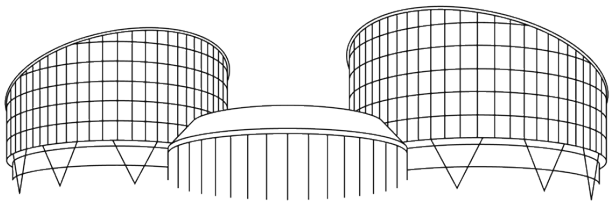

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

# CASE OF BERHANI v. ALBANIA

*(Application no. 847/05)*

JUDGMENT

STRASBOURG

27 May 2010

**FINAL**

*04/10/2010*

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

**In the case of Berhani v. Albania,**

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

Nicolas Bratza, *President,*
Giovanni Bonello,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 May 2010,

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

# PROCEDURE

1. The case originated in an application (no. 847/05) 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, Mr Gentian Berhani ("the applicant"), on 20 December 2004.

2. The applicant was represented by Mr P. Rama, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their Agent, Mrs E. Hajro, of the State Advocate's Office.

3. The applicant complained about the unfairness of the criminal proceedings against him under Article 6 of the Convention.

4. On 23 June 2008 the President of the Chamber 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, it was decided to examine the merits of the application at the same time as its admissibility.

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

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and is serving a prison sentence in Tirana Prison in Albania.

### A. The applicant's arrest and subsequent release

7. On the early morning of 5 July 1996 a murder took place in a bar in Kuçovë, committed by two persons wearing motorcycle helmets (*kokore*).

8. In the evening of the same day, the applicant was arrested on suspicion of premeditated murder while walking on a secondary road. The applicant fitted the description given to the police, namely that one of the perpetrators had long hair. The applicant was placed in pre-trial detention. The other perpetrator of the murder remained unidentified and could not be traced.

Witnesses J., K. and L. made statements to the investigation team on that day in the absence of the applicant's counsel. Whereas the content of such statements was not submitted by the parties, it would appear that they implicated the applicant in the commission of the murder.

9. The police searched the route the applicant had travelled and they found a red motorcycle with a flat front tyre a few kilometres away.

10. On 6 July 1996 the prosecutor requested the validation of the applicant's arrest. On 7 July 1996 the Kuçovë District Court ordered the applicant's release for lack of reasonable suspicion and evidence. The applicant was represented by his lawyer A.

11. On 9 July 1996 the prosecutor appealed.

12. On 19 July 1996 the Tirana Court of Appeal quashed the Kuçovë District Court's decision and remanded the applicant in custody. The applicant could not be arrested as he had fled the country after his release on 17 July 1996, fearing a vendetta by the victim's relatives. It would appear that a few years prior to the murder, the victim had murdered the applicant's brother.

*Minutes of the crime scene investigation and other reports*

13. A report on the examination and collection of material evidence of 5 July 1996 (*proces-verbal për kqyrjen dhe sekuestrimin e provave materiale*) contained information about the finding of seven bullet cartridges at the crime scene which were taken for ballistics examination. It was reported that the perpetrators had been on a red motorcycle and one of them had long hair.

14. A body search report (*process-verbal i kontrollit personal*) of the applicant, at the time of the arrest, stated that he was found to have "...one belt with a metal stud *(me një tokëz metalike)*." No other items were recorded in the body search report.

15. Another report on the examination and collection of material evidence contained information about a red Suzuki motorcycle found on the side of the road between Kuçovë and Fier.

## B. The trial proceedings

16. There is no documented information regarding any developments from 19 July 1996 to 6 January 1997. It appears that on an unspecified date the proceedings were transferred to the Berat District Court ("the District Court").

17. On 6 January 1997 the applicant was declared a fugitive, following unsuccessful efforts by the police to find him. The court assigned lawyer B. to represent him.

18. All hearings scheduled between 11 January 1997 and 28 October 1998 were adjourned. Two hearings scheduled between 15 February and 2 March 1999 were also adjourned owing to the absence of the prosecutor. No witnesses, including police officers, even though they had been summoned by the court, appeared. No other procedural measures were taken.

