



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

FOURTH SECTION

CASE OF DELVINA v. ALBANIA

(Application no. 49106/06)

JUDGMENT
(merits)

STRASBOURG

8 March 2011

FINAL

08/06/2011

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

In the case of Delvina v. Albania,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Sverre Erik Jebens,

Päivi Hirvelä,

Ledi Bianku,

Vincent A. de Gaetano, *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. 49106/06) 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 three Albanian nationals, Mr Sherif Delvina, Mr Ahmet Delvina and Ms Fatime Delvina (“the applicants”), on 23 November 2006.

2. The applicants were represented by Ms L. Suli, a lawyer practising in Tirana. The Albanian Government (“the Government”) were represented by their then Agent, Ms S. Meneri.

3. The applicants 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. They 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 their compensation.

4. On 14 February 2008 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 applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1932, 1934 and 1942, respectively, and live in Albania.

A. Background of the case and administrative proceedings

7. In 1950 a plot of land measuring 1,600 sq. m., which belonged to the applicants' father, was confiscated without compensation by the State, which subsequently constructed a building on the plot of land.

8. On 1 July 1991 the Italian Embassy in Albania purchased two buildings in Tirana, one of which was situated on the applicants' inherited plot of land. The transaction was concluded through an inter-State agreement validated by means of *note verbale* exchanges between the two governments. The relevant property titles were not entered in the Tirana Property Register.

9. The Albanian Government subsequently used the income from the transaction to purchase the premises of the Albanian Embassy in Rome (see also *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, §§ 7-16, 29 September 2009 for a similar description of facts).

10. Under the Property Restitution and Compensation Act, the applicants lodged an application with the Tirana Commission on Restitution and Compensation of Properties (*Komisioni i Kthimit dhe Kompensimit të Pronave* – “the Commission”) claiming title to their father's property.

11. On 28 July 1999 the Commission recognised the applicants' father's property title over 1,600 sq. m. and acknowledged the fact that the plot of land was occupied by the Italian Embassy in Albania. Since buildings had been constructed on the land, the Commission ruled that their owner, the Italian Government, had to pay rent for the land or repurchase the land by agreement.

12. The applicants were also issued with a certificate of registration of property by the Registry Office: registration no. 137, dated 9 August 1999.

13. The applicants claimed that they sent letters to the Italian Embassy to enter into a lease or to sell the plot of land according to the Commission's decision. However, the Italian Embassy explained that the property had been transferred to them through the exchange of *notes verbales* in 1991.

B. Proceedings for recovery of the property and compensation

14. The applicants filed an action on 16 January 2003 to recover the property and to obtain damages from the Italian authorities.

15. On 22 June 2004 the Tirana District Court quashed the Commission's decision as regards the physical return of the property to the applicants, since that plot of land had been lawfully occupied by the Italian Embassy since 1991. Instead, it ruled that the applicants should be compensated for 1,600 sq. m in one of the ways provided for by law. The Court of Appeal and the Supreme Court, by way of reasoned decisions, upheld the District Court's decision on 25 March 2005 and 6 June 2006, respectively. On 24 November 2006 the applicants lodged a constitutional complaint with the Constitutional Court.

16. On 8 December 2006 the Constitutional Court, sitting as a bench of three judges, declared the application inadmissible.

II. RELEVANT DOMESTIC LAW

A. The Constitution

17. The relevant provisions of the Albanian Constitution read as follows:

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

18. 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.

19. 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)

20. 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)

21. 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.

22. 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.

23. 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.

24. 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.

25. 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)

26. 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.

27. 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)

28. 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.

29. 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.

30. 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)

31. 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)

32. 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.

33. 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.

34. 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)

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

36. 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)

37. 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.

38. 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.

39. 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 received previous 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).

40. 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.

41. 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.

42. 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 200; CMD no. 139 of 13 February 2008; and CMD no. 1620 of 26 November 2008)

43. 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.

44. 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. According to that decision, the reference price per square metre for the area in which the applicants' property was located was valued at ALL 180,000.

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

45. 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.

46. 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.

47. 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.

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

THE LAW

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

49. The applicants complained that the judicial proceedings had been unfair. They also alleged that the enforcement of the Court of Appeal decision of 25 March 2005 had taken an unreasonable period of time.

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 within a reasonable time... by [a] ... tribunal ...”

A. The unfairness of the judicial proceedings

50. The applicants alleged that the domestic courts had wrongly assessed the evidence and misinterpreted domestic law. The Government contended that the domestic proceedings had been fair. In their view, the applicants' arguments had been adequately addressed by the domestic courts.

51. In so far as the applicants complain 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; *Beshiri and Others v. Albania*, no. 7352/03, § 37, 22 August 2006).

52. The Court considers that it has not been demonstrated that the proceedings before the domestic courts were not in accordance with the requirements of Article 6 § 1 of the Convention. The applicants were legally represented. They had the possibility of submitting their arguments and defending their views. The domestic courts, after assessing all the evidence, gave reasoned decisions and dismissed their claim. The Court is unable to discern any arbitrariness in the domestic courts' decisions. It does not find any indication of a violation of Article 6 § 1 of the Convention under this head.

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

B. Non-enforcement of the Supreme Court's decision of 6 June 2006

1. Admissibility

54. 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

55. The applicants submitted that the authorities had not taken any measures to enforce the Court of Appeal's decision of 25 March 2005.

56. The Government argued that the applicants never sought compensation before the domestic authorities. In their view, the authorities were not obliged to make an offer given that the applicants disputed the domestic courts' findings.

57. As regards the scope of this complaint, the Court notes at the outset that Article 6 protects the enforcement of final and binding judicial judgments, and not judgments which may be subject to subsequent control of a higher instance court and, eventually, quashed (see, for example, *Ouzounis and Others v. Greece*, no. 49144/99, § 21, 18 April 2002; *Ioannis Karahalios v. Greece* (dec.), no. 62499/00, 26 September 2002; *Xheraj v. Albania*, no. 37959/02, § 70, 29 July 2008). On that understanding, the Court finds that this complaint must be taken to concern the non-enforcement of the Supreme Court's decision of 6 June 2006, which finally recognised the applicants' right to compensation *in lieu* of the restitution of property, even if the Court of Appeal, to the disappointment of the applicants, reached the same conclusion on 25 March 2005.

58. 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*, cited above, §§ 60-61.

59. The Court observes that the Supreme Court's decision ordered compensation to be paid to the applicants in respect of their plot of land measuring 1,600 sq. m. To date, the authorities have failed to take any measure to enforce that decision in the applicants' favour.

60. The Court further reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Beshiri and Others*, cited above, § 54).

61. Moreover, the Court 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.

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

C. The length of the proceedings

63. 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 complaint inadmissible have been established and therefore declares it admissible.

64. However, the Court further considers that in the light of its finding of a violation under Article 6 § 1 of the Convention as regards the non-enforcement of the Supreme Court's decision of 6 June 2006, it does not have to rule separately on the merits of the length of proceedings complaint (see *Vrioni and Others v. Albania and Italy*, cited above, § 66; *Lizanets v. Ukraine*, no. 6725/03, § 48, 31 May 2007).

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

65. The applicants complained under Article 13 of the Convention that there was no effective remedy to enforce the final judgment in their favour.

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

66. 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

67. The Court recalls that in its judgment in the above-mentioned 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 applicants' rights."

68. 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.

69. 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)).

70. 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).

71. 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 applicants in the instant case, who have an enforceable compensation claim by virtue of a final court decision.

72. 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.

73. 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.

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

75. Accordingly, there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention.

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

76. The applicants alleged that the failure to pay them compensation as ordered by the Supreme Court's decision of 6 June 2006 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

77. 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

78. The Government submitted that there was no causal link between this complaint and the authorities' obligation to provide compensation.

79. 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).

80. The Court observes that the Supreme Court's decision of 6 June 2006 provided the applicants with an enforceable claim to compensation *in lieu* of the restitution of property.

81. 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).

82. 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 58-62 above).

83. 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.

84. 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

85. 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 applicants' situation and to the scope for further applications to the Court raising the same issues (see *Driza*, cited above, § 122).

86. 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.

87. 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.

88. 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

89. 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.”

90. The applicants claimed EUR 3,210,240 in respect of pecuniary damage, which consisted of EUR 2,640,000 as regards the value of the land and EUR 570,240 as regards the loss of profits for a period of ten years.

They relied on an expert report for determining the overall value of land and the loss of profits, according to which the market price of the property was EUR 1,650 per sq. m and the market price of the rent was EUR 5,280 per month. Lastly, the applicants claimed EUR 100,000 in respect of non-pecuniary damage.

91. The Government did not submit any observations in this respect.

92. 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 applicants.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicants' complaint concerning the unfairness of the judicial proceedings inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the Supreme Court's decision of 6 June 2006;
3. *Holds* that it is not necessary to examine the applicants' complaint under Article 6 § 1 concerning the length of the non-enforcement of the Supreme Court's decision of 6 June 2006;
4. *Holds* that there has been a violation of Article 13 taken in conjunction with Article 6 § 1 of the Convention;
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