

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

FOURTH SECTION

DECISION

Application no. 29975/06
by Besnik SHARRA
against Albania

The European Court of Human Rights (Fourth Section), sitting on 6 December 2011 as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 July 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Besnik Sharra, is a Belgian national who was born in 1959 and lives in Brussels. He was represented before the Court by Mr A. Hajdari, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their then Agents, Ms S. Mëneri and Mrs E. Hajro.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Proceedings relating to the recovery of the applicant's money

2. On 7 September 1995 the applicant entered into a loan contract with a private company, UCMK, through one of its shareholders, G.M. He agreed to lend the amount of 250,000 US dollars from 7 September 1995 to 7 December 1995, with an interest rate of six per cent per month. When the company defaulted, the applicant lodged an action with the Vlora District Court to recover the debt under the loan contract.

3. On 13 August 1996 the Vlora District Court ("the District Court") ordered UCMK, which was represented by G.M. to pay back the principal amount, including the interest accrued. In the absence of an appeal, the District Court's decision became final and enforceable.

4. A writ of execution was issued for the enforcement of the District Court decision on 3 September 1996, as a result of which UCMK's property – a light bulb factory – was seized by the Vlore Bailiff's Office. There is no information regarding any developments in the proceedings following the seizure.

5. On an unspecified date in the beginning of 1997 the applicant fled the country and was granted political asylum in Belgium. He did not return to Albania until 2002.

B. Bankruptcy proceedings against the private company

6. By a request of UCMK shareholders which had reached the registry on 29 September 1997, the District Court declared bankruptcy proceedings open in respect of UCMK on 3 March 1998. In the light of reports and inspections conducted by the general assembly of creditors, the court decided that no reorganisation plan could be considered viable as the company did not have the financial means by which to satisfy the requests of its creditors.

7. By a decision of 17 April 1998, the District Court approved the list of creditors that had been drawn up by the assembly of creditors, including the outstanding amounts due. It would appear that UCMK shareholders omitted the applicant's name from the list of creditors that they had submitted to the District Court pursuant to section 6 of the Bankruptcy Act 1995. Consequently, the applicant's name was not included in the list of creditors approved by the District Court.

8. The District Court further declared the company bankrupt and recognised the creditors as the shareholders of its assets. It assigned an administrator (*administrator*), who, together with the creditors, was to proceed with the assessment of the company's assets.

C. Enforcement of the District Court decision of 13 August 1996

9. In 2002 the applicant returned to Albania for a visit and enquired about the enforcement of the District Court decision. He was informed that none of UCMK's property had been seized on his behalf and that, consequently, the 1996 decision had not been enforced. The applicant returned to Belgium on an unspecified date without taking any action.

10. In 2005 the applicant returned to Albania and on 5 September lodged a request for the enforcement of the District Court decision.

11. On 6 October 2005 the bailiff ordered the seizure of G.M.'s property without specifying it.

12. On 13 October 2005 UCMK's property, the light bulb factory, was seized.

13. On 23 November 2005 the bailiff attempted to sell the light bulb factory at a public auction. It transpires that the bailiff's office was not aware of the District Court's decision of 17 April 1998 regarding the bankruptcy of the company and the appointment of an administrator.

14. A letter of 23 December 2005 was sent by a lawyer to the Vlora tax authorities enquiring about UCMK's registration as a commercial entity. A handwritten note in the bottom right-hand corner indicated that no such company was registered with the tax authorities.

D. Administrator's action for leave to appeal out of time

15. On an unspecified date the administrator lodged a complaint with the Vlora District Court requesting leave to appeal out of time to enable him to challenge the District Court decision of 13 August 1996. The administrator maintained that he had not been aware of that court decision or of the fact that the applicant was one of UCMK's creditors, since the applicant's name did not appear on the list of creditors drawn up by UCMK's shareholders.

