



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

FOURTH SECTION

CASE OF ÇAUSH DRIZA v. ALBANIA

(Application no. 10810/05)

JUDGMENT

STRASBOURG

15 March 2011

FINAL

15/06/2011

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

In the case of ÇausH Driza v. Albania,

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

Nicolas Bratza, *President*,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Registrar*,

Having deliberated in private on 22 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 10810/05) 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 ÇausH Driza (“the applicant”), on 24 February 2005.

2. The applicant was initially represented by Mr Z. Hajdarmataj and, subsequently, by Mr A. Shehu, both lawyers practising in Tirana. The Albanian Government (“the Government”) were represented by their Agent, Ms S. Meneri and, subsequently, Mrs E. Hajro.

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. He also relied on Article 13 of the Convention as regards the lack of an effective remedy concerning the non-enforcement of the final court decision in his favour and Article 1 of Protocol No. 1 to the Convention as regards a breach of his right to property.

4. On 21 November 2006 the President of the Fourth Section of the Court to which the case was allocated decided to give notice of the application to the Government. Under the provisions of Article 29 § 1 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

6. The applicant was born in 1943 and lives in Fier, Albania.

7. On 20 May 1947 the authorities confiscated the applicant's father's one-storey villa and the appurtenant plot of land measuring 360 sq. m which was situated in the city of Fier.

8. On 6 June 1953 the authorities transferred the confiscated villa and the plot of land to S.

9. Pursuant to the 1993 Property Act, on an unspecified date the applicant and his nine siblings lodged an application with the Fier Commission on Restitution and Compensation of Properties (“the Commission”) seeking the restitution of their father's property. On 27 October 1993 the Commission dismissed their request.

10. The applicant lodged an appeal with the Lushnjë District Court (“the District Court”) claiming that the Commission's decision was unlawful.

11. On 22 February 2000 the District Court recognised the applicant's and his siblings' inherited property rights over the villa and the plot of land. However, the District Court found that, in so far as the plot of land was occupied and in so far as the one-storey villa had been lawfully transferred to S, they were not recoverable by the applicant and his siblings. It awarded them compensation in the amount of 204,902 Albanian leks (“ALL”).

12. The applicant and his siblings appealed arguing that the District Court had wrongly assessed the evidence.

13. On 30 June 2000 the Vlora Court of Appeal (“Court of Appeal”) awarded the applicant and his siblings compensation in-kind for the value of the plot of land as opposed to monetary compensation. The applicant and his siblings appealed.

14. On 18 June 2001 the Supreme Court dismissed the appeal, finding that it did not contain any of the grounds of appeal envisaged by Article 472 of the Code of Civil Procedure. The applicant and his siblings lodged a constitutional appeal with the Constitutional Court.

15. On 10 June 2002 the Constitutional Court, sitting as a bench of three judges, declared the appeal inadmissible.

16. To date, the Court of Appeal decision has not been enforced.

II. RELEVANT DOMESTIC LAW

A. The Constitution

17. 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

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 (“CMDs”)

37. Pursuant to the 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 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)

38. 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.

39. 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.

40. 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).

41. Applications were to 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.

42. 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.

43. 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)

44. 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.

45. The first decision fixed the price of land for the regions of Berat, Gjirokastër, 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

46. The 2006 Property Act provided for the establishment of the IkCF (see paragraph 25 above). The Government have adopted the following CMDs on the procedures for the allocation of properties covered by the IkCF.

(a) CMD no. 567 of 5 September 2007

47. By decision no. 567 of 5 September 2007 the Government lay down the criteria and the procedures for the determination of State properties covered by the IkCF. 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.

48. Local and central State institutions are responsible for identifying and drawing up a list of immovable properties in their ownership which could serve as in-kind compensation. The list is submitted to the Agency and its regional offices which are responsible for checking the legal status of each property. 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.

(b) CMD no. 868 of 18 June 2008

49. By decision no. 868 of 18 June 2008 the Government allocated 17,335 hectares of agricultural land to the IkCF. The Agency is responsible for using it for the compensation of owners in accordance with the criteria prescribed by law.

