

2. The Government

87. The Government argued that immediate payment of all compensation claims would paralyse the machinery of the State. The principle of honouring obligations by the State, as referred to in the Court's case-law, concerned only sporadic and not widespread cases of non-enforcement. Enforcement of final decisions did not extend to continuing situations which had been created prior to the Convention's entry into force, all the more so when such problems were inherited from a totalitarian regime which had extinguished all property rights.

88. The Government attributed the non-enforcement of final administrative decisions to: (a) the lack of funds; (b) frequent changes of the legislation; (b) the initial adoption of the property valuation maps as late as 2005; (c) the lack of an accurate system of addresses; (d) difficulties in the identification of heirs of former owners which resulted in delays; and, (e) the absence of data as to the status of judicial review proceedings concerning Commission decisions.

89. They further submitted that they were taking swift measures to establish the IkCF and to involve former owners in the privatisation of State-owned enterprises and objects. Having regard to the burden of compensation with which the State was laden, they submitted that they had

made the utmost efforts to secure the enforcement of final decisions and former owners' right to compensation.

B. The Court's assessment

1. General principles

(a) As regards Article 6 § 1 of the Convention

90. The Court refers to the general principles outlined, inter alia, in the case of *Burdov* (no. 2), cited above, §§ 65-70 (references omitted).

> "65. The right to a court protected by Article 6 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 (...).
>
> 66. An unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (...). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, and the amount and nature of the court award (...).
>
> 67. While the Court has due regard to the domestic statutory time-limits set for enforcement proceedings, their non-respect does not automatically amount to a breach of the Convention. Some delay may be justified in particular circumstances but it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1 (...). Thus, the Court considered, for example, in a recent case concerning Russia, that an overall delay of nine months taken by the authorities to enforce a judgment was not prima facie unreasonable under the Convention (...). Such an assumption does not, however, obviate the need for an assessment in the light of the aforementioned criteria (...) and having regard to other relevant circumstances (...).
>
> 68. A person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (...). In such cases, the defendant State authority must be duly notified of the judgment and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for execution. This is particularly relevant in a situation where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the execution or enforcement of the judgment (...).
>
> 69. A successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, be it during a voluntary execution of a judgment by the State or during its enforcement by compulsory means (...). Accordingly, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment (...). The requirement of the creditor's cooperation must not, however, go beyond what is strictly necessary and, in any event, does not relieve the authorities of their

obligation under the Convention to take timely action of their own motion, on the basis of the information available to them, with a view to honouring the judgment against the State (...). The Court thus considers that the burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable.

70. The complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. Nor is it open to a State authority to cite the lack of funds or other resources (such as housing) as an excuse for not honouring a judgment debt (...). It is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation in this regard (...)."

91. The same principals were also described in the case of *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 51-54, 15 October 2009.

(b) As regards Article 1 of Protocol No. 1 to the Convention

92. The Court refers to the general principles outlined, inter alia, in the case of *Maria Atanasiu and Others v. Romania*, nos. 30767/05 and 33800/06, §§ 134-37 and 163-68, 12 October 2010 (references omitted).

"134. The Court reiterates that 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 (...).

135. The Court further observes that 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 (...).

136. 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 (...).

137. 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 (...).

...

163. 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" (...).

164. Just as Article 1 of Protocol No. 1 does not guarantee the right to acquire property, it does not 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 (...).

165. On the other hand, Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (...). The principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable in their application (...).

166. Furthermore, any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. By the same token, in cases involving a positive duty, there must be a legitimate justification for the State's inaction. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property, including deprivation and restitution of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation.

Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property or affording publicly funded compensation for expropriated property will commonly involve consideration of political, economic and social issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has declared that it will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (...).

167. Both an interference with the peaceful enjoyment of possessions and an abstention from action must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures depriving a person of his of her possessions. In each case involving the alleged violation of that Article the Court must, therefore, ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate and excessive burden (...).

168. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the relevant compensation terms – if the situation is akin to the taking of property – but also the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is

incumbent on the public authorities to act in good time, in an appropriate and consistent manner (...).

