



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

FOURTH SECTION

CASE OF RAMADHI AND OTHERS v. ALBANIA

(Application no. 38222/02)

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 Ramadhi and Others 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. 38222/02) 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 six Albanian nationals, Mr Shyqyri Ramadhi, Mr Remzi Kapidani, Mrs Rabije Ramadhi, Mrs Xhemile Ramadhi, Mr Dilaver Ramadhi and Mr Nakib Ramadhi (“the applicants”), on 9 October 2002. On 1 July 2005, following Mrs Xhemile Ramadhi’s death, her daughter, Mrs Shpresa Idrizi, took her place in the proceedings before the Court.

2. The applicants, who had been granted legal aid, were represented by Mrs O. Muçollari, 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 alleged a violation of Article 6 § 1, Article 13 and Article 1 of Protocol No. 1 to the Convention, on account of the authorities’ failure to enforce decisions given pursuant to the Property Act and the Land Act. The applicants further complained of a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

4. On 19 May 2005 the Court decided to give notice of 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 applicants, all siblings, were born in 1921, 1916, 1927, 1928, 1934 and 1943 respectively and live in Kavaja and Durrës, Albania.

6. During the communist regime several plots of land and two shops owned by the applicants' father were confiscated by the authorities without payment of compensation. The property, measuring in total 46,000 sq. m (the land) and 150 sq. m (the shops) ("the relevant property"), was situated in the Kavaja region.

A. Proceedings under the Property Act concerning the shops and the plot of land measuring 15,500 sq. m

7. On an unspecified date the applicants lodged an application with the Kavaja Property Restitution and Compensation Commission (*Komisioni i Kthimit dhe Kompensimit të Pronave* – "the Commission") under the Property Act, seeking to have the relevant property returned to them.

8. On 7 June 1995 and 20 September 1996, respectively the Kavaja Commission upheld the applicants' title as joint owners of two shops and a plot of land measuring 15,500 sq. m. Not being able to restore the relevant property in its entirety, the Commission ruled that 10,000 sq. m of the relevant property was to be returned to the applicants and that they were entitled to compensation, under the Property Act, in respect of the remaining 5,500 sq. m of land and the shops. Moreover, it decided not to rule on the adjacent plot of land measuring 30,500 sq. m, since agricultural property was outside its jurisdiction: rather the District Land Commission was the competent body pursuant to the Land Act (Law no. 7501 of 19 July 1991).

9. On an unspecified date, in compliance with the Kavaja Commission's decision of 20 September 1996, the applicants took possession of the plot of land measuring 10,000 sq. m.

10. Notwithstanding the applicants' requests, to date, the authorities have failed to comply with the parts of the Commission's decisions of 7 June 1995 and 20 September 1996 relating to the payment of compensation in respect of the shops and the plot of land measuring 5,500 sq. m.

B. Proceedings under the Land Act concerning the plot of land measuring 30,500 sq. m

1. Proceedings before the Land Commission

11. On an unspecified date the applicants lodged an application with the Kavaja Land Commission (“the Land Commission”), attached to the Kavaja Municipality, claiming property rights in respect of the plot of land measuring 30,500 sq. m.

12. On 11 November 1998 the Land Commission upheld the property claims of the applicants Sh. Ramadhi, R. Kapedani and R. Ramadhi (“the first three applicants”) and dismissed those of the applicants Xh. Ramadhi, D. Ramadhi and N. Ramadhi (“the last three applicants”) on the ground that the latter were not eligible to claim property rights over agricultural land, in so far as they were not resident in the area where the land was located.

13. The first three applicants entered their ownership of the property in the Land Register. According to the ownership certificates, the applicants’ titles nos. 462, 460 and 461 corresponded to the plots of land registered in the Register as nos. 89/15, 89/16 and 89/17 respectively.

14. On 7 April 1999 the Land Commission, further to a request by the Ministry of Justice, declared the first three applicants’ titles void on the basis that the decision of 11 November 1998 conflicted with substantive laws.

2. Ordinary proceedings

15. On 25 November 1999 the first three applicants initiated proceedings in the Durrës District Court, claiming property rights over the relevant property.

