



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

FOURTH SECTION

CASE OF DRIZA v. ALBANIA

(Application no. 33771/02)

JUDGMENT

STRASBOURG

13 November 2007

FINAL

02/06/2008

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 Driza v. Albania,

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 33771/02) 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 an Albanian national, Mr Ramazan Driza (“the applicant”), on 4 September 2002.

2. The applicant was represented by Mrs A. Driza-Maurer, his daughter and lawyer, who practises in Geneva. 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 applicant complained, in particular, of a violation of the fairness aspect of Article 6 § 1 and a failure to enforce a final judgment. He also complained of a violation of Article 1 of Protocol No. 1 to the Convention and, invoking Article 13, of the lack of an effective remedy for the aforementioned complaints.

4. On 5 July 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, 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 applicant was born in 1941 and lives in Tirana.

6. The relevant domestic proceedings concern an application for the restitution of land.

A. Administrative proceedings for the restitution of land

7. In pre-war Albania the applicant's late father had owned a bakery in Tirana and a plot of land measuring 6,000 square metres. In 1960 the Albanian authorities demolished the building and expropriated the land.

8. On 27 September 1994 the Tirana District Court restored the applicant's property rights over his late father's property pursuant to the Property Restitution and Compensation Act 1993 (hereinafter, the Property Act). The decision became final and binding at the latest on 11 October 1994.

9. As it was unable to return the original property, the Tirana City Council decided on 30 April 1996 that the applicant had a right to receive compensation in kind for the original property. It allocated him a piece of land situated two kilometres from the centre of Tirana and measuring 5,000 sq. m. The land was divided into two plots measuring, respectively, 1,650 sq. m. (hereinafter, the smaller plot) and 3,350 sq. m. (hereinafter, the larger plot).

10. By decision no. 621 of 20 June 1996 the Tirana Commission on the Restitution of Properties and Compensation (hereinafter referred to as the "Tirana Commission") upheld the Tirana City Council's decision.

11. On 15 August 1996 the applicant's title to the land was entered in the Tirana Land Register.

12. In 1996 and 1997 a series of possession orders concerning the two plots of land were issued by the Tirana City Council and the Tirana District Court. However, the applicant was unable to recover possession from the occupants.

13. On 10 September 1997 he concluded a preliminary contract to sell the smaller plot.

B. Civil proceedings concerning the smaller plot

1. Ordinary proceedings

14. F.Z., a former member of an agricultural cooperative, had previously been granted under Law no. 7501 of 19 July 1991 the right to use the smaller of the two plots allocated to the applicant.

15. On an unspecified date she brought a civil action in the Tirana District Court claiming full title over the smaller plot under Law no. 8053 of 21 December 1995. She also asked the District Court to set aside the Commission's decision of 20 June 1996 in so far as it related to that plot.

16. On 10 October 1997 the Tirana District Court set aside the Commission's decision relating to the smaller plot on the grounds that the Commission had first to award compensation to the user and to the former owner of the land.

17. The applicant lodged an appeal with the Tirana Court of Appeal claiming full title to the plot. He argued that, when the Commission reached its decision, the plot was State property that was available for allocation to former owners in lieu of compensation. He added that F.Z. was merely a user of the land at the time.

18. On 2 June 1998 the Tirana Court of Appeal allowed the applicant's appeal, quashed the District Court's decision as being defective in law and upheld the validity of the Commission's decision concerning the applicant's title.

19. On 17 December 1998 the Supreme Court (Administrative Division) deciding on the merits, upheld the applicant's rights over the smaller plot of land that had been allocated as compensation for the original property. The judgment became final and binding on an unspecified date.

2. Supervisory review

20. On an unspecified date, while the enforcement proceedings were in progress, F.Z. lodged an application with the Supreme Court for supervisory review (*Rekurs në interes të ligjit*) of the merits of the Supreme Court (Administrative Division's) judgment of 17 December 1998 and of the Court of Appeal's judgment of 2 June 1998, on the grounds that they conflicted with substantive law.

21. The application for supervisory review was examined by the Supreme Court (Joint Colleges). On 5 July 2001, approximately two and a half years after the final decision, the Supreme Court granted the application. On the same date, it quashed, by a majority, the judgments of 2 June 1998 and 17 December 1998 in favour of the applicant, and upheld the District Court's decision of 10 October 1997 dismissing the applicant's claims relating to the smaller plot of land. It found that the Commission's decision had been based on a misinterpretation of the substantive law (Property Act 1993).

22. The applicant was neither informed of the supervisory-review proceedings nor invited to attend the hearings before the Supreme Court. He was not served with the Supreme Court's judgment within the six-month time-limit for appealing and so did not appeal against it.

23. Of the fifteen Supreme Court judges who decided the case on 5 July 2001, three (B. C., N. SH. and M.S.) had been members of the panel which on 17 December 1998 had decided the merits of the case. A further three (Th. K., P.Z., and V.K.) had sat on the panel which on 7 December 2000 had decided the merits of the case in the proceedings concerning both plots of land (see paragraph 29 below). The first three judges were called upon to

rule in the supervisory-review proceedings on their alleged misinterpretation of substantive law while the other three judges had to determine the merits of the case for the second time in the same proceedings.

C. Civil proceedings concerning the entire property (both plots of land)

24. In 1997 the State Supreme Audit Institution (*Kontrolli i Larte i Shtetit*), acting on its own behalf and at the instance of S. SH., the user of the larger plot of land allocated to the applicant, brought an action in the Tirana District Court for an order setting aside the Commission's decision of 20 June 1996 in its entirety, on the ground that it had exceeded its jurisdiction by allocating land to the applicant.

25. On 22 December 1997 the Tirana District Court set aside the Commission's decision in its entirety as being defective in law. It also held that the State had an obligation to pay the applicant compensation under the Property Act for a plot of land measuring 5,000 sq. m.

