



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

FOURTH SECTION

CASE OF MISHGJONI v. ALBANIA

(Application no. 18381/05)

JUDGMENT

STRASBOURG

7 December 2010

FINAL

07/03/2011

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

In the case of Mishgjeni v. Albania,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent Anthony de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 18381/05) 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, Ms Mirela Mishgjeni (“the applicant”), on 4 May 2005.

2. The applicant was represented by Mr A. Hysi, a lawyer practising in Tirana. The Albanian Government (“the Government”) were initially represented by their then Agent, Ms S. Meneri and, following the submission of their additional observations by their Agent, Mrs E. Hajro.

3. The applicant alleged various violations under Article 6 § 1 of the Convention and Article 13 taken in conjunction with Article 6 § 1.

4. On 1 February 2008 the President of the Fourth Section to which the case was allocated decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention (new Article 29 § 1), it was decided to examine the merits of the application at the same time as its admissibility.

5. On 9 June 2008 the Government submitted their observations and on 19 September 2009 the applicant responded.

6. On 7 September 2009 the President of the Fourth Section decided to re-communicate an additional complaint to the Government in the light of new information submitted to the Court. The parties replied in writing to each-other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1972 and lives in Vlore.

A. Administrative and criminal proceedings against the applicant

8. In 1996 the applicant was appointed a judge at the Vlora District Court. In December 2001 a disciplinary inquiry was opened against her by the inspectors of the High Council of Justice ("HCJ"). On the basis of the results of this inquiry, the prosecutor's office was asked to open a criminal investigation against the applicant. The investigation was opened on 12 January 2002. This resulted in the applicant being suspended from work on the same day.

9. On 26 April 2002 the prosecutor discontinued the criminal investigation for lack of evidence. However, on 15 July 2002 the HCJ, during the applicant's absence on sick leave, dismissed her on account of flagrant violations of professional discipline. The records of previous HCJ meetings indicated that the applicant had been summoned on several occasions to appear before it. However, she was on extended sick leave because of depressive neurosis. The HCJ continued the proceedings *in absentia*.

B. Proceedings concerning the applicant's dismissal

10. On 22 July 2002 the applicant challenged the HCJ's decision of 15 July 2002 by filing an appeal with the Supreme Court, which was competent to determine issues of both fact and law. On 18 November 2002 the Supreme Court Joint Benches rejected the appeal.

11. The applicant's subsequent constitutional complaint to the Constitutional Court was accepted on 12 November 2004. The Constitutional Court found violations of Article 42 of the Constitution and Article 6 of the Convention given the *in absentia* proceedings. It quashed both decisions (of the Supreme Court Joint Benches and the HCJ) and remitted the case for re-examination to the HCJ.

12. In response to the applicant's request for reinstatement at the Vlora District Court, the President of the District Court replied on 23 December 2004 that he was not competent to consider her request.

13. On 28 December 2004 the applicant filed a request for reinstatement with the HCJ. She requested that the HCJ re-hear her case in accordance with the Constitutional Court's decision.

14. On 24 October 2008 the HCJ decided to dismiss the applicant on account of flagrant violations that seriously discredited the position and image of a judge. The applicant appealed to the Supreme Court Joint Benches.

15. On 6 February 2009 the Supreme Court Joint Benches quashed the HCJ decision of 24 October 2008. It found that the proceedings relating to the disciplinary measure had taken too long and as a result the said measure could not produce any effect and was therefore invalid (*masa disiplinore e marrë tej një afati të arsyeshëm ndaj kësaj gjyqtareje është e paefektshme dhe konsiderohet e pavlefshme ... Prandaj vendimi i KLD-së duhet të shfuqizohet*).

16. On 27 February 2009 the applicant was reinstated as a judge at the Vlora District Court.

C. Proceedings concerning payment of salary arrears

17. Following the discontinuance of the criminal proceedings on 26 April 2002, the applicant requested the HCJ and the Minister of Justice on 30 April 2002 to pay her salary arrears for the period during which she was suspended from her duties.