19. On 18 March 1999 the District Court decided to continue the proceedings *in absentia*. It was decided that B. would continue to defend the applicant. On the same day B. requested the court to declare the detention report (*proces-verbal i kapjes në flagrancë*), the personal search report (*proces-verbal i kontrollit personal*) and the reports on the examination and collection of material evidence null and void. He maintained that the detention report was forged, had been signed at a later stage by police officers and did not bear the signature of the applicant. Moreover, he suggested that the personal search report and the reports on the examination and collection of material evidence had not been prepared by judicial police officers in accordance with the Code of Criminal Procedure. No witnesses appeared on that day and no other evidence was considered by the court.

### *1. Witness statements*

20. At the hearing of 26 April 1999, witness E., a police officer, testified. He stated that the applicant had been arrested at random together with a number of other young people as one of the suspects. While the other youngsters had been released on the strength of recognition assurances provided by the nearby villagers, the applicant had been taken to the police station as no one could vouch for his identity. E. stated that the applicant was carrying a shopping bag. The applicant was not searched by the police

at the time of his arrest. He was not aware of any motorcycle such as had been entered into the record in which his name and signature appeared. The applicant's lawyer questioned the witness.

21. At the hearing of 23 June 1999 three witnesses appeared before the court.

Witness G. testified that he was working at a petrol station when two people he did not know, who were on a motorcycle and wearing helmets, had enquired from a distance about petrol. He stated that he did not remember the colour of the motorcycle or the helmets. Nor had he noticed any particular details about the persons. He could not observe from a distance whether or not the front tyre of the motorcycle was flat.

Witness H. testified that he was three hundred metres away from the crime scene when he saw two people with helmets, one of whom had committed the murder of 5 July 1996. There is no mention that he indicated the applicant as one of the perpetrators.

Witness I. testified that while she had been having her morning coffee on the terrace of the café-bar where the crime occurred, she had heard the waitress scream and had run away. She had neither seen anyone behaving conspicuously nor heard the roar of a motorcycle.

22. At the hearing of 30 September 1999 witness F. gave his testimony. As a police officer, he testified that the applicant had been selected at random, following information the police had received on the radio. It was confirmed, on the basis of a statement by the head of a nearby village, that the applicant had been riding a red motorcycle. The red motorcycle was found six or seven kilometres from the place where the applicant had been arrested. The witness testified that he had not participated personally in the search for the applicant.

23. Between 15 October and 14 December six hearings were adjourned. None of the witnesses, including former police officers, appeared, while the applicant's representative was absent from three of them.

24. At the hearing of 23 December, noting the repeated absence of lawyer B., the court assigned lawyer C. to the applicant. The prosecutor stated that the identity of the head of the village, as mentioned in the testimony of witness F. on 30 September, had been discovered, but he was abroad and could not give his testimony before the court.

25. At the hearing of 12 January 2000 the court rejected the applicant's lawyer's request of 18 March 1999, which referred to the invalidity of several reports. It allowed the prosecutor to proceed with the reading out of the statements of J., K. and L., who had never been questioned by the applicant or his representative as regards their statement. The prosecutor and the applicant's representative made their final submissions.

*2. Overall conclusion of the District Court*

26. On 12 January 2000 the Berat District Court found the applicant guilty of premeditated murder, acting in collusion with others and illegal possession of firearms. The judgment, which was given *in absentia*, relied on the above reports and testimonies of witnesses E., F., G., H., I. and statements of J., K. and L. The court sentenced the applicant to eighteen years' imprisonment.

## C. The appeal proceedings

27. On an unspecified date the applicant's father was informed of the Berat District Court's judgment. On 25 September 2000 he appointed a lawyer to lodge an appeal against that judgment. On an unspecified date the lawyer lodged an appeal with the Vlora Court of Appeal. According to the Code of Criminal Procedure, the time-limit for lodging an appeal against a district court's decision is ten days.

28. On 24 November 2000 the Vlora Court of Appeal dismissed the appeal, finding that it did not comply with the prescribed time-limits. It also noted that the date of notification of the Berat District Court's judgment to the applicant's father could not be determined.

29. Meanwhile, on 29 November 2001 the applicant was extradited from Italy, where he had been arrested on the strength of an extradition order from the Albanian authorities.

