

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

THIRD SECTION

CASE OF ZELA v. ALBANIA

(Application no. 33164/11)

JUDGMENT

Art 6 § 1 (civil) • Reasonable time • Overall length of compensation proceedings, lasting more than eight years at four levels of jurisdiction, not exceeding what may be considered reasonable in case circumstances
Art 1 P1 • Deprivation of property • Demolition of applicant's building on the ground that its construction was illegal and annulment of his title thereto without compensation • Disproportionate burden on applicant who was made to bear all consequences for creating situation leading to building's demolition despite shared responsibility for it • Particular importance of the principle of good governance in this context • No indication of bad faith on the applicant's part • Failure to strike a fair balance between the public interest and applicant's property rights

Prepared by the Registry. Does not bind the Court.

STRASBOURG

11 June 2024

FINAL

11/09/2024

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



In the case of Zela v. Albania,

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

Jolien Schukking*, President*,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 33164/11) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Mr Skënder Zela ("the applicant"), on 5 May 2011;

the decision to give notice to the Albanian Government ("the Government") of the complaints concerning the unfairness and length of the proceedings under Article 6 § 1 of the Convention, the applicant's right to respect for his home under Article 8 of the Convention, his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention and his right to an effective remedy under Article 13 of the Convention, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 21 May 2024,

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

INTRODUCTION

1. The case concerns the demolition of the applicant's building and the length of the proceedings concerning his claim for compensation.

THE FACTS

2. The applicant was born in 1953 and lives in Tirana. He was represented by the law office Haxhia and Hajdari, from Tirana.

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

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

5. On 10 December 1991 the Executive Committee of Tirana Region No. 2 ("the Executive Committee") issued a collective authorisation assigning lots on the Lana river bank for construction of various objects, mostly kiosks such as meat and vegetable stalls, and garages. The applicant's name was not included in that authorisation.

6. On 19 May 1992, the Urban Planning Section of the Executive Committee, referring to the authorisation of 10 December 1991, issued a construction permit to the applicant for a residential building with a surface area of 115.5 square metres per floor (462 square metres in total). The permit was issued for a period of six months starting on 1 June 1992, meaning that construction was to be begun as of 1 June 1992 and completed by 1 December 1992. It appears thar the permit allowed the building to remain in place for one year after construction had finished. It was indicated in the permit itself that it had been issued on the basis of Decree no. 5747 of the Presidium of the People's Assembly of 29 June 1978, as amended, as well as on the basis of decision no. 255 of the Presidium of the People's Assembly of 30 June 1980, as amended.

7. The applicant claimed that on 19 May 1992 he had purchased a 218-square-metre plot of land from the State for the price of 18,000 Albanian lek (ALL).

8. On 28 March 1993 the applicant completed the construction of a building comprising three storeys and a basement. It housed the applicant's place of residence, as well as a bakery, a warehouse, a tyre shop and offices for his business. The second floor measuring 118.72 square metres, and the attic measuring 93.75 square metres were used as residential area, whereas other parts of the building were used for business purposes. A technical survey report of 28 March 1993 stated that a compliance assessment had been carried out on the building and that the building was built on land in the applicant's possession in accordance with permits issued by the relevant authorities. The building in issue was residential, had a surface area of 115.5 square metres and was built on 218.7 square metres of land.

9. On an unspecified date the applicant asked the Tirana District Court to acknowledge as a legal fact the existence of both a three-storey residential building with a surface area of 115.5 square metres and a plot of land measuring 218.7 square metres. On 30 July 1997 the Tirana District Court granted the applicant's request.

10. On 16 August 1997 the applicant registered that building as his property with the Real Estate Registration Office and was provided with an ownership certificate.

11. On 24 May 2002 the Tirana Territory Regulation Council ("the TTRC"), relying on Law no. 8405 of 17 September 1998 on urban planning, ordered the demolition of all unlawful (unauthorised) buildings in the segment running from the bridge near the Vasil Shanto School to the bridge near the Technological School on both sides of the Lana River, regardless of the year of construction.

12. On 16 September 2002 two inspectors from the Construction Police made a police record establishing that the applicant had committed administrative offences under sections 45, 66, 75 and 77(2) of Law no. 8405 of 17 September 1998 on urban planning.

13. On 17 September 2002 the Tirana Construction Police ordered the demolition of the applicant's building on the basis of the TTRC decision of 24 May 2002 and the police record of 16 September 2002. The applicant was notified of that decision on the same day and was given five days to demolish his building. The applicant lodged a complaint with the Head of the Construction Police and requested that the demolition order be revoked.

14. On 19 September 2002 the applicant brought a civil action in the Tirana District Court against the Tirana Construction Police and the Municipality of Tirana, seeking to have the demolition order of 17 September 2002 set aside and to be recognised as the owner of the three-storey residential building to which it applied. He also sought an interim measure in the form of the suspension of the decision to demolish his building. On that same date, at an unspecified time, the Tirana District Court granted the requested interim measure until the proceedings had been completed, in order to avoid irreparable consequences for the applicant.

