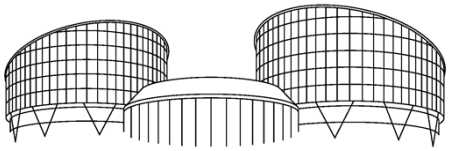

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RAMAJ v. ALBANIA

(Application no. 17758/06)

JUDGMENT
(Merits)

Art 1 P1 • Peaceful enjoyment of possessions • Prolonged non-enforcement of a final and binding domestic judgment recognising the applicant's title to a plot of land • Applicant's inability to secure the cadastral registration of his title stemming from a number of structural problems • Domestic authorities bore main responsibility for the non-registration of the part of the applicant's plot not occupied by unauthorised constructions • Disproportionate and excessive burden imposed on applicant • Domestic authorities' failure to strike a fair balance between competing interests
Art 1 P1 • Deprivation of property • Legalisation and registration of illegal constructions by third parties on remaining part of the applicant's plot amounting to *de facto* expropriation • Applicant's failure to take any measures to prevent or stop the adverse possession or illegal construction while still possible • Applicant's failure to apply for compensation under the relevant legal regime with respect of that part of the plot

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 December 2024

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 Ramaj v. Albania,

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

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

Having regard to:

the application (no. 17758/06) 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 Bashkim Ramaj ("the applicant"), on 23 April 2006;

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

the parties' observations;

Having deliberated in private on 19 November 2024,

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

INTRODUCTION

1. The application mainly concerns complaints under Article 1 of Protocol No. 1 to the Convention of the non-enforcement of a domestic judgment and administrative decision that were delivered in the applicant's favour and recognised his property rights over a plot of land.

THE FACTS

2. The applicant was born in 1942 and lived in Tirana. He was represented by Mr B. Çami, a lawyer practising in Tirana. The applicant died on 31 August 2015 when the proceedings were pending before the Court. By a letter of 7 March 2024, Mr Ramaj's representative informed the Court that the applicant's son, who was also one of his three heirs, Mr Eduart Ramaj, wished to continue the proceedings in his stead, and would retain the same representative.

3. The Government were represented by their then Agents Ms. S. Mëneri and Ms E. Hajro, and subsequently by Mr O. Moçka, the General State Advocate.

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

5. During the communist period a plot of land located in the area known as Uji i Ftohtë in the Vlora district and measuring 6,700 square meters (sq. m)

had been confiscated from the applicant's father for the establishment of an agricultural enterprise. In 1991, following the reorganisation of agricultural enterprises, the applicant's father was granted the right to use that plot. On 1 March 1993 a Council of Ministers' Decision designated the whole area where the plot was located as a touristic area.

6. On 18 October 1996 the Vlora Land Commission ("the Land Commission") restored the applicant's father's title to the plot in question by issuing a Land Acquisition Certificate (*Akti i marrjes së tokës në pronësi* – "AMTP").

7. Following the death of the applicant's father, six of his eight heirs relinquished their property rights over the land in favour of the applicant, granting him the ownership of seven out of eight parts of the property at issue.

8. The applicant first applied to register the plot of land in question in 1998. The Immovable Property Registration Office (*Zyra e Regjistrimit të Pasurive të Paluajtshme* – "the IPRO") in Vlora failed to register the land.

9. On 15 June 2000 the Land Commission annulled its decision of 18 October 1996 and, consequently, the applicant's father's ownership rights, on the ground that the applicant's father did not have such rights to the property in question.

10. On 18 November 2001 the Vlora IPRO confirmed that the documents pertaining to the applicant's first request for registration had been lost by its employees.

11. On an unspecified date in 2003 the applicant joined a civil action brought with the Vlora District Court ("the District Court") by third parties who contested the Land Commission's decision of 15 June 2000 in the parts that affected their property rights.

12. On 20 May 2003 the District Court allowed the third parties' claim but dismissed the applicant's claim against the Land Commission's decision as unfounded.

13. The applicant appealed against that decision. On 13 April 2004 the Vlora Court of Appeal ("the Court of Appeal"), deciding on the merits, allowed his appeal and quashed the Land Commission's decision of 15 June 2000 on the grounds of lack of reasoning and defaults in the procedure, and because it had not been approved by the majority of its members. The Court of Appeal's decision was not appealed against and became final. Therefore, the applicant's title to the plot of land was reconfirmed and the Land Commission's decision of 18 October 1996 became enforceable.

14. The Albanian Prime Minister issued Orders no. 45 and no. 93 concerning the property issues in the Uji i Ftohtë area on 9 February 2004 and 27 April 2004 respectively. Those Orders suspended any activities with property titles in the area, including their registration by the IPRO. It was also decided to conduct an administrative review of such titles. No information

has been provided to the Court as to the outcome or conclusions of that review.

15. On 22 December 2004 the District Court issued a writ of execution in respect of the Court of Appeal's decision of 13 April 2004 (see paragraph 13 above). On 6 April 2006 the Vlora Regional Land Commission ("the Regional Land Commission"), at the request of the bailiff's office, repealed its decision of 15 June 2000 and confirmed the restoration of the applicant's father's title. That decision included a statement that a copy of the decision was to be sent to the IPRO. Following that, the enforcement proceedings were terminated.

16. In the meantime, on 18 November 2004 the Central IPRO informed the applicant that a solution to the issue concerning his property would be determined once the Land Commission had concluded its review.

17. On 22 November 2004 and 30 December 2004 the Vlora Municipality confirmed that the applicant had submitted the relevant documents, including the AMTP, the relevant court decision, the inheritance certificate and the documents in which his father's heirs had relinquished their property rights in favour of the applicant.

18. Following a request by the applicant, on 14 August 2006 the Vlora IPRO informed him that the 2004 Court of Appeal decision and the 2006 Regional Land Commission decision concerning the registration of his property had been sent to the Central IPRO.

19. On 8 May 2007 the Central IPRO, in a letter addressed to the Albanian Ombudsman (*Avokati i Popullit*), stated that the transfer of titles in the area of Uji i Ftohtë had been suspended because of competing titles. It mentioned that a report had been drafted on the issue and that the applicant could not be provided with an ownership certificate until the issue had been addressed. It also informed the Ombudsman that all property transfers in the Uji i Ftohtë area had been suspended because of the existence of overlapping and conflicting title deeds issued for the same plots of land.

20. The applicant submitted a complaint to the Central IPRO about the situation, but on 4 November 2009 it informed him that his complaint was not complete.

21. On 23 April 2010 the Central IPRO informed the applicant of the start of an initial registration of properties in the area where his property was located. That procedure, which all immovable properties in the country would undergo after the fall of communism, would be considered a first registration. It would be based on legal documents and cartographic information already available to the IPRO's offices or provided by the owners.

22. On 26 May 2010 the Vlora IPRO informed the applicant that he should submit an application for the registration of his property together with a map of it (see paragraphs 29 and 31 below).

23. On 29 June 2010 the Ministry of Justice informed the applicant that he should submit an application to the Vlora IPRO.

24. On 16 March 2011 the Central IPRO informed the State Advocate's Office that the registration of the applicant's title had been suspended and that the applicant had been kept constantly informed about the situation with his property.

25. On 6 June 2011 the Central IPRO, in response to a query from the applicant, informed him that he was obliged to deposit the relevant documents with the local IPRO.

