



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

SECOND SECTION

CASE OF KASMI v. ALBANIA

(Application no. 1175/06)

JUDGMENT

Art 1 P1 • Control of the use of property • Applicant's inability to recover possession of his property occupied by tenants, for more than 13 years, in the framework of housing protection of tenants affected by restitution of expropriated or nationalised properties to former owners • Social and economic circumstances at the relevant time taken into account • Scheme meant to be of limited time duration, with State responsibility for securing alternative housing solutions for the affected tenants • Tenancy agreements imposed by law • Agreement not time-limited • Lack of adequate mechanisms safeguarding the applicant's right to terminate the tenancy agreements • Low amount of rent fixed by law not allowing for its indexation to inflation • Absence of authorities concrete measures to provide alternative housing to the tenants • Long period of uncertainty • Burden of a socially complex situation placed on the applicant

STRASBOURG

23 June 2020

FINAL

23/09/2020

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

In the case of Kasmi v. Albania,

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

Robert Spano, *President*,
Paul Lemmens,
Valeriu Grițco,
Egidijus Kūris,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Darian Pavli, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 10 April 2018 and 26 May 2020,

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

PROCEDURE

1. The case originated in an application (no. 1175/06) 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 Gëzim Kasmi (“the applicant”), on 19 December 2005.

2. The applicant was represented by Mr S. Dodbiba, a lawyer practising in Tirana. The Albanian Government (“the Government”) were represented by their then Agent, Ms E. Hajro of the State Advocate’s Office.

3. Mr Ledi Bianku, subsequent to the end of his term of office as the judge elected in respect of Albania, withdrew from sitting in the case (Rule 28 of the Rules of Court). Mr Darian Pavli, following the taking up of office as the judge elected in respect of Albania, sat in his place (Rule 26 § 1 (a)).

4. The applicant alleged under Article 1 of Protocol No. 1 to the Convention that there had been a violation of his property rights as he had been unable to recover possession of his house.

5. On 5 February 2009 the application was communicated to the Government.

THE FACTS

6. The applicant was born in 1942 and lives in Tirana.

I. THE CIRCUMSTANCES OF THE CASE

A. Relevant background

7. During the communist period in Albania, households typically lived in State-owned premises, let as dwellings, in accordance with residential

tenancy agreements which were entered into between tenants and the then State-owned Housing Maintenance Company (*Ndërmarrja Komunale Banesa* - “the Housing Company”). Privately owned dwellings which had passed into State ownership through legislation on nationalisation were allocated by the then Government to households - the members of which, as a rule, worked for the State at the time - on the basis of tenancy agreements.

8. In 1992, following the end of communist rule, the Privatisation Act was enacted, pursuant to which State-owned dwellings, save those which had formerly been privately owned property, would be subject to privatisation. The relevant provisions of the Privatisation Act are set out in paragraphs 21-24 below.

9. In 1993 the Property Restitution and Compensation Act (“the Property Act”) was enacted, pursuant to which former owners or their heirs were entitled to claim restitution of expropriated or nationalised properties as well as compensation *in lieu* of restitution. However, flats in those properties were commonly occupied by tenants who had entered into a tenancy agreement with the State. The relevant provisions of the Property Act are set out in paragraphs 41-46 below.

B. The circumstances of the particular case

1. Administrative proceedings concerning the restitution of the applicant’s property

10. The applicant’s father owned two houses located in Tirana, each of which was made up of four rooms, a dining room and the appurtenant courtyard. On an unspecified date in the 1950s both properties were nationalised by the State, which were subsequently tenanted by households.

11. Following the entry into force of the Property Act in 1993, on an unspecified date - most likely in 1994 or 1995 - the applicant’s father lodged a claim with the Tirana Commission on Property Restitution and Compensation (“the Commission”) to have the houses restored.

12. It transpires that by a decision of 27 September 1995, no copy of which has been submitted by the parties, the Commission recognised the applicant’s father’s property rights over the houses.

13. On 15 August 1997, following the death of the applicant’s father, his and his siblings’ title to the property was entered into the property register.

2. Judicial proceedings concerning the eviction of tenants occupying the applicant’s property

14. On an unspecified date, since the applicant could not regain possession of one of the houses as it was occupied by tenants, he lodged a civil action with the Tirana District Court (“the District Court”) seeking their eviction. In his view, the tenants did not possess any property rights to the house, they had never paid him any rent and they were not legally

homeless (i pastrehë). He argued that, being the lawful owner of the house, its occupation by the tenants had directly impinged upon his property rights, the protection of which was guaranteed by the Constitution and the Convention.

15. On 17 March 2003 the Tirana District Court upheld the applicant's action. It found that one of the tenants, namely J.D., did not possess a lawful occupancy authorisation to continue occupying the applicant's property. As regards the other tenants, the court stated that two of them, namely B.S. and M.S., had been living abroad for at least five years and one of them, namely F.S., had received housing from the State. The court ordered all tenants to vacate the house.

16. The tenants lodged an appeal with the Tirana Court of Appeal ("the Court of Appeal"), which on 23 April 2004 partially quashed the District Court's decision insofar as it related to J.D., B.S. and M.S. The Court of Appeal held that those tenants had been occupying the house since 1980s. As regards J.D., the court found that he was legally homeless and had gained the right to a tenancy since 1993. As regards B.S. and M.S., the court held that, because they had been living abroad as economic migrants for the last two years and had not established any permanent residence there, they had not abandoned their dwelling in Albania. The Court of Appeal, however, upheld the District Court's decision insofar as it concerned F.S. and ordered that tenant to vacate a room located on the ground floor.

17. The applicant lodged an appeal with the Supreme Court contending that J.D. had not had a lawful occupancy authorisation, on the basis of which he could enter into a tenancy agreement. He further argued that B.S. and M.S. had been living abroad for ten years.

18. On 19 July 2005 the Supreme Court upheld the Court of Appeal's decision. The Supreme Court recognised the applicant's undisputed property rights over the house. However, as regards J.D., the Supreme Court found that, as he was legally homeless, he had been lawfully occupying one of the flats on the basis of an occupancy authorisation since 1986. He had further obtained a final court decision in 1993, which remained unenforced, entitling him to the continuation of the tenancy. It further held that, even though B.S. and M.S. were living abroad, they were lawfully occupying the flat on the ground of being legally homeless.

19. The Supreme Court further stated that, having regard to section 14 of the Property Act 1993 which determined the relationship between former owners and tenants (see paragraph 42 below), there existed a legal possibility for the parties to regulate their relationship (*palët ndërgjygjëse kanë hapësira ligjore për rregullimin e marrëdhënieve të tyre*).

3. *Subsequent developments after the communication of the case to the Government*

20. On 20 May 2010 the applicant informed the Court that the tenants living in his property, without specifying their names, had died and that he had taken possession of the house.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic legal framework concerning privatisation of State-owned dwellings and State support to homeless households

1. *Privatisation of State-Owned Dwellings Act (“the Privatisation Act” - Law no. 7652 of 23 December 1992, as amended)*

21. The Privatisation Act was intended to privatise State-owned dwellings and to create a free market for housing, thus enabling occupying tenants to become owners. Households living in State-owned dwellings, pursuant to a tenancy agreement, could purchase those dwellings and become owners subject to the completion of a set of actions, such as payment of the full privatisation price and registration of the property at the relevant land registry office.

22. Section 16 provided that homeless people were entitled to receive loans from financial institutions to resolve their housing needs. The interest payments would be borne by the State through the National Housing Entity (“NHA” – *Enti Kombëtar i Banesave*).

23. Section 21 provided that State-owned dwellings which had previously been privately owned property would not be subject to privatisation under the Privatisation Act. As tenants would continue to pay rent, section 19 stated that rents for State-owned dwellings, which had formerly been privately owned property, would be liberalised from December 1995. Section 21/1, as introduced in 1994, stated that State-owned dwellings which had formerly been privately owned property, in respect of which no restitution claim had been made in application of the Property Act 1993, would continue to be administered and maintained by the NHA.

24. Under section 25 the State would provide tenants living in dwellings belonging to former owners who were to vacate the dwelling as a result of their restitution to the former owner with rental housing to be constructed in the future.

25. The Privatisation Act, the operation of which was frequently extended at least until 31 December 1995, was repealed by the entry into force of the Social Programmes Act, as amended in 2007 (see paragraph 37 below).

Constitutional Court decision no. 11/1993

26. Following a request for constitutional review of the Privatisation Act on the ground that it discriminated against tenants occupying properties which would be restored to former owners, filed with the Constitutional Court by 265 tenants occupying former privately owned properties, on 27 August 1993 the Constitutional Court rejected the request as ill-founded. It held, *inter alia*, as follows:

“The [Constitutional] Court observes that [the Privatisation Act] and [the Property Act] govern the problems of the privatisation of State-owned dwellings and of the restitution of properties to former owners or compensation for them.

Under both laws, tenants of State-owned dwellings have the right to take them into private ownership in compliance with the conditions prescribed by the law. In order to resolve their housing needs, tenants of dwellings that have been restored to former owners have been granted the right to obtain loans from financial institutions, the interest payments on which ... are to be borne by the State, as expressly provided for in section 16 of the Act, or, alternatively, are to be accommodated as tenants in housing units to be constructed by the State in accordance with section 25 of the said Act.

The different solutions to the housing problems that concern these categories of tenants do not arise from any type of discrimination between them, but are a result of the different status they enjoy: the first are tenants of State-owned dwellings, the second are tenants of dwellings that have been restored to former owners.

The complainants’ request that they were discriminated against [on the basis of their belonging to the category of tenants occupying former privately owned properties] on account of the Privatisation Act and the Property Act is ill-founded.”

2. *State Contribution to Homeless Households Act (“The Contribution to Homeless Households Act” - law no. 8030 of 15 November 1995, as amended by Law no. 8647 of 24 July 2000)*

27. According to section 1, the Act was intended to determine the State obligations for homeless households (that is, households rendered homeless as a result of the operation of the Privatisation Act) through the grant of a housing allowance and loans. It also aimed to give them the opportunity to benefit from the free property market.

28. Under section 2, homeless households were entitled to receive a housing allowance (*përfitim*) from the State. Under section 6 the allowance could be used to purchase dwellings from the State or private persons, to purchase a plot of land for the construction of a dwelling by the State or private persons and to pay contractual rent for the use of a State or private dwelling. Upon depletion of the allowance the household’s homeless status would be revoked. Moreover, homeless households were entitled to a loan from the then Savings Bank (*Banka e Kursimeve*) for the construction or purchase of a dwelling, as provided for in sections 7 and 8.