30. On 30 November 2001, after being granted leave to appeal out of time, the applicant lodged an appeal against the Berat District Court's judgment. He was represented by D., a lawyer of his own choosing. The applicant complained that the District Court's judgment was not adequately reasoned. He pointed out that none of the witnesses had accused him of having committed the crime of 5 July 1996. He questioned how he could have been identified if he had been wearing a motorcycle helmet. He also objected to the reading out of the statements of witnesses J., K. and L. who had never been questioned or examined before the District Court.

31. On 19 March 2002 the Vlorë Court of Appeal (“the Court of Appeal”) upheld the Berat District Court's judgment. It dismissed the applicant's request by relying on the witnesses' testimonies and the reading out of statements, which it found to be valid. Of the three judges who decided the case, two (Gj.G. and A.M.) had been members of the panel which had dismissed the applicant's appeal on 24 November 2000.

32. On 16 April 2002 the applicant lodged an appeal with the Supreme Court. He complained that the personal search report, the reports on the examination and collection of material evidence taken at the investigation stage, and the reading out of statements of witnesses who had not been questioned during the criminal investigation, were invalid. He also argued

that it was impossible for the witnesses to have identified him as the perpetrator of the crime, since the offender had allegedly been wearing a helmet. As regards the charge of the illegal possession of firearms, he claimed that there was no evidence to prove that he had used any weapons.

33. On 25 October 2002 the Supreme Court declared his appeal inadmissible, using standard wording ("the grounds of the appeal fall outside the scope of Article 472 of the Code of Criminal Procedure").

34. On 8 May 2004 the applicant lodged a constitutional complaint. In addition to complaining of the unfairness of trial and appeal proceedings, he also complained that the Court of Appeal's bench of 19 March 2002 was not impartial.

35. On 21 June 2004 the Constitutional Court, sitting as a bench of three judges, declared the applicant's complaints inadmissible. It held that the applicant's complaints did not raise any fair trial issues, but mainly concerned the assessment of evidence, which was the function of the lower courts.

## II. RELEVANT DOMESTIC LAW

### A. The Constitution

36. **The Albanian Constitution, in so far as relevant, reads as follows:**

**Article 42 § 2**

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

**Article 131**

"The Constitutional Court shall decide: ...

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

**Article 142 § 1**

"Judicial decisions must be reasoned."

*Relevant case-law of the Albanian Constitutional Court*

37. On 21 July 2009 the Constitutional Court examined an appellant's constitutional appeal for breach of his right to a fair hearing within a reasonable time as a result of the delayed enforcement of a final ruling in his favour. In a reasoned decision, the Constitutional Court, sitting as a full bench, dismissed the appellant's constitutional appeal finding that there had been no breach of the right in question.

38. There is no reported case-law in which the Constitutional Court has examined the length of criminal proceedings.

## B. The Code of Criminal Procedure ("the CCP")

**Article 171: Identification of persons**

"1. When the need arises to conduct the identification of a person, the proceeding authority invites the person who must conduct the identification to describe the person (to be identified), relating all the features he or she remembers and that person is asked whether he/she has been previously summoned to do the identification and about other circumstances, which may contribute to the accuracy of the identification.

2. Actions provided for by paragraph 1 and statements made by the person who does the identification are entered in the records.

3. Non-compliance with the provisions of paragraphs 1 and 2 is a cause for the invalidity of the identification."

**Article 172: Performing identification**

1. The proceeding authority, after taking away the person who will do the identification, ensures the presence of at least two persons, looking as alike as possible, to the person to be identified. It invites the latter to choose his or her place in relation to others, taking care to be portrayed, as much as possible, in the same circumstances under which he or she would have been seen by the person called to do the identification. After the person who will do the identification has appeared, the court asks the latter whether he or she knows any of those presented for identification, and if yes, to point out the person he or she knows and to specify whether he or she is sure.

2. When there are reasons to believe that the person called to do the identification may be afraid or influenced by the presence of the person to be identified, the proceeding authority orders the act to be performed without the latter seeing the former.

3. The records must describe how the identification was performed, failure to do so invalidates the identification. The proceeding authority may order, for records purposes, the performance of the identification to be photographed or filmed.

