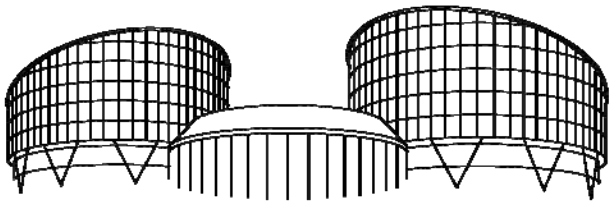

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF VRIONI AND OTHERS v. ALBANIA AND ITALY

(Applications nos. 35720/04 and 42832/06)

JUDGMENT
(merits)

STRASBOURG

(29 September 2009)

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vrioni and Others v. Albania and Italy,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *judges,*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 September 2009,

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

PROCEDURE

1. The case originated in two applications against the Republics of Albania and Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") as follows: application no. 35720/04, *Vrioni*, on 8 April 1999; application no. 42832/06, *Vrioni and Others*, on 15 August 2006.

2. The applicants were represented by Ms L. Sula and Ms. E. Qirjako, lawyers practising in Tirana. The Albanian Government ("the Government") were represented by their then Agent, Ms S. Meneri.

3. The applicants alleged that there had been violations of Article 6 § 1 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 13 taken in conjunction with Article 1 of Protocol No. 1.

4. On 9 February 2006 and 8 January 2007 the President of the Fourth Section of the Court decided to give notice of application no. 35720/04 and application no. 42832/06 respectively to the Government of Albania. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the applications at the same time as their admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Shahin Vrioni, the applicant in application no. 35720/04, is an Albanian national who was born in 1925 and lives in Albania. Mr Gherardo La Francesca, Mr Dario La Francesca and Mr Oliver Vrioni, the applicants in application no. 42832/06, are Albanian and Italian nationals who were born in 1946, 1950 and 1974 respectively and live in Italy. Mr Shahin Vrioni represented himself and the other applicants in the domestic courts' proceedings.

A. Background to the case

7. In 1950 a plot of land measuring 1,637 sq. m belonging to the applicants' ancestor, was confiscated by the then Albanian authorities without compensation.

8. On 1 July 1991 the Italian Embassy in Albania purchased two buildings in Tirana bordering on the property confiscated from the applicants' grandfather. The transaction was concluded through an inter-State agreement validated by means of *note verbale* exchanges between the two governments. The *note verbale* did not contain any information as to the transfer of title to the surrounding or adjacent plots of land. The relevant property titles were not entered in the Tirana Property Register.

9. The Albanian Government subsequently used the income from the transaction to purchase the premises of the Albanian Embassy in Rome.

10. Under the Property Restitution and Compensation Act ("the Property Act"), the applicants lodged two applications in 1996 and 1999, respectively, with the Tirana Property Restitution and Compensation Commission (*Komisioni i Kthimit dhe Kompensimit të Pronave* – "the Commission"), claiming title to their deceased grandfather's property.

11. On 18 March 1996 and 14 December 1999 the Commission recognised the applicants' title to two plots of land measuring 1,100 sq. m. and 537 sq. m. respectively. The Commission held that it was impossible for the applicants to have the whole original plot of land allocated to them. It decided to restore to the applicants a vacant plot of land (*një truall i lirë*) measuring 1,456 sq. m., which was situated within the occupied grounds of the Italian Embassy, and ordered the authorities to pay compensation in respect of a plot of land measuring 181 sq. m. Moreover, it ordered that the applicants' title to the property be entered in the Tirana Property Register.

12. The applicants were also issued with two certificates of property registration by the Registry Office: registration no. 4373, dated 1 June 1996, and registration no. 420, dated 28 December 1999.

13. On an unspecified date in 1996, having regard to the fact that, according to the *note verbale* of 1991, the Italian Embassy had title to one of the buildings only, but not to the occupied plot of land, the applicants requested the Embassy to return their property which it was occupying without title.

14. On 27 November 1996 the Albanian Ministry of Foreign Affairs, having regard to the applicants' property claims to the plot of land adjacent to the Embassy's buildings, offered mediation to the Italian Embassy with a view to entering into civil agreements with the applicants.

