

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

THIRD SECTION

CASE OF MUÇAJ v. ALBANIA

(Application no. 37814/10)

JUDGMENT

STRASBOURG

11 July 2023

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



In the case of Muçaj v. Albania,

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

Georgios A. Serghides*, President*,

Darian Pavli,

Oddný Mjöll Arnardóttir*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 37814/10) 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 28 June 2010 by an Albanian national, Mr Mariglen Muçaj, who was born in 1978 ("the applicant"), who was represented by Mr A. Lamaj, lawyer practising in Tirana;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their Agent Ms. A. Hicka, and subsequently by Mr O. Moçka, of the State Advocate's Office;

the parties' observations;

Having deliberated in private on 20 June 2023,

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

SUBJECT MATTER OF THE CASE

1. The present application concerns mainly (i) the length of and reasons for the applicant's pre-trial detention under Article 5 § 3 of the Convention; (ii) whether there was a breach of the applicant's right to be presumed innocent, guaranteed under Article 6 § 2 of the Convention; as well as other complaints related to the fairness of the proceedings.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

2. On 9 August 2009 four police officers were killed as a result of exchange of fire between D.D., a fugitive from criminal prosecution, and E.Xh. with police forces. E.Xh.'s mobile telephone was seized at the crime scene, and it appeared that the applicant had made frequent calls to E.Xh., who was charged with aiding and abetting D.D. in the commission of crimes.

3. In August 2009 criminal proceedings were opened against the applicant.

A. Proceedings concerning pre-trial detention

4. At the prosecutor's request, on 22 November 2009 the Serious Crime First Instance Court (hereinafter the "FISC") ordered the applicant's pre-trial detention, on the basis of the charge of abuse of office on account of his

alleged contacts with the individuals involved in the above-mentioned killing of four police officers, under Article 244 of the Criminal Procedure Code ("CPC") on account of danger of absconding.

5. As to the reasonable suspicion that the applicant had committed the criminal offence of abuse of office, the court held that the applicant had close social ties with E.Xh. He had managed to procure a police uniform for E.Xh. at the Korça Police Directorate, where the applicant had served as a police officer. The photographs taken had shown that the rank on the police uniform D.D. had worn matched the applicant's rank. D.D.'s alleged position in the police forces on the forged identification document that he had had on him matched that of the applicant's.

6. On 23 November 2009 the applicant was arrested and on 26 November 2009 he was heard by the FISC which confirmed the applicant's pre-trial detention under Article 248 of the CPC, on account of danger of absconding, without elaborating further on that issue.

7. On 14 December 2009, the Serious Crimes Appeal Court (SC Appeal Court) upheld the FISC's decision. It held that the evidence showed that there existed a reasonable suspicion that the applicant had committed the crime of abuse of office. Moreover, even though the applicant had known of E.Xh.'s and D.D.'s criminal acts, he had agreed to assist them. The applicant's appeal was dismissed by the Supreme Court on 11 January 2010.

8. On 18 February 2010, the applicant lodged a constitutional complaint with the Constitutional Court. The complaint was dismissed on 17 June 2010 on the ground that it did not fall within the Constitutional Court's jurisdiction.

9. The applicant's further requests of 1 March and 24 December 2010, and 20 March 2012 that his pre-trial detention be lifted or substituted by other measures were dismissed by the domestic courts on the ground that the conditions on which the pre-trial detention had been ordered had not changed. The applicant's references to the passage of time and completion of the investigation were not addressed by the domestic courts.

B. Proceedings before the District Court

10. On 17 December 2012 the case against the applicant was transferred to the Durrës District Court (hereinafter the "District Court") which on 24 December 2012 extended the applicant's detention on remand until the trial of the case. The District Court took into account, *inter alia*, the delays in proceedings caused by the applicant's co-defendant D.D. and concluded that the applicant's pre-trial detention had been justified and permissible under the legislation, even if it formally exceeded the statutory time-limits.

11. On 6 February 2013 the District Court found the applicant guilty as charged and sentenced him to four years and eight months' imprisonment. Since the time spent in pre-trial detention, as calculated under the applicable ratio of one and a half days, exceeded his sentence, the court ordered the

applicant's immediate release. The applicant was further banned from holding public office for a period of three years. The applicant did not appeal his conviction.

C. Media coverage and Prime Minister's statement

12. In 2009 and 2010 several articles were published referring to the case against the applicant in harsh terms.

13. On 25 January 2010 the Ministry of Interior's Official Bulletin cited a statement of the Prime Minister in which he criticised corruption within the police, referred to the applicant as a person who had assisted the killers of four police officers in Durrës and called him a criminal. The applicant has not raised this matter in any domestic proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. In its decision no. 57 of 21 December 2012, the Constitutional Court considered the presumption of innocence (guaranteed by Article 30 of the Constitution) as one of the constituent elements of fair trial.