16. On 4 February 2000 the Durrës District Court annulled the Land Commission’s decision of 7 April 1999 and ordered the Land Commission to examine de novo the first three applicants’ claim to be given title to the plot of land measuring 30,500sq.m. The judgment became final at the latest on 6 March 2000.

3. Enforcement proceedings

17. On an unspecified date the Kavaja District Court issued a writ for the enforcement of the judgment of 4 February 2000.

18. On 14 February 2001, by letter no. 151/h, the Bailiff’s Office ordered the Kavaja Municipality to comply with the District Court’s decision of 4 February 2000.

19. On 7 May 2001, by decision no. 366, the Kavaja Municipality held that it had no jurisdiction to enforce the decision on the ground that the Kavaja Land Commission, which would originally have had jurisdiction,

had been dissolved pursuant to the Instruction of 8 November 1999 by the city's mayor.

20. On 8 January 2003, the newly established Kavaja Land Commission, in compliance with the District Court's judgment of 4 February 2000, upheld the validity of the first three applicants' titles nos. 462, 460 and 461.

21. The applicants maintained that the property issue was still unresolved since the local authorities had transferred the above-mentioned plots of land to third parties, so that the Commission decision was thus ineffective in practice. Entries in the Land Register indicate that the plots of land registered as nos. 89/15 and 89/16 (corresponding to the applicants' titles nos. 462, 460) are currently owned by third parties and the applicants maintained that third parties had built on the third plot of land corresponding to title no. 461. The Government maintained that the applicants had failed to register their title to the relevant property in the Land Register in order to take possession of the property in question and did not comment on the applicants' submission concerning the transfer of the property to third parties.

II. RELEVANT DOMESTIC LAW

A. Constitution

22. 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)

23. 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

24. 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.

25. 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

26. 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 Shtetëror për 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).

27. 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.

28. 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.

29. 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*

30. 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 AND ARTICLE 13 OF THE CONVENTION

31. The applicants complained of the authorities' failure to effectively enforce three final decisions given in their favour. Moreover, they complained about the lack of remedies to enforce the Commission's decisions awarding them compensation. They relied on Article 6 § 1, which, in so far as relevant, read 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..."

They also invoked Article 13 of the Convention, which, provides 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. Enforcement of the Commission's decisions concerning the payment of compensation in respect of the shops measuring 150 sq. m and the plot of land measuring 5,500 sq. m

1. Admissibility

(a) The parties' submissions

32. The applicants complained that by decisions of 7 June 1995 and 20 September 1996 the compensation awarded to them had not been paid for a prolonged period of time.

33. The Government contested that argument. The guarantees enshrined in Article 6 were not applicable to the enforcement of decisions which according to domestic law were not final and binding, as was the case with the Commission's decisions. Consequently, the complaint should be declared inadmissible as being incompatible *ratione materiae*. Furthermore, the Government maintained that in the event that the Court found Article 6 applicable in this respect, the complaint should be declared inadmissible in so far as the applicants had failed to exhaust the domestic remedies offered by the Property Act 2004 in seeking redress for the failure to pay compensation for their property.

34. The applicants contested the Government's view, submitting that the relevant domestic law provided that the Commission's decisions, like the District Court's decisions, generated enforceable property titles. Moreover, the applicants submitted that after more than twelve years the decisions at issue had not been challenged before the domestic courts so they were clearly final. The domestic courts had already ruled that the Property Act 2004 did not have retrospective effect. Moreover, they were satisfied with the merits of the decisions and the remedies mentioned by the Government were inadequate to offer them redress, given that they offered only an appeal against the Commission's decisions and not a remedy for their enforcement.

(b) The Court's assessment

(i) Applicability of Article 6 § 1

35. The Court reiterates that for Article 6 § 1, in its "civil" limb, to be applicable there must be a dispute (*contestatio*) over a "right" that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the

civil right in question (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII).