2. Application of those principles to the present case

93. The Court has already found similar violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in other cases concerning delays in enforcing final administrative property decisions in respect of the respondent State (see, among other authorities, *Ramadhi and Others*, cited above, §§ 45-53 and 75-84; *Hamzaraj* (no. 1), cited above, §§ 24-27 and 38-43; and, *Nuri v. Albania*, no. 12306/04, §§ 26-29 and 35-40, 3 February 2009. It will examine whether the Government have made new and relevant submissions.

94. The Government explained that it was feasible to enforce final decisions in a small number of cases, but not numerous applications. However, every applicant is entitled to have a final decision in his favour enforced (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The question of whether the non-enforcement of final decisions raises a systemic issue will be examined under Article 46 of the Convention below (see paragraphs 99-121 below).

95. The Government questioned the application of the Convention to final decisions adopted prior to its entry into force in respect of the respondent State. The Court notes that the non-enforcement of the final decisions in question persisted subsequent to the Convention's entry into force on 2 October 1996. In fact, it still continues. The Convention therefore applies.

96. The lack of funds or other resources as a reason for not honouring a judgment debt cannot relieve the State of its obligation under the Convention to ensure compliance with a final decision within a reasonable time (see, for example, *Burdov*, cited above, §35; *Beshiri and Others*, cited above, § 102; and, *Kukalo v. Russia*, no. 63995/00, § 49, 3 November 2005). The other factors advanced by the Government in paragraph 88 above simply point to the authorities' delayed action and failure to act in order to address the enforcement of Commission decisions.

97. In the circumstances of the instant case, final and enforceable Commission decisions in favour of the applicants remained unenforced for periods varying between 15 and 17 years. Having examined the materials submitted to it, the Court sees no reason to depart from its findings in previous cases (see paragraph 92 above). There has accordingly been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in each application.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

98. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

A. The parties' submissions

1. The applicants

99. The applicants in the applications nos. 604/07 (*Manushaqe Puto*), 43628/07 (*Dani*) and 46684/07 (*Ahmatas and Others*) did not object to the application of the pilot-judgment procedure in the light of the authorities' promises to draft unrealistic and ineffective actions plans or (inter)-sectoral strategies on property restitution and compensation. However, they questioned its utility, having regard to the fact that general measures had already been indicated to the Government under Article 46 in the judgments of *Driza,* cited above; *Ramadhi and Others*, cited above; *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, § 87, 29 September 2009; and, *Delvina v. Albania*, no. 49106/06, §§ 85-88, 8 March 2011. Were the Court to apply the pilot-judgment procedure, those applicants requested that the application of Article 41 of the Convention in the above cases should not be reserved. Moreover, they requested the Court to continue the examination of all similar registered cases which have been communicated to the Government.

100. The applicant in application no. 34770/09 (*Muka*) submitted that the compensation process was a complete failure and that it could be characterised as a systemic/structural problem. Such failure was rooted in the legislative framework as well as in the authorities' inability to establish an effective mechanism to award compensation.

2. The Government

101. The Government preliminary submitted that the issues identified in the above cases were similar to those identified in the judgment of *Driza*, cited above. Structural problems concerning the non-enforcement of final decisions, in general, were addressed in a working document drafted by the Government and the Committee of Ministers in the framework of the supervision and execution of this Court's judgments. The Government considered that the situation in Albania resembled that described in the case of *Maria Atanasiu and Others,* cited above. This case would therefore be

suitable for the application of the pilot-judgment procedure. They further submitted that they reserved the right to formally request the application of the pilot-judgment procedure at a later stage.

B. The Court's assessment

1. General principles

102. The Court recalls that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings. This obligation was consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments in cases concerning the length of proceedings in Italy as well as in cases concerning the action of the security forces in Turkey (see *Burdov* (no. 2), cited above, § 125).

103. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Maria Atanasiu and Others*, cited above, § 211)

104. The object of the Court's designating a case for the "pilot-judgment procedure" is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention right in question in the national legal order. The aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system (see *Maria Atanasiu and Others*, cited above, § 212).

105. One of the relevant factors considered by the Court in devising and applying the pilot-judgment procedure has been the growing threat to the Convention system resulting from large numbers of repetitive cases that derive from, among other things, the same structural or systemic problem Indeed, the Court's task, as defined by Article 19, that is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in large series of cases (see *Burdov* (no. 2), cited above, § 127).

