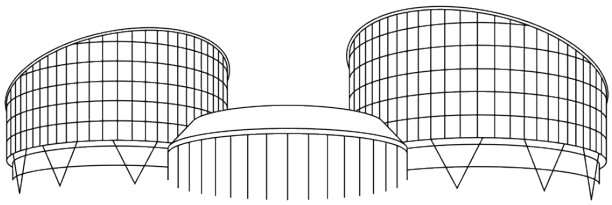

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MULLAI AND OTHERS v. ALBANIA

(Application no. 9074/07)

JUDGMENT
(merits)

STRASBOURG

23 March 2010

FINAL

23/06/2010

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

In the case of Mullai 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,
Ledi Bianku,
Nebojša Vučinić, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 9074/07) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Albanian nationals, Mrs Nesime Mullai, Mr Astrit Daci, Mrs Mediha Hoti, Mrs Suzana Zereliu, Mrs Nermin Daci, Mrs Etleva Mullai and Mrs Eva Pinguli ("the individual applicants") and by Teknoprojekt sh.p.k. ("the applicant company"), a limited liability company, on 1 December 2006.

2. The applicants were represented by Mr S. Puto, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their then Agent, Ms S. Meneri.

3. The applicants alleged a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the quashing of a final judgment, the authorities' failure to enforce a final court judgment and the excessive length of the proceedings.

4. On 12 September 2007 the President of the Section to which the case was allocated 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. On the same date the application was given priority under Rule 41 of the Rules of Court.

5. The applicants and the Government each filed written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The individual applicants were born in 1938, 1938, 1926, 1963, 1942, 1970 and 1954 respectively and live in Albania, the United States of America and Italy.

7. The applicant company is incorporated under Albanian law and is registered in Tirana.

A. Proceedings concerning the restitution of property

8. The individual applicants are the heirs of a certain Mr M. who, in 1947, was the owner of a three-storey villa and an adjacent plot of land situated in the centre of Tirana. On an unspecified date in 1947 the authorities confiscated the property, which remained in their possession until 1994.

9. On 30 December 1994, following the individual applicants' request in accordance with the Property Act 1993, the Tirana Commission on Restitution and Compensation of Properties ("the Commission") allowed their claim to the villa and 1,100 sq. m of land. The Commission rectified that decision on 8 August 2002, recognising the individual applicants' property rights to a plot of land measuring 1,515 sq. m, which corresponded to the original property. The property title was entered in the Land Register.

10. From 1996 to 1998 the property concerned was leased by the individual applicants to the Libyan Embassy in Tirana.

B. Proceedings concerning the building permit

1. Administrative proceedings

11. On 30 April 1998 the individual applicants entered into an agreement with the applicant company for the construction of a tower block on their property. Under that agreement the applicant company was given authority to obtain the administrative authorisations needed for the construction. A final contract was to be concluded when the requisite permit had been obtained.

12. On 23 October 1998 and 22 December 1998 the Tirana Municipality's Council for Territorial Planning (*Këshilli i Rregullimit Territorit të Bashkisë së Tiranës* – "the municipal CTP") granted the applicant company a planning permit and a building permit authorising it to erect a sixteen-storey building on the property. Consequently, on 15 July 1999 the Tirana Municipality Technical Council (*Këshilli Teknik i*

Bashkisë së Tiranës) authorised the applicant company to demolish the existing three-storey villa and erect the new construction in its place.

13. On an unspecified date in 1999 the applicant company demolished the villa and developed the site according to the permits and plans approved by the Tirana Municipality ("the Municipality").

14. On 31 August 1999, while the construction work was under way, the Prefect of Tirana, ("the Prefect") issued a notice suspending the work. The notice stated that the building permit should have been granted by the national Council for Territorial Planning ("the national CTP") and that the Municipality had exceeded its competence by authorising the construction of such a large building in the centre of Tirana (see paragraph 59 below).

15. On 6 September 1999 the Municipality informed the Prefect that the building permit was in order and had been issued on the basis of the relevant legal provisions. Notwithstanding this, on 4 October 1999, the Tirana Construction Police (*Policia Ndërtimore*) enforced the Prefect's notice and suspended work on the construction site.

16. On 12 January 2000, acting on the applicant company's request, the Prefect annulled his previous notice and the building work resumed.

17. On 22 January 2000 the Minister of Public Works ("the Minister") ordered the suspension of the construction work on the basis that the municipal CTP's decisions (see paragraph 12 above) had to be examined and approved by the national CTP. On the same day the Tirana Construction Police enforced the Minister's order by suspending the work again.

18. On 26 January 2000 the applicant company unsuccessfully filed an application with the Director of the national Construction Police to have the suspension order lifted.