36. The Court notes that in the present case it was not contested that there was a “dispute” over a right recognised under domestic law, that the dispute was genuine and serious or that the outcome of the proceedings was directly decisive for the right concerned. It further observes that the dispute related to a right which was civil by its very nature, since it was a dispute between the State and the applicants as to the determination of the latter’s property rights under the Property Acts. Through the competent Commission’s decisions at issue, the State recognised that the applicants were entitled to receive compensation. Notwithstanding the fact that domestic law omitted to specify a time for their becoming final, the Court observes that, after more than twelve years, the merits of such decisions were not challenged before any court and, in law, nothing therefore prevented their immediate enforcement. Consequently, the Court will consider the rights thus generated to be final and enforceable. In addition the rights arising from such decisions and the subsequent enforcement proceedings were closely bound up with each other (the effectiveness of the former ultimately depended on the success of the latter).

37. The Court thus considers that the proceedings before the Commission described above fall within the scope of Article 6 § 1 of the Convention and it dismisses the Government’s objection.

(ii) *Exhaustion of domestic remedies offered by the Property Act 2004*

38. 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).

39. The Court observes that the same argument raised by the Government in the *Beshiri and Others* case was dismissed since the Government failed to provide any evidence to substantiate the effectiveness of the remedies introduced by the Property Act 2004 (see *Beshiri and Others*, cited above, §§ 54-55).

40. However, the Court observes that the present case differs from *Beshiri and Others*, since the latter case concerns the enforcement of judgments awarding compensation which concern the Code of Civil Procedure rather than the Property Act 2004.

41. The Court considers that the question of the effectiveness of the enforcement proceedings is central to the merits of the applicants' complaints under this title. It holds that both questions should be examined together on the merits.

(iii) Admissibility of the complaint under Article 6 § 1 in conjunction with Article 13 of the Convention

42. The Court considers that the complaints under these heads are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) The parties' submissions

43. In the applicants' opinion, the authorities' failure to provide for procedures to be followed for the enforcement of the Commission's decisions had violated their right of access to court as guaranteed under Article 6 and also amounted to a violation of Article 13 of the Convention.

44. The Government contested the applicants' submissions, maintaining that the remedies offered by the Property Act 2004 were effective. They were committed to finding a solution for the restitution of properties and the award of compensation in compliance with the relevant statutory provisions.

(b) The Court's assessment

45. 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 constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36; and *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3166, § 136, and p. 3169, § 147).

46. While it is clear that in the instant case the applicants were not prevented from commencing proceedings for the recognition of their property rights under the Property Acts, that does not suffice, as the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see, *mutatis mutandis*, *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II; *Lungoci v. Romania*, no. 62710/00, § 35, 26 January 2006; and *Yanakiev v. Bulgaria*, no. 40476/98, § 68, 10 August 2006). Moreover, the determination of civil rights corresponds with the time when the right asserted actually becomes effective (see *Di Pede v. Italy*, judgment of 26 September 1996, *Reports* 1996-IV, p. 1384, §§ 22-24, and *Zappia v. Italy*, judgment of 26 September

1996, *Reports* 1996-IV, p. 1411, §§ 18–20), regardless of the form of the authority to execute (see *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports* 1998-II, pp. 772–73, §§ 37–38).

47. However, the core of the applicants' complaint under Article 6 concerns the non-existence of any remedy for the failure to enforce the Commission's decisions awarding compensation under the Property Acts, which the Court considers is more appropriately examined under Article 13.

48. As to the authorities' compliance with the general obligation under Article 13 to provide effective remedies in respect of the substantive rights guaranteed under the Convention, the Court recalls the following principles:

“(...) Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Chahal v. United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, pp. 1869-70, § 145). The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention (*ibid.*, pp. 1870-71, §§ 150-51). Nevertheless, 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 among other authorities *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95 and *Cobzaru v. Romania*, no. 48254/99, § 80, 26 July 2007).”

49. The Court observes that, irrespective of whether the final decision to be executed takes the form of a court judgment or a decision by an administrative authority, domestic law as well as the Convention provides that it is to be enforced. No steps have been taken to enforce the Commission's decisions in the applicants' favour.

