



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF BUSHATI AND OTHERS v. ALBANIA

(Application no. 6397/04)

JUDGMENT
(merits)

STRASBOURG

8 December 2009

FINAL

08/03/2010

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 Bushati and Others v. Albania,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Nebojša Vučinić, *judges*,

Markelian Koca, *ad hoc judge*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 6397/04) 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 Mrs Ixhlale Bushati, Mr Skender Bushati and Mr Genc Bushati, Albanian nationals (“the applicants”), on 8 January 2004.

2. The first and second applicants were represented before the Court by Mr Genc Bushati, (“the third applicant”), who, at the time of the introduction of the application, was himself represented by Messrs L. Bianku and D. Gjata and, who is currently represented by Mr P. Kalo, lawyers practising in Tirana. The Albanian Government (“the Government”) were represented by their then Agents, Mr S. Puto and Ms S. Meneri.

3. The applicants complained under Article 6 § 1 of the Convention of a violation of the principle of legal certainty, the length of proceedings and the non-enforcement of a court decision. They also argued that the authorities had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. The application was allocated to the Fourth Section (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted in accordance with Rule 26 § 1 of the Rules of Court. Mr Ledi Bianku, the judge elected in respect of Albania, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Markelian Koça to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

5. On 16 September 2005 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under

the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

6. The applicants and the Government each submitted further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1918, 1939 and 1944, respectively, and live in Shkoder.

8. Following the conclusion of a purchase contract on 10 July 1940, the applicants' relative became the owner of a plot of land measuring 5,000 sq. m and situated on the Durrës coast. The applicants' relative's title to the property was subsequently entered in the Durrës Land Register.

9. In 1946 the State nationalised – without compensation – all the land situated on the Albanian coast, including the applicants' relative's plot of land.

A. Restitution of property

10. On 3 February 1994 the Durrës Commission on Restitution and Compensation of Property (*Komisioni i Kthimit dhe Kompensimit të Pronave* – hereafter “the Commission”), restored the applicants' property rights over their relative's property pursuant to the Property (Restitution and Compensation) Act of 1993 (see “Relevant domestic law”, paragraph 53 below). On 22 February 1994 the applicants' title to the property was entered in the Durrës Land Register.

11. Between 1994 and 1995 attempts by the applicants to recover possession of the property proved unsuccessful because buildings had been illegally erected on their land by unlawful occupiers.

B. Domestic courts' proceedings

1. Ordinary proceedings

12. On an unspecified date in 1995, being unable to recover possession of their property, the applicants initiated proceedings before the Durrës District Court (“the District Court”), seeking an order for three occupiers (M., R. and D.) to cease occupation of their property and for the illegal buildings to be demolished.

13. On 11 April 1995 the District Court confirmed the applicants' property rights over the plot of land allocated to them by the Commission and ordered the occupiers to vacate the applicants' property. That decision became final on 23 May 1995.

2. Supervisory review

14. On 1 August 1995 one of the occupiers, M., submitted a request to the President of the then Court of Cassation for supervisory review of the District Court's decision of 11 April 1995 on the ground that he had not been notified of the proceedings. On 23 September 1995 the President of the Court of Cassation endorsed his request by putting it before the Civil Bench.

15. On 2 February 1996 the Court of Cassation quashed the District Court's decision of 11 April 1995 on the ground that none of the three occupiers had been duly informed of the proceedings before the District Court, and remitted the case to the same court for fresh examination.

16. The applicants were neither informed of the proceedings nor invited to attend the hearings before the Court of Cassation.

17. On 21 June 1996 the District Court decided to dismiss the case as none of the parties had attended the hearing and none had given legitimate reasons for their failure to attend.

3. Reopening of proceedings

18. It appears that the proceedings were reopened on an unspecified date. They were also directed against another unlawful occupier, B. On 20 January 1997 the District Court confirmed the applicants' title to their relative's plot of land and ordered the four occupiers (M., R., D. and B.) to cease occupation.

19. In February 1997 the applicants sold a plot measuring 500 sq. m to another party. That transaction was entered in the land register.

20. On an unspecified date the occupiers of the applicants' property appealed against the District Court's decision of 20 January 1997, challenging the lawfulness of the applicants' title to the plot of land. On 1 April 1998 the Durrës Court of Appeal ("the Court of Appeal") dismissed their appeal and upheld the District Court's decision.