**Article 173: Identification of items**

1. When the identification of material evidence or other items relevant to the criminal offence must be performed, the proceeding authority acts in compliance with the rules for identification of persons to the extent that they are applicable.

2. After finding, when possible, at least two similar items to the one to be identified, the proceeding authority asks the person called to identify whether he/she recognises any of them and, if the answer is yes, invites him/her to state which of them he/she recognised and to specify whether he/she is sure.

3. The records must describe how the identification was performed, failure to do so invalidates the identification.

**Article 175: Identification of or by several persons**

1. When several persons are called to do the identification of the same person or item, the proceeding authority performs it one by one separately, prohibiting any communication between the one who has done the identification and those who will do it subsequently.

2. When a person must identify several persons or items, the proceeding authority orders the person or item to be identified to be placed among different persons or items.

3. The provisions of Articles 171, 172 and 173 of the CCP are applicable.

39. Article 425 establishes the scope of the examination of the appeal by the Court of Appeal. It provides that the examination of the case by the Court of Appeal is not limited to the grounds of appeal, but extends to the whole case.

40. Under Article 427, at the party's request, the Court of Appeal shall be empowered to directly re-examine previous evidence and additional new materials, if it considers necessary.

41. Article 428 establishes which decisions may be taken by the Court of Appeal. It provides that the Court of Appeal may decide to dismiss the appeal and uphold the judgment, to amend the judgment, to quash the judgment and terminate the criminal proceedings, or to quash the judgment and remit the case for a fresh trial.

42. The Court of Appeal's judgments may be appealed to the Supreme Court under Article 432 in the event that: a) the criminal law has not been respected or has been erroneously applied; b) there have been breaches which result in the court's judgment being declared invalid in accordance with Article 128 of this Code; c) there have been breaches of procedural rules that have affected the adoption of the judgment.

43. Article 434 provides that the Supreme Court examines the appeal in so far as points of law have been raised therein.

# THE LAW

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

44. Under Article 6 § 1 of the Convention, the applicant complained about the lack of reasoning of the domestic courts' judgments, the length of the proceedings and the lack of impartiality of the Court of Appeal's bench of 19 March 2002.

Article 6 § 1 of the Convention, in its relevant parts, reads:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

### A. The unfairness of proceedings

#### *1. Admissibility*

45. The applicant complained about the lack of reasoning of the domestic courts' judgments. None of the parties raised any preliminary objection in respect of this complaint.

46. 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, amongst other authorities, *Mullai and Others v. Albania*, no. 9074/07, § 73, 23 March 2010). The Court considers that, on the basis of the information in the case file, this complaint should be examined from the perspective of fairness of proceedings.

47. 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.

#### *2. Merits*

##### a. The parties' submissions

48. The applicant submitted that the domestic courts had not adequately reasoned their judgments on the basis of decisive and conclusive evidence. Consequently, he alleged that the proceedings had been unfair.

49. The Government submitted that the proceedings had been fair. The applicant had had the benefit of adversarial proceedings and he had been represented by lawyers of his own choosing or appointed by his family

members. The domestic courts had reasoned their judgments and found the applicant guilty on the basis of collected evidence and reports.

**b. The Court's assessment**

50. The Court reiterates at the outset that the admissibility of evidence is primarily governed by the rules of domestic law and that, as a rule, it is for the national courts to assess the evidence before them, establish facts and interpret domestic law. The Court will not in principle intervene, unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair as required by Article 6 § 1 (see *Caka v. Albania*, no. 44023/02, § 100, 8 December 2009; and *Khamidov v. Russia*, no. 72118/01, § 170, ECHR 2007-XII (extracts)).

51. The Court further reiterates that under certain circumstances it may be necessary for the courts to have recourse to statements made during the criminal investigation stage. If the accused had sufficient and adequate opportunity to challenge such statements, at the time they were taken or at a later stage of the proceedings, their use does not run counter to the guarantees of Article 6 §§ 1 and 3 (d). The rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial (see *Vozhigov v. Russia*, no. 5953/02, § 51, 26 April 2007; *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001-II; and *Solakov v. "the former Yugoslav Republic of Macedonia"*, no. 47023/99, § 57, ECHR 2001-X).

52. In the present case, the applicant's conviction was based, *inter alia*, on the statements of witnesses J., K. and L. made during the criminal investigation. The Court notes that none of those witnesses appeared before the District Court or the Court of Appeal or had been questioned by the applicant or his representative during the criminal investigation. Whilst the Court cannot speculate on the content of those statements, as they were not submitted by the parties, they were clearly of relevance to the case and appear to have been of decisive importance in the conviction of the applicant. The applicant's argument that they should be disregarded, on the ground that his right to examine witnesses had not been respected, was insufficiently addressed on appeal (see *Caka*, cited above, §§ 108 and 115).

53. Moreover, the Court finds no other convincing evidence in the domestic courts' judgments that could justify the applicant's conviction.

In the first place, it notes that none of the three eye-witnesses, G., H. and I., who testified before the District Court on 23 June 1999 identified the applicant as the author of the crime. Secondly, the two police officers, E. and F., who gave testimony before the District Court on 26 April and 30 September 1999, respectively, stated that the applicant had been arrested

at random and was taken to the police station on the strength of the vague description given by nearby villagers. The Court therefore finds it difficult to comprehend how the applicant's guilt could be founded on eye-witnesses evidence, as stated by the domestic courts.

54. Even assuming that the eye witnesses identified the applicant as the author of the crime, the Court notes that the domestic courts did not respond to the applicant's complaint about the impossibility of identifying him when the assailant was allegedly wearing a helmet. It would appear from the case file that no identification parade occurred even though the CCP clearly regulated at the relevant time the organisation of identification of persons and items. The Court cannot find any explanation for such omission; nor did the Government provide any clarification in this respect.

55. Finally, the Court takes note of the various police reports filed during the criminal investigation. There is no indication in the reports that the applicant's fingerprints were found on the red Suzuki motorcycle which had allegedly been used by the assailants. Nor can it be adduced that the seven bullet cartridges were fired by a weapon which had been in the possession of the applicant. Moreover, it does not appear from the case file and information made available by the Government that the authorities found the weapon used by the assailants. There is no reference, let alone attempt, to resolve any of the above issues in the domestic judgments.

56. Having regard to the above considerations, the Court considers that the domestic courts' proceedings did not satisfy the requirements of fairness as required by Article 6 § 1 of the Convention, and that therefore there has been a violation of that provision in this connection.

## B. The length of the proceedings

### *1. Admissibility*

57. The Government argued that the applicant's complaint about the length of the proceedings should be dismissed for non-exhaustion of domestic remedies.

58. The applicant did not make any submissions in this regard.

59. The Court reiterates its finding in *Balliu v. Albania* (dec.) no. 74727/01) that the Constitutional Court is considered an effective remedy for the purposes of Article 35 of the Convention where fair-trial issues arise. In the instant case, the applicant did not avail himself of this remedy. The Court will examine whether the applicant was required to exhaust this remedy.

60. The Court recalls that the rule of exhaustion of domestic remedies is assessed, in principle, against the date of introduction of the application with this Court (see *Marien v. Belgium* (dec.), no. 46046/99, 24 June 2004). It reiterates its findings in *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) that there was no effective remedy in respect of the length of civil proceedings. The fact that on 21 July 2009 the Constitutional Court examined the merits of an application about the length of delayed enforcement of a final court decision (see paragraph 37 above), does not suffice to find that it constituted an effective remedy in respect of the length of criminal proceedings at the material time.

61. The Court therefore dismisses the Government's objection. No other grounds for declaring the complaint inadmissible have been established. The Court therefore declares this complaint admissible.

*2. Merits*

**a. The parties' submissions**

62. The Government attributed the length of the trial proceedings to the 1997 civil upheaval, the lack of normal operation of State structures at the time and the overall state of insecurity which delayed the appearance of witnesses before trial.

63. The applicant complained that his proceedings had lasted almost eight years and were beyond "the reasonable time" requirement. He maintained that the 1997 events, as contended by the Government, had no bearing on the length of the trial proceedings, whose length had extended, in time, beyond those events.

