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

THIRD SECTION

DECISION

Application no. 34712/18
Rabije HAKA
against Albania

The European Court of Human Rights (Third Section), sitting on 30 May 2023 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. 34712/18) 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 14 July 2018 by an Albanian national, Ms Rabije Haka, who was born in 1981 and lives in Tirana ("the applicant") who was represented by Ms Golloshi, a lawyer practising in Tirana;

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. On an unspecified date the applicant's husband lodged a claim with the Tirana District Court, seeking payment of full disability pension for the period between 31 March 2007 and 24 November 2009. On 12 October 2011 the first-instance court upheld the claim. However, on appeal lodged by the defendant, on 24 May 2012 the Tirana Appeal Court reversed the first instance decision and dismissed the applicant's husband's claim. The applicant's husband died and the applicant took over the proceedings. She

lodged an appeal with the Supreme Court, which dismissed it on 17 December 2015.

2. On 8 November 2016 Law no. 99/2016 of 6 November 2016 was published in the Official Journal. It shortened the time-limit for lodging a constitutional complaint from two years to four months "of obtaining knowledge of the interference [with a constitutional right or freedom]" (*konstatimi i cënimit*). It also provided that the new time-limit should enter into force on 1 March 2017.

3. On 14 November 2017 the applicant lodged a constitutional complaint, which was declared inadmissible by the Constitutional Court on 16 January 2018 as being lodged outside the four-month time-limit, counting from 17 December 2015 when the Supreme Court's decision had been adopted.

RELEVANT DOMESTIC LAW AND PRACTICE

4. The relevant domestic law concerning the new time-limit for lodging a constitutional complaint is set out in the case of *Çela v. Albania* (no. 73274/17, §§ 7 and 8, 29 November 2022).

5. On 16 June 2017 the Constitutional Court adopted two separate decisions in the cases of Pajova (decision no. 157) and Ibrahimi (decision no.152) in which it applied the newly introduced four-month time-limit in respect of the Supreme Court's decisions adopted respectively on 7 May 2015 and 25 June 2015 and counting from the date of their adoption.

THE COURT'S ASSESSMENT

6. The general principles concerning access to the Albanian Constitutional Court as regards the newly introduced four-month time-limit for lodging a constitutional complaint have been summarized in *Çela* (cited above, §§ 20, 27-29 and 32).

7. The Court notes that the final decision by the Supreme Court was adopted on 17 December 2015 and that at that time the time-limit for lodging a constitutional complaint was two years, counting from the adoption of the Supreme Court's decision. The new law, shortening that time-limit to four months was published on 8 November 2016 and provided that the new time-limit would be applicable from 1 March 2017. The applicant lodged her constitutional complaint on 14 November 2017, within the two-year time-limit. However, it was declared inadmissible by the Constitutional Court as being lodged out of the four-month time-limit, counting from the date of adoption of the Supreme Court's judgment.

8. The Court notes that, initially, when the law introducing the new four-month time-limit was adopted it was not clear whether it would also apply in respect of contested decisions adopted before 1 March 2017 (see *Çela*, cited above, §§ 36-39). The Constitutional Court made its position clear

no later than by 16 June 2017 when its decisions in the cases of Pajova and Ibrahimi were adopted (see paragraph 5 above, see also *Çela*, cited above, § 6), holding in effect that the two-year time limit ceased to apply after 1 March 2017 and that any constitutional complaints filed after that date would be subject to the new four-month time limit in all cases, without exception. This meant in practice that with respect to all cases in which a Supreme Court judgment (or other final challenged decision) had been adopted prior to 1 November 2016, constitutional complaints had had to be filed by 1 March 2017, failing which they would be declared inadmissible.

9. The Court has already held in the similar circumstances of the *Çela* case that such an interpretation of the new time-limit had not been sufficiently foreseeable for potential constitutional complainants on 1 March 2017. However, following the Constitutional Court's decisions of 16 June 2017 (see paragraph 5 above), read together with that court's decision in the *Çela* case, the Court considers that the position that the new time-limit applied in respect of all challenged decisions adopted before 1 March 2017 was to be seen as constituting established practice of which the applicant should have been aware (contrast *Çela*, cited above, § 37). However, even if the four-month time-limit is to be counted from the time when the position of the Constitutional Court became clear, the applicant lodged her constitutional complaint outside that time-limit. In that connection the Court reiterates that it has accepted that there was no infringement of the applicant's right of access to a court where legal provisions that might have been lacking in clarity had been supplemented by settled case-law that had been published and had been accessible and sufficiently precise as to enable the applicant (if necessary with the benefit of skilled advice) to determine what steps she should be taking (see *Cañete de Goñi v. Spain*, no. 55782/00, § 41, ECHR 2002-VIII).

10. In these circumstances the Court considers that the applicant's complaint about her lack of access to the Constitutional Court is manifestly ill-founded, since it lacks any indication of a violation of the right of access to court enshrined in Article 6 of the Convention, and in particular, the requirement of foreseeability (see, for general principles, *Zubac v. Croatia* [GC], no. 40160/12, §§ 76-99, 5 April 2018).

11. It follows that this part of the application must be rejected in accordance with Article 35 § 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 June 2023.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President