



Delays in national courts lead to violations of right to a fair trial

In today's **Chamber judgment**¹ in the case of [ARB SHPK and Others v. Albania](#) (applications nos. 39860/19, 38996/20, 6142/22 and 27370/22) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights as regards ARB SHPK's and Mr Gazidedja's applications, and

a violation of Article 13 (right to an effective remedy) as regards Mr Gazidedja's application.

The case concerned alleged excessive length of proceedings in cases taken before the Albanian courts.

The Court found in particular that the delays of eight years and six months and seven years that ARB SHPK's cases had been pending before the Supreme Court had been excessive.

Regarding Mr Gazidedja's case, the Court noted that he had not received compensation for the delays, despite an order in that regard, and that his case had still not been finally judged before the courts in Albania despite a delay so far of eight years and 11 months, which was excessive.

The Court indicated, under **Article 46 (binding force and enforcement of judgments)**, that Albania was to, in particular, reduce the backlog at various court levels by filling the relevant judicial vacancies and providing the necessary resources to the judicial system.

Principal facts

The applicants are ARB SHPK (applications nos. 39860/19 and 38996/20), a company based in Albania that specialises in private enforcement of judgments or writs, and two Albanian citizens, Kujtim Llagami and Selman Gazidedja, who live in Tirana and were born in 1962 and 1954 respectively.

Albania has undergone judicial reform in recent years, including, in 2016, constitutional changes, the make-up of the Supreme Court, reorganisation of the judiciary, vetting of judges. Sometimes this has led to courts, including the Supreme Court, having to operate with a reduced number of judges.

ARB SHPK's two applications concerned the length of the proceedings it took against two separate local banks. Both sets of proceedings lasted over 10 years and three months. In both cases the Constitutional Court noted that the Supreme Court had failed to issue a ruling on the complaint within 45 days, as required under the law. However, it found that, owing to the Supreme Court backlog – and as it had not been operating with a full bench for some time – there had been no violation of the "reasonable time" requirement. The appeals were dismissed.

Mr Llagami's application concerned the length of proceedings (over nine years and two months) of his complaint concerning alleged unlawful dismissal against a State body. Following his claim in that connection, the Supreme Court found that there had been no violation of his right to a hearing within a reasonable time. Any delay had been a result of reforms to the justice system.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Gazidedja's complaint concerned the length of proceedings of his challenge to a decision not to award him a miner's pension alongside his old-age pension (the proceedings began in May 2016 and his appeal in that matter before the Tirana Administrative Court of Appeal was still pending at the time of his application to the European Court). He complained of the excessive length of the proceedings, and the Constitutional Court agreed and ordered the Supreme Court to examine his cassation appeal within six months. He was awarded damages in that connection by the Tirana District Court, but that judgment has not been enforced, and an appeal on that matter too is pending.

Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair trial) and 13 (right to an effective remedy), the applicants complained of the length of proceedings and that they had no effective remedy for that complaint.

The applications were lodged with the European Court of Human Rights on 15 July and 20 December 2019, and 19 January and 26 May 2022.

Judgment was given by a Chamber of seven judges, composed as follows:

Ioannis **Ktistakis** (Greece), *President*,
Lətif **Hüseynov** (Azerbaijan),
Darian **Pavli** (Albania),
Oddný Mjöll **Arnardóttir** (Iceland),
Úna Ní **Raifeartaigh** (Ireland),
Mateja **Đurović** (Serbia),
Canòlic **Mingorance Cairat** (Andorra),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 6

The Court held that, owing to his not having lodged a constitutional appeal in Albania, Mr **Llagami's** complaint under this Article was **inadmissible** for failure to [exhaust domestic remedies](#).

The Court noted the significant challenges faced by the Albanian judiciary in the wake of the recent reforms, and commended the progress made in reducing the Supreme Court backlog in particular. It reiterated that where a violation had already been found, the authorities had an obligation to provide an effective compensatory remedy.

Regarding **ARB SHPK's** applications, it found that the three-and-a-half-year limit in which the Supreme Court had to process a case was already long, and the length in the proceedings in these cases had greatly exceeded that. It also stated that if the doctrinal position on "objective reasons" to not find delays in proceedings were maintained by the Supreme Court in the future, it might call into doubt the effectiveness of the available national remedies. The Court reiterated that all parties to civil proceedings were entitled to a speedy trial under Article 6 § 1 of the Convention, and were not required to prove any special or additional harm resulting from delays.

Concerning **ARB SHPK's** first application, the Court considered that the delay of eight years and six months before the Supreme Court was excessive. Similarly, for its second application, the Court considered that the period of seven years that the case had been pending before the Supreme Court of Albania had been excessive. There had been a **violation** of Article 6 in respect of both applications.

As concerns Mr **Gazidedja**, the Court noted that after three years waiting on his initial complaint, he complained to the Supreme Court about the delay, but did not receive a timely ruling. It took 13

months overall to complete this first phase of the proceedings on the length of the original proceedings, for which compensation should have been expected. However, the decision on compensation had not been enforced and an appeal was still pending at the time of application, alongside the original case on the pension, which is still pending three years after having been remitted by the Supreme Court to the Administrative Court. He was therefore still a victim of the delays.

Those delays were not caused by Mr Gazidedja, and the case had not been complex in either fact or law. The overall length of proceedings of eight years and 11 months was excessive and in **violation** of Article 6 of the Convention.

Article 13

Regarding both **ARB SHPK**'s applications, the European Court noted that the Constitutional Court had comprehensively examined its complaints concerning length of proceedings on three occasions. Its complaints under Article 13 were therefore **manifestly ill-founded**.

Regarding Mr **Llagami**, the Court noted that he had not lodged a constitutional appeal, which had been, in theory, an effective remedy. It therefore found this complaint **inadmissible**.

Mr **Gazidedja**'s complaint concerned the delays in finalising his compensation under the 2017 remedy. The Court had already found that, owing to such delay and despite the favourable outcome of his constitutional complaint, he retained victim status. It therefore found a **violation** of Article 13 in conjunction with Article 6.

Other articles

ARB SHPK lodged new complaints after its application, under Article 6 § 1 and Article 1 of Protocol No. 1 (protection of property). The Court held that it had dealt with the major issues contained in those complaints and that there was no need to give a separate ruling.

Article 46 (binding force and enforcement of judgments)

The Court indicated, with a view to assisting Albania in meeting its obligations under [Article 46 of the Convention](#), that the national authorities should undertake efforts to meet the Convention "reasonable time" requirements by, among other measures, reducing the high backlog before the appeal courts by filling the relevant judicial vacancies and by granting adequate human resources and other necessary support to the judiciary. It also urged the Government to look again at the practical effectiveness of the compensatory remedy under Articles 399/1 et seq. of the Code of Civil Procedure.

Just satisfaction (Article 41)

The Court held that Albania was to pay ARB SHPK 5,700 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses, and to pay Mr Gazidedja EUR 1,800 in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.