26. On an unspecified date the applicant lodged an appeal with the Tirana Court of Appeal seeking the reinstatement of the Commission's decision allocating him the land.

27. On 9 April 1999 the Tirana Court of Appeal dismissed the applicant's appeal and upheld the District Court's decision.

28. On an unspecified date the applicant lodged an appeal with the Supreme Court (Civil Division) arguing that the lower courts had failed to rule on the question of the users' title to the land.

29. On 7 December 2000 the Supreme Court (Civil Division), deciding the merits of the case, upheld the Court of Appeal's judgment on the ground that the Commission had exceeded its jurisdiction by deciding on the form of compensation the applicant should receive for the loss of his original property. It noted that pursuant to a Council of Ministers' decision of 13 May 1996, Commissions were to be set up by the municipal councils to assess compensation for land situated in tourist areas. These Commissions had yet to be established. Lastly, the Supreme Court upheld the applicant's right under the Property Act to obtain the payment of compensation for a 5,000 sq. m. plot of land.

D. The Constitutional Court proceedings

30. The applicant lodged an appeal with the Constitutional Court under Article 131 (f) of the Constitution, arguing that the Supreme Court's judgments of 7 December 2000 and 5 July 2001 were unconstitutional.

31. The appeal was declared inadmissible by the Constitutional Court on 8 April 2002 pursuant to Article 31 of the Constitutional Court Act, as being "outside its jurisdiction".

E. Recent developments

32. The applicant says that an apartment block has now been built on the larger plot of land by third parties and the apartments sold to, and occupied by, new owners. The smaller plot is occupied by temporary structures. The applicant has not received any compensation from the authorities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

33. 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 for 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. Expropriations or limitations of a property right that are equivalent to expropriation are permitted only if fair compensation is provided. 5. A complaint may be filed in court to resolve disputes regarding the amount or extent of compensation due.”

Article 42 § 2

“In order to protect their constitutional and legal rights, freedoms and interests, or to defend criminal charges, everyone shall have 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 this Constitution enters into force, the Assembly, guided by the criteria of Article 41, shall issue laws for the just resolution

of various issues relating to expropriations and confiscations that were effected before the approval of this Constitution.

2. Laws and other normative acts relating to expropriations and confiscations enacted before the entry into force of this Constitution shall continue to apply provided they are compatible with the Constitution.”

B. Code of Civil Procedure

34. Under the Code of Civil Procedure 1996, which was in force at the material time, judgments became final in the following circumstances:

Article 451

“Court judgments shall become legally binding on the expiration of the time-limit for lodging an appeal if no such appeal has been lodged. If the judgment is not quashed on an appeal to a higher court, it shall become legally binding when the higher court delivers its decision...”

35. Pursuant to the provisions in force at the material time supervisory review (*Rekurs në interes të ligjit*) was an extraordinary remedy that enabled courts to reopen proceedings after a judgment had become final. Between 1996 and its abrogation by Law no. 8812 of 17 May 2001 the supervisory-review procedure underwent several legislative changes.

Section 473 – Review in the interests of the law (Law no. 8431 of 14 December 1998)

“Final judgments, decisions and rulings of the colleges of the Supreme Court shall be amenable to supervisory review in the interests of the law for the reasons set forth in section 472 (a), (b) and (c) on an application lodged by the parties to the proceedings within three years from the moment the decision becomes binding.

The application for supervisory review will firstly be examined by a preliminary review panel of five judges and then by the full Supreme Court (Joint Colleges). ... Judges of the Supreme Court who sat as members of the division that delivered the judgment, decision or ruling or of the preliminary review panel shall not sit on the panel that conducts the supervisory review of the final judgment...”

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

36. The Property Restitution and Compensation Act (*Ligji për kthimin dhe kompensimin e pronës*) has undergone 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. The original Act and these two amending Acts will hereinafter 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 can be summarised as follows:

1. The Property Act 1993

37. Under the Property Act 1993 former owners of properties expropriated by the relevant regime and the legal heirs of such owners had the right to claim ownership of the original properties. Upon ownership being determined they were entitled either to the restitution of the original immovable property or to an award of compensation either in kind (up to a maximum of 10,000 sq. m) or in value if any 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; or (4) had been designated as suitable for construction and was 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 returned: (a) State bonds, equivalent to the compensation owed, with a first option over shares in State enterprises being privatised by the Government or in other activities carried on through the granting of loans; (b) an equivalent plot of land or a 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 power to define detailed rules for determining how such compensation should be provided and the applicable time-limits.

38. The 1993 Act also instituted the Commission on the Restitution of Properties and Compensation (*Komisioni i Kthimit dhe Kompensimit të Pronave*) as the competent administrative body to deal with former owners’ claims to restitution and compensation. However, it did not provide a time-limit within which a decision could be appealed against, so preventing it from even becoming binding.

2. The Property Act 2004

39. The Property Act 2004, which repealed the previous version, provided for two forms of restitution of immovable property, namely the return, under certain circumstances, of the original property and compensation in the event of the authorities being unable to return the original property. 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 course of privatisation, 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 on 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 to be applied (sections 13).

40. Section 19 provided for the enforcement of decisions awarding compensation within the first six months of each financial year. Following its entry into force, anyone entitled to claim restitution or compensation was required to lodge an application with the District Committee by 31 December 2007. The Act granted the Committee a discretion to decide which form of compensation should be granted, but applicants could express their preference in writing. An appeal lay against the District Committee's decision 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 enacted legislation setting out the method by which immovable property would be valued for compensation purposes. Its implementation was left to the State Committee on Property Restitution and Compensation, which was to issue the site plans allowing the properties to be valued.

42. In order to comply with the committee's awards of 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 dating from before its entry into force.

3. *The Property Act of 2006*

43. On 17 July 2006 the Property Act 2004 was amended by 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 of Properties and Compensation, a new body competent to decide restitution and compensation claims (section 15). The new law repealed sections 11

(2), 19 and 20 of the 2004 Act which, *inter alia*, laid down the procedure for the enforcement of compensation awards.