50. The Court notes that none of the Property Acts or any related domestic provision governed the enforcement of the Commission's decisions. In particular, the Property Acts did not provide either for any statutory time-limit for appealing against such decisions before the domestic courts or for any specific remedy for their enforcement. The Court further notes that the Property Acts left the determination of the appropriate form and manner of compensation to the Council of Ministers, which was to define the detailed rules and methods for such compensation. To date no such measures have been adopted (as described in “Relevant domestic law” above) and the Government proffered no explanation for this.

51. That the authorities are committed, as the Government maintained, to the restitution of property and the payment of appropriate compensation did not lead to the enforcement of the decisions in the applicants' favour, now unenforced for 12 and 11 years, respectively. Moreover, the Government have not submitted any evidence that relevant measures are imminent.

52. The foregoing considerations are sufficient to enable the Court to conclude that, by failing to take the necessary measures to provide for the means to enforce the Commission's decisions, the applicants were deprived of their right to an effective remedy enabling them to secure the enforcement of their civil right to compensation. It therefore dismisses the Government's objection (see paragraph 41 above).

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

B. Enforcement of the District Court's judgment concerning the plot of land measuring 30,500 sq. m

1. Admissibility

(a) The parties' submissions

54. The applicants complained about a violation of Article 6 § 1 given the authorities' failure to enforce in practice the Kavaja District Court's judgment of 4 February 2000 that ordered the issuance of a decision on their property rights (see paragraph 16 above).

55. The Government contested the applicants' argument, maintaining that the Kavaja District Court's judgment of 4 February 2000 had been enforced on 8 January 2003, when the Land Commission had delivered a decision on their title to the relevant property. Moreover, they contended that the applicants lacked victim status since they had failed to take the necessary administrative steps to enter their titles in the Land Register and accordingly to claim possession of the property. According to the Government, the applicants had also failed either to prove that the properties allocated to them had already been sold to third parties and, if so, to raise that issue with the domestic courts.

(b) The Court's assessment

56. The Court notes that the applicants' complaint under this head concerned the failure to enforce the District Court's judgment of 4 February 2000. Since only the first three applicants were parties to the proceedings at issue, the Court considers that the last three applicants have not demonstrated that they can claim to be victims of a failure to enforce the above-mentioned judgment.

57. Moreover, the Court considers that the Government's objection concerning the first three applicants' victim status is related to the merits of their complaint and that both questions should be examined together on the merits.

58. It follows that the last three applicants' complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and therefore inadmissible pursuant to Article 35 § 4 of the Convention. The first three applicants' complaint under this head 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

59. The first three applicants submitted that, after more than seven years, the District Court's judgment of 4 February 2000 had not been enforced.

60. The Government argued that the authorities could not be held responsible for the non-enforcement of the above-mentioned decision since its execution depended upon the applicants taking the appropriate steps, namely bringing an action seeking the entry of their titles in the Land Register.

(b) The Court's assessment

61. The general principles concerning the non-enforcement of final judgments are set out in the *Beshiri and Others* judgment (cited above, §§ 60 et seq.).

62. The Court observes that on 4 February 2000 the District Court ordered the issuance of a fresh decision on the first three applicants' property claims. On 8 January 2003, after two years of inactivity, the Land Commission upheld their title to three specific plots of land (see paragraph 14 above), by which date the land was owned by third parties. The latter argument was supported by the Land Register evidence submitted by the relevant applicants. The Government did not comment on this evidence and indeed submitted no substantiated material to the contrary.

63. Finding that the State has not discharged the onus on it to prove the effectiveness of the remedies invoked (see paragraph 55 above) and noting that the first three applicants' property rights are far from being determined, the Court finds that the State authorities have failed to enforce the District Court's judgment of 4 February 2000. It therefore dismisses the Government's objection (see paragraph 57 above).

64. There has therefore been a violation of Article 6 § 1 of the Convention as regards the first three applicants.

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

65. The applicants complained of a violation of their property rights over the relevant property. They relied on Article 1 of Protocol No. 1 to the Convention.

“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.”

66. The Government contested that argument.

A. Admissibility

67. The Court 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 where 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, § 65, 6 October 2005, ECHR 2005-IX).

68. The Court notes that the complaint is linked to those examined under Article 6 § 1 in relation to the authorities’ failure to enforce the decisions given in the applicants’ favour.