19. On 9 February 2000 the national CTP decided that a legal interpretation of the validity of the building permit was needed, stating that the permit had been adopted on the basis of the Urban Planning Act 1993, which had been repealed at the material time. It did not revoke the suspension order. Nor did the decision explicitly indicate the body that was to be responsible for the legal interpretation. However, it appears that the decision was addressed to the Municipality, requesting it to issue a new urban plan of the area and to inform the national CTP accordingly.

20. On 13 March 2000 and 3 May 2000 the Ministry of Public Works requested the Tirana Municipality to comply with the national CTP's decision.

21. According to the individual applicants and the applicant company, on an unspecified date in 2000 the Municipality confirmed the validity of its decisions of 23 October 1998 and 22 December 1998. However, no substantiating document was produced.

2. The judicial proceedings concerning the lawfulness of the Minister's order and the action of the Construction Police of 22 January 2000

22. On an unspecified date in 2000 the applicant company challenged the validity of the above acts (see paragraph 17 above).

23. On 11 July 2000 the District Court dismissed their application. In its reasoning it found that the building permit was null and void as it had been issued on the basis of the Urban Planning Act 1993, which was not in force at the material time. The operative part of the judgment did not state that the building permit was null and void.

24. On 4 January 2001 the Tirana Court of Appeal ("the Court of Appeal") quashed the District Court's judgment. It upheld the applicant company's grounds of appeal and annulled the Minister's order and the action of the Construction Police.

25. On 29 March 2001, following an appeal by the Construction Police, the Supreme Court quashed the Court of Appeal's judgment and upheld that of the District Court. The Supreme Court found that the prefect's decision of 12 January 2000 was *ultra vires* in so far as the proceedings were pending before the national CTP. Given the circumstances, the Minister and the Tirana Construction Police had suspended the work on 22 January 2000. The judgment stated the following:

> "(...) The court notes that the national CTP's decision is not final. It does not determine the merits of the case at issue, but it implies that they will be determined once the tasks emanating from the decision have been completed. Point (a) of the national CTP's decision [the legal interpretation of the municipal CTP decision of 22 December 1998] questions the lawfulness of the building permit issued by the municipal CTP. It does not, however, take a final decision on the matter, even though it should have done so. It is not clear as to who is to make the legal interpretation of the municipal CTP decision. (...)
>
> The contents of points (b) [the preparation of a new urban plan of the area] and (c) [the Municipality's obligation to comply with the national CTP decision and inform it accordingly] of the national CTP decision reinforce the conclusion that the decision is not final.
>
> The final decision shall be taken after the municipal CTP issues a new urban plan of the area, which shall be subject to examination by the national CTP.
>
> (...)
>
> It is incumbent upon the national CTP to fully, unequivocally and finally address the above issues. Only after the administrative remedies have been exhausted, with the help of the national CTP (...), can the matter be referred to the courts for the protection of property rights and other rights *in rem* of parties bordering on the plot of land (...).
>
> The prefect represents the Council of Ministers [the Central Government] to the local government. He has been invested with powers by law. However, when an issue has been transferred to the Central Government, even by his own motion, he cannot exercise any other right. Otherwise, that would be considered an excess of powers."

26. However, in the same judgment the Supreme Court went on to declare the building permit null and void for the following reasons:

> "(...) It results that at the time the building permit was granted, the Urban Planning Act 1993, which redefined the composition of the municipal CTP, had been repealed. Article 19 of the new [Urban Planning] Act of 1998 establishes the new composition of the municipal CTP, made up of 21 members, stipulating the respective functions and tasks to be carried out.
>
> (...) The new [1998] Act entered into force on 25 October 1998.
>
> Given that the new Act does not contain any transitional provisions which would render legitimate the continuation of the municipal CTP's work on the basis of the 1993 Act, the new [municipal] CTP should have been established in compliance with the composition and selection criteria of its members laid down in the new [1998] Act.
>
> Consequently, any decision taken by the previous CTP [on the basis of the Urban Planning Act 1993] is considered null. A decision taken by an organ which has been revoked by law and on the basis of a repealed law is null and, as such, cannot yield any legal consequences.
>
> That being so, the [applicant company's] building permit of 22 December 1998 is considered null and void.
>
> In view of the foregoing, the Civil Bench of the Supreme Court concludes that the District Court's judgment was not *ultra vires* when it considered the building permit null and void, even though this was not part of the object of those proceedings.
>
> [The District Court] did not examine the [applicant company's] right to continue the building work as this would have been beyond the scope of the examination of the administrative dispute before it."

27. The operative part of the Supreme Court's ruling did not contain any mention of the invalidity of the building permit. The judgment became final on the same day as none of the parties filed a complaint with the Constitutional Court.

C. The judicial proceedings initiated by the Swiss Embassy in Tirana ("the Embassy")

28. On 19 March 2001 the Embassy, whose premises are adjacent to the construction site, challenged the validity of the building permit. The individual applicants intervened in the proceedings as third parties (*ndërhyrës dytësor*).