106. While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it

may also include ad hoc solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court may decide to adjourn examination of all similar cases, thus giving the respondent State an opportunity to settle them in such various ways. 128. If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment so as to ensure effective observance of Convention (see *Burdov* (no. 2), cited above, § 128).

2. Application of those principles to the present case

(a) Existence of a practice incompatible with the Convention

107. The Court recalls, at the outset, as already stated in paragraph 90 of the *Ramadhi and Others* judgment, that the violations found in the present judgment "originated in a widespread problem affecting a large number of people", namely the regulatory shortcomings and/or administrative conduct of the authorities in the enforcement of final Commission decisions awarding compensation to former owners under the Property Acts.

108. The Court notes with concern that it has found violations in the present case, despite the general measures indicated in its previous judgments in 2007, 2009 and 2011 in the cases of *Driza*, cited above; *Ramadhi and Others*, cited above; *Vrioni and Others*, cited above; and, *Delvina*, cited above). Having regard to the number of similar cases pending before the Court and statistics provided by the Government (see the attached Annex), the Court is seriously concerned that the number of well-founded applications registered could increase and, therefore, represent a critical threat to the future effectiveness of the Convention machinery (see, amongst others, *Yuriy Nikolayevich Ivanov*, cited above, § 86).

(b) Application of the pilot-judgment procedure

109. In view of the large number of problems besetting the compensation mechanism which continue to persist after the adoption of the judgments in the cases of *Driza*, *Ramadhi and Others*, *Vrioni and Others* and *Delvina*, cited above, as well as the urgent need to grant applicants speedy and appropriate redress at the domestic level, the Court considers it imperative to apply the pilot-judgment procedure in this case. In this connection, the Court notes that in none of the above cases did it adopt a pilot judgment.

(c) General measures

110. The Court considers that the respondent State should take general measures, as a matter of urgency, in order to secure in an effective manner the right to compensation, while striking a fair balance between the different interests at stake (see, for example, *Burdov (no. 2)*, cited above, § 125). Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Court initially observes that the current property legislation has been frequently amended, at least seven times between 2004 and 2010. Whereas legislative amendments may reflect an evolving state of affairs, the complexity of the legislative provisions, the frequent changes made to them as well as the inconsistent judicial practice resulting therefrom, will inevitably contribute to a general lack of legal certainty. The respondent State should avoid frequent changes of the legislation and carefully examine all legal and financial implications before introducing further modifications.

111. As conceded by the Government in their Action Plan, the authorities lack accurate and reliable information as regards the overall number of administrative decisions recognising property rights and awarding compensation, as appropriate, that have been adopted since 1993. The existence of precise data, which should also reflect modifications made by way of judicial review, would enable the authorities to calculate and track the overall compensation bill as well as the financial implications of the compensation mechanism.

112. The compilation of a database and the estimation of the global compensation bill should be accompanied by a carefully devised and clear compensation scheme. The compensation scheme, which should be free of cumbersome compliance procedures, for example the obligation for a claimant to apply for compensation in the subsequent year in the event of unsuccessful application in a preceding year, should take into account the principles of the Court's case-law concerning the application of Article 6 § 1 and Article 1 of Protocol No. 1 (see paragraphs 90-92 above).

113. The Court further notes that the compensation scheme should address the findings made under Article 13 of the Convention (see paragraphs 75-84 above). In particular, it takes note of the very considerable burden on the State budget which financial compensation represents. The above findings clearly require a reconsideration of the modalities for the payment of financial compensation as currently implemented. The revision and update of valuation maps should be subject to transparent and explanatory criteria, taking into account the land development and market fluctuations. The Court urges the authorities, as a matter of priority, to start

making use of other alternative forms of compensation as provided for by the 2004 Property Act, which would eventually ease pressure on the budget, and/or to introduce other methods of compensation.

114. The decision-making process for the type of compensation to be awarded requires the utmost transparency and efficiency with a view to enhancing public confidence. It would be in the general interest that the results be made public and disseminated through different, accessible means of communication. It is crucial that the authorities' decisions contain clear and sufficient reasons and that they be amenable to judicial review in the event of discord.