21. On 10 November 1998 the Court of Cassation quashed the Court of Appeal's decision on the ground that the latter had not examined the lawfulness of the applicants' relative's title to the property. It remitted the case to the Court of Appeal for fresh examination.

22. On 24 November 1999 the Court of Appeal found that on 30 August 1994 the Commission had allocated to R. (who had subsequently donated his property to G.) a plot of land that overlapped with 720 sq. m of the plot of land allocated to the applicants by the same Commission on 3 February 1994. Moreover, the court declared null and void the

Commission's decision of 3 February 1994 in respect of the plot measuring 720 sq. m, finding that the applicants' relative's purchase contract of 10 July 1940 was null and void. It therefore revoked the applicants' title to the entire plot of land measuring 5,000 sq. m.

23. On 2 April 2001, following appeals by the applicants and by three of the four occupiers (M., B. and D.), the Supreme Court, which had replaced the Court of Cassation after the Albanian Constitution's entry into force on 28 November 1998, quashed the Court of Appeal's decision in part. The court dismissed the occupiers' appeals on the ground that, as they occupied the land without title, they lacked standing to challenge the applicants' title to the property. The Supreme Court therefore ordered them to cease their occupation of the land. Moreover, the court upheld G.'s title to the plot measuring 720 sq. m that overlapped with the land allocated to the applicants and confirmed the applicants' property rights over the remaining 4,280 sq. m.

24. On 11 March 2003 the applicants lodged an appeal with the Constitutional Court under Article 131 (f) of the Constitution, arguing that the Supreme Court's judgment of 2 April 2001, which resulted in only partial recognition of their property, was unconstitutional. They complained that as the Supreme Court had wrongly assessed the evidence, its impartiality was open to doubt.

25. The Constitutional Court found that the applicants' constitutional complaint concerned the assessment of evidence, which fell within the jurisdiction of the lower courts and was outside its jurisdiction. It therefore declared the appeal inadmissible by a decision of 10 July 2003, which was served on the applicants on 14 July 2003.

4. Enforcement proceedings concerning the Supreme Court's decision of 2 April 2001

26. On 28 June 2001 the District Court ordered the bailiffs to enforce the Supreme Court's judgment of 2 April 2001.

27. On 31 July 2001 the bailiff sent three separate letters to M., D. and B. to comply with the judgment within 10 days from the notification thereof. The bailiff drew the occupiers' attention to the mandatory enforcement of the judgment, should they fail to comply with the judgment voluntarily.

28. On 25 September 2001 the third applicant requested a stay in the execution of the judgment until 15 October for reasons which he did not disclose. The record states that the applicant would appear at the bailiff's office to request the continuation of the enforcement proceedings.

29. On 26 October 2001 the applicant and occupiers M. and D. appeared before the bailiff. The record states that "the parties agreed to postpone the execution of the judgment until 15 November 2001".

30. On 16 January 2002 the third applicant requested the bailiff to waive the applicants' right of enforcement of the judgment against B. as both parties would resolve the issue by agreement. It appears that on an unspecified date in 2002 the applicants sold a plot measuring 164 sq. m to B.

On the same day the third applicant requested enforcement of the judgment against M. and D. by demolishing their constructions. The bailiff agreed to request the assistance of the police for this purpose.

31. On 22 January 2002 M. and D. were informed that the bailiff would proceed with the mandatory execution of the judgment on 4 February, in the presence of police officers.

32. On 4 February 2002 the bailiff decided to postpone the execution to an unspecified date owing to the applicants' absence. It results from the record that the bailiff did not go to the site to undertake any measures with a view to demolishing M.'s and D.'s constructions.

33. On 9 September 2002 the third applicant requested the bailiff to proceed with the enforcement of the judgment, given the failure of M. and D. to comply with an agreement on the amount of compensation in respect of the plots they had occupied.

34. On 10 September 2002 the bailiff sent two separate letters to M. and D. asking them to comply within 10 days with the agreement entered into with the applicants. The bailiff drew the occupiers' attention to the mandatory enforcement of the judgment, should they fail to comply with the judgment voluntarily.

35. On 16 September 2002 the bailiff had a meeting with M. and D., who informed him that they were unable to pay the price requested by the applicants. The occupiers stated that they would vacate the plot of land on the condition that the applicants compensated them for the construction they had erected or that they provided them with a lawfully constructed flat in another location. The bailiff decided to inform the third applicant of the occupiers' requests.