29. On 28 May 2002 the District Court declared the building permit null and void. Without explicitly referring to the Supreme Court's ruling of 29 March 2001 (see paragraph 26 above), the reasoning of the District Court stated that the building permit had been issued on the strength of the Urban Planning Act 1993, which had been repealed at the material time.

30. The individual applicants and the applicant company appealed. On 3 March 2003 the Court of Appeal requested the national CTP to rule on the validity of the building permit in the light of the Supreme Court's finding of 29 March 2001 that all administrative remedies had to be exhausted (see paragraph 25 above).

31. On 18 June 2003 the national CTP upheld the validity of the building permit issued by the Municipality. In its letter to the Court of Appeal the Minister of Territorial Planning, acting as the deputy chairman of the national CTP, indicated that the judicial proceedings pending before the Court of Appeal would examine and finally resolve the dispute (*është procesi gjyqësor që do të bëjë vlerësimin dhe do të zgjidhë përfundimisht konfliktin e paraqitur në lidhje me këtë objekt*).

32. On 3 October 2003 the Court of Appeal quashed the District Court's judgment and dismissed the case. In its reasoning, it stated that the Embassy had lodged its action outside the time-limits prescribed by the Code of Civil Procedure. It appears that the building permit was declared lawful, although no mention of this was made in the operative part of the judgment. The Court of Appeal did not make any reference to the reasoning of the Supreme Court's judgment of 29 March 2001, which had declared the building permit null and void (see paragraph 26 above). There was no order in the judgment for the construction work to be resumed.

1. Developments following the Court of Appeal's judgment of 3 October 2003

33. On 15 September 2003 the applicant company requested the Construction Police to cancel the order for the suspension of building work on the strength of the national CTP's decision of 18 June 2003 (see paragraph 31 above).

34. The Construction Police requested the applicant company to update the file relating to the work by presenting *ex novo* the necessary documents in order for them to consider the request. The applicant company submitted the documents as requested. No response from the police was received.

35. On 29 December 2004, following the applicant company's request for intervention, the Albanian Ombudsperson (*Avokati i Popullit*) acknowledged that the building permit had been declared null and void by the Supreme Court's judgment of 29 March 2001 and refused to intervene.

2. Proceedings before the Supreme Court

36. On 20 April 2005, following an appeal by the Embassy, the Supreme Court upheld the Court of Appeal's judgment of 3 October 2003. It found that the Embassy did not have *locus standi* to challenge the impugned building permit and reasoned, in so far as relevant, as follows.

> "The building permit relates to an administrative-legal relationship between the construction company [the applicant company] and the national CTP. The action filed

by the plaintiff [the Embassy] cannot pertain outside the context of an action concerning the cessation of interference with its property rights (...)

Article 32 (a) of the Code of Civil Procedure stipulates: "A civil legal action is lodged in order to seek the restoration of a right or legitimate interest that has been violated." (...)

In the instant case, no legitimate interest within the meaning of the provision cited above has been invoked. [The Embassy] has not argued any violation or denial of a right directly caused to it by the defendant's building permit. Since the lodging of the civil action and throughout the [court] proceedings, [the Embassy] has merely set out some procedural violations associated with the granting of the building permit. The existence or otherwise of these violations cannot impinge upon a claimant's subjective right. The claimant would have *locus standi* if it alleged that the company's construction work resulted in an infringement of its property rights. Even though [the Embassy] initially introduced such a claim, it subsequently withdrew it and did not refer it to the court.

(...) the court concludes that [the Embassy] lacks a legal interest and therefore lacks *locus standi* to lodge the civil action.

(...)

The claimant argued that the Court of Appeal had been wrong to accept that the national CTP had ruled on the validity of the building permit as no decision had been issued by that authority. This complaint relates to the determination of the merits of the case, on which the court deems it inappropriate to rule one way or the other.

In the light of the above conclusions, there are no other legal grounds to challenge the Court of Appeal's judgment."

37. In its ruling, the Supreme Court did not examine the lawfulness of the building permit. The judgment became final on the same day, as none of the parties filed a complaint with the Constitutional Court.

3. Developments following the Supreme Court's judgment of 20 April 2005

38. On 22 June 2005 the applicant company, considering that the lawfulness of the building permit had been upheld by the Supreme Court's judgment of 20 April 2005, and given the inactivity of the Construction Police, informed the Municipality that it had decided to resume the construction notwithstanding the fact that a suspending order was still in force.

39. On 23 June 2005 the Municipal Police (*Policia Bashkiake*) inspected the construction site and ordered the suspension of work until such time as security measures were properly observed.

40. On 29 June 2005 the Municipal Police extended the suspension order on account of some breaches of urban planning rules. In a letter of 4 July 2005 the applicant company provided explanations concerning the alleged breaches.