26. On 27 July 2011, the State Advocate's Office informed the applicant that the 2004 Court of Appeal's decision had been executed when the Land Commission had issued its decision in 2006. As to the registration of his property, any action in that respect had been suspended.

27. On 28 August 2011 the Vlora IPRO required the applicant to present himself at its premises to provide further information, which he did.

28. On 13 April 2012 the Vlora IPRO informed the applicant that the initial registration of property in the area where his property was located was in progress, and that the relevant documents concerning his property which the applicant had submitted to the Land Commission would be forwarded to the relevant authorities.

29. On 20 April 2012 the applicant submitted another application for the registration of his property to the Vlora IPRO, together with a map of the property.

30. On 17 May and 18 June 2012 the Vlora IPRO informed the applicant that he was required to submit a formal application for the registration of his property (see paragraph 29 above, and paragraph 31 below).

31. On 5 September 2012, the applicant submitted a new application for the registration of his property to the Vlora IPRO, together with a map of the property. He also paid the application fee again.

32. On 6 September 2012 the Vlora IPRO forwarded the applicant's request of 20 April 2012, including the relevant documents, to the designated company responsible for the initial registration of the properties in the area.

33. On 3 November 2012 the Vlora IPRO informed the applicant that his title would be registered once the initial registration process had been completed (see paragraphs 41 and 50 below). It further stated that the documents had already been submitted by the Regional Directory for the Administration and Protection of the Land. No request for further documents was made to the applicant.

34. On 1 June 2015, the Vlora IPRO informed the applicant that his property overlapped with eight other properties registered to private parties. The overlapping properties consisted of agricultural land, two olive groves and residential land (*truall*). Four of the properties, consisting of 1,542.3 sq. m, which had been registered based on Law no. 9482/2006 on the legalisation of informal constructions, also overlapped with other properties belonging to third parties that had been registered pursuant to a decision of the Commission for the Restitution and Compensation of Property dated

15 January 2008. There is no information in the case file as to the precise extent of the overlap between those properties and that of the applicant, or the extent to which they overlap with each other. The Government did not provide any submissions on the procedures employed for those registrations, when they occurred or the origin of the registered titles.

35. On 16 October 2015 the State Advocate's Office informed the applicant that it had required the Central and Vlora branches of the IPRO to speed up the registration of his property.

36. On 12 December 2015 the Vlora IPRO informed the applicant that his title to the property had not been registered after the initial registration of the properties in the area was concluded. It further requested him to submit a map of his property.

37. On 22 December 2022, in response to further questions posed by the Court, the applicant's representative replied that the applicant had not taken any legal action against third parties seeking the cessation of any infringement of his property rights or to regain possession of his property.

38. In its latest letter of 6 January 2023, the IPRO reiterated its previous argument that the applicant's title had not been registered because there already were registered titles concerning the plot of land in question, without providing any additional information.

RELEVANT LEGAL FRAMEWORK AND PRACTICE AND INTERNATIONAL MATERIALS

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

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

Article 41

"1. The right of private property is guaranteed.

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, are permitted only in return for fair compensation."

Article 42 § 2

"In order to protect their constitutional and legal rights, freedoms and interests, or when an accusation has been made against them, everyone has the right to a fair and public trial, within a reasonable time, by an independent and impartial tribunal established by law."

Article 142 § 3

"State bodies shall comply with judicial decisions."

B. The Civil Code

40. The relevant parts of the Albanian Civil Code read as follows:

Article 83

"For a transfer of ownership and rights *in rem* over immovable property to be valid, the transaction should be carried out by notarised deed and be registered."

Article 192

"Contracts which create, alter, transfer, or revoke property rights over immovable property must be entered in the land register."

Article 193

"The following must be registered in the land register:

...

dh) Court decisions or the decisions of State authorities that include the granting or recognition of titles to immovable property, the division of immovable property, the annulment of legal acts transferring previously registered ownership, as well as any orders of bailiffs' offices for the seizure of immovable property or its sale by auction."

Article 197

"The following must also be registered:

...

b) Proceedings for the acquisition, recognition, modification or termination of property rights or other rights *in rem* over immovable property;

..."

Article 296

"The owner has the right to bring an action to reclaim his property from anyone who possesses it. Each co-owner has the same right concerning common property, in order to have it restored to all co-owners."

C. The Land Act (Law no. 7501/1991), as amended by Laws no. 7715/1993 and no. 7855/1994

41. The relevant parts read as follows:

Section 3

"Agricultural land is given into ownership or in use to local legal or natural persons without compensation."

Section 5/a

"The Village Land Commissions submit the documentation relating to the land allocation to the district's cadastral section in accordance with the specified provisions and criteria."

Section 10

"Land whose ownership or use is transferred to any legal or natural person shall be registered in the cadastre.

Also, any changes made after the initial registration shall be registered in the land cadastre."

D. Law no. 8053/1995 on agricultural land

42. The purpose of this Law was to regulate the free transfer of agricultural land to agricultural families or individuals who were already making use of it. Land situated in tourist areas was excluded, except in cases where land belonging to families had been used for the establishment of state farms during the communist regime.

E. Law no. 9948/2008 on the review of the legal validity of titles to agricultural land

43. Law no. 9948 was adopted in 2008 in order to respond to perceived abuses and inconsistencies that had occurred in the original process whereby the land commissions had granted AMTPs. The law's scope was to undertake a thorough review of the "validity" of titles so acquired. The authorities in charge of conducting the review were newly created local commissions for the evaluation of titles.

44. In accordance with section 4 of the law, the transfer of agricultural land should be effected only *via* the issuing of an AMTP.

45. Only titles created in accordance with the relevant legal provisions were to be considered as valid. The Law provided for procedures for reviewing any title that had not been issued in accordance with it and the consequences thereof. The reviewing process was scheduled to be completed on 31 December 2019.

46. In those cases where, after the evaluation of the documents, it was assessed that the title to the agricultural land had been issued in breach of the Law, the local commission for the evaluation of titles decided whether the title was invalid wholly or in part (section 9(1)). The local commission would then initiate court proceedings requesting the annulment of the relevant AMTP (section 10).

F. Immovable Property Registration Legislation

1. *Law no. 7843/1994 on the registration of immovable property*

47. This Law created local registration offices in each administrative district, as well as a central registration office. The Law provided for the registration of immovable property, which was carried out by the local IPROs (section 2 of the Law). It delegated the registration of all contracts related to the transfer of property rights (section 2(c)) and the issuance of certificates of ownership (section 5(a)) to the local IPROs.

48. After an immovable property was registered, any further transaction would have to be registered in accordance with the legal requirements. That registration would give the owner the right to dispose of the property (section 9).

49. The priority in registration of multiple titles or claims to a property was to be determined by the chronological order in which the registration requests were submitted, regardless of when they had been drafted (section 10) – "first come first registered" (*"përparësia e regjistrimit përcaktohet në varësi nga radha e paraqitjes"*).

50. Section 24 laid out the procedures for the initial registration of properties. "Initial registration" was the first registration of the immovable property in accordance with the Law and the Civil Code (section 1). All properties in the country were subject to initial registration. The Law did not provide any timeframe for such registration. Title to and the boundaries of a property were determined in deeds issued under the Land Act, the Privatisation Act, the Compensation and Restitution Act or a court decision. Any individual wishing to register his or her property title had to lodge a request with the relevant IPRO and provide the relevant documents. Provisional registration was carried out until the initial registration phase had been finalised.