D. Agricultural Land Act

44. Law no. 8053 of 21 December 1995 conferred on former members of agricultural cooperatives the right to request the title to land they were farming.

THE LAW

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

45. The applicant complained of a violation of Article 6 § 1 of the Convention, arguing that the annulment of a final judgment was contrary to the principle of legal certainty, that the Supreme Court was not impartial when it decided his case and that the authorities had failed to enforce the final judgments of 17 December 1998 and 7 December 2000. In so far as relevant Article 6 § 1 reads as follows:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

A. Admissibility

1. Compliance with the six-month rule

46. The Government contended that all the complaints under Article 6 were inadmissible as they had been lodged outside the six-month period provided for under Article 35 § 1 of the Convention. Owing to the discretionary character of the proceedings before the Constitutional Court and since its inadmissibility decision was *de plano*, the final effective remedies within the meaning of Article 35 were in fact the decisions of the Supreme Court of 5 July 2001 (first set of proceedings) and 7 December 2000 (second set of proceedings), and the applicant had not introduced his application with the Court until 4 September 2002.

47. The applicant replied, with reference to Article 131 (f) of the Constitution and the practice of the Constitutional Court, that in order to exhaust all domestic remedies, individuals had to file a complaint with the

Constitutional Court if and when they alleged a breach of Article 6 of the Convention. Indeed, the applicant's claims before the Constitutional Court, namely the impartiality of the court, the breach of the principle of legal certainty and the failure to enforce a final judgment, fell within the Constitutional Court's competence as confirmed by its practice. Hence, the Constitutional Court had both the competence and an obligation to consider and decide the case, if necessary, by means of a judgment. Accordingly, the applicant's claims had been lodged in time as, irrespective of the fact that it was a *de plano* inadmissibility decision, the Constitutional Court's decision was dated 8 April 2002.

48. The Court notes that the rights to fair proceedings and to have final decisions enforced, which lie at the heart of the applicant's complaints before the Court, are constitutional rights enshrined in Articles 31 and 42 of the Constitution.

49. It reiterates its findings in the case-law concerning Albania to the effect that the Constitutional Court can be considered an effective remedy the exhaustion of which is required by Article 35 of the Convention when Article 6 issues arise and considers that, in the circumstances of the present case, there are no reasons for it to depart from those findings (see *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, § 42, 18 November 2004, and *Balliu v. Albania* (dec.), no. 74727/01, ECHR-2004).

50. It follows that the relevant final decision is that of 8 April 2002. Since the applicant introduced his application on 4 September 2002, he complied with the six-month time-limit prescribed by Article 35.

51. For these reasons, the Court dismisses the Government's objection on this point.

2. Fairness of the proceedings: breach of the principles of legal certainty and impartiality

52. The applicant alleged a violation of Article 6 § 1 through the quashing by the Supreme Court (Joint Colleges) of the final judgment of 17 December 1998 and the Commission's decision of 20 June 1996 by way, *inter alia*, of supervisory-review proceedings. He further complained of the lack of impartiality of the panels of the Supreme Court under two separate heads: three of the Supreme Court judges (TH.K., P. Z. and V. K.) had sat on the benches which had ruled against him on 5 July 2001 and on 7 December 2000; and the President of the Supreme Court had performed a dual role in the supervisory-review proceedings.

53. The Government contested that argument.

54. The Court considers that the 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.

3. *Alleged failure to enforce the final judgments of 17 December 1998 and 7 December 2000*

55. The Government further maintained that, while the applicant was challenging the end result of the proceedings, he had not shown any interest in obtaining the enforcement of the judgment of 7 December 2000 as he had failed to initiate enforcement proceedings in the Tirana District Court by requesting a writ of execution and had also failed to make use of the remedies introduced by the Property Act 2004 in relation to the issue of compensation. The Government argued that this complaint should therefore be declared inadmissible for failure to exhaust domestic remedies.

56. The applicant challenged the effectiveness of the remedies relied upon by the Government. He argued that the remedy introduced by the Property Act 2004 could not provide an effective remedy within the meaning of the Convention as his property rights had been considered in the final judgments of 17 December 1998 and 7 December 2000 and an administrative body could not, therefore, re-examine the same issue. He further maintained that, had the domestic courts awarded compensation in one of the forms provided for by law, the bailiffs would not have been able to enforce the decision. It was up to the Government to adopt effective measures, either by classifying the State properties available for compensation in kind or by providing sufficient budgetary funds for pecuniary compensation, in order to make such a means of redress feasible. In conclusion, the applicant maintained that the Government had thus far failed to take effective steps to find solutions relating to the issue of compensation for former owners.

57. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27; *Aksoy v. Turkey*, no. 21987/93, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI; and *Akdivar and Others v. Turkey*, no. 21893/93, §§ 65-67, *Reports* 1996-IV).

58. The Court considers that the question of the effectiveness of the remedies offered by the Property Acts is central to the merits of the applicant's complaint under Article 13 read in conjunction with Article 1 of Protocol No. 1. It holds that both questions should be examined together on the merits.

B. Merits

1. Fairness of the proceedings

(a) Legal certainty: Quashing of a final judgment

(i) The parties' submissions

59. The applicant submitted that the domestic courts had breached the principle of legal certainty on two separate occasions. In the first place, by using a *Brumărescu* type procedure, ending with the quashing of the Supreme Court's final judgment of 17 December 1998 that had upheld in part the validity of the Commission's decision of 20 June 1996; and secondly, by issuing contradictory decisions in parallel proceedings in apparent ignorance of previous final findings. Indeed, the Supreme Court's judgment of 7 December 2000 dealing with the validity of the Commission's decision of 20 June 1996 as a whole had failed to take into account the findings in the Supreme Court's judgment of 17 December 1998.