69. Since the Court has declared inadmissible the last three applicants’ complaint as regards the non-enforcement of the judgment of 4 February 2000, these applicants have had no “legitimate expectation”, based either on the provisions of the Land Act or on the decisions given in relation to their claim for restitution of the plot of land measuring 30,500 sq. m. Accordingly, the last three applicants’ complaint about the judgment of 4 February 2000 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

70. However, the first three applicants complaints under Article 1 of Protocol No. 1 as regards the failure to enforce the judgment of 4 February 2000 and all the applicants’ complaint as regards the failure to enforce the Commission decisions of 1995 and 1996 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

71. In this respect, the Court notes that ever since the applicants' relevant property had been nationalised, pursuant to the Property Acts and the Land Act in conjunction with the decisions given in their favour, they had a claim to compensation in value and kind which was clearly established in domestic law. It was certain that, at the time of the decisions of 7 June 1995 and 20 September 1996, the applicants were entitled to pecuniary compensation in accordance with the Property Act, and that at the time of the court judgment of 4 February 2000 the first three applicants were entitled to restitution of the original property in accordance with the Land Act. In these circumstances, the Court considers the applicants' claim sufficiently established to qualify as an "asset" for the purposes of Article 1 of Protocol No. 1. The Court further finds that their complaints are not inadmissible on any other grounds and they must therefore be declared admissible.

B. Merits

1. The parties' submissions

72. The Government contended that the Commission's decisions and the court's decision in the present case could not attract the guarantees of this Article since, in order to secure their property rights, the applicants should have raised the matter with the competent authorities in accordance with the Property Act 2004. They maintained that any failure to execute the Commission's decisions awarding compensation to the applicants had been due to objective circumstances such as the lack of funds and the general interests of the community.

73. With reference to the plot of land measuring 30,500 sq. m, the Government submitted that the State should not be considered responsible for the applicants' failure to take the necessary steps with the Land Registry Office and to take possession of the property allocated to them. In the Government's submission, this would have been the only way to attract the protection of the Convention and to enable the applicants to claim property rights under Article 1 of Protocol No. 1.

74. The applicants contested the Government's arguments, claiming they were unsubstantiated. They maintained that their property rights were still unresolved after a prolonged period of time.

2. The Court's assessment

75. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first

paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest (see, among other authorities, *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, § 33, and *Draon*, cited above, § 69).

76. In the present case, the Court observes that the interference with the applicants' right to the enjoyment of their possessions stems from the continuing failure to pay them the compensation stemming from the Commission's decisions and to return to the first three applicants the property of which they had been recognised as the owners by the Land Commission.

77. The Court observes that in its established case-law it has examined the non-enforcement of a decision recognising title to property under the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003; *Sabin Popescu v. Romania*, no. 48102/99, § 80, 2 March 2004; and *Beshiri and Others*, cited above, § 99). The circumstances of the present case are similar to those of the cases mentioned above and therefore the interference falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1, which lays down the principle of peaceful enjoyment of property in general terms.

78. The Court must therefore establish whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In the circumstances of the instant case, the Court is called upon to determine whether the time necessary for the domestic authorities to pay the applicants compensation and to effectively return to the first three applicants the properties to which they were entitled disturbed that balance and whether it placed an excessive burden on them.

79. The Court reiterates that States have a wide margin of appreciation to determine what is in the public interest, especially where compensation for nationalisation or expropriation is concerned, as the national legislature has a wide discretion in implementing social and economic policies. However, that margin of appreciation is not unlimited and its exercise is subject to review by the Convention institutions (see *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, pp. 50-51, §§ 121-22).

80. In the present case, twelve and eleven years have passed since the Commission's decisions of 1995 and 1996 respectively without the applicants having been paid any compensation. Moreover, the situation arising from the combination of the sale of the relevant property (measuring 30,500 sq. m) and the Land Commission's decision of 8 January 2003 had

the effect of depriving the applicants of the benefit of the enforcement of that decision (see paragraph 63 above).