115. The process of compensation of former owners on account of the Property Acts should be distinguished from the compensation to former owners on the strength of the Legalisation Act. As to the latter, the respondent State could reconsider increasing the cost-share borne by the legalisation applicants to the extent that it would be capable of matching the financial compensation paid to former owners. On another note, the respondent State should ensure the existence of a transparent and effective system of property registration, including accurate, unified, cartographic data, in order to enable, simplify and facilitate future legal transactions.

116. Quite unlike the proposals in the Government's Action Plan which lacked specific mention of time-limits, the Court cannot emphasise enough the importance of setting realistic, statutory and binding time-limits in respect of every step of the process. Frequent extensions of time-limits, as has been the case to date, do not contribute to an expedient solution of the problems identified and further undermines public confidence.

117. It is important that, in order to ensure the effective implementation of general measures, sufficient human and material resources be placed at the competent authorities' disposal and that coordination amongst different State institutions be ensured with a view to exchanging information. Whenever possible, the authorities could explore the possibility of pooling resources by merging different institutions in order to avoid overlapping and diminish operative costs and expenses. Establishing new institutional structures should not be seen as another layer to the process but should be entirely justified.

118. The Court considers that the magnitude of the problem and the measures suggested above, on a purely indicative basis, together with the need for a comprehensive and practical solution, could be better addressed if subjected to wide public discussions in order to garner broad understanding about the level of compensation that the State is expected to realistically pay and about the different forms of compensation.

(d) Subsequent procedure to be followed in similar cases before this Court

119. As regards the procedure to be followed in respect of similar cases, the Court considers it appropriate to differentiate between the cases already lodged with the Court and those that could be brought in the future.

120. The Court will adjourn proceedings concerning all new applications lodged with it after the delivery of the present judgment in which the applicants raise arguable complaints relating solely to the prolonged non-enforcement of final property decisions for the execution of which the State is responsible, including applications in which complaints alleging a lack of effective remedies in respect of such non-enforcement are also raised. The adjournment will be effective for a period of 18 months after the present judgment becomes final. The applicants in such cases will be informed accordingly.

121. The Court decides, however, to follow a different course in respect of applications lodged before the delivery of the present judgment. Proceedings in respect of all registered cases will not be adjourned. They will continue to be examined after the present judgment becomes final, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention or Rule 62A of the Rules of Court.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

1. The parties' submissions

123. The applicants relied on experts' valuation reports and made the following claims in respect of pecuniary and non-pecuniary damage.

Application no. and name	Pecuniary damage	Non-pecuniary damage
604/07 – *Manushaqe Puto*	EUR 1,440,000 as regards the property's value (5,000 sq. m x 288 EUR/sq. m);	EUR 25,000
	EUR 720,000 as regards the loss of	

	use of profits;	
43628/07 – *Dani*	EUR 343,750 as regards the property's value (1,375 sq. m x 250 EUR / sq. m);	EUR 70,000
46684/07 – *Ahmatas and Others*	EUR 305,900 as regards the plot of land measuring 3,800 sq. m (3,800 sq. m x 80.5 EUR/sq. m);	EUR 80,000
	ALL 2,545,590 (EUR 18,372) as regards the plot of land measuring 59,546 sq. m in respect of which bonds had been issued;	
34770/09 – *Muka*	ALL 105,000,000 (EUR 790,000) as regards the plot of land measuring 660 sq. m;	None.
	ALL 79,000,000 (EUR 585,000) as regards the plot of land measuring 622 sq. m;	

124. The Government contested the applicants' claims and invited them to apply for financial compensation in accordance with the CMDs.

2. The Court's assessment

125. In view of the ineffective nature of the current system of compensation and having regard, in particular, to the fact that it is now over 15 years since they were initially awarded compensation, the Court, without prejudging possible future developments with regard to the compensation mechanism, considers it reasonable to award the applicants a sum which would represent a final and exhaustive settlement of their applications. In this connection, the Court reiterates its findings in the case of *Vrioni and Others v. Albania* ((just satisfaction), nos. 35720/04 and 42832/06, §§ 33-39, 7 December 2010) as regards the method of calculation of pecuniary and non-pecuniary damage.

