

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

THIRD SECTION

CASE OF GABA v. ALBANIA

(Application no. 33369/17)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Extraordinary review and quashing of a final decision of the property restitution commission, awarding the applicant a plot of land, not justified by substantial and compelling circumstances • Violation of the principle of legal certainty

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 December 2024

FINAL

17/03/2025

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



In the case of Gaba v. Albania,

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

Ioannis Ktistakis*, President*,
Lətif Hüseynov,
Darian Pavli,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović, *judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 33369/17) 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") on 2 May 2017 by an Albanian national, Mr Hasan Gaba ("the applicant");

the decision to give notice of the application to the Albanian Government ("the Government");

the parties' observations;

Having deliberated in private on 26 November 2024,

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

INTRODUCTION

1. The case concerns a complaint under Article 6 § 1 of the Convention that domestic authorities annulled a final decision of a property commission without putting forward substantial and compelling circumstances warranting that action.

THE FACTS

2. The applicant was born in 1940 and lived in Tirana. He was represented before the Court by B. Asllani, a lawyer practising in Tirana. Following the applicant's death on 18 November 2018, his heirs, Ms Hysnie Mahmuti, Ms Melaize Ruli and Ms Lale Meçi, expressed their wish to pursue the proceedings on the applicant's behalf.

3. The Government were represented by their then Agent, Ms B. Lilo, and subsequently by Mr O. Moçka, General State Advocate.

4. The facts of the case may be summarised as follows.

I. BUILDING PERMIT FOR A BROADCAST RELAY STATION

5. On 2 February 2000 the relevant authority issued a building permit to the Albanian Public Broadcaster (TVSh – "the public broadcaster") for the

construction of a broadcast relay station (*pike transmetimi radio televizive*) on a plot of mountain pasture land located in Lazarat.

II. PROCEEDINGS RELATED TO FORMER OWNERSHIP OF THE LAND

6. On an unspecified date, most likely in 2003, the applicant lodged a claim with the Gjirokastra District Court, asking it to declare that a given plot of mountain pasture land had been owned by his father in 1945 and later on had been expropriated from him by the communist authorities.

7. The applicant submitted that he had lodged a court claim, rather than a restitution claim with the Gjirokastra Commission on Property Restitution and Compensation ("the Commission" – see paragraph 43 below), because he did not possess sufficient written and archival evidence to meet the Commission's requirements regarding standard of proof.

8. The Gjirokastra District Court found that a 1998 decision of the Commission, given in respect of an adjacent plot of land, referred to the applicant's plot as belonging to the applicant's family. Moreover, the court examined an agreement of 1945, the content of which was not described in the Commission's decision, which also supported the claim that the plot had belonged to the applicant's father. Lastly, the court heard three witnesses who stated that the land in question had belonged to the applicant's father.

9. The Gjirokastra Directorate for Forests and Pasture Land was named as the defendant in the proceedings on account of the fact that it was the State authority in charge of the plot at that time. The defendant was represented by a lawyer from the State Advocate's Office and left the matter to the court's discretion.

10. On 17 December 2003 the Gjirokastra District Court allowed the claim and declared that the applicant's father had been the owner of the land (*njohjen e pronesise se ish-pronarit ... mbi dy parcela ...*) ("the 2003 judgment"). On an unspecified date the registrar of the court added to the judgment a finality clause stating that no appeals had been lodged against it and that it had become final on 5 January 2004.

III. PROCEEDINGS RELATED TO RESTITUTION OF THE LAND

11. On an unspecified date the applicant lodged a property restitution claim with the Commission, asking for the mountain pasture land that had belonged to his father to be restored to him.

12. Following a site visit, the Commission noted that there were four antennas on the land in question. It also noted that the broadcast relay station (see paragraph 5 above) had not yet been built.

13. On 20 February 2006, relying on the 2003 judgment, the Commission found that the pasture land of 335 hectares ("the land") had belonged to the

applicant's father and decided to restore it to the applicant ("the 2006 decision").

