

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

THIRD SECTION

DECISION

Application no. 54282/11
Vehbi ALIMUÇAJ
against Albania

The European Court of Human Rights (Third Section), sitting on 21 May 2024 as a Committee composed of:

Ioannis Ktistakis*, President*,

Darian Pavli,

Andreas Zünd*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 54282/11) 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") on 23 August 2011 by an Albanian national, Mr Vehbi Alimuçaj ("the applicant"), who was born in 1946, lives in Tirana and was represented by Mr A. Sacca, a lawyer practising in Milan;

the decision to give notice of the complaints about the length of proceedings and the right to property under, respectively, Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention to the Albanian Government ("the Government"), initially represented by their Agent, L. Mandija and subsequently by O. Moçka, of the State Advocate's Office;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant complained that continued *ad hoc* compulsory administration of his company amounted to a violation Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

A. Background

2. The applicant is the sole shareholder of Vefa Holding SHPK, a limited liability company established in 1992 under Albanian law (see, for context, *Vefa Holding sh.p.k and Alimuçaj v. Albania* (dec.), no. 24096/05, §§ 1-47, 14 June 2011, and *Alimuçaj v. Albania*, no. 20134/05, §§ 8-95, 7 February 2012).

3. As of 1994 the company started borrowing funds from private persons.

4. In 1997 Albania was hit by large-scale civil unrest, which was prompted by the default of numerous companies which had, in the preceding years, borrowed funds from private citizens and were considered to be "pyramid schemes".

B. Compulsory administration

1. Placement in compulsory administration

(a) First decision

5. On 22 August 1997 the Council of Ministers placed a number of companies involved in pyramid schemes, including Vefa Holding, under compulsory administration proceedings. The decision was based on the 1997 Non-banking Entities Audit Act (law no. 8215, dated 9 May 1997 "On the audit of non-banking entities which have taken loans from the public at large", as subsequently amended).

6. The decision of the Council of Ministers and a part of the 1997 act were subsequently quashed by domestic courts.

(b) Second decision

7. Following a number of amendments to the 1997 Non-banking Entities Audit Act, on 24 November 1997 the Council of Ministers again placed Vefa Holding in compulsory state administration.

2. Compulsory administration proceedings

8. The administration process was conducted in two phases. During the first phase, State-appointed administrators assumed full control of the company. An inventory of the company's assets was compiled and an action plan was prepared for the recovery of the assets. An audit was conducted by qualified auditors appointed by the domestic authorities. During the second phase, the administrators sold many of the company's assets and assisted in the redistribution process to its creditors.

9. The proceeds collected from the sale of assets totalled 3,800,000,000 Albanian leks (ALL), approximately 37,383,200 United States Dollars (USD) at the relevant time. On 28 January 2005 the Council of Ministers adopted a decision on the redistribution of those proceeds to the

company's creditors on basis of a given coefficient. The outstanding debt of the company remained at ALL 34,361,781,170, approximately USD 338,040,000 at the relevant time.

10. In a letter of 29 March 2010 the administrators informed the State Advocate's Office that the total number of creditors was 73,509, of whom 57,742 had benefited from the redistribution process (see *Alimuçaj*, cited above, §§ 13-15).

3. 2012 Closure Act

11. On 13 May 2012 the Closure Act entered into force (law no. 41/2012 of 21 April 2012 "On the deadlines and procedures for closing the financial control process of non-banking legal entities that have taken loans from the public at large", published in the Official Gazette, no. 43 of 27 April 2012).

12. It provided that within six months of its entry into force, the administrator of each company under compulsory administration would initiate before the relevant courts bankruptcy proceedings in its respect (section 4).

13. In their submissions of 12 February 2013 before the Court, the Government stated that the initiation of the company's bankruptcy would require some additional time. It appears from the applicant's subsequent submissions that the administration proceedings are still ongoing.

C. Relevant domestic law

14. Section 71/ § 1(a) of the Constitutional Court Act (law no. 8577 as amended) provides that the Constitutional Court may examine an individual complaint when ordinary remedies have been exhausted or when there are no available remedies.

THE COURT'S ASSESSMENT

A. Alleged violations of Article 6 § 1 and Article 13 of the Convention

15. The applicant complained under Articles 6 and 13 of the Convention that the length of the compulsory administration proceedings concerning his company had been in breach of the "reasonable time" requirement and that no effective remedy was available for that complaint.

16. The Court agrees with the Government's objection that the applicant raised this complaint for the first time before the Court (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, with further references). Indeed there is no evidence in the case file that the applicant complained before any domestic authorities of the length of proceedings.

17. In particular, Article 399/1 et. seq. of the Code of Civil Procedure (CCP), as in force as of 5 November 2017, provides for an acceleratory and/or compensatory remedy in respect of delays that amount to a violation of the "reasonable time" requirement under Article 6 § 1 of the Convention (see *Bara and Kola v. Albania*, nos. 43391/18 and 17766/19, §§ 106-19, 12 October 2021).

18. Before the Court, the applicant alleged that the impugned domestic proceedings were within the scope of Article 6 § 1 of the Convention (compare with *Cipolletta v. Italy*, no. 38259/09, §§24-37, 11 January 2018). He further claims that this is an ongoing situation. Accordingly, it was open to the applicant, as of November 2017, to put that same argument to the domestic courts and request acceleration and/or compensation for any excessive length of proceedings. In this connection, the Convention is directly applicable in Albania by virtue of Article 122 § 1 of the Constitution (see *Bakiu and Others v. Albania* (dec.), nos. 43928/13 and 16 other applications, § 80, 10 April 2018) and Article 399/1 of the CCP refers expressly to Article 6 § 1 of the Convention (see *Bara and Kola*, cited above, § 37).

19. However, there is no evidence that the applicant used that remedy.

20. It follows that the applicant's complaint under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

21. As regards the complaint related to an alleged continuous violation of Article 13 of the Convention, the Court has already found that a remedy was available to the applicant. It follows that this complaint must be rejected in accordance with Article 35 § 3 (a) and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

22. The applicant alleged that the delay in the compulsory administration proceedings and the way in which administrators managed the company's assets amounted to a violation of his property rights under Article 1 of Protocol No. 1 to the Convention. The Government claimed non-exhaustion as the applicant has not brought this complaint before any domestic authority.

23. The question of the extent to which this complaint may be substantially the same as the one already examined by the Court in *Vefa Holding sh.p.k and Alimuçaj* (cited above, §§ 82-111) and of compliance with the six-month time-limit may be left open as the complaint is in any event inadmissible for the reasons indicated below.

24. The Court refers once again to the general principles relating to the exhaustion of domestic remedies set forth in *Vučković* (see paragraph 16 above).

25. Since 12 August 2016, the Constitutional Court's competence to examine individual complaints has been significantly expanded to include challenges "against any act of public power or judicial decision" affecting fundamental rights and freedoms (see *Fullani v. Albania* (dec.), no. 4586/18, § 79, 20 September 2022). It is also relevant that when no ordinary remedies are available, an individual constitutional appeal may be lodged directly with the Constitutional Court (see paragraph 14 above). It was therefore open to the applicant to bring first to the Constitutional Court the complaints that are now before the Court.

26. However, the applicant has not started any proceedings to complain of the delays or alleged negligence of the state-appointed administrators of his company, either before the ordinary courts or before the Constitutional Court.

27. It follows that the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 June 2024.

Olga Chernishova
Deputy Registrar

Ioannis Ktistakis
President