126. Having regard to the material in its possession and ruling on an equitable basis, the Court considers it reasonable to make the following awards in respect of pecuniary and non-pecuniary damage:

Application no. and name	Pecuniary and non-pecuniary damage
604/07 – *Manushaqe Puto*	EUR 1,000,000
43628/07 – *Dani*	EUR 280,000
46684/07 – *Ahmatas and Others*	EUR 352,400
34770/09 – *Muka*	EUR 1,360,000

B. Costs and expenses

1. The parties' submissions

127. The applicants, who submitted invoices, made the following claims in respect of costs and expenses.

Application no. and name	Domestic proceedings	Strasbourg proceedings
604/07 – *Manushaqe Puto*	None.	EUR 4,075
43628/07 – *Dani*	EUR 2,940	
46684/07 – *Ahmatas and Others*	EUR 5,035	
34770/09 – *Muka*	None.	

128. The Government submitted that the applicants failed to submit detailed receipts. They rejected the applicants' claims for costs and expenses as excessive and unreasonable.

2. The Court's assessment

129. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Gjyli v. Albania*, no. 32907/07, § 72, 29 September 2009). To this end, Rule 60 §§ 2 and 3 of the Rules of Court stipulates that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court "may reject the claims in whole or in part".

130. In the present case, the Court notes that the applicants in applications nos. 604/07 (*Manushaqe Puto*), 43628/07 (*Dani*) and 46684/07 (*Ahmatas and Others*) were represented by the same lawyer. The facts of those cases were straightforward as was the conduct of the domestic and Convention proceedings. Their submissions to this Court were almost identical. Furthermore, the majority of the costs and expenses claimed were not reasonable as to quantum. In conclusion, the Court decides to award EUR 1,000 in respect of each of the above three applications.

131. The Court does not make an award for costs and expenses in respect of applications no. 34770/09 (*Muka*) in the absence of claims made by the applicant.

C. Default interest

132. The Court considers it appropriate that the default interest rate 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. *Decides* to join the applications;

2. *Decides* to join to the merits of the complaint under Article 13 of the Convention the Government's objection as to the exhaustion of domestic remedies;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 13 of the Convention and, consequently, *dismisses* the Government's objection as to the exhaustion of domestic remedies;

5. *Holds* that there has been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. *Holds* that the respondent State must take, within eighteen months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, measures to ensure effective protection of the rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in the context of all the cases similar to the present case, in line with the Convention principles as established in the Court's case-law;

7. *Holds* that it will examine, from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the cases lodged prior to the delivery of the present judgment, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention;

8. *Holds* that pending the adoption of the above measures, the Court will adjourn, for eighteen months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the proceedings in all cases similar to the present case, which were lodged subsequent to the delivery of the present judgment, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 or 39 of the Convention;

9. *Holds*

(a) that the respondent State is to pay the applicants jointly, 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 at the rate applicable at the date of settlement:

(i) EUR 1,000,000 (one million euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage as regards application no. 604/07;

(ii) EUR 280,000 (two hundred and eighty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage as regards application no. 43628/07;

(iii) EUR 352,400 (three hundred and fifty two thousand and four hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage as regards application no. 46684/07;

(iv) EUR 1,360,000 (one million three hundred and sixty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage as regards application no. 34770/09;

(v) EUR 1,000 (one thousand euros), in respect of costs and expenses as regards application no. 604/07;

(vi) EUR 1,000 (one thousand euros), in respect of costs and expenses as regards application no. 43628/07;

(vii) EUR 1,000 (one thousand euros), in respect of costs and expenses as regards application no. 46684/07;

(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;

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

Done in English, and notified in writing on 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President

ANNEX

A. Statistics concerning the property restitution and compensation process

On 30 June 2009 the Government provided a list of 1,194 claimants who had applied for financial compensation between 2005 and 2008. The award of financial compensation was based on the property valuation maps. The list contained several claimants who had obtained Commission decisions as early as 1993 and 1994, but were not awarded financial compensation, since they had previously received partial restoration of their plots of land. As regards other claimants who were not awarded financial compensation in respect of their Commission decisions of 1993 and 1995, the Government explained it by way of claimants' non-compliance with statutory requirements for the submission of required documents and the lack of funds.

On 19 May 2010 the Government provided the following combined statistics concerning the financial compensation process.

No.	**Year**	**Total compensation amount**	**No of claims**	**No. of beneficiaries**	**Geographical location**
1.	2005	ALL 209,215,623	103	28	Tirana
2.	2006	ALL 297,067,149	251	59	Tirana, Kavaja
3.	2007	ALL 499,999,994	468	119	Countrywide
4.	2008	ALL 497,518,493	740	162	Countrywide
5.	2009	ALL 1,250,725,155		209	Countrywide
6.	2010	ALL 21,000,000 United States Dollars		Ongoing	Countrywide

In addition, the Government provided the following figures:

No.	**Description of the items**	**Total number**
1.	Number of pending applications claiming recognition of property rights, restitution and compensation thereof.	40,803

2.	Number of applications, whose property rights have been recognised.	28,899
3.	Number of applications awaiting full compensation [no partial financial compensation having been made to date].	14,953
4.	Number of applications awaiting full compensation, in respect of which financial compensation has been [partially] awarded.	9,065
5.	Number of claimants having applied for financial compensation.	1,460
6.	Number of applications in receipt of financial compensation [excluding 2009 and 2010].	368
7.	Number of claimants in receipt of full financial compensation (property size up to 200 sq. m).	128

On 22 February 2012 the Government adopted the annual report on the distribution of financial compensation during 2011 (decision no. 128). According to the report, in 2011, there had been 1,012 claims for financial compensation out of which 107 claimants were awarded financial compensation in a total amount of ALL 665,999,275, the equivalent of 4,684,000 euros ("EUR"); 46 claims were rejected and the remaining 859 were not examined owing to the lack of funds.

B. Statistics concerning the legalisation process

The 2008 Progress Report on the National Strategy for Development and Integration stated, amongst others, that:

> "2.2 Property rights
>
> [...]
>
> Between 2006 and 2008 a total of 350,000 informal buildings have been identified throughout the country and a database has been established by way of aerial photography. Voluntary self-declaration has been completed in respect of 270,595 informal buildings (...). On the basis of statistics and following data processing, it results that 29% of informal buildings were erected on plots of land belonging to lawful owners, 24% [of informal buildings were raised] on public land and 35% [of informal buildings were constructed on the constructor's] own plot of land. There is no information as regards 14% [of informal buildings].]

On 30 June 2009 the Government confirmed that there were 350,000 unauthorised buildings which would be subject to the legalisation process. Between 2008 and 2009 the authorities awarded compensation in the equivalent amount of EUR 34,500,000 in respect of 1,234 former owners. Over 36,640 objects were legalised, covering an area of 12,066,188.43 sq. m.

A 2011 World Bank Issue Brief on "Governance in the protection of immovable property rights in Albania: a continuing challenge" stated, amongst others, that (references omitted):

> "... only 874 expropriated owners have received compensation in connection with the legalization process and another 1,300 cases have been transferred to the Agency for Property Restitution and Compensation (...), while a much larger number of cases await compensation. Figures produced by ALUIZNI and obtained from [the Agency] show that some 4.5 billion lek (over €30 million) is due to be paid to 1,460 owners of expropriated property whose claims have been approved by Government decision. ALUIZNI has collected €30 million in fees so far, of which half has been paid to restitution claimants. This has fallen far short of the required amount to compensate expropriated owners, which means the largest share of the compensation due must therefore be paid out of budget resources. This shortfall notwithstanding, amendments to the Legalisation [Act] were adopted in October 2009 that allow applicants to pay up to half of the cost of legalization using otherwise worthless vouchers issued under a 1990s privatization scheme. The acceptance of vouchers is likely to deprive the state of significant revenue that could have been used to compensate expropriated owners."

The report on the distribution of financial compensation during 2011 mentioned that during the period between August 2010 and February 2011, ALL 1,877,092,628.87, the equivalent of EUR 13,142,800, was distributed as compensation to former owners as a result of the legalisation process. The monies had been used to pay either the first, second or third instalments in accordance with awards made by virtue of CMDs over different years.