18. On 10 April 2003 the applicant, relying on sections 27 and 38 of the Judiciary Act, lodged an application with the Vlora District Court requesting the payment of salary arrears from 12 January 2002 to 15 July 2002 and consequential damages. On 13 February 2004 the Vlora District Court (“the District Court”) decided in favour of the applicant. It found that since the criminal proceedings had been discontinued, the applicant should be paid salary arrears for the period between 12 January and 15 July 2002 in accordance with section 27 of the Judiciary Act. On an unspecified date the President of the Vlora District Court appealed the decision.

19. On 5 November 2004 the Vlora Court of Appeal quashed the District Court's judgment. It relied on the HCJ's decision of 15 July 2002, by which the applicant had been dismissed from work (see paragraph 9 above). It found that as long as no decision had been taken on the applicant's reinstatement, she could not benefit from salary arrears.

20. On 4 December 2004 the applicant filed an appeal with the Supreme Court. She argued that the Court of Appeal had incorrectly applied the domestic law and had not given sufficient reasons in its decision.

21. On 21 October 2005 the Supreme Court dismissed the applicant's appeal finding that it did not contain any lawful grounds of appeal in accordance with Article 472 of the Code of Civil Procedure (“CCP”).

22. On 26 October 2006 the applicant appealed to the Constitutional Court, relying on the same arguments as before the Supreme Court. She also alleged that the domestic courts lacked impartiality in the examination of her case.

23. On 3 July 2007 the Constitutional Court, sitting as a bench of three judges, dismissed the appeal as manifestly ill-founded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant provisions of the Albanian Constitution:

Article 42 § 2

“In the protection of his constitutional and legal rights, freedoms and interests, or in the event of criminal charges brought against him, everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial court established by law.”

Article 142 § 3

“State bodies shall comply with judicial decisions.”

Article 131

“The Constitutional Court shall determine: ... (f) Final complaints by individuals alleging violation of their constitutional rights to a fair hearing, after all legal remedies for the protection of those rights have been exhausted.”

Article 147

“1. The High Council of Justice is composed of the President of the Republic, the Chairman of the Supreme Court, the Minister of Justice, three members elected by the Parliament and nine judges of all levels who are elected by the National Judicial Conference. ...

4. The High Council of Justice decides on the transfer of judges as well as their disciplinary responsibility pursuant to the law.

6. A judge may be removed from office by the High Council of Justice for commission of a crime, mental or physical incapacity, acts and behaviour that seriously discredit the position and image of a judge or professional inefficiency. The judge has the right to complain against this decision to the Supreme Court, which decides by Joint Colleges.”

B. The HCJ Act (Law No. 8811 dated 17 May 2001, amended by Law No. 9448 dated 5 December 2005 “On the organisation and operation of the HCJ”)

24. This law governs the overall membership, organisation, functioning and responsibilities of the HCJ, which is chaired by the President of the Republic. Among its chief tasks, the HCJ decides on the appointment and

dismissal of judges in respect of courts of first instance and courts of appeal. The law also governs the conduct of disciplinary proceedings against judges. According to the law, it is incumbent upon the Minister of Justice to inspect courts of first instance and courts of appeal. The Minister submits requests for disciplinary proceedings to be taken against judges to the High Council of Justice, which takes a decision thereon. An appeal against the decision of the HCJ may be lodged with the Supreme Court within 10 days from the notification thereof.

25. Section 19 of the HCJ Act stipulates that the Chairman decides on the time and date of its meetings, which should take place at least once every two months.

C. The Judiciary Act (Law No. 8436 dated 28 December 1998 “On the organisation of the judiciary in the Republic of Albania”)

26. Section 27 of the Judiciary Act provides that a judge shall be suspended from work when a criminal investigation is initiated against him, until a final decision is taken. In the event the judge is acquitted of the charges by a final court decision, the judge is entitled to resume his position and to full remuneration since the time he was suspended from work.