60. In short, by delivering contradictory decisions in parallel sets of proceedings which entirely or partly quashed previous final adjudications, the Albanian legal system had shown deficiencies which breached the principle of legal certainty. Furthermore, notwithstanding the fact that the supervisory-review remedy had been repealed the applicant remained a victim of the alleged violations.

61. The Government contested that argument. They maintained that during the period of June-July 1997 the domestic courts had been justified in initiating two independent sets of civil proceedings to rule on the lawfulness of the Commission's decision of 20 June 1996 as they had been introduced by different parties and dealt with different matters.

62. As to the supervisory-review (*Rekurs në interes të ligjit*), the Government submitted that domestic law at the time allowed a review of a decision within a period of three years of its becoming final. The procedure was aimed at redressing decisions issued in breach of domestic law during the transitional period and thus had temporary effect until 2001, when the legislation was repealed. Indeed, in the present case, in view of contradictory rulings in the two judgments in question, the review by a higher decision-making body in order to determine the matter had been necessary. This was further confirmed by the fact that the ruling of the Supreme Court in its judgment of 5 July 2001 corresponded to the findings of the judgment of 7 December 2000.

(ii) The Court's assessment

63. The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be

part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Ryabykh v. Russia*, no. 52854/99, §§ 51-56, ECHR 2003-IX; and *Roşca v. Moldova*, no. 6267/02, § 24, 22 March 2005).

64. Legal certainty presupposes respect for the principle of *res judicata* (see *Brumărescu v. Romania* cited above, § 62), that is the principle of the finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' powers of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (*Roşca v. Moldova*, cited above, § 25).

65. Turning to the present case, the Court notes that on 17 December 1998 the Supreme Court (Administrative Division) upheld the applicant's property rights over the smaller plot of land. Notwithstanding this, on 7 December 2000 the Supreme Court (Civil Division), in a parallel set of proceedings, found the recognition of title to be unlawful. In addition, on 5 July 2001, following the President of the Supreme Court's request for leave to seek a review of the Administrative Court's judgment of 1998 (*Rekurs në inters të ligjit*), the Supreme Court (Joint Colleges), without making any reference to its findings in the judgment of 2000, quashed the final judgment of 17 December 1998 to the detriment of the applicant. In short, after 2 years and 7 months the Supreme Court's final judgment of 17 December 1998 was quashed twice by the Supreme Court, once by a judgment issued in parallel proceedings and once by means of a supervisory-review remedy. As a result, the applicant's property issue is still unresolved.

66. The Court notes that the first judgment was quashed for the first time by means of a supervisory-review procedure, which enabled the President of the Supreme Court to challenge any final decision at the request of one of the parties to the proceedings. This procedure was provided for in section 473 of the Code of Civil Procedure, which was in force until 17 May 2001.

67. The Court disagrees with the Government's argument as to the limited effect of the supervisory-review remedy. The fact that this remedy was revoked after the occurrence of the pertinent events in this case is of no relevance: there exist no domestic remedies capable of remedying the impairment of the principle of legal certainty brought about by the use of the supervisory-review procedure and its effects were never redressed in the

present case (see *Sardin v. Russia (dec.)*, no. 69582/01, ECHR 2004-II, and *Ryabykh v. Russia (dec.)*, no. 52854/99, 21 February 2002).

68. The same judgment was quashed a second time by a judgment delivered in a parallel set of proceedings. The Court rejects the Government's argument that the authorities were justified in initiating two parallel sets of proceedings. It recalls that by virtue of Article 1 the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities (see *Kudła v. Poland [GC]*, no. 30210/96, § 152, ECHR 2000-XI).

69. In this connection, it is the State's responsibility to organise the legal system in such a way as to identify related proceedings and where necessary to join them or prohibit the further institution of new proceedings related to the same matter, in order to circumvent reviewing final adjudications treated as an appeal in disguise, in the ambit of parallel sets of proceedings (see, *mutatis mutandis*, *Roşca v. Moldova*, cited above, § 25).

70. In sum, the Court considers that, by granting the President of the Supreme Court's request for leave to seek a review of a final judgment and by allowing the introduction of parallel sets of proceedings, the Supreme Court set at naught an entire judicial process which had ended in a final and enforceable judicial decision which was thus *res judicata*. Hence, in the light of the above circumstances, the Court does not find any reason to depart from its findings in its established case-law on the matter (see paragraphs 63-64 above).

71. There has therefore been a violation of Article 6 § 1 of the Convention on account of the quashing of the final judgment of 17 December 1998 given in the applicant's favour.

(b) Impartiality

(i) The parties' submissions

72. The applicant complained under this Article of a lack of impartiality on the part of the Supreme Court panels. He noted, firstly, that three of the Supreme Court judges (TH.K., P. Z. and V. K.) had sat on the panel which had ruled on his case on 5 July 2001 and had also been on the panel which had delivered the judgment of 7 December 2000. Both panels had ruled against him. Secondly, the President of the Supreme Court, who lodged the request for a supervisory-review of the judgment in his favour, had also sat as a judge on the two benches that had found against him.

73. The Government contested that argument. They maintained that under domestic law as it stood at the material time the Supreme Court could sit as a five-judge panel (Civil/Criminal College) or a full-court panel (Joint Colleges). The latter formation was empowered to decide, *inter alia*, supervisory-review requests and important issues. Therefore, in the Government's view, the functioning of the Joint Colleges would be affected

if judges who had already sat on the five-judge panel were not able to sit on the Joint-Colleges bench. They referred to a judgment of the Albanian Constitutional Court dated 7 April 2000 which had held that the Supreme Court's functioning as a full court and decision-making body was in compliance with the fair-trial requirements. Lastly, the Government submitted that the applicant had failed to prove the allegations of bias on the part of the three aforementioned judges.