16. By a decision of 30 March 2006 the District Court granted the administrator's action for leave to appeal out of time in accordance with section 16 § 2 of the 1995 Bankruptcy Act. After having initially summoned him to attend the proceedings, the District Court proceeded in the applicant's absence pursuant to Article 192 of the Code of Civil Procedure ("CCP") as he was not resident in Albania. The applicant became aware of the decision on an unspecified date in 2006 and alleged that all time-limits for lodging an appeal had expired by that time.

17. On 16 May 2006 the bailiff's office decided to discontinue enforcement of the writ of execution of 3 September 1996 on the ground that the granting of leave to appeal out of time in the administrator's favour had stripped the District Court's 1996 decision of its *res judicata* effect. The bailiff's office indicated that the District Court's 1996 decision did not constitute an enforceable title under the CCP.

E. The rehearing proceedings

18. On 12 April 2006 the administrator lodged an appeal with the Vlora Court of Appeal ("the Court of Appeal"), claiming that there had been serious procedural irregularities in the proceedings that had led to the 1996 court decision.

19. Unable to locate the applicant in order to summon him to the hearing, on 2 March 2007 the Court of Appeal issued a public notice for the hearing of 30 March 2007 pursuant to Article 133 of the CCP.

20. On 30 March 2007 the Court of Appeal decided to quash the District Court decision of 18 March 1996 on account of serious procedural irregularities. It found that the District Court had failed to notify and summon the other two shareholders of the company. It finally remitted the case for fresh examination. The relevant parts of the decision read as follows.

> "By not properly determining the parties to the proceedings and by not notifying the parties of the time and date of the hearing, the examination of this case was in serious breach of procedural rules and violated the provisions of Article 467 (ç) and (d) of the CCP.
>
> The first-instance court started the examination of the case without notifying the defendant [that is, the company]. It erred in the determination of the parties to the proceedings, because it failed to obtain important evidence such as the [company's] articles of association, its statute and the court decision, from which it could have found out who to summon to the hearing and the exact address of the company's seat. The court only summoned G.M., who was one of the shareholders. There is no evidence in the case file that he was authorised, or had any other prerogative, to represent the company or take actions in its name."

21. On 21 June 2007 the Court of Appeal issued a public notice stating the outcome of its decision.

22. Following three unsuccessful attempts to summon the applicant to a hearing, on 19 November 2007 the District Court issued a public notice to notify the applicant of the hearing of 3 December 2007 pursuant to Article 133 of the CCP.

23. On 3 December 2007 the District Court decided in the applicant's absence to terminate the proceedings in accordance with Article 179 § 1 of the CCP.

F. Administrator's action for the criminal prosecution of G.M.

24. On 9 March 2006 the administrator requested the prosecutor's office to institute criminal proceedings against G.M. for the criminal offence of drawing up false statements, having regard to the incorrect information he had submitted in the course of the bankruptcy proceedings (see paragraph 7 above).

25. On 13 March 2006 the prosecutor's office declined the request on the strength of the statute of limitations and the Amnesty Act 2002.

G. Derogation of Albania from its obligations under the Convention

26. By *note verbale* of 4 March 1997, which was registered at the Secretariat General on 10 March 1997, the Albanian Ministry of Foreign Affairs, in accordance with Article 15 of the Convention, informed the Secretary General of the Council of Europe of the Government's intention to derogate from its obligations under the Convention. The relevant parts of the *note verbale* read as follows (extracted from the original in English).

