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

FOURTH SECTION

DECISION

This decision was rectified on 31 March 2016 under Rule 81 of the Rules of Court.

Application no. 27656/07
Altin ARAPI
against Albania

The European Court of Human Rights (Fourth Section), sitting on 7 July 2015 as a Chamber composed of:
Guido Raimondi*, President*,
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Faris Vehabović,
Yonko Grozev, *judges,*
and Françoise Elens-Passos, *Section Registrar,*
Having regard to the above application lodged on 12 June 2007,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Altin Arapi, is an Albanian national, who was born in 1971 and is currently living in Belgium. He is represented before the Court by Mr G.-H. Beauthier, a lawyer practising in Brussels.

[…][1]

1. Rectified on 31 March 2006: section "A. Background of the case" as well as paragraphs 2 and 3 were deleted.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The applicant's conviction for other criminal offences

3. At some time in 1996 the prosecutor opened an investigation against the applicant and nine other people, including O., into numerous criminal offences committed between 1993 and 1996 in the cities of Tirana and Vlora. Almost all offences had been committed by way of a criminal organisation, named 'Revenge for Justice – *Hakmarrja për Drejtësi*', which the ten co-accused had allegedly established.

4. On 22 November 1996 the applicant's arrest was ordered. By that time, the applicant had gone into hiding.

5. On 12 February 2003 the Tirana District Court decided to discontinue the proceedings for lack of evidence.

6. On 19 February 2003, in a press conference, the then leader of the Democratic Party accused the judges who had given the decision of 12 February 2003 of being members of the said criminal organisation. The applicant has submitted an article of 20 February 2003 which had appeared in the daily "*Koha Jonë*". Another article of the daily "55" of 14 February 2003 reported the spokesperson of the office of the Prosecutor General stating that "the court's decision was given by scared judges who were under pressure and threat."

7. The applicant alleges that the judges who gave the judgment of 12 February 2003 left the country on an unspecified date.

8. On 30 April 2003 the Tirana Court of Appeal quashed the decision of 12 February 2003 and remitted the case for fresh consideration. It held that the Tirana District Court was not empowered to discontinue the proceedings. Instead, it should have returned the investigation file to the prosecutor for further completion with documents.

9. On 1 July 2008 the Tirana Serious Crimes District Court found the applicant guilty as charged and sentenced him to life imprisonment. This decision was upheld on appeal by the Court of Appeal and the Supreme Court (decisions nos. 40 of 7 July 2009 and 731 of 2 July 2010).

10. On 7 November 2011 the Constitutional Court accepted O.'s constitutional complaint and found a breach of the length of proceedings and the Supreme Court's lack of impartiality. It remitted the case for re-examination to the Supreme Court. It would appear that the proceedings are pending before the Supreme Court.

11. None of these sets of proceedings are the subject of this application.

2. Criminal investigation against the applicant into the murder of G.

12. On the evening of 29 September 2003, around 9 p.m., a certain G. was murdered in a car on a main boulevard in Tirana, while waiting at the traffic lights. The victim was the driver of the escort group of the Prosecutor General and he was shot dead by a male passenger in a taxi which was in the line of traffic. The perpetrator left the crime scene together with a girl who was in the taxi with him. The Prosecutor General's spouse, Z., and minor daughter, S., were in the car when the murder was committed.

13. The crime scene investigation reports indicated that three fingerprints, which were taken for an examination, were found on the door of the victim's car. Another fingerprint, which was taken for examination, was found on the interior side of the taxi's back seat window.

14. On the same evening, at 10 p.m., Z. made a statement to a prosecutor. The relevant parts of the statement, which was not initially disclosed to the defence, read as follows.

> "While we were waiting at the traffic lights, I heard G. speaking to someone on the left of the car. Initially, I did not pay attention. When the conversation was not being made on normal tones, I told G. to stop talking and to pull up the window ... The other person started raising his voice and even shouted swear words. I told G. not to respond. Suddenly I saw that the other person came closer to the car. Again, I told G. to pull up the window and not to snap back. Initially, I could not discern who that person was. At the moment he neared the car, I saw that he was a young man. G. attempted to open the door of the car to clarify things away from our presence. He opened the door ajar but could not get out because the person pushed the door back, without closing it, and shot G. with a pistol he took out of the inside of his jacket."

15. Z. also gave a description of the perpetrator. Whereas she had not been able to see anyone else who was with the perpetrator, after getting out of the car, she heard people saying that a girl, who was with him on the taxi, left together with the perpetrator after the murder.

16. On the same evening the taxi driver, T., made a statement to the police officers. He declared that he had collected a man and a woman from a restaurant in Tirana. He was asked to take them to a certain address in the city, without having been given instructions as to the route to follow. According to the statement, while they were waiting at the traffic lights, the male passenger, who was sitting in the front seat, pulled down the window and started arguing with the victim whose car stopped beside the taxi. The relevant parts of the statement, read as follows.