15. On 16 August 1997 the Italian Embassy in Albania, in reply to the applicants' request for recovery of their property, informed them that their property claims to the plot of land situated within its premises had to be settled with the Albanian authorities.

16. On 1 October 1997, following a request by the applicants, the Italian Ministry of Foreign Affairs informed them that by virtue of the *note verbale* exchanges of 1991 the Italian Embassy in Albania had full ownership of the buildings and adjacent land. Moreover, it referred the applicants to the Albanian authorities as competent to determine any claims for compensation that the applicants might submit.

B. Judicial proceedings for recovery of property and compensation

17. On 2 May 1997, following a civil action brought by the applicants against the Ministry of Foreign Affairs, the Tirana District Court (“the District Court”) found that the Italian Embassy was occupying the applicants' property without title and, being unable to take action against a diplomatic mission, ordered the Ministry of Foreign Affairs to facilitate the applicants' recovery of their property and also to pay them compensation amounting to 21,607.50 United States dollars.

18. On 27 January 1998 the Tirana Court of Appeal, (“the Court of Appeal”), quashed the District Court's judgment and remitted the case to a different bench of the District Court for fresh consideration. According to the Court of Appeal, the Ministry of Foreign Affairs, which had represented the Albanian State in the agreement relating to the transfer of the property to the Italian Embassy, could not be the defendant party in the proceedings in so far as the Ministry of Finance was the competent body to represent State interests in domestic proceedings. The applicants appealed against the Court of Appeal's judgment to the then Court of Cassation.

19. On 17 June 1998 the Court of Cassation quashed the Court of Appeal's judgment and remitted the case to that court for a fresh examination.

20. On 29 January 1999 the Court of Appeal, re-examining the case, found that the Ministry of Foreign Affairs could not be held liable in this connection and designated the Italian Embassy, which was occupying the applicants' property without title, as the liable entity in relation to the property. It quashed the District Court's judgment of 2 May 1997 and remitted the case to the same court for fresh consideration.

21. On 20 June 2000 the District Court dismissed the applicants' grounds of appeal, finding that the Commission's decisions of 18 March 1996 and 14 December 1999 had been unlawful, as they were in breach of section 4 of the Property Act.

22. The District Court found that the applicants' disputed plot of land, even though there were no buildings on it, constituted an integral part of the Italian Embassy's premises. Thus, the District Court declared null and void the Commission's decisions and held that the applicants were entitled to receive compensation for the original properties in one of the forms laid down in section 16 of the Property Act.

23. On 31 October 2001 the Court of Appeal quashed the District Court's judgment and remitted the case to a different bench of the Court of Appeal, in accordance with Article 467/a of the Code of Civil Procedure, as it had noted irregularities in the proceedings in the lower courts.

24. On 29 October 2002 the Court of Appeal, having duly given notice of the hearings to the opposing parties, namely the Ministry of Foreign Affairs, the Tirana Commission, the Ministry of Finance and the Italian Embassy in Albania, declared null and void the Commission's decisions of 18 March 1996 and 14 December 1999. It held that all applicants were entitled to receive compensation *in lieu* of the original property in one of the forms provided for by law in respect of the plot of land measuring 1,456 sq. m. Consequently, all applicants were to receive compensation in accordance with the Property Act for the totality of the 1,637 sq. m. of land. Moreover, the Court of Appeal found that, in so far as the property was an integral part of the Italian Embassy's premises, it could not be considered a vacant plot of land within the meaning of section 4 of the Property Act (see paragraph 31 below).

25. On 15 June 2004 the Supreme Court, which had replaced the Court of Cassation after the Albanian Constitution's entry into force on 28 November 1998, following an appeal by the applicants, upheld the reasoning of the Court of Appeal's judgment of 29 October 2002.

26. On an unspecified date in 2004 the applicants lodged an appeal with the Constitutional Court under Article 131 (f) of the Constitution, arguing that the Tirana Court of Appeal's judgment of 29 October 2002 and the Supreme Court's judgment of 15 June 2004 were unconstitutional.

27. The appeal was declared inadmissible by the Constitutional Court on 13 January 2005 by a bench of three judges. It found that the applicants' constitutional complaint concerned the assessment of evidence, which fell

within the jurisdiction of the lower courts, but was outside its own jurisdiction.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW

A. Relevant international law

28. The relevant international provisions have been set out in *Treska v. Albania and Italy* (dec.), no. 26937/04, ECHR 2006-... (extracts) and *Manoilescu and Dobrescu v. Romania and Russia* (dec.), no. 60861/00, §§ 38-39, ECHR 2005-VI.