36. On 4 November 2002 the third applicant requested either the vacation of the plots of land or the payment of compensation by the occupiers at the indicated price. The third applicant consented to having the price paid in instalments over a two-year period. He would come to an agreement with the occupiers as regards the amount of the instalments and the method of payment. Failing an agreement, the third applicant affirmed that he would request that the plot of land be vacated.

37. The bailiff's record of a meeting on 14 February 2003 between the third applicant and both occupiers, states that,

“Following a series of discussions the parties did not agree on the price offered by the creditor [the third applicant], who requests [the amount of compensation per sq. m] over a three-year period.

The debtors offered to pay a [lower] price at (...).

Given this disagreement, it was decided that the creditor would request the mandatory enforcement of the judgment when he was ready (*kur të jetë gati*)”.

38. On the same day the bailiff decided to suspend the enforcement proceedings. The relevant parts of the decision read:

“The creditor [the third applicant] has unsuccessfully been trying to resolve the problem by friendly settlement, save with debtor B.

Under these circumstances, the creditor requested suspension of the enforcement proceedings until a later appearance before the bailiff at which he would request the mandatory execution as regards the vacation of the plot occupied by M. and D. This has also been reflected in the record of 14 February 2003.”

5. Proceedings concerning the removal of 255 sq. m from the Land Register

39. The Durrës Land Registry (“the Land Registry”) entered in the land register, *inter alia*, G.'s title to a plot of land measuring 975 sq. m, despite the fact that the Supreme Court's judgment of 2 April 2001 had recognised her property rights over a plot of land measuring 720 sq. m (see paragraph 23 above).

40. On an unspecified date the applicants initiated proceedings with the District Court seeking the removal of 255 sq. m from G.'s title of property as entered in the Durrës Land Registry.

41. On 24 December 2003 the District Court decided to suspend the proceedings pending the outcome of the proceedings for recovery of the property (see paragraph 50 below).

42. On 20 April 2004, following an appeal by the applicants, the Court of Appeal quashed the District Court's decision of 24 December 2003 on the ground that there was no connection between the two sets of proceedings as each of them could be decided upon independently, and remitted the case to the same court for continuation of the proceedings.

43. On 7 January 2005 the District Court decided to suspend the proceedings until the parties had provided updated copies of mortgage certificates issued by the Land Registry.

44. On 30 May 2005, following an appeal by the applicants, the Court of Appeal quashed the District Court's decision of 7 January 2005 and remitted the case to the same court for continuation of the proceedings.

45. On 16 January 2006 the District Court, after having received the updated mortgage certificates and the property plans, decided that there was no overlap between the applicants' property and that of G. That decision was upheld by the Court of Appeal on 20 November 2006.

6. Injunction proceedings against construction works carried out by G.

46. On an unspecified date G. commenced construction works, which allegedly encroached upon the plot of land belonging to the applicants. On 17 June 2003, following proceedings initiated by the applicants, the District Court issued an injunction ordering G. to suspend the construction works since the buildings encroached upon the applicants' property.

47. On 20 June 2003 the District Court ordered the bailiffs to enforce the injunction of 17 June 2003. On 30 October 2003 the bailiffs decided not to enforce it because G. had not encroached upon the applicants' property.

48. On 16 December 2003, following an action initiated by the applicants in accordance with Article 610 of the Code of Civil Procedure, the District Court set aside the bailiffs' decision of 30 October 2003. It found that the bailiffs had exceeded their powers as they were not authorised to overrule a court decision. The decision was upheld by the Court of Appeal on 20 April 2004.

49. On an unspecified date in 2004 G. lodged an action with the District Court requesting that the writ of execution of 20 June 2003 be set aside in the light of the District Court's decision of 20 May 2004 (see paragraph 51 below). On 18 March 2005 the District Court dismissed her request on the basis of the Court of Appeal's decision of 24 November 2004, according to which the merits of the case would be heard by a different bench of the District Court (see paragraph 52 below).

7. Proceedings concerning the recovery of property occupied by G.

50. In view of G's construction works, which had apparently encroached upon the applicants' property, on an unspecified date in 2003 the applicants initiated proceedings for recovery of possession of their property. In the meantime G. filed a counter civil claim requesting the applicants to vacate her plot of land, which was allegedly occupied by their buildings.