(ii) *The Court's assessment*

74. The Court reiterates that it is of fundamental importance in a democratic society that the courts inspire confidence in the public (see the *Padovani v. Italy* judgment of 26 February 1993, Series A no. 257-B, p. 20, § 27). To that end, Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes absence of prejudice or bias and its existence or otherwise can be tested in various ways. The Court has thus distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see *Piersack v. Belgium*, judgment of 1 October 1982, Series A no. 53, § 30, and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118-119, ECHR 2005-...).

75. In applying the subjective test the Court has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, judgment of 24 May 1989, Series A no. 154, p. 21, § 47). The principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long established in the case-law of the Court (see, for example, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, p. 25, § 58).

76. As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect, even appearances may be of some importance (see *Castillo Algar v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3116, § 45, and *Morel v. France*, no. 34130/96, § 42, ECHR 2000-VI). When it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Ferrantelli and Santangelo v. Italy*, judgment of 7 August 1996, *Reports* 1996-III, pp. 951-52, § 58; *Wettstein v. Switzerland*, no. 33958/96, § 44, CEDH 2000-XII; and *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 118-119, ECHR 2005).

77. In the present case, the applicant disputed both the subjective and the objective impartiality of the three judges of the Supreme Court and the Court will examine each aspect in turn.

78. With regard to the personal impartiality of Judges P.Z. and V.K., the Court does not find any evidence to corroborate the applicant's allegations. As to Th. K., the President of the Supreme Court, it notes that, in accordance with Albanian law at the time, the supervisory-review proceedings were instituted at the request of the President of the Supreme Court, who had already ruled against the applicant on the same matter (in the second set of proceedings). The Supreme Court, of which the President was a member along with fourteen other judges, examined that request and decided on the merits to quash the final judgment that had been given in the applicant's favour. The Court is of the opinion that the practice of the Albanian Supreme Court at the time was incompatible with the "subjective impartiality" of a judge hearing a particular case, since no one can be both plaintiff and judge in his own case (see *Svetlana Naumenko v. Ukraine*, no. 41984/98, § 97, 9 November 2004).

79. As to objective impartiality, the concerns regarding the impartiality of the Supreme Court Joint Colleges stemmed from the fact that the bench was composed of fifteen judges including the same six judges who had previously heard the merits of the case and adopted the judgments of 17 December 1998 and 7 December 2000.

80. The Court accepts that the situation could give rise to doubts in the applicant's mind about the impartiality of the Supreme Court. However, it has to decide whether those doubts were objectively justified. The answer to this question depends on the circumstances of the case.

81. In this connection, the Court observes that, pursuant to the domestic legal provisions on supervisory-review proceedings, the Supreme Court had to sit as a full court. Three judges who had already ruled on the case were among the fifteen judges called upon to decide the request for leave and subsequently, the merits of the case. They were therefore required to decide whether or not they had erred in their earlier decision. Moreover, three other judges sitting in the same full-court formation had to decide a matter on which they had already expressed their opinions.

82. The Court therefore finds that the objective impartiality of the Supreme Court (Joint Colleges) was capable of appearing open to doubt. The applicant's fears in this respect can thus be considered to have been objectively justified.

83. In the light of the foregoing, the Court finds that the Supreme Court was not impartial within the meaning of Article 6 § 1 of the Convention under either of the two aforementioned tests.

(c) Conclusion

84. Having regard to the forgoing considerations, the Court finds that the applicant's right to a fair hearing by an impartial tribunal within the meaning of Article 6 § 1 of the Convention has been infringed.

2. Non-enforcement of the final judgments of 17 December 1998 and 7 December 2000

(a) The parties' submissions

85. The Government repeated that the authorities could not be held responsible for the non-enforcement of the above-mentioned judgments since their execution depended upon the applicant's taking appropriate steps for their enforcement. The Government referred to their earlier arguments on the exhaustion of domestic remedies.

86. The applicant contested that argument.

(b) The Court's assessment

87. The general principles concerning the non-enforcement of final judgments awarding compensation, including compensation in kind, within the framework of the restitution of property were set out in the *Beshiri* judgment (cited above, §§ 60 et seq.).

88. The Court notes that the Supreme Court's judgments of 17 December 1998 and 7 December 2000 can be interpreted as ordering the authorities to offer the applicant a form of compensation in kind and in value, respectively, which would indemnify him in lieu of the restitution of his original property rights.

89. The Court does not accept the Government's assertion that the applicant was not interested in enforcing the judgments as he did in fact challenge the outcome of the proceedings that led to the Supreme Court's judgment of 7 December 2000.

90. The Court observes that, as in the *Beshiri* judgment, following the delivery of the judgment in 2000 the authorities failed to offer the applicant the option of obtaining appropriate compensation, in compliance with the final court decision (see, in contrast, *Užkurėlienė and Others v. Lithuania*, no. 62988/00, § 36, 7 April 2005). Thus, the applicant did not even have the possibility of considering an offer of compensation in lieu of the restitution of the property that had previously been allocated. Moreover, by quashing the Supreme Court's judgment of 17 December 1998 twice (see paragraph 71 above) the authorities failed to honour the obligations stemming from that final judgment.

91. Moreover, the Government have not provided any explanation as to why the judgment of 7 December 2000 has still not been enforced more than six years after it was delivered. It does not appear that the bailiffs or the administrative authorities have taken any measures to execute the judgment.

92. Consequently, the Court considers that the problem persists notwithstanding the indications it gave in the *Qufaj Co. Sh.p.k* and *Beshiri* judgments (see *Qufaj Co. Sh.p.k.*, cited above, § 54-59, and *Beshiri and Others*, cited above, § 109).