14. Section 5 of the operative clause of the decision provided for a thirty-day time-limit within which to lodge an appeal. On an unspecified date the chairman of the Commission added to the decision a finality clause stating that it had become final (*mori formë të prerë*) on 20 March 2006.

15. On 2 May 2006 the Commission and the applicant signed a delivery record attesting that the latter was put in possession of the land.

16. On 29 June 2006 the Immovable Property Registration Office registered the applicant's ownership title to the land and handed him the relevant documentation (*vërtetim nga dokumenti hipotekor*).

IV. ACTION TO VACATE THE LAND

17. On an unspecified date, relying on the 2006 decision, the applicant lodged a court claim against the public broadcaster and a number of private telecommunication companies, asking them to remove their antennas from his land (see paragraph 12 above).

18. On 6 April 2009 the public broadcaster informed the State Advocate's Office that it was being sued by the applicant. It also asked the State Advocate's Office to initiate a review of the 2006 decision under section 5 of the State Advocate's Office Act (Law no. 10018 of 13 November 2008 – see paragraph 42 below), which allowed that office to initiate proceedings to seek a revision (*rishikimin*) of final decisions.

V. ACTION TO REVIEW THE 2006 DECISION

A. Decision of the Agency for the Restitution and Compensation of Property

19. On 7 May 2009 the State Advocate's Office lodged a complaint against the 2006 decision with the Agency for the Restitution and Compensation of Property ("the Agency"), which was an administrative authority that had succeeded the Commission (see paragraph 45 below). In addition, on 15 June 2009 the director of the Agency decided to exercise his prerogative to review the 2006 decision of his own motion (see paragraph 49 below). Both actions were joined to the same case file.

20. On 25 May 2010 the Agency annulled the 2006 decision.

21. The Agency found that the Commission had, without any explanation, given the applicant a smaller area of land than the one referred to in the 2003 judgment. Moreover, it found a number of issues with the documents in the case file: (i) maps of the land had not been drawn by a licensed professional; (ii) some parts of the maps of the land were coloured in yellow without an explanation; (iii) the field report had not been signed by a member of the

Commission; and (iv) the 1998 decision of the Commission examined and relied upon by the Commission was not accompanied by a map.

22. The Agency also found that there appeared to be a partial overlap between the applicant's land and the property owned by the public broadcaster, and the Commission had ignored that issue.

23. In addition, the Agency found that there was no sufficient evidence to prove that the applicant's father had ever owned the land. In particular, in its view, the 2003 judgment had limited authority, as it had been taken following a specific procedure for "ascertainment of a legal fact in respect of which documentary evidence has disappeared" (see *Marku v. Albania*, no. 54710/12, §§ 19 and 37, 15 July 2014, and *Bici v. Albania*, no. 5250/07, § 51, 3 December 2015 for context).

24. As regards the 1945 agreement, the Agency found that it did not provide sufficient details to prove that the applicant's father had owned the land. The other material in the case file was also found to be unpersuasive.

25. Lastly, the Agency found that the decision to restore the land to the applicant rather than award him compensation had been ill-founded, because the presence of telecommunication and television antennas on it meant that the land was serving a public interest.

B. The Tirana District Court

26. The applicant challenged the Agency's decision, arguing that (i) the Agency's power to review of its own motion and annul the decisions of property commissions had meanwhile been declared unconstitutional, since it violated the requirement of legal certainty (see paragraphs 52-56 below), and (ii) in any event, he had submitted sufficient evidence to show that his father had owned the land.

27. On 9 December 2011 the Tirana District Court rejected the challenge. It found that the 2006 decision had not been "annulled", but had instead been amended following a complaint by the State Advocate's Office (see paragraph 19 above).

28. The court also found that the applicant had not provided sufficient evidence to prove that his father had owned the land.

C. The Tirana Court of Appeal

29. The applicant lodged an appeal. On 18 October 2012 the Tirana Court of Appeal reversed the lower court's judgment and ruled in favour of the applicant.

30. The court found that the Agency's power to review and annul the final decisions of commissions had been declared unconstitutional by the Constitutional Court, and that the applicant's ownership of the land was based

on sufficient evidence and the 2004 Property Act (Law no. 9235 of 29 July 2004, as amended).