(c) CMD no. 1077 of 18 June 2008

50. By decision no. 1077 of 18 June 2008 the Government allocated 71,699.3 hectares of forests and pastures to the IkCF. The Agency shall use it for the compensation of owners in accordance with the criteria prescribed by law.

(d) CMD no. 1232 of 18 June 2008

51. By decision no. 1232 of 18 June 2008 the Government allocated twenty-nine objects, mainly warehouses, factories and office buildings, to the IkCF. The Agency is responsible for using it for the compensation of owners in accordance with the criteria prescribed by law.

(e) CMD no. 1696 of 24 December 2008

52. By decision no. 1696 of 24 December 2008 the Government allocated thirty-two objects, mainly warehouses, office buildings and workshops to the IkCF. The Agency is in charge of using it for the compensation of owners in accordance with the criteria prescribed by law.

D. Code of Civil Procedure

53. 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. ADMISSIBILITY OF THE COMPLAINTS

54. The applicant complained under Article 6 § 1 of the Convention that the proceedings were unfair and that the authorities had failed to enforce a

final decision in his favour. Under Article 13 of the Convention he complained that there was no effective remedy in respect of the non-enforcement of a final court decision. He also made a complaint under Article 1 of Protocol No. 1 to the Convention.

A. Article 6 § 1 complaints

55. The applicant complained that the judicial proceedings had been unfair in that the courts had wrongly assessed the evidence. He also alleged that the prolonged non-enforcement of the Court of Appeal's decision of 30 June 2000 had violated his “right to court” under Article 6 § 1, which, 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 ...”

1. The unfairness of the proceedings

56. The Government argued that this complaint had been submitted outside the six-month time-limit prescribed by the Convention, the Constitutional Court's decision of 10 June 2002 being the last domestic ruling in the case.

57. The Court observes that this complaint was lodged with it on 24 February 2005. The final judgment for the purpose of calculating the six-month time-limit was issued on 10 June 2002. The Court notes that the applicant did not comply with the six-month rule. It follows that this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Non-enforcement of the Court of Appeal decision of 30 June 2000

(a) Complaint lodged out of time

58. The Government argued that this complaint had been submitted outside the six-month time-limit prescribed by the Convention, the Constitutional Court's decision of 10 June 2002 being the last domestic ruling in the case.

59. The applicant submitted that the complaint had been filed within the time-limit prescribed by the Convention.

60. The Court observes that the authorities' failure to comply with final judgments creates a continuing situation, so that the six-month rule does not apply (see *Marini v. Albania*, no. 3738/02, § 95, ECHR 2007-XIV (extracts)). The Government's objection must therefore be dismissed.

(b) Failure to exhaust domestic remedies

61. Without relying on any particular remedy, the Government contended that the applicant had not availed himself of all available remedies for the alleged non-enforcement of the decision of 30 June 2000.

62. 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-...).

63. In the present case, the Court notes that the Government did not explicitly rely on any 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 30 June 2000, and in particular the effectiveness of the remedies offered by the Property Act, introduced after the adoption of this Court's judgment in the case of *Driza*, cited above, should be joined to the merits and examined in conjunction with the applicant's complaint under Article 13 (see paragraphs 72-83 below).

64. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Not being inadmissible on any other grounds, the complaint must therefore be declared admissible.

B. Article 13 of the Convention

65. The applicant complained under Article 13 of the Convention that there was no effective remedy to enforce the final Court of Appeal's decision of 30 June 2000 awarding in-kind compensation.

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.”

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.

C. Article 1 of Protocol No. 1 to the Convention

67. The applicant alleged that the failure to enforce the Court of Appeal's decision of 30 June 2000 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.”

68. The Government argued that this complaint had been filed out of time.

69. The applicant submitted that the complaint was filed within the time-limit prescribed by the Convention.

70. The Court refers to its findings in paragraph 60 above. It results from the findings that the six-month rule does not apply to the instant complaint. The Government's objection must therefore be dismissed.

71. The Court further considers that the complaint under this head is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring this part of the application inadmissible having been established, the Court therefore declares this complaint admissible.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

72. The Government submitted that the applicant could have had recourse to the available remedies to seek the in-kind compensation to which he was entitled.

73. The Court recalls that in its judgment in the case of *Driza* it found as follows:

“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."

74. 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.

75. 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)).

76. 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).

77. The Court has taken note of the significant domestic legal developments which have taken place in Albania consequent on this Court's judgments in the cases of *Driza*, cited above, and *Ramadhi and Others*, cited above. However, the question to be addressed by the Court is whether there exists an effective domestic remedy as regards the enforcement of final court judgments awarding compensation in-kind.

78. In the first place, the Court notes that on 17 July 2006 the Property Act made provision for the establishment of the IkCF. It also observes that it was not until 5 September 2007 that the Government adopted a decision on the procedures for the allocation of properties to the IkCF. The Government allocated properties, namely agricultural land, forests and

pastures, and various buildings to the IkCF throughout the second half of 2008.

79. The Court further notes that, on at least two occasions, the deadline for the allocation of properties to the IkCF was extended, the current deadline being fixed for 31 December 2011. No information was submitted by the Government about the progress of the allocation of properties to the IkCF during 2009 and 2010.

80. Secondly, no information has been brought to the Court's attention about the adoption of any procedures which a claimant, such as the present applicant, could use to vindicate his right to in-kind compensation awarded by virtue of a final court ruling.

81. Thirdly, the Court was not provided with documents showing that the Agency has in fact made any in-kind compensation awards to claimants, such as the present applicant, who have an enforceable compensation claim by virtue of a final court decision. 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 in-kind compensation to an applicant *in lieu* of the restitution of the original property.

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

83. Accordingly, there has been a violation of Article 13 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 6 § 1 OF THE CONVENTION

84. The Government submitted that the applicant had never been interested in obtaining the in-kind compensation awarded by way of the Court of Appeal's decision of 30 June 2000. In their view, the applicant insisted on the restoration of the original property.

85. The applicant maintained that, to date, the decision of 30 June 2000 which recognised his right to compensation has not been enforced.

86. 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).

87. The Court observes that the Court of Appeal decision of 30 June 2000 became final and binding on 10 June 2002. To date, the authorities have failed to take any measures to enforce that decision in the applicant's favour.

88. The Court 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 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.

89. 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.

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

90. The Government submitted that the applicant's interest lay in the return of the original property instead of the award of in-kind compensation.

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 Court of Appeal decision of 30 June 2000 provided the applicant with an enforceable claim to in-kind compensation *in lieu* of the restitution of property. The applicant therefore has “possessions” within the meaning of Article 1 of Protocol No.1.

93. The Court recalls its case-law to the effect 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 in-kind compensation (see paragraphs 86-89 above).

95. Furthermore, the Court 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* (cited above §§ 71-77). 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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.”

98. The applicant, relying on an expert's report, sought 451,365 euros (“EUR”) in respect of pecuniary damage. He did not make any claims in respect of non-pecuniary damage, nor for costs and expenses.

99. The Government rejected the applicant's claims as having been submitted out of time.

100. The Court notes that the applicant's just satisfaction claim was indeed submitted on 8 July 2009, more than two years after the expiry of the original deadline on 23 April 2007. The Court further notes that the applicant has advanced no reasons justifying his failure to comply with the requirements of Rule 60 § 2 of the Rules of Court. In these circumstances, the Court considers that his claim should be dismissed.

101. The Court notes that the applicant remains entitled to the award of in-kind compensation pursuant to the Court of Appeal's decision in his favour (see *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, § 32, 3 April 2007), and that the authorities are required to take the necessary steps to secure the enforcement of that decision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *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 in respect of the non-enforcement of the Court of Appeal's decision of 30 June 2000;
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 13 of the Convention and, consequently, *dismisses* the Government's objection as to the exhaustion of domestic remedies;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the non-enforcement of the Court of Appeal's decision of 30 June 2000;
5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the Court of Appeal's decision of 30 June 2000;

6. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President