> "My passenger nervously hit the door with his fist. I saw that he and the SUV driver were exchanging looks. My passenger pulled down the window and asked the SUV driver 'what are you looking at?' I do not recall whether the window of the SUV door had been pulled down and I did not hear the SUV driver's answer. I then saw that my passenger got out of the taxi, went over to the SUV driver and started arguing. I did not hear their arguments. I then saw my passenger taking out a pistol from his belt and directing it to the SUV driver. I did not see whether the SUV door was opened or not. I heard one single shot and the SUV driver fell on the side of the

passenger's seat. At that moment the driver fell on the other side, the door of the SUV was opened. I did not see whether the door was opened by the passengers or the driver. I saw that the passenger took the SUV driver's pistol away with him and left from the back of the SUV."

17. The statement also included a description of each passenger.

18. The applicant alleges that T. left the country immediately after giving the above statement.

19. On 4 October 2003 the applicant fled Albania on a false passport and later sought asylum in Belgium. On 30 October 2003 the applicant was arrested in Belgium (see the section "Extradition proceedings and the applicant's detention in Belgium" below).

20. On 22 and 28 October 2003 two extradition requests ("*letër porosi* – letters rogatory*"*) were sent by the Prosecutor General to the Belgian authorities requesting the arrest of O. with a view to his extradition to Albania. At the material time it was believed that O. was the author of the murder of 29 September 2003. However, O. obtained asylum in Switzerland on 13 September 2004 and the Swiss authorities refused an extradition request by the Albanian authorities in respect of O. on 14 December 2005.

21. On 29 October 2003 an arrest warrant was issued against the applicant in connection with the above murder. No copy of the warrant has been submitted to the Court.

22. On 30 October 2003 the applicant's fiancée, Im. (allegedly the girl in the taxi) was arrested. Her fingerprints were taken the following day. During the questioning, Im. identified the person who had been arrested in Belgium as the applicant, on the basis of some photographs. On the same day the Prosecutor General sent another extradition request to the Belgian authorities requesting that the applicant, instead of O., be arrested with a view to extradition. The relevant excerpts of the applicant's copy of the extradition request, as submitted in French (text not edited), read as follows[1]:

« D'après les actions immédiates d'investigation de cette affaire, on a identifié les numéros utilisés par le suspect principal, Altin Arapi et par ses collaborateurs. Arapi est un criminel connu et déjà recherché pour plusieurs crimes dont meurtre, vol de banques, enlèvement et actes terroristes. Arapi est le dirigeant d'un groupe criminel appelé "Hakmarrja per Drejtesi" (Vengeance pour la Justice). On pense que le groupe est très dangereux et presque tous d'entre eux ont été poursuivis pénalement par défault pour quelques crimes graves.

...

Après l'interrogatoire de la citoyenne Albanaise [Im.], (laquelle déclare être la fiancée d'Altin Arapi) et après lui avoir montre pour effet de reconnaissance des photos du sujet arrêté en Belgique, elle a admis que la personne sur la photo est Altin Arapi. C'est pourquoi nous avons des raisons fondées pour croire que le tueur n'est pas O., mais Altin Arapi, qui est la personne arrêtée en Belgique.

1. Rectified on 31 March 2016: the text of the extradition request in French was added.

...

Les articles appartenants au Code Pénal Albanais, traduits en Français, qui concernent les crimes pour lesquels Arapi a été condamné auparavant, aussi que le dernier meurtre du chauffeur du Procureur General. »

23. In the meantime, the Albanian Government, pursuant to a request for factual information by the Judge Rapporteur in accordance with Rule 49 § 3 (a) of the Rules of Court, submitted a copy of the extradition letter. The cover letter reads as follows[1]:

"This document [the extradition request] was provided by the General Prosecution Office who stated that at the file of extradition regarding Altin Arapi, this document was created only in the English version. Please find attached an Albanian translation of the extradition request dated 30 October 2003."

24. The relevant excerpts of the copy of the extradition request, as submitted in English (text not edited), read as follows:

"From the very urgent investigative steps that we have taken following the vent, we have identified some telephone numbers used by the chief suspect, Altin Arapi, and his criminal associates. Arapi is a known criminal already wanted for several crimes including murder, bank robbery, kidnapping and terrorist acts. Arapi is the leader of a criminal group called 'Revenge for Justice'. The group is presumed to be very dangerous and nearly all of them have previously been prosecuted *in absentia* for other severe crimes.

...

From the interrogation of the Albanian citizen [Im.] (who is actually declaring to be the finance of Altin Arapi) and after the introduction of the photographs of the subject arrested in Belgium, she has admitted that the person in photograph is Altin Arapi. So we have reasonable ground to believe that the murderer is not O. but Altin Arapi, who is the person that is arrested by you in Belgium.