93. The foregoing considerations are sufficient to enable the Court to conclude that, by failing to take the necessary measures to comply with the judgments of 17 December 1998 and 7 December 2000, the Albanian authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

94. There has accordingly been a violation of Article 6 § 1 of the Convention in this respect.

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

95. The applicant alleged that the annulment of the Commission's decision and the final judgment of 17 December 1998 without any compensation in lieu entailed a breach of Article 1 of Protocol No. 1, which provides:

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

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

A. Admissibility

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

B. Merits

1. *The parties' submissions*

97. Having regard to the domestic court's judgments on the matter, the Government argued that the applicant could not claim protection under this Article since the Commission's decision had awarded him two plots of land

in lieu of the original property, which the applicant had never possessed. Despite the fact that the applicant had registered his title in the Land Register, under domestic law title derived from a decision of the Commission was susceptible to challenge in the courts, without any limit of time. Indeed, the above decision was contested before the domestic courts, and they declared the title null and void and ordered that the applicant be paid compensation for the original property. Moreover, in the Government's view, the Supreme Court's final judgment upholding the validity of his title to the smaller plot of land could not be considered as generating property rights since the validity of that title had, in the meantime, been the subject of another set of proceedings.

98. Furthermore, the Government submitted that the fact that the applicant was not satisfied with the outcome of the civil proceedings relating to the lawfulness of his title to the two plots of land could not engage the State's responsibility since the applicant had failed to lodge a request with the authorities to establish the form of compensation, as the Property Act allowed him to do.

99. They added that the failure to execute the final judgments awarding compensation in the framework of the property restitution process was due to objective circumstances such as a lack of funds and the general interests of the community.

100. The applicant submitted that the Government's assertions were unsubstantiated. He claimed that the Supreme Court's judgments of 2000 amounted to deprivation of his property which did not pursue a public interest and that, after more than 12 years of administrative and civil proceedings, his rights guaranteed under Article 1 of Protocol No. 1 had still not been enforced. Lastly, he submitted that the State was liable for the outstanding debts due in compensation and that, by failing to pay those debts over a lengthy period, the State had deprived him of actual possession of the property, in violation of Article 1 of Protocol No. 1.

2. *The Court's assessment*

101. The Court notes the principles established in its case-law under Article 1 of Protocol No. 1 (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35; *von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V; and *Beshiri* cited above).

102. It reiterates that "possessions" can be "existing possessions" or assets, including, in certain well-defined situations, claims. For a claim to be capable of being considered an "asset" falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it, or whether there is a final court judgment in the claimant's favour. Where that has been done, the concept of "legitimate

expectation” can come into play (see *Draon v. France* [GC], no. 1513/03, § 68, 6 October 2005, ECHR 2005-IX, and *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

103. The Court observes that the applicant brought an action for the recovery of possession under the Property Act. The authorities declared that the nationalisation of his father’s property had been unlawful and, as compensation, allocated him two plots of land measuring 5,000 sq. m in lieu of the 6,000 sq. m of original land. Notwithstanding numerous interventions by the authorities, the applicant did not take possession of the replacement land since it was occupied by third parties. Neither of the parties commented on events during the period following the Supreme Court’s judgment of 1998 which upheld the applicants’ property right to the plot of land measuring 1,650 sq. m. In 2001 and 2000 two judgments delivered respectively in supervisory-review proceedings and in parallel proceedings annulled the applicant’s title to the two plots of land and ordered him to be given compensation by one of the means provided for by law. The applicant has not been received any compensation to date.

104. While it is true that both plots of land were entered in the Land Register and that his right to property over the smaller plot was upheld by a final judgment before being overturned in supervisory-review proceedings, the Court cannot speculate on whether the applicant ever possessed either plot of land or on the current situation. Thus, for the purposes of the examination of the complaint it will consider that the applicant had a “claim” under this Article.

105. It notes that this complaint is linked to the one examined under Article 6 § 1 in relation to the failure to enforce a final decision (see paragraphs 85-94 above).

106. In the present case, the Court has already found that the authorities had an obligation under the judgments of 17 December 1998 and 7 December 2000 to offer the applicant compensation in kind and in value respectively, in lieu of the original property (see paragraphs 19 and 29 above). Therefore, the applicant had enforceable claims deriving from the judgments in question.

107. The Court considers that the failure of the authorities to enforce the judgments of 17 December 1998 and 7 December 2000 amount to an interference with his right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

108. As to the justification advanced by the Government for this interference, the Court reiterates that a lack of funds cannot justify a failure to enforce a final and binding judgment debt owed by the State (see *Pasteli and Others v. Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02, § 30, 15 June 2004; *Voytenko v. Ukraine*, no. 18966/02, § 55, 29 June 2004; and *Shmalko v. Ukraine*, no. 60750/00, § 57, 20 July 2004).

109. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention in this regard.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

110. The applicant complained of the lack of effective remedies to obtain a final determination of his property rights. He relied on Article 13 of the Convention, which 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.”

111. The Court must therefore examine the complaint under Article 13 in conjunction with Article 1 of Protocol No. 1. To this question, the Court has joined the issue of whether the applicant exhausted the domestic remedies available for his Article 6 non-enforcement complaint (see paragraph 58 above).

A. Admissibility

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

B. Merits

1. The parties' submissions

113. The applicant submitted that the only remedy afforded by Albanian law with respect to the restitution of and/or compensation for nationalised property, namely an application to the competent body laid down in the Property Act, could not be said to be “effective” within the meaning of Article 13. Even if such an application was successful, the return of and/or compensation for the original property was in practice at the relevant authorities’ discretion and depended on their willingness to implement the relevant provisions.

114. The Government contested the applicant’s view essentially repeating their arguments concerning the alleged failure to exhaust domestic

remedies. They observed that the Albanian legal system provided a specific remedy whereby the applicant could claim the restitution of and compensation for property which had been unlawfully nationalised or confiscated by the State. The legal framework on the restitution and compensation issue had been the subject of frequent legislative changes, owing to the significant financial and social consequences of the process. However, even without those legislative changes, which were aimed at making improvements to the system, the three remedies introduced by the Property Acts complied with the requirements of Article 13 of the Convention. However, the Government suggested without further explanation that the applicant could have filed motions for redress with the competent authority in accordance with the Property Act 2004.