15. The applicant's building was demolished on 19 September 2002.

16. After the demolition, the applicant altered his claim, instead seeking compensation for the demolition of his property, namely a residential building and commercial unit, and for the loss of the land, in the amount of ALL 52,850,000. He relied on Articles 608 and 609 of the Civil Code (see paragraph 29 below).

17. On 16 October 2002 the Head of the Construction Police rejected the applicant's claim on the grounds that the decision to grant him a construction permit had been unlawful under section 1 of Presidential Decree no. 772 of 14 February 1994 (see paragraph 31 below).

18. In the same decision the Head of the Construction Police amended the decision of 17 September 2002 and ordered the demolition of the applicant's building on the basis of violations of sections 45 and 77(2) of Law no. 8405 of 17 September 1998 on urban planning.

19. At a hearing held on 18 October 2002 in the Tirana District Court, the applicant requested that the decision of 16 October 2002 be set aside.

20. In a judgment of 15 April 2003 the Tirana District Court dismissed the applicant's claim for compensation and revoked its interim measure of 19 September 2002.

The District Court held that non-contractual damages under Articles 608 and 609 of the Civil Code might be awarded when the following four cumulative conditions had been fulfilled: an unlawful act or omission; the existence of damage; fault; and a causal link between the act or omission and the damage caused. The District Court established that at least one of those elements was missing, namely an unlawful act or omission on the part of the defendants.

As regards the applicant's claim for damages in respect of the demolition of his building, the District Court found that the construction of the building had been unlawful on the grounds that the applicant had not proved that he

had bought the land on which the building had been constructed. He had only produced an invoice stating that he had paid ALL 18,000 to the State. However, the purpose of that payment was not clear as it was not specified on the invoice. Furthermore, such an invoice could not in itself serve as proof of purchase of land from the State. For such a purchase to be valid, a written contract needed to be entered into in the form of a notarial deed and that contract had to be properly registered, as required under Article 89 § 2 of the 1981 Civil Code. Since the applicant had not complied with those requirements, he had not proved that he had become the owner of the land in issue, making any building he had constructed thereon unlawful.

The construction permit of 19 May 1992 had been issued to the applicant for six months only, meaning that the construction had had to start as of 1 June 1992 and be completed by 1 December 1992. The building constructed under the permit had been allowed to remain in place for one year following the completion of construction. After the expiry of that period, the applicant had had to seek a new permit. However, the applicant had not proved that he had completed construction by 1 December 1992. He had only registered the constructed building on 16 August 1997, following the Tirana District Court's decision of 30 July 1997.

However, under Article 193 of the Civil Code, a judicial decision merely certifying a legal fact (of possession) could not serve as proof of title to property. Furthermore, the applicant had altered the purpose of the building by using it as a commercial property, thereby violating Decree no. 5747 of 29 June 1978 on urban planning, which only allowed dwellings for personal use to be constructed by individuals in urban areas.

The Construction Police was entitled to order that any unlawful buildings be demolished. Furthermore, section 77 of Law no. 8405 (1998) on urban planning provided for the demolition of any unlawful building hindering progress on projects under approved studies.

The TTRC decision of 24 May 2002 had established that the unlawful buildings on the specified segment of the banks of the Lana River had been an obstacle to the implementation of the Municipality of Tirana's plans for works on the bed of the Lana River and of one portion of the main wastewater collector in that segment of the river.

All the above considerations led the District Court to conclude that the decisions ordering the demolition and the actual demolition of the applicant's unlawful building had not been unlawful themselves. As regards the applicant's claim for damages in respect of the loss of the land, the District Court held that the applicant had not proved that he had been the owner of that land.

21. On an appeal by the applicant, the Tirana Court of Appeal on 24 December 2003 upheld in part the first-instance decision in so far as it concerned the claim against the Municipality of Tirana, and reversed it in so far as it concerned the claim against the Head of the Construction Police,

ordering that institution to pay the applicant ALL 52,850,000 in respect of the damage caused by the demolition of the residential building and commercial units owned by the applicant.

22. On 6 October 2005 the Supreme Court quashed the Court of Appeal's decision and remitted the case to it.

23. On 8 May 2007 the Tirana Court of Appeal upheld the Tirana District Court's decision of 15 April 2003, endorsing its reasoning.

24. On 6 June 2007 the applicant lodged an appeal with the Supreme Court, which dismissed it summarily on 12 June 2009.

25. On 12 April 2010 the applicant lodged a constitutional complaint, providing his lawyer's address as Rruga Komuna e Parisit, Pall 2/2.

26. On 22 July 2010 a three-judge panel of the Constitutional Court dismissed the applicant's constitutional complaint as manifestly ill-founded. According to the Government, that decision was sent to the applicant's lawyer by mail on 20 September 2010 at the address he had provided in the constitutional complaint.