> "I. In compliance with Article 16 of Law Nº 7491, dated 29.04.1991, "On Principal Constitutional Provisions", on the proposal of the Government, the People's Assembly of the Republic of Albania took the decision to declare a state of public emergency. Such a situation will be general, covering the entire territory of the Republic of Albania. It started from March 2nd, 1997, 17.35 hours, and will continue up to the moment of the full reinstatement of constitutional and public order.
>
> II. The imposition of the state of public emergency was forced because of the very extraordinary situation that was created in recent days in Albania. Some forces, making use of the protests and the despair of citizens who lost their money from the failure of financial pyramid schemes, organised groups of terrorists to perform violent actions. Without organising peaceful gatherings, these groups violated the law, the constitutional order, the life of the citizens, institutions and the territorial integrity of the country, creating thereby conditions to plunge Albania into a civil war. Being faced with these attacks of extreme violence, the police forces have preserved self-control, by taking only defensive positions and making no use of firearms, which avoided the prospect of a conflict with unpredictable consequences. A few days later, the situation had become extremely complicated, and reached a climax at the moment when the imposition of the state of emergency was being discussed.
>
> Though the Government made a proposal, the People's Assembly, after a wide and public discussion, with the intervention of the President of the Republic, refused the proclamation of a public emergency and ordered the temporary placement of some army troops to help the police forces. With a view to having a dialogue and awaiting the response of the protestors, the Government resigned.
>
> On March 1st, 1997, a communist armed rebellion broke out in Vlora and adjacent regions organised by the former Albanian communists and the former Albanian secret police, in collaboration with foreign secret services. Terrorist groups attacked the Southern cities to take power by force of arms. The target of their attacks were innocent people, municipalities, and the headquarters of the police; jails were broken and ordinary criminals and killers were armed, hundred of thousands millions of Leks were robbed from the banks; the houses of citizens and the shops of the businessmen were attacked. The clear aim was to terrorise the population, to paralyse and to take over power by force.
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> ...
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> IV. According to the Law Nº. 8194, dated 02.03.1997 'For the State of Public Emergency in Case of Grave Infringement of the Constitutional and Public Order', in the event that the state of public emergency is announced, a regime of special

measures is to be established. The Council of Defence lead all State activity to be aimed at dealing with the state of public emergency. Under that state of public emergency, the Republic of Albania took several measures derogating from its international obligations. Those derogations are made to the extent strictly required by the exigency of the situation, not inconsistent with our constitutional law 'For the Principal Constitutional Provisions', nor with international treaties to which the Albanian State is a party, in particular the 'Convention for the Protection of Human Rights and Fundamental Freedoms' and the 'International Covenant on Civil and Political Rights'. They were made only for a restricted period of time. These derogations consist of restricting some human rights and fundamental freedoms of individuals. With regard to that issue, Article 41 of Law Nº. 7692, dated 31.03.1993 "For the Human Rights and Fundamental Freedoms", provides that "The exercise of some specific rights may be temporarily restricted by law in a situation of national emergency or war, with the exclusion of the rights provided for in Articles 1 (right to life) ..., 3 (abolition of torture), 6 (no enforcement to confess one's guilt), 19 (freedom of conscience and religion), 25 (equality before the law), 39 (judicial restitution of the right), and 40 (guarantee of a fair trial)".

According to the Law Nº. 8194, dated 02.03.1997 'For the State of Public Emergency in Case of Grave Infringement of the Constitutional and Public Order', as well as the Law 'On Some Measures in the Context of the State of Emergency', the specific restrictions on human rights and fundamental freedoms, entailed by these derogations from our international legal obligations, are as follows:

1. All armed rebels must hand over arms, munitions and explosives by March 3, 1997, 14.00 hours. After this deadline, the armed rebels in the battlefield will be shot without warning (Article 1).

2. All the gatherings in public places are forbidden (Article 6)

3. All activities of political, sport, cultural or trade union nature are forbidden (Article 6).

4. The free movement of people is forbidden during defined hours of the day (between 20.00 and 07.00 hours) (Article 7).

5. Illegal gatherings in public places shall be dispersed. In the event that it is impossible to carry out such dispersal by other means, the police units are entitled to use tear-gas, as well as firearms, to the extent indispensable to carry out their own duty according to the law (Article 6).

6. Limits are imposed on the freedom of press and information. Publication and distribution in the press and broadcasts on the radio of reports which stir up and call for violent actions against national security, the constitutional law, public security and the life of the individual are prohibited. Daily press and media are obliged to publish the full text of the official reports which are directly related to the state of emergency. Press organs are obliged to obtain an approval, prior to sale, of the material intended to be published, from the local staff responsible for execution of the state of emergency. The local staff has the right to suspend any publication which violates this provision (Article 4).