81. The Court considers that by failing to comply with the Commission's decisions of 1995 and 1996 and the District Court's of 4 February 2000, the national authorities left the applicants in a state of uncertainty with regard to the realisation of their property rights. Furthermore, for a considerable period of time, the authorities prevented them from enjoying the possession of their money and land.

82. The Government submitted that notwithstanding the administrative authorities' commitment to the implementation of the Property and Land Acts, the proceedings were very complex because the authorities were called upon to determine the manner and the funds for the fulfilment of their obligations pursuant to those Acts. Given that there existed no clear legal rules in domestic law governing the calculation of compensation or any other similar procedure for enforcing the Commission's decisions awarding compensation (see paragraph 24 above), the Court does not find this argument particularly convincing, bearing in mind that it was the authorities' inactivity that caused the interference at issue. In any event, the applicants should not be prevented from benefiting from the success of their litigation on the ground of alleged difficulties experienced by the State (see *mutatis mutandis Jeličić v. Bosnia and Herzegovina*, no. 41183/02, § 42, ECHR 2006-....).

83. In conclusion, the Government have not produced any convincing evidence to justify the failure of the domestic authorities over so many years to determine the final amount of the compensation due or to return to the first three applicants the plot of land now allocated to third parties. This has resulted in an interference with the applicants' property rights, which in the Court's view is such as to have placed an excessive burden on them.

84. In the light of all the circumstances, the Court considers that there has therefore been a violation of Article 1 of Protocol No. 1 as regards all the applicants in respect of the issue of compensation and as regards the first three applicants in respect of the issue of restitution.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. Lastly, the last three applicants complained that the domestic courts had discriminated against them on the ground of their place of residence, in apparent breach of their property rights. They relied on Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

86. The Government contested that argument.

87. The Court observes that in its decision of 11 November 1998 the Land Commission dismissed the claims of the last three applicants on the ground that they were not resident in the region where the relevant property

they were claiming was situated. The applicants failed to appeal against that decision.

88. The Court considers that by failing to raise the issue of their discrimination with the domestic courts, the applicants failed to exhaust domestic remedies for the purposes of Article 35 § 1. It follows that this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

89. 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.”

90. It is inherent in the Court’s findings above that the violation of the applicants’ rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 originated in a widespread problem affecting large numbers of people, namely the unjustified hindrance of their right to the peaceful enjoyment of their property, stemming from the non - enforcement of Commission decisions that awarded them 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 for 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 applicants’ particular case may subsequently give rise to other numerous well-founded applications.

91. Before examining the applicants’ 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, 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. Subject to supervision by the Committee of Ministers, the national authorities have the task of taking – retrospectively if needs be – (see among other authorities *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 233, ECHR 2006 and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V, *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.

92. 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.

93. 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 90 above) the Court considers that general measures at national level are undoubtedly called for in the execution of the present judgment.

94. In order to assist the respondent State in complying 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, introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment as well as in respect of all similar applications pending before it, in accordance with the principles for the protection of the rights laid down in Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1. By introducing the relevant remedy, the State should, *inter alia*, designate the competent body, set out the procedural rules, ensure compliance with such rules in practice and remove all obstacles to the award of compensation under the Property Act. These objectives can be achieved by ensuring the appropriate statutory, administrative and budgetary measures. These measures should include the adoption of the maps for the property valuation in respect of those applicants who are entitled to receive compensation in kind and the designation of an adequate fund in respect to those applicants who are entitled to receive compensation in value, this in order to make it possible for all the claimants having successful

Commission's decisions in their favour to obtain speedily the lands or the sums due. Such measures should be made available as a matter of urgency.

B. Article 41 of the Convention

95. 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

96. As regards pecuniary damage, the applicants claimed 590,000 euros (EUR) for the plots of land measuring a total of 36,000 sq. m and EUR 65,500 for the shops. In assessing the above mentioned sums the applicants took account of the current market value of the properties at issue, *i.e.* EUR 2,000 per sq. m. in respect of the land and EUR 2,200 per sq. m. in respect of the shops. Moreover, they left it to the Court's discretion to determine the relevant rate of interest for the period during which the authorities had failed to pay them the compensation due. Lastly, the applicants claimed EUR 12,000 in non-pecuniary damage.