51. Section 27 provided for the procedures to be followed when there were competing claims to the same property. However, it stated that if the issue had been resolved by a final court decision, the IPRO should refrain from further actions. The IPRO had an obligation to enter a note in the Immovable Property Register concerning the overlapping claims.

52. Section 38 stipulated that if a physical person acquired title to an immovable property on the basis, *inter alia,* of a court decision, he or she should be registered as its owner upon request.

2. *Law no. 33/2012 on the registration of immovable property*

53. This Law repealed Law no. 7843/1994. Under section 37 priority in the registration of immovable property did not change from previous Law (see paragraph 49 above) and was determined by the time the documents were presented to the registry, regardless of their drafting date. The IPRO could

not accept a new registration request in respect of a property, title to which had already been registered by a third party. When there was overlap with an existing title, the IPRO, by a reasoned order, could refuse to register the part of the property concerned until the issue was resolved through judicial proceedings. The IPRO had to provide guidance to the individual concerned in relation to the judicial resolution of his or her issue.

3. Law no. 111/2018 on the Cadastre

54. This Law repealed Law no. 33/2012 and is currently in force. It established the State Cadastre Agency ("the Cadastre"), which replaced the IPRO and the Legalisation Agency (section 67(3)).

55. Section 24(4) provides that the Cadastre should refuse to register any transfer of ownership that has no chronological continuity and that could create an overlap with another property.

56. If inaccuracies affecting a large number of properties are identified in the cadastral map, the Cadastre must, either *proprio motu* or upon the request of an interested party, undertake the improvement of the relevant cadastral zone register (section 35).

57. Under section 37 the improvement of the register should be implemented in two steps. The first should include the review and adjustment of the cadastral maps with the relevant titles and the factual situation of the properties. During the second step it should be assessed whether the title deeds match with the situation in practice. The local cadastre office is responsible for correcting any possible mistakes and other minor inaccuracies in the cadastral documents for any title created by a public authority before the Law came into force.

58. The registration of a transfer of title to an immovable property, based on a final judicial decision or a decision of an administrative authority, is carried out after verifying the submitted documents and that the relevant procedures laid out in sections 24 and 25 of the Law and Article 193 of the Civil Code have been complied with. Otherwise, the registration request will be denied. A claim may be brought against such a decision (section 47) before the administrative courts.

G. Law no. 20/2020 on the finalisation of transitional property processes

59. Two of the Law's main objectives are: the finalisation of the registration of all titles granted to agricultural land (section 2(1)(a)) and resolving issues arising from overlapping titles (section 2(1)(dh)). Such overlaps arise from, for example, errors in the cadastral maps or the existence of two or more titles to the same property.

60. Section 4(2) gives the definition of an AMTP, a Land Acquisition Certificate, which is a type of administrative act that was issued before the

entry into force of the Law and that aimed at transferring ownership of state-owned land to private parties in accordance with legal provisions.

61. The Law undertakes to consolidate the legal relationship between title deeds originating from previous laws or by-laws (section 6(1)(a)).

62. Under section 8, the Cadastre's duty will be to assess competing titles and register only one of them. If the legal conditions for registration are not met, the Cadastre must notify the persons to whom the AMTP was granted and request them to provide any relevant documents within 45 days. Afterwards, within thirty days, a decision will be made to register the property, or a non-compliance report will be drafted. A decision not to register should be reasoned and recorded in the land register, including in cases involving property claims based on an AMTP. Such a decision does not affect the validity of the title, and any interested party has the right to raise any ownership claims before the courts to determine which title has priority in registration.

63. Under section 11(2)(b), a title must not be registered if it is in conflict with a final court judgment issued before the law entered into force. The Cadastre must refuse registration, pursuant to section 24(4) of Law no. 111/2018, if a final judgment granting title to the requester has not resolved a conflict with other valid titles to the same plot and the overlap cannot be resolved administratively. The refusal to register has no effect on the validity of the title. All interested parties have the right to raise their claims before the courts.

64. Under section 12(2)(ç), no valid title can be transferred if there are unlawful [unauthorised] constructions on the property. If only part of the plot is occupied by such constructions, the transfer of ownership to the original owner applies only to the remaining part.

65. Owners whose property has been occupied, in whole or in part, by legalised unlawful constructions should be compensated based on property value maps (section 24(1)). Such plots will be treated as residential land ("*truall*") for the purposes of compensation (section 24(2)). In cases where there is a dispute over the ownership of a plot of land, the compensation value is approved without specifying the beneficiary. The compensation is then deposited into a bank account and will be made available to the beneficiary after the dispute is resolved *via* a court decision.

66. The Cadastre has the authority to check if any overlapping titles have been caused by errors in the maps, or by any other clerical error (section 64). Any measure taken by the Cadastre to fix such errors cannot in any way violate the property rights of the owners of neighbouring plots (section 65(2)).

II. RELEVANT INTERNATIONAL MATERIALS

A. Venice Commission Opinion

67. Further to a request for an opinion on the compatibility of draft Law no. 20/2020 on the finalisation of transitional ownership processes with the standards enshrined in the Convention and the case law of the Court, which was made by the Speaker of the Albanian Parliament on 10 May 2019, the European Commission for Democracy through Law ("the Venice Commission") adopted a final opinion on 11 and 12 October 2019.

68. The Venice Commission concluded, *inter alia* (references omitted):

> "6. Property rights in Albania constitute one of the most complicated issues after the change of the regime in 1990, hampering the [country's] economic development. The legal framework is at best characterized as fragmented, complex and incoherent. Immovable property cases have flooded domestic courts as well as the European Court of Human Rights. This influx continues.
>
> 7. Most of the problems, which Albania faces currently in the field of property rights have their origin in the first laws adopted in the early 90's of the previous century. The process regarding immovable property did not start with restitution of original owners unlike in other countries. Instead Albania follows the principle of 'lawfulness of fact'. ... The Law No. 7501/1991 "On Land" [the Land Act] foresaw the allocation of agricultural land under state's ownership to individuals and legal persons, other than the original owners to whom the land belonged before the communist regime. In practice this meant that the usage of the land was given to the families sitting on it (about 500,000 family farms, separated into nearly 2 million parcels), instead of the former landowners regaining it. As a result, the soil follows the usage and the former owner should have been compensated with other land or financially as provided for in different laws. In fact the distribution of the land of the so called 'cooperative farms' did not follow 'usage' – it was done on list of members, some of whom left the villages long ago and others never intended to 'use' it and do farming. Later, a similar, controversial legalisation/expropriation procedure had been applied after to regulate the situation of people having occupied land, sometimes by force, and had building on it.
>
> ...
>
> 16. During the visit, the delegation of the Venice Commission received information that these different laws appear to have been implemented in an often inconsistent manner resulting in legal uncertainty for all stakeholders, including municipalities, making it difficult for the legislature to find appropriate solutions without violating individual rights.
>
> ...
>
> 26. The new draft law is an initiative of the Albanian Government and aims to provide effective legal instruments for resolving a remaining set of problems related to property rights on immovable properties and registration issues, which have dominated the country's socio-economic development for three decades as summarised above. According to the parliamentary report, the new draft law 'aims to find solutions to all those undealt [with issues] and pending situations, because proceeding with the current framework is impossible (either because of the legal vacuum or due to legal preclusive

provisions, which only identify problematic issues, without setting out the way they shall be dealt with).'