..."

27. By *note verbale* of 26 July 1997, which was registered at the Secretariat General on 24 October 1997, the Albanian Ministry of Foreign Affairs informed the Secretary General of the Council of Europe that the

Government were withdrawing their notice of derogation under Article 15 of the Convention. The relevant parts of the *note verbale* read as follows.

> "The Ministry for Foreign Affairs of the Republic of Albania presents its compliments to the Secretary General of the Council of Europe and, referring to the content of Article 15.3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, has the honour of informing him that the People's Assembly of the Republic of Albania, when adopting the Law No. 8225 of 24 July 1997 'On the lifting of the state of public emergency in the Republic of Albania', decided to put an end to the state of public emergency in the whole territory of the country. As from that date, all the measures taken in application of the state of public emergency have ceased to have effect."

H. Relevant domestic law and practice

1. The Constitution

28. The relevant parts of the Albanian Constitution read as follows.

> **"Article 142 § 3**
>
> State bodies shall comply with judicial decisions."

2. The relevant case-law of the Constitutional Court

29. The relevant case-law of the Constitutional Court concerning the breach of an appellant's right of access to court on account of the non-enforcement of a final court ruling has been described in detail in the case of *Gjyli v. Albania*, no. 32907/07, §§ 21–27, 29 September 2009.

3. Code of Civil Procedure ("CCP")

30. The relevant parts of the CCP read as follows.

> **Article 133**
>
> "In the event that the receiver [of the summons] does not have a living abode, residence or temporary home in the Republic of Albania or has not provided an address or appointed a representative ..., he shall be notified of the [hearing] by way of posting a copy of the document at the tribunal of the location where the dispute shall be heard as well as on the notice board of the administrative entity where he used to reside and, when that is unknown, of that of his place of birth.
>
> In the event that Albania has entered into bilateral or multilateral agreements, the above-cited provision shall apply only in so far as the notification is not possible in one of the ways envisaged in those agreements."
>
> **Article 179 – Legal consequences in the event of default**
>
> "If the plaintiff or any of the parties do not attend either the preparatory meeting or the hearing after having been duly notified and without reasonable grounds, the court or the single judge shall decide to terminate the proceedings (*vendos pushimin e gjykimit*).

...”

Article 192 – Summoning a third party

“Each party may summon to the trial of the case a person with whom he or she believes he or she has a shared interest in the case or from whom a guarantee or compensation may be requested if necessary for the completion of the case.

....

A third party can be summoned when he or she has a known place of abode within the borders of the Republic of Albania and as long as the trial of the case is still pending at first instance.”

Article 458 – Leave to appeal out of time

“A party which has forfeited the right to appeal on reasonable grounds may submit a request to the court which adopted the decision for leave to appeal out of time. ...”

Article 467 – Remittal of the case

The Court of Appeal may quash the decision of the first-instance court and remits the case for fresh examination in the event that:

...

ç) the case was heard in the absence of parties to the proceedings, without having been informed of the date of hearing;

d) the parties to the proceedings were improperly identified and determined;

...”

Article 510 – Enforceable title (titujt ekzekutivë)

“Execution of a decision may only be enforced on the basis of an enforceable title. Enforceable titles include

...

(a) civil court’s decisions that have become final. ...”

Article 511 – Writ of execution

“A valid title shall be executed at the request of the creditor. A writ of execution shall be issued for this purpose. It is issued

(a) by the court which made the decision in the cases provided for in sub-sections (a) ... of the foregoing Article.”

Article 515 - Enforcement

“The writ of execution shall be enforced by the bailiff at the request of the creditor ...”

Article 560 – Seizure of the property

“A court decision or other valid title shall be enforced against the debtor’s immovable property by seizure of the property.

The seizure shall be registered at the Office for Registration of Immovable Property for the area where the writ of execution was issued. The entry in the register shall indicate the type, nature and [a description of] at least three borders of the immovable property, its location and any mortgage or other property rights attached to it.