97. The Government contested the applicants' claims but did not submit any argument relating to the amounts claimed by the applicants. However, they maintained their commitment to the finding of a solution to the problem of restitution of property and payment of compensation in compliance with the relevant statutory provisions. Accordingly, the Government asked the Court to rule that a finding of a violation would constitute in itself just satisfaction.

98. 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.

99. 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).

100. The Court further reiterates 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 in which he or she would have been had the requirements of Article 6 not been disregarded (see *Teteriny v. Russia*, no. 11931/03, § 56, 30 June 2005). Having regard to the nature of the violations found, the Court considers therefore that the applicants have suffered considerable pecuniary and non-pecuniary damage as a result of the breach of their 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.

101. 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 view of the Government's failure to follow the indications given by the Court in the last mentioned judgments to provide for the relevant regulations 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).

102. The Court considers, in the circumstances of the case, that the return of the plots of land measuring 30,500 sq. m as ordered in the Land Commission's decision of 8 January 2003 and the payment of the compensation corresponding to the value of the plots of land measuring 5,500 sq. m and 150 sq. m, at the time of the relevant decisions, together with a measure of interest to reflect the intervening loss of use of the said plots of land would put the first three applicants and all the applicants, respectively, as far as possible, in a situation equivalent to the one in which they would have been if there had not been a breach of the Convention.

103. Having regard to the material in its possession and the fact that the Government did not furnish any objection to the method of calculation of the compensation submitted by the applicants and making an assessment on an equitable basis, the Court awards jointly to all the applicants a lump sum of EUR 64,000 in respect of pecuniary and non-pecuniary damage relating to the plots of land measuring 5,500 sq. m and 150 sq. m.

104. Moreover, it awards jointly to the first three applicants a global sum of EUR 25,000 together with the restitution of the plot of land measuring 30,500 sq. m. Failing the restitution of the said plot of land 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 jointly to the first three applicants, an amount of EUR 120,000 in respect of pecuniary and non-pecuniary damage relating to that property.

2. Costs and expenses

105. The applicants, who received EUR 824 in legal aid from the Council of Europe in connection with the presentation of their case, sought EUR 2,800 and EUR 2,500 for the costs and expenses incurred before the domestic courts and before the Court respectively. They did not provide a detailed breakdown to substantiate their claim for costs and expenses before the domestic courts.

106. The Government contested the claim.

107. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

108. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,676, in addition to the sum already granted in legal aid by the Council of Europe, for costs and expenses incurred in the proceedings before the Court, but dismisses the claim for costs in the domestic proceedings for lack of substantiation.

3. Default interest

109. 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 under Article 6 § 1 of the Convention, Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention as regards the Commission's decisions of 7 June 1995 and 20 September 1996 admissible;
2. *Declares* the complaints under Article 6 § 1 and Article 1 of Protocol No. 1 as regards the Kavaja District Court judgment of 4 February 2000

admissible in respect of the first three applicants and declares the remainder of the complaints inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the failure to enforce the Commission's decisions of 7 June 1995 and 20 September 1996 and the Kavaja District Court judgment of 4 February 2000;
4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1 of the Convention in respect of the ineffectiveness of the remedies at the applicants' disposal to secure the enforcement of the Commission's decisions of 7 June 1995 and 20 September 1996;
5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of all the applicants as regards the plot of land measuring 5,500 sq. m and the shops, and in respect of the first three applicants as regards the plot of land measuring 30,500 sq. m;
6. *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 the plot of land measuring 30,500 sq. m belonging to the first three applicants and to pay them jointly EUR 25,000 (twenty five 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 jointly to the first three applicants, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 120,000 (one hundred and twenty 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;
 - (c) that the respondent State is to pay jointly to all the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, 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:
 - (i) EUR 64,000 (sixty four thousand euros) in respect of pecuniary and non-pecuniary damage relating to the plots of land measuring 5,500 sq. m and 150 sq. m;

(ii) EUR 1,676 (one thousand six hundred and seventy six euros) in respect of costs and expenses;

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

7. *Dismisses* the remainder of the applicants' 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