...

57. In view of the detailed analysis provided above the Venice Commission underlines that the agricultural titles issued and referred to as AMTPs, whether registered or not constitute protected possessions under Article 1 [of] Protocol [No.] 1 to the ECHR.

...

63. According to the parliamentary report the need to draft and propose the draft law has arisen as a result of noticing weaknesses both in material and procedural aspects of the current legal framework and in the institutional structure. The purpose of the draft law is to create a simplified and harmonized legal basis for the completion of administrative processes for the treatment of state and private immovable property within a 10-year-term and thus to achieve legal certainty within a reasonable time. This aim seems to be legitimate.

...

72. The Venice Commission acknowledges the need for consolidation of the fragmented legal framework. During its visit to Tirana the delegation of the Venice Commission received a lot of information on the lack of reliable cadastral maps, archives burned, lost, improperly maintained, boundaries of parcels not identified and on deficiencies in AMTPs as to form, content, undefined geographical position, overlaps that is 2 or more owners on whole or on part of a parcel including for parcels classified as state [property], AMTPs having been issued for very small parcels, as well as for territory not used and not usable for farming (sand, rocks), and 200 – 300 year old buildings for which there is neither legal documentation [proving] ownership nor technical [or] cartographic identification."

69. The Venice Commission concluded that the draft law lacked clarity and precision owing to a lack of definitions, the far-reaching regulatory power it gave to the Council of Ministers, and a lack of basic procedural steps and clearly defined deadlines for title holders. It argued that, in particular, sections 7 and 9 of the draft law were inherently unclear and imprecise and therefore bore a high risk that their implementation would lead to infringements of the Convention, in particular under Article 1 of Protocol No. 1 and Articles 6, 13, and 14. The final version of the law underwent several changes based on those conclusions.

B. Commentary on Law no. 20/2020 on the finalisation of transitional property processes in the Republic of Albania, Council of Europe Office in Tirana, June 2021

70. The relevant parts read as follows:

"The agricultural land registration process has been characterised by material, procedural and bureaucratic problems. Problems of a material nature are related to the issuance over the years of titles that overlap or where there is a fundamental discrepancy with the factual situation. These hardships have become more difficult because of procedural and bureaucratic obstacles that have hindered the finalisation of the process or the registration of titles. Law 20/2020 aims to address that process through simplified

procedures, dealing with procedural and bureaucratic obstacles, while also finding solutions to the material conflicts over titles (page 41). ...

The question is how to act in cases where there are parallel titles to certain plots of agricultural land, granting different owners [rights to] the same or overlapping plots of land. None of the criteria or principles established in sections 3 and 6 of the law provide a direct answer to this question. ... Consolidation is the result of a process in which different claimants to a property are involved in a registration process that is concluded with the registration of only one title and the refusal to register other titles that do not meet the legal criteria for registration. This paves the way for the parties to turn to the courts for the resolution of the parallel claims over the same property or leads them towards a compensation process when applicable (page 42)."

III. OVERVIEW OF RELEVANT DOMESTIC JUDICIAL PRACTICE

A. The Supreme Court's case-law

71. The Supreme Court's unifying decision no. 1 of 6 January 2009 provided that the registration of a transfer of ownership of a plot of land in the land register was declaratory in nature and that a failure to register such a transfer did not render it invalid. However, failure to register the transaction in the land register meant that the buyer could not transfer that property to another party and could entail a risk of fraudulent transfers.

72. In decision no. 120 of 26 February 2015, the Supreme Court considered appropriate the IPRO's decision not to register the transfer of ownership of a plot of land based on a sales contract. It held that every administrative authority had the power to verify whether a legal action or administrative act fulfilled the necessary criteria under the relevant legal provisions. State authorities should not perform an action or take a decision based on an absolutely invalid legal act. In such cases there was an obligation to establish, even *proprio motu*, the absolute invalidity of such an act and not continue further with the relevant administrative proceedings by refusing to perform the administrative action or issue the administrative act. In that case the Supreme Court noted that the IPRO's refusal could then be challenged in legal proceedings.

73. In decision no. 116 of 4 April 2023 the Supreme Court held that in order to facilitate the bringing of court actions to resolve disputes involving overlapping titles, a clear identification of the properties and the relevant titles was necessary. The Supreme Court held that it was the Cadastre's duty not only to confirm the existence of such an overlap, but also to define the relevant property with all its identifying elements. That information was crucial not only to show that there had been no arbitrariness on the part of the public authorities, but also to provide the potential plaintiff with the opportunity to bring the proper legal proceedings.

74. In a more recent decision, namely no. 128 of 28 March 2024, the Supreme Court dismissed proceedings seeking an injunction to force the Cadastre to register the plaintiff's property and provide her with a deed,

holding that the Cadastre office could not assess property rights, verify how ownership had been acquired, correct a title or create a new one. When individuals seeking the registration of land have any claims concerning overlapping titles or the ownership of the property, those claims must be addressed *via* legal proceedings. Only after a court had established the merits of the claim concerning a property right could the parties apply to the Cadastre for the registration of the title.

B. The Constitutional Court's case-law

75. The Constitutional Court, in its decision no. 17 of 23 April 2010, found that the deletion of a registered title by an administrative authority [the IPRO], without fair judicial proceedings, could significantly infringe the right of property and violate the principle of legal certainty.

76. In its decision no. 1 of 21 January 2016, the Constitutional Court held that the IPRO's refusal to register a title as ordered by a final court decision amounted to a violation of the right to a fair trial guaranteed under Article 42 of the Constitution. That court found that requiring the title holder to initiate another judicial or administrative process [against the IPRO or a third party] would put an excessive burden on the title holder in realizing her right of property and its effective exercise. For that reason, it was the authorities' duty to find the right tools to guarantee the execution of the court decision and not to present obstacles or reasons for their failure to register the property in the name of the party concerned.

THE LAW

I. LOCUS STANDI

77. The Court takes note of the death of Mr Bashkim Ramaj after the introduction of the present application, and of the wish expressed by his son to continue the application before the Court in his stead (see paragraph 2 above).

78. The Government did not oppose his wish.

79. The Court accepts that the late applicant's son has a legitimate interest in pursuing the application (see, for example, *Şamat v. Turkey*, no. 29115/07, § 43, 21 January 2020). For practical purposes, reference will still be made to the applicant throughout the ensuing text.

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

80. The applicant complained under Article 1 of Protocol No. 1 to the Convention of an interference with his property rights because of the non-

enforcement of the Court of Appeal's decision restoring his title to the 6,700 sq. m plot of land. He maintained that he had never been in real and effective possession of his property in view of the refusal to register his title by the IPRO. Article 1 of Protocol No. 1 reads as follows:

> "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. Whether the applicant had a possession within the meaning of Article 1 of Protocol No. 1

(a) The parties' submissions

81. In their first observations to the Court in 2008 the Government submitted several arguments as to why the applicant's title was unlawful, seeking thereby to justify the authorities' refusal to register it. They contended that the domestic courts had not had an opportunity to assess whether the applicant had met the legal criteria to obtain restitution of the land in question.

82. The applicant contested the Government's view, submitting that under the relevant domestic laws his title was legitimate and unchallenged. Thus the 2004 Court of Appeal decision and the 2006 decision of the Regional Land Commission had confirmed that the title was valid and enforceable.