...

Attached to this request are:

The relevant articles of the Albanian Criminal Code, translated into French, covering both the crimes for which Arapi has previously been indicted and the recent murder of the General Prosecutor's driver.

..."

The English copy bore stamps reading "General Prosecutor's office, copy certified against the original".

25. On 31 October 2003 the first fingerprint examination concluded that the fingerprint found on the taxi's back seat window corresponded to Im.'s. On 6 November 2003 the second fingerprint examination concluded that two of the fingerprints found on the victim's car's door corresponded to the applicant's right palm and his right hand little finger, of which digital prints

1. Rectified on 31 March 2016: paragraphs 23 and 24 were added.

had been provided by the Belgian authorities following his arrest in Belgium.

26. On 29 January 2004 the prosecutor charged the applicant with six offences, namely the murder of G., theft, the illegal possession of firearms, the forging of documents, the forging of identity cards or visas and the forging of civil status acts. On 6 February 2004 the applicant's lawyer was notified of the charges.

27. On 9 February 2004 the Tirana Serious Crimes District Court ("the District Court") granted the prosecutor's request for the applicant's arrest *in absentia*. There is no indication that the applicant's lawyer attended the hearing.

3. Judicial proceedings conducted in absentia against the applicant

(a) The trial proceedings

28. On 28 October 2004 the prosecutor filed a bill of indictment with the Tirana Serious Crimes District Court ("the trial court") accusing the applicant of six criminal offences.

29. On 16 December 2004 the applicant's lawyer contended that the prosecutor had breached the presumption of innocence against the applicant by virtue of the extradition request of 30 October 2003. He also submitted seven other requests in order to obtain additional evidence, conduct other experts' reports and question other witnesses.

30. On 17 December 2004 the applicant's lawyer requested that the fingerprint examination report of 6 November 2003 be declared invalid for breach of procedural rules. It would appear that on 23 December 2004 the trial court dismissed the request.

31. On 7 February 2005 the trial court heard the testimony of Z. (the Prosecutor General's spouse). She described the events of 29 September 2003 and the fact that the perpetrator had prevented G. from opening the door of the car after the exchange of heated words. She stated that the person who had murdered G. resembled the photographs of the accused as shown on the press and on the television, during his appearance before the Belgian courts. The witness further declared that she had made a preliminary statement on 29 September 2003 to a prosecutor, whereas S. had not made any statements since she was a minor at the material time. The applicant's lawyer sought to obtain possession of Z.'s statement of 29 September 2003 which had been withheld by the prosecutor. At least four other witnesses were questioned on the same day. The court issued a summons for the appearance of the taxi driver, T.. However, T. never appeared before the court as he had fled the country to an unspecified address.

32. On 11 February 2005 the prosecutor read out T.'s statement, which had been taken during the criminal investigation. The applicant's lawyer

contested the statement in so far as the characteristics of the perpetrator did not match those given by other witnesses before the trial. The applicant's lawyer further insisted on being provided with a copy of Z.'s statement of 29 September 2003. On the same day the trial court rejected the applicant's lawyer request. It decided that, in so far as the evidence was not submitted to the trial court, the latter had no right to obtain acts from the parties, neither oblige them to submit any particular acts. However, the court granted most of the applicant's requests of 16 December 2004, while it rejected the request to order an examination report of fingerprints in the restaurant as being unnecessary given the circumstances of the case.

33. Consequently, the trial court heard two criminal investigators K. and E., as well as two criminal experts R. and D. as requested by the defence. They were questioned about the crime scene investigation reports and the experts' reports they had completed. In addition, witness B. testified before the court as requested by the defence.

34. B. had not made any statements during the criminal investigation for lack of trust in the justice system. He had decided to testify before the court following the airing of views on television about the murder and the suspects. In his testimony, B. declared that he had stopped at the corner of the traffic lights while he was waiting to cross the street. He had seen from distance that the door of G.'s car opened and he heard a choking noise. He thought that a murder had taken place. After that moment, the person who had opened the door of G.'s car, took away a girl who was seated in the back of a taxi next to the car. In B.'s view, the perpetrator did not resemble the applicant.

35. On an unspecified date before 18 February 2005 the prosecutor provided the applicant's lawyer with Z.'s statement of 29 September 2003. The statement was not submitted to the court to be included in the case file.

36. On 18 February 2005 two other criminal experts, H. and Q., appeared before the court as requested by the defence. They were questioned about the experts' reports they had conducted. The trial court decided to obtain additional relevant evidence from various bodies in relation to the case as requested by the defence. On the same day, the applicant's lawyer submitted a memorial objecting to Z.'s statement of 29 September 2003. According to the memorial, the applicant's lawyer complained of the procedure followed for obtaining the statement and its content.

