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

THIRD SECTION

CASE OF BARA AND KOLA v. ALBANIA

(Applications nos. 43391/18 and 17766/19)

JUDGMENT

Art 6 § 1 (civil and criminal) • Unreasonable length of proceedings • Significant delays before the Supreme Court unacceptable despite the context of the far-reaching reform of the justice system Art 13 (+Art 6 § 1) • Effective remedy • New acceleratory/preventive and compensatory remedy in length-of-proceedings cases albeit effective in principle and to be used, ineffective in the particular circumstances of the case

STRASBOURG

12 October 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bara and Kola v. Albania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 43391/18 and 17766/19) 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") by two Albanian nationals, Mr Petrit Bara ("the first applicant") and Mr Eduard Kola ("the second applicant"), on 4 September 2018 and 27 March 2019, respectively;

the decision to give notice to the Albanian Government ("the Government") of the complaints of the excessive length of the proceedings, the unfairness of the proceedings in respect of the second applicant and the lack of an effective remedy in respect of the length-of-proceedings complaints;

the parties' observations;

Having deliberated in private on 7 September 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applications concern the allegedly excessive length of administrative and criminal proceedings and the effectiveness of a new remedy introduced in 2017 in respect of the excessive length of proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

2. The first applicant was born in 1953 and lives in Tirana. He was represented before the Court by Ms B. Bara and subsequently by Mr J. Bara, a lawyer practising in Tirana.

3. The second applicant was born in 1986 and is currently serving a prison sentence in Albania. He was represented before the Court by Mr A. Doda, a lawyer practising in Tirana.

4. The Government were represented by their then Agent, Mr A. Metani, and subsequently by Ms E. Muçaj of the State Attorney's Office.

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

A. Application no. 43391/18: *Bara v. Albania*

6. The first applicant is a doctor and professor of medicine at the publicly funded Tirana University of Medicine (*Universiteti i Mjekësisë, Tiranë* – "the UMT").

7. Following an election for the position of the UMT rector, in which the first applicant was one of three candidates who ran for the position (see paragraphs 47 and 48 below), on 23 April 2016 the Institutional Electoral Committee ("the Electoral Committee" – see paragraph 48 below) announced the preliminary election results, according to which the first applicant had received 36.3% of the votes cast, and the other two candidates 38.3% and 25.4%. On the same date, maintaining that there had been several irregularities in the election process, the first applicant lodged an administrative complaint, which was dismissed by the Electoral Committee on 24 April 2016.

8. On 29 April 2016 the Appellate Committee, another administrative body of the UMT, dismissed the administrative appeal by the first applicant. On the same date the Electoral Committee confirmed that the winner of the election was the candidate who had received 38.3% of the votes cast.

9. Having exhausted the available administrative remedies, on 3 May 2016 the first applicant lodged an action with the Tirana Administrative Court of First Instance ("the Tirana Administrative Court"), requesting that the election be invalidated.

10. On 3 July 2016 the Tirana Administrative Court dismissed the action. On 29 September 2016 the Administrative Court of Appeal upheld that judgment, concluding that the first applicant's challenge as to the accuracy of the list of voters was inadmissible, because the list had been published before the election and no challenge had been lodged at the time. As regards a discrepancy between the security codes of a ballot box and the codes appearing on the official records, the court held that this had been the result of human error. Lastly, the court found that since the eight invalid votes of which the first applicant had complained had been cast in favour of his opponent, he had no legal interest in requesting their invalidation by the Committee.

11. On 27 October 2016 the first applicant lodged a cassation appeal with the Supreme Court, arguing that the lower courts had erred in their application of the relevant statutory provisions.

12. On 11 September 2017, 26 February and 5 July 2018 the first applicant asked the Supreme Court to expedite the proceedings concerning the examination of his appeal.

13. On 4 May 2018 the first applicant lodged a request with the Supreme Court under Articles 399/1 et seq. of the Code of Civil Procedure ("the CCP"), asking the court to find a breach of his right to be heard within a reasonable time.

14. On 24 February 2021 the Supreme Court examined the first applicant's cassation appeal and, having identified several shortcomings in the proceedings before the Administrative Court of Appeal, remitted the case for a fresh hearing by another bench of that court. Accordingly, the case is currently pending before the Administrative Court of Appeal.

