CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 10508/02
by Agron GJONBOCARI and Others
against Albania

The European Court of Human Rights (Fourth Section), sitting on 31 March 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 6 July 2001,
Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Agron Gjonboçari, Mr Midat Gjonboçari, Mr Agim Gjonboçari, Mr Gjon Gjonboçari, Mrs Hava Veizaj, Mr Arben Boçari and Mr Gezim Boçari are Albanian nationals, who were born in 1939, 1927, 1934, 1931, 1924, 1949 and 1949 respectively. They live in Tirana and Vlora, Albania. They are represented before the Court by Mr G. Boçari, one of the applicants.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The application concerns proceedings related to the restitution of properties which were confiscated during the communist period.

1. Proceedings on the restitution of property to the applicants

The applicants' parents owned several plots of land, measuring 132 hectares in total, which were confiscated by the communist regime. These plots are situated in the Vlora region on the south Albanian coast.

On 30 March 1994, pursuant to the Restitution and Compensation of Property Act, the applicants lodged a request with the Vlora Commission on Restitution and Compensation of Properties (*Komisioni i Kthimit dhe Kompensimit të Pronave*, "the Vlora Commission"*)*.

On 27 August 1996 the Vlora Commission assigned to the applicants, as property, 14 hectares (2 hectares per person) of the land which had been confiscated from their parents. The decision was signed by four of the seven members of the Vlora Commission.

Based on the Commission's decision, the applicants registered their properties with the Vlora Land Register on an unspecified date.

On 28 December 1998 they applied to the Vlora Commission requesting the issue of a new document that would comply with the formal requirements.

On 6 January 1999, by document no. 76, the President of the Vlora Commission replied to the applicants, informing them that the Commission had already ruled on their property status in its decision of 27 August 1996, which recognised the applicants as legal owners of the properties. He also maintained that, pursuant to the laws in force at the material time, formal correction of the Commission's documents lay with the courts.

2. Legal proceedings with the Ministry of Tourism as a party

On 25 November 1996 the Ministry of Tourism, by Decree no 20/2, leased a plot of land to A.L., for tourism-related use, within the property allocated to the applicants by the Vlora Commission.

On 29 December 1997 the applicants brought an action before the Tirana District Court applying for cancellation of the Ministry's Decree.

On 17 February 1998 the Tirana District Court annulled the Ministry's Decree on the ground that the transaction concerned a private property.

On 16 June 1998 the Tirana Court of Appeal quashed the District Court's decision and upheld the validity of the Ministry's Decree, stating that the Commission's decision had been invalid in that it had not complied with the formal requirements; consequently the applicants could not claim property rights.

On 10 June 1999, following an appeal by the applicants, the Supreme Court quashed the Court of Appeal's judgment of 16 June 1998 as illogical and sent the case back to the Court of Appeal for retrial.

On 10 November 1999 the Tirana Court of Appeal, in the retrial proceedings, rejected the applicants' action on the ground that the civil action lodged with the District Court on 29 December 1997 had been lodged after the one-month time-limit.

On 17 January 2001 the Supreme Court upheld the Court of Appeal's judgment.

3. Proceedings on the restitution of the property to K.B.

Meanwhile, on 9 October 1997 the Vlora Commission allocated to K.B. (A.L.'s mother), as compensation, the same plot of land, situated within the applicants' property, that the Ministry had leased to A.L..

At an unspecified date K.B donated the land to her son, A.L..

By Order no. 3 dated 11 June 1999**,** following a request by A.L., the Vlora Land Register cancelled the applicants' status as owners of the above plot of land and registered A.L. as the legal owner.

4. Legal proceedings with A.L. as a party

On 13 December 1999, following a civil action brought by A.L., the Vlora District Court declared null and void the Vlora Commission's decision of 27 August 1996, allocating the plot of land to the applicants as property, on the ground that it had not been issued in compliance with the formal requirements.

On 17 March 2000 the Vlora Court of Appeal upheld the reasoning of the District Court's decision, maintaining also that the Vlora Commission had exceeded its jurisdiction in taking decisions about properties which the State had assigned for tourism purposes.

On 17 January 2001 the Civil Division of the Supreme Court confirmed that the Vlora Commission's decision in the applicants' favour was null and void, on the ground that it had not been issued in compliance with the formal requirements; consequently, the Vlora Commission's decision could have no effect for the applicants or for others. The Supreme Court quashed the judgments given by the above courts and decided to discontinue the proceedings.

5. Legal proceedings with the Vlora Commission as a party

(a) Ordinary proceedings

On 18 April 2000 the applicants lodged an action with the Vlora District Court alleging that the Vlora Commission's decision of 9 October 1997 was null and void and asking the court to regularise the Commission's decision

of 27 August 1996, since it had been signed by four of the seven commissioners.