37. On 18 March 2005 the applicant's lawyer made his final written submissions. He accepted three charges levelled against the applicant, namely the forging of documents, the forging of identity cards or visas and the forging of civil status acts, but dismissed the remaining three, namely the murder of G., theft and the illegal possession of firearms. The final observations contested the admissibility and assessment of evidence submitted by the prosecutor.

38. On 24 March 2005 the trial court delivered its judgment, finding the applicant guilty as charged and sentenced him to life imprisonment. The court relied on the applicant's telephone metering information, which indicated that he had dialled the land line telephone number of the taxi company whose taxi he had been using at the time the murder was committed. In addition, two of the fingerprints found on the crime scene corresponded to the applicant's fingerprints. The oral testimony of Z. confirmed that the perpetrator resembled the applicant as shown on television in his appearance before the Belgian court. The statement of T. also confirmed the resemblance between the perpetrator and the applicant.

(b) The appeal proceedings

39. On 30 March 2005 the applicant appealed. He mainly complained of the admissibility and assessment of several pieces of evidence, such as Z.'s oral testimony, the report on the examination of his fingerprints and the report on the examination of the victim's car. He asked the Tirana Serious Crimes Court of Appeal ("Court of Appeal") to obtain additional evidence such as O.'s fingerprints, to summon the restaurant's waitresses, and to re-examine some of the experts questioned during the trial. He also complained that the prosecutor had not disclosed a fingerprint examination report that had been conducted at the restaurant in which he had been dining on 29 September 2003. On 11 July 2005 the applicant submitted further written observations. He finally argued that the evidence submitted by the prosecutor was contradictory and inconclusive.

40. On 11 July 2005 the Court of Appeal dismissed the applicant's appeal and upheld the trial court's judgment. It concluded that the applicant's guilt was proved on the strength of the telephone metering information, the fingerprint report, Z.'s oral testimony and T.'s statement.

41. In the same judgment, the court addressed each of applicant's requests. As regards the applicant's requests to declare invalid several pieces of evidence, the court dismissed them as being unsubstantiated and found that they had been obtained lawfully. In so far as the applicant's request for the administration of O.'s fingerprints was concerned, the court decided that such fingerprints would not serve any purpose. The applicant's request for summoning waitresses from the restaurant in which he had been dining on the evening of 29 September 2003 was dismissed on grounds of their incorrect identification and the unclear description of facts the defence intended to prove. The applicant's allegation that the prosecutor had not submitted an expert report on the fingerprints taken at the restaurant was rejected as being unsubstantiated. There was no proof that such report existed. The court also dismissed the applicant's request to re-examine some experts given that their testimonies would not disclose any new facts other than the ones that had been testified before the trial court. The court considered that the testimony of B. presented information which was

difficult to prove given the location and distance of the witness. It found that the credibility of his testimony was questionable and decided to reject it.

42. On 29 July 2005 the applicant appealed. He contended that the domestic courts lacked impartiality as they had dismissed the accused's requests to obtain further evidence, question witnesses and disregard the evidence already procured as being invalid. He also argued that the courts had erred in the qualification of the criminal offence.

43. On 30 June 2006 the Supreme Court dismissed the appeal, finding that it contained no lawful grounds of appeal in accordance with Article 432 of the Code of Criminal Procedure.

44. On 10 October 2006 the applicant filed a constitutional appeal. He submitted that the applicant's right to legal assistance had been breached as a result of non-notification of the decision of 9 February 2004. He further argued that there had been a breach of the presumption of innocence owing to the content of the extradition request of 30 October 2003. The principle of equality of arms had also been violated, following the dismissal of his requests to re-examine witnesses, obtain additional evidence, conduct further experts' reports and reconsider the evidence submitted by the defence.

45. On 14 December 2006 the Constitutional Court, sitting as a bench of three judges, dismissed the applicant's appeal. It held that the applicant's complaint did not raise any fair trial issues, but mainly concerned the assessment of evidence and interpretation of statutes, which was the function of the lower courts.

4. Extradition proceedings and the applicant's detention in Belgium

46. Following the Albanian authorities' extradition request of 30 October 2003 requesting the applicant's extradition, he was arrested and detained on remand by the Belgian authorities. It would appear that the extradition request was supplemented by documents on 17 February and 13 April 2004.