B. Relevant domestic law

1. The Constitution

29. The relevant provisions of the Albanian Constitution read as follows:

Article 41

"1. The right of private property is protected by law.

2. Property may be acquired by gift, inheritance, purchase, or any other ordinary means provided for by the Civil Code.

3. The law may provide for expropriations or limitations in the exercise of a property right only in the public interest.

4. Expropriations, or limitations of a property right that are equivalent to expropriation, shall be permitted only in return for fair compensation.

5. A complaint may be lodged with a court to resolve disputes regarding the amount or extent of the compensation due."

Article 42 § 2

"In the protection of his constitutional and legal rights, freedoms and interests, and in defending a criminal charge, everyone is entitled 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."

Article 131

"The Constitutional Court shall decide on: ...

(f) final complaints by individuals alleging a violation of their constitutional rights to a fair hearing, after all legal remedies for the protection of those rights have been exhausted."

Article 181

"1. Within two to three years from the date when this Constitution enters into force, the Assembly, guided by the provisions of Article 41, shall enact laws for the just resolution of different issues related to expropriations and confiscations carried out before the approval of this Constitution.

2. Laws and other normative acts that relate to expropriations and confiscations carried out before the entry into force of this Constitution shall be applied provided they are compatible with the latter."

2. Property Restitution and Compensation Act (Law no. 7698 of 15 April 1993, as amended by Laws nos. 7736 and 7765 of 1993, Laws nos. 7808 and 7879 of 1994, Law no. 7916 of 1995, Law no. 8084 of 1996 and abrogated by Law no. 9235 dated 29 July 2004 and recently amended by Law. no. 9388 of 2005 and Law no. 9583 of 2006)

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

31. Section 4 of the 1993 Property Act, as amended and as stood in force at the material time, provided that vacant plots of land were to be allocated and restored to the former landlords or their heirs, save as provided otherwise.

3. Code of Civil Procedure

32. The relevant provision of the Code of Civil Procedure reads as follows:

Article 39

"Members of consular and diplomatic representations residing in the Republic of Albania are not subject to the jurisdiction of Albanian courts, except:

(a) where they accept voluntarily;

(b) in the cases and conditions envisaged in the Vienna Convention on Diplomatic Relations."

THE LAW

I. JOINDER OF THE APPLICATIONS

33. Given that the two applications concern the same facts, complaints and domestic courts' proceedings, the Court decides that they shall be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ADMISSIBILITY

A. Compatibility *ratione personae*

34. The applicants complained against Italy about a violation under Article 1 of Protocol No. 1 to the Convention in so far as the possession *sine titulo* by the Italian Embassy in Albania of the property allocated to them by virtue of the Property Act amounted to an interference with the peaceful enjoyment of their possessions.

35. The Court must determine whether the facts complained of by the applicants are such as to engage the responsibility of Italy under the Convention. As it has consistently held, the responsibility of a State is engaged if a violation of one of the rights and freedoms defined in the Convention is the result of a breach of Article 1, by which "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention" (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 57, §§ 25-26).

36. The Court must therefore determine whether the applicants were "within the jurisdiction" of Italy within the meaning of that provision. In other words, it must be established whether, despite the fact that the proceedings in issue did not take place on that State's soil, Italy may still be held responsible for their outcome and for the alleged impossibility of enforcing the Albanian authorities' decisions in the applicants' favour.

37. The Court refers to its case-law on the exercise of territorial and extraterritorial jurisdiction by a Contracting State (see, for example, *Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240; *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, ECHR 2001-XII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII; *McElhinney v. Ireland and the United Kingdom* (dec.) [GC], no. 31253/96, 9 February 2000).

38. The proceedings in issue were conducted exclusively on Albanian territory. The Albanian courts had sovereign authority in the applicants' case

and the Italian authorities had no direct or indirect influence over decisions and judgments delivered in Albania. The obligation to comply with the Supreme Court's judgment of 15 June 2004, which ultimately decided on the award of compensation in respect of the applicants, lay with the Albanian authorities.

39. It is clear from the circumstances of the present case that the applicants were not within the jurisdiction of Italy. That State did not exercise jurisdiction over the applicants. There is no justifying factor to bring the applications within the jurisdiction of Italy for the purposes of Article 1 of the Convention (see *Treska*, cited above; *Manoilescu and Dobrescu*, cited above, §§ 104–105).

40. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Compliance with the six-month rule

41. On 6 June 2006 the applicant in respect of application no. 35720/04 submitted a new complaint to the Court about the lack of reasoning in the Constitutional Court's decision of 13 January 2005.

42. The Court reiterates that, as regards complaints not included in the initial application, the running of the six-month time-limit is not interrupted until the date when the complaint is first submitted to a Convention organ (see *Allan v. the United Kingdom* (dec.), no. 48539/99, decision of 28 August 2001).

43. It follows that the complaint about lack of reasons was introduced more than six months after the date of the Constitutional Court's decision of 13 January 2005 and should therefore be rejected pursuant to Article 35 §§ 1 and 4.

C. Other issues

44. The applicants complained of a denial of access to a court on account of their inability to take proceedings against a diplomatic mission, namely the Embassy of the Republic of Italy in Albania.

45. Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, § 36). The right of access to a court is not, however, absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, § 57).

46. The Court reiterates that generally recognised rules of international law on State immunity cannot be regarded as imposing a disproportionate

restriction on the right of access to a court as embodied in Article 6 § 1 of the Convention. As the right of access to a court is an inherent part of the fair-trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the community of nations as part of the doctrine of State immunity (see *McElhinney v. Ireland* [GC], no. 31253/96, § 37, ECHR 2001-XI; *Manoilescu and Dobrescu*, (dec.), cited above, § 80, ECHR 2005-VI; and, *Treska*, cited above).

47. There is nothing in the present case to warrant departing from those conclusions. In these circumstances, the facts complained of do not disclose an unjustified restriction on the applicants' right of access to a court. The complaint is therefore inadmissible as being manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

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

48. The applicants alleged that there had been several violations under Article 6 § 1 of the Convention, mainly on account of the excessive length of the domestic proceedings and the failure to enforce the Supreme Court's judgment of 15 June 2004.

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

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

A. Non-enforcement of the Supreme Court's judgment of 15 June 2004

1. Admissibility

49. The applicants complained about the authorities' failure to enforce in practice the Supreme Court's judgment of 15 June 2004 that ordered the payment of compensation to them in respect of their ancestor's plot of land.

50. The Government maintained that the applicants had not exhausted the new domestic remedies introduced by the Property Act 2004 with respect to this complaint.

51. The Court reiterates the principle enunciated in *Driza* (cited above, § 57), and considers that the question of the effectiveness of the remedies offered by the Property Acts is central to the merits of the applicants' complaint under Article 13 in conjunction with Article 1 of Protocol No. 1. It holds that both questions should be examined together on the merits. Moreover, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It finds that no other grounds for

declaring this complaint inadmissible have been established and therefore declares it admissible.

2. Merits

(a) The parties' submissions

52. The Government repeated that the authorities could not be held responsible for the non-enforcement of the Supreme Court's judgment of 15 June 2004 since its execution depended upon the applicants' taking the appropriate steps, namely bringing an action seeking its enforcement. The Government referred to their earlier arguments on exhaustion of domestic remedies.

53. The applicants contested the Government's argument.

(b) The Court's assessment

54. The right of access to a tribunal guaranteed by Article 6 § 1 of the Convention would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see, *inter alia*, *Beshiri and Others*, cited above, § 60).

55. The Convention cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they had ratified the Convention (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, and *von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V). Nor is there any general obligation under the Convention to establish legal procedures in which restitution of property may be sought. However, once a Contracting State decides to establish legal procedures of such a kind, it cannot be exempted from the obligation to honour all relevant guarantees provided for by the Convention, in particular in Article 6 § 1.

56. The Court recalls its finding in paragraph 38 above. The Supreme Court's judgment of 15 June 2004, which upheld the Court of Appeal's judgment of 29 October 2002, can be interpreted as ordering the authorities to offer the applicants a form of compensation which would indemnify them in lieu of the restitution of their original property.