**b. The Court's assessment**

64. The period to be taken into consideration began only on 2 October 1996, when the recognition by Albania of the right of individual petition took effect. However, in assessing the reasonableness of the period that elapsed after that date, account must be taken of the state of proceedings at the time.

65. Furthermore, the period during which the applicant absconded to Italy (17 July 1996 to 29 November 2001) should be excluded from the overall length of the proceedings (see *Yeloyev v. Ukraine*, no. 17283/02, § 70, 6 November 2008; *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 81, ECHR 2003-IX; and *Girolami v. Italy*, judgment of 19 February 1991, Series A no. 196-E, § 13). The period in question started on 29 November 2001 and ended on 21 June 2004. It thus lasted two years, seven months and twenty-three days over three instances.

66. Having regard to the criteria laid down in the Court's case-law (see, among many other authorities, *Gjonbocari and Others v. Albania*, cited above), the Court is not convinced that the length of the proceedings failed to satisfy the "reasonable time" requirement. No delay can be attributed to

the authorities during that period. On the contrary, they acted with diligence in a criminal case that was rather complex.

67. There has accordingly been no violation of Article 6 § 1 of the Convention in that respect.

### C. Lack of impartiality

68. The applicant argued that the fact that two judges were part of the Court of Appeal on 24 November 2000 and on 19 March 2002 meant that the latter bench could not be considered objectively impartial.

69. The Government submitted that there had been no such breach, since on 24 November 2000 the Court of Appeal had dismissed the applicant's appeal for non-compliance with the formal requirements and time-limits as prescribed by law, without examining its merits. The merits of the case had only been examined on 19 March 2002.

70. The Court points out that the existence of impartiality for the purposes of Article 6 § 1 must be determined by a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also by an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among many other authorities, *Driza v. Albania*, no. 33771/02, § 74, ECHR 2007-XII (extracts)).

71. As regards the subjective test, the Court reiterates that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Driza*, cited above, § 75). In the present case, the Court is not persuaded that there is any evidence that either judge acted on the basis of personal bias. Accordingly, it can presume their personal impartiality.

72. The Court considers that the main thrust of the applicant's complaint concerns a lack of objective impartiality. Under the objective test it must be determined whether, irrespective of the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public, including the accused. In deciding whether there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Driza*, cited above, § 76).

73. In the present case, the fear that the Court of Appeal's bench of 19 March 2002 was not impartial stemmed from the fact that two of the three judges sitting in it had previously sat on the bench which had dismissed the appeal on 24 November 2000, which could give rise to misgivings on the part of the accused as to the impartiality of the judges. However, whether such misgivings should be treated as objectively justified depends on the circumstances of each particular case. The mere fact that a

judge has already taken other decisions on appeal cannot in itself be regarded as justifying anxieties as to his impartiality (see *Castillo Algar v. Spain*, 28 October 1998, § 46, *Reports of Judgments and Decisions* 1998-VIII). What matters is the scope and nature of the measures taken by the judge on prior appeals.

74. In this connection, the Court notes that on 24 November 2000 the Court of Appeal confined itself to dismissing the applicant's appeal for failure to comply with the formal requirements, including time-limits. It did not make any assessment of the available facts or evidence produced with a view to reviewing the District Court's judgment.

75. The merits of the applicant's appeal were examined by the Court of Appeal on 19 March 2002, only after the applicant was granted leave to appeal out of time. On that date the Court of Appeal, after examining the evidence produced, concluded that the applicant had committed the criminal offence as charged and upheld the District Court's judgment.

76. The Court consequently considers that the participation of two judges in the adoption of the judgment of 19 March 2002 did not undermine the impartiality of the Court of Appeal since the applicant's misgivings cannot be regarded as objectively justified (see, *mutatis mutandis*, *Sainte-Marie v. France*, 16 December 1992, §§ 32-34, Series A no. 253-A and *Morel v. France*, no. 34130/96, §§ 48-50, ECHR 2000-VI; see, *a contrario*, *Castillo Algar*, cited above, §§ 47-51, and *Indra v. Slovakia*, no. 46845/99, §§ 51-55, 1 February 2005).