47. On 17 September 2004 the Belgian Ministry of Justice refused the extradition request. The relevant parts of the decision, as submitted by the applicant in Dutch, read as follows:

> "3. Considering that in a report of the Federal Police, dated 1 December 2003, information is mentioned – which the Federal Police received from two different sources – that places the arrest of the person whose extradition is requested in a political light whereas the Belgian police and justice authorities are being used in a tangle of political complications and a process of settling scores in Tirana; that, according to this report, it had already been established in this case that the working methods and the documents provided by the Albanian authorities contained anomalies; that the report sets out the intelligence obtained from which it, *inter alia*, appears that, as regards the arrest warrant of 22 November 1996, a judgment was given on 12 February 2003, which, *inter alia*, states that documents were forged, that

several witnesses testified that they had not identified the accused as perpetrators, that in the course of the investigation witnesses were blackmailed and tortured and, that the accused – including the person whose extradition is being sought – were acquitted; that the judges who issued this judgment were subsequently accused of participating in the "*Hakmarrja*" terrorist organisation; that the basis for the arrest warrant of 29 October 2003 has to be found in a web of political competition; that in this case various inconsistencies can be established whereby the data have been manipulated; that evidence of such manipulation can be found in the great differences between the actual statements of the taxi driver who transported the perpetrator and his female companion on the one hand and the official version of these statements on the other;

4. Considering that on 17 October 2003 an international arrest warrant was originally issued against [O.] concerning the murder of [G.] and that on the same day a picture and fingerprints of this person were submitted; that only on the day that [the applicant] was interviewed in Belgium, namely on 30 October 2003, and after there had been contact between Belgium and Albania, the Albanian Government let it be known that the perpetrator of the assault on [G.] had not been [O.] but [the applicant]; that it is true that the case file contains information relating to fingerprints submitted by the Albanian authorities, supposedly demonstrating that [the applicant] was present at the crime scene when [G.] was shot, these elements were however only submitted after the Belgian authorities had sent [the applicant's] fingerprints to the Albanian authorities;

5. Considering that it is furthermore the case that the request for extradition speaks of criminal proceedings against the [applicant] which were instituted on 29 September 2003 and of the criminal proceedings 1589/96, without however making any mention of the course of the aforementioned proceedings (see para. 1 above), i.e. the judgments of 12 February 2003, 30 April 2003 and 4 September 2003; that the course of the proceedings was kept concealed until the Belgian authorities, based on the documents submitted by the defence, requested the Albanian authorities to provide additional information;

Upon considering that it has thus been adequately demonstrated that in the present case there are serious grounds for believing that the request for extradition was made with the intention to prosecute the person concerned for political motives, or that the position of the person concerned would be adversely affected on the basis of these motives;

6. Upon considering that pursuant to Article 3 of the [European] Convention on Extradition and Article 2bis of the Belgian Law on Extradition of 15 March 1874 the extradition shall not be allowed if the requested Party has serious reasons for believing that the request for extradition concerning a non-political offence was made with the intention to prosecute or punish a person on the ground of his race, religion, nationality or political opinion, or if the position of the person involved threatens to be adversely affected on the basis of one of these reasons;

Decides:

The extradition of ARAPI Altin is not granted to the Government of Albania."

48. In a letter of 30 September 2004 to the Albanian Embassy in Brussels, the Belgian authorities stated that the refusal of the extradition request was based on Article 3 of the European Convention on Extradition and Article 2bis of the Belgian Law on Extradition of 15 March 1874, according to which extradition shall be refused if there exist "substantial

grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons."

49. The applicant submits that he was held for eleven months in detention in Belgium, at the end of which he was released.

50. A certificate of 12 June 2013 by the Belgian Office of the Commissioner General for Refugees and Stateless Persons stated that the applicant was a refugee within the meaning of the Geneva Convention of 28 July 1951.

5. Public statements made in respect of the applicant

51. The applicant submitted that on 16 April 2006 the then spokesperson of the parliamentary group of the Democratic Party, B.N, declared before the Albanian media the following:

> "before making a summary of achievements, the Prosecutor General should explain to Albanians his links with the terrorist organisation 'Revenge for Justice' and the reasons that the case file in respect of Altin Arapi, [the applicant], did not follow the formal procedure".

52. On 17 April 2006, in an interview in a private television channel, the then Prosecutor General was reported to have stated the following:

> "the fact that Belgium, Switzerland ... did not grant the extradition of the persons concerned for political reasons indicates that these countries assessed the political statements made in Albania and are afraid of an unjust [legal] process."

53. According to a press article published in the "Panorama" daily newspaper, it would appear that on 24 July 2006 the Albanian Prime Minister, speaking before the Albanian parliamentarians prior to their voting on the dismissal of the Prosecutor General, stated, amongst others, the following:

> "those who voted for you do not have anything in common with the murder of the Prosecutor General's driver by Altin Arapi in the middle of the boulevard."

B. Relevant domestic law

1. The Constitution

54. The relevant part of the Constitution reads as follows:

> "Article 131
>
> The Constitutional Court shall determine: ... (f) complaints by individuals alleging a violation of their constitutional rights to a fair hearing, provided all legal remedies for the protection of those rights have been exhausted."

