

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

THIRD SECTION

CASE OF FRROKU v. ALBANIA

(Application no. 30658/18)

JUDGMENT

STRASBOURG

4 February 2025

This judgment is final but it may be subject to editorial revision.



In the case of Frroku v. Albania,

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

Lətif Hüseynov*, President*,

Darian Pavli,

Úna Ní Raifeartaigh*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 30658/18) 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 20 June 2018 by an Albanian national, Mr Arben Frroku ("the applicant"), who was born in 1969, whose address is unknown and who was represented by Mr T. Prendi, a lawyer practising in Tirana;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their then Agents Mr. A. Metani, Ms J. Mansaku, and subsequently by Mr O. Moçka, General State Advocate;

the parties' observations;

Having deliberated in private on 14 January 2025,

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

SUBJECT MATTER OF THE CASE

I. THE CIRCUMSTANCES OF THE CASE

1. The case concerns, principally, the alleged violation of the applicant's right to have a reasoned decision of the Constitutional Court under Article 6 § 1 of the Convention and other fair trial guarantees under Article 6.

2. On 3 April 2015 the Serious Crimes District Court acquitted the applicant of murder and unlawful possession of firearms.

3. On 29 June 2015 the Serious Crimes Court of Appeal ("the Court of Appeal") reversed that judgment and found the applicant guilty on both charges and sentenced him *in absentia* to life imprisonment.

4. On 24 July 2015 the applicant lodged an appeal on points of law with the Supreme Court, complaining that the decision of the Court of Appeal lacked reasoning and was not based on evidence, that the applicant had an alibi in respect of murder, and that the prosecution had failed to prove the applicant's presence at the crime scene. He also complained that the evidence exonerating him was not taken into account.

5. On 8 June 2017 the Supreme Court dismissed *de plano* the applicant's appeal on points of law on the grounds that it did not contain any admissible arguments.

6. On 10 July 2017 the applicant lodged a constitutional complaint raising the Supreme Court's alleged lack of impartiality due to the previous

involvement of several of its judges in the decision concerning the security measures imposed on the applicant; violation of the presumption of innocence; breach of the right of access to court on the grounds that the Supreme Court had not held a hearing; and lack of adequate reasons for the Supreme Court's decision. On 18 December 2017 the applicant submitted further complaints to the Constitutional Court, challenging the decision of the Court of Appeal for lack of reasoning; lack of impartiality; breach of access to a court; and violation of equality of arms.

7. On 24 April 2018 the Constitutional Court, in a formation of six out of nine judges, dismissed with prejudice the applicant's constitutional complaint. The court stated that a majority of five votes was required under Section 73(4) of the Constitutional Court Act which provides that "where a five-judge majority is not achieved", the complaint must be deemed dismissed (*rrëzuar*) in a definitive way. The reasoning of the decision consisted merely of the results of the voting (four votes against two in favour of dismissing the constitutional complaint) and the fact that the court could not reach a majority of five on any of the issues raised in the appeal. A breakdown showing the individual vote of each judge was provided in a footnote. By virtue of Section 73(4) of the Constitutional Court Act, that decision was final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. In the case of *Marini v. Albania* (no. 3738/02, 18 December 2007) the Court had found that dismissing a constitutional complaint without prejudice on the basis that the court had not reached "the required majority of votes of all members for any of the outcomes" violated the right to a fair trial. Following that judgment, Law no. 99/2016 amended Section 73(4) of the Constitutional Court Act. Pursuant to these amendments, it is no longer possible to dismiss without prejudice an individual complaint due to a failure to reach a five-member majority. In such a case the complaint is dismissed with prejudice in a final and definitive fashion.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE RIGHT TO A REASONED JUDGMENT BY THE CONSTITUTIONAL COURT

9. The Government argued that the applicant lacked victim status and that his complaint was abusive, without further substantiating. In addition they argued that the applicant's complaint was of a fourth-instance nature and therefore inadmissible.

10. The Court dismisses the Government's objection concerning the applicant's victim status and the application being abusive as unsubstantiated. The Court also notes that the complaint raised by the applicant concerns a right protected by the Convention. Therefore, it concludes that it is not inadmissible on any other grounds and has to be declared admissible.

11. The general principles concerning the right to a reasoned decision by the Constitutional Court in the context of a dismissal of constitutional complaints because of failure to reach a five-judge majority, have been summarised in the case of *Meli and Swinkles Family Brewers N.V. v. Albania* (nos. 41373/21 and 48801/21, §§ 72-75, 16 July 2024).

12. The applicant argued that the Constitutional Court had failed to provide any reasoning concerning the complaints and the arguments brought before it, because the decision that dismissed those complaints only contained the result of the voting. The applicant claimed that he had been unable to understand why his complaints had been dismissed.