51. On 20 May 2004 the District Court concluded, on the basis of an expert valuation concerning the overlap of the properties, that the applicants had occupied a plot of 172.12 sq. m of G.'s property. It also found that G. had occupied a plot of 200.52 sq. m of the applicants' property. The District Court ordered G. to compensate the applicants in the amount of 2,556 United States dollars (USD) for a plot of 28.4 sq. m, which was the difference between the plots of land occupied by each party to the proceedings. Accordingly, it dismissed the applicants' civil claim and also decided to lift the injunction that had been issued on 17 June 2003 (see paragraphs 46 above).

52. On 24 November 2004, following an appeal by the applicants, the Court of Appeal found that the District Court had not examined the parties' updated property titles, particularly in the light of some changes that had taken place to their properties over the years. Accordingly, it quashed the

District Court's decision and remitted the case to the same court for a fresh examination by a different bench.

53. On 10 June 2005 the Supreme Court declared G.'s appeal inadmissible in accordance with Article 472 of the Code of Civil Procedure (no valid grounds of appeal). It accordingly upheld the Court of Appeal's decision.

54. On 25 April 2006, on the basis of an expert valuation, the District Court found that the properties overlapped in respect of a plot of 255 sq. m. It concluded that that plot of land belonged to the applicants. The District Court did not find any occupation of G.'s property by the applicants, but ruled that G. had occupied a plot of 347 sq. m that belonged to the applicants. It rejected G's request to pay compensation for the occupation of that plot of land as this was not envisaged under the law. It ordered G. to vacate and return the plot of 347 sq. m to the applicants. The decision was upheld by the Court of Appeal on 5 March 2007.

55. On 25 April 2007 the District Court ordered the bailiffs to enforce its judgment of 25 April 2006. By a letter of 7 June 2007 the applicant informed the Court that the writ of execution of 25 April 2007 was unlikely to be enforced given the presence of two apartment blocks on the occupied plot of land.

56. On an unspecified date G. lodged an action with the District Court requesting the suspension of the writ of execution in respect of one of the illegal buildings, whose status she was trying to legalise. No further information about the enforcement proceedings has been submitted to the Court.

II. RELEVANT DOMESTIC LAW

A. The Constitution of Albania

57. The relevant sections of the Constitution of Albania have been set out in *Beshiri and Others v. Albania* (no. 7352/03, § 20, 22 August 2006).

B. Code of Civil Procedure

58. Article 171 of the 1981 Code of Civil Procedure ("the CCP"), which was in force until 1 June 1996, provided that decisions could be quashed for serious procedural violations, *inter alia*, when the case was tried in the absence of other parties without their having been informed of the hearing dates.

59. Section 9 of Law no. 7574 of 24 June 1992, which amended the Code of Civil Procedure of 1981 in force at the material time, provided that the Court of Cassation was empowered to examine the lawfulness of court

decisions by way of an application for supervisory review (*kërkesë për mbrojtje ligjshmërie*) lodged by the President of the Court of Cassation or the General Prosecutor. The provision did not impose time-limits for applying for such a review.

60. As provided by the 1996 CCP, which abrogated the Code of Civil Procedure of 1981, supervisory review (*rekurs në interes të ligjit*) was an extraordinary remedy that enabled the Supreme Court (the new name for the Court of Cassation) to reopen proceedings where judgments had become final. Between 1996 and its abolition in 2001, by virtue of Law no. 8812 of 17 May 2001 the supervisory-review procedure underwent several legislative changes.

61. Article 451/a of the CCP provides that a final court judgment is binding on the parties, their heirs, the court that adopted the judgment and other courts and institutions.

62. Article 510 of the CCP stipulates that a judgment can be enforced only on the basis of an execution title, which includes, *inter alia*, a final court judgment. Under Article 511 of the CCP, an execution title is executed at the request of the creditor. An execution writ is issued for this purpose. In the wording of Article 515 of the CCP, an execution writ is enforced by the bailiff at, *inter alia*, the request of the creditor. The bailiff invites the debtor to comply voluntarily with the execution writ in accordance with the time-limits laid down in Article 517 of the CCP. Should the debtor fail to comply with a voluntary enforcement within the prescribed time-limits, the bailiff proceeds with a mandatory enforcement in accordance with Article 519 of the CCP.