27. Section 38 provides that a judge is entitled to obtain the official journals, legal periodicals and bulletins free of charge.

28. Chapter V of the Judiciary Act governs the disciplinary responsibility of judges. Section 40 provides that judges bear responsibility for breaches of discipline and the commission of acts or behaviour that seriously discredit them personally and the authority of justice. Section 42, which listed dismissal from work as one of the measures to be taken against a judge for breaches of discipline, was rescinded by the Constitutional Court's decision No.3, dated 20 February 2006.

D. Code of Civil Procedure

29. Article 324–333 regulate the adjudication of administrative disputes. Article 324 provides that a party may bring an action before a court with a view to challenging the administrative body's refusal to adopt an administrative act.

30. Article 472, in so far as relevant, reads as follows:

“Decisions of the Court of Appeal and the District Court may be appealed against to the Supreme Court on the following grounds: (a) the law has not been complied with or has been applied erroneously; (b) there have been serious breaches of procedural rules (pursuant to Article 467 of the Code); (c) there have been procedural violations that have affected the adoption of the decision. ...”

**E. The Constitutional Court Act (Law no. 8577 of 10 February 2000
“On the organisation and operation of the Constitutional Court”)**

Article 81 – Execution of decisions

“1. The Constitutional Court's judgments are binding.

2. The execution of the Constitutional Court's judgments is ensured by the Council of Ministers by virtue of respective State administration bodies.

3. The Constitutional Court may assign another body responsible for the execution of its judgment and, as necessary, the method of its execution.

4. The persons who do not enforce or prevent the enforcement of the Constitutional Court's judgments, when their action does not constitute a criminal offence, are liable to a fine (...) imposed by the President of the Constitutional Court, whose decision is final and constitutes an executive title.”

THE LAW

31. The applicant complained under Article 6 § 1 of the Convention about the non-enforcement of the Constitutional Court's decision of 12 November 2004, the length of the administrative and judicial proceedings concerning her dismissal and the unfairness of the proceedings concerning the payment of salary arrears for the period during which she was suspended.

Article 6 § 1 reads as follows:

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

32. Under Article 13 of the Convention, the applicant complained about the lack of an effective remedy for the enforcement of the Constitutional Court's decision of 12 November 2004. The relevant parts of Article 13 of the Convention read 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.”

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

A. Admissibility

1. The parties' submission

33. The Government relied on the non-applicability of Article 6 § 1 of the Convention in its civil limb. They submitted that the Constitutional Court's decision of 12 November 2004 did not generate a civil right or obligation for the applicant. According to the Government, the Constitutional Court remitted the case for re-examination to the HCJ, without ordering the applicant's reinstatement.

34. Moreover, in the Government's view, disputes concerning the recruitment, career and termination of employment of public servants were not, as a rule, regarded as “civil” within the meaning of Article 6 § 1 of the Convention. The Government relied on the “functional” criterion as provided for in *Pellegrin v. France* [GC], no. 28541/95, § 66-67, ECHR 1999-VIII and *Pitkevich v. Russia* (dec.), no. 47936/99, 8 February 2001 in that a judge “participates directly in the exercise of powers conferred by public law and performs duties designed to safeguard the general interests of the State”. They requested the Court to declare the applicant's complaint incompatible *ratione materiae*.

35. In their additional observations, the Government submitted that the applicant was no longer a “victim”. In their view, the Supreme Court's decision of 6 February 2009 expressly recognised a breach of the applicant's right to a fair hearing and provided *restitutio* by way of the applicant's reinstatement.

36. The applicant maintained that the domestic proceedings concerned a “civil” right in the light of this Court's judgment in *Gjyli v. Albania*, no. 32907/07, § 37, 29 September 2009 and *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-IV, § 62, 8 August 2006. She submitted that she had exhausted all domestic remedies as regards her complaint.

2. The Court's assessment

a. Scope of the case

37. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case. It does not consider itself bound by the characterisation given by an applicant or a government (see *Mullai and Others v. Albania*, no. 9074/07, § 73, 23 March 2010).