27. On 2 April 2011 the applicant's lawyer sent a letter to the Constitutional Court asking about the applicant's case. In that letter he provided the same address. The Constitutional Court answered in a letter of 4 April 2011, sent to the applicant's lawyer at the address Rruga "Komuna e Parisit", Pall. 2/2, stating that it had given a decision in the applicant's case on 22 July 2010 and had already sent it to the applicant's lawyer on 20 September 2010. The Constitutional Court enclosed the letter of 20 September 2010.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. 1981 CIVIL CODE

28. The relevant part of Article 89 of the 1981 Civil Code provides that a contract for the transfer of property is valid only if it is entered into in the form of a notarial deed and subsequently registered.

II. 1994 CIVIL CODE

29. Article 193 § 1 (dh) of the 1994 Civil Code provides, *inter alia*, that court decisions on recognition of property ownership are registered in the Land Registry as proof of title. Paragraph 2 of that Article provides that court decisions acknowledging the legal fact of ownership are not registered in the Land Registry, which means that they cannot serve as proof of title. Article 608 of the Civil Code provides that anyone who unlawfully causes damage to another person or to that person's property is obliged to pay compensation for that damage, unless he or she proves that he or she is not at

fault. Article 609 provides that the damage must be the result of a person's direct and immediate act or omission.

III. LAW No. 7693 OF 6 APRIL 1993 ON URBAN PLANNING

30. Under section 29 of Law no. 7693, the time-limit for requesting a construction permit after a construction site had been approved was between three and six months, depending on the size of the construction site. The relevant councils had the power to extend those time-limits; however, the failure to respect the time-limits rendered the initial approval of the construction site invalid.

IV. DECREE No. 772 OF 14 FEBRUARY 1994

31. Section 1 of Decree no. 772 of 14 February 1994 (see paragraph 17 above) amended Law no. 7693 of 6 April 1993 on urban planning by adding section 29(a), which provides that the remainder of that section also applies to all construction sites approved by local government bodies after 1 January 1990. It further states that natural or legal persons will be reimbursed the price they paid for a construction site if the decision approving their purchase is revoked.

V. LAW No. 8405 OF 17 SEPTEMBER 1998 ON URBAN PLANNING

32. The relevant parts of Law no. 8405 provide as follows. Section 4 requires all construction in Albania to comply with urban and environmental planning studies, technical norms and conditions, and all laws and by-laws in force. Section 44 requires potential construction sites to be approved or rejected within two months. Section 45 requires a building permit to be obtained for all construction. Section 66 provides that construction in tourist areas must protect the environment and is prohibited if there is no approved engineering infrastructure in place. Section 75 provides that unlawful construction is subject to fines and may lead to demolition. The Head of the Construction Police is competent to impose fines and issue demolition orders, while the Construction Police carries out demolition orders. Section 77 defines the powers of the Council for Adjustment of Territory under the Municipality of Tirana and other first-category cities (CAT) in respect of unlawful buildings constructed before the Law in issue came into force. In particular, subsection 2 provides that where such buildings pose a risk for the environment or occupy public space, immediate demolition is ordered and carried out.

VI. PRACTICE OF THE CONSTITUTIONAL COURT ON DELIVERY OF JUDGMENTS

33. Under the Internal Regulations (2009) and relevant practice of the Constitutional Court, as in force at the relevant time, the judgments of the plenary court were announced either at a public hearing, to which the parties were invited, or by delivery of the written judgment to the parties. The decisions of the three-judge panels (*kolegj*) of the court on the inadmissibility of individual complaints were, as a rule, delivered to the parties by mail.

THE LAW

I. PRELIMINARY REMARKS

Compliance with the six-month rule

1. The parties' submissions

34. The Government argued that the application had been lodged outside the six-month time-limit because the Constitutional Court had sent its decision of 22 July 2010 to the applicant's lawyer on 20 September 2010 at the address indicated in the constitutional complaint. However, since the lawyer had not informed the Constitutional Court of the change of the street name, he could not complain that that decision had not been properly delivered to him. Moreover, even in his letter to the Constitutional Court of 2 April 2011, he had indicated the same address.

35. The applicant argued that the decision of 22 July 2010 had been notified to his lawyer only after he had sent a letter to the Constitutional Court through his lawyer on 2 April 2011 asking about the case. He also pointed out that the Government had not submitted any evidence that the decision had been notified to his lawyer earlier. He further submitted that the name of his lawyer's street had changed and that the decision had therefore not been sent to the correct address.