15. It transpires from the Supreme Court's website that on 13 July 2021 the Supreme Court decided to discontinue the review of the first applicant's request under Articles 399/1 et seq. of the CCP, finding that the case was not exceptionally complex and that there had been a delay of one year and six months, running from the date when the case file had been registered with the court until the date when the first applicant had lodged his request under Articles 399/1 et seq. of the CCP. The Supreme Court attributed the delay to the justice system reform (see paragraph 24 below) and stated that any short delays caused by it were not disproportionate to its benefits. The court further held that, pursuant to Article 399/2 of the CCP, delays caused by a situation where it was objectively impossible to proceed with the case were not to be taken into account in the determination of the length of proceedings. Since the Supreme Court had examined the first applicant's cassation appeal and remitted the case to the administrative appellate court for a fresh hearing, it decided to discontinue the proceedings.

B. Application no. 17766/19: *Kola v. Albania*

16. On 24 September 2011 a night watchman of a stone quarry was found dead in the container cabin that served as his workplace.

17. Following a police investigation, on 24 November 2011 the second applicant and a co-defendant were charged with premeditated murder and illegal possession of hunting or sporting firearms, under Article 78 § 2 and Article 280 of the Criminal Code.

18. On 15 November 2012 the Shkodra District Court sentenced the second applicant to life imprisonment for premeditated murder. The co-defendant's charge was reclassified and he was convicted of obstruction of justice for engaging in acts aimed at obstructing the discovery of the truth.

19. While the decision was upheld on appeal, on 1 March 2016 the Supreme Court quashed the decision on the grounds that it lacked sufficient reasoning. It remitted the case for re-examination and directed, amongst other things, that an expert report be carried out on a weapon that the co-defendant had removed from the crime scene in order to verify the existence of any fingerprints.

20. On 23 March 2017 the Shkodra Court of Appeal ("the Court of Appeal") upheld the applicant's conviction and discontinued the examination of the charge of illegal possession of firearms in application of an amnesty law.

21. On 27 March 2017 the second applicant filed a cassation appeal with the Supreme Court.

22. On 5 March 2021 the Supreme Court, sitting in a three-judge formation, declared the second applicant's cassation appeal admissible. It does not appear that the Supreme Court has fixed the date for examination of the appeal on the merits.

C. Statistical and other information about the Supreme Court

1. Information regarding the Supreme Court's composition

23. Until March 2016 the Supreme Court was composed of seventeen of a total of nineteen judges. Between April 2016 and October 2017 seven judges resigned, and one judge was found guilty of a criminal offence and dismissed.

24. In 2016 Albania embarked on far-reaching justice system reforms, which led to amendments to the Constitution and the enactment of a number of essential statutes relating to, amongst other things, the re-evaluation of all serving judges and prosecutors (otherwise referred to as the vetting process of judges and prosecutors), the organisation of the judiciary, including that of the Supreme Court, and the establishment of new governing bodies of the justice system (see *Xhoxhaj v. Albania*, no. 15227/19, §§ 4-7, 9 February 2021).

25. Between July 2018 and May 2019, following the outcome of the vetting process instituted in relation to Supreme Court judges, seven of the nine remaining judges were dismissed from office. Thus, from 31 July to 11 December 2018 the Supreme Court was composed of four judges who could examine certain types of cassation appeals, from 12 December 2018 to 21 May 2019 it was composed of three judges and from 22 May 2019 to 18 March 2020 it lacked the statutory quorum of three judges to examine any cassation appeals.

26. Only two judges were confirmed in their positions following the successful outcome of the vetting process. Of the two confirmed judges, in December 2018 one judge was elected as representative to the High Judicial Council (*Këshilli i Lartë Gjyqësor* – "the KLGJ"), a new governing body

responsible for the management of the judiciary, and his term of office at the Supreme Court was suspended *ex lege*.

27. Since 30 July 2021 nine of a supposed total of nineteen judges have been serving at the Supreme Court.

2. Information regarding the Supreme Court's backlog

28. By the end of 2012 the Supreme Court's backlog consisted of 9,961 cases[1], by the end of 2014 its backlog had reached 11,357 cases[2] and by the end of 2015 it had a backlog of 16,777 cases[3].

29. On 12 February 2021, in response to a request from the Court, the Government stated that the Supreme Court's backlog was 36,609 cases. A number of backlog reduction measures had been taken as follows: the Supreme Court had decided to examine the most urgent and oldest cases; the KLGJ had seconded other judges and legal advisors to alleviate the Supreme Court's backlog; and additional human resources had been allocated, which contributed to the preliminary review of 22,623 cases.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

1. Organisation and functioning of the Supreme Court

30. Article 135 of the Constitution provides that the Supreme Court is the highest court of law in the country. Under Article 136, its members serve a non-renewable nine-year term.