On 6 February 2001 the Vlora District Court dismissed the applicants' action on the ground that the Vlora Commission's decision of 27 August 1996 had been declared null and void by the Vlora District Court's decision of 13 December 1999.

On 25 May 2001 the Vlora Court of Appeal, having examined the applicants' complaint regarding the lack of compliance with the formal requirements of the Commission's decision of 27 August 1996, decided to reject the complaint, arguing that an irregular act, even if not considered formally invalid, should not have any legal effect. Lastly, the court rejected the applicants' complaint on the nullity of the Commission's decision of 9 October 1997 on the ground that it was ill-founded. Consequently, the court upheld the District Court's decision.

On 6 March 2003, following an appeal by the applicants, the Supreme Court quashed the decisions of the District Court and Court of Appeal. Moreover, the Supreme Court held that the Vlora Commission was to issue a decision on the applicants' ownership status that complied with the formal requirements. Lastly, the court dismissed the applicants' request for a declaration that the Vlora Commission's decision of 9 October 1997 was null and void, on the ground that it had been issued subsequent to the resolution of the applicants' property claims.

Two members of the Supreme Court's panel that decided on the above-mentioned judgment, TH.K. and N.K., were also part of the decision-making body in the Supreme Court's judgment of 17 January 2001.

(b) Enforcement proceedings

On 14 April 2004 the Vlora District Court issued an enforcement order to the Vlora Commission, instructing it to comply with the Supreme Court's judgment of 6 March 2003.

On 19 October 2004 the applicants informed the Registry that the Supreme Court's judgment had still not been executed by the Vlora Commission.

Their ownership's issues are still not resolved.

B. Relevant domestic law

1. The relevant parts of the Albanian Constitution read as follows:

Article 42 § 2

"In the protection of his constitutional and legal rights, freedoms and interests, or in defending a criminal charge, everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial court established by law."

Article 142 § 3

"State bodies shall comply with judicial decisions."

2. The Restitution and Compensation of Property Act no. 7698 of 15 April 1993, as amended through Law 8084/ 1996 provides, in its relevant part:

Section 4 § 1

"Former owners and their legal heirs have the right of ownership. A former owner of property has the right to either receive the original land or to be compensated in kind if one of four conditions is met: (1) the land formerly owned was pasture, meadow, forestry land, or agricultural or non-agricultural land; (2) the land is not subject to Law no. 7501, of 19 July 1991; (3) the land is currently State-owned; (4) the land is now zoned as being suited for construction and lies within the boundaries of a town or city. The extent of restitution or compensation in kind shall not exceed 10,000 square metres according to Article 1 § 4 of Decree no. 1359, dated 5 February 1996, as amended by Law no. 8084, dated March 7 1996."

COMPLAINTS

1. Relying on Article 6 § 1 of the Convention the applicants complained that the proceedings had been unfair in several respects, namely the length of the proceedings, the lack of impartiality of the domestic courts and the authorities' failure to comply with a final decision; they also alleged that the principles of the "rule of law" and "legal certainty" had been breached.

2. Under Article 13 of the Convention, taken in conjunction with Article 6 § 1 the applicants claimed that they had no effective remedy in respect of the excessive length of the proceedings.

3. The applicants claimed a violation under Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 to the Convention.

4. Lastly, the applicants relied on Articles 17 and 18 of the Convention in connection with their complaint under Article 1 of Protocol No. 1.

THE LAW

1. Relying on Article 6 § 1 of the Convention, the applicants complained of the unfairness of the proceedings. In so far as relevant, Article 6 § 1 reads as follows:

> "In the determination of his civil rights and obligations ...., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

(a) The applicants submitted that the domestic courts had failed to respect the principles of the rule of law and legal certainty, given that the outcome of the decisions with regard to their case had helped to create a confused situation in relation to their property rights.

The Court recalls that it is not its function to substitute its own assessment of the facts and evidence for that of the national courts or to act as a fourth instance appeal and that it will not intervene generally on the basis that a domestic court has come to a wrong decision (see, among many other examples, *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34, see also *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

Consequently, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

(b) The applicants argued that, by failing to comply with the Supreme Court's judgment of 6 March 2003, the Albanian authorities had deprived the provisions of Article 6 of the Convention of all useful effect.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of it to the respondent Government.

(c) The applicants alleged that several sets of proceedings concerning their civil claims had exceeded the "reasonable time" requirement.

They observed that the domestic courts examined their cases in three sets of proceedings. The first set commenced on 29 December 1997, when the applicants filed an application with the District Court, and ended with the Supreme Court's judgment of 17 January 2001. The second set began on an unspecified date before 13 December 1999, when A.L. brought a civil action with the District Court, and terminated on 17 January 2001. The third set of proceedings began on 18 April 2000, when the applicants filed an action with the Vlora District Court, and ended with the Supreme Court's final decision of 6 March 2003 (that judgment has still not been executed).