13. The Government presented the same arguments as those in the case of *Meli and Swinkles Family Brewers N.V.* (cited above), arguing essentially that after the changes of 2016 (see paragraph 8 above) the Constitutional Court, by acting in accordance with the relevant legal provisions, had guaranteed the right to a fair trial.

14. The Court notes that the present case does not differ in this respect from that of *Meli and Swinkles Family Brewers N.V.* (cited above, § 76), where it found that the fact that the applicants had not been provided with the relevant grounds for the dismissal of their claims amounted to a violation of Article 6 § 1 of the Convention. In that case the decision of the Constitutional Court concerning the applicants' complaint was also limited to noting the result of the voting and its outcome, but no reasons as to the merits of the case were provided (see paragraph 7 above). The Court considered that the applicants in that case were thus left without any adequate reasoning concerning the grounds on which the Constitutional Court had reached its conclusions.

15. As to the case at issue, having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion. Therefore, the Court concludes that this lack of adequate reasoning failed to satisfy the requirements of a fair trial. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE RIGHT OF ACCESS TO THE CONSTITUTIONAL COURT

16. The general principles on the right of access to a court and, in particular, on access to superior courts have been summarised in *Zubac*

v. Croatia ([GC], no. 40160/12, §§ 76-99, 5 April 2018). The Court has addressed the specific situation of the qualified majority voting by the Constitutional Court in Albania in *Meli and Swinkles Family Brewers N.V.* (cited above, §§ 64-66).

17. The applicant argued that the Constitutional Court by dismissing his case with prejudice did not provide him with a final resolution and violated his right of access to a court.

18. In *Meli and Swinkles Family Brewers N.V.* (cited above, § 67) the applicants' constitutional complaints were dismissed with prejudice because the members of the panel could not reach the five-judge majority required by law. The Court concluded that the applicants were not deprived of the right to a determination of the merits of their claims, because the dismissal by the Constitutional Court was final and followed proper deliberations in the merits of the complaints. Therefore, there was no violation of their right of access to a court under Article 6 § 1 of the Convention.

19. Since the two cases concern the same issue, the Court sees no reason to depart from its previous findings. In the present case the applicant's constitutional complaint was dismissed with the six-judge panel splitting four-to-two against a finding of any constitutional violation (see paragraph 7 above). The applicant was informed about the voting result and the consequences of this outcome for his complaints. Therefore, he was not deprived of the right to a determination of the merits of his claims.

20. In these circumstances, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER COMPLAINTS

21. The applicant also complained under Article 6 § 1 of the Convention about the lack of adequate reasoning of the Supreme Court, that the Supreme Court was not an independent and impartial tribunal, and under Article 6 § 2 about the presumption of innocence.

22. Having regard to its finding concerning the applicant's right to a reasoned judgment under Article 6 § 1 of the Convention (see paragraph 16 above), the Court notes that the applicant now has an opportunity to seek the reopening of the proceedings before the Constitutional Court (see paragraph 25 below). That would allow, in principle, for an examination of the applicant's remaining complaints under the Convention through a properly reasoned decision of that court. In these circumstances, and in line with its subsidiary role, the Court considers that it is not necessary to consider the applicant's remaining complaints at this time. It is open to him to lodge a new application with the Court, as the case may be, following a fresh determination of his constitutional complaint at the national level.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses incurred before the Constitutional Court and before the Court.

24. The Government deemed the sums claimed unfounded and excessive and furthermore declared that the applicant had not provided relevant invoices to prove his expenses.

25. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. Given the nature of the applicants' complaints and of the violation found, the Court considers that the most appropriate form of reparation for the violations found would be the reopening of the proceedings before the Constitutional Court, should the applicant so request, given that it is capable of providing *restitutio in integrum* as required under Article 41 of the Convention (compare *Shkalla v. Albania*, no. 26866/05, §§ 77-79, 10 May 2011, and *X v. the Netherlands*, no. 72631/17, § 61, 27 July 2021). In this connection, the Court notes that Section 71(c) of the Constitutional Court Act provides that proceedings before the Constitutional Court may be reopened if an international court with binding jurisdiction over the Republic of Albania finds that an individual's fundamental rights or freedoms have been violated "owing to a [prior] decision of the Constitutional Court". That being so, the finding of a violation constitutes sufficient just satisfaction in the present case.

26. With regard to costs and expenses for the proceedings before the Constitutional Court and the Court, the applicant has not substantiated his claim with any relevant supporting documents. The Court therefore rejects the claim on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the right to a reasoned decision by the Constitutional Court admissible, and the complaint under Article 6 § 1 of the Convention concerning access to the Constitutional Court inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the applicant's right to a reasoned decision by the Constitutional Court;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;

5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Lətif Hüseynov President