41. On 30 November 2005, following the applicant company's request for permission to resume the building work, the Construction Police informed them that the request concerning the dispute between the applicant company and the Municipal Police was outside their jurisdiction.

D. The second set of judicial proceedings initiated by the Embassy

42. On an unspecified date in 2005 the Embassy initiated another set of proceedings with the District Court alleging that the new construction breached its property rights.

43. On 14 December 2005 the District Court delivered its judgment finding that the new building would not comply with urban planning distances and therefore breached the Embassy's property rights. The District Court ordered the suspension of construction work until the final determination of the dispute. It relied on the Supreme Court's judgment of 29 March 2001, which had declared the building permit null and void.

44. On an unspecified date between 2005 and 2006 the applicant company challenged the lawfulness of the District Court's judgment before the Court of Appeal, arguing that the Court of Appeal's judgment of 3 October 2003, which had become final, confirmed the validity of the building permit (see paragraph 32 above). The District Court's judgment of 14 December 2005 had quashed that final ruling, thereby contravening the principle of legal certainty.

45. Two months later, the District Court's judgment had not yet been served on the applicant company. On 15 March 2006, following complaints by the applicant company, the High Council of Justice informed them that the case had been sent to the Ministry of Justice for the appropriate disciplinary proceedings to be taken against the District Court judges who had failed to deliver the judgment. In a letter of 5 April 2006 the applicant company complained to the Court of Appeal that they had not yet been served with a copy of the District Court's judgment. The case file indicates that the judgment was served on them at some point after 5 April 2006.

46. On 13 June 2007 the Court of Appeal quashed the District Court's judgment. It found that there had been no interference with the Embassy's property rights since the construction had barely started, so there was no building to comply with urban planning distances. It further held that as the Supreme Court had found in its judgment of 29 March 2001 that the building permit was not valid, there could be no interference with the Embassy's property rights. It finally dismissed the case.

47. On an unspecified date in 2007 the Embassy appealed to the Supreme Court. On 14 July 2009 the Supreme Court declared the appeal inadmissible in accordance with Article 472 of the Code of Civil Procedure (no valid grounds of appeal).

1. Developments following the Court of Appeal's judgment of 13 June 2007

48. On 1 August 2007 the Tirana Construction Police informed the Embassy and the Ministry of Public Works that they would comply with the Court of Appeal's judgment of 13 June 2007, which, in their opinion, had confirmed the lawfulness of the applicant company's building permit.

49. On 21 August 2007, at the applicant company's request, the District Court issued a writ of execution in respect of the Court of Appeal's judgment of 13 June 2007.

50. On an unspecified date in 2007 the applicant company resumed the construction work, which was subsequently suspended by the Construction Police on 11 September 2007 with the cooperation of the police.

51. On 13 September 2007 the Municipal Construction Inspectorate ("MCI") requested the applicant company to provide some missing technical documents.

52. On 19 September 2007, at the applicant company's request, the Tirana prosecutor's office enquired about the lawfulness of the action of the Construction Police of 11 September 2007 in the absence of any written notice of the suspension of construction work. The applicant company maintained that the validity of the building permit had been acknowledged by the national CTP and confirmed by the judgments of the Court of Appeal and the Supreme Court of 3 October 2003 and 20 April 2005, respectively.

53. On 24 September 2007 the MCI ordered the suspension of the construction work because certain technical documents were missing from the file. On 1 October 2007 the applicant company appealed to the National Construction Inspectorate ("the NCI"). On 30 October 2007 the NCI informed the applicant company that they should submit their concerns to the MCI.

54. On 5 January 2008, noting that some technical documents were missing, the MCI decided to suspend the work. There is no indication that an appeal was filed against that decision. On 16 January 2008 the MCI extended the suspension order for a period of sixty days.

55. On 18 March 2008 the MCI decided to stop the construction work altogether and demolish what had already been built. There is no indication that an appeal was filed against that decision. Nor is there any information that the existing construction has been demolished.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

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

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."

B. The Urban Planning Act 1998 (Law no. 8405 of 17 September 1998 as amended by Law no. 8501 of 16 June 1999, Law no. 8991 of 23 January 2003 and, more recently, Law no. 9843 of 17 December 2007) ("The 1998 Act")

57. The 1998 Act defines the general rules governing the location and architecture of constructions in Albania. The Act entered into force on 25 October 1998. Section 7 provides for the establishment of the national CTP, presided over by the Prime Minister. Its composition is determined by decision of the Council of Ministers (section 8). The Ministry responsible for territorial planning coordinates the work of the national CTP (section 12). Section 14 provides for the establishment of municipal CTPs.