The applicants maintained that by failing to rule on the validity of the Commission's decision in their favour, given in the very first set of proceedings, the domestic courts had exceeded the "reasonable time" requirement for deciding a non-complex case such the present case, which

concerned the invalidity of an act on the ground of a failure to satisfy the formal requirements.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of it to the respondent Government.

(d) The applicants also complained under this Article about the lack of impartiality in the Supreme Court's panels, since two of the judges (TH.K. and N.K.) who participated in the judgment of 17 January 2001 were also part of the decision-making body in the judgment of 6 March 2003.

The Court recalls that impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see Hauschildt v. Denmark, judgment of 24 May 1989, Series A no. 154, p. 21, § 46, Fey v. Austria, judgment of 24 February 1993, Series A no. 255, p. 12, § 28, Gautrin and Others v. France, judgment of 20 May 1998, Reports 1998-III, pp. 1030-31, § 58).

As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see Padovani v. Italy, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 26). As to the objective test, it consists in determining whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. In this respect even appearances may be of some importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of those claiming that he or she is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see Delage and Magistrello v. France (dec.), no. 40028/98, ECHR 2002-II).

In the instant case the applicants disputed both the subjective and the objective impartiality of the two judges of the Supreme Court, in particular their participation in two panels that decided on the applicants' property status.

With regard to the personal impartiality of the two judges of the Supreme Court the Court does not find any evidence, however, to corroborate the applicants' allegations.

As to the objective impartiality the Court has already held that the mere fact that a judge has already taken decisions cannot by itself be regarded as justifying concerns about his or her impartiality. What matters is the scope and nature of the measures taken by the judge before the trial. Likewise, a judge's detailed knowledge of the case does not entail any prejudice on his

or her part that would prevent him or her from being regarded as impartial when the decision on the merits is taken. Nor, lastly, does a preliminary analysis of the available information mean that the final analysis has been prejudged (see, mutatis mutandis, Hauschildt v. Denmark, judgment of 24 May 1989, Series A no. 154, p. 22, § 50; Nortier v. the Netherlands, judgment of 24 August 1993, Series A no. 267, p. 15, § 33; and Saraiva de Carvalho v. Portugal, judgment of 22 April 1994, Series A no. 286-B, p. 38, § 35).

In this connection, in the instant case, the Court does not find that the actions of the judges in question undermined the guarantee of impartiality of the Supreme Court. The mere fact that the judges in question participated in both decision – bodies did not affect the Supreme Court's impartiality, given that the last judgment ruled on the applicants favour.

Having regard to the foregoing the Court concludes that the applicants' fears were not objectively justified in the instant case.

It follows that, as far as the alleged lack of partiality is concerned, this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Under Article 13 of the Convention, taken in conjunction with Article 6 § 1, the applicants argued that they had no effective remedy in respect of the excessive length of the proceedings. Article 13 in its relevant parts reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

In this regard the Court recalls that Article 13 of the Convention has been interpreted as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see Boyle and Rice v. the United Kingdom, judgment of 27 April 1988, Series A no. 131, § 52).

In so far as the applicants complain that they has been denied an effective remedy in respect of they complaint under Article 6 § 1 of the Convention concerning the length of the proceedings, the Court considers that it cannot on the basis of the case file determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of it to the respondent Government.

3. The applicants alleged that they were victims of a breach of Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Article 14 of the Convention.

Article 1 of Protocol 1 provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The applicants complained that they have been deprived of their possessions in that the local authorities first allocated their parents' property to them and subsequently transferred it to third parties. Moreover, they submitted that, pending a final outcome in the proceedings on their restitution request, they are effectively prevented from alienating their property.

Lastly, the applicants asserted that the local authorities discriminated against them on account of the valuable location of the property concerned on the Albanian coast.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of it to the respondent Government.

4. Finally, the applicants complained of a violation of their rights protected under Articles 17 and 18 of the Convention in connection with their complaints under Article 1 of Protocol No. 1.

Article 17 reads as follows:

> "Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Article 18 reads as follows

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

The Court finds, insofar as this part of the application has been substantiated and fall within its competence, that the facts of the case do not disclose any appearance of a violation of these provisions of the Convention.

It follows that these complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints under Article 6 § 1 of the Convention concerning the failure of the national authorities to comply with a final decision and the length of civil proceedings, the applicants' complaints under Article 13 of the Convention and Article 1 of Protocol 1 to the Convention taken alone and in conjunction with Article 14 of the Convention.

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President