2. Code of Criminal Procedure

55. Article 141 provides that any document addressed to an accused who cannot be found, has been declared fugitive or gone into hiding, is notified to his representative.

56. Article 238 states that one of the security measures (*masë sigurimi*) that the court assigns is imprisonment. Article 249 § 1 allows for the opportunity to appeal to a higher court within ten days against measures of restraint. Under Article 249 § 2, the time-limit to appeal in respect of the accused who has been declared fugitive or gone into hiding starts to run from the date of notification to his representative in accordance with Article 141.

57. 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.

58. 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.

59. 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.

60. The Court of Appeal's judgments may be appealed to the Supreme Court in compliance with one of the following requirements of Article 432: a) the criminal law has not been respected or has been misapplied; 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.

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

3. The Serious Crimes Courts Act (Law no. 9110 of 24 July 2003 – "Ligji për Organizimin dhe Funksionimin e Gjykatave të Krimeve të Rënda)

62. This Act set up the Serious Crimes District Courts (G*jykatat për Krime te Rënda*) and the Serious Crimes Courts of Appeal (*Gjykatat e Apelit për Krime të Rënda*). Both courts sit in chambers composed of five judges. They try cases that concern criminal offences committed under Article 75 (a) of the Criminal Code.

4. Criminal Code

63. Article 75 (a), as introduced by Law no. 8813 of 13 June 2002, provides that the serious crimes courts try cases that concern the criminal offence of establishing an armed group or a criminal organisation, any criminal offence committed by such group or organisation and any other crime which is punishable by no less than 15 years.

COMPLAINTS

64. The applicant complains under Article 5 § 4 of the Convention that he could not challenge his deprivation of liberty of 30 October 2003, because the Albanian authorities had notified his lawyer of the applicant's arrest only on 29 January 2004, three months after the arrest.

65. The applicant further complains that there has been a breach of Article 6 §§ 1 and 3 (b) and (d) of the Convention on account of: the unfair admission and assessment of evidence; the lack of impartiality of domestic courts; the non-respect of the principle of equality of arms as a result of the domestic court's dismissal of his requests to obtain additional evidence, to conduct further expert reports, to re-examine witnesses and to consider the evidence submitted by the defence; and the non-disclosure of Z.'s statement of 29 September 2003.

66. Under Article 6 § 2 of the Convention, he alleges that there has been a breach of the presumption of innocence on account of the extradition request of 30 October 2003 and the public statements of 16 April and 24 July 2006.

67. Lastly, the applicant contends that there has been a violation of Article 14 and Article 1 of Protocol No. 12 in conjunction with Article 6 in that the prosecution and trial against him had been politically motivated.

THE LAW

A. Article 5 § 4 of the Convention

68. The applicant complained against Albania, under Article 5 § 4 of the Convention, that he could not challenge the lawfulness of his detention in Belgium.

Article 5 § 4 of the Convention reads as follows.

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

69. The Court considers that before examining the applicant's complaint under Article 5 § 4 of the Convention, it should decide whether the facts complained of can be attributed to Albania.

70. The Court recalls that in the case of *Stephens v. Malta (no. 1)* (no. 11956/07, 21 April 2009) it found that the arrest warrant and extradition issued by the Maltese authorities, as a result of which the applicant was detained, pending extradition, by the Spanish authorities, engaged the responsibility of Malta under the Convention (see paragraphs 50-54). The Court sees no reason to reach a different conclusion in the circumstances of the instant case. It finds that, having regard to the alleged arrest warrant of 29 October 2003, no copy of which has been submitted, the applicant's complaint in respect of Article 5 engages the responsibility of Albania under the Convention.

71. The Court reiterates that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). In so far as there exists at national level a remedy enabling the national courts to address, at least in substance, the argument of violation of the Convention right, it is that remedy which should be used. If the complaint presented before the Court has not been put, either explicitly or in substance, to the national courts when it could have been raised in the exercise of a remedy available to the applicant, the national legal order has been denied the opportunity to address the Convention issue which the rule on exhaustion of domestic remedies is intended to give it (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

72. In the present case, the Court notes that, on 30 October 2003, the applicant was arrested in Belgium on the strength of an extradition request issued by the Albanian authorities. There is no indication in the case file that the applicant was not informed by the Belgian authorities of the reasons of his arrest. The Belgian authorities' decision of 17 September 2004 shows that the applicant took steps, presumably through the assistance of a lawyer, to oppose his extradition to Albania. However, the documents in the case file do not contain any proof to establish that the applicant was prevented from taking any steps, whether through the assistance of a Belgian lawyer, or through the assistance of his relatives or directly, to contact a lawyer in Albania between 30 October 2003 and 29 January 2004. Even after he was notified of the detention order of 29 January 2004, as alleged by the applicant, the applicant's lawyer failed to challenge it in accordance with Article 249 § 2 of the CCP. The applicant did not show that such proceedings would have been unavailable, inaccessible or ineffective. He did not raise such a complaint, even in substance, at the trial and on appeal. It would be contrary to the subsidiary character of the Convention

machinery if an applicant raised a possible Convention argument before the Court, without having challenged the impugned measure domestically (see *Vučković and Others v. Serbia* [GC], no. 17153/11, § 75, 25 March 2014).