57. The Court observes that following the delivery of the judgment in 2004 the authorities failed to offer the applicants the option of obtaining appropriate compensation (contrast *Užkurėlienė and Others v. Lithuania*, no. 62988/00, § 36, 7 April 2005). Thus, the applicants did not even have the possibility of considering an offer of compensation in lieu of the restitution of the property that had previously been allocated to them (see *Driza,* cited above, § 90.)

58. Moreover, the Government have not provided any explanation as to why the judgment of 15 June 2004 has still not been enforced more than five years after it was delivered. It does not appear that the administrative authorities have taken any measures to execute the judgment.

59. Consequently, the Court considers that the problem persists and remains unresolved, notwithstanding the indications it gave in *Beshiri and Others* that "in the execution of judgments in which the State was ordered to make a payment, a person who had obtained a judgment debt against the State should not be required to bring enforcement proceedings in order to recover the sum due" (see § 108).

60. The foregoing considerations are sufficient to enable the Court to conclude that, by failing to take the necessary measures to comply with the judgment of 15 June 2004, the Albanian authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

61. There has accordingly been a violation of Article 6 § 1 of the Convention in this respect.

B. Length of proceedings

1. Admissibility

62. The Court considers that the complaint under this head is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover finds that no other grounds for declaring this part of the complaint inadmissible have been established and therefore declares it admissible.

2. Merits

(a) The parties' submissions

63. The applicants complained about the unreasonable length of the domestic proceedings, which had lasted almost eight years for nine levels of jurisdiction. They attributed this delay to the domestic authorities, which had drawn different conclusions at various levels of jurisdiction, and to the position maintained by the Albanian Ministry of Foreign Affairs concerning his right of property.

64. The Government submitted that the proceedings had been complex owing to the changes in and assessment of property rights in different periods and because of the fact that a diplomatic mission accredited in Albania was involved. They added that the complexity of the facts combined with the lack of case-law had resulted in frequent remittals of the case for fresh examination. They contended that the length of the

proceedings did not directly influence the applicants' right as they had never effectively possessed their property.

(b) The Court's assessment

65. The Court notes that all the proceedings at issue concerned the question of the applicants' property rights. The period to be taken into account should cover the entire length of proceedings, which started on an unspecified date in 1997 and ended with the Constitutional Court's decision of 13 January 2005. Moreover, the Supreme Court's judgment of 15 June 2004 has not yet been enforced. To date, the proceedings have lasted for more than eleven years.

66. However, the Court considers that in the light of its finding of a violation under Article 6 § 1 of the Convention about the non-enforcement of the Supreme Court's judgment of 15 June 2004, it does not have to rule separately on the merits of the length of proceedings complaint (see *Lizanets v. Ukraine*, no. 6725/03, § 48, 31 May 2007).

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

67. The applicants complained that the failure to grant them compensation, by virtue of the final judgment of 15 June 2004, had entailed a breach of Article 1 of Protocol No. 1 to the Convention, which 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."

A. Admissibility

68. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover finds that no other grounds for declaring it inadmissible have been established and therefore declares it admissible.

B. Merits

1. The parties' submissions

69. The Government submitted that the applicants' right to property had not been breached since the Supreme Court's judgment of 15 June 2004 had upheld their right to compensation in one of the forms under the law. They contended that the applicants had not yet complied with the rules set forth in the Property Act in order to establish the form of that compensation. They added that the compensation process had been hampered by its prolonged duration, which had also been the result of objective circumstances such as lack of funds and the general interests of the community.

70. The applicants maintained that there had been a breach of their right to property.

2. The Court's assessment

71. The Court reiterates the principles established in its case-law under Article 1 of Protocol No. 1 (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35; *von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V; and *Beshiri and Others*, cited above).

72. "Possessions" can be "existing possessions" or assets, including, in certain well-defined situations, claims. For a claim to be capable of being considered an "asset" falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it, or where there is a final court judgment in the claimant's favour. Where that has been done, the concept of "legitimate expectation" can come into play (see *Draon v. France* [GC], no. 1513/03, § 68, 6 October 2005, ECHR 2005-IX, and *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

73. The Court observes that the applicants were recognised as having a right to compensation by virtue of the Supreme Court's final judgment of 15 June 2004 (see paragraph 25 above). Therefore, the applicants had enforceable claims deriving from the judgment in question.

74. It notes that this complaint is linked to the one examined under Article 6 § 1 in relation to the failure to enforce a final decision (see paragraphs 54–61 above).

75. The Court considers that the failure of the authorities to enforce the judgment of 15 June 2004 for such a prolonged time amounts to an interference with their right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

76. As to the justification advanced by the Government for this interference, the Court reiterates that a lack of funds cannot justify a failure to enforce payment of a final and binding judgment debt owed by the State

(see *Driza*, cited above, § 108; *Pasteli and Others v. Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02, § 30, 15 June 2004; *Voytenko v. Ukraine*, no. 18966/02, § 55, 29 June 2004; and *Shmalko v. Ukraine*, no. 60750/00, § 57, 20 July 2004).

77. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention in this regard.

V. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

78. The applicants complained of the lack of effective remedies by which to obtain a final determination of their property rights. They relied on Article 13 of the Convention, which 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."

A. Admissibility

79. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover finds that no other grounds for declaring it inadmissible have been established and therefore declares it admissible.

B. Merits

1. The parties' submissions

80. The applicants submitted that there was no effective remedy by which to claim compensation in lieu of restitution of property. They argued that owing to the Government's observations about the lack of funds and unavailability of vacant plots of land, they could not obtain any compensation pursuant to the Supreme Court's judgment of 15 June 2004.

81. The Government raised the same objections concerning the alleged failure to exhaust domestic remedies (see paragraph 52 above). They pointed to the remedies introduced by the Property Act 2004, which were to be considered effective for the purposes of Article 13.

2. The Court's assessment

82. The Court notes that the applicants' complaint under Article 1 of Protocol 1 to the Convention was indisputably "arguable". The applicant was therefore entitled to an effective domestic remedy within the meaning of Article 13 of the Convention.

83. Moreover, the "authority" referred to in Article 13 may not necessarily in all instances be a judicial authority in the strict sense. Nevertheless, the powers and procedural guarantees an authority possesses are relevant in determining whether the remedy before it is effective (see *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 30, § 67). The remedy required by Article 13 must be "effective" in practice as well as in law, in particular, in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95 *in fine*).

84. The Court refers to its findings in *Driza*, cited above, §§ 117-120. The Government did not provide any information as to whether there had been any particular measures adopted or actions taken since the delivery of the *Driza* judgment. There is nothing in the present case to warrant a departure from those findings. It follows that there has been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1.

85. On that account, the Government's preliminary objection based on non-exhaustion of domestic remedies must be dismissed.

VI. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

86. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

87. The Court reiterates its findings in *Driza* (cited above, §§ 122 – 126) in respect of Article 46 of the Convention. It urges the respondent State to adopt general measures as indicated in paragraph 126 of the said judgment.

B. Article 41 of the Convention

88. 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."

89. The applicants claimed a total of 2,719,500 euros (EUR) in respect of pecuniary damage and of EUR 200,000 in respect of non-pecuniary damage. As regards the claim in respect of pecuniary damage, the applicants submitted an expert valuation of the property, which assessed its value at EUR 2,184,000, and estimated the loss of profits between 1996 and 2006 at EUR 535,500.

90. The Government did not submit any comments.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* the applicants' complaints under Article 6 § 1 of the Convention concerning the denial of access to a court and the lack of reasoning in the Constitutional Court's decision of 13 January 2005 inadmissible;

3. *Declares* the applicants' complaint under Article 1 of Protocol No. 1 to the Convention in so far as it was directed against Italy incompatible *ratione personae*;

4. *Joins* to the merits the Government's preliminary objection regarding the applicants' failure to exhaust domestic remedies and d*eclares* admissible the remainder of the applications;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the non-enforcement of the Supreme Court's judgment of 15 June 2004;

6. *Holds* that it does not consider it necessary to examine the complaint about the length of the proceedings under Article 6 § 1 of the Convention;

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

8. *Holds* that there has been a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention and *dismisses* in consequence the Government's preliminary objection;

9. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
(a) *reserves* the said question in whole;
(b) *invites* the Government and the applicants to submit, within the forthcoming three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 29 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President