31. Section 31 of the Judiciary Act (Law no. 98/2016 "On the Organisation of the Judiciary") provides that the Supreme Court examines cassation appeals in civil, administrative and criminal benches (*kolegje*).

32. As regards criminal cassation appeals, Article 14/a of the Code of Criminal Procedure, as in force until 29 May 2021, provided for three different formations of the Supreme Court: it examined the admissibility of cassation appeals sitting in private in a three-judge formation, harmonised and developed case-law in a five-judge formation, and departed from

[1] Retrieved from a press release issued by the Supreme Court on 21 March 2013, as accessible at http://www.gjykataelarte.gov.al/web/Kryetarja_e_Gjykates_se_Larte_Znj_Shpresa_Becaj ka_mbledhur_diten_e_enjte_trupen_gjyqesore_te_Gjykates_se_Larte_1463_1.php.

[2] Retrieved from a press release issued by the Supreme Court on of 18 February 2015, as accessible at http://www.gjykataelarte.gov.al/web/NJOFTIM_P_R_MEDIAN_2475_1.php.

[3] European Commission annual progress report on Albania 2016 (SWD(2016) 364), page 60, as accessible at https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf.

established case-law sitting in a joint bench composed of at least two third of the judges of the Supreme Court.

33. In leading decision no. 00-2020-473 (4) of 22 December 2020 the Supreme Court decided that, save for cases which warranted a harmonisation and development of the case-law, a three-judge formation would also examine the merits of admissible criminal cassation appeals. It thus discontinued the practice according to which a five-judge formation examined all criminal cassation appeals on the merits.

34. As regards administrative cassation appeals, section 58 of the Administrative Courts Act (Law no. 49/2012 "On Administrative Courts and Adjudication of Administrative Disputes", as amended), as in force at the relevant time, listed the grounds under which such an appeal could be lodged, namely: (a) where the substantive law was disregarded, misinterpreted or misapplied or the decision was contrary to a prior decision of the Supreme Court's administrative bench or joint bench; (b) where there was a serious breach of procedural rules resulting in the invalidity of the decision or court proceedings; or (c) where there was a serious procedural breach which had significantly affected the delivery of the decision. Under section 60 the Supreme Court must examine administrative cassation appeals within ninety days of receipt.

2. Constitutional Court's case-law regarding the interpretation of section 60 of the Administrative Courts Act

35. In decision no. 26 of 27 March 2017 (26/2017), the Constitutional Court found a breach of the complainant's right to a hearing within a reasonable time on account of the proceedings before the Supreme Court having lasted almost three years (between 2013 and 2016), that is, beyond the ninety-day time-limit provided for in section 60 of the Administrative Courts Act. Without making an award in respect of the breach found, the court stated, amongst other things, that:

> "... in so far as the legislature has laid down time-limits for the adjudication of administrative proceedings, this meant that [it] has considered them reasonable time-limits to be applied by the administrative courts. In this connection, strict observance of the law constitutes an obligation for the Supreme Court, owing to its role and position as a court of law examining the application of substantive and procedural law by the lower courts ... [T]he backlog does not constitute a [valid reason] justifying non-compliance with the time-limits laid down by the legislature."

36. In decision no. 3 of 6 February 2018, the Constitutional Court examined a constitutional complaint in which it was argued, among other things, that there had been a breach of the complainant's right to a hearing within a reasonable time on account of the proceedings before the Supreme Court having lasted three years (between 2014 and 2017). The Constitutional Court held that the constitutional appeal, which had been

lodged prior to the entry into force of a new remedy in respect of the length of proceedings (see paragraph 37 below), concerned the length of finished administrative proceedings for which the complainant had no effective remedy except for the constitutional appeal. The Constitutional Court made the same findings with regard to the length of administrative proceedings before the Supreme Court as in its decision no. 26/2017. As regards the issue of damages, the Constitutional Court directed the complainant to lodge a separate claim with the courts of general jurisdiction.

3. Length of proceedings

(a) Domestic law regarding the new remedy in respect of the length of proceedings

37. In implementation of the Court's leading judgment in the case of *Luli and Others v. Albania* (nos. 64480/09 and 5 others, 1 April 2014), on 30 March 2017 Albania introduced a new remedy in the Code of Civil Procedure in respect of the unreasