CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF GJONBOCARI AND OTHERS v. ALBANIA

(Application no. 10508/02)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

31/03/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gjonbocari and Others v. Albania,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 10508/02) 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 seven Albanian nationals, Mr Agron Gjonbocari, Mr Midat Gjonboçari, Mr Agim Gjonboçari, Mr Gjon Gjonboçari, Mrs Hava Veizaj, Mr Arben Boçari and Mr Gezim Boçari ("the applicants"), on 6 July 2001.

2. The applicants, who had been granted legal aid, were represented by Mr S. Luci, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their Agents, Mr S. Puto and Mrs S. Mëneri, of the Ministry of Foreign Affairs.

3. The applicants complained under Article 6 § 1, alone and in conjunction with Article 13 of the Convention, about the failure of the authorities to comply with a final judgment that ordered the issuance of an administrative decision. Moreover, they argued that several sets of proceedings concerning their property rights had exceeded the "reasonable time" requirement and that they had no remedy at their disposal in that respect. Lastly, the applicants complained under Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Article 14 of the Convention, of a violation of their property rights.

4. On 31 March 2005 the Court declared the application partly inadmissible and decided to communicate to the Government certain complaints under Article 6 § 1 (concerning non-enforcement of a final judgment and the length of proceedings) in conjunction with Article 13 of the Convention, Article 1 of Protocol No. 1, alone and in conjunction with Article 14 of the Convention. Under the provisions of Article 29 § 3 of the Convention, on 6 February 2007 it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, who are all siblings, were born in 1939, 1927, 1934, 1931, 1924, 1949 and 1949, respectively. They live in Tirana and Vlora.

A. Proceedings pursuant to the Property Act

6. During the communist regime several plots of land owned by the applicants' parents had been confiscated by the authorities without compensation. The property measuring in total 132 hectares was situated in the Vlora region on the southern Albanian coast.

7. On 30 March 1994, pursuant to the Property Act, the applicants lodged a request with the Vlora Commission on Restitution and Compensation of Properties (*Komisioni i Kthimit dhe Kompensimit të Pronave*, "the Vlora Commission"*)* seeking the allocation of the original property to them.

8. On 27 August 1996 the Vlora Commission assigned to the applicants jointly, as co-owners, 14 hectares (2 hectares per person) of the property ("relevant property"). The decision was signed by four out of the seven members of the Vlora Commission.

9. Notwithstanding this, and based on the Commission's decision, on an unspecified date the applicants registered the relevant property with the Vlora Land Registry.

10. On 28 December 1998 they applied to the Vlora Commission requesting the issuance of a new document complying with formal legal requirements, namely, a document duly signed by all of the Commission's members.

11. On 6 January 1999, by document no. 76, the President of the Vlora Commission replied to the applicants, informing them that the Commission had already confirmed their title in its decision of 27 August 1996. In any event, pursuant to the laws in force at the material time, competence for any formal correction of the Commission's documents lay with the courts.

B. Proceedings with the Ministry of Tourism as a party

12. On 25 November 1996 the Ministry of Tourism, by decree no 20/2, ("the decree"), leased a plot of land (part of the applicants' property) to A.L., for tourism purposes.

13. On 29 December 1997 the applicants brought an action before the Tirana District Court to quash the decree.

14. On 17 February 1998 the Tirana District Court annulled the decree on the ground that the transaction concerned private property.

15. On 16 June 1998 the Tirana Court of Appeal quashed the District Court's decision and upheld the validity of the decree, stating that the Commission's decision of 27 August 1996 had been invalid in that it had not complied with formal requirements. Consequently, the applicants could not claim title to the relevant property.

16. On 10 June 1999, following an appeal by the applicants, the Supreme Court quashed the Court of Appeal's judgment of 16 June 1998 on the ground that it had been illogical and sent the case back to the Court of Appeal for re-hearing.

17. On 10 November 1999 the Tirana Court of Appeal, following a re-hearing, rejected the applicants' action on the ground that it had been lodged with the District Court after the one-month time-limit stipulated by law had expired.

18. On 17 January 2001 the Supreme Court upheld the Court of Appeal's judgment.

C. Proceedings on the restitution of the property to K.B.

19. Meanwhile, on 9 October 1997 the Vlora Commission allocated to K.B. - A.L.'s mother - as compensation, the same plot of land that the Ministry had previously leased to her son.

20. On an unspecified date K.B donated the land to her son.

21. Following a request by A.L., by order no. 3 dated 11 June 1999, the Vlora Land Registry cancelled the applicants' title to this plot of land and registered A.L. as the owner.

D. Proceedings with A.L. as a party

22. On 13 December 1999, following a civil action brought by A.L., the Vlora District Court declared null and void the Vlora Commission's decision of 27 August 1996 which had allocated the ownership of the plot of land to the applicants on the ground that it had not been issued in compliance with formal requirements (see the findings of the Tirana Court of Appeal decision of 16 June 1998).

23. On 17 March 2000 the Vlora Court of Appeal upheld the District Court's decision and reasoning, adding that the Vlora Commission had exceeded its jurisdiction in taking decisions about properties which the State had assigned for tourism purposes.

24. On 17 January 2001 the Supreme Court confirmed that the Vlora Commission's decision was null and void, on the ground that it had not been issued in compliance with formal requirements. It was consequently of no effect as regards the applicants or other third parties. Notwithstanding this, it quashed the judgments given at first and second instance and discontinued the proceedings.

E. Proceedings with the Vlora Commission as a party

1. Ordinary proceedings

25. On 18 April 2000 the applicants initiated proceedings with the Vlora District Court seeking the annulment of the decision of the Vlora Commission in K.B.'s favour. On 6 February 2001 the Vlora District Court dismissed the applicants' request on the ground that the Vlora Commission's decision in their favour had been declared null and void by the Vlora District Court's decision of 13 December 1999.

26. On 25 May 2001 the Vlora Court of Appeal, having examined the applicants' appeal, rejected the applicants' argument as to the nullity of the Commission's decision allocating the land to K.B. on the ground that it was unsubstantiated. It also rejected their second request, holding that an irregular act, even if not considered formally invalid, as in this case, should not have any legal effect.

27. On 6 March 2003 the Supreme Court quashed the first and second instance decisions in part. It dismissed the applicants' request for a declaration that the Vlora Commission's decision allocating the plot of land to K.B. was null and void, on the ground that its nullity could only be determined once a valid decision determining the applicants' rights over the land had been taken. It accordingly ordered the Vlora Commission to issue a decision *vis-a-vis* the applicants in compliance with the formal requirements.

2. Enforcement proceedings

28. On 14 April 2004 the Vlora District Court, upon a request by the applicants, issued an enforcement order instructing the Vlora Commission to comply with the Supreme Court's judgment of 6 March 2003.

29. On 10 May and 2 September 2004 the Commission informed the Bailiffs' Office that they had not issued the decision ordered in the Supreme Court judgment due to the fact that the applicants had failed to submit the documents necessary to enable a legally correct decision to be taken.

30. On 27 August 2004 the Bailiffs' Office once again brought to the Vlora Commission's attention the enforcement order issued on 14 April 2004.

31. On 12 May and 6 September 2004 the Bailiffs' Office invited the applicants to comply with the Commission's requests and to submit the documents relating to their property claims.

32. The applicants then informed the Bailiffs' Office and the Vlora Commission that they had already submitted the necessary documents at the time the Commission had decided in 1996. Moreover, they were reluctant to submit the requested documents since they disagreed with any suggestion that their case had to be decided *ex novo*. In their opinion, the Supreme Court's judgment only required the formalisation of the decision of 1996.

33. On 29 May 2006 the Vlora Commission decided not to consider the case for apparent insufficiency of documentation and on 30 November 2006 it sent the case for further consideration to the National Committee for the Restitution and Compensation of properties.

34. On 5 April 2007 the National Committee, now known as the Agency for the Restitution and Compensation of properties ("the Agency") informed the applicants that, notwithstanding that the Commission file was in fact complete, it had decided to stay the proceedings until the Government had issued the appropriate plans for the properties' valuation.

II. RELEVANT DOMESTIC LAW

A. Constitution

35. The Albanian Constitution, in so far as relevant, reads as follows:

Article 41

"1. The right of private property is protected by law 2. Property may be acquired by gift, inheritance, purchase, or any other ordinary means provided by the Civil Code. 3. The law may provide for expropriations or limitations in the exercise of a property right only in the public interest. 4. The expropriations or limitations of a property right that are equivalent to expropriation are permitted only against fair compensation. 5. A complaint may be filed in court to resolve disputes regarding the amount/extent of compensation due."

Article 42 § 2

"In the protection of his constitutional and legal rights, freedoms and interests, and in defence of a criminal charge, 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."

Article 181

"1. Within two to three years from the date when this Constitution enters into force, The Assembly, guided by the criteria of article 41, shall issue laws for the just resolution of different issues related to expropriations and confiscations done before the approval of this Constitution,.

2. Laws and other normative acts that relate to the expropriations and confiscations, adopted before the entry into force of this Constitution, shall be applied provided they are compatible with the latter."

B. Property Restitution and Compensation Act (Law no. 7698 of 15 April 1993, as amended by Laws nos. 7736 and 7765 of 1993, Laws nos. 7808 and 7879 of 1994, Law no. 7916 of 1995, Law no. 8084 of 1996 and abrogated by Law no. 9235 dated 29 July 2004 and recently amended by Law. no. 9388 of 2005 and Law no. 9583 of 2006)

36. The Property Restitution and Compensation Act (*Ligji për kthimin dhe kompensimin e pronës*) underwent several amendments during the past fourteen years. The main changes to the first Property Act of 1993 came about as a result of two laws which entered into force respectively in 2004 and 2006. Thus, hereinafter they will be referred to as the "Property Act 1993", the "Property Act 2004" and the "Property Act 2006", respectively.

The relevant provisions of each of these laws are abridged as follows:

1. The Property Act of 1993

37. According to the Act of 1993 the former owners of properties expropriated by the relevant regime and their legal heirs had the right to claim the ownership over the original properties. Upon ownership being determined they were entitled either to have allocated the original immovable property or to be awarded compensation in kind (in a maximum of 10,000 sq. m) or in value if one of the following conditions was met: the alleged property (1) was pasture, meadow, forestry land, or agricultural or non-agricultural land; (2) was not subject to Law no. 7501 of 19 July 1991; (3) was currently State-owned; (4) had been designated as suitable for construction and is situated within the boundaries of a city.

Section 16 of the Act provided for the following forms of compensation in respect of property which could not be restituted: (a) State bonds, equivalent to the compensation owed, and with a first option of acquiring shares in State enterprises being privatised by the Government or in other activities carried out through the granting of loans; (b) an equivalent plot of land or building site near to an urban area, in accordance with the general urban-development regulations; and (c) an equivalent plot of land in a tourist zone, in accordance with the general urban-development regulations.

The Council of Ministers had the authority to define detailed rules for determining the methods and time-limits for such compensation to take place.

38. Moreover, the 1993 Act instituted the Commission on Restitution and Compensation of Properties (*Komisioni i Kthimit dhe Kompensimit të Pronave*) as the competent administrative body to deal with former owners' restitution and compensation of property claims. However, it omitted to provide a time-limit within which a decision could be appealed, thus preventing it from even becoming binding.

2. The Property Act of 2004

39. The Property Act enacted in 2004, repealing the previous one, provided for two forms of restitution of immovable properties, namely the return, under certain circumstances, of the original property and compensation in the event of the impossibility for the authorities to return the original property. The restitution was not limited in size. The Act provided for five forms of compensation: (a) property of the same kind; (b) property of any other kind; (c) shares in State-owned companies; (d) the value of a State-owned property in the privatisation process, and (e) a sum of money corresponding to the value attributed to the property at the time of the decision (section 11). The Act instituted the State Committee for Property Restitution and Compensation (*Komiteti Shteteror per Kthimin dhe Kompensimin e Pronave*), composed of five members elected by Parliament. Its role was to decide on the lawfulness of district committees' decisions on restitution and compensation claims (sections 15 and 17). The Council of Ministers was to establish the rules and the criteria of these (sections 13).

40. Section 19 provided for the enforcement of the decisions awarding compensation within the first six months of each financial year. On its entry into force, persons entitled to claim restitution or compensation had to lodge applications with the District Committee by 31 December 2007. The Act granted the Committee discretion to decide which form of compensation should be granted, but applicants could express in writing their preferred type of compensation. The District Committee's decision could be appealed to the State Committee (section 20) and to the district courts within thirty days of the date of issue of the Committee's decision.

41. On 28 April 2005 Parliament adopted an Act, setting down the method by which immovable property would be valued for compensation purposes. Its implementation was left to the State Committee for the Compensation and Restitution of Properties, which was to issue the appropriate maps for the properties' valuation.

42. In order to comply with the committees' decisions awarding pecuniary compensation, section 23 of the 2004 Act provided for the establishment of a ten-year Property Compensation Fund, whose aim was to

provide financial support for such awards. The 2004 Act was examined by both the Constitutional and the Supreme Courts.

On 24 March 2005 the Supreme Court, Joint Colleges, concluded that the Property Act of 2004 had no retroactive effect and that its provisions, could therefore, not have any impact on property rights recognised by administrative or court decisions given before its entry into force.

3. The Property Act of 2006

43. On 17 July 2006 Property Act of 2004 was amended by means of the Property Act 2006 which entered into force on 17 August 2006. It provided, *inter alia,* for the establishment of the Agency for the Restitution and Compensation of Properties, a new body competent to decide restitution and compensation claims (section 15). The new law repealed sections 11 § 2; 19 and 20 of the previous law which, *inter alia*, provided for the procedure for the enforcement of decisions that awarded compensation.

THE LAW

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

44. The applicants complained of a breach of Article 6 § 1 of the Convention as regards a failure to enforce a final judgment and the length of civil proceedings. In so far as relevant, Article 6 § 1 reads as follows:

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

45. The Court considers that while both complaints concerned the same factual situation the Convention issues are largely different and require separate consideration.

A. The alleged failure to enforce a final judgment

1. Admissibility

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

2. Merits

(a) The parties' submissions

47. The applicants argued that, by failing to comply with the Supreme Court's judgment of 6 March 2003, the Albanian authorities had deprived the provisions of Article 6 of the Convention of all useful effect.

48. The Government contested the applicants' argument. They observed that in order to enforce the judgment, the Bailiffs' Office and the Vlora Commission had requested the applicants to submit the necessary documents. In their opinion, the State could not be held responsible for the applicants' reluctance to co-operate with the authorities. Since the authorities had taken all necessary steps, they could not be blamed for the delay. Lastly, they submitted that as a result of the Vlora Commission's decision of 29 May 2006, the authorities had honoured their obligation to enforce the Supreme Court's judgment of 6 March 2003.

49. The applicants disagreed. They observed that in order to comply with the Supreme Court's judgment the Vlora Commission had simply to issue a new document in compliance with formal requirements rather than decide *ex novo* on their property rights over the plot of land at issue.

50. The applicants maintained that from 2003 onwards there had been, frequent legislative changes to the law on the restitution of properties and they should not be burdened with requests to reformulate their claims and/or submit fresh documents as a result of these changes. It was the authorities' responsibility to decide their claims in time and pursuant to the laws in force in 1996. The applicants considered that the authorities' request for new documents was tantamount to circumventing the implementation of the Supreme Court's final judgment in their case. The argument was supported by the wording of the Agency's decision that recognised the fact that the file was complete and ready for decision. Lastly, they maintained that the question of their property rights had still not been resolved.

(b) The Court's assessment

51. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants–proceedings that are fair, public and expeditious–without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would indeed be likely to lead to situations incompatible with the principle of the rule of law which the Contracting

States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. A delay in the execution of a judgment may be justified in particular circumstances, but it may not be such as to impair the essence of the right protected under Article 6 § 1 (see among other authorities *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40; *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003; *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, § 38, 18 November 2004; *Beshiri and Others v. Albania*, no. 7352/03, § 60, 22 August 2006).

52. The Court notes that the Supreme Court's judgment of 6 March 2003 imposed on the Vlora Commission the duty to issue a decision *vis-a-vis* the applicants in compliance with formal requirements. It further observes that on 10 May 2004, the Commission requested the applicants to submit fresh documents to enable a decision to be taken. On 29 May 2006, given the applicants' position that their file was complete, the Vlora Commission referred the case to the competent national body, the Agency. On 5 April 2007, the Agency not only recognised the correctness of the applicants' position, but also stayed the proceedings until the Government had issued the appropriate plans for the properties' valuation.

53. The Court observes that the Supreme Court's judgment of 6 March 2003 has not been enforced more than four years after its delivery. Indeed, the entire matter has now been stayed pending the taking of necessary action by the Government. It considers that, even if the applicants' omission to submit the documents requested by the Commission might have contributed to the length of the non-enforcement, it cannot absolve the authorities from their obligation to execute a final and binding judgment, not least in the present case when a higher authority subsequently vindicated the applicants' position.

54. Having regard to the above, the Court considers that the facts of the case do not demonstrate any justification for the failure to enforce the judgment of 6 March 2003.

55. There has therefore been a violation of Article 6 § 1 of the Convention in that respect.

B. The length of the proceedings

1. Admissibility

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

2. Merits

(a) The parties' submissions

57. The applicants alleged that the several sets of civil proceedings to which they were parties exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention. They maintained that the domestic courts, by failing to rule on the validity of and/or failing to formalise the Commission's decision, in the very first set of proceedings, had fallen short of this requirement. They submitted that it was not a complex case since it concerned the invalidity of an act caused by a failure to satisfy formal requirements.

58. The Government argued that the three sets of proceedings were not related. According to them, the period to be taken into consideration should be that of each set of proceedings. They submitted that, having regard to the length of each set of proceedings, the instances involved, the complexity of the case and the number of claimants who alleged that they had proprietary interests in the property in question, the overall length of the proceedings had not exceeded a reasonable time as required by Article 6 § 1. They furthermore submitted that the applicants' conduct had caused part of the delay. This was particularly due to their willingness to initiate parallel sets of proceedings based on different qualifications of their claims and to their failure to co-operate with the authorities and to submit the necessary documents during the enforcement proceedings.

(b) The Court's assessment

(i) Period to be taken into consideration

59. While it is true that the three sets of proceedings each concerned the applicants' title over the same property and while the judicial authorities could have joined these proceedings, they were nevertheless different proceedings, involving different parties and concerning different legal arguments. The Court does not consider that the period to be taken into account should cover the entire length of all the proceedings. Rather the length of each set of proceedings should be separately examined. However the authorities' management of different sets of proceedings will be examined at paragraph 65 below.

60. The first set commenced on 29 December 1997 and ended with the Supreme Court's judgment of 17 January 2001; thus it lasted three years over five instances. The second set began on an unspecified date before at least 13 December 1999 and terminated on 17 January 2001; thus, it lasted at least one year over three instances. The third set of proceedings began on 18 April 2000 and the enforcement proceedings (the Supreme Court's final judgment of 6 March 2003) are still pending; this set has lasted over seven years and five months to date.

(ii) Applicable criteria

61. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

(iii) Application of the criteria to the present case

62. Having regard to the above-mentioned criteria, the Court does not consider that the length of either the first or the second set of proceedings of itself constituted a violation of the reasonable time requirement of Article 6 § 1 of the Convention.

63. The Court does not consider that the third set of proceedings was complex: it concerned title to property said to be devoid of legal effect due to a decision not being duly signed, a finding repeated three times at different instances and in different proceedings.

64. As to the conduct of the applicants, the Court considers that they cannot be reproached for having caused any unnecessary delay. Having regard to its findings above (paragraphs 52-54), nor are they responsible for the delays in the enforcement proceedings since their position as regards the submission of further documents was later vindicated.

65. As to the authorities' conduct, the Court observes that three instances were involved. The domestic courts cannot be said to have been inactive. However, it has nevertheless taken over seven years to determine the applicants' title to the relevant property and that issue has still not been settled. Such situation led the Court to find above a violation of Article 6 § 1 as regards the failure to enforce the judgment of 6 March 2003 (see paragraph 55 above).

66. Moreover, having regard to the multiplications of the proceedings the Court will assess the authorities' management of the sets of related proceedings. The three sets of proceedings related to the same issue, the validity of the applicants' title over the relevant property. The authorities allocated the relevant property in the first place to the applicants, then to A.L through a lease contract and finally to A.L.'s mother. Furthermore, it would appear that the initiation of separate proceedings was designed to circumvent previous courts' findings. The domestic courts were aware of the parallel proceedings in that they frequently cross-referred to them (see paragraphs 15, 22 and 26). Most importantly it would have been legally possible to join all the proceedings. The Court considers that better management of the parallel inter-related proceedings would certainly have contributed positively to the speedy clarification of the applicants' title. For the Court, the existence of prior proceedings raising the same legal issue must be taken into account in assessing the reasonableness of the length of the third set of proceedings.

67. In this respect the Court recalls that under Article 6 of the Convention, everyone has the right to a final decision, within a reasonable time, on disputes (contestations) over civil rights and obligations. The Contracting States accordingly have the obligation to organise their legal systems so as to allow the courts to comply with this requirement (see *Unión Alimentaria Sanders S.A. v. Spain*, judgment of 7 July 1989, Series A no. 157, pp.14-15, § 38). The Court considers that it was the domestic courts' task to identify related proceedings and, where necessary, join them, suspend them or reject the further institution of new proceedings on the same matter. Having regard, in particular, to the overall length of the proceedings, the Agency's decision to stay the proceedings (see paragraph 34 above) and the failure of the judicial system to manage properly the multiplication of proceedings on the same issue, the Court finds that the length of the third set of proceedings cannot be considered to comply with the requirements of Article 6.

68. For all the above reasons there has accordingly been a violation of Article 6 § 1 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

69. Under Article 13 of the Convention the applicants argued that they had no effective remedy in respect of the complaints under Article 6 § 1 of the Convention. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

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

B. Merits

1. The parties' submissions

71. The Government contested the applicants' view. They observed that the Albanian legal system did not provide for a particular remedy enabling the applicants to raise the problem of the length of the proceedings. This was due to the fact that the excessive length of proceedings was not a characteristic feature of the Albanian judicial system and, in any event, the Court's case-law did not compel the States to set up new remedies.

Moreover, the Government observed that the applicants could have complained about the unreasonable length of the proceedings before the domestic courts and obtained redress.

72. The applicants, *inter alia*, argued that they had no remedy whereby they could raise the issue of the excessive length of the proceedings.

2. The Court's assessment

73. The Court has examined above the applicants' complaint about the failure of the authorities to comply with the final decision. It notes that the applicants' complaint in this respect under Article 13 is essentially based on the same lack of procedural protection which has already been found to have given rise to a violation of Article 6 (see, *mutatis mutandis, British-American Tobacco Company Ltd. v. the Netherlands*, judgment of 20 November 1995, Series A no. 331, p. 29, § 91). In these circumstances, the Court considers that it is not necessary to examine this aspect of the complaint separately under Article 13.

74. As to the applicants' complaint about the lack of a remedy in respect of the excessive length of the proceedings, the Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

75. As established in its case-law, the Court reiterates that the remedies available to a litigant at the domestic level for raising a complaint about the length of proceedings are "effective", within the meaning of Article 13 of the Convention if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudla* ibid., § 158). Article 13 therefore offers an alternative: a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Kudla*, ibid., § 159; *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

76. However, as the Court has recently emphasised, the best solution in absolute terms is indisputably, as in many spheres, prevention. Where the judicial system is deficient with regard to the reasonable-time requirement in Article 6 § 1 of the Convention, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy. Some States have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 183, 186, ECHR 2006-...).