A copy of the writ of execution shall be communicated to the debtor."

Article 567 – Sale by auction

"Once the property has been seized, the bailiff's office shall inform the debtor that the property will be sold [at auction], if he does not fulfil his obligation within ten days. ...."

Article 568

"The announcement for the sale at auction shall be posted at the bailiff's office and at the site of the immovable property. ..."

Article 610 – Challenging the bailiff's acts

"The parties may apply to the court executing the decision in order to challenge an act or failure to act by the bailiff's office, within five days of the said act or omission where the parties were present or summoned when the act was committed and in other cases from the date when they were notified or received knowledge of the act or refusal to act."

Article 617 – Appeal against the suspension and discontinuation of execution

"The suspension of the enforcement, unless ordered by the court, as well as its discontinuation, shall be decided by the bailiff.

An appeal may be lodged against such decisions to the first-instance court ..."

4. The Bankruptcy Act 1995 (Law on Bankruptcy Procedures, no. 8017, dated 25 October 1995)

31. The Bankruptcy Act 1995, as in force at the material time, provided that bankruptcy proceedings were to be conducted in court (section 3). Were the proceedings to start on the strength of a legal action by the creditor, he would need to prove that the debtor had defaulted on payment. In any event, the debtor could also file a similar action (section 5).

32. During the proceedings, the court could question witnesses, summon experts and hear evidence from the debtor (sections 5 and 7), who was obliged to submit to the court, *inter alia*, an accurate list of all his assets and their corresponding value, a list of creditors with their names and addresses and the amount owed to each of them and a list of any debtors with the corresponding amounts they owed to him. The debtor assumed criminal responsibility for the veracity of the lists (section 6).

33. The opening of bankruptcy proceedings took place on the strength of a court decision, which would, *inter alia*, fix a time-limit by which all creditors could submit their claims and the respective sums in Albanian leks, state the grounds that gave rise to their participation in the bankruptcy

proceedings as well as give their accord for the distribution of sums obtained from the bankruptcy proceedings (section 9). The district court would also decide to place the debtor under compulsory administration by appointing an administrator.

34. By virtue of the opening of bankruptcy proceedings, the debtor lost the right to possess and administer all his present and future property. Any civil and arbitration proceedings in which the debtor was a party were suspended on the initiation of bankruptcy proceedings. Judicial rulings given before the initiation of bankruptcy proceedings in respect of the enforcement of a court decision were no longer binding at the start of bankruptcy proceedings (section 11).

35. In the course of the discharge of his duties, the administrator acted under the supervision of the court, which was empowered to replace him, stating reasons (section 14). In accordance with section 16, the administrator could lodge a civil claim against the debtor's legal actions in the event that the debtor had intentionally made the position of one of the creditors worse and when this was known to the third party; or if, in the year preceding the opening of the bankruptcy proceedings, the debtor had intentionally made [the creditors'] position worse in favour of other persons, in so far as this can be proved and in so far as the administrator was unaware of the disadvantage suffered.

36. The Bankruptcy Act 1995 provided for the possibility of drafting a restructuring plan (*plani i riorganizimit*), with a view to final liquidation of the debtor. Such a plan required the court's approval (section 26-32). The administrator then proceeded with the liquidation of the debtor and the distribution of the sums collected to the creditors in accordance with the table of outstanding dues that had been approved by the court (section 32).

37. The Bankruptcy Act 1995 was repealed by Law no. 8901, dated 23 May 2002.

COMPLAINTS

38. The applicant complained that the Court of Appeal decision of 30 March 2007 had effectively quashed the District Court final decision of 13 August 1996 and breached the principle of legal certainty under Article 6 § 1 of the Convention. He further complained that the authorities had failed to enforce the District Court decision of 13 August 1996 within a reasonable time. He alleged that the rehearing proceedings had been unfair.

39. The applicant further complained under Article 1 of Protocol No. 1 that he had been unable to recover the money awarded to him on account of the District Court decision of 13 August 1996.