29. The amended section 2 further stipulated that homeless households living in dwellings that belonged to former owners would be treated as a

priority category. The State would secure them housing through the NHA. The privatisation of such housing units would be carried out in accordance with the Privatisation Act, with the sale price to be linked to the inflation index (*duke i shtuar tarifës indeksin e korrigjimit të cmimeve*).

30. Section 11 introduced the notion of liberalisation of rents that homeless tenants living in dwellings which belonged to former owners would be obliged to pay. It established the ratio of the rent payable by the tenant and by the State. Tenants would have to pay a rent similar to that paid for State dwellings, estimated in accordance with the size of the property they occupied. The State was obliged to pay the remaining rent amount, estimated in accordance with rents paid for State dwellings and the size of the property. This section was subsequently repealed by the Constitutional Court in 1997 (see paragraph 35 below).

31. Following the repeal of section 11 by the Constitutional Court, section 10 of the Act, as amended in 2000, stated that until the resolution of the housing problem, homeless citizens who lived in dwellings belonging to former owners would pay rent on the basis of the rates that they were paying at the time of entry into force of the Property Act 1993.

32. The Contribution to Homeless Households Act was repealed by the entry into force of the Social Programmes Act in 2004 (see paragraph 37 below).

(a) Council of Minister's decision no. 250 of 16 April 1996 on procedures and priorities relating to the application of the Contribution, to Homeless Households Act, as amended ("CMD no. 250/1996")

33. Households living in privately owned dwellings belonging to former owners were the first category of homeless households which would benefit from the housing allowance provided for in the Contribution to Homeless Households Act, the housing problem of which would be dealt with by order of priority as stipulated in section 6. Section 2.1 of the decision provided that as a result of the operation of the Property Act 1993, the previous tenancy agreements entered into between tenants and the State were as of that point deemed concluded between tenants and the former owners on the basis of documentation to be submitted by the latter. The local government authorities would draw up a list of such households.

34. Section 14 provided that existing tenancy agreements between tenants and former owners would be renewed with the assistance of the local government authorities. Such agreements would be of a time-limited duration, which was until the tenant had completely used up the subsidy provided by the State. According to section 15, tenants living in dwellings belonging to former owners, which were within the housing standards (*jo mbi normat e strehimit në fuqi*), would have to pay three-fifths of the rent while the State would pay the remainder.

(b) Constitutional Court decision no. 5/1997

35. Following a request for constitutional review of the Contribution to Homeless Households Act, filed with the Constitutional Court by the Association of Tenants of State-owned dwellings which were formerly privately owned property (*Shoqata e Qiramarrësve në Shtëpitë Shtetërore Ish-Pronë Private*), on 27 February 1997 the Constitutional Court decided to repeal section 11 of the said Act. Having examined the requirement set down by CMD no. 250/1996 that tenants would have to pay three-fifths of the rent amount to former owners, the Constitutional Court found that the ratio of the rent payable by tenants would be almost the equivalent of an old age pension. In view of the fact that the majority of tenants living in dwellings belonging to former owners had retired and benefited from the old age pension or received financial aid, the court had made a determination that they would be obliged to use the entire pension or the financial aid towards the payment of the rent, rendering its allocation devoid of purpose and their subsequent accommodation untenable. Consequently, it would be impracticable to apply the said Act, which would have adverse effect on the interests of tenants and former owners.

36. The Constitutional Court directed that a new provision should be adopted, which would regulate the obligation of tenants occupying former privately owned dwellings to pay rent to former owners within their financial capacity, until the resolution of the housing problem. The Constitutional Court further recommended that a new provision should provide for the indexation of the housing allowance to inflation

3. *Social Programmes for the Housing of Inhabitants of Urban Areas Act*
 (“The Social Programmes Act” - Law no. 9232 of 13 May 2004, as amended)

37. The Social Programmes Act, which in 2004 repealed the Contribution to Homeless Households Act, and in 2007 the Privatisation Act, was intended to provide possibilities for affordable and suitable housing having due regard to the financial capacity of households which needed housing. The said Act provided for three types of social-housing programmes: (i) programmes for the provision of social rental housing; (ii) programmes for the provision of low-cost housing; and (iii) programmes for the provision of construction land for development and housing purposes (*programe të pajisjes së truallit me infrastrukturë*) (section 3). Households which had not benefited from the application of the Privatisation Act, provided that they met the requirements prescribed by the Social Programmes Act, would be treated as a matter of priority in accordance with section 5.

38. The Social Programmes Act was repealed by the entry into force of the Social Housing Act (*Ligji për Strehimin Social*) in November 2018.

B. Domestic legal framework concerning property restitution and compensation

1. Constitution

39. Article 41 of the Constitution, which entered into force in 1998, provides that the right of private property is protected by law. The law may provide for expropriation or limitations in the exercise of a property right only in the public interest.

40. Article 131 (f) of the Constitution provided at the material time that the Constitutional Court would hear final complaints by individuals alleging a violation of their constitutional right to a fair hearing, after all legal remedies for the protection of that right had been exhausted.

2. Property Act

(a) Property Act 1993 (Law no. 7698 of 15 April 1993, as amended)

41. According to the Property Act 1993 former owners or their legal heirs had the right to claim their ownership over the original immovable property which had been expropriated, nationalised or confiscated by the communist regime. Following the determination of ownership, they were entitled either to have the original immovable property restored or to be awarded compensation *in lieu* in one of the forms provided for by law. However, pursuant to the Property Act, the authorities' decision to restore the property to former owners did not affect the pre-existing tenancy agreements which entitled the tenants to continue occupying those properties.

42. The relevant provision of the Property Act 1993, as referred to in the Supreme Court's decision of 9 July 2005 in paragraph 19 above, provided as follows:

Section 14

"The relationship between tenants and former owners who become owners/landlords pursuant to this [Act] shall be governed by [the Privatisation Act].

If ... the former owner provides the tenant with a dwelling within the same [local government] area, consisting of a surface area [to be determined] in accordance with the housing standards in force at the time of the adoption of this Act, the tenant shall be obliged to vacate the dwelling.

The State is obliged to resolve the housing needs of current tenants in accordance with the current housing standards, by giving priority to households with limited financial means.

At their request former owners may be compensated in one of the forms determined by this [Act]."

(b) Property Act 2004 (Law no. 9235 of 29 July 2004, as amended)

43. In so far as relevant, the Property Act 2004, which repealed the Property Act 1993 and entered into force on 15 September 2004, provided:

Section 9

“1. Properties which are the property of former owners shall be vacated by tenant(s) within three years. The tenants shall continue to pay the rent set by the Council of Ministers for two years after the entry into force of this Act. The Council of Ministers shall be responsible for housing homeless tenants by providing a dwelling at a low rent, offering a low-interest loan or providing a dwelling the rent of which is borne by the State.”

Constitutional Court decision no. 26/2005

44. Following a request for constitutional review of section 9 (1) of the said Act, filed with the Constitutional Court by the Association of Tenants of State-owned dwellings which were formerly privately owned property, on 2 November 2005 the Constitutional Court struck down that provision as being unconstitutional. The court attached importance to the fact that the provision had worsened the status of tenants compared to the provisions that had existed prior to the entry into force of the Property Act 2004. It found that the amendment to the legislation had not respected the principle of legal certainty. It concluded that a limitation on tenants’ right to housing could not be justified by the public interest in upholding former owners’ property rights. The decision, in so far as relevant, reads:

“Until the entry into force of the above provision, tenants of State-owned dwellings which were formerly private property were entitled to certain rights ... in particular: a fixed rent at 1993 levels until a resolution is found to the housing problem; the provision of housing by the State through its National Housing Agency, in compliance with the criteria set forth in [the Privatisation Act 1992]. On the basis of these provisions, the State, firstly, undertook to provide housing by means of privatisation, in compliance with the criteria that were used for the privatisation of housing in 1992, and, secondly, guaranteed that rents would remain unchanged until the resolution of the [housing] problem.

Section 9(1) [of the Property Act 2004] makes significant changes to tenants’ rights. While, under the previous provisions, the State undertook to resolve the housing problem by enabling tenants to become owners on the basis of criteria that applied to the rest of the population, the impugned provision does not expressly put that obligation on the State. The section envisages the provision of housing through low-rent dwellings, low-interest loans or [the payment of] rents ... by the State.

Moreover, in contrast with the previous provision, which ‘froze’ rents until a resolution for the housing problem had been found, the impugned provision expressly envisages the payment of such ‘frozen’ rents for the first two years after the Act’s entry into force, implying that rents would be liberalised on the expiry of that time-limit.

The new Act contains other provisions which seriously worsen the status of tenants. While the previous Act provided that dwellings would be vacated when their tenants

had been provided with permanent housing, the impugned provision arbitrarily, and without giving any express assurances, envisages that tenants are to vacate dwellings within three years.

It is clear that section 9(1) [of the Property Act 2004] significantly impinges upon some of the rights that tenants had acquired under the previous legislation

The Constitutional Court also observes that section 9(1) breaches ... the principle of legal certainty ...

Legal certainty presumes, *inter alia*, that citizens should have trust in the State and the irreversibility (*pandryshueshmërinë*) of the law. That trust is related to the fact that citizens should not have to worry continuously about the ever-changing nature and consequences of legal norms which impinge upon and worsen a previously settled status.

... This principle [of legal certainty] cannot prevail in every instance. Thus, if it happens that the legal regulation of a relationship is directly influenced by the public interest, it is the latter which prevails over the principle of legal certainty.

In the instant case, the amendment to the law in favour of a certain section of the population cannot be justified by an essential public interest. It is true that the amended provision favours property owners; on the other hand, however, it discriminates against another group (even though small in number), impinging upon tenants' basic right to life and the provision of housing. Denying tenants their rights to become owners and ending their tenancy without guaranteeing another dwelling cannot be justified on any public interest ground."

(c) Property Act 2006

45. Following the Constitutional Court decision no. 26/2005, in 2006 section 9 of the 2004 Act was amended to read as follows:

Section 9

"1. Properties which are the property of former owners and which were leased to tenants by the State before the entry into force of [Privations Act 1992], which are used for housing needs, shall be transferred to the possession of the former owner(s) when one of the following conditions is met:

- a. the housing needs of the tenants have been met in any other lawful way;
- b. the former owner provides the tenants with a dwelling that has a surface area no smaller than the dwelling they already occupy and which is in an approximately similar condition and within the same local-government area, until such time as the tenants' housing needs are met in one of the other ways provided by this section.
- c. the tenants conclude a loan agreement with a financial institution, in accordance with the ... [the Social Programmes Act 2004];
- d. the tenants benefit from housing or a plot of land as provided for by ... [the Social Programmes Act 2004]"

...

4. Homeless persons who are tenants in dwellings which are the property of former owners and who have not concluded a loan agreement in accordance with sub-paragraph (c) of the first paragraph of this section, or have not yet been provided with

housing in accordance with subparagraphs (a), (c) and (d) of the first paragraph of this section, shall lose their right to occupy lawfully the dwelling by 31 December 2008. They shall be offered social housing programmes, in accordance with section 4 of the Social Programmes Act. The former owner shall be entitled to take lawful possession of the dwelling under his ownership.

5. The rent for dwellings occupied by homeless persons as provided for in paragraph 1 of this section shall be indexed ... to annual price and salary increases, and its aim is to cover the expenses of the owner for the maintenance and good administration of the dwelling ...”

Constitutional Court decision no. 11/2007

46. Following a request for constitutional review of the amended section 9 on the ground that it was in breach of the principle of acquired rights and the findings of the Constitutional Court in its decision no. 26/2005, filed with the Constitutional Court by the Association of Tenants of State-owned dwellings which were formerly privately owned property, on 4 April 2007 the Constitutional Court repealed the amended section for the same reasons set out in its decision no. 26/2005. It directed that new provisions be adopted to fill the legal vacuum.

(d) Normative Act 2012

47. On 1 August 2012 the Government introduced a normative act for the vacation of former owners’ properties which continued to be occupied by tenants. The normative act was subsequently endorsed by parliament on 13 September 2012.

48. The deadline to vacate voluntarily former owners’ properties was set as 1 November 2012. In the event of a failure to vacate a property voluntarily within the prescribed time-limit, the NHA, upon written notification of the former owner, would issue an eviction order, which would be considered an executable decision within the meaning of the Code of Civil Procedure. The NHA would then ask the District Court to issue an enforcement writ for the vacation of the flat. Section 3 bars a stay of execution of the enforcement writ.

49. Details of the Normative Act, including the unsuccessful constitutional review proceedings brought against it before the Constitutional Court, have been described in this Court’s decision in the case of *Bakiu and Others v. Albania* (dec.), nos. 43928/13 and 16 other applications, 10 April 2018.

C. Other relevant domestic case-law

50. In decisions no. 36/2002 and no. 531/2002, the Supreme Court dismissed the landlords’ civil actions concerning the payment of free-market (liberalised) rents by tenants occupying dwellings that had been returned to the landlords, in their capacity as former owners, and remitted

the cases for examination before the Court of Appeal. The Supreme Court reasoned that section 11 of the Contribution to Homeless Households Act had been repealed by the Constitutional Court decision no. 5/1997. It further stated that its section 10, as amended in 2000, had provided that tenants should pay a rent on the basis of the rates that they had been paying at the time of the entry into force of the Property Act 1993 (also see paragraph 31 above).

51. In decision no. 44 of 24 February 2009 the Supreme Court, relying on the Constitutional Court's decisions no. 26/2005 and no. 11/2007, dismissed a landlord's civil claim for the vacation of a property occupied by tenants, insofar as the tenants' housing problem had not been resolved by the authorities. Consequently, the Supreme Court rejected the landlord's claim for the payment of a free-market rent by the tenants.

THE LAW

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

52. The applicant complained that there had been a breach of Article 1 of Protocol No. 1 to the Convention on account of his inability to recover possession of his house and receive income from it.

Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. *The parties' submissions*

53. The Government submitted that the applicant had failed to exhaust domestic remedies, namely a complaint to the Constitutional Court under Article 131 of the Constitution of Albania for an alleged breach of his property rights. They also submitted that the applicant had failed to make an administrative claim or file a legal action against the administrative act that had given homeless status to the tenants living in his property.

54. The applicant, relying on the Constitutional Court's decisions nos. 5/1997, 26/2005 and 11/2007, submitted that a constitutional complaint

would have been ineffective as that court had not protected former owners' rights.

2. *The Court's assessment*

55. The Court recalls that the only remedies which Article 35 § 1 of the Convention requires to be exhausted are those that relate to the breach alleged and are capable of redressing the alleged violation. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see, most recently, *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 52, 20 January 2020).

56. The Court notes that, under Article 131 (f) of the Constitution at the material time, the Constitutional Court was competent to examine alleged violations of the right to a fair hearing, as guaranteed by Article 6 of the Convention, in respect of an applicant's constitutional rights. This remedy was exceptional as the Constitutional Court was not called upon to examine the merits of a substantive Convention right; rather, within that limited scope, the Constitutional Court was to examine the proceedings as a whole, from the proceedings before the court of first instance to the proceedings before the Supreme Court, only insofar as they related to an alleged breach of the right to a fair hearing, as protected by Article 6 of the Convention (see *Jakupi v. Albania* (dec.), no. 11186/03, 1 December 2009, and *Balliu v. Albania* (dec.), no. 74727/01, 30 September 2004).

