

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

THIRD SECTION

CASE OF YZEIRAJ v. ALBANIA

(Application no. 70455/10)

JUDGMENT

STRASBOURG

11 July 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Yzeiraj 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. 70455/10) 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 25 November 2010 by an Albanian national, Mr Pëllumb Yzeiraj, born in 1975 and detained in Peqin ("the applicant") who was represented by Mr P. Pavarini, a lawyer practising in Torino;

the decision to give notice of the application to the Albanian Government ("the Government"), represented by their then Agent, Ms Alma 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 application concerns the alleged unfairness of the criminal proceedings against the applicant, namely the lack of adequate reasons in the domestic decisions in rejecting the applicant's alibi and alleged domestic courts' failure to summon and question a number of witnesses.

2. On 3 November 2004 the applicant was found guilty by the Fier District Court of murdering two persons, J.I. and E.T. who were in a vehicle, gravely injuring two others, B.K. and T.S., as well as of illegal possession of firearms, and sentenced to life imprisonment.

3. During the investigation B.K. said that he had not seen the person who had shot, because he had turned away from the scene. At the trial, B.K. testified that he had seen the applicant standing about one and half metre from the victims' vehicle and shooting at them. A policeman, F.M., who was present at the scene, gave evidence at the trial. He said that he believed that the perpetrator had shot from inside his own vehicle.

4. The applicant denied the charges against him, claiming that at the time of the events he had been in Greece. During the trial he presented his passport which showed that he had entered Greece on 22 March 2002 and had returned to Albania on 1 April 2002. This was confirmed by evidence from the border control.

5. It was also established that the applicant had previously used other identities, notably that of Kosta Papa, born in 1975 in Saranda. It was

established that two persons named Kosta Papa had entered Albania from Greece on 22 March 2002, but the domestic courts admitted that neither of them could have been the applicant because they were born in 1928 and 1945, respectively.

6. The domestic courts also enquired whether a person named Yzeiri had crossed the Albanian-Greek border at the relevant time.

7. The applicant's requests that a number of witnesses, namely Th.P. and S.K. who lived in Greece and who had previously provided written affidavits ('*deklaratat autentike'*), could have confirmed his alibi, a medical expert who could give explanations about the ability of the sole eye-witness, B.K., to make statements about the circumstances of a shooting in which he was seriously injured, and a ballistic expert who could reconstruct the commission of the crime and verify B.K.'s statement, were dismissed on the ground that the facts relevant for the applicant's conviction had already been established by evidence given by B.K and other witnesses. There was no material evidence against the applicant.

8. The applicant's conviction was upheld by the Vlora Appeal Court and the Supreme Court, on 8 March 2008 and 17 February 2010, respectively. His constitutional complaint was dismissed by the Constitutional Court on 28 October 2010.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (D) OF THE CONVENTION

9. 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.

10. The general principles concerning the right to call witnesses for the defence have been summarised in *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 150-68, 18 December 2018, and those concerning the duty of the courts to provide reasons for their decisions in *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). The guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision, and the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings. In making this assessment, the Court looks at the proceedings as a whole (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 100-101, ECHR 2015).

11. It is to be noted, first, that the applicant's defence was concentrated on the allegation that he had been in Greece between 22 March and 1 April 2002. Given that the criminal offence at issue took place on 25 March 2002, the information from the applicant's passport and the border control police created a strong support for his alibi (see paragraph 4 above). The domestic

courts, while rejecting the applicant's motion for further evidence in this respect, did not reason that the data about the border crossing in the passport were not reliable, or that there was an indication that such evidence had been falsified.

12. The domestic courts did not accept the applicant's passport as convincing evidence on the basis that the applicant had used other identities as well, notably that of Kosta Papa. Even though the evidence adduced showed that two persons with that name had crossed the border from Albania to Greece on 22 March 2002, it was also established by the courts that neither of them was the applicant (see paragraph 5 above).

13. Further to this, there is no explanation as to how the domestic courts' attempt to verify whether a person named Yzeiri had crossed the border was relevant, because that is not the applicant's surname (see paragraph 6 above).

14. In view of the above, the Court concludes that the domestic courts appear to have rejected the applicant's alibi on the sole assumption that he might have returned to Albania under another name, but they have not explained their reasoning nor relied on any evidence to support that conclusion. It follows that the domestic courts did not provide adequate reasons for rejecting the applicant's alibi.

15. The Court notes next that the request to call Th.P. and S.K. as witnesses was sufficiently reasoned and relevant because of the possible evidentiary value of their live testimony in respect of the applicant's alibi, which could have strengthened the position of the defence or even led to the applicant's acquittal. However, the domestic courts' judgments did not contain any examination of the relevance of their possible testimonies and provided no sufficient reasons for the decision to dismiss the applicant's request that these witnesses be heard (see *Murtazaliyeva*, cited above, §§ 160-61, and compare with *Bregvadze v. Georgia* [Committee], no. 49284/09, § 28, 17 January 2019). The fact that the two witnesses had provided written affidavits cannot be considered sufficient to rule out the need for their live testimony on such a central aspect of the applicant's defence, in the absence of additional explanation. Without going into an assessment of the evidence, the Court considers that the applicant should have had the opportunity, in line with the principle of the equality of arms, to present the domestic courts with evidence in his defence that might have exonerated him.

16. Finally, the Court notes that hearing the two witnesses in the proceedings was crucial not only because of the relevance and of the decisive nature of the submissions they could have made but also because the key piece of evidence relied upon by the courts to find the applicant guilty, B.K.'s testimony, appears to have been flawed with inconsistencies. Namely, during the investigation that witness had said that he had not seen who had shot him and the other victims because it had happened behind his back, while he was conducting business with a currency trader on a sidewalk, whereas at the trial

he testified that he had seen the applicant standing on the other side of the victims' car and shooting at them. The latter statement was also at variance with the one given by police officer F.M., who, being present at the scene of the shooting, had testified that the perpetrator had fired shots from inside another vehicle (see paragraph 3 above). These major inconsistencies were not addressed by the domestic courts, who declined to call additional witnesses (see paragraph 7 above) and simply accepted the prosecution's arguments, to the detriment of the overall fairness (contrast with *Murtazaliyeva*, cited above, § 175).

17. In the light of the above, the Court finds that by declining to hear the additional witnesses at the trial, the domestic courts created an unfair advantage in favour of the prosecution and consequently deprived the applicant of a practical opportunity to effectively challenge the charges against him.

18. The Court considers that the above failures of the domestic courts undermined the overall fairness of the proceedings.

19. There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant asked the Court to order the Government "to reimburse his damages", but did not specify any claim for just satisfaction or for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on these accounts. In any event, the Court reiterates that a judgment in which it finds a breach 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 applicant's complaint and of the violation found, the Court considers that the most appropriate form of redress in the present case would be the reopening of the criminal proceedings against the applicant, should he so request.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3(d) of the Convention.

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