77. The Court therefore considers that the applicant's complaint under this aspect of Article 6 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

78. Under Article 6 § 2 the applicant complained that he was presumed guilty on the basis of old conflicts between his family and the victim's.

Article 6 § 2 of the Convention reads:

> "(...)
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> (...)."

79. The Court reiterates that the presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law, a judicial decision concerning him reflects an opinion that he is guilty (see, for example, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 91, Series A no. 146).

80. The Court considers that this complaint is unsubstantiated. There is no evidence that during the proceedings the domestic courts had taken any decisions or adopted any attitudes reflecting the applicant's guilt on account of the alleged old conflicts between his family and the victim's. In addition, there is no indication that the authorities made any public statements which would have been tantamount to a declaration of the applicant's guilt. Moreover, the domestic courts' judgments do not mention, let alone refer to, the alleged conflict between the two families. Finally, the Court considers that a failure to give sufficient reasons under Article 6 § 1 of the Convention, is not, of itself, evidence of any presumption of guilt by the domestic courts based on grounds of conflicts between the applicant's family and the victim's.

81. Overall, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of Article 6 § 2 of the Convention.

82. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 6 § 3 OF THE CONVENTION

83. The applicant complained under Article 6 § 3 (a), (b) and (c) that: he had not been informed of the charges by the prosecutor's office; he had not had adequate time to defend himself; and he had not been able to appoint counsel of his own choosing as he had not been informed of the criminal proceedings.

Article 6 § 3 of the Convention, in so far as relevant, reads:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (...)."

84. 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.

85. However, the Court, having regard to the findings above (see paragraphs 50-56 above), does not find it necessary to carry out a separate examination in relation to the Article 6 § 3 complaints.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 200,000 euros in respect of pecuniary damage and 250,000 euros in respect of non-pecuniary damage.

88. The Government rejected the applicant's claim for just satisfaction.

89. As to the pecuniary damage allegedly caused, the Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, among others, *Dybeku v. Albania*, no. 41153/06, § 65, 18 December 2007).

90. The Court, having regard to its finding of a violation concerning the applicant's complaint under Article 6 § 1 about the unfair proceedings, considers that no causal link has been established between the damage alleged and the violation it has found. The Court cannot speculate as to what the outcome of the criminal proceedings against the applicant might have been if the violation of the Convention had not occurred. Therefore, the Court finds it inappropriate to award the applicant compensation for the alleged pecuniary damage.

91. The Court considers that the finding of a violation of Article 6 § 1 means that it has not been demonstrated that the domestic courts' proceedings satisfied the requirements of fairness. The Court refers to its settled case-law to the effect that in the event of a violation of Article 6 § 1 of the Convention the applicant should as far as possible be put in the position he would have been in had the requirements of that provision not been disregarded. The Court reiterates that, where it finds that an applicant has been convicted without being afforded one of the safeguards of a fair trial, the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, in due course and in accordance with the requirements of Article 6 of the Convention (see *Xheraj v. Albania*, no. 37959/02, § 82, 29 July 2008; *Caka v. Albania*, no. 44023/02, § 122, 8 December 2009 and *Laska and Lika v. Albania*, nos. 12315/04 and 17605/04, §§ 73-77, 20 April 2010). As regards the claim for non-pecuniary

damage, ruling on an equitable basis, the Court awards the applicant 4,800 euros (EUR), plus any tax that may be chargeable on this amount.

### B. Costs and expenses

92. The applicant claimed EUR 4,000 in respect of costs and expenses incurred before the domestic courts and EUR 7,500 before this Court. He did not provide a detailed breakdown to substantiate their claim for costs and expenses.

93. The Government contested the claim.

94. The Court observes that it has not been provided with relevant documentation showing that the expenses claimed were in fact incurred. The Court will not, therefore, make an award under this head.

### C. Default interest

95. 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 about the lack of impartiality of the Court of Appeal and a breach of the presumption of innocence inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of fairness of the proceedings;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the length of the proceedings;

4. *Holds* that it is not necessary to examine the applicant's complaint under Article 6 § 3 of the Convention;

5. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into

the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Fatoş Aracı | Nicolas Bratza |
| Deputy Registrar | President |