38. The Court notes that the Constitutional Court's decision of 12 November 2004 remitted the case to the HCJ for reconsideration, without finally deciding on the merits. Nor did the Constitutional Court make any final award in favour of the applicant (compare and contrast *Gjyli*, cited above). The Court therefore considers that the applicant's first two complaints should be examined from the angle of compliance with the "reasonable time" requirement under Article 6 of the Convention.

39. Furthermore, the Court considers that the length of each set of proceedings, namely the dismissal and salary arrears' proceedings, should be separately examined, since the proceedings concerning the salary arrears involved different parties and concerned different legal arguments in relation to a different subject matter.

b. As regards the alleged compatibility *ratione materiae*

40. In the *Vilho Eskelinen and Others* judgment, cited above, the Grand Chamber of the Court decided to revisit the criteria established in the above-mentioned *Pellegrin* judgment for determining the applicability of Article 6 to disputes concerning the recruitment and dismissal of civil servants. The Grand Chamber considered in its *Vilho Eskelinen and Others* judgment that Article 6 § 1 under its "civil" head should be applicable to all disputes involving civil servants, unless the national law expressly excluded access to a court for the post or category of staff in question, and this exclusion was justified on objective grounds in the State's interest. There can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question (see *Vilho Eskelinen and Others*, cited above, § 62).

41. Turning to the present case, the Court notes that the applicant's civil claim was examined and granted by the Supreme Court and the Constitutional Court. The applicant was not excluded by domestic law from "access to a court" within the meaning of Article 6 of the Convention. Based on the test developed in the case of *Vilho Eskelinen and Others*, cited above, the Court concludes that Article 6 is applicable to the domestic proceedings at issue (see, also, *Olujić v. Croatia*, no. 22330/05, §§ 31-43, 5 February 2009, in which the Court found Article 6 § 1 of the Convention to be applicable to disciplinary proceedings against a judge). It therefore dismisses this objection.

c. As regards the applicant's alleged lack of "victim" status

42. The Court reiterates that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive the individual of his or her status as "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the

Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

43. In the present case, the Court considers that, while the relevant judgment has now been enforced and the Supreme Court acknowledged a breach of the applicant's right to trial within a reasonable time, its decision of 6 February 2009 failed to afford any particular redress for the period during which the breach occurred. The applicant's reinstatement does not remedy the situation *a priori*. In such circumstances, the applicant can continue to claim to be a "victim" of a violation of her Convention rights as a result of the delay in complying with the Constitutional Court's decision. The Court therefore rejects this objection.

d. As regards the alleged length of proceedings relating to the salary arrears

44. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, for example, *Gjonbocari and Others v. Albania*, no. 10508/02, § 61, 23 October 2007).

45. The Court considers that the proceedings concerning salary arrears started on 10 April 2003 and ended on 3 July 2007, thus lasting a little more than four years over four instances. In view of the number of instances involved, the Court does not find the length of the proceedings concerning the salary arrears to be unreasonable, even having regard to what was at stake for the applicant (see, for example, *Gjonbocari and Others*, cited above, § 62).

46. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

e. As regards the alleged unfairness of proceedings relating to the salary arrears

47. The applicant complained that the proceedings concerning payment of salary arrears were unfair in so far as the Supreme Court's decision of 21 October 2005 and the Constitutional Court's decision of 3 July 2007 were not adequately reasoned.

48. The Government submitted that the proceedings were fair. They maintained that the domestic courts had respected the equality of arms and addressed the parties' arguments by providing adequate reasons. According to the Government, the applicant's complaint mainly concerned the interpretation of the domestic law, which is a task of the national courts. In this connection, the Court of Appeal had decided against the applicant in the light of the Supreme Court's decision of 18 November 2002, which had

upheld the applicant's dismissal. Consequently, the applicant was not entitled to any salary arrears.

49. The Court reiterates that it is not within its province to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them and interpret the domestic law (see *Jakupi v. Albania* (dec.), no. 11186/03, 1 December 2009). The Court's task is to ascertain whether the proceedings in their entirety were fair.