83. The applicant argued that, although there had been no need for a second decision from the Regional Land Commission, the fact that such a decision was issued in 2006 only further confirmed the legitimacy of his property rights to the plot of land in question. Nevertheless, the State authorities had not taken any action to ensure the execution of the Court of Appeal's decision and had failed to register the applicant's title in the land register.

(b) The Court's assessment

84. The Court considers that these arguments concern the issue of whether the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1. 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 reason exists in the present case.

85. Article 1 of Protocol No. 1 protects "possessions" which can be either "existing possessions" or certain other rights and interests constituting assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. It does not, however, guarantee the right to acquire property (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

86. The Court observes that Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).

87. On the other hand, once a Contracting State, having ratified the Convention, including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement (see *Kopecký*, cited above, § 35).

88. As to the present case, the Court notes that the property at issue was returned to the applicant's father in 1996 by the Land Commission. That title was then confirmed by a final decision of the Court of Appeal in 2004. The Court further notes that after twenty years the Court of Appeal's decision has not been challenged in any way and is, therefore, final. The Court is unable to agree with the Government's assertion that no domestic court had assessed the validity of the title. No State authority or any third party has ever brought any proceedings to challenge the applicant's title to the relevant plot or the lawfulness of the original restitution ; and the court judgment of 13 April 2004 and the 2006 decision of the Regional Land Commission remain valid to this date (see *Jasiūnienė v. Lithuania*, no. 41510/98, § 30, 6 March 2003).

89. The Court notes that the applicant was never registered as the owner of the plot of land in question in the land register; he also claims that he never came into possession of the land. However, under domestic law a lack of registration in the land register does not affect the validity of the title as such (see paragraphs 40 and 71 above). Moreover, in the course of the registration procedure initiated by the applicant, the IPRO has never disputed the validity of his title to the plot of land, but found that, for various reasons provided at different times, its registration was not possible.

90. In view of the Land Commission's decision of 1996 and its confirmation by a domestic court in 2004, and irrespective of the fact that the applicant did not register the title and did not enter into physical possession of the disputed plot of land, the Court considers that he has a property claim with sufficient basis to be enforced, which constitutes a possession under Article 1 of Protocol No. 1 to the Convention (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B;

Pincová and Pinc v. the Czech Republic, no. 36548/97, § 44, ECHR 2002-VIII; *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Străin and Others v. Romania*, no. 57001/00, § 38, ECHR 2005-VII; and *Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, § 179, 1 July 2014).

2. Exhaustion of domestic remedies

(a) The parties' arguments

91. The Government invited the Court to declare the complaint inadmissible for non-exhaustion of domestic remedies as regards the failure to enforce the Court of Appeal's decision and the failure to register the applicant's ownership. They argued that the authorities could not be held responsible for the non-enforcement of the above-mentioned decision because its execution had depended on the applicant taking the appropriate steps, namely bringing an action against the IPRO seeking the entry of his title in the land register and appealing against the bailiff's decision to close the enforcement proceedings.

92. The applicant contested the Government's arguments and submitted that he had exhausted all the domestic remedies available to him.

(b) The Court's assessment

(i) General principles

93. The general principles concerning exhaustion of domestic remedies have been summarised in the cases of *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69-77, 25 March 2014, 25 March 2014) and *Gherghina v. Romania* ((dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015). In particular, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. That means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the applicant's personal circumstances. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII). The only remedies that must be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient (see *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Vučković and Others*, cited above, §§ 73 and 74, with further references).

The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, in particular, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).The availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law. Such case-law must in principle be well established and date back to the period before the application was lodged, subject to exceptions which may be justified by the particular circumstances of the case (see *Gherghina*, cited above, § 88, with further references).

(ii) Application of these principles to the present case

94. The Court observes that in previous cases it has dismissed non-exhaustion arguments similar to those raised by the Government in the present case (see *Jasiūnienė v. Lithuania* (dec.), no. 41510/98, 24 October 2000).

95. The Court considers that the remedies suggested by the Government – namely, the applicant (i) bringing an action seeking the registration of his title by the IPRO, or (ii) appealing against the bailiff's decision to terminate the enforcement proceedings – cannot be regarded as capable of being effective in respect of the complaint at hand for the following reasons. For over two decades, even after the application was brought to the Court, the IPRO provided the applicant with different and at times conflicting reasons for not registering his property: the Prime Minister's suspension orders, the fact that the initial registration of titles in the cadastral zone had not been completed, or the existence of overlapping titles (see paragraphs 14, 33 and 34 above). It was only in June 2015, some 17 years after the applicant's original request for registration of his title, that the cadastral authorities provided him with only basic details about the overlapping titles, conflicting registrations and informal constructions on his land (see paragraph 34 above). The Court is therefore not satisfied that any fresh proceedings brought against the IPRO would have guaranteed registration of the applicant's title. Furthermore, the failure to provide the applicant in a timely fashion with sufficient details about any competing claims or registration of titles to the same plot of land prevented him from bringing adequate legal action against the IPRO or any third parties who did not exercise obvious and adverse possession over parts of his property. So did the lack of a transparent and reasoned refusal of registration by the IPRO.

96. Furthermore, having regard to the specifics of the final decision by the Court of Appeal and the bailiff's inability to secure the registration of the title in the applicant's favour, it is unlikely that an appeal against the bailiff's decision to terminate the enforcement proceedings would have been capable

of remedying the situation. The Court notes that some of the reasons that rendered registration impossible in the applicant's case were of a structural nature (see paragraphs 68 above and 135 below) and affected a large area where land restitution decisions were challenged or deemed questionable by the authorities.

97. The Court lastly notes that a certain amount of uncertainty remains in the domestic system as to the nature of the remedies to be exhausted in circumstances such as those of the present case: while the Constitutional Court has adopted the position that a title-holder seeking cadastral registration on the strength of a final court judgment is not required to bring any additional proceedings, national legislation and practice appear to allow the cadastral authorities to refuse court-ordered registration in certain circumstances (see paragraphs 58, 63, 68 and 71-76 above). While the Constitutional Court has urged the authorities to seek alternative solutions in situations of competing titles or cadastral registrations, it remains unclear what those alternative arrangements ought to be.

98. It should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Broniowski v. Poland* [GC], no. 31443/96, § 151, ECHR 2004-V).

99. In the light of the above, the Court considers that the Government have not shown that the remedies referred to were adequate or effective in the particular circumstances of this case. They were not able to show how those remedies would have provided the applicant redress for the failure to register his title. Therefore, the Government's objection of non-exhaustion of domestic remedies must be dismissed.

(c) Conclusion as to admissibility

100. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

101. The applicant claimed that the longstanding refusal by the relevant authorities to register his title in the land register amounted to an interference with his property rights, and that after more than twenty years his rights under Article 1 of Protocol No. 1 had still not been enforced. Furthermore, he maintained that for as long as his title was not registered in the land register,

he could not exercise his ownership rights and could not effectively take possession of the plot of land at issue.

102. The Government proffered various reasons at different times for the non-enforcement of the applicant's title: the alleged unlawfulness of his title, the need to undertake an initial registration of land in the cadastral area, the suspension orders of the Prime Minister, and the overlap between the registered titles of multiple third parties to the same plot of land.