THE LAW

A. The complaints under Article 6 § 1 of the Convention

40. The applicant made three essential complaints under Article 6 of the Convention namely, that there had been a breach of the principle of legal certainty, that a final court decision in his favour had not been enforced and that the rehearing proceedings had been unfair. Article 6 § 1 of the Convention, in so far as relevant, reads as follows.

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

1. The alleged breach of the principle of legal certainty

(a) The parties' submissions

41. The Government submitted that the authorities had been justified in quashing a final and binding decision.

42. The applicant complained that the authorities had quashed the final decision of 13 August 1996 after eleven years. He alleged that the Court of Appeal decision of 30 March 2007 had been arbitrary in that the court had erred in the assessment of the facts. He maintained that in 1996 the company had been duly represented by G.M.

43. In the applicant's view the domestic authorities had issued confusing and contradictory judgments, which gave rise to a situation of legal uncertainty. They had failed to secure his rights under the Convention.

(b) The Court's assessment

44. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania*, 28 October 1999, § 61, *Reports of Judgments and Decisions* 1999-VII).

45. This principle insists that no party is entitled to seek a reopening of proceedings merely for the purpose of obtaining a rehearing and a fresh decision in the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for the purpose of correcting fundamental defects. The mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle

are justified only when made necessary by circumstances of a substantial and compelling nature (see, *mutatis mutandis*, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X, and *Pravednaya v. Russia*, no. 69529/01, § 25, 18 November 2004).

46. The Court observes that the final decision of 13 August 1996 in the applicant's favour was set aside by way of the Court of Appeal decision of 30 March 2007. The Court has to assess whether in the present case the quashing of the final judgment in the applicant's favour was justified in the circumstances and whether a fair balance was struck between the interests of the applicant and the need to ensure the proper administration of justice.

47. The Court notes that in the present case the Court of Appeal did not base its assessment for quashing the decision of 13 August 1996 on an erroneous application or interpretation of the substantive law by the lower courts (contrast, for example, *Vrioni and Others v. Albania*, no. 2141/03, §§ 52-60, 24 March 2009, and *Driza v. Albania*, no. 33771/02, §§ 63-71, ECHR 2007-XII (extracts)).

48. The Court has previously found that a fundamental defect in the proceedings, such as, in particular, a jurisdictional error, serious breaches of court procedure, abuse of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice could, in principle, justify a departure from the principle of legal certainty (see, in the context of civil proceedings, *Tolstobrov v. Russia*, no. 11612/05, §§ 17-20, 4 March 2010; *Tishkevich v. Russia*, no. 2202/05, §§ 23-27, 4 December 2008; *Protsenko v. Russia*, no. 13151/04, §§ 25-34, 31 July 2008; and *Luchkina v. Russia*, no. 3548/04, § 21, 10 April 2008; in the context of criminal proceedings, see *Lenskaya v. Russia*, no. 28730/03, §§ 36-44, 29 January 2009; *Fadin v. Russia*, no. 58079/00, §§ 33–36, 27 July 2006; *Radchikov v. Russia*, no. 65582/01, § 48, 24 May 2007; and *Bratyakin v. Russia* (dec.), no. 72776/01, 14 April 2001). The Court notes that the Court of Appeal found that the District Court's decision had been given in serious violation of procedural law. The District Court had neglected to examine whether G.M. was empowered to represent the company or act on its behalf and whether other defendants had been properly identified and summoned to the proceedings. This omission was serious and akin to failings which have previously disclosed breaches of the principle of a fair trial (see *Tishkevich*, cited above, § 25).

49. The Court observes that the administrator became aware of the decision of 13 August 1996 long after it had become final. Through no fault of his own, he had not been told of its existence. In order to protect the interests of the debtor company's creditors, whose list had been finalised by virtue of the bankruptcy decision of 17 April 1998, he decided to challenge the decision in the applicant's favour. In this connection, the Court also refers to section 11 of the Bankruptcy Act 1995, which prevented the

enforcement of a final court decision given before the initiation of bankruptcy proceedings against the debtor.