57. Turning to the present case, the Court observes that at no point in the proceedings before this Court did the applicant assert that there had been a breach of his rights under Article 6 of the Convention. Rather, his sole complaint, on the basis of which notice of the case was given to the respondent Government, concerns a breach of the peaceful enjoyment of his property, as guaranteed by Article 1 of Protocol No. 1 to the Convention. In these circumstances, the Court considers that for the purposes of Article 35 § 1 of the Convention a constitutional appeal at the material time was not a remedy, which would have been effective in practice for the purpose of the present complaint. The applicant was therefore not required to avail himself of that remedy, and the Court consequently decides to dismiss this objection.

58. The Court also notes that the applicant instituted legal proceedings before the domestic courts to have the tenants vacate his property. In its final decision, the Supreme Court upheld the tenants' legally homeless status (see paragraph 18 above). In view of such finding, the Court considers that, contrary to the Government's objection, it would have been futile for the applicant to institute separate proceedings in order to challenge the tenants' homeless status. The Court therefore dismisses this objection.

59. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Not being inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

60. The applicant submitted that he had been deprived of the possession of his property and income from its use on the market. The State had failed to guarantee the property's maintenance, which would require additional costs to return it to a good condition. The applicant argued that the first paragraph of Article 1 of Protocol No. 1 to the Convention applied in the present case.

61. The applicant submitted that no authority or domestic court had ever described the interference as being made in the public interest. No such interest had existed since the number of tenants was much smaller than the number of former owners. For example, in Tirana there were fewer than 960 households living in former owners' dwellings. He further submitted that the interference had been going on for nineteen years (from 1990 to 2009) and so the situation could no longer be considered exceptional.

62. As to the proportionality test, the applicant submitted that former owners had not fully enjoyed their property rights during the whole of that time. No balance had been struck between the competing interests; the State had favoured tenants to the detriment of former owners' rights. However, in his situation, the eviction of the tenants would not have resulted in any severe consequences or a breach of public order as B.S. and M.S. lived abroad and J.D. lived by himself.

63. The applicant submitted that a low monthly rent was paid to former owners, equal to the rent that had existed before 1990, namely two euros (EUR) a month, whereas the monthly free-market rent was in fact much higher. Together with his siblings he would have earned EUR 2,160 a month by renting the house.

64. The authorities had not taken any measures to provide housing to tenants in accordance with the Contribution to Homeless Households Act and secondary legislation, which classified them as a priority category (see paragraph 33 above). In contrast, the authorities had over the years provided housing to other categories of homeless households. With the entry into force of the Social Programmes Act, tenants living in former owners' dwellings had no longer been placed in a priority category and the category of households qualifying for social housing programmes had increased. He also submitted that the Constitutional Court, by its decisions nos. 26/05 and 11/07, had struck down the provisions of the Property Act which had provided a solution to the problem. Since then, and up to the date when the

applicant submitted his observations on 4 September 2009, the authorities had not provided any other remedy. He also submitted that former owners had had a disproportionate burden for a long period of time, without any prospect of a solution. There had been no legal act or procedural guarantee solving the problem they faced.

(b) The Government

65. The Government submitted that the second paragraph of Article 1 of Protocol No. 1 to the Convention should apply to this case. They acknowledged that there had been an interference with the applicant's right to property. However, the interference had been provided for by law and had also pursued a legitimate aim, namely the protection of tenants' rights to housing. The Government further submitted that the interference had originated under the communist regime and had been related to the country's transition process.

66. As to the proportionality test, the Government submitted that the interference had arisen in the context of policies aiming at social justice for individuals and households who were in need of protection of their right to a family life and their right to a home. The situation could be classified as extraordinary. More concretely, proceedings for the eviction of tenants would be accompanied by severe consequences for public order, affecting hundreds of households. The immediate execution of administrative decisions recognising former owners' property rights would have affected the minimum levels of subsistence enjoyed by tenants, whereas the former owners, on the other hand, benefited from some income as a result of the payment of rent. The State had authority to intervene in the housing problem, which could not be left entirely to market logic. In evaluating the competing interests between the former owners' rights and the tenants' housing needs, a margin of appreciation was left to the States Parties on the selection of the means necessary to achieve that purpose. They further submitted that the Constitutional Court had in its decisions decided in tenants' favour by having regard to the principle of legal certainty.

67. The Government further submitted that the Albanian State had tried several times to find a solution to the problem but the complexity of the situation and the fact that some measures had been struck down by the Constitutional Court meant they had not yet found one. However, the domestic authorities had taken and were still taking a series of procedural and institutional measures to resolve tenants' housing problems. For example, local authorities were responsible for the construction of housing in order to secure them dwellings. The process of construction required a certain amount of time because of the high number of households involved, namely 5,000. Nevertheless, they were taking measures to resolve the problem as quickly as possible.

68. Turning to the present case, the Government submitted that the applicant had not been in need of lodging. His property had been leased to persons who had homeless status. They had accordingly paid a rent which was controlled by the State and which had not yet been deregulated. Therefore, it could not be said that the interference imposed a serious burden on the applicant and other former owners because it was of a temporary nature.

2. *The Court's assessment*

69. The Court notes that, while the applicant's father's right to the restitution of his property was recognised on 27 September 1995, the period susceptible to the Court's scrutiny began on 2 October 1996 - the date of the Convention's entry into force in respect of Albania - and ended when the applicant regained possession of the property in 2010 (see paragraph 20 above).