73. The Court considers that this complaint should be dismissed for non-exhaustion of domestic remedies. It therefore decides to declare it inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Article 6 §§ 1 and 3 (b) and (d) of the Convention

74. The applicant made numerous complaints under Article 6 §§ 1 and 3 (b) and (d) of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
>
> ..."

75. The Court notes that the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1. For this reason, it is appropriate to examine the complaints from the standpoint of paragraph 3 taken together with the principles inherent in paragraph 1 (see, amongst others, *Haxhia v. Albania*, no. 29861/03, § 125, 8 October 2013). The fact that the applicant evaded justice during the trial does not render illegitimate his interest in obtaining from the Court a ruling on the violations he is alleging (see *Stapleton v. Ireland* (dec.), no. 56588/07, § 24, 4 May 2010).

76. As regards the applicant's complaints concerning the admissibility and assessment of evidence, the Court reiterates 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 (see, for example, *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140; *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, Reports 1998-IV; and *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX). The Court's task under the Convention is to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; *Bykov v. Russia* [GC], no. 4378/02, § 89,

ECHR 2009-...; and *Gäfgen v. Germany* [GC], no. 22978/05, § 163, ECHR 2010-...).

77. In the present case, the Court considers that the domestic courts adequately addressed the applicant's complaints concerning the admissibility and assessment of evidence. They dismissed them finding that the evidence had not been obtained by any unlawful means or that the evidence could have been tainted by unfairness. The Court sees no reason to adopt a different view from that of the national courts.

78. The applicant further complained that Z.'s statement of 29 September 2003 was omitted from the investigation file and was made available to the defence only during the trial. The Court notes that Article 6 § 3 (b) recognises the right of the accused to acquaint himself, for the purposes of exonerating himself or of obtaining a reduction in his sentence, with the results of investigations carried out throughout the proceedings (see, for example, *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06, and *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 538, 20 September 2011). In the present case, the Court notes that the prosecutor had initially not included Z.'s statement in the case file. However, upon its disclosure to the defence, the applicant's representative had full access to it. Following his objection to the statement, the Court observes that, in convicting the applicant, the domestic courts relied on other corroborating evidence, whereas the statement was not used in evidence.

79. In so far as the applicant complains of a breach of the principle of equality of arms and his right to examine witnesses, the Court recalls that Article 6 does not grant the accused an unlimited right to secure the appearance of every witness in court. It is normally for the national courts to decide whether it is necessary or advisable to call a witness (see, for example, *Van der Heijden v. the Netherlands* [GC], no. 42857/05, § 75, 3 April 2012, and *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158). Its essential aim, as is indicated by the word "under the same conditions", is a full "equality of arms" in the matter (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B).

80. In the present case, the Court notes that at the hearings of 11 and 18 February 2005 the trial court granted the applicant's requests to summon and question several witnesses. Almost all witnesses were heard by the trial court and questioned by the defence. No obstacles were hinted at by the applicant. Two requests were refused by way of reasoned decision (see paragraphs 32-36 above). The orders and decisions of the trial court do not appear arbitrary or unreasonable. On appeal, all the applicant's requests were adequately and reasonably refused by the Court of Appeal, which found that such requests had been properly addressed at the trial or that they were of no relevance to the proceedings or that the applicant had failed to

substantiate them or that the defence had not provided precise indications for the procurement of additional evidence.

81. As regards T.'s statement, the Court notes that such evidence was not decisive, but served to corroborate the material evidence already contained in the file. Furthermore, the domestic courts issued summonses to ensure the attendance of T., who, as discovered by the domestic authorities, had left the country for an unspecified address (contrast *Caka v. Albania*, no. 44023/02, §§ 108 and 115, 8 December 2009).

82. The Court concludes that the applicant was convicted following adversarial proceedings, on the basis of evidence which was examined at hearings and which the domestic courts deemed sufficient to establish his guilt. He was represented by a lawyer, who was given ample opportunity to state his case and to challenge the evidence against him. Moreover, in the national courts' decisions, detailed reasons were provided in respect of the applicant's objections, with the result that there was no danger of an arbitrary decision.

83. Finally, the Court is unable to discern any traces of objective or subjective partiality of domestic courts. The fact that the bench dismissed the applicant's objections and decided against him cannot be considered indicative of any lack of impartiality.

84. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected under Article 35 § 4.

