



Criminal proceedings leading to conviction of high-ranking police officers for involvement in assassination of politician were fair

In today's Chamber judgments in the cases of [Haxhia v. Albania](#) (application no. 29861/03) and [Mulosmani v. Albania](#) (application no. 29864/03), which are not final¹, the European Court of Human Rights held – by a majority in the case of Haxhia and unanimously in the case of Mulosmani – that there had been:

No violation of Article 6 §§ 1 and 3 (a) to (d) (right to a fair trial) of the European Convention on Human Rights.

The Court further declared inadmissible, in particular, the applicants' complaints under **Article 6 § 2 (presumption of innocence)**.

The cases concerned the criminal proceedings against two high-ranking police officers following the assassination in 1998 of a Member of Parliament for the opposition party, as well as his bodyguard. One of the officers was convicted of the assassination and the other officer was convicted of aiding and abetting the murder.

The Court concluded that the proceedings in both cases did not disclose any elements of unfairness. The applicants' lawyers had had enough time to study the case file; their convictions were based on the testimonies of a number of witnesses; and, the Court could find no arbitrariness in the assessment of the evidence.

Furthermore, the Court found that Mr Mulosmani's complaint about an alleged violation of his right to be presumed innocent was manifestly ill-founded. While a public statement of the leading opposition politician, who immediately after the crime accused Mr Mulosmani of the murder, could have had a continuing impact even at the time he was charged more than one year later, the politician had made the statement as a private individual and had not held any public office at the time.

Principal facts

The applicants, Ismet Haxhia and Jaho Mulosmani, are Albanian nationals who were born in 1954 and 1977, respectively. Mr Haxhia was the head of traffic police and Mr Mulosmani was the head of public order in Bajram Curri, a city in the north east of Albania. Mr Haxhia is currently serving a 20-year prison sentence and Mr Mulosmani is serving a life sentence.

In the evening of 12 September 1998, Azem Hajdari, a Member of Parliament for the Democratic Party, and one of his bodyguards were shot dead. His second bodyguard was seriously injured in the shooting. Immediately after the assassination, the then chairman of the Democratic Party, Sali Berisha, made a public statement accusing Mr Mulosmani of the murder.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

In December 1999, Mr Mulosmani was charged with having participated in, or organised the assassination. In May 2001, he was arrested. Mr Haxhia was arrested in January 2001, and charged with two counts of murder and one count of attempted murder. The trial court questioned a number of witnesses in connection with the murder, including one witness who was serving a prison sentence in Italy and who was questioned via video link.

In its judgment of 29 April 2002, the trial court made a legal reclassification of the charges, from premeditated murder on political grounds to premeditated murder out of revenge. It convicted Mr Mulosmani of the assassination of the MP and his bodyguard, and Mr Haxhia of aiding and abetting the murder. Both convictions were based, in particular, on the testimonies of a number of witnesses, including one eye witness to the murder in Mr Mulosmani's case. Both applicants' convictions were upheld by the Supreme Court in February 2003 and by the Constitutional Court on 9 July 2003.

Complaints, procedure and composition of the Court

Both applicants made a number of complaints under Article 6 §§ 1 and 3 (a) to (d), alleging that the proceedings against them had been unfair. Notably, they alleged that the Albanian courts had admitted evidence which had been unlawfully obtained, such as the video-link testimony of one witness, and that their decisions had lacked sufficient reasons. They also alleged that their lawyers had not been given enough time to study the investigation file and had not been given access to all the documents in the file. They further complained of the fact that the charges against them had been reclassified without giving them enough time to prepare. Mr Haxhia also complained that he had not had the opportunity to cross-examine one of the witnesses. Mr Mulosmani complained that the Albanian courts had been unable to summon Mr Berisha to testify as a witness.

Relying on Article 6 § 2 (presumption of innocence), the applicants also complained about statements made in public about their guilt by political figures, notably by Mr Berisha in Mr Mulosmani's case.

Both applicants made a number of other complaints which were declared inadmissible by the Court because they were either lodged outside the six-month time limit after the last decision at national level or because they had not been raised before the Albanian courts.