58. The 1998 Act instituted a two-tier procedure for obtaining the necessary permits. An application for planning permission (*kërkesa për shesh ndërtimi*) should initially be submitted for examination and approval by the Municipal CTP pursuant to section 39. A building permit (*leje ndërtimi*) should then be obtained pursuant to section 45. This is the sole legal document on the basis of which construction work may start.

59. Section 9 of the 1998 Act empowered the national CTP, amongst other things, to approve the urban study and building permits in respect of constructions located in city centres. Under section 10 of the 1998 Act the national CTP was empowered to quash decisions adopted by the municipal CTPs. By decision no. 29 of 21 December 2006 the Constitutional Court declared unconstitutional these parts of section 9 and section 10, since they breached the constitutional principle of decentralisation and local government autonomy.

C. The Construction Police Act 1998 ("the 1998 Police Act") as amended by the Construction Inspection Act 2007 ("the 2007 Police Act") (Law no 8408 of 25 September 1998 as repealed by Law no. 9780 of 16 July 2007)

60. The 1998 Police Act established the Construction Police, responsible for supervising compliance with urban planning legislation. The Construction Police were empowered to impose fines, decide on the suspension of construction work and order the demolition of unlawful constructions.

61. The 2007 Police Act repealed the 1998 Police Act and introduced the Construction and Urban Planning Inspectorate, which operates at

municipal/communal level ("Municipal Construction Inspectorate – the MCI"), at district (*qark*) level and at national level ("National Construction Inspectorate – the NCI") (sections 3, 7 and 8).

62. The duties of the MCI include the imposition of fees, the suspension of construction work and the demolition of unlawful constructions (section 5). The inspectors have the right to access and inspect construction sites (section 12 and Council of Minister's decision no. 862 of 5 December 2007).

63. MCI decisions are open to appeal before the NCI. An interested party may take court action against a decision of the NCI. The court action does not have suspensive effect on the execution of the impugned administrative decision (section 14).

D. The Act on the Organisation and Operation of the Municipal and Commune Police ("The Municipal Police Act") (Law no. 8224 of 15 May 1997 as amended by Law no. 8335 of 23 April 1998)

64. The Municipal Police Act provides for the establishment of the Municipal Police, who answer to the Mayor and operate under the supervision of the Prefect. Under section 8, the Municipal Police ensure the effective implementation of acts and decisions of the Mayor and the city council which relate to public order and maintenance of public infrastructure. They prevent, stop or demolish unlawful constructions, and prevent the unlawful occupation of plots of land, buildings and property belonging to the municipality and ensure their immediate evacuation (section 8 § 6).

E. Code of Civil Procedure

65. Articles 189-201 govern the participation of third parties in civil proceedings. Article 195 provides that a third party has the right to undertake all the same procedural steps as the main parties to the proceedings, save for steps that concern the disposal of the object of the civil action. Article 196 provides that the effect of a decision taken after a third party's intervention extends equally to the relationship between the third party and the claimant or the defendant.

THE LAW

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

66. The applicants alleged a number of violations of Article 6 § 1 of the Convention, including failure to enforce the Court of Appeal's final judgment of 3 October 2003, a breach of the principle of legal certainty as a result of the quashing of that final judgment and the excessive length of the proceedings.

Article 6 § 1 of the Convention, in so far as relevant, reads:

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

A. Admissibility

1. The parties' submissions

67. The applicants complained about the non-enforcement of the Court of Appeal's judgment of 3 October 2003, which they alleged had established that the building permit was valid and that the building work should continue.

68. The Government submitted that the applicants had not complained before the domestic courts about the non-enforcement of a final court judgment, and that there had been no violation on account of the authorities' failure to enforce a final court judgment.

69. The applicants argued that the Court of Appeal's judgment of 3 October 2003 was a final judgment but had been quashed by the District Court's judgment of 14 December 2005, violating the principle of legal certainty.

70. The Government contended that the object of the second and third sets of proceedings differed. The validity of the building permit had been finally determined by the Supreme Court's judgment of 29 March 2001. The second set of proceedings had been dismissed by the domestic courts because the Embassy did not have *locus standi*.

71. In the applicants' view, the domestic proceedings had exceeded the reasonable time requirement within the meaning of Article 6 § 1 of the Convention.

72. The Government did not raise any objections concerning the admissibility of this complaint.

2. The Court's assessment

a. The lack of legal certainty as regards domestic courts' decisions

73. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case. It does not consider itself bound by the characterisation given by an applicant or a government (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I).

74. The Court notes that the parties did not dispute the applicability of Article 6 of the Convention. In the Court's view, having regard to the circumstances of the case, the applicants' complaints about the non-enforcement of the Court of Appeal's judgment of 3 October 2003 and its alleged quashing are essentially linked to the lawfulness of the building permit, which constitutes the core issue of the complaints. It therefore considers that it is necessary to examine both complaints from the perspective of the principle of legal certainty, notably whether the domestic courts pursued a uniform line of reasoning concerning the lawfulness of the building permit.