D. The Supreme Court

31. On 18 February 2016 the Supreme Court reversed the judgment of the appellate court and upheld the one delivered by the Tirana District Court.

32. Firstly, it found that the applicant had been unable to prove that his father had owned the land.

33. Secondly, it found that the 2006 decision had never become final and binding, as a timely appeal had been lodged against it by the State Advocate's Office. Accordingly, the court concluded that no issue of legal certainty had arisen.

34. In the applicable law section of its judgment, the Supreme Court cited section 18 of the 2004 Property Act (as amended and restated in 2009 – see paragraph 50 below), which allows the State Advocate to challenge the Agency's decisions within thirty days of being notified.

E. The Constitutional Court

35. On 6 September 2016 the applicant lodged a constitutional complaint with the Constitutional Court.

36. In so far as relevant, he argued that his father's ownership of the land had been established by the final judgment of the Gjirokastra District Court in 2003 and, by ignoring that judgment, the Supreme Court had violated the principle of *res judicata*.

37. The applicant added that the Supreme Court had not acted as a court established by law because it had re-examined the evidence in the case file, which was not its task under domestic law.

38. Moreover, in the applicant's view, the Supreme Court had clearly erred in finding that the 2006 decision had not become final.

39. Lastly, he referred extensively to the Constitutional Court's case-law on the review of final decisions of commissions (see paragraphs 52-56 below), and complained that the annulment of the 2006 decision had violated the principle of legal certainty.

40. On 2 November 2016 the Constitutional Court dismissed the complaint. It found that the Supreme Court had not proceeded to re-examine the evidence in the case file, nor had it breached the Constitution. The Constitutional Court also stated that its task was limited to examining allegations of a violation of the Constitution, rather than the laws applicable to a civil dispute.

RELEVANT DOMESTIC LAW AND CONSTITUTIONAL CASE-LAW

I. THE CODE OF CIVIL PROCEDURE

41. Article 388 of the Albanian Code of Civil Procedure provides that any interested party has the right to request, by means of a court claim, the recognition (*vërtetimin*) of a fact in respect of which documentary evidence has disappeared or been lost and cannot be created again or obtained in any other way, provided that such a fact relates to a personal or property right. Under Article 390, a request for the acknowledgement of a fact is examined by a district court at a hearing, in the presence of all parties who have an interest in the case. Under Article 391, the district court's decision is amenable to appeal by any of the parties to the proceedings. The court decision does not have any "probative value" in respect of persons who were not a party to the proceedings.

II. STATE ADVOCATE'S OFFICE ACT (LAW No. 10018 OF 13 NOVEMBER 2008)

42. The relevant part of section 5 § 1 (e) of the Act provided that the State Advocate's Office had the right to initiate proceedings to seek the revision (*rishikimin*) of final court judgments, in accordance with the conditions and criteria established under the relevant procedural laws.

III. RELEVANT LEGAL FRAMEWORK FOR PROPERTY RESTITUTION

A. Establishment of property commissions – the 1993 Property Act

43. The 1993 Property Act (Law no. 7698 of 15 April 1993, as amended) was the initial Act governing the restitution of property that had been expropriated during the communist era in Albania (see *Gjonbocari and Others v. Albania*, no. 10508/02, § 37-38, 23 October 2007). Requests for restitution of property were decided by local commissions on restitution and compensation of properties, established under that Act.

B. The State Committee – the 2004 Property Act

44. The above Act was repealed and replaced by the 2004 Property Act (Law no. 9235 of 29 July 2004), which provided, in sections 15 and 17, that the decisions of local commissions were amenable to appeal to the State Committee on Property Restitution and Compensation.

C. Establishment of the Agency – 2006 amendment

45. On 17 July 2006 the 2004 Property Act was amended by means of a 2006 amendment (Law no. 9583), which entered into force on 17 August 2006. The 2006 amendment provided for the establishment of the Agency for the Restitution and Compensation of Property, a new body based in regional offices and a central office, replacing the local commissions and the State Committee respectively.