15. In its judgment no. 47 of 7 November 2011, the Constitutional Court stressed that the principle of the presumption of innocence was violated if a court decision reflected an opinion that an accused was guilty before he had been proven guilty according to law. Even if there was no formal statement to that effect, it was sufficient that the reasoning implied that the accused was guilty.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

16. The applicant complained that the length of pre-trial detention under Article 5 § 3 had been excessive.

A. Admissibility

17. The Government considered that the applicant had not exhausted domestic remedies because, even though he had complained before the domestic courts about the pre-trial detention, he had not raised complaints about the overall fairness of the proceedings.

18. The applicant consistently and unsuccessfully challenged his pre-trial detention before the competent courts. The Government's objection should therefore be rejected.

19. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. The relevant domestic law is set out in *Delijorgji v. Albania,* no. 6858/11, §§ 39-50, 28 April 2015, and *Hysa v. Albania*, no. 52048/16, §§ 26-41, 21 February 2023.

21. The Court recalls that persistence of a reasonable suspicion is a condition *sine qua non* for the validity of the pre-trial detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether other grounds given by the judicial authorities continue to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 84-91, 102, ECHR 2016, and *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 222 -25, 28 November 2017).

22. As to the present case, the Court notes that the applicant spent in pre-trial detention three years, two months, and thirteen days. For such a lengthy period strong grounds for deprivation of one's liberty would, in principle, be required. The Court is satisfied that the domestic courts, on the basis of available evidence, established that there existed a reasonable suspicion that the applicant had committed the offence of abuse of office. However, the domestic courts continued to refer to the danger of absconding as the primary ground for the applicant's prolonged detention, without any attempt to show how it applied concretely to the applicant's case, but merely noting the seriousness of the charges. The Court notes that the gravity of the offence or the consequences thereof do not constitute standalone grounds justifying detention and may not, by themselves, justify depriving a suspect of his or her liberty unless they are considered in the course of assessing the existence of permissible grounds under which detention may be ordered (see *Hysa*, cited above, § 74). Furthermore, the arguments such as the passing of time and completion of the investigation raised by the applicant in his submissions were not addressed by the domestic courts. Nor does it appear that any alternative security measures were considered by those courts beyond a mere formal statement (see paragraph 9 above).

23. The investigation and trial proceedings lasted about three and a half years. The charges brought against D.D. and the applicant were serious enough and the facts of the case were somewhat complex. At the same time, the Court notes that the applicant was charged with only one offence, and in justifying the applicant's pre-trial detention, the Durrës District Court referred to the delays in proceedings caused by his co-defendant's counsel

(see paragraph 10 above). In the absence of any measures taken by the judicial bodies to address such delays, it cannot be said that the domestic criminal justice system had handled the applicant's case with "special diligence" (compare and contrast with *Štvrtecký v. Slovakia,* no. 55844/12, §§ 67-70, 5 June 2018).

24. It follows that there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

25. The Government objected that the applicant had not properly exhausted domestic remedies as regards his complaint under Article 6 § 2 of the Convention that his presumption of innocence had been violated by media coverage of the trial against him and by some statements of the Prime Minister.

26. The Court notes, first, that the applicant does not claim that he had no domestic remedies to exhaust in this regard. It further recalls that the principle of the presumption of innocence is above all a procedural safeguard, and one of the elements of a fair criminal trial required by Article 6 of the Convention, (see *Konstas v. Greece*, no. 53466/07, § 29, 24 May 2011, and *Mamaladze v. Georgia*, no. 9487/19, § 63-65, 3 November 2022). The Court further notes that the Convention is, in principle, directly applicable in the Albanian legal order, the right to be presumed innocent is guaranteed in the Albanian Constitution and that the practice of the Constitutional Court shows that it has addressed that issue as an aspect of a fair trial (see paragraph 15 above). An individual petition to the Constitutional Court 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, *mutatis mutandis*, *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). However, the applicant has never raised this matter either in the course of the criminal proceedings, in his complaint before the Constitutional Court, or in any separate civil law proceedings (see paragraph 13 above).

27. In view of the foregoing, the complaint should be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant also complained under Article 6 § 1 that his pre-trial detention should have been ordered by an ordinary criminal court instead of the Serious Crimes Court.

29. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. The applicant claimed 80,000 euros (EUR) in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage, and EUR 64,000 in respect of costs and expenses incurred before the Court.

31. The Government contested the applicant's claims.

32. The Court does not discern any causal link between the violation found and the claim for pecuniary damage. Having regard to the nature of the violation found, the Court, ruling on an equitable basis, awards EUR 1,900 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable.

33. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,000 for costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 3 of the Convention admissible, and the remaining complains inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. Holds
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,900 (one thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President