2. The Court's assessment

(a) General principles

103. Article 1 of Protocol No. 1 comprises 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 Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *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).

104. The essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions. However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take the measures necessary to protect the right of property (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII, with further references), especially where there is a direct link between the measures applicants may legitimately expect from the authorities and their effective enjoyment of their possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII).

105. The boundaries between the State's positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition (see *Broniowski*, cited above, § 144).

106. Whether the case is analysed in terms of a positive duty of the State or in terms of interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. It also holds true that the aims mentioned in Article 1 of Protocol No. 1 may be of some relevance in assessing whether a fair balance between the demands of the public interest involved and the applicant's fundamental right of property has been struck. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (ibid., § 144).

107. The Court has to determine – regardless of whether the conduct may be characterised as an interference or as a failure to act, or a combination of both – if the prejudice sustained by the applicant was justifiable in the light of the relevant principles. The assessment of proportionality requires an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective" (see *Beyeler v. Italy* [GC], no. 33202/96, § 114, ECHR 2000-I). Furthermore, in each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate burden (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII). That assessment also includes the nature of the interference, the conduct of the applicant and that of the State authorities (see *Perdigão v. Portugal* [GC], no. 24768/06, § 68, 16 November 2010, and *Szkórits v. Hungary*, no. 58171/09, § 40, 16 September 2014).

108. In examining the conformity of the justifications presented by the Government with the Convention, the Court reiterates the particular importance of the principle of "good governance". It requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as property rights, the public authorities must act in good time and in an appropriate and, above all, consistent manner (see *Beyeler*, cited above, § 120; *Öneryıldız*, cited above, § 128; *Megadat.com SRL v. Moldova*, no. 21151/04, § 72, ECHR 2008; and *Moskal v. Poland*, no. 10373/05, § 51, 15 September 2009). In particular, it is incumbent on the public authorities to minimise the risk of mistakes and make sure that errors are not remedied in a way that places disproportionate burdens on the individuals concerned (see, for example, *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010, and *Toşcuţă and Others v. Romania*, no. 36900/03, § 37, 25 November 2008).

(b) Application of these principles to the case at issue

109. The first issue to be addressed is the precise nature of the interferences with the applicant's rights over the relevant plot of land, which

fall into two distinct categories. The Court notes, firstly, that cadastral registration in the Albanian legal system is not a condition for the validity of title to immovable property, or for obtaining possession of the same, contrary to the applicant's claims (see paragraph 80 above). Conversely, registration is necessary to enable alienation of the property and other transactions with third parties, although the applicant has not claimed that he has been unable to carry out any particular transaction. At the same time, it is clear that the prolonged refusal by the cadastral authorities to register the applicant's title has undermined the security of the title and the applicant's undisturbed enjoyment of his possessions, in particular by allowing the registration of competing claims by third parties to the same plot of land while the applicant's request for registration was persistently refused. The Government have not provided any details as to the circumstances and chronology of those third-party claims, or the reasons why those claims have been granted priority by the cadastral authorities over the applicant's longstanding requests for registration of his title, yet it is not disputed that competing registrations have been entered into the land register.

110. Secondly, it appears that a number of informal, unauthorised constructions have been erected by third parties over the years on the applicant's plot. In order to determine whether there has been a deprivation of possessions within the meaning of the second rule by such constructions, the Court must not confine itself to examining whether there has been dispossession or formal expropriation, but must look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are "practical and effective", it must be ascertained whether that situation amounted to a *de facto* expropriation (see the *Sporrong and Lönnroth*, cited above, § 63, and *Carbonara and Ventura v. Italy*, no. 24638/94, § 60, ECHR 2000-VI). The applicant has taken no legal action to challenge such adverse possession and has provided no convincing explanation for his failure to do so. Be that as it may, it has been the choice of the Albanian legislature to prioritise the *de facto* claims of persons seeking to legalise informal constructions over the interests of the owners of agricultural land in the same position as the applicant, who are to obtain financial compensation instead. In particular, under section 12(2)(ç) of Law no. 20/2020, it appears that registration of the applicant's title to those parts of the property that have been illegally occupied by third parties is no longer possible, and that once legalised, ownership of the occupied plots has been or will be transferred to the owners of the informal constructions. As a result, those parts of the applicant's land have been effectively expropriated and he is in principle entitled to seek compensation under domestic law. The Court will address the two types of interference in turn.

(i) Overall impact on the enjoyment of possessions

111. Given that the Court of Appeal's decision confirmed the applicant's title and that, therefore, he had an enforceable claim deriving from that decision, which was never executed, the circumstances of the present case can be examined in terms of an interference falling under the first sentence of the first paragraph of Article 1 of Protocol No. 1 laying down the principle of peaceful enjoyment of property in general terms (see *Sabin Popescu v. Romania*, no. 48102/99, § 80, 2 March 2004, and *Ramadhi and Others v. Albania*, no. 38222/02, § 77, 13 November 2007). On the other hand, given that the reasons provided by the Government for the failure to register the applicant's title refer also to structural issues related to the registration of the titles within the broader area in which the property is located, and indeed at the national level, the applicant's situation can also be construed as originating in the authorities' failure to keep sufficiently accurate registers and to guarantee appropriate legal procedures for the registration of the immovable properties. Although the fact that the applicant's title to the property was not registered in the land register does not constitute an obstacle for possession, the Court notes that the registration of third parties' competing titles to the plot of land in question has seriously affected the security of the applicant's title.

112. In the present case, the applicant's main submission is that the respondent State, having conferred on him an entitlement to a property, subsequently made it impossible, through its repeated and prolonged obstruction and inaction, for him to benefit from that entitlement. The facts of the case, therefore, may well be examined in terms of a hindrance to the effective exercise of the right protected by Article 1 of Protocol No. 1 and a failure to secure the implementation of that right.

113. Having regard to the particular circumstances of the present case, the Court considers it unnecessary to strictly categorise its examination as being under the head of the State's positive obligations or under the head of the State's negative duty to refrain from an unjustified interference with the peaceful enjoyment of property. The Court will determine whether the conduct of the Albanian State – regardless of whether that conduct may be characterised as an interference or as a failure to act, or as a combination of both – was justifiable in the light of the arguments advanced by the Government.

(α) Overlapping titles and faulty cadastral maps

114. One of the main reasons put forward by the Government for the refusal to register the applicant's title related to the existence of competing claims to the same plot of land, despite the fact that the applicant's title does not appear to have been challenged by any third party. The Court notes that overlapping titles appear to be a persistent and continuous problem in the

process of restitution of properties expropriated by the communist regime, caused in part by different authorities granting title deeds to different parties on the basis of the same or different legal frameworks (see paragraph 68 above).

115. The Court has dealt with similar issues in the case of *Preda and Others v. Romania* (nos. 9584/02 and 7 others, §§ 134-40, 29 April 2014) where it found that although the mechanism established by a newly introduced law provided a set of effective remedies for various types of circumstances, it did not contain any provisions of a procedural or substantive nature capable of affording redress in situations in which final judgments existed validating concurrent titles with respect to the same residential property. That particular conclusion was reaffirmed in the cases of *Dickmann and Gion v. Romania* (nos. 10346/03 and 10893/04, §§ 103-04, 24 October 2017) and *Văleanu and Others v. Romania* (nos. 59012/17 and 27 others, § 222, 8 November 2022). In the latter and most recent case, the Court noted that the national authorities had previously been made aware that the existence of concurring and valid claims in respect of the same property, for which titles had already been issued to third parties in highly contentious proceedings, was problematic and at odds with the principles of protection of property and of legal certainty.

116. Another factor that has contributed to the problem is the existence of faulty cadastral maps, which remains a challenging issue in Albania despite efforts that have been made for a final and conclusive registration of land (see paragraphs 68 and 70 above). The cadastral maps had not been kept accurately and contained mistakes, including parallel records concerning the same plot of land, as in the situation with the applicant's plot. While the Court has not been provided with relevant information as to the circumstances of the competing third-party claims in the present case, it notes the general findings of the Venice Commission as regards the lack of reliable cadastral maps, which list several causes for this situation (see paragraph 68 above). One of the main tasks of the newly established State Cadastre Agency was to create and administer a national cadastral register in which all titles had to be registered (see paragraph 54 above).

117. Law no. 7843/1994 on the registration of immovable property provided for a modern, parcel-based registration system, comprising both legal documents and cartographic information. Nevertheless, owing to the lack of a nationwide effort aimed at systematic first registration, the initial registration process took a long time to be completed and many of the records produced subsequently proved to be unreliable and in need of correction (see paragraph 68 above), thus contributing extensively to issues around property registration. Judging by the IPRO's replies to the applicant, the delays in carrying out the initial registration process in the area where his land was situated was one of the main reasons for the failure to proceed with his title's registration.

(β) The suspension orders of the Prime Minister

118. The initial refusal of the Vlora IPRO to register the applicant's title was allegedly based on the Orders issued by the Prime Minister (see paragraph 14 above) concerning verifications to be carried out by the executive on all title deeds and property registrations in the Uji i Ftohtë area, in which the applicant's land was located.

119. The Court notes that there is no evidence that those Orders, or any assessments or findings based on them, were ever communicated to the applicant so that he could bring proceedings in connection with them. The Government have not presented the Court with any written document resulting from the administrative proceedings in question, although the authorities used them as an argument to justify the refusal of the applicant's request for registration of his property for several years. The Court further notes that the registration of other competing titles to the same plot of land during the same period, some of which appear to also overlap with each other, suggests that the suspensive effect of the Prime Minister's Orders in question was not consistently applied.

120. The Court finds that the issuance of the Orders of the Prime Minister, which apparently had a suspensive effect on court judgments and other binding decisions, without the Government providing a clear legal basis and with a lack of transparency for the affected parties, is a cause for serious concern and could not serve as a plausible justification for the non-enforcement of the applicant's title. Those acts adversely affected the applicant's entitlement and prevented him from having his property properly registered.

(γ) National law and practice on the IPRO's refusal to carry out court-ordered registrations

121. In the present case, the applicant faced the refusal of the IPRO, an administrative authority, to proceed with the registration of title that had been recognised by a final court judgment and further confirmed by the Land Commission. The Court observes that, irrespective of whether the final decision to be executed takes the form of a court judgment or a decision by an administrative authority, both domestic law and the Convention require that it be enforced (see *Nuri v. Albania*, no. 12306/04, § 28, 3 February 2009). As already noted (see paragraph 97 above), a degree of uncertainty exists in the domestic legal system as to the correct approach to be followed in such a situation.

122. The case-law of the Constitutional Court has held that the IPRO is an administrative authority that should act in conformity with court judgments or equivalent orders and proceed with registrations so-ordered without questioning their validity. Finding otherwise would inevitably lead to a violation of the right to a fair trial since it would amount to non-execution of judgments. In its case-law, the Constitutional Court has held that requiring

the parties to initiate other judicial or administrative proceedings would place an excessive burden on them. In accordance with that case-law, it was the responsibility of the public authorities in the instant case to identify and explore other, alternative methods to enforce the applicant's property rights, rather than presenting obstacles or reasons for not registering the property in his name.

123. At the same time, national law as it presently stands authorises the cadastral authorities to refuse to register new titles, including ones arising from a court order, when they clash with an existing registered title and if the relevant judgment has not solved the issue of the affected parties' competing substantive claims. In such cases the new title holder is advised to start fresh judicial proceedings (see paragraph 74 above). Legal and administrative practice appears to lend support to the same approach, namely that the IPRO should refuse to register such titles and instruct the parties to take the issue to court in all cases where they are faced with overlapping titles or other disputes concerning the property (see paragraph 74 above). While the Court recognises the obvious need to avoid multiple entries for the same plot of land, the Government have not shown that the structural challenges identified by the Constitutional Court as regards respect for the authority of final judgments and the need to find alternative solutions in this context have been satisfactorily addressed.

(δ) The lack of clear procedures in cases of overlapping titles

124. The Government, in their latest update of 28 February 2023 as to the non-registration of the applicant's title, referred principally to the fact that the Court of Appeal's judgment had become impossible to enforce in the intervening period since third parties already possessed title deeds issued in respect of the same plot of land. However, the Government have not presented any information as to the procedures followed for the registration of those titles or provided any solution to the applicant's complaint.

125. The Court has to assess whether the procedure applied in any given case provided an applicant a fair possibility of defending his or her interests (see *Bäck v. Finland*, no. 37598/97, § 63, ECHR 2004-VIII). The Court reiterates that although Article 1 of Protocol No. 1 contains no explicit procedural requirements, proceedings in such cases must afford the individual a reasonable opportunity of putting his or her case to the relevant authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by that provision. The Court takes a comprehensive view in ascertaining whether this condition had been satisfied (see, for instance, *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

126. The Court finds that the IPRO's procedures were not transparent and accessible to the applicant in terms of his attempts to register his title to the plot of land in question. Neither the IPRO nor the Government have provided any explanation as to the criteria employed in the present case by the

authorities to decide which title to register first and on what grounds. The applicant's first attempt to register his title was in 1999, and there is no indication that other registration requests concerning the same land had been lodged before that date. That procedure was never completed, and his queries as to the reasons for that were never met with an adequate response.

127. After the writ of execution was issued on 22 December 2004, the applicant, in addition to initiating enforcement proceedings in respect of the Court of Appeal's decision through the bailiff's office, submitted several requests to the IPRO for the registration of his title. During all that time no concrete measures were taken in that regard.

128. The Court notes that the objective of Law no. 20/2020 is to establish effective procedures for resolving conflicts between clashing judgments or decisions, and for providing appropriate compensation to the party which cannot obtain enforcement of a judgment in his or her favour owing to intervening circumstances. Nevertheless, those provisions offer a solution only for cases where the overlapping of titles has been caused by unlawful third-party constructions or the public expropriation of property, and are not applicable to cases where the overlap is caused, for example, by the same land having been restored to different owners by separate decisions of the Commission for the Restitution and Compensation of Property. In the latter scenario, national law provides simply that the parties should undertake fresh court proceedings (see paragraph 63 above), despite the fact that they may have held valid titles for long periods of time, and that the conflict may be primarily due to errors committed by one or more State authorities. The Court recalls that in the case of *Preda and Others* it held that no remedies of a substantial or procedural nature were available to claimants in a situation comparable to that faced by the applicant in the present case (see *Preda and Others*, cited above, § 124).