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

b. The length of the proceedings

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

B. Merits

1. As regards the lack of legal certainty concerning domestic courts' decisions

a. The parties' submissions

77. The Government contended that the building permit had been declared null and void by the Supreme Court in its judgment of 29 March 2001, which had acquired the force of *res judicata.* They argued that the case was complex, as demonstrated by the need for three different sets of proceedings.

78. The applicants argued that the lawfulness of the building permit had been upheld by the Court of Appeal's judgment of 3 October 2003, which had become final. They maintained that the case was not complex and that

the authorities were to blame for having made the proceedings unnecessarily complicated.

b. The Court's assessment

79. The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

80. Turning to the present case, the Court must determine whether a final and binding decision was adopted as regards the lawfulness of the building permit. It reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. It is not for the Court to assess the facts on the basis of which the national courts adopted their decision, provided that it is compatible with the articles of the Convention. The Court shall, within the framework of Article 6 of the Convention, examine applications which allege a breach of specific procedural guarantees or allege that the conduct of the procedure, as a whole, did not provide the guarantees of the right to a fair hearing to the applicant (see *Schwarzkopf and Taussik v. the Czech Republic* (dec.), no. 42162/02, 2 December 2008).

81. The Court notes that three sets of proceedings were conducted in the present application, spanning a period of almost ten years. Whereas the object of each set of proceedings was to some degree different, the essence of all of them, taking account of the domestic courts' judgments, was the lawfulness of the applicant company's building permit.

82. The first set of proceedings, which examined the lawfulness of the Minister's order and the action of the Construction Police, addressed the lawfulness of the building permit. The Court finds the reasoning in the Supreme Court's judgment of 29 March 2001 inconsistent. The Supreme Court declared that the prefect's decision of 12 January 2000 was *ultra vires* on account of non-exhaustion of domestic administrative remedies in respect of the validity of the building permit. In the same judgment, the Supreme Court overruled this finding and proceeded to declare the building permit null and void.

83. The Court considers that such inconsistencies within the same judgment of the Supreme Court are incompatible with its judicial function. The role of a higher court in a Contracting Party is precisely to resolve conflicts, avoid divergences and be consistent. In fact, in the present case, the Supreme Court itself became the source of uncertainty undermining public confidence in the judiciary and the rule of law (see, *mutatis mutandis*, *Beian v. Romania (no. 1)*, no. 30658/05, §§ 37-39, ECHR 2007-...).

84. The ensuing judicial proceedings considerably added to that general climate of legal uncertainty. It was during those proceedings that the Embassy essentially sought to have the building permit revoked. The fact that the District Court examined the Embassy's action suggested that the validity of the building permit had not been definitively established in the first set of proceedings. Moreover, the Court of Appeal's judgment of 3 October 2003 appeared to recognise the lawfulness of the building permit, whereas the Supreme Court's judgment of 20 May 2005 left the issue of its lawfulness unanswered (see paragraphs 32 and 36–37 above).

85. In the third set of judicial proceedings, the domestic courts recognised the invalidity of the building permit.

86. The Court notes that the Contracting States have the obligation to organise their legal system so as to allow the courts to identify related proceedings and, where necessary, avoid the adoption of discordant judgments. It considers that the underlying problem in the present case has resulted from the multiplicity of legal proceedings, which could have been better managed so as to contribute to the speedy clarification of the issues involved. For the Court, the existence of multiple parallel and interrelated proceedings raising substantially the same legal issue cannot be considered to be in compliance with the rule of law. By giving a number of contradictory decisions at several levels of jurisdiction the Albanian authorities demonstrated a shortcoming in the judicial system for which they are responsible (see, *mutatis mutandis*, *Gjonbocari and Others v. Albania*, no. 10508/02, §§ 66-67, 23 October 2007; *Marini v. Albania*, no. 3738/02, § 145, ECHR 2007-... (extracts); and *Driza v. Albania*, no. 33771/02, § 69, ECHR 2007-XII (extracts)).

87. Moreover, the manner in which the other domestic authorities proceeded was far from consistent with the State's obligation to deal with the applicants' situation in as clear and coherent a manner as possible and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I). The domestic authorities' letters of 1 August and 19 September 2007 added further confusion to this continuous lack of clarity and certainty (see paragraphs 48 and 52 above). Furthermore, none of the suspension orders issued after 29 March 2001 mentioned the invalidity of the building permit as their main ground of justification (see paragraphs 39–40 and 53–55 above).

88. Having regard to the combination of the above reasons, the Court considers that there has accordingly been a breach of the principle of legal certainty as regards the lack of consistent reasoning in the domestic courts' decisions about the lawfulness of the building permit.