2. The Court's assessment

36. The Court notes the general practice of the Constitutional Court that decisions of the three-judge panels (*kolegj*) on the inadmissibility of individual petitions were delivered to the parties by mail (see paragraph 33 above). The Court has no reason to question the Government's assertion that on 20 September 2010 the Constitutional Court had sent its decision of 22 July 2010 to the applicant's lawyer. The Court also notes that the Constitutional Court, following the letter of 2 April 2011 from the applicant's lawyer, sent the lawyer the same decision on 4 April 2011, noting in the accompanying letter that it had already been sent on 20 September 2010.

37. The Court agrees with the Government that the applicant's lawyer had a duty to inform the Constitutional Court of the change in the address. However, it would appear that the change of the street name did not affect the delivery of the Constitutional Court's decision to the applicant's lawyer, since the Constitutional Court had sent the letters of 20 September 2010 and 4 April 2011, with its decision enclosed, to the same address, and the letter of 4 April 2011 was properly delivered to the applicant's lawyer at that same address.

38. The fact that on 20 September 2010 the Constitutional Court sent a letter to the applicant enclosing its decision of 22 July 2010 does not mean that the applicant actually received it. It is for the respondent Government which relies on the failure to comply with the six-month time-limit to establish the date when the applicant became aware of the final domestic decision (see *Şahmo v. Turkey* (dec.), no. 37415/97, 1 April 2003, and *Belozorov v. Russia and Ukraine*, no. 43611/02, §§ 93-97, 15 October 2015). The Government have not submitted any evidence, such as a delivery slip, indicating that the decision had been delivered to the applicant's lawyer, or that the delivery had at least been attempted but had not been possible owing to the wrong address (compare *Mumladze v. Georgia*, no. 30097/03, § 47, 8 January 2008; *Rassohin v. Moldova*, no. 11373/05, § 34, 18 October 2011; *Lazarenko and Others v. Ukraine*, nos. 70329/12 and 5 others, § 38, 27 June 2017; and *Belova v. Russia*, no. 33955/08, § 51, 15 September 2020).

39. In these circumstances, the Court cannot assume that the applicant's lawyer received the decision of the Constitutional Court prior to 4 April 2011. Since the present application was lodged with the Court on 5 May 2011, it follows that the six-month time-limit laid down in Article 35 § 1 of the Convention as in force at the relevant time has been complied with and that the Government's objection must be dismissed.

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

40. The applicant complained about the length of the proceedings for compensation. He relied on Article 6 § 1 of the Convention, which reads:

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

A. Admissibility

41. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

42. The applicant complained that the length of the civil proceedings which he had instituted on 19 September 2002, and which had concluded on 22 July 2010, had been excessive.

43. The Government submitted that the length of the proceedings in question had been reasonable.

2. *The Court's assessment*

44. The general principles concerning the length of proceedings have been summarised in *Frydlender v. France* ([GC], no. 30979/96, § 43, ECHR 2000-VII).

45. The proceedings complained of commenced on 19 September 2002 and concluded with the Constitutional Court's decision of 22 July 2010. However, that decision was served on the applicant's lawyer on 4 April 2011. The proceedings thus lasted eight years, six months and fifteen days at four levels of jurisdiction (compare, as to the time to be considered, *Kirsten v. Germany*, no. 19124/02, § 37, 15 February 2007; *Zorc v. Slovenia*, no. 2792/02, § 28, 2 November 2006; and Sylvester *v. Austria (no. 2)*, no. 54640/00, § 29, 3 February 2005). On account of a remittal, decisions were given on six occasions (compare *Šeliga v. Slovenia* (dec.), no. 33578/02, 30 November 2006).

46. The Court considers that the case was quite complex as it involved difficult issues concerning the validity of the applicant's ownership title and urban planning.

47. As to the conduct of the applicant, the Court finds that he contributed to the length of proceedings by lodging a constitutional complaint some ten months after the contested decision of the Supreme Court had been given (see paragraphs 24 and 25 above).

48. Regarding the conduct of the domestic courts, the Court observes that none of the courts dealing with the case took more than three years to deliver its decision. Having regard to this observation and its case-law (see, for example, *L.Z. v. Slovakia* (dec.), no. 27753/06, 27 September 2011, and *Lyszczyna v. Germany* (dec.), no. 34863/04, 4 January 2008), the Court considers that the overall length of eight years at four levels of jurisdiction, with decisions on six separate occasions, did not exceed what could be considered reasonable in the circumstances (compare *Ekholm v. Finland* (dec.), no. 5952/03, 10 July 2007, and *Steiner v. Austria* (dec.), no. 32637/96, 22 November 2001).

49. There has accordingly been no violation of Article 6 § 1 of the Convention.

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

50. The applicant complained about the demolition of his building and the fact that no compensation had been awarded in that respect. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Court, being master of the characterisation to be given in law to the facts of the case, will examine the complaints solely under Article 1 of Protocol No. 1 to the Convention (compare *Ibrahimbeyov and Others v. Azerbaijan*, no. 32380/13, § 39, 16 February 2023), which 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. Applicability of Article 1 of Protocol No. 1 to the Convention

(a) The parties' submissions

51. The Government argued that the applicant could not be seen as the victim of a violation of Article 1 of Protocol No. 1 to the Convention because he had not been the owner of the building in question and because that building could not have constituted a possession.

52. The applicant argued that he had been the owner of the building in question and of the land on which it had been built.

(b) The Court's assessment

53. The Court considers that these arguments concern the issue of whether the applicant had a "possession" and therefore whether Article 1 of Protocol No. 1 applies. The Court has established that the question of the applicability of a particular provision of the Convention or its Protocols is an issue of the Court's jurisdiction *ratione materiae*, and that the relevant analysis should therefore be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Savickis and Others v. Latvia* [GC], no. 49270/11, § 119, 9 June 2022). No such particular reason exists in the present case.

54. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or claims that are sufficiently established to be

regarded as "assets" (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 142, 20 March 2018).

55. According to the domestic courts' decisions, the applicant's building had been constructed unlawfully and he was considered never to have owned it. However, the Court notes that in 1992 the applicant obtained a construction permit for the building in question and that his ownership was recorded with the Real Estate Registration Office (see paragraph 10 above) and he possessed the building for over nine years.

56. In these circumstances, the Court considers that the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention even if it might be argued that his title was null and void *ab initio* (compare *Gashi v. Croatia*, no. 32457/05, § 22, 13 December 2007).

57. It follows that the Government's objection as to the applicability of Article 1 of Protocol No. 1 to the Convention must be dismissed.

2. Abuse of the right of application

(a) The parties' submissions

58. The Government further argued that the applicant had abused his right of application because he had not presented the original construction permit before the domestic courts and the Court.

59. The applicant asserted that he had obtained a lawful construction permit from a competent body under the relevant rules applicable at that time.

(b) The Court's assessment

60. The relevant part of Article 35 § 3 of the Convention provides:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application;
>
> ..."

61. The Court reiterates that under this provision an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, and the cases cited therein). Except in extraordinary circumstances, an

application may only be rejected as an abuse of the right of application if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X, and *Zaytsev v. Russia*, no. 22644/02, § 16, 16 November 2006).

62. Turning to the circumstances of the present case, the Court notes that the applicant submitted that he had obtained a construction permit in compliance with all relevant regulations at the time – an argument which he had also put forward before the domestic courts. There is nothing to indicate that the applicant, by making such submissions, had the intention of misleading the Court or that he knowingly presented any untrue facts.

63. Having regard to the statements made by the applicant in the present case, the Court does not therefore consider that they amount to an abuse of the right of application. Accordingly, the Government's objection is dismissed.

3. Conclusion as to admissibility

64. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

65. The applicant argued that the demolition of his building had been carried out in violation of his rights under Article 1 of Protocol No. 1 to the Convention. He contended that the demolition had had no basis in law. In that connection, he submitted that, contrary to the Government's submissions, the construction permit for the building in issue had not been granted to him on the basis of the Executive Committee's decision of 10 December 1991, but rather of Decree no. 5747 of the Presidium of the People's Assembly of 29 June 1978, as amended, and of decision no. 255 of the Presidium of the People's Assembly of 30 June 1980, as amended.

66. As to the Government's contention that his name had not been included in the Executive Committee's decision of 10 December 1991, the applicant submitted that the construction permit had been granted under the relevant legislation of that time, on the basis of the regulatory plans, partial urban-planning studies, the layout of the construction site, the layout of the facilities and the building permit. In that connection, the applicant relied on section 8 of Decree no. 5747 of the Presidium of the People's Assembly of 29 June 1978, which provided that the first step when constructing in towns and villages with inhabited areas was to obtain a construction permit which

was issued after the construction site had been prepared and the project had been approved.

67. In the applicant's case, the Executive Committee, as the competent body, had issued the construction permit after the construction site had been approved on the basis of the regulatory plan. The permit had been granted for a residential building and for a period of one year from the date of issue.

68. The applicant further submitted that he had complied with the time-limit and the other conditions for the construction of his building, as established by the technical survey report of 28 March 1993. He also argued that he had obtained a court's recognition of the legality of the building and had properly registered it with the Real Estate Registration Office, all of which proved his ownership of the building and the land in issue.

69. The applicant maintained that his building had been demolished on the basis of the TTRC decision of 24 May 2002, which had ordered the demolition of all unlawful structures along a certain segment of the banks of the Lana River. The demolition had taken place despite the fact that his building had not been constructed unlawfully. On the contrary, he had obtained all necessary permits for the building, it had been properly registered with the Real Estate Registration Office and he had obtained an ownership certificate in respect of it.

70. The applicant further contended that the Head of the Construction Police, in rejecting his appeal against the decision to demolish his building, had found the construction permit unlawful under section 1 of Decree no. 772 of 14 February 1994. The applicant complained that that Decree had been applied retrospectively and that the Head of the Construction Police had not provided any reasons for such retrospective application.

71. As to the legitimate aim, the applicant accepted that the interests of urban-planning policy might justify the demolition of property.

72. Regarding the proportionality of the measure, the applicant submitted that the TTRC decision which had served as the basis for demolishing his building had been issued more than nine years after he had completed construction and been recognised as the legal owner. He could thus have been deprived of his property only through expropriation with adequate compensation.

73. The applicant also complained that his building had been demolished irrespective of an interim measure of the Tirana District Court suspending the Construction Police's decision to demolish it, and despite the fact that his appeal against that decision had still been pending with the Head of the Construction Police.

(b) The Government

74. The Government maintained that the construction permit of 19 May 1992, on the basis of which the applicant had had the building in question constructed, had been purportedly issued on the basis of a previous

plot authorisation of 10 December 1991, which however had not mentioned the applicant's name and had concerned the erection of temporary kiosks by third parties. In addition, the applicant had not complied with the conditions of the permit governing construction type and time-limits. As to the land on which the building had been situated, the Government submitted that the only evidence the applicant had presented for the purchase of that land was an invoice bearing no mention of the plot's size or location. An invoice in itself, moreover, could not serve as proof of ownership for land that required a notarial deed and registration. The applicant had therefore never been the owner of the building or the land in question.

75. The Government maintained that the applicant's building had been unlawful, as the domestic authorities had established. Its demolition had therefore had a basis in law and been necessary as it contravened the urban plan for that segment of the banks of the Lana River. At the relevant time there had been a significant number of unlawful buildings in Albania and measures to demolish such structures had been in the public interest. That had been particularly true as regards buildings in areas which, as in the applicant's case, had been intended as green, construction-free spaces.

76. The Government also contended that the applicant was not entitled to compensation since his building had been unlawful.

2. The Court's assessment

(a) Whether there was an interference

77. Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not, however, unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, for example, *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 48, 19 February 2009, and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 93, 25 October 2012).

78. In the present case, the applicant was deprived of his property as a consequence of the building's demolition and the subsequent findings of the Tirana District Court in its judgment of 15 April 2003, which was upheld by the Court of Appeal and the Supreme Court. By virtue of those judgments, the applicant's title to the building in question was annulled.

79. The Court further refers to its settled case-law, according to which demolition of property and stripping of an ownership title amount to

deprivation within the meaning of Article 1 of Protocol No. 1 (compare *Kolona v. Cyprus*, no. 28025/03, § 70, 27 September 2007; *Akhverdiyev v. Azerbaijan*, no. 76254/11, § 80, 29 January 2015; *Khalikova v. Azerbaijan*, no. 42883/11, § 135, 22 October 2015; and *Sharxhi and Others v. Albania*, no. 10613/16, § 170, 11 January 2018). The Court must further examine whether the interference was justified.

(b) Justification for the interference with the peaceful enjoyment of possessions

(i) Whether the interference was lawful

80. As to whether the interference had a basis in law, the Court notes that the first TTRC decision relied on Law no. 8405 (1998) on urban planning, and that the applicant contended that it had been applied retroactively because the construction of his building had been completed in 1993. However, the Court notes that the final decision of the Construction Police referred to Decree 772/94, which had made section 29 of Law no. 7693 (1993) applicable retroactively to all construction permits issued since 1 January 1990 (see paragraph 31 above), hence including the applicant's. Therefore, there was at the relevant time a legal basis for determining that the applicant's building had been an illegal construction and, under Law no. 8405 (1998), for ordering its demolition as such. Furthermore, the Court notes that the applicant's building was demolished because it was deemed illegal by the administrative authorities. The Court accepts that it cannot be said that demolishing illegal constructions was not based in law.

(ii) Whether the interference pursued a legitimate aim

81. The Court notes that the applicant's building was demolished on the basis of the TTRC decision of 24 May 2002, on the grounds that its construction was illegal and in contravention of urban-planning rules for the area. The Court accepts that the demolition of illegal buildings which contravene laws and urban-planning rules serves a legitimate public interest.

(iii) Whether the interference was proportionate to the legitimate aim served

82. The Court has held that the balance to be maintained between the demands of the general interest of the community and the requirements of the protection of fundamental rights is upset if the person concerned has had to bear a disproportionate burden (see, among many other authorities, *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 115, 13 December 2016, and the cases cited therein). Despite the margin of appreciation afforded to the State, the Court must nevertheless, in the exercise of its power of review, determine whether the requisite balance was maintained in a manner consonant with the applicant's right to property (see *Rosinski v. Poland*, no. 17373/02, § 78, 17 July 2007). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the first

paragraph's second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved by any measure depriving a person of his or her possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 38, Series A no. 332, and *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII).