63. Under Article 610 of the CCP, the parties may complain to the court of an act or failure to act by the bailiff within five days of the said act or omission. There is a right of appeal against the court decision in accordance with Article 611 of the CCP. The appeals has no suspensive effect on the execution.

64. The bailiff may decide to suspend execution at the request of the creditor in accordance with Article 615 of the CCP. The parties may challenge the bailiff's decision to suspend enforcement at the district court in accordance with Article 617 of the CCP.

C. The Property Act

65. The relevant sections of the Property (Restitution and Compensation) Act have been set out in *Beshiri and Others v. Albania* (no. 7352/03, §§ 21-29, 22 August 2006); *Driza v. Albania* (no. 33771/02, §§ 36-43, ECHR 2007-... (extracts); and *Ramadhi and Others v. Albania* (no. 38222/02, §§ 23-30, 13 November 2007).

THE LAW

66. The applicants complained under Article 6 § 1 of the Convention of a violation of the principle of legal certainty as a result of the quashing of a final judgment, the non-enforcement of a final court decision and the length of the proceedings.

The relevant parts of Article 6 § 1 of the Convention provide:

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

67. They also complained that after eleven years of proceedings they are still not able to recover possession of the property allocated to them by virtue of the Supreme Court's decision of 2 April 2001.

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

I. ADMISSIBILITY OF THE COMPLAINTS

A. Legal certainty: quashing of the final Durrës District Court's judgment of 11 April 1995

68. The applicants complained that, under the supervisory-review procedure, the then Court of Cassation's decision of 2 February 1996 quashed the Durrës District Court's final decision of 11 April 1995, thereby breaching the principle of legal certainty.

69. The Government argued that this complaint was incompatible *ratione temporis* with the provisions of the Convention in so far as the Court of Cassation's decision of 2 February 1996 was adopted at a time when the Convention had not entered into force in respect of Albania.

70. In this connection the Court reiterates that it is competent to examine events from 2 October 1996 onwards, when the recognition by Albania of the right of individual petition took effect. The Court therefore finds that the above complaint, relating to facts prior to 2 October 1996, is incompatible *ratione temporis* with the provisions of the Convention and must be rejected in accordance with Article 35 § 4.

B. Non-enforcement of final court judgments

71. The Court notes that the enforcement proceedings in respect of the District Court's decision of 25 April 2006 are still pending. It further notes that the applicants have raised no specific complaint in respect of the conduct of these proceedings. The Court does not see any reason to do so of its own motion.

72. The Court notes that the applicants' complaint also concerns the non-enforcement of the Supreme Court's decision of 2 April 2001. It considers that the applicants may legitimately claim to be victims in light of the continuing violation of the Convention, given the prolonged non-enforcement of the Supreme Court's decision of 2 April 2001. The six-month rule is therefore not applicable in this situation (see *Karpova v. Ukraine*, no. 12884/02, § 23, 29 November 2005). This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. The length of the proceedings

73. The Court notes that a number of proceedings concerned the applicants' title to the same property. While the judicial authorities could have joined the proceedings, they were nevertheless different, involving different parties and concerning different legal arguments.

74. The Court further notes that the parties' arguments focused on the length of the reopening proceedings which ended on 14 July 2003, the date on which the applicants were informed of the Constitutional Court's decision.

75. The Court considers that this complaint 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 complaint inadmissible have been established and therefore declares it admissible.

D. The applicants' complaint under Article 1 of Protocol No. 1 to the Convention concerning the non-enforcement of the Supreme Court's decision of 2 April 2001

76. The Court considers that this complaint 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.

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

A. Non-enforcement of the Supreme Court's decision of 2 April 2001

1. *The parties' submissions*

77. The applicants observed that the Supreme Court's decision of 2 April 2001 had not yet been enforced. Even though on paper they owned 3,616 sq. m, they did not exercise effective possession of their property as it was still occupied.

78. The Government contended that the enforcement proceedings of the Supreme Court's decision of 2 April 2001 had been adjourned on several occasions at the applicants' requests. Despite negotiations conducted between the private parties concerning the amount of compensation, at the applicants' request the bailiffs had decided to suspend the enforcement proceedings until further notice. The Government therefore concluded that the delays in the enforcement proceedings could be attributed to the applicants, who continued to negotiate the amount of compensation with the occupiers and did not raise any complaints against the bailiffs' decision.

2. *The Court's assessment*

79. The Court reiterates that execution of a final judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II). The State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delays (see *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C).

80. The right of “access to court” does not impose an obligation on a State to execute every judgment of a civil character without having regard to the particular circumstances of a case (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003). The State's responsibility for enforcement of a judgment against a private person extends no further than the involvement of State bodies in the enforcement procedures (see *Fuklev v. Ukraine*, no. 71186/01, § 67 and §§ 90-91, 7 June 2005). The Court's only task is to examine whether the measures taken by the authorities were adequate and sufficient. In cases such as the present one, where the debtor is a private person, the State has to act diligently in order to assist a creditor in

execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

81. The Court notes that the applicants' attitude to enforcement appears to have been influenced by the negotiations with the occupiers on the amount of compensation. They requested a delay in the enforcement in September and October 2001. Following a deadlock in the negotiations with the occupiers, on 16 January 2002 the applicants requested the bailiff to proceed with the enforcement of the judgment in respect of M. and D. On 4 February 2002 the bailiff decided to adjourn the forced execution owing to the applicants' absence.

82. The Court doubts whether the bailiff's decision of 4 February 2002 was reasonable. In the first place, it transpires from the record that the bailiff did not go to the site to undertake any action for the demolition of the occupiers' buildings with a view to ensuring enforcement. Secondly, the Court does not find the bailiff's reasoning about the absence of the applicants a relevant justification: no legal ground was invoked or relied upon to require the presence of the applicants in the course of mandatory enforcement proceedings. Thirdly, no other objectively justified limitations on the bailiff's ability to act have been put forward by the Government.

83. On 9 September 2002 the applicants reiterated their wish to proceed with the enforcement of the final judgment. The Court considers ineffectual the bailiff's decision of 10 September 2002 to attempt another voluntary enforcement. Such measure had previously proved unsuccessful. Rather, the bailiff should have proceeded with coercive measures to enforce the judgment.

84. Furthermore, the Court finds the occupiers' requests of 16 September 2002 unreasonable given that it had been decided by the Supreme Court's decision of 2 April 2001 that they were unlawfully occupying the applicants' property. The existence of a final and enforceable judgment in the applicants' favour is indicative of the fact that their litigation was meritorious (see *Cebotari and Others v. Moldova*, nos. 37763/04, 37712/04, 35247/04, 35178/04 and 34350/04, § 45, 27 January 2009). The applicants cannot be held responsible for any costs that could have resulted from, or been associated with, the occupiers' eviction. The Court notes that the applicants were consistent from 16 January 2002 to 14 February 2003 in their requests about the enforcement of the Supreme Court's decision of 2 April 2001.

85. Confronted with the occupiers' unreasonable requests, the bailiff should have taken immediate steps to secure mandatory enforcement. On the contrary, on 14 February 2003 he decided to suspend the enforcement again. The decision of 14 February 2003, of which the applicants took cognisance by signing it, constituted an act that could have been challenged before the domestic courts (see paragraphs 48 and 64 above). In the present case, the applicants failed to do so and, accordingly, they cannot be

regarded as having exhausted the domestic remedies available to them under the Albanian law.

86. Having regard to the above considerations, the Court finds that there has been a breach of Article 6 § 1 of the Convention on account of the non-enforcement of the Supreme Court's decision of 2 April 2001 between 28 June 2001 and 14 February 2003.

B. The length of the proceedings

1. The parties' submissions

87. The applicants complained of the unreasonable length of the domestic proceedings, which started on an unspecified date in 1995 and concluded with the Constitutional Court's decision of 10 July 2003. They lasted over eight years for eight levels of jurisdiction. The applicants contended that, considering what was at stake for them, namely the cessation of their property's occupation, the domestic courts did not hear their case within a reasonable time.

88. The Government argued that in the light of the complexity of the case, the attitude and conduct of the authorities, the applicants' behaviour, and other elements, the proceedings had been conducted within a reasonable time. The Government also pointed to the dismissal of the case by the District Court on 21 June 1996 owing to the applicants' failure to appear, which had contributed to the length of the proceedings (see paragraph 17 above).

2. The Court's assessment

89. The Court reiterates that it is competent to examine events from 2 October 1996 onwards, when the recognition by Albania of the right of individual petition took effect. It may, however, have regard to facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 74, ECHR 2002-X).