50. It transpires from the case file that the applicant had the benefit of adversarial proceedings. She made submissions to the domestic courts which decided on the merits of the case after examining and assessing all the evidence before them. The Court is unable to discern any arbitrariness in the domestic proceedings.

51. The limited reasons given by the Supreme Court in its decision of 21 October 2005 implicitly indicated that the applicant had not raised one of the points of law provided for in the relevant domestic provision, which is an admissibility requirement for leave to appeal to be granted. The Court observes that where a Supreme Court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see, *mutatis mutandis*, *Marini v. Albania*, no. 3738/02, § 106, ECHR 2007-XIV (extracts)). Moreover, since the applicant's constitutional appeal contained the same grounds of appeal as those relied upon before the Supreme Court, the same reasoning could be said to apply in respect of the Constitutional Court's decision of 3 July 2007 (see *Jakupi*, cited above).

52. For the above reasons, the Court considers that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

f. As regards the length of proceedings relating to the applicant's dismissal

53. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

54. The Government stated that the composition of the HCJ in 2005 underwent drastic changes due to the replacement of some of its members. The newly-composed HCJ had been busily engaged in taking decisions with a view to resolving problems in the judiciary, prioritising matters such as

the appointment of the domestic courts' presidents, disciplinary enquiries and adoption of legal acts concerning the performance of the judiciary.

55. The applicant maintained that the Constitutional Court's decision had not been enforced, even though the HCJ had met and deliberated on disciplinary proceedings concerning other judges.

2. The Court's assessment

56. The Court notes that the dismissal proceedings started at least on 22 July 2002 and ended on 6 February 2009. The Court considers that the period to be taken into account should cover the entire length of the dismissal proceedings, which thus lasted more than eight years for three levels of jurisdiction.

57. The Court refers to paragraph 44 as regards the general principle under Article 6 § 1 of the Convention concerning the length of the proceedings.

58. The Court is of the view that the dismissal proceedings did not disclose any element of complexity. The applicant requested the authorities to comply with the Constitutional Court's decision by letter of 28 December 2004. It cannot be said that she remained passive or failed to display the necessary diligence. Additionally, it does not transpire from the case file that any delay could be attributed to her. As regards the conduct of the authorities, the Court observes that from 12 November 2004 to 24 October 2008 there was no decision determining the merits of the applicant's case, following the remittal of the case by the Constitutional Court. It was only on 24 October 2008 that the HCJ re-examined the applicant's case and complied with the Constitutional Court's decision of 12 November 2004. It would appear, as submitted by the Government, that during this time the HCJ had decided on other disciplinary enquiries similar to the applicant's. The Court does not find any plausible reasons for omitting the applicant's case from re-consideration.

59. The Court cannot accept the Government's arguments that the changes in the composition of the HCJ in 2005 and the refocusing of its priorities could justify an almost four-year delay in the re-examination of the applicant's case. The Court reiterates that an employee who considers that he or she has been wrongly suspended or dismissed by his or her employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his or her means of subsistence (see *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII, cited above, § 45). Moreover, the Court recalls that it is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet the requirements of Article 6 of the

Convention, including the obligation to hear cases within a reasonable time (see *Makarova v. Russia*, no. 23554/03, § 42, 1 October 2009).

60. The Court considers that an overall delay of almost four years taken by the HCJ to re-examine the applicant's case did not satisfy the “reasonable-time” requirement under the Convention. Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the overall length of the dismissal proceedings.

II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

A. Admissibility

1. *The parties' submissions*

61. The applicant maintained that there was no available and effective domestic remedy in relation to her complaint under Article 6 § 1 of the Convention as regards the length of the dismissal proceedings.

62. The Government submitted that Article 13 was not applicable in view of their argument about the non-applicability of Article 6.

2. *The Court's assessment*

63. The Court recalls that in order for Article 13 to apply, an applicant must have an “arguable claim” that he has been subjected to a violation of the Convention rights (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 55, Series A no. 131).