The application **Haxhia v. Albania** was lodged with the European Court of Human Rights on 20 July 2003 and the application **Mulosmani v. Albania** was lodged on 4 July 2003.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta **Ziemele** (Latvia), *President*,
David Thór **Björgvinsson** (Iceland),
George **Nicolaou** (Cyprus),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **De Gaetano** (Malta),
Paul **Mahoney** (the United Kingdom) and,
Markelian **Koca** (Albania), *ad hoc Judge*,

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

Article 6 §§ 1 and 3

Concerning the applicants' complaint relating to their lawyer's access to the case file, the Court observed that, following the introduction of the bill of indictment against Mr Haxhia, his lawyer had been given access to the voluminous investigation file. At the first hearing, the trial court had

granted the lawyer's request for an extension of time needed to examine the file. Mr Mulosmani had initially represented himself, although having been informed of his right to appoint a lawyer. The trial court had accepted his subsequent appointment of a lawyer of his own choosing, who had requested the continuation of the trial after having studied part of the material in the case file.

As regards the admission of evidence allegedly obtained unlawfully, the Court noted that the trial court had rejected the testimonies of two witnesses as contradictory and lacking credibility and had not relied on them, including the testimony given by one witness via video link. Moreover, Mr Haxhia had freely waived his right to attend the hearing during which the witness was heard via video link.

In its case-law the Court had accepted that a reclassification of an offence did not impair the rights of the defence if the accused, in review proceedings, had a sufficient opportunity to defend himself. Both Mr Haxhia and Mr Mulosmani had challenged their conviction and the reclassification of the offence in the appeal proceedings, but the competent courts, after examining their submissions, had rejected them. Furthermore, both applicants had been in a position to anticipate the reclassification of the charges against them, having regard, in particular to the prosecutor's final submissions. Furthermore, they had had adequate time and facilities to prepare their defence to the reformulated charges in the appeal proceedings.

As regards Mr Mulosmani's complaint about the Albanian courts' failure to question Mr Berisha as a witness, the Court noted that Mr Berisha had not been an eye witness to the murder. The public statement he had made immediately following the assassination had not been introduced as evidence in the proceedings, let alone been relied on by the courts. Mr Mulosmani had therefore not shown how Mr Berisha's appearance would have been decisive. Furthermore, Mr Mulosmani's conviction had been based on and corroborated by the testimonies of four witnesses. The Court could find no arbitrariness in the assessment of those pieces of evidence.

Mr Haxhia's conviction had been based on the testimonies of three witnesses. The appeal court had re-opened the judicial examination and it had granted some of his requests for the admission in evidence of additional documents and had rejected the remainder. The Court underlined that the national courts enjoyed discretion as regards the admission of evidence and could not be reproached for having rejected Mr Haxhia's requests if they considered that they possessed sufficient evidence to decide the case.

The Court concluded that the proceedings before the Albanian courts against both applicants, seen as a whole in each case, did not disclose any elements of unfairness. There had accordingly been no violation of Article 6 §§ 1 and 3 in either case.

Article 6 § 2

The Court declared both applicants' complaints under Article 6 § 2 inadmissible.

As regards Mr Mulosmani's claim that Mr Berisha's public statement accusing him of the murder immediately following the assassination had breached his right to be presumed innocent, the Court considered that even though Mr Mulosmani had been charged more than a year later, it could be considered to have had a continuing impact. However, Mr Berisha had not acted as a public official and, at the time, he had not held a public office and he had not been involved in the criminal investigation into the MP's murder. He made the statement as a private individual in his capacity as the chairman of a political party which was legally and financially independent of the State. The mere fact that his statement might have been useful in calling for justice to be rendered did not transform him into a public official. Mr Mulosmani's complaint was therefore manifestly ill-founded.

Mr Haxhia had not raised his complaint concerning the alleged breach of his right to be presumed innocent before the Albanian courts. It was therefore to be rejected as inadmissible for non-exhaustion of domestic remedies.

Separate opinion

Judge De Gaetano expressed a partly dissenting opinion in the case of **Haxhia v. Albania**, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.