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

THIRD SECTION

DECISION

Application no. 38924/13
Hasan BUCI
against Albania

The European Court of Human Rights (Third Section), sitting on 5 July 2022 as a Committee composed of:

Andreas Zünd, *President,*
Darian Pavli,
Mikhail Lobov, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 38924/13) 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 15 April 2013 by an Albanian national, Mr Hasan Buci, who was born in 1968 and lives in Mat ("the applicant") who was represented by Mr Rusi, a lawyer practising in Tirana;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their Agent, Ms Alma Hicka, State Advocate General;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the fairness of criminal proceedings against the applicant before the Mat District Court on charges of premeditated murder and unlawful possession of weapons, held *in absentia*. The police searched for the applicant at his address and learned that he was abroad. In these criminal proceedings a lawyer appointed by the trial court represented the applicant. On 7 June 2007 the Mat District Court sentenced the applicant to eighteen years' imprisonment. On 14 June 2007 both the court appointed lawyer and the applicant's brother lodged separate appeals against the

conviction. The applicant's brother signed a power of attorney on 11 October 2007 to lawyer P.R. to represent him. At the hearing held before the Tirana Court of Appeal on 24 October 2007 lawyer P. R. represented the applicant. The appeals by the court-appointed lawyer and by the applicant's brother were dismissed on the merits by the Tirana Court of Appeal on 24 October 2007. Lawyer P. R. lodged further appeal with the Supreme Court, which was dismissed and the applicant's conviction was upheld by the Supreme Court on 15 January 2010.

2. The applicant was arrested in Athens on 25 March 2010 and extradited to Albania on 27 March 2010. Following arrest, the applicant submitted a request for leave to appeal out of time, which was granted by the Mat District Court in 2011, but rejected by the Tirana Court of Appeal in 2011, and finally by the Supreme Court on 8 March 2012 on the ground that the applicant's conviction had become a *res judicata* and that, therefore, rehearing the appeal was not possible.

3. The applicant then lodged a constitutional complaint which was declared inadmissible by the Constitutional Court on 19 December 2012 as being lodged out of time, namely more than two years after the applicant took cognisance of the proceedings against him.

4. The applicant complains under Article 6 §§ 1 and 3 of the Convention of a violation of his right to a fair trial, namely the right to participate in person in the criminal proceedings against him and to be represented by a lawyer of his own choosing.

THE COURT'S ASSESSMENT

5. The Government submitted that the applicant had not made proper use of domestic remedies. He had lodged an application to appeal out of time against his conviction *in absentia*. However, that remedy was inadmissible under the established practice of the Supreme Court which held that in a situation where an accused's family or family-appointed lawyer had lodged appeals against the accused's conviction *in absentia*, and the conviction had been upheld, subsequent appeal out of time lodged by the accused himself would not be admissible. The Government argued that instead of lodging a clearly inadmissible appeal, the applicant should have asked for a revision of his conviction and lodged a constitutional complaint within two years after he had learned of his conviction. However, the applicant had lodged his complaint outside that time limit and therefore the Constitutional Court had declared it inadmissible.

6. The applicant argued that he had made proper use of domestic remedies.

7. The general principles concerning the exhaustion of domestic remedies and the principle of subsidiarity have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others,

§§ 69-77, 25 March 2014). The Court also stresses that if domestic law provides for several parallel remedies, an applicant who has sought to obtain redress for an alleged breach of the Convention through one of these remedies is not necessarily required to use others which have essentially the same objective (see *Shkalla v. Albania*, no. 26866/05, § 61, 10 May 2011; and *Garcia Gonzales v. Spain*, no. 65107/16, § 63, 6 October 2020).

8. The Court notes that initially it might appear that the applicant had a choice of different remedies to use. However, under the long-standing practice of the Supreme Court an accused tried *in absentia* would not be able to successfully apply for an appeal out of time in cases where members of his family of a family-appointed lawyer had already appealed against his conviction *in absentia* and the conviction had been upheld (see *Shkalla*, cited above, § 60). A decision to that effect was adopted by the Supreme Court in 2008 and published on its website (see *Sulejmani v. Albania* (dec.), no. 16114/10, §§ 10 and 11, 9 June 2012; see also *Izet Haxhia v. Albania*, no. 34783/06, §§ 54-56, 5 November 2013).

9. In the present case the applicant's brother gave a power of attorney to lawyer P.R. on 11 October 2007. Even though that power of attorney stated that the applicant's brother empowered the lawyer to represent himself, it is clear that this was an obvious error since that lawyer represented the applicant at the hearing before the Tirana District Court, lodged an appeal with the Supreme Court against the applicant's conviction and was for all purposes a family-appointed lawyer on behalf of the applicant. The applicant's brother also lodged an appeal against the applicant's conviction *in absentia*. All appeals were dismissed on the merits and the applicant's conviction was upheld. It follows that by lodging an application for an appeal out of time against his conviction the applicant made use of an ineffective remedy because it did not offer reasonable prospects of success (see *Vučković*, cited above, § 74).

10. As regards the applicant's failure to lodge an application for revision of a final decision, the Court does not have to rule on that issue in the present case because the application is in any event inadmissible for the following reasons.

11. The Court has already held that after 26 November 2009 applicants cannot be discharged from their obligation to lodge a constitutional complaint against their trial and conviction *in absentia* in Albania as soon as they are extradited to Albania and served with a copy of the decision given *in absentia* (see *Izet Haxhia*, cited above, § 50). Already at that time the practice of the Constitutional Court showed that it could accept a constitutional complaint against trial *in absentia*, following the appellant's extradition to Albania (see *Izet Haxhia*, cited above, § 40). The appellants should lodge their constitutional complaints within the two-year statutory time-limit, which starts to run after their extradition to Albania, when they are notified of the decisions given *in absentia* (see *Izet Haxhia*, cited above, § 41). It follows

that the constitutional complaint was an available and sufficient remedy, certain in theory and in practice.

12. The applicant was extradited on 27 March 2010 and therefore had to lodge a constitutional complaint against his conviction *in absentia* within two years. However, the applicant's constitutional complaint was lodged out of time. In these circumstances the applicant did not make proper use of an available domestic remedy and thus has not complied with the requirement that the domestic remedy must be used in compliance with the formal requirements and time-limits laid down in domestic law (see *Vučković*, cited above, § 72).

13. It follows that the application 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 28 July 2022.

Olga Chernishova
Deputy Registrar

Andreas Zünd
President