



Complaint about criminal proceedings against members of Greek-speaking minority in Albania: inadmissible for failure to exhaust domestic remedies

In its decision in the case of [Beleri and Others v. Albania](#) (application no. 39468/09) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The case concerned the complaint of a group of Albanian nationals belonging to the Greek-speaking minority of their conviction, in Albania, of incitement to national hatred and denigration of the Republic and its symbols.

The Court concluded in particular that the applicants had failed to raise their complaint under Article 10 (freedom of expression) in their appeals to the domestic courts. They had not alleged – be it only in substance – that the sentences imposed on them had interfered with their freedom of expression. This part of the complaint therefore had to be dismissed for failure to exhaust the domestic remedies.

Principal facts

The applicants are five Albanian nationals who were born between 1938 and 1985 and live in Greece.

According to the applicants, who are originally from the town of Himara on the south-west coast of Albania, they belong to the Greek-speaking minority. One of them was the president of a minority association – called the Union of Himariotes – in Greece and the publisher of the association's newspaper, which was published in Greek; another applicant was a board member of the association. The autumn 2003 issue of the newspaper urged Himariotes living in Greece to organise themselves to cast their votes in the October 2003 local elections in Albania. In the evening of 12 October 2003, the day of the elections, following reports of irregularities, the applicants protested in front of the local election commission, carrying Greek flags and shouting pro-Greek slogans, demonstrating their support for one of the candidates. On the following day they left Albania for Greece, where they are currently living.

A criminal investigation was subsequently opened against the applicants, and in September 2004 they were convicted, in their absence, of incitement to national hatred and denigration of the Republic and its symbols. Having subsequently become aware of the judgment, the applicants authorised a lawyer in November 2004 to represent them in appeal proceedings. The judgment was quashed on appeal and the case was remitted for a fresh examination. During the re-hearing proceedings the trial court declared them to be fugitives; they remained absent from the proceedings. In July 2006 they were again convicted and sentenced, in their absence, to three years' imprisonment. The applicants subsequently appealed. Relying on the Freedom of Assembly Act, they sought to have their acts classified as minor offences and their prison sentences commuted to a fine. They also contested the witnesses' statements as being unreliable. Eventually the Supreme Court dismissed their appeals in February 2009.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 June 2009.

Relying on Article 10 (freedom of expression) and Article 14 (prohibition of discrimination), the applicants complained that their freedom of expression was violated on account of their belonging to the Greek minority. They further complained of violations of their rights, in particular, under Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy).

The decision was given by a Chamber of seven, composed as follows:

Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”), *President*,
Ledi **Bianku** (Albania),
Linos-Alexandre **Sicilianos** (Greece),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Robert **Spano** (Iceland),
Pauliine **Koskelo** (Finland), *Judges*,

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 10

The applicants had failed to raise the Article 10 complaint “at least in substance” – as required by the Court’s case-law – in their appeals to the domestic courts. They had also been unable to demonstrate that they had made any efforts to do that. Their arguments in their appeals before the domestic courts had exclusively concerned the legal re-classification of their actions under the Freedom of Assembly Act and the unreliability of the witnesses. They had not alleged – be it only in substance – that the sentences imposed on them had interfered with their freedom of expression.

This part of the complaint therefore had to be dismissed for failure to exhaust the domestic remedies, in accordance with Article 35 §§ 1 and 4.

Article 6 § 1

The Court observed that the applicants, who had left Albania, had continued to be absent during the entire re-hearing of the case. The court conducting the re-trial had declared them fugitives, and in their submissions to the European Court of Human Rights they had confirmed that they had absconded.

Referring to its case-law, the Court underlined that when an accused person fled from a State which respected the principles of the rule of law, it could be assumed that he or she was not entitled to complain of the proceedings lasting an unreasonable time following that flight. Since the applicants had not demonstrated that there was any reason to rebut that assumption in their case, the Court considered that they could not rely on the “reasonable time” guarantee under Article 6 § 1. In any event, the Court did not consider that the duration of the proceedings – around four years and two months over three levels of jurisdiction – had been excessive. The complaint therefore had to be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

Other articles

Finding that there was no appearance of a violation, the Court rejected the complaints under Articles 13 and 14 as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4.

The decision 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.