2. As regards the length of the proceedings

89. The Court considers that in the light of its finding of a violation under Article 6 § 1 of the Convention about the breach of the principle of

legal certainty, it does not have to rule separately on the merits of the length of proceedings complaint.

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

90. The individual applicants and the applicant company alleged that their right to the peaceful enjoyment of their possessions had been breached. They further complained that they were unlawfully deprived of the use of their property for a long period of time.

Article 1 of Protocol No. 1 to the Convention reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. The parties' submissions

91. The Government maintained that the applicant company did not have "possessions" within the meaning of Article 1 of Protocol No. 1 as the Supreme Court's decision of 29 March 2001 had declared the building permit null and void. They requested the Court to declare this complaint incompatible *ratione materiae*.

92. The Government submitted that the individual applicants' property rights were limited by the contractual agreement they had concluded with the applicant company. The individual applicants' complaint about a breach of their property rights should have been directed towards the applicant company within the framework of the agreement they had concluded with it. Consequently, in the Government's view, the seven individual applicants could not be considered victims within the meaning of Article 34 of the Convention. Furthermore, the individual applicants had not instituted any legal proceedings concerning the alleged violation of their property rights.

93. The individual applicants contended that they were "victims" within the meaning of Article 34 of the Convention. They recalled that Article 1 of Protocol No. 1 entitled owners to the peaceful enjoyment of their possessions, which entailed, *inter alia*, the right to conclude agreements with third parties in order to freely dispose of their property by selling and renting it or constructing buildings on it in full compliance with the relevant

domestic law provisions. The individual applicants had concluded an agreement with the applicant company as part of the requirements for obtaining a building permit. In the individual applicants' view, the fact that the municipality granted the building permit for the construction work on their property was not, in principle, sufficient to deprive them of victim status.

94. The applicant company argued that the building permit constituted a possession within the meaning of Article 1 of Protocol No. 1.

2. The Court's assessment

95. The first question that arises is whether the applicant company and the individual applicants had a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

96. The Court recalls that the notion "possessions" in Article 1 of Protocol No. 1 has an autonomous meaning which is certainly not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights" and thus as "possessions". The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicants title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Beyeler* [GC], cited above, § 100, ECHR 2000-I; *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V; and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-...).

97. In the case of non-physical assets, the Court has taken into consideration, in particular, whether the legal position in question gave rise to financial rights and interests and thus had an economic value (see, for example, *Anheuser-Busch Inc.*, cited above, where intellectual property constituted possessions; *Paeffgen GMBH v. Germany* (dec.), no. 25379/04, 21688/05, 21722/05 and 21770/05, 18 September 2007, in which the right to use or dispose of internet domains constituted possessions; *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, Series A no. 222, where the granting of a commercial operating licence by the authorities constituted possessions; and *Tre Traktörer AB v. Sweden*, 7 July 1989, Series A no. 159, in which licences to serve alcoholic beverages constituted possessions).

98. The Court will examine whether the circumstances of the case, considered as a whole, conferred on the applicant company and the individual applicants an interest protected by Article 1 of Protocol No. 1. In that connection, it notes that an application for a building permit cannot give rise to a well-defined proprietary interest. Such an interest would materialise if the application, after having been examined and found to satisfy the relevant formal and procedural conditions, was accepted by the relevant authority by issuing a building permit.

99. In the present case, the Court notes that a building permit was granted to the applicant company by the municipality of Tirana on 22 December 1998 to build on the individual applicants' plot of land. Consequently, the building permit constituted “possessions” for the applicant company. On that account, the Government's objection concerning the applicant company's lack of “possessions” should be dismissed.

100. In itself, the building permit also gave rise to the benefits of the contract negotiated between the applicant company and the individual applicants for the construction of the tower block. It therefore generated a capital asset and had a definite economic value for the individual applicants. It was on the strength of the building permit that the individual applicants' then existing three-storey villa was demolished. Moreover, it has not been disputed that the individual applicants continued to have property rights over the plot of land, which is an “existing possession” within the meaning of Article 1 of Protocol No. 1 to the Convention. Therefore, the Government's submission based on the lack of victim status of the individual applicants must be dismissed.

101. As regards the Government's submission that the individual applicants did not exhaust domestic remedies, the Court reiterates that in the context of the machinery for the protection of human rights the rule on exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time it requires in principle that the complaints intended to be made subsequently at international level should have been aired before [the appropriate domestic] courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

102. The applicant company was a partner with whom the seven individual applicants agreed to make use of their proprietary interest. The applicant company was the main party to the domestic proceedings, with the individual applicants acting as interveners, notably in the first set of proceedings initiated by the Swiss Embassy, which, in their opinion, resulted in the acknowledgement of the building permit's validity. In the Court's view, the domestic proceedings must be regarded as an examination of the respective proprietary rights of the individual applicants and the applicant company, since the lawfulness of the building permit was interlinked with the individual applicants' enjoyment of their proprietary interest. Consequently, the Government's objection based on non-exhaustion of domestic remedies by the individual applicants must be dismissed.