D. Appeals to the Agency – 2007 amendment

46. On 6 February 2007, the 2004 Property Act was further amended by means of a 2007 amendment (Law no. 9684). In particular, section 18 of the Act was reworded in relation to three main points.

47. Firstly, the State Advocate's Office was allowed to lodge an appeal with the central office of the Agency against the decisions of regional branches of the Agency, within thirty days of being notified.

48. Secondly, the State Advocate's Office was allowed to lodge an appeal with the central office of the Agency against the decisions of former commissions. No time-limit was provided for those appeals.

49. Thirdly, the director of the central Agency was allowed to review, and potentially annul, of his or her own motion, the decisions of former property commissions and regional branches of the Agency. No time-limit was provided for such a review.

E. Appeals to the Tirana District Court – 2009 amendment

50. On 23 December 2009 the 2004 Property Act was further amended by Law no. 10207. The amendment reworded section 18 as follows:

> "Within 30 days from the notification of the decisions of the AKKP [the Agency], the person whose property has been expropriated or the State Advocate may lodge an appeal against that decision with the Tirana District Court, in compliance with the rules of the Code of Civil Procedure of the Republic of Albania."

IV. CONSTITUTIONAL CASE-LAW

51. On 26 March 2009 the Supreme Court submitted to the Constitutional Court a request for a preliminary ruling on the constitutionality of the Agency's power to review previous restitution or compensation decisions of its own motion (see paragraph 49 above).

52. On 26 May 2010 the Constitutional Court ruled that the Agency's power to review previous decisions of its own motion was unconstitutional.

53. It reasoned that a request lodged with a property commission was equivalent to a court claim, and therefore the decisions of commissions created the same expectations as court judgments. They were not mere

administrative acts, but rather quasi-judicial decisions. It followed that only a judicial authority, and not an administrative authority such as the Agency, could examine an action for review of a property commission's decision.

54. The Constitutional Court added that in the absence of an appeal, the decisions of property commissions became final and binding in respect of the parties to the proceedings and enforceable under the law, like court judgments.

55. As regards the merits of an action for review, the court referred to *Brumărescu v. Romania* ([GC], no. 28342/95, ECHR 1999-VII) and stated that it would be contrary to the requirements of legal certainty if a party, including a State authority, were to obtain a review of a final decision merely because it was unsatisfied with the result.

56. Following the above decision, on 22 July 2010 Parliament enacted amendments to the 2004 Property Act which restored the central Agency's powers to review prior decisions of commissions. On 6 October 2011 the Constitutional Court found, once again, that those provisions were unconstitutional, essentially for the same reasons as those described above. In particular, the court considered that a review (*rishikimi*) of a final decision of a commission was similar to an "extraordinary action" (*mjet i jashtëzakonshëm*) for review of a final civil or criminal judgment.

THE LAW

I. *LOCUS STANDI* OF THE APPLICANT'S HEIRS

57. The Court notes that on 8 November 2021 the applicant's heirs, Ms Hysnie Mahmuti, Ms Melaize Ruli and Ms Lale Meçi, expressed their wish to pursue the proceedings on the applicant's behalf.

58. In various cases in which an applicant has died in the course of the Convention proceedings, the Court has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before it. The Court has accepted that the next-of-kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Tagiyev and Huseynov v. Azerbaijan,* no. 13274/08, § 24, 5 December 2019, with further references).

59. In view of the above and having regard to the circumstances of the present case, the Court accepts that Ms Hysnie Mahmuti, Ms Melaize Ruli and Ms Lale Meçi, have a legitimate interest in pursuing the application in the applicant's stead (compare *Alasgarov and Others v. Azerbaijan*, no. 32088/11, § 25, 10 November 2022). However, for reasons of convenience, the text of this judgment will continue to refer to Mr Hasan Gaba as "the applicant", even though only the above mentioned heirs are to be regarded as having the status of applicants before the Court.

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

60. The applicant complained of a breach of the principle of legal certainty under Article 6 § 1 of the Convention as a result of the domestic authorities annulling the 2006 decision. In as far as relevant Article 6 § 1 reads as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ..."

A. Scope of the complaint

61. The Court notes that before the 2006 decision, the 2003 judgment had also contained a number of conclusions which were subsequently reversed by domestic courts.

62. However, a number of aspects relating to the 2003 judgment are unclear to the Court.

63. Firstly, both the Government and the applicant referred to the 2003 judgment as one "recognising a legal fact", which may be understood as a reference to court decisions issued under Article 388 of the Code of Civil Procedure. However, the 2003 judgment does not appear to include any reference to that Article. Moreover, it refers to a plaintiff and a defendant (*paditës/i padituri*) rather than an applicant and an interested party (*kërkues/palë e interesuar*), who are generally the parties in a decision issued under Article 388.

64. Secondly, the Government argued that in view of its specificity under domestic law, the 2003 judgment enjoyed only limited authority. The applicant disagreed.

65. Be that as it may, the Court considers that in the present case it is not necessary to rule on the above matters because the other material in the case file is sufficient to reach a conclusion on the complaint. In addition, in his application to the Court, the applicant focused his complaint on the annulment of the 2006 decision, not the 2003 judgment, and accordingly the Court will follow the same approach in its analysis.

B. Admissibility

66. The Government submitted that the applicant had failed to exhaust domestic remedies, as he had not raised his complaint in substance before the Constitutional Court.

67. The Court notes that the applicant's constitutional complaint referred extensively to the domestic case-law on legal certainty and clearly stated that the annulment of the 2006 decision had violated the principle of legal certainty (see paragraphs 36-39 above).

68. Moreover, the Government argued that the 2006 decision had been delivered by a specific administrative authority and was not a court judgment. Accordingly, in their view, the present case should be distinguished from cases which concerned the quashing of final court decisions.

69. The Court considers that the Government's submission touches on the applicability *ratione materiae* of Article 6 § 1 to the present case.

70. The Court has previously found in cases against Albania that a complaint about the non-enforcement of a final decision of a property commission was *ratione materiae* compatible with Article 6 § 1 of the Convention (see *Ramadhi and Others v. Albania*, no. 38222/02, § 37, 13 November 2007). Moreover, the Constitutional Court also established that the decisions of property commissions were not mere administrative acts, but rather quasi-judicial decisions (see paragraph 53 above). Accordingly, the Government's argument is dismissed.

71. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

72. The applicant submitted that the 2006 decision had become final and that the domestic courts had annulled it in violation of the principle of legal certainty. He alleged that the public broadcaster had no established ownership rights over the land, but merely a claim – a claim which, moreover, concerned only a part of that land.

73. The Government responded that the public broadcaster had not been a party to the 2006 proceedings before the Commission. Therefore the *res judicata* effect of its decision had not applied to the public broadcaster, which had thus been entitled to challenge the 2006 decision without violating the principle of legal certainty or the principle of *res judicata*.

74. The Government added that the 2006 decision had not been final and that the adoption of the 2007 amendment to the 2004 Property Act, which served as a basis for reviewing the decisions of former property commissions (see paragraph 48 above), had become necessary because of the abuses that had been observed in connection with the processes of property restitution. They concluded by submitting that the decision had been annulled in compliance with domestic law.

2. The Court's assessment

(a) General principles

75. The Court reiterates that the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of the rule of law

and legal certainty, encompasses the requirement that where the courts have determined an issue with final effect, their ruling should not be called into question (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 238, 1 December 2020, and *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). This presupposes, in general, respect for the principle of *res judicata* (see *Guðmundur Andri Ástráðsson*, cited above, § 238).

76. By virtue of this principle, no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. The review should not become an appeal in disguise. The principle of legal certainty dictates that where a civil dispute is examined on the merits by the courts, it should be decided once and for all, and a departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as the correction of fundamental defects or a miscarriage of justice (see, for example, *Gražulevičiūtė v. Lithuania*, no. 53176/17, §§ 73, 80 and 82, 14 December 2021, with further references).

(b) Application of the principles

(i) Effects of the 2006 decision on the public broadcaster

77. In response to the Government's argument (see paragraph 73 above), the Court notes that the Agency's decision of 2010 referred to the public broadcaster having rights over part of the plot of land. At the same time, the overlap between the applicant's property and the public broadcaster's property was only partial, and could not therefore justify the annulment of the 2006 decision in respect of the entire plot of land (see paragraph 22 above).

78. Moreover, ultimately, neither the Tirana District Court nor the Supreme Court relied on the public broadcaster's rights over part of the land or any other compelling public interest to annul the 2006 decision. Instead, they relied on the applicant's failure to put forward sufficient evidence showing that his father had previously owned the land (see paragraphs 26-28 and 32-33 above).

79. Therefore, the question before the Court is not to what extent the 2006 decision had any *res judicata* effect on the public broadcaster. The Court must consider whether the 2006 decision was final and, if so, whether its exceptional review and quashing was made necessary by circumstances of a substantial and compelling character, or whether the review amounted to a mere rehearing of the case (see paragraph 76 above). The Court will address these questions in turn.

(ii) Whether the 2006 decision was final

80. The Supreme Court stated that the 2006 decision had not become final (see paragraph 33 above), without providing a clear reasoning as to the legal

grounds for reaching that conclusion. The Government supported that conclusion in their submissions before the Court.

81. The Court is unable to subscribe to that argument, as there are multiple elements which were not addressed by the Supreme Court and which point to the opposite conclusion. In particular, section 5 of the operative clause of the 2006 decision provided for a thirty-day time-limit within which to lodge appeals against it, and the finality clause in the decision clearly stated that no appeals had been lodged within that time-limit (see paragraph 14 above). In fact, no other action against the 2006 decision appears to have been taken during the two-year period that followed its adoption.

82. After more than two years, the public broadcaster asked the State Advocate Office to challenge the 2006 decision under section 5 of the State Advocate's Act, a general provision that allows it to challenge "final decisions" in accordance with the general rules on the revision of final judgments (see paragraphs 18 and 42 above). That suggests that the public broadcaster had also considered the 2006 decision to be final.

83. In addition, in the applicable law section of its judgment, the Supreme Court cited section 18 of the 2004 Property Act (as amended and restated in December 2009 – see paragraphs 34 and 50 above), which allows the State Advocate to challenge the Agency's decisions within thirty days of being notified thereof. However, the said provision had not been in force at the time the State Advocate had filed its complaint with the Agency (see paragraph 19 above). Furthermore, it is unclear how that court applied the amended section 18 in the present case, as the section governs challenges against decisions of the Agency and does not mention decisions of former commissions. It is, lastly, unclear how the thirty-day time-limit was calculated, when the impugned decision was delivered on 20 February 2006 and the State Advocate's challenge was lodged on 7 May 2009 (see paragraphs 13 and 19 above).

84. Instead, it appears that, at the time of introduction of its appeal against the 2006 decision, the State Advocate had relied on a different clause of the amended section 18 of the 2004 Property Act, which empowered the State Advocate to challenge the final decisions of former commissions without any temporal or substantive limits (see paragraph 48 above). Such an unqualified legislative provision raises obvious questions of respect for legal certainty. That provision was only repealed in late 2009 by Law no. 10207; as a result, the State Advocate's Office enjoyed for almost three years very broad powers to challenge the authority of *res judicata* in the restitution context, without any clear legislative guidance or restrictions on its use of revision powers. It was during this same period that the action affecting the applicant was brought.

85. In view of the foregoing, the Court is unable to agree with the assertion that the 2006 decision had not become final and was amended by way of an ordinary appeal. In line with the Constitutional Court's

jurisprudence (see paragraphs 52-56 above), the Court considers that the 2006 decision had become final and the challenge against it amounted to an extraordinary remedy.

(iii) Whether substantial and compelling circumstances for review existed

86. As regards the Government's argument about the necessity to review certain abusive decisions of property commissions, the Court has held in the past that higher courts' powers to quash or alter binding and enforceable judicial decisions should be exercised for the purpose of correcting judicial errors and miscarriages of justice but not to carry out a fresh examination (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX). That power must be exercised so as to strike, to the maximum extent possible, a fair balance between the interests of an individual and the need to ensure the effectiveness of the system of justice (see *Giuran v. Romania*, no. 24360/04, § 30, ECHR 2011 (extracts)).

87. The Court has previously found that a fundamental defect in the proceedings, such as, in particular, a jurisdictional error, serious breaches of court procedure, abuse of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice could, in principle, justify a departure from the principle of legal certainty (see, in the context of civil proceedings, *Tolstobrov v. Russia*, no. 11612/05, §§ 17-20, 4 March 2010; *Tishkevich v. Russia*, no. 2202/05, §§ 23-27, 4 December 2008; *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008; *Luchkina v. Russia*, no. 3548/04, § 21, 10 April 2008; and *Sharra v. Albania* (dec.), no. 29975/06, §§ 46-53, 6 December 2011).

88. Returning to the case at hand, the Court reiterates that at the relevant time the State Advocate's power to challenge the decisions of former property commissions was not limited in time (see paragraph 48 above). An unlimited time-frame for lodging such an action cannot be considered acceptable from the point of view of observance of procedural time-limits, and compliance with the requirements of procedural clarity and foreseeability of the conduct of the proceedings, which are matters of major importance under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Salov v. Ukraine*, no. 65518/01, § 96, ECHR 2005-VIII (extracts)).

89. Moreover, it appears that the State Advocate could seek the review of a final decision of a former property commission on any legal grounds of a general nature, rather than on the grounds of substantial and compelling circumstances (see *Gražulevičiūtė*, cited above, §§ 73, 80 and 82, and *Ryabykh*, cited above, § 52).

90. Indeed the Tirana District Court and the Supreme Court simply concluded that the applicant had been unable to prove that his father had owned the land (see paragraphs 28 and 32 above), without any further consideration related to any fundamental defect in the prior proceedings or any failure to consider compelling public interests in the restitution process.

91. The courts did not point to the emergence of any new evidence or cast doubt on the veracity of any of the evidence that was already in the case file. In essence, they re-examined the existing and known facts that had already been examined by the Commission, and used their discretion to reach the opposite conclusion to that reached by a decision of the Commission which the Court found to be final (see paragraph 85 above; see also *Solomun v. Croatia*, no. 679/11, § 55, 2 April 2015).

92. The Court is unable to conclude that there were substantial and compelling circumstances justifying the annulment of the 2006 decision.

(iv) Conclusion

93. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the annulment of the 2006 decision of the property restitution commission without substantial and compelling circumstances justifying that action.

III. OTHER COMPLAINTS

94. The applicant complained that the annulment of the 2006 decision, and thus the revocation of his ownership title to the land, had amounted to a violation of Article 1 of Protocol No. 1 to the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

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."

96. The applicant did not claim any amount in respect of pecuniary damage or costs and expenses incurred before the domestic courts, therefore the Court makes no award under these heads.

97. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage, and EUR 4,115 in respect of costs and expenses incurred before the Court.

98. The Government contested those claims as unjustified.

99. The Court awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

100. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 3,500 for the costs and expenses related to the proceedings before it, plus any tax that may be chargeable to him.

101. Lastly, the Court notes that domestic law provides for the possibility of reopening court proceedings in cases where the Court has found a violation of the Convention (see *Besnik Cani v. Albania*, no. 37474/20, §§ 56-57, 4 October 2022). Accordingly, the most appropriate form of redress for the applicant would be to reopen the proceedings, should the applicant request this, and re-examine the case in a manner that is in keeping with all the requirements of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that Ms Hysnie Mahmuti, Ms Melaize Ruli and Ms Lale Meçi have standing to pursue the application;

2. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

3. *Holds* that there has been a violation of the principle of legal certainty under Article 6 § 1 of the Convention on account of the domestic authorities annulling the 2006 decision of the property restitution commission in the applicant's favour;

4. *Holds* that there is no need to examine separately the applicant's complaint under Article 1 of Protocol No. 1;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred before the Court;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President