2. The Court's assessment

115. The Court notes that the applicant's complaint under Article 1 of Protocol 1 to the Convention was indisputably "arguable". He was therefore entitled to an effective domestic remedy within the meaning of Article 13 of the Convention.

116. Moreover, the "authority" referred to in Article 13 may not necessarily in all instances be a judicial authority in the strict sense. Nevertheless, the powers and procedural guarantees an authority possesses are relevant in determining whether the remedy before it is effective (see *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 30, § 67). The remedy required by Article 13 must be "effective" in practice as well as in law, in particular, in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95 in fine).

117. The Court observes that by virtue of the three Property Acts the Albanian legal system afforded a remedy in the form of a claim for the restitution of and compensation for property lodged with a special administrative body empowered to decide on the former owners' title and to order the return of their original property if possible or the payment of compensation in lieu. The aforementioned procedure is the only way to generate property rights with respect to property which has been unlawfully nationalised. The applicant availed himself of that remedy and on two occasions the authorities upheld his right to receive compensation in lieu of the original property (see paragraphs 9 and 10 above).

118. The Court notes that the Property Act 1993 (which was repealed by the Property Act 2004, which in turn was amended by the Property Act 2006) provided for various forms of compensation when the original property could not be returned to the former owner (see paragraphs 36-43 above). The Property Act 1993 left the determination of the appropriate form of compensation to the Council of Ministers, which was to define the

detailed rules and methods applicable to the provision of compensation. According to the findings of the Supreme Court in its judgment of 7 December 2000, the bodies competent to deal with compensation issues had yet to be set up (see paragraph 29 above). Notwithstanding the entry into force of the Property Act 2004 the situation did not change. It was not until 28 April 2005 that Parliament passed an Act determining the methodology for the valuation of property for compensation purposes. Section 5 of that Act left the task of implementing this methodology to the State Committee on Property Restitution and Compensation, which should have issued the appropriate site plans to allow the properties to be valued. However, to date those plans have not been adopted.

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

120. Consequently and recalling its findings in the *Beshiri* judgment, the Court finds that the applicant was denied an effective remedy for the alleged breach of his rights under Article 1 of Protocol No 1 (see *Beshiri and Others cited above*, §§ 54, 55).

Thus, there has been a violation of Article 13 of the Convention as regards the complaint under Article 1 of Protocol No. 1. The Court therefore dismisses the Government's objection.

IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

121. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

122. The Court observes that its conclusions above (see paragraphs 117-120) demonstrate that the unjustified hindrance to the applicant's attempts to obtain compensation pursuant to the Property Act was not attributable to

his conduct. It arose from shortcomings in the Albanian legal order as a consequence of which an entire category of individuals have been and are still being deprived of their right to the peaceful enjoyment of their property as a result of the non-enforcement of court judgments awarding compensation under the Property Act. Indeed, there are already dozens of identical applications before the Court. The escalating number of applications is an aggravating factor as regards the State's responsibility under the Convention and is also a threat to the future effectiveness of the system put in place by the Convention, given that in the Court's view, the legal vacuums detected in the applicant's particular case may subsequently give rise to other numerous well-founded applications.

123. Before examining the applicant's individual claims for just satisfaction under Article 41 of the Convention and in view of the circumstances of the instant case, the Court wishes to consider what consequences may be drawn for the respondent State from Article 46 of the Convention. It reiterates that, under Article 46, the High Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers. One of the effects of this is that where the Court finds a violation, the respondent State has a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Furthermore, once a deficiency in the legal system has been identified by the Court, the national authorities have the task, subject to supervision by the Committee of Ministers, of taking within a determined period of time – retrospectively if needs be – (see, among other authorities, *Xenides-Arestis v. Turkey*, no. 46347/99, §§ 39, 40, 22 December 2005; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 233, ECHR 2006; *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V; and *Di Mauro v. Italy* [GC], no. 34256/96, § 23, ECHR 1999-V) the necessary measures of redress in accordance with the principle of subsidiarity under the Convention, so that the Court does not have to reiterate its finding of a violation in a long series of comparable cases.

124. In this respect, as part of the measures designed to guarantee the effectiveness of the machinery established by the Convention, the Court draws attention to the Resolution (Res(2004)3) and Recommendation (Rec(2004)6) of the Committee of Ministers of the Council of Europe both adopted on 12 May 2004.

125. In theory it is not for the Court to determine what may be the appropriate measures of redress for a respondent State to perform in accordance with its obligations under Article 46 of the Convention.

However, the Court's concern is to facilitate the rapid and effective suppression of a malfunctioning found in the national system of human-rights protection. In that connection and having regard to the systemic situation which it has identified above (see paragraph 122), the Court considers that general measures at the national level are undoubtedly called for in the execution of the present judgment.

126. In order to assist the respondent State to comply with its obligations under Article 46, the Court has attempted to indicate the type of measures that the Albanian State could take in order to put an end to the nature and cause of the breaches found in the present case. It considers that the respondent State should, above all, remove all obstacles to the award of compensation under the Property Act by ensuring that the appropriate statutory, administrative and budgetary measures are taken. These measures should include the adoption of the site plans for the property valuation in respect of those claimants who are entitled to receive compensation in kind and the designation of an adequate fund in respect of those claimants who are entitled to receive compensation in value, to enable all claimants with judgments in their favour awarding them compensation under the Property Act to obtain speedily the sums or land due. Such measures should be made available as a matter of urgency.

B. Article 41 of the Convention

127. 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.”