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

B. Merits

1. The parties' submissions

104. The Government contended that the applicant company's behaviour prevented the authorities from examining the lawfulness of the building permit. They argued that in its decision no. 1 of 27 April 2004 the National CTP had envisaged the construction of buildings no higher than three storeys in the city centre.

105. The individual applicants and the applicant company maintained that the authorities had interfered with their possessions by preventing the applicant company from constructing a building on the individual applicants' plot of land.

106. The applicants submitted that the crux of their complaint concerned the non-enforcement of the Court of Appeal's judgment of 3 October 2003. They maintained that the legal uncertainty surrounding the reluctance of the executive authorities to comply with a valid building permit and the lack of any effective domestic remedy, combined with the absence of any compensation, meant that they had been made to bear an excessive burden.

107. Additionally, they claimed that the authorities' interference with the construction of a building adjacent to a foreign Embassy's property did not pursue a general interest, nor did it strike a fair balance. They also mentioned that high-rise buildings already existed in the immediate vicinity of their property.

2. The Court's assessment

a. Whether there was an interference

108. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52).

109. The Court notes that for many years the individual applicants and the applicant company have been unable to enjoy and freely dispose of their contractual benefits as a result of the suspension of the construction work arising out of the disputed lawfulness of the building permit. The multiplicity of legal proceedings has failed to remedy the situation. There has accordingly been an interference with their right of property.

110. In the Court's opinion there was no formal expropriation of the property in question, that is to say a transfer of ownership. Nor can it be said that there was a *de facto* deprivation. The impugned measures imposed limitations on the individual applicants' and the applicant company's enjoyment of their proprietary interests.

111. The Court finds that the interference must be considered as a control of the use of the applicants' property falling within the scope of the second paragraph of Article 1 of Protocol No. 1 (see, for example, *Sporrong and Lönnroth*, cited above, §§ 62 – 64; *Tre Traktörer AB*, cited above, § 55; and *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 54, Series A no. 163).

b. Whether the interference was lawful

112. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of someone's possessions should be lawful (*Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

113. The Court considers that when speaking of "law", Article 1 of Protocol No. 1 alludes to the same concept to be found elsewhere in the Convention, a concept which comprises statutory law as well as case-law. It refers to the quality of law in question, requiring that it be accessible to the persons concerned, precise and foreseeable (see *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999; *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000-VI; *Baklanov v. Russia*, no. 68443/01, §§ 40-41, 9 June 2005).

114. The Court accepts that its power to review compliance with domestic law is limited as it is in the first place for the national authorities to interpret and apply that law. In the instant case, the Court is required to verify whether the way in which the domestic law was interpreted and applied produces consequences that are consistent with the principles of the Convention.

115. The Court notes that this complaint is closely linked to the complaint under Article 6 § 1 of the Convention in which it found a violation of the principle of legal certainty (see paragraphs 79–88 above). In that connection, the Court notes that the case-law of the domestic courts has led to inconsistent decisions on the lawfulness of the building permit. The case-law lacked the required precision to enable the applicant company and the individual applicants to foresee, to a degree that was reasonable in the circumstances, the consequences of their actions and the State's interference (see, *mutatis mutandis*, *Sierpiński v. Poland*, no. 38016/07, §§ 74-76, 3 November 2009 and *Plechanow v. Poland*, no. 22279/04, § 105-107, 7 July 2009). Such confusion and lack of foreseeability, leading to arbitrariness, continues to prevail even to date.

116. It follows that the interference with the applicant company's right and the proprietary rights of the individual applicants' who demolished their

three-storey villa on the strength of the building permit issued by the authorities, cannot be considered lawful within the meaning of Article 1 of Protocol No. 1. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the applicants' fundamental rights (see *Iatridis*, cited above, § 62).

117. There has, accordingly, been a breach of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The individual applicants claimed 1,547,037.4 euros in respect of pecuniary damage and 270,000 euros in respect of non-pecuniary damage. The applicant company claimed 10,297,947 euros in respect of pecuniary damage and 1,650,000 euros in respect of non-pecuniary damage. In support of their claim for pecuniary damage, they submitted an expert's valuation report.

120. The Government submitted that the individual applicants and the applicant company had not exhausted the domestic remedies in respect of their claims for pecuniary and non-pecuniary damage. However, the Court would point out that the rule of exhaustion of domestic remedies does not apply in connection with Article 41 claims (see *Matache and Others v. Romania* (just satisfaction), no. 38113/02, § 16, 17 June 2008).

121. 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 applicant company and the individual applicants.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards a breach of the principle of legal certainty;

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;

5. *Holds* that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question in 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 23 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President