(a) Whether there was an interference with the applicant's peaceful enjoyment of his "possessions"

70. The Court considers it necessary to determine the alleged interference in the present case, the existence of which has not been disputed by the parties. In this connection, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 289, 28 June 2018).

71. Turning to the present case, the applicant's main argument is that he was unable to gain possession of his property on account of it being occupied by tenants. In the domestic proceedings concerning the eviction of tenants, the domestic courts found that the situation had been the result of the operation of domestic legislation. The Court finds no reason to justify drawing a different conclusion. It notes that the cumulative application of domestic statutes, namely the Privatisation Act, the Contribution to Homeless Households Act and the Property Act, had provided for the tenants' right to continue occupying privately owned dwellings which had been restored to former owners, such as the applicant in the present case.

72. Further, the Court finds the interference did not amount either to formal or to *de facto* expropriation. The applicant's ownership of the property had been entered into the property register (see paragraph 13 above) and he never lost that ownership or his right to sell his property. Nor did the authorities apply any measures resulting in the transfer of his ownership. The interference was thus aimed at subjecting his property to a continuing tenancy and not at taking it from him permanently. Accordingly, the Court considers that the interference in question constituted a measure amounting to the control of use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention.

(b) Whether the interference was justified

(i) Whether the interference was "provided for by law"

73. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference with the peaceful enjoyment of possessions should be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, for example, *Ghigo v. Malta*, no. 31122/05, § 51, 26 September 2006). For the purposes of its examination of lawfulness, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law and to decide on issues of constitutionality (see, for example, *R & L, s.r.o., and Others v. the Czech Republic*, nos. 37926/05 and 4 others, § 115, 3 July 2014).

74. That the interference was lawful is a matter not disputed by the parties. As stated in paragraph 71 above, the Court considers that the legal basis for the interference lies in the domestic statutes which were in force at the material time. There is no indication that the relevant provisions of those statutes, as interpreted by the domestic courts, did not meet the requirements of sufficient accessibility, precision and foreseeability, despite the frequent amendments to legislation. Therefore, the interference was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

(ii) Whether the interference pursued a legitimate aim

75. Any interference aiming at controlling the use of property can only be justified if it is shown, *inter alia*, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. The notion of "public" or "general" interest is necessarily extensive. In particular,

spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see, amongst other authorities, *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 165-66, ECHR 2006-VIII, and *Amato Gauci v. Malta*, no. 47045/06, § 54, 15 September 2009).

76. The Court accepts that the domestic legislation, as interpreted by the Constitutional Court's decisions no. 5/1997 and 26/2005 (see paragraphs 35 and 44 above), was intended to provide housing to a vulnerable part of the society, such as retirees, in a country where availability of dwellings could not meet the demand. It was also aimed at making accommodation available at reasonably affordable prices to those less affluent members of the population who lacked the financial means to pay for alternative accommodation. The Court is prepared to accept that in the social and economic circumstances of Albania at the relevant time the control of the use of the applicant's property had a legitimate aim in the general interest, as required by the second paragraph of Article 1 of Protocol No. 1.

(iii) *Whether the interference was proportionate*

77. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see, amongst other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-V). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see *Bittó and Others v. Slovakia*, no. 30255/09, § 97, 28 January 2014).

78. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State’s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord’s property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State’s conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 54, ECHR 1999-V).

79. The Court considers that the main thrust of the applicant’s complaint before the Court relates to his inability to recover possession of his property which was occupied by tenants on the basis of tenancy agreements. In this connection, the Court notes that the relevant legal framework was aimed at providing housing protection to a limited category of tenants who would be affected by the restitution of properties to former owners in a transitional context; as such, it did not amount to a general system of rent control for the benefit of low-income households (contrast *Riedel and Others v. Slovakia*, nos. 44218/07 and 3 others, §§ 7 and 28-33, 10 January 2017; *Hutten-Czapska*, cited above, §§154-225; and *Mellacher and Others v. Austria*, 19 December 1989, §§ 42-47, Series A no. 169). In addition, and more importantly, the scheme was, from the outset, meant to be of limited time duration, with the State expressly assuming the responsibility for securing alternative housing solutions for the affected tenants during this transitional period (see paragraphs 23, 24 and 42 above). The Court further notes that, as a general rule, a tenancy agreement would normally be entered into voluntarily between the parties at a rent reflecting the market level at the time when the agreement was concluded. However, in the present case, as stated in paragraph 33 above, the tenancy agreements were created *ex lege* by the transfer of the previously existing tenancy agreements entered into between the tenants and the State. The applicant had no influence on the choice of the tenants or the essential elements of the tenancy agreements. He was subjected to a forced landlord-tenant relationship. Nor can it be argued that the applicant had implicitly waived his right to choose the tenants as he never had the possibility of exercising that right (see *R & L, s.r.o., and Others v. the Czech Republic*, cited above, § 106).

80. Furthermore, drawing from the tenancy agreement concluded between one of the tenants and the State, a copy of which was provided by the applicant, the Court notes that the agreement was not time-limited. That notwithstanding, the applicant instituted eviction proceedings against the tenants. The Court appreciates that the task of the domestic courts was challenging in a socially sensitive case. It notes that the Court of Appeal and the Supreme Court were prevented from striking a fair balance between the interests at stake by reason of the constraints imposed by national legislation.

81. Furthermore, the Court is not persuaded that the interests of two tenants, namely B.S. and M.S., who had been living abroad since prior to the commencement of the judicial proceedings, should have prevailed, under Article 1 of Protocol No. 1, over the applicant's property interests. More importantly, the applicant had no possibility of obtaining a reasonable rent, given that the level of rent had been frozen at the rate it had existed in 1993 (see paragraphs 35, 31 and 50, in that order) and throughout the rest of the period under consideration by the Court (see paragraph 69 above). Furthermore, the legislation did not provide for any adjustment of the rent to take into account changes of inflation.

82. Following the unsuccessful outcome of the eviction proceedings, the applicant did not have any other means to terminate the tenancy agreements. This rendered it impossible for him to regain possession of his property, making it dependent on the tenants to terminate the tenancy agreements. Such an avenue was a rather remote possibility in the circumstances of the instant case, not least because of the payment of a fixed rent, the existence of an indefinite duration tenancy agreement and the scarcity of affordable and suitable accommodation. That the landlord's right to terminate the tenancy agreement was seriously limited was subsequently reiterated in the Supreme Court's case-law (see paragraph 51 above).

83. This situation inevitably left the applicant in a state of 'perpetual' uncertainty as to whether he would ever be able to recover his property, not least because the statutory provisions which had been introduced in 2004 and 2006 were subsequently repealed by the Constitutional Court in 2005 and 2007 as being unfair to tenants. Furthermore, no immediate legislative measures to fill the legal vacuum were taken subsequent to the Constitutional Court decision 11/2007 in spite of the direction made to that effect in that decision (see paragraph 46 above). Only in 2012 did the Government adopt the Normative Act 2012 for the vacation of former owners' properties which continued to be occupied by tenants (see paragraph 47 above). In addition, it has not been shown that the national authorities took any concrete measures to provide alternative housing to the tenants occupying the applicant's house throughout the period under consideration by the Court (see paragraph 69 above). The national legal framework, as interpreted by the domestic courts and applied by the relevant

implementing agencies, effectively placed the entire burden of a socially complex situation on the applicant.

84. Lastly, the applicant cannot be reproached for this situation as it was beyond his control for the reasons given in the preceding paragraphs. The Court observes that he was obliged to wait for a significantly long time - more than 13 years - before he was able to recover possession of his property, which was ultimately not due to the authorities' intervention.

85. In the light of these considerations and, more particularly, having regard to the tenancy agreements imposed by law, the lack of adequate mechanisms safeguarding the applicant's right to terminate the tenancy agreements, including the lack of a specific time-line set by law for this purpose, the low amount of rent fixed by law which did not allow for its indexation to inflation, the long period of uncertainty in which the applicant found himself, the Court finds that the applicant has been made to bear a disproportionate and excessive burden. It follows that the State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

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

A. Damage

88. The applicant submitted a valuation report according to which the three-storey building was valued at approximately EUR 351,300 and the loss of profit from renting the property for fifteen years (from 1994, when the property was returned by the authorities, to 2009, when the applicant submitted his claim for just satisfaction) was calculated at EUR 338,800. The valuation report stated that the rent per square metre in the relevant area was EUR 5-10 and that he was requesting the lowest amount, namely EUR 5 per sq. m. The calculation was made on the basis of a fixed rent (EUR 5) throughout the whole period. The applicant also claimed expenses for repairs and damage which had occurred throughout the years, without quantifying the amount.

89. The Government requested the Court to rule that any finding of a violation would constitute by itself sufficient redress for the damage sustained by the applicant. Alternatively, they submitted that the applicant's

claim was unreasonable and unsubstantiated. The expert report was not detailed and the building in fact had only two floors.

90. The Court notes that, having regard to the breach found in the instant case, the applicant is entitled to redress. However, the Court considers that, in view of the general interest pursued by the interference with the applicant's property rights (see paragraph 76 above), redress for the pecuniary damage suffered by the applicant is to be limited to appropriate compensation (see *Statileo v. Croatia*, no. 12027/10, § 156, 10 July 2014, and *Bittó and Others v. Slovakia* (just satisfaction), no. 30255/09, § 22, 7 July 2015).

91. In assessing the pecuniary damage sustained by the applicant, the Court cannot accept the amounts he has submitted. The Court reiterates that the applicant was never divested of his property rights (see paragraph 72 above). His attempt to assess the loss of rental profit, at EUR 2,160 per month (see paragraph 63 above), is speculative. Lastly, in the absence of any specific submission and supporting document, the applicant's claim for expenses in respect of repairs and damage cannot be accepted. It is not for the Court to quantify such claim.

92. The Court considers it necessary to compensate the applicant for pecuniary damage in relation to his share of property, it being recalled that he is one of the co-owners. The Court considers it reasonable to award the applicant EUR 30,000 in respect of pecuniary damage.

93. The Court, noting that the applicant did not submit any claim in respect of non-pecuniary damage, considers that there are no exceptional circumstances which would require it to make an award in that respect (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 74-92, 30 March 2017).

B. Costs and expenses

94. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court.

95. The Government contested the applicant's claim.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Gjyli v. Albania* no. 32907/07, § 72, 20 September 2009). To this end, Rule 60 §§ 2 and 3 of the Rules of Court states that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court "may reject the claims in whole or in part".

97. The Court notes that the applicant did not submit any supporting documents for his claims for costs and expenses. Accordingly, the Court rejects his claim.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President