64. In the present case, it is evident that the applicant had an arguable claim as regards the length of the dismissal proceedings within the purview of Article 6 of the Convention. The Court finds that Article 13 is applicable and dismisses the Government's objection.

65. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible

B. Merits

1. *The parties' submissions*

66. The Government contended that the applicant could have filed an action before the court against the HCJ's failure to act in accordance with Article 324 of the Code of Civil Procedure. Additionally, she could have

requested the President of the Constitutional Court to impose a fine in accordance with section 81 of the Constitutional Court Act.

67. The applicant maintained that the execution of the Constitutional Court's decision lay with the Council of Ministers. In any case, the HCJ neglected to re-examine her case, even though they had decided on other disciplinary proceedings.

2. *The Court's assessment*

68. Article 13 of the Convention guarantees the availability at a national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

69. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII) in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has occurred (see *Kudła*, cited above, § 158).

70. It is true that, as stated by the Government, the applicant could have challenged the HCJ's failure to act in accordance with Article 324 (b) of the CCP or filed a request in accordance with section 81 of the Constitutional Court Act. However, the Court is not convinced that either remedy is effective in practice when it comes to length of proceedings complaints. The Government have failed to provide any domestic courts' case-law which found in a claimant's favour in such situations.

71. The Court has moreover found similar violations of Article 13 of the Convention concerning the length of the proceedings in respect of Albania (see, for example, *Gjonbocari and Others v. Albania*, no. 10508/02, §§ 73-82, 23 October 2007, and *Marini v. Albania*, no. 3738/02, §§ 147-158, ECHR 2007-XIV (extracts)).

72. The Court finds that the applicant had no remedy either to prevent the continuation of the violation of her rights under Article 6 § 1 of the Convention or to obtain compensation. It therefore finds that there was no effective remedy for the applicant's complaint concerning the excessive length of the dismissal proceedings. The Court will revert to this matter.

73. Accordingly, there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed EUR 80,000 in respect of pecuniary damage, which consisted of the loss of her salary and benefits between 2001 and 2009. She failed to submit a breakdown of the calculation of her salary and other benefits. She further claimed EUR 20,000 in respect of non-pecuniary damage.

76. The Government submitted that the finding of a violation constituted sufficient just satisfaction. They contended that the applicant had failed to submit documents in support of her claim for pecuniary and non-pecuniary damage. In their view, the applicant had not suffered from a loss of income as she had been practising law as a legal practitioner since 2003.

77. In the present case, the Court has found a violation of Article 6 § 1 of the Convention as regards the length of the dismissal proceedings and of Article 13 in conjunction with Article 6 § 1 as regards the lack of an effective remedy in respect of the length of those proceedings. The Court does not discern any causal link between the violations found and the pecuniary damage alleged.

78. However, the Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of length of the proceedings affecting her livelihood and awards her EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

79. The applicant also claimed EUR 6,000 for costs and expenses incurred before the domestic courts and this Court. She provided a detailed breakdown to substantiate her claim.

80. The Government contested the amount maintaining that the applicant had failed to submit officially recognised taxable receipts.

81. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred (in the case of domestic proceedings, in seeking redress for the violations of the Convention found or preventing a violation occurring) and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, for example, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II; *Smith and Grady v. the United*

Kingdom, nos. 33985/96 and 33986/96, § 28, ECHR 1999-VI; and *Roche v. the United Kingdom* [GC], no. 32555/96, § 182, ECHR 2005-X).

82. The Court considers that the applicant's lawyer's fees incurred in the domestic proceedings do not constitute expenses incurred in seeking redress for the violations of the Convention found in the present case. However, making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 in respect of the Strasbourg proceedings.

C. Default interest

83. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 1 of the Convention about the unfairness and the length of proceedings relating to the salary arrears inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the dismissal proceedings;
3. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention as regards the lack of an effective remedy in respect of the length of the dismissal proceedings;
4. *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 national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one 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;

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

Done in English, and notified in writing on 7 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President