



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

FOURTH SECTION

CASE OF ELTARI v. ALBANIA

(Application no. 16530/06)

JUDGMENT
(merits)

STRASBOURG

8 March 2011

FINAL

15/09/2011

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

In the case of *Eltari v. Albania*,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 16530/06) 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 an Albanian national, Mr Zamira Eltari, née Sharra, (“the applicant”), on 25 April 2006.

2. The applicant, who had been granted legal aid, was initially represented by Mr F. Braka, who was replaced by Mr A. Tartari and subsequently by Mr S. Puto, all lawyers practising in Tirana. The Albanian Government (“the Government”) were represented by their then Agent, Ms S. Meneri.

3. The applicant alleged that there had been a breach of Article 6 § 1 of the Convention as regards the unfairness of the domestic proceedings and the non-enforcement of a final court decision. She also relied on Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention as regards the lack of an effective remedy concerning the amount of her compensation.

4. On 21 November 2006 the President of the Section to which the case was allocated decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Proceedings concerning the restitution of property

6. The applicant was born in 1956 and lives in Tirana.

7. On 28 December 1994 the Vlora Commission on Property Restitution and Compensation (“the Commission”) recognised the applicant’s and other heirs’ inherited title to a number of plots of land, amongst which a plot of land measuring 10,500 sq. m. As the restitution of that plot of land was impossible since it was occupied, the Commission decided that the applicant and the other heirs would be compensated in one of the ways provided for by law.

8. On 11 September 1997, relying on the right of first refusal, the applicant concluded a sale contract with the Vlora regional office of the National Privatisation Agency for the purchase of a pharmacy and its corresponding plot of 79.5 sq. m, which was allegedly part of the plot of land measuring 10,500 sq. m.

9. The chemist of the pharmacy lodged a complaint with the Vlora prosecutor office alleging that the sale contract was unlawful.

10. On 12 February 1998 the Vlora prosecutor initiated civil proceedings with the Vlora District Court (“the District Court”) seeking the nullity of the sale contract and the nullity of the Commission decision. The chemist intervened as a third party.

11. On 15 December 1999 the District Court declared null and void, in part, the Commission’s decision in so far as it had restored to the applicant the plot of 79.5 sq. m which corresponded to the site of the pharmacy. Relying on an expert’s report, it found that the plot of 79.5 sq. m had been expropriated in 1920, as a result of which the Property Act was inapplicable *ratione temporis*. Thus, the applicant could not claim a property right over that plot of land pursuant to the Property Act in so far as it had not been expropriated by the communist regime. Furthermore, the court decided to annul the contract for the purchase of the pharmacy since any such contract was based on the premise that only the owner of the site had the right of first refusal over the buildings constructed on it. However, the operative part of the judgment stated that the applicant would be compensated only in respect of 79 sq. m, the remainder of the property rights over 10,500 sq. m having been declared null and void.

12. On 21 March 2000 the Court of Appeal upheld the District Court’s decision. It found that the prosecutor had *locus standi* to lodge a civil action in accordance with the Prosecutor’s Office Organisation and Operation Act.

It also held that the civil action was not time-barred as it had been lodged pursuant to the Property Act. It further dismissed the applicant's complaint about the assessment of evidence and the credibility of the expert's report.

13. On 20 March 2001 the Supreme Court dismissed the applicant's appeal since it did not contain any lawful ground of appeal in accordance with Article 472 of the Code of Civil Procedure.

14. On 21 May 2001 the applicant filed a supervisory review request (*rekurs në interes të ligjit*) with the Supreme Court Joint Benches.

15. On 28 January 2003 the Supreme Court Joint Benches dismissed the applicant's supervisory review request in the light of impending review proceedings that she had instituted (see "The review proceedings" below).

16. On an unspecified date the applicant filed a constitutional appeal.

17. On 4 November 2005 the Constitutional Court, sitting in plenary session, dismissed the applicant's appeal finding that there had been no breach of the right to fair hearing. It found that the prosecutor's civil action had been supported by the intervention of the chemist who had full interests in the case and did not disclose any breach of the applicant's right to a fair trial. It further held that there was no other compelling evidence that the fairness of the proceedings had been tainted.

B. The review proceedings

18. On an unspecified date the applicant requested revision of the decision of 15 December 1999.

19. On 6 February 2002 the District Court dismissed the revision request.

20. On 13 May 2003, following the applicant's appeal, the Court of Appeal upheld the decision of 15 December 1999.

21. It would appear that the applicant's appeal to the Supreme Court was dismissed on an unspecified date.

C. Proceedings concerning the interpretation of the decision of 15 December 1999

22. On 12 January 2005 the applicant lodged a request with the District Court for the interpretation of its decision of 15 December 1999, arguing that there existed a discrepancy between the reasoning and the operative part of the decision.

23. On 18 February 2005 the District Court entertained her request and rectified the operative part of the decision of 15 December 1999. It confirmed that the applicant's property rights could not be recognised in respect of 79 sq. m and that the applicant should be compensated as regards the plot of land measuring 10,500 sq. m in one of the ways provided for by law.

24. The decision became final and binding on 7 March 2005, no appeal having been filed against it.

25. To date, the authorities have still not complied with the District Court decision of 15 December 1999, as rectified and interpreted by the decision of 18 February 2005.

II. RELEVANT DOMESTIC LAW

A. The Constitution

26. The relevant provisions of the Albanian Constitution read:

Article 42 § 2

“In the protection of his constitutional and legal rights, freedoms and interests, or in the case of a criminal charge brought against him, 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: ... (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.”

B. The Property Act

27. The relevant domestic law as regards property restitution and compensation in Albania has been described 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.

28. New and substantial legislative measures have been enacted amending the principal 2004 Property Act since the adoption of those judgments. The principal amendments are as follows:

1. *The 2005 Property Act (Law no. 9388 of 4 May 2005)*

29. Section 3 extended until 31 December 2007 the time-limit for the completion of the examination of applications for the recognition, restitution and compensation of immovable properties, with the exception of

payment of the amount of compensation, the time-limit for which was fixed for 2015.

2. The 2006 Property Act (Law no. 9583 of 17 July 2006)

30. Section 13 established the Agency for the Restitution and Compensation of Properties (“the central Agency”) which replaced the State Committee on the Restitution and Compensation of Properties (“the State Committee”). The central Agency, which was headed by a Director, had its seat in Tirana and was made up of twelve regional Agency offices.

31. According to section 14, the regional Agency office was responsible for the initial examination of applications for the recognition of property rights, in response to which it decided on the restitution of property and/or compensation *in lieu* thereof. Section 15 set the time-limit for the submission of applications for the recognition of property rights for 1 October 2007.

32. Section 16 stipulated that an appeal against a decision of the regional Agency office could be lodged with the central Agency. The decision of the central Agency could be appealed against to the Tirana District Court within thirty days of its notification.

33. Section 21 extended until 31 June 2008 the time-limit for the completion of the examination of applications for the recognition, restitution and compensation of immovable properties, with the exception of payment of compensation.

34. Section 22 provided for the establishment of the In-kind Compensation Fund (IkCF) alongside the Financial Compensation Fund (“FCF”). Within sixty days from the Act’s entry into force, the Government had to approve the list of properties to be allocated to the IkCF.

3. The 2007 Property Act (Law no. 9684 of 6 February 2007)

35. Section 1 provided that the central Agency was responsible for examining claims for in-kind and financial compensation. The central Agency was also responsible for examining appeals against the decisions of regional Agency offices.

36. Section 2 reiterated that the regional Agency offices continued to be responsible for the initial examination of applications for the recognition of property rights. The claimant or the State Advocate’s Office had the right to appeal against that decision within thirty days to the central Agency, which was the highest administrative body. Such an administrative decision was amenable to judicial review in accordance with the provisions of the Code of Civil Procedure.

4. The 2008 Property Act (Law no. 9898 of 10 April 2008)

37. Section 1 extended until 31 December 2008 the time-limit for the submission of applications for the recognition of property rights and the restitution of properties by the regional Agency offices. It also provided for the possibility for a claimant to be given a new time-limit by way of a court decision.

38. According to section 2, the completion of the examination of applications for the recognition of property rights and restitution of properties would be finalised on 30 June 2009, with the exception of the payment of the amount of compensation, the deadline for which was fixed for 2015.

39. Section 3 extended until 31 December 2008 the deadline for the allocation of properties to the IkCF.

5. The 2009 Property Act (Law no. 10095 of 12 March 2009)

40. Section 2 provided that in addition to the budgetary appropriations, the allocations obtained by virtue of this law and other donors, the FCF would also be made up of proceeds obtained through auctions of State properties' which had not been the subject of a Commission decision.

6. The 2009 Property Act (Law no. 10207 of 23 December 2009)

41. Section 6 abolished the regional Agency offices. It stated that the archives of those offices would be transferred to the central Agency. According to section 1, the central Agency would complete the examination of applications for recognition of property rights and restitution of properties lodged with the former regional Agency offices. The central Agency continued to examine appeals lodged with it against former regional Agency offices' decisions.

42. According to section 5, the claimant or the State Advocate's Office had the right to appeal against the central Agency's decision within thirty days of its notification to the Tirana District Court.

43. Section 7 set the deadline for the completion of the examination of applications for the recognition and restitution of properties for 31 December 2011.

7. The 2010 Property Act (Law no. 10308 of 22 July 2010)

44. The 2010 Property Act chiefly introduced the possibility of requesting a revision of decisions of former Commissions / regional Agency offices.

45. Section 4 extended until 31 December 2011 the deadline for the allocation of properties to the IkCF.

C. Council of Ministers' Decisions

1. *Council of Ministers' Decisions ("CMDs") on awards from the Financial Compensation Fund (CMD no. 13 of 17 November 2005; CMD no. 758 of 16 November 2006; CMD no. 566 of 5 September 2007; CMD no. 1343 of 4 June 2008 and, CMD no. 487 of 6 May 2009)*

46. Pursuant to Article 23 of the 2004 Property Act which established the Financial Compensation Fund, the Government adopted the above-mentioned decisions, between 2005 and 2009, in respect of the award of financial compensation to former owners.

47. In 2005 financial compensation was awarded in respect of compensation claims arising out of the Tirana Commission's 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 and 2009 all former owners, who were entitled to compensation, following a Commission / regional Agency's decision, were eligible to apply for financial compensation.

48. According to the CMDs adopted between 2005 and 2008, a claimant was required to lodge a standard application for financial compensation with the central Agency in Tirana, furnishing, inter alia, the Commission / regional Agency's decision that recognised his right to compensation. Only those former owners who had not previously received compensation were entitled to financial compensation from 2005 to 2008. The 2009 CMD provided that a former owner was entitled to financial compensation on the condition that 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).

49. Applications would be examined in chronological order on the basis of the Commission's / regional Agency's 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.

50. The lodging of an application entailed the payment of a processing fee. Former owners who had been unsuccessful in their application for financial compensation in a preceding year could re-submit their application in the following year(s) once they had paid the processing fee.

51. None of those decisions provided for the award of compensation to holders claims arising out of a final, enforceable court decision.

2. CMDs on property valuation maps (CMD no. 555 of 29 September 2007; CMD no. 653 of 29 August 2007 and CMD no. 139 of 13 February 2008; and CMD no. 1620 of 26 November 2008)

52. By virtue of the above-mentioned decisions, two of which were adopted in 2007 and two in 2008, the Government approved and issued property valuation maps as listed above. The maps included the reference price per square metre throughout the country.

53. The first decision fixed the price of land for the regions of Berat, Gjirokastrë, Vlorë and Dibër; the second decision fixed the price of land for the regions of Lezhë, Dibër, Korçë and Kukës; the third decision fixed the price of land for the regions of Fier, Elbasan, Tirana, Vlorë, Durrës and Shkodër. The fourth decision contained an updated price list for certain cities.

3. CMDs on in-kind compensation of former owners (CMD no. 567 of 5 September 2007)

54. The 2006 Property Act provided for the establishment of an In-kind Compensation Fund ("IkCF"). The Government would adopt the procedures for the allocation of properties covered by the IkCF.

55. By decision of 5 September 2007 the Government laid down the criteria and the procedures for the determination of State properties covered by the IkCF (CMD no. 567 of 5 September 2007). Section 1 lists the types of properties, for example: a) public immovable property which is located in tourist areas; b) properties of the Ministry of Defence which are not used by the armed forces and have been approved by the President of the Republic; c) available agricultural land belonging to the Ministry of Agriculture; d) forests, pastures and meadows; and e) property of State institutions which falls outside their intended activity.

56. The Agency and its regional offices are responsible for checking the legal status of each property as submitted by the respective State institution. The Agency submits the final list of immovable properties for inclusion in the IkCF to the Minister of Justice. The Government are to approve the list and publish it in the Official Journal.

57. To date, it would appear that no such list has yet been approved.

D. Code of Civil Procedure

58. Articles 324-333 govern the adjudication of administrative disputes, following exhaustion of all administrative remedies. Article 324 provides that a party may bring an action before a court with a view to revoking or amending an administrative decision. Under Article 325 a party must argue that the decision is unlawful and that his or her own interests and rights have been violated directly or indirectly, individually or collectively.

59. With regard to the appeal procedure before the Supreme Court, the Code of Civil Procedure, in so far as relevant, reads as follows:

Article 472

“Decisions of the Court of Appeal and the District Court may be appealed against to the Supreme Court on the following grounds: (a) the law has not been complied with or has been applied erroneously; (b) there have been serious breaches of procedural rules (pursuant to Article 467 of the Code); (c) there have been procedural violations that have affected the adoption of the decision. ...”

Article 480

“An appeal [to the Supreme Court] shall be declared inadmissible if it contains grounds other than those provided for under the law. The inadmissibility of appeals shall be decided upon in deliberations in camera.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

60. The applicant complained that the judicial review proceedings concerning the nullity of the sale contract of 11 September 1997 had been unfair. She also alleged that the authorities had failed to enforce the District Court’s judgment of 15 December 1999, as rectified and interpreted on 18 February 2005.

Article 6 § 1 of the Convention, in so far as relevant, reads:

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

A. The unfairness of the proceedings concerning the nullity of the sale contract

61. The Government contended that the domestic proceedings had been fair. In their view, the applicant’s arguments were adequately addressed by the domestic courts. She was given the possibility of being heard before the courts, which had, in turn, summoned witnesses and ordered experts’ reports. The Government contended that the applicant’s complaint concerned the outcome of the proceedings.

62. In so far as the applicant complains about the assessment of evidence and the interpretation of the domestic law, the Court reiterates that it is not within its province to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the

evidence before them and interpret the domestic law. The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair (see *Jakupi v. Albania* (dec.), no. 11186/03, 1 December 2009).

63. The Court considers that, in the present case, the applicant was duly represented before the domestic courts. She was afforded the possibility of submitting her arguments and defending her views. The domestic courts, after ordering experts' reports and assessing all the evidence, gave reasoned decision and dismissed her claim. The Court is unable to discern any arbitrariness in the domestic courts' decisions.

64. For the above reasons, the Court considers that this complaint under Article 6 § 1 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

B. Non-enforcement of the decision of 15 December 1999 as interpreted by the decision of 18 February 2005

1. Admissibility

65. Without relying on any particular remedy, the Government contended that the applicant had not availed herself of all available remedies for the alleged non-enforcement of the decision of 15 December 1999.

66. The applicant stated that she had exhausted all domestic remedies.

67. 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, most recently, *Demopoulos and Others v. Turkey* [GC] (dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, §§ 69-70, ECHR 2010-...).

68. In the present case, the Court notes that the Government did not explicitly rely on a specific remedy to be exhausted by the applicant. However, the Court considers that the question of the existence of effective remedies as regards the non-enforcement of the decision of 15 December 1999, as rectified and interpreted by the decision of 18 February 2005, and in particular the effectiveness of the remedies offered by the Property Act, notably those introduced after the adoption of this Court's judgment in the case of *Driza*, should be joined to the merits and examined in conjunction with the applicant's Article 13 complaint (see paragraphs 78-86 below).

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

2. Merits

(a) The parties' submissions

70. The Government pointed out that the operative part of the decision of 15 December 1999 had revoked the applicant's property rights over the plot of land measuring 10,500 sq. m. Consequently, the applicant had no interest in the enforcement of the above judgment. It was not until 18 February 2005 that the District Court interpreted the 1999 decision and recognised the applicant's right to compensation in respect of the said plot. For this reason, the Government claimed that the non-enforcement period, which started to run from 18 February 2005, had not been excessive.

71. The applicant maintained that, to date, the decision of 15 December 1999 which recognised her right to compensation has not been enforced.

(b) The Court's assessment

72. The general principles under Article 6 § 1 of the Convention concerning the non-enforcement of final court judgments are set out in *Gjyli v. Albania*, no. 32907/07, §§ 43-44, 29 September 2009; and *Beshiri and Others v. Albania*, no. 7352/03, §§ 60-61, 22 August 2006.

73. The Court notes that there was an initial confusion over the enforcement of the decision of 15 December 1999, which arose from the discrepancy between the reasoning of the District Court and the operative part of the said decision. The situation was remedied by virtue of the decision of 18 February 2005, which ordered compensation to be paid to the applicant in respect of the plot of land measuring 10,500 sq. m.

74. The Court further observes that the decision of 18 February 2005 became final and binding and, to date, the authorities have failed to take any measures to enforce that decision in the applicant's favour. Moreover, it recalls that it has already found a violation of Article 6 § 1 of the Convention on account of the non-enforcement of a final court decision awarding compensation *in lieu* of restitution in the cases of *Beshiri and Others*, cited above, §§ 62-66; *Driza*, cited above, §§ 87-94; and *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, §§ 54-61, 29 September 2009. It sees no reason to depart from those findings in the present case.

75. The Court therefore concludes that there has been a violation of the applicant's right of access to a court under Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

76. The applicant complained under Article 13 of the Convention that there was no effective remedy to enforce a final court decision awarding compensation *in lieu* of the restitution of property.

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.”

A. Admissibility

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

B. Merits

78. The Court recalls that in its judgment in the case of *Driza* it found the following:

“118. The Court notes that the Property Act 1993 (which was repealed by the Property Act 2004, which in turn was amended by the Property Act 2006) provided for various forms of compensation when the original property could not be returned to the former owner (...). The Property Act 1993 left the determination of the appropriate form of compensation to the Council of Ministers, which was to define the detailed rules and methods applicable to the provision of compensation. According to the findings of the Supreme Court in its judgment of 7 December 2000, the bodies competent to deal with compensation issues had yet to be set up (...). Notwithstanding the entry into force of the Property Act 2004 the situation did not change. It was not until 28 April 2005 that Parliament passed an Act determining the methodology for the valuation of property for compensation purposes. Section 5 of that Act left the task of implementing this methodology to the State Committee on Property Restitution and Compensation, which should have issued the appropriate site plans to allow the properties to be valued. However, to date those plans have not been adopted.

119. Consequently, the Court considers that, by not setting up the appropriate bodies to deal with the compensation issues or adopting site plans for the valuation of the properties, the Government failed to establish an adequate procedure in relation to the compensation claims. Moreover, it is unlikely that the Government will put in place such a system imminently or within a span of time sufficiently short to enable the settlement of the dispute related to the determination of the applicant’s rights.”

79. In the instant case, the Court observes that, since the date of adoption of the judgment in *Driza*, the Government have enacted new legal provisions as regards the award of financial compensation, the adoption of

property valuation maps and the establishment of the IkCF (see “The relevant domestic law” section above). The Court must therefore determine whether the measures adopted constitute an effective remedy within the meaning of Article 13 of the Convention.

80. The Court reiterates that Article 13 of the Convention 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 (*Burdov v. Russia* (no. 2), no. 33509/04, § 96, ECHR 2009-...; and, *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 63, ECHR 2009-... (extracts)).

81. The scope of the Contracting States’ obligations under Article 13 of the Convention varies depending on the nature of the applicant’s complaint; the “effectiveness” of a “remedy” within the meaning of this provision 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 (see *Burdov* (no. 2), cited above, § 97; and, *Yuriy Nikolayevich Ivanov*, cited above, § 64).

82. In the instant case the Court observes at the outset that the Government decisions on the award of financial compensation explicitly stipulate that a claimant could vindicate his right to compensation on the basis of a Commission decision. The provisions on financial compensation do not apply to claimants, like the applicant in the instant case, who have an enforceable compensation claim by virtue of a final court decision.

83. Having regard to the information in its possession, the Court further notes that, in practice, the Agency has awarded compensation only to claimants who are in possession of a Commission decision. There have been no awards to a claimant possessing a final, enforceable court decision.

84. Moreover, the Court is unable to identify any other measures which have been adopted with a view to securing the enforcement of a final court decision awarding compensation to an applicant *in lieu* of the restitution of property. The Government have not submitted any evidence to the contrary.

85. In the light of the foregoing, the Court considers that the applicant did not have an effective remedy enabling her to secure the enforcement of her right to compensation recognised by virtue of a final court judgment.

86. Accordingly, there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention. Consequently, the Court dismisses the Government’s objection that the applicant failed to exhaust effective domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO 1 TO THE CONVENTION

87. The applicant alleged that the failure to pay her compensation as interpreted by the decision of 18 February 2005 entailed a breach of Article 1 of Protocol No. 1, 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.”

A. Admissibility

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

B. Merits

89. The Government submitted that the applicant’s right to compensation was recognised only by virtue of the decision of 18 February 2005. The Government relied on an official document which outlined the process of property restitution and compensation. According to the document, the process of restitution and compensation could not occur overnight. The delays associated therewith were related to the transitional process which the country was going through. Any delays were not due to negligence or unwillingness on the part of the respondent State, but to the complex nature of the reforms undertaken in the property field.

90. The applicant maintained that she had an asset in the form of compensation awarded by a final court decision. However, during all these years she had been unable to enjoy possession thereof.

91. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

92. The Court observes that the District Court's decision of 15 December 1999 as interpreted by the decision of 18 February 2005 provided the applicant with an enforceable claim to compensation *in lieu* of the restitution of property.

93. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a final court judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

94. The Court notes that it has already found a violation of Article 6 § 1 of the Convention because of the authorities' failure to enforce a final court decision awarding compensation (see paragraphs 72-75 above).

95. The Court further notes that it has already found a violation of an applicant's property rights on account of the authorities' failure to provide compensation arising out of a final court decision in the cases of *Beshiri and Others*, cited above, §§ 95-103; *Driza*, cited above, §§ 101-109; and *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, §§ 71-77, 29 September 2009. The Court sees no reason to reach a different conclusion in the circumstances of the instant case.

96. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

97. The Court notes that in the instant case it has identified shortcomings in the Albanian regulatory framework as regards the lack of machinery to secure the enforcement of a final court decision awarding compensation *in lieu* of the restitution of property. Such shortcomings should be addressed as a matter of urgency having regard to the number of persons in the applicant's situation and to the scope for further applications to the Court raising the same issues (see *Driza*, cited above, § 122).

98. Whereas the respondent State remains free to choose the means by which it will discharge its legal obligations under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Burdov v. Russia (no. 2)*, cited above, § 136), the Court considers that general measures at national level are undoubtedly called for in the execution of the present judgment.

99. The Court observes that the problems at the root of the violations of Article 6, Article 13 in conjunction with Article 6 and Article 1 of Protocol No. 1 found in this case are complex and structural. They require the

adoption and implementation of measures of a legislative and administrative character, involving various authorities. The Court considers that the respondent State should take adequate legislative, administrative and financial measures in order to provide for awards of compensation, without undue delay, ordered by a final court decision *in lieu* of the restitution of property. The respondent State should, for example, designate a competent enforcement body, provide sufficient human and material resources, establish clear and simplified rules of procedure for the collection of claims, lay down realistic and binding time-limits for their processing and enforcement, allocate the necessary budgetary funds, and remove all obstacles with a view to securing the expedient award of financial or in-kind compensation, having regard to the principles established in the Court's case-law.

100. The Court recalls that it is of crucial importance that a court decision against the State, having acquired the force of *res judicata*, should be enforced without undue delay. The applicant should not be required to bear the burden for the execution of *res judicata* judgments given in his favour against the State (see, *mutatis mutandis*, *Metaxas v. Greece*, no. 8415/02, § 49, 27 May 2004). The State's failure to enforce *res judicata* judgments undermines public confidence in the judiciary and respect for the rule of law, which is one of the fundamental principles of a democratic society and an inherent element in all the Articles of the Convention (see, *mutatis mutandis*, *Stere and Others v. Romania*, no. 25632/02, § 53, 23 February 2006).

B. Article 41 of the Convention

101. 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."

102. The applicant did not specify a total claim in respect of pecuniary damage. She claimed that she owned one twentieth of the property and sought compensation in respect of 525 sq. m. She submitted that the average price of the land was between 550 and 700 euros per sq. m, whereas the price of the plot of land belonging to the pharmacy was between 2,500 and 3,000 euros. She further sought 100,000 euros in respect of the value of pharmacy's building. She did not submit any claim in respect of non-pecuniary damage.

103. The Government rejected the applicant's claims.

104. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and

the further procedure fixed with due regard to the possibility of agreement being reached between the Albanian Government and the applicant.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits the Government's preliminary objection regarding the applicant's failure to exhaust domestic remedies in respect of the decision of 15 December 1999 as interpreted by the decision of 18 February 2005;
2. *Declares* the complaint concerning the unfairness of the proceedings under Article 6 § 1 inadmissible and the remainder of the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the non-enforcement of the decision of 15 December 1999 as interpreted by the decision of 18 February 2005;
4. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention and *dismisses* in consequence the Government's above-mentioned preliminary objection;
5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
6. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 8 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President