1. Damage

128. The applicant principally claimed *restitutio in integrum* of both plots of land (measuring 5,000 sq. m) and also a sum of EUR 186,000 for the loss of profits. Alternatively, in the event of restitution being impossible he claimed EUR 5,779,000 in respect of pecuniary damage and loss of profits in respect of the original property measuring 6,000 sq. m. He relied on an expert's valuation for the purposes of determining the overall value of the properties and the loss of profits. According to the expert's report the property was situated in a well developed urban zone of Tirana. It had very good access to main roads and had good economic potential for construction purposes. The report stated, *inter alia*, that in 2005 the market value of the property varied from EUR 400 per sq. m. to EUR 2,000 per sq.

m., depending on its designation. Lastly, the applicant claimed EUR 70,000 in respect of non-pecuniary damage.

129. The Government contested the applicant's claims but did not submit any argument relating to the amounts claimed by the applicant. They maintained their commitment to finding a solution for the restitution of, and compensation for, property. The Government therefore asked the Court to rule that a finding of a violation would constitute in itself just satisfaction.

130. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 72). If the domestic law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission that has led to the finding of a violation of the Convention. The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest.

131. Among the matters which the Court takes into account when assessing compensation are pecuniary damage (the loss actually suffered as a direct result of the alleged violations) and non-pecuniary damage (reparation for the anxiety, inconvenience and uncertainty caused by the violation) and other non-pecuniary loss (see, among other authorities, *Ernestina Zullo v. Italy*, no. 64897/01, § 25, 10 November 2004). In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

132. Turning to the present case, the Court observes that the final judgment of 7 December 2000 recognised the applicant as the owner of a plot of land, measuring 5,000 sq. m. Thus, his claim for damage relating to properties other than those allocated to him are to be considered as *ultra petitum* and must therefore be dismissed.

133. The Court further observes that, in the present case, it has concluded that there have been violations of Article 6 § 1, Article 1 of Protocol No. 1 and Article 13 of the Convention, after finding that the applicant was prevented from enjoying his property or receiving compensation in lieu. It considers therefore that the applicant has suffered considerable pecuniary and non-pecuniary damage as a result of the breach of his rights under the Convention, which is why a finding of a violation alone would clearly not constitute sufficient just satisfaction within the meaning of Article 41.

134. Moreover, having regard to its findings in the judgments recently delivered by the Court, in which it held that the Albanian authorities had to

take the appropriate measures in order to comply with final judgments (see *Qufaj Co. Sh.p.k.*, cited above, § 54-59, and also, *Beshiri and Others*, cited above, § 109) and in the absence of any domestic measures adopted since then allowing the enforcement of compensation awards, the Court considers that it has no other option than to make an award which would constitute a full and final settlement of the property dispute (see, among other authorities, *Plotnikov v. Russia*, no. 43883/02, § 33, 24 February 2005, and *OOO Rusatommet v. Russia*, no. 61651/00, § 33, 14 June 2005).

135. The Court considers, in the circumstances of the case, that the return of the smaller plot of land, as ordered in the final judgment of the Supreme Court of 17 December 1998, together with the payment of the loss of profits, and the payment of compensation corresponding to the value of the larger plot of land at the time of the judgment of 7 December 2000, together with a measure of interest to reflect the intervening loss of use of the larger plot, would put the applicant as far as possible in a situation equivalent to the one in which he would have been if there had not been a breach of the Convention.

136. As to the determination of the amount of that compensation, the Court notes that the Government have neither submitted a method of calculation nor furnished any objection to the method of calculation submitted by the applicant (see paragraph 128 above).

137. Having regard to the information available to it on prices on the Tirana property market at the time of the relevant judgments and making an assessment on an equitable basis, the Court awards the applicant a lump sum of EUR 500,000 in respect of pecuniary and non-pecuniary damage on account of the larger plot of land.

138. Moreover, it awards the applicant a global sum of EUR 50,000 together with the restitution of the smaller plot of land. Failing such restitution by the respondent State, within three months from the date on which this judgment becomes final, the Court holds that the respondent State is to pay the applicant an amount of EUR 280,000 in respect of pecuniary and non-pecuniary damage relating to that property.

2. Costs and expenses

139. The applicant also claimed EUR 5,000 for costs and expenses incurred before the domestic courts and EUR 1,000 for those incurred before the Court. He did not provide a detailed breakdown to substantiate his claim for costs and expenses.

140. The Government contested the claim, considering it exaggerated.

141. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *The Sunday Times v. the United Kingdom* (Article 50), judgment of 6 November 1980, Series A no. 38, p. 13, § 23). Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy*, (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002).

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

3. Default interest

143. 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 of the Convention (in respect of the breach of the principle of legal certainty, the impartiality of a tribunal and the non-enforcement of a final judgment) and Article 1 of Protocol No. 1 to the Convention alone and in conjunction with Article 13 of the Convention, admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the principle of legal certainty, as a consequence of the quashing by the Supreme Court of the final judgment of 17 December 1998 in supervisory-review proceedings and in a parallel set of proceedings;

3. *Holds*, as regards the Supreme Court's decision of 5 July 2001 on the merits of the case, that there has been a violation of Article 6 § 1 of the Convention in respect of the lack of subjective impartiality of the President of the Supreme Court and the lack of objective impartiality of the Supreme Court;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the non-enforcement of the final judgments of 17 December 1998 and 7 December 2000;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention as regards the authorities' failure to enforce the final judgments of 17 December 1998 and 7 December 2000;

6. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention in respect of the ineffectiveness of the remedies introduced by the Property Act;

7. *Holds*

(a) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, is to return to the applicant the plot of land measuring 1,650 sq. m together with the payment of EUR 50,000 (fifty thousand euros) in respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(b) that, failing such restitution, the respondent State is to pay the applicant, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 280,000 (two hundred and eighty thousand euros) in respect of pecuniary and non-pecuniary damage regarding the plot of land measuring 1,650 sq. m, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(c) 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 500,000 (five hundred thousand euros) in respect of pecuniary and non-pecuniary damage regarding the plot of land measuring 3,350 sq. m, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(d) that from the expiry of the above-mentioned six months period (as regards points (a) and (b)), and three months period (as regards point (c)) 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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President