83. As to the administrative decisions adopted in the applicant's case, the Court notes that the TTRC decision did not refer to the applicant or his building in particular, but ordered the demolition in general of all unlawful buildings along a certain segment of the Lana river bank. There was no assessment in that decision as to why the applicant's building was considered unlawful. In addition, the applicant was not involved in the proceedings that led to that decision and had no opportunity to advance any arguments prior to its adoption. It also appears that no appeal lay against it.

84. Following the TTRC's decision, inspectors from the Construction Police made a record that the applicant had committed administrative offences under sections 45, 66, 75 and 77(2) of Law no. 8405 on urban planning. That record served as the basis for the Tirana Construction Police's demolition order of 17 September 2002. However, neither the police record, nor the demolition order contained any reasoning as to what precisely constituted administrative offences. It also appears that the applicant was not able to submit any arguments before the record was made and the demolition order issued. He only had the option of lodging an appeal with the Head of the Construction Police, which he did. However, the demolition order was carried out on 19 September 2002, before the Head of the Construction Police issued his decision on the applicant's appeal against it.

85. In addition, even though the Tirana District Court issued an interim measure suspending the demolition order that same day, the demolition was nevertheless carried out.

86. Subsequently, the applicant sought compensation in the domestic courts for the demolition of his building. As to the decisions adopted in these civil proceedings, the Court notes that the applicant's claim for compensation was ulimately dismissed, with the domestic courts finding that the construction of the applicant's building had been unlawful on the following grounds: that the applicant had not acquired ownership of the land in issue in accordance with the law, because the only evidence he had presented in that respect was an invoice; that he had failed to comply with the time-limit for the construction of the building: the relevant period had expired on 1 December 1992, but the applicant had registered the building only on 16 August 1997; that the applicant had altered the purpose of the building because he had also used it for commercial activities; and that the original permit had been granted for one year only but the applicant had failed to request its renewal thereafter.

87. Without questioning the finding of the domestic courts that the applicant's building was unlawful, the Court cannot but note that the domestic authorities failed to take proper account of the following circumstances.

88. The Court notes that at the relevant period, the permits for construction of buildings in Albania were issued at two stages. In the first, one or more plots were allocated for a certain purpose, and in the second a construction permit was issued.

89. In the present case, the collective authorisation issued on 10 December 1991 (see paragraph 5 above) included no reference to the applicant's name, nor did it allocate to him any plot for development. That authorisation allocated plots for temporary construction of various commercial kiosks for small businesses, food stalls, as well as garages. Even though the applicant's name was not included in that original authorisation, the Executive Committee's Urban Planning Section, purportedly by reliance on the 10 December 1991 authorisation, granted the applicant a construction permit for a residential building with a surface area of 115.5 square metres per floor (462 square metres in total). That second permit was issued by the appropriate body. It is not for the Court to assess how that came about and the national courts did not contest its validity as such.

90. As to the second permit, the Court notes that it contained two conditions. First, the construction was to be completed within six months, and secondly, the building was to remain in place for one year, after which the applicant apparently had to seek a new licence for its use.

91. The Court notes that it appears that the applicant did not complete the construction within the set time-limit, and that he did not ask for the licence to be renewed after the first year. That notwithstanding, the applicant continued to occupy the building for many years without hindrance.

92. Following a request by the applicant, the Tirana District Court acknowledged as a legal fact the existence of the building, and the applicant subsequently registered the building with the Real Estate Registration Office and was issued a certificate of ownership. It was on the competent national authorities, and in particular the Real Estate Registration Office, to verify whether the applicant complied with all conditions prior to registering the building at issue as his ownership.

93. The Court also notes that there is no indication that the applicant did not act in good faith; the fact that the first permit did not include an authorisation in his name is not sufficient, in itself, to establish otherwise. Indeed, the domestic courts never established that the applicant had acted in bad faith or that he had otherwise acted unlawfully when obtaining the relevant permits (compare *Gavrilova and Others v. Russia*, no. 2625/17, § 83, 16 March 2021, and *Ibrahimbeyov and Others*, cited above, § 51).

94. It follows that if any of the actions or omissions of the domestic authorities concerning the applicant's building – such as the issue of the building permit, the toleration of its use over many years, and the registration

of the applicant's ownership with the Real Estate Registration Office – were the result of an error or erroneous interpretation of the law, it would be disproportionate for the entire burden of any such sequence of mistakes to be placed on the applicant alone.

95. In that connection, the Court emphasises the particular importance of the principle of good governance. This principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence. However, the need to correct an old "wrong" should not disproportionately interfere with a new right which has been acquired by an individual relying on the legitimacy of the public authority's action in good faith. The risk of any mistake made by the State authority must be borne by the State itself and the errors must not be remedied at the expense of the individuals concerned. In the context of revoking ownership of a property obtained erroneously, the good governance principle may not only impose on the authorities an obligation to act promptly in correcting their mistake, but may also necessitate the payment of adequate compensation or another type of appropriate reparation to its former bona fide holder (see *Beinarovič and Others v. Lithuania*, nos. 70520/10 and 2 others, §§ 139-40, 12 June 2018, with further references).

96. At the same time, the Court takes note of the findings of the national courts that the applicant had used the building as a place of business even though he had obtained a construction permit for a residential building only, and that he had not sought the renewal of the permit, as required.

97. In view of these findings, the Court considers that the burden for creating the circumstances that led to the demolition of the applicant's building should have been distributed between the domestic authorities and the applicant. Given that the applicant had acted in good faith, that he obtained a permit for a residential building, registered his ownership, and that his occupying the building in question had been tolerated for many years without any hindrance, the Court considers that the applicant was led to believe that his ownership of the building at issue was legitimate, and therefore should have been awarded some compensation for its demolition.

98. In that connection the Court reiterates that a person deprived of his or her property must in principle obtain compensation "reasonably related to its value", even though "legitimate objectives of 'public interest' may call for less than reimbursement of the full market value". It follows that the balance mentioned above is generally achieved where the compensation paid to the person whose property has been taken is reasonably related to its "market" value, as determined at the time of the expropriation (see *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 53, ECHR 2002-VIII).

99. In the present case, the Court notes that the applicant's claim for compensation was dismissed.

100. Given the above considerations, the Court finds that the interference with the applicant's property rights in the particular circumstances of the

present case failed to strike a fair balance between the public interest and the applicant's rights under Article 1 of Protocol No. 1 to the Convention.

101. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

102. In view of this conclusion, it is not necessary to address the applicant's complaint that his building was demolished in violation of the Tirana District Court's interim measure.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

103. The applicant further complained under Article 8 of the Convention that the demolition of his building had violated his right to respect for his home because he and his family had lived in that building, without further substantiation as to any hardship suffered in obtaining alternative accommodation.

104. The Court finds that this complaint is closely related to the complaint under Article 1 of Protocol No. 1 to the Convention and therefore considers that, in view of its findings under Article 1 of Protocol No. 1, there is no need to examine separately the admissibility or merits of the complaint under Article 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

105. Lastly, the applicant complained under Article 13 of the Convention that he had had no effective remedy for his complaints concerning the demolition of his building.

106. The Court notes, however, that the applicant was able to complain about the TTRC's decision to the Head of the Construction Police, and also to challenge it before the courts. The fact that his attempts were ultimately unsuccessful does not affect the availability of those remedies since Article 13 does not guarantee the success of a remedy that has been pursued.

107. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

1. Pecuniary damage

109. The applicant claimed 4,789,205.25 euros (EUR) in respect of pecuniary damage for the value of the land and the building at issue.

110. The Government submitted that the amount claimed was unfounded and excessive.

111. The Court notes firstly that the national courts established that the applicant had not been the owner of the plot on which the building was constructed, and the Court sees no reason to question that finding. As to the building itself, the Court notes that the permit issued to the applicant referred to residential purposes only. However, according to the report submitted by the applicant, only the second storey of the building measuring 118.72 square metres, and the attic measuring 93.75 square metres, were used as residential areas whereas other parts of the building were used as business premises, contrary to the purpose for which the permit had been issued. The applicant also did not seek the renewal of the permit, as required. Given these circumstances, and the shared burden of the situation which led to the demolition of the applicant's house, the Court considers that the sum of EUR 50,000 is to be awarded to the applicant on account of pecuniary damage.

2. Non-pecuniary damage

112. The applicant claimed EUR 250,000 in respect of non-pecuniary damage.

113. The Government submitted that the amount claimed was unfounded and excessive.

114. The Court considers that the applicant undoubtedly suffered distress and frustration because of the demolition of his building. However, it considers the amount claimed excessive. Making its assessment on an equitable basis and taking into account its findings in the present judgment, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

115. The applicant also claimed EUR 7,000 for the costs and expenses incurred before the domestic courts and the Court.

116. The Government submitted that the amounts claimed were excessive and that the invoices provided had not been submitted on the officially approved invoice forms.

117. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that

these were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant pursued proceedings before four levels of domestic courts prior to lodging his application with the Court. The Court has previously rejected similar arguments by the Government that claims for costs and expenses must be supported by officially approved invoices (see *Sharxhi and Others*, cited above, § 209; *Delijorgji v. Albania*, no. 6858/11, § 100, 28 April 2015; *Luli and Others v. Albania*, nos. 64480/09 and 5 others, § 129, 1 April 2014; and *Hysa v. Albania*, no. 52048/16, § 93, 21 February 2023). It finds no reason to reach a different conclusion in this case.

118. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the length of proceedings and the complaint under Article 1 of Protocol No. 1 to the Convention admissible and the complaint under Article 13 of the Convention inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine the admissibility or merits of the complaint under Article 8 of the Convention;

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 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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 11 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Jolien Schukking President