C. Article 6 § 2 of the Convention

85. The applicant complained under Article 6 § 2 of the Convention, which reads as follows:

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

86. The Court recalls that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of a fair trial. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty (see, for example, *Shuvalov v. Estonia*, no. 14942/09, § 75, 29 May 2002; *Allenet de Ribemont v. France*, no. 15175/89, § 35, 10 February 1995). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras v. Lithuania*, no. 42095/98, § 43, ECHR 2000-X).

1. As regards the extradition request of 30 October 2003

87. Turning to the present case, the Court does not consider that the wording of the extradition request of 30 October 2003, as submitted by both the applicant and the Government[1], was tantamount to a breach of the presumption of innocence. The crux of the extradition request concerned the alleged commission of crimes of which the applicant was primarily suspected. The extradition request did not amount to a finding of guilt in respect of the applicant, but only described a state of suspicion. [...][2] Whereas the applicant's French version of the extradition request referred to him as "previously convicted", the Government's English version of the request described the applicant as having been "previously indicted"[3]. The Court notes that the applicant's French version of the extradition request, the provenance of which is unknown, was not on the requesting institution's letterhead and was not signed[4]. On the other hand, the Court sees no reason to doubt the Government's good faith in stating that the extradition request "was created only in the English version", which would appear to have been the language of correspondence with the Belgian authorities[5]. The Government's English version of the extradition request was on the requesting institution's letterhead and was signed by the person who had drafted it and the responsible official[6]. The Court further takes note of the Albanian version of the extradition request as submitted by the applicant on 30 December 2015[7]. It is not however prepared to attach more weight to that version in the absence of authentic, corroborating documents[8]. In these

1. Rectified on 31 March 2016: the following words were added: "…as submitted by both the applicant and the Government…."
2. Rectified on 31 March 2016: the following sentence was deleted: "The use of the word "convicted" referred to previously committed crimes of which he had been convicted (see paragraph 2 above referring to the applicant's conviction for murder)".
3. Rectified on 31 March 2016: the following sentence was added: "Whereas the applicant's French version of the extradition request referred to him as "previously convicted", the Government's English version of the request described the applicant as having been "previously indicted."
4. Rectified on 31 March 2016: the following sentence was added: "The Court notes that the applicant's French version of the extradition request, the provenance of which is unknown, was not on the requesting institution's letterhead and was not signed."
5. Rectified on 31 March 2016: the following sentence was added: "On the other hand, the Court sees no reason to doubt the Government's good faith in stating that the extradition request "was created only in the English version", which would appear to have been the language of correspondence with the Belgian authorities."
6. Rectified on 31 March 2016: the following sentence was added: "The Government's English version of the extradition request was on the requesting institution's letterhead and was signed by the person who had drafted it and the responsible official."
7. Rectified on 31 March 2016: the following sentence was added: "The Court further takes note of the Albanian version of the extradition request as submitted by the applicant on 30 December 2015."

circumstances, this complaint must be declared inadmissible as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. As regards the statements of 16 and 17 April 2006

88. The Court considers that, on the face of them, the statements of 16 and 17 April 2006 do not raise any issue that would engage the application of Article 6 § 2 of the Convention. In these circumstances, this complaint must be declared inadmissible as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. As regards the statement of 24 July 2006

89. As regards the statement made by the Prime Minister on 24 July 2006, the Court notes that such statement is capable of attracting the application of Article 6 § 2 (see, for example, *Konstas v. Greece*, no. 53466/07, 24 May 2011). However, in the present case, the Court notes that this particular complaint was not raised either explicitly or in substance before the Constitutional Court. The Court reiterates that it has consistently acknowledged, in the light of the Constitutional Court's case-law, that a constitutional complaint is, in principle, an effective remedy and is thus required for exhaustion purposes in respect of an applicant's right to a fair hearing under Article 6 of the Convention (see *Balliu v. Albania* (dec.), no. 74727/01, 30 September 2004; *Beshiri and Others v. Albania*, no. 7352/03, §§ 30-34, 22 August 2006; and *Jakupi v. Albania* (dec.), no. 11186/03, 1 December 2009). In these circumstances, the Court must reject this complaint for failure to exhaust domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

D. Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention

90. The applicant complained under Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention that his trial had been politically motivated.

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12 to the Convention reads as follows:

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8. Rectified on 31 March 2016: the following sentence was added: "It is not however prepared to attach more weight to that version in the absence of authentic, corroborating documents."

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

91. The Court considers that this complaint should be dismissed for non-exhaustion of domestic remedies, the applicant not having raised a similar complaint before the domestic courts. It therefore decides to declare it inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

92. In so far as the applicant may allude to a politically motivated prosecution and trial as regards other, unrelated, criminal proceedings, the Court notes that those proceedings are not the subject of this application.

For these reasons, the Court unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 July 2015.

Françoise Elens-Passos
Registrar

Guido Raimondi
President