129. The Court recognises that the Uji i Ftohtë area was subject to different legal frameworks whose implementation may have caused the granting of overlapping titles, and that as a result several administrative procedures were launched aimed at finding a solution. Nevertheless, none of those efforts proved capable of securing proper and effective enforcement of the judgments and decisions issued in favour of the applicant. The authorities cannot avoid responsibility for that failure by relying on the supposed objective impossibility of enforcing the judgment, considering that the inaction of the authorities over many years has contributed greatly to that state of affairs. Individuals should not be forced to bear the burden of mistakes made by public authorities by being required to initiate long and costly proceedings (see *Văleanu and Others*, cited above, § 247). Recent domestic case-law suggests that such issues continue to be a persistent problem in Albania (see the Supreme Court's decision no. 116, of 4 April 2023, referred to in paragraph 73 above).

130. While it is not for the Court to indicate the precise solutions to be adopted by the national authorities in such a challenging context arising from complex historical events, the establishment of efficient and transparent procedures and a functional immovable property registration system are generally beneficial in securing respect for the rights of immovable property owners. In these circumstances it must be concluded that the procedural guarantees afforded to the applicant at the domestic level did not offer him an opportunity to challenge effectively the impugned omissions.

(ii) De facto expropriation of the legalised plots

131. The Court reiterates that the legalisation and registration of four illegal constructions on the applicant's plot of land constitutes a form of deprivation of possessions which is assimilable to expropriation for the part of the plot that has been exclusively occupied by those constructions (see paragraph 34 above). Although the relevant Law does not use the term "expropriation" and does not provide for a formal expropriation procedure, it is clear that such an interference constitutes a "deprivation of possessions" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

132. The Court is mindful that the applicant has contributed to the situation in which he finds himself by not taking any measures or initiating any proceedings seeking to prevent or stop the adverse possession or illegal construction by third parties on his property. The applicant's father was granted use of the plot of land in question in 1991 and title to it was restored to him in 1996 (see paragraphs 5 and 6 above). However, the applicant has not submitted that he has ever attempted to take possession of the land or initiated any proceedings to obtain possession of it, despite being its legitimate owner. The applicant has failed to take advantage of the legal tools at his disposal, such as civil proceedings to regain possession and obtain registration of that claim in accordance with Article 197 of the Civil Code (see paragraph 40 above). Such a course of action could have prevented at least some of the issues that the applicant is now facing.

133. The Court further notes that, in any event, based on the relevant legal framework, title to the occupied parts of the land appears to have been transferred at the end of the legalisation process to the owners of the unauthorised constructions, who have been thus able to obtain registration of their ownership of those parts in the land register. It is no longer possible for the applicant to obtain registration of his ownership of those specific parts of the property occupied by unauthorised constructions, meaning that those parts have thus been expropriated from him and he is entitled to seek compensation in accordance with section 24(1) of Law no. 20/2020 (see *Saraç and Others v. Turkey*, no. 23189/09, § 73, 30 March 2021 and *Yavuz Özden v. Turkey*, no. 21371/10, § 87, 14 September 2021; see also paragraph 65 above). Without prejudging the overall effectiveness of this

remedy, the Court notes that the applicant has not indicated that he has applied for such compensation under the applicable legal regime. Therefore, the Court concludes that there has been no violation of Article 1 of Protocol No. 1 in so far as concerns those particular parts of the land.

(c) Conclusion

134. The Court observes that the way the public authorities dealt with the applicant's situation in the present case was incoherent and lacking in transparency. In particular, the applicant was provided by the authorities with various reasons for the refusal to register his property, some of which led him to believe that the property would eventually be registered. It was only on 1 June 2015 that the Vlora IPRO informed the applicant for the first time that his property overlapped with the already registered properties of other private parties (see paragraph 34 above).

135. The Court notes that the issues that led to the non-enforcement of the final judgment concerning the applicant's property title appear to be of a structural nature, going beyond this specific case. Interference by the executive with property titles, faulty cadastral maps, the lack of clear procedures for common conflict situations, and the discrepancies in the domestic legal practice over compliance with court-ordered registration have all contributed to the failure to register the applicant's property for more than twenty-six years.

136. Positive obligations under Article 1 of Protocol No. 1 to the Convention required the national authorities to take practical steps to ensure that the decisions concerning the applicant's right of ownership were enforceable and not blocked by the actions or inactions of public authorities (compare with *Văleanu and Others*, cited above, §§ 247-52). By failing to keep an adequate register of immovable property, suspending the registration proceedings on the basis of orders issued by the Prime Minister and registering titles of third parties without sufficient transparency the national authorities left the applicant in a state of uncertainty with regard to the realisation of his Convention rights.

137. In so far as the part of the land that was not occupied by unauthorised constructions is concerned, the main responsibility for the non-registration of the applicant's title falls with the national authorities (see *mutatis mutandis Drăculeţ v. Romania*, no. 20294/02, §§ 47-50, 6 December 2007). The Court considers that, even if the applicant's omission to obtain or recover possession from the occupants of part of his land in this case has contributed to the non-enforcement, that cannot absolve the authorities from their obligation to execute a final and binding judgment recognising an enforceable title over such an extensive period of time.

138. The Court concludes that the authorities' failure to comply with the final and binding court decision imposed on the applicant a disproportionate and excessive burden and that the authorities have failed to strike a fair

balance between the demands of the public interest on the one hand and the applicant's right to peaceful enjoyment of his possessions on the other. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention concerning the part of the land that is not occupied by unauthorised constructions.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

139. The applicant also complained under Article 6 § 1 and Article 13 of the Convention of the authorities' failure to enforce the final decision given in his favour granting him title to a 6,700 sq. m plot of land and of the excessive length of the enforcement proceedings.

140. Having examined all the material before it, the Court concludes that it has already determined the main legal issue in the present application in view of the findings in paragraph 138 above, and that accordingly there is no need to examine these complaints separately (see, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156 ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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

142. The applicant claimed a total of 1,970,000 euros (EUR) in respect of pecuniary damage.

143. The Government contested the sum claimed as unfounded and excessive, arguing that the value of the plot in question was 2,700 Albanian leks (about 27 euros) per square metre.

144. The Court considers that the question of the application of Article 41 in respect of pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

2. Non-pecuniary damage

145. The applicant claimed EUR 150,000 in respect of non-pecuniary damage.

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

147. The Court considers that the applicant undoubtedly suffered distress and frustration in view of the non-execution of the Court of Appeal's judgment confirming his title to the property. Making its assessment on an equitable basis and taking into account its findings in the present judgment, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

148. The applicant also claimed EUR 50,000 in respect of costs and expenses incurred before the domestic courts and EUR 5,630 in respect of those incurred before the Court.

149. The Government did not make any comments on those claims.

150. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000 in respect of the proceedings before the Court and of costs and expenses incurred in the domestic proceedings, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant's son, Mr Eduart Ramaj, has standing to continue the present proceedings in his stead;

2. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;

3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention in respect of the part of the plot occupied solely by the unauthorised constructions;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the remaining part of the plot of land;

5. *Holds* that there is no need to examine the complaints under Article 6 § 1 and Article 13 of the Convention concerning access to a court, the length of the enforcement proceedings and the lack of an effective remedy;

6. *Holds* that the question of the application of Article 41 is not ready for decision in so far as pecuniary damage resulting from the violations found in the present case is concerned, and accordingly:
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicant to submit, within 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;

7. *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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten 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;

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

Done in English, and notified in writing on 10 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Ioannis Ktistakis President