50. In so far as the applicant contends that the Court of Appeal incorrectly assessed the facts, the Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and that, as a general rule, it is for the national courts to assess the evidence before them. The Court's task under the Convention is rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII).

51. In this connection, following the administrator's appeal of 12 April 2006, the applicant was invited to attend the hearing of 30 March 2007. However, he could not be traced. The domestic courts took further measures by issuing public notices to notify the applicant of the hearing. When the applicant failed to attend the hearing, they proceeded *in absentia*. The Court finds that the domestic courts acted in accordance with the domestic law and did what was reasonably expected of them, affording the applicant the procedural safeguards of Article 6 § 1 of the Convention. The applicant failed to specify any other lack of procedural guarantee.

52. Having regard to the foregoing, the Court considers that the circumstances referred to were in their nature and significance such as to justify the quashing of the final judgment and that this was not inconsistent with the principle of legal certainty.

53. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

2. The alleged delayed non-enforcement of the District Court's decision of 13 August 1996

(a) The parties' submissions

54. The Government submitted that there had been no violation of the applicant's rights on three grounds. In the first place, the enforcement of the decision of 13 August 1996 had been hampered by the 1997 crisis that had negatively affected the proper administration of justice and the bailiff system in Albania. Secondly, in their view the final court decision could not have been enforced in the light of bankruptcy proceedings having been brought against the debtor company. The Government argued that the applicant could not have legitimately expected to have the final court decision enforced once the debtor company had been declared bankrupt. Thirdly, the Government contended that the bailiff had taken the necessary measures to enforce the final court decision by, for example, seizing the debtor company's assets.

55. The applicant submitted that to date the decision of 13 August 1996 had not been enforced. Whereas the bailiff had started its execution on 3 September 1996, no action had been taken from that date until 3 March 1998, when the company was declared bankrupt. The applicant alleged that the Government had not derogated from their obligations to respect the individual's rights under Article 15 of the Convention.

56. The applicant maintained that the execution of the court decision in his favour had not been a complex matter. All the bailiff had had to do was to seize the company's assets and sell them at an auction. In his view, the Government had failed to demonstrate any justification for the authorities' failure to enforce the decision of 13 August 1996.

(b) The Court's assessment

57. At the outset the Court observes that where an applicant complains about an inability to enforce a final court award in his or her favour, the extent of the State's obligations under Article 6 varies depending on whether the debtor is a High Contracting Party within the meaning of Article 34 of the Convention or a private person. In the former case, the Court's case-law usually insists on the State complying with the respective court decision both fully and timeously (see, for example, *Burdov v. Russia*, no. 59498/00, §§ 33-42, ECHR 2002-III). When the debtor is a private person, the position is different since the State is not, as a general rule, directly liable for the debts of private persons and its obligations under the relevant Convention provisions are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through a bailiff service or bankruptcy procedures (see, for example, *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002; *Krivonogova v. Russia* (dec.), no. 74694/01, 1 April 2004; and *Kesyan v. Russia*, no. 36496/02, 19 October 2006). Thus, when the authorities are obliged to act in order to enforce a final judgment and they fail to do so, their inactivity may, in certain circumstances, engage the State's responsibility under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C, and *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

58. In the instant case, the applicant entered a loan agreement with a private company. Following the company's default, on 13 August 1996 the District Court found in the applicant's favour and ordered the recovery of money from the company. The Court will examine whether the measures applied by the authorities were adequate and sufficient and whether they acted diligently in order to assist the applicant in the execution of the District Court decision of 1996 (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005, and *Fuklev*, cited above, § 84).

59. Following the adoption of the writ of execution on 3 September 1996, the bailiff took prompt action to enforce the decision of 13 August

1996 by seizing the company's property. However, those efforts were hampered by the overall situation that adversely affected the normal operation of State structures in Albania in 1997. The Government had documented the situation in the 1997 declaration for the derogation of their obligations under the Convention. Having in mind the public-order problems that Albania undoubtedly faced in 1997 and, taking into account the Government's declaration made in accordance with Article 15 § 3 of the Convention, the Court considers that the delay, at least as regards the period after 2 October 1996 – the date of the Convention's entry into force in respect of Albania – until the lifting of the state of public emergency, was justified (see, *mutatis mutandis*, *Shestakov* (dec.), cited above).

60. Furthermore, the Court notes that in September 1997 bankruptcy proceedings were opened in respect of the private company. In April 1998 the private company was declared bankrupt. In this regard, the Court notes that the authorities displayed due diligence in dealing with the insolvency proceedings. It further notes that the respondent State cannot be held liable for default of payment arising from an enforceable claim owing to the bankruptcy of a "private" debtor (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003; contrast *Cone v. Romania*, no. 35935/02, § 31, 24 June 2008).

61. It is to be regretted that the applicant's name was not included in the debtor company's list of creditors, particularly having regard to the fact that all domestic proceedings were instituted before the Vlora District Court. In this connection, it notes that the administrator unsuccessfully lodged a criminal complaint about the prosecution of G.M. for making false statements. Furthermore, at no stage of the proceedings did the applicant complain of any restrictions of his rights to challenge the insolvency proceedings, including the decision of 17 April 1998, or to be included in the company's list of creditors (contrast *Saggio v. Italy*, no. 41879/98, §§ 42-44, 25 October 2001).

62. The Court further notes that the applicant left Albania on an unspecified date in 1997. It was only in September 2005 that he attempted to set the enforcement machinery in motion in respect of the decision of 13 August 1996. The applicant did not refer to any other measure that the authorities should have taken during that time but failed to do. Moreover, nothing in the case file leads the Court to conclude that the company has been replaced by a similar structure, which would make an equivalent enforcement possible, or that the bankruptcy procedure has not been concluded or that there is money available for the applicant's compensation. The applicant has not furnished any documents or proof to the contrary.

63. The fact that the bailiff took action in 2005 at the request of the applicant does not alter the Court's conclusions that the company had been declared bankrupt in 1998 and that the decision in the applicant's favour could not be enforced. The Court further points to section 11 of the

Bankruptcy Act 1995, which provided that court rulings that had been handed down against a party before the initiation of its bankruptcy proceedings were no longer binding after the commencement thereof.

64. In these circumstances, taking into account that the enforcement proceedings were opened, that the bailiff's actions to enforce the District Court decision of 1996 were justifiably hindered by the exceptional public-order problems in Albania in 1997, that the respondent State had derogated from its obligations in accordance with Article 15 of the Convention, that the company went bankrupt and that the applicant failed to show due diligence in connection with the enforcement of a final court decision in his favour, the Court considers that the events could not be said to have deprived the applicant's right of access of all useful effect.

65. As to the non-enforcement after the quashing of the decision, the Court considers that no separate issue arises in this connection, having regard to its finding concerning the quashing of the decision of 13 August 1996 (see paragraphs 44–53 above).

66. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

3. The alleged unfairness of the rehearing proceedings before the District Court

67. In his submissions of 17 December 2009 the applicant, relying on Article 6 § 1 of the Convention, complained that the District Court had arbitrarily and unjustifiably dismissed the case.

68. The Court notes that the rehearing proceedings were ended by the decision of 3 December 2007 in which it was decided to terminate the proceedings. Whereas it does not appear that the applicant lodged an appeal against that decision or sought leave to appeal out of time, the Court further notes that this complaint was lodged outside the six-month time-limit laid down by Article 35 § 1 of the Convention.

69. The Court therefore decides to reject this complaint in accordance with Article 35 §§ 1 and 4 of the Convention.

B. The complaint under Article 1 of Protocol No. 1 to the Convention

70. The applicant complained that his right to the peaceful enjoyment of his property had been breached as a result of the non-enforcement of the District Court's decision of 13 August 1996.

Article 1 of Protocol No. 1 provides that:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

71. The Court considers that, having regard to its findings concerning the non-enforcement of the District Court's decision of 13 August 1996 (see paragraphs 57–66 above), this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President