90. However, in the light of its finding of a violation under Article 6 § 1 of the Convention about the non-enforcement of the Supreme Court's decision of 2 April 2001 between 28 June 2001 and 14 February 2003, it does not have to rule separately on the merits of the length of proceedings complaint (see *Lizanets v. Ukraine*, no. 6725/03, § 48, 31 May 2007).

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

A. The parties' submissions

91. The applicants submitted that they had recovered possession of a plot measuring only 664 sq. m through selling it to other parties. They maintained that the non-enforcement of the Supreme Court's decision of 2 April 2001 had adversely affected their right to effective enjoyment of their possessions, which were occupied by other parties.

92. The Government, referring to the applicants' conduct during the enforcement proceedings in respect of the Supreme Court's decision of 2 April 2001, contended that their right of property had not been disproportionately infringed. The domestic proceedings had been fair and the applicants had obtained a ruling on their right of property in the Supreme Court's decision.

B. The Court's assessment

93. The Court notes that it has already established in its case-law the principles relating to the alleged violation of an applicant's property rights owing to the State's failure to ensure the enforcement of a final judgment issued against a private party. In particular, in the case of *Fuklev v. Ukraine* the Court found as follows:

“89. The Court reiterates that by virtue of Article 1 of the Convention, each Contracting Party 'shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention'. The obligation to secure the effective exercise of the rights defined in that instrument may result in positive obligations for the State. In such circumstances, the State cannot simply remain passive and 'there is ... no room to distinguish between acts and omissions'....

91. As regards the right guaranteed by Article 1 of Protocol No. 1, those positive obligations may entail certain measures necessary to protect the right to property even in cases involving litigation between private individuals or companies. This means, in particular, that States are under an obligation to ensure that the procedures enshrined in the legislation for the enforcement of final judgments... are complied with.

92. The Court considers that the failure of the bailiffs to act and the domestic courts' failure to exercise appropriate control over the situation, created permanent uncertainty as to the enforcement of a judgment in the applicant's favour and as to the payment of the debt owed to him. Consequently, the applicant had to cope with that uncertainty during a lengthy period of time...

93. Having regard to the foregoing considerations and to its findings in respect of Article 6 § 1 of the Convention, the Court is of the view that the manner in which the enforcement proceedings were conducted, their total length and the uncertainty in

which the applicant was left, upset the 'fair balance' that had to be struck between the demands of the public interest and the need to protect the applicant's right to the peaceful enjoyment of his possessions. Consequently, the State failed to comply with its obligation to secure to the applicant the effective enjoyment of his right of property, as guaranteed by Article 1 of Protocol No. 1." (no. 71186/01, 7 June 2005)

94. Applying these principles and having regard to the findings set out in paragraphs 79-86 above, the Court considers that owing to the bailiffs' failure to take adequate and sufficient measures with a view to securing enforcement of the Supreme Court's decision of 2 April 2001 in favour of the applicants from 28 June 2001 to 14 February 2003, they were left in a situation of uncertainty and have been unable to fully enjoy their possessions. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF 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."

A. Damage, costs and expenses

96. The applicant claimed 2,036,211 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage. As regards the claim for pecuniary damage, the applicant estimated the value of the property at EUR 236,211 and the loss of investment he would have made at EUR 1,800,000.

97. In addition, the applicants claimed 650,000 leks (approximately 5,542 euros) and 334,600 leks (approximately 2,853 euros) for the costs and expenses incurred before the domestic courts and those incurred before this Court. They failed to submit supporting documents in relation to the expenses incurred in the domestic proceedings.

98. The Government did not submit any comments.

99. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and the further procedure fixed with due regard to the possibility of agreement being reached between the Albanian Government and the applicants.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* inadmissible the complaints about the quashing of a final judgment under Article 6 § 1 of the Convention and the non-enforcement from 14 February 2003 onwards of the Supreme Court's decision of 2 April 2001 and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the non-enforcement of the Supreme Court's decision of 2 April 2001 between 28 June 2001 and 14 February 2003;
3. *Holds* that it does not consider it necessary to examine the complaint about the length of the proceedings under Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention as regards the failure to enforce the Supreme Court's decision of 2 April 2001 between 28 June 2001 and 14 February 2003;
5. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
 - (a) *reserves* the said question as a whole;
 - (b) *invites* the Government and the applicants to submit, within the forthcoming three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President