77. Turning to the present case, the Court observes that as the Government admitted, apart from the constitutional complaint, the Albanian legal system did not provide for a particular remedy, such as those referred to by the Court in *Kudla* (cited above), which the applicants could have used in order to obtain redress for the excessive length of the proceedings.

78. Their suggestion that excessive length was not a problem in the domestic system is unsubstantiated and, in any event, it is no response to the present applicants' complaint about length of proceedings, which the Court has found to be unreasonable.

79. As to the constitutional complaint pursuant to Article 131 of the Constitution, the Court observes that under that provision individuals can lodge a complaint with the Constitutional Court if and when they allege a breach of Article 6 of the Convention. Such a complaint will be considered by the latter court only after the exhaustion of remedies in the lower courts, notwithstanding any further delays that this may cause.

80. The Court further observes that, even assuming that the Constitutional Court could in theory offer adequate redress in respect of the excessive length claims, the Government failed to produce any case in which the Constitutional Court ruled on a complaint about the length of proceedings. While it is not for the Court to give a ruling on an issue of domestic law that is as yet unsettled (see, *mutatis mutandis*, *De Jong, Baljet and Van den Brink v. the Netherlands*, judgment of 22 May 1984, Series A no. 77, p. 19, § 39, and *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII), the absence of any case-law does indicate the uncertainty of this remedy in practice.

81. In the light of the foregoing, the Court considers that there is no evidence that a complaint under Article 131 of the Constitution could be regarded, with a sufficient degree of certainty, as constituting an effective remedy for the applicant's complaint concerning the excessive length of the proceedings.

82. Accordingly, the Court finds that in the present case there has been a violation of Article 13 of the Convention, in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

83. The applicants alleged that they were victims of a breach of Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Article 14 of the Convention.

84. Article 1 of Protocol 1 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."

85. Article 14 of the Convention provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

86. The Government contested the applicants' argument. They submitted that the Vlora Commission decision's of 1996 did not invest them with title to the relevant property since the decision was invalid. Accordingly, having regard to the applicants' refusal to submit the documents that would have enabled the Commission to issue a decision on title, they could not be considered to have property rights guaranteed under this Article.

87. The applicants complained that they were deprived of their possessions in that the local authorities first allocated their parents' property to them and subsequently transferred it to third parties. Moreover, they submitted that, pending a final outcome to the proceedings on their restitution request, they were effectively prevented from selling their property.

88. The Court recalls that, in line with its established case-law, "possessions" within the meaning of Article 1 of Protocol No. 1 can be "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of a non-fulfilment of the condition (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, 13 December 2000, ECHR 2000-XII and *Gratzinger and Gratzingerová v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002–VII, with further references; see also the *Kopecký* case, in which the applicant's proprietary claim was not considered to be an "existing possession" (*Kopecký v. Slovakia*, no. 44912/98 (GC)).

89. In the present case, the applicants based their restitution claim on the provisions of the Property Act. It is not suggested that title to the property they sought to recover could be vested in them without the intervention of the courts. The proprietary interest invoked by the applicants is therefore in the nature of a claim and cannot accordingly be characterised as an "existing possession" within the meaning of the Court's case-law.

90. In the light of its case-law, the Court does not contemplate the

existence of a "genuine dispute" or an "arguable claim" as a criterion for determining whether there is a "legitimate expectation" protected by Article 1 of Protocol No. 1. The Court takes the view that, where the proprietary interest is in the nature of a claim, it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (see case of *Kopecký v. Slovakia*, cited above).

91. In particular, the Court notes that the domestic courts which decided the case in the final instance found that the applicants' claim for restitution of their parents' property depended on the issuance of a new document which complied with formal requirements. The judgment delivered by the Supreme Court did not invest the applicants with an enforceable right to have the land restored (see, *mutatis mutandis*, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). That judgment was therefore not sufficient to generate a proprietary interest amounting to an "asset".

92. Moreover, taking into consideration the fact that the applicants' alleged property was already allocated to K.B (see paragraph 19 above) and that the domestic court left the determination of the dispute with the Vlora Commission (see paragraph 27 above), the belief that the latter administrative body's new decision, issued in compliance with formal requirements, would be in the applicants' favour cannot be regarded as a form of legitimate expectation for the purposes of Article 1 of Protocol No. 1. The Court recalls that there is a difference between a mere hope of restitution, however understandable that hope may be, and a legitimate expectation, which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38).

93. In these circumstances, the Court considers that, in the context of their restitution claim, the applicants had no "possessions" within the meaning of the first sentence of Article 1 of Protocol No. 1. The guarantees of that provision do not therefore apply to the present case. It follows that this part of the application must accordingly be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

94. The applicants asserted that the local authorities had discriminated against them on account of the valuable location of the property concerned.

95. Having regard to the conclusion that Article 1 of Protocol No. 1 is not applicable under this head, the Court considers that Article 14 cannot apply with respect to this complaint (see, mutatis mutandis, *Polacek and Polackova v. the Czech Republic* (dec.) [GC], no. 38645/97, §§ 61-70, 10 July 2002; *Beshiri and Others v. Albania*, no. 7352/03, § 91, 22 August 2006).

96. It follows that this complaint must also be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. 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."

A. Damage

98. The applicants claimed EUR 2,742,774 in respect of pecuniary damage and EUR 51,000 in respect of non-pecuniary damage. They relied on an expert's valuation report for the purposes of determining the overall value of their alleged properties and loss of profits.

99. The Government contested the applicants' claims.

100. The Court notes that the State's outstanding obligation to enforce the judgment of 6 March 2003 is not in dispute. Accordingly, the applicants are still entitled to have their property rights over the relevant plot of land determined. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis, Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The same applies in the present case, especially in view of the violations found and the Court's findings in previous judgments concerning Albania (see *Qufaj Co. Sh.p.k.,* cited above, § 54-59, and, *mutatis mutandis, Beshiri and Others*, cited above, § 109).

101. It therefore considers that the Government must secure, by appropriate means and speedily, the enforcement of the domestic court's final judgment (see among other authorities *Teteriny v. Russia*, no. 11931/03, § 56, 30 June 2005; *Apostol v. Georgia*, no. 40765/02, §§ 72-73, ECHR 2006-...).

102. Taking into account the above considerations and all relevant circumstances, in particular the fact that the Court has not found a violation of Article 1 of Protocol No. 1 it does not discern any causal link between the violations found (Article 6 § 1 in the aspects of non-enforcement of the final judgment and length of the proceedings) and the pecuniary damage alleged. It therefore rejects this claim.

103. The Court however considers that the applicants must have sustained feelings of frustration and stress having regard to the nature of the breaches of Articles 6 § 1 and 13 of the Convention. Ruling on an equitable basis, it awards each of the applicants EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

104. The applicants who received EUR 850 in legal aid from the Council of Europe in connection with the presentation of their case sought, in addition, EUR 6,000 for the costs and expenses incurred before the domestic courts and before the Court. They did not provide a detailed breakdown to substantiate their claim for costs and expenses.

105. The Government contested the claim.

106. The Court observes that it has not been provided with relevant documentation showing that the expenses claimed were in fact incurred. The Court will not, therefore, make an award under this head.

C. Default interest

107. The Court considers it appropriate that the default interest 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 complaints concerning Article 6 § 1 (as regards the non-enforcement of the final judgment of 6 March 2003 and the length of proceedings) read alone and in conjunction with Article 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the failure to enforce the final judgment of 6 March 2003;

3. *Holds* that there has been a violation of Article 6 § 1 as regards the excessive length of the third set of proceedings;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention in conjunction with Article 6 § 1 in respect of the failure to enforce the final judgment of 6 March 2003;

5. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention, in respect of the length of the third set of proceedings;

6. *Holds*

(a) that the respondent State is to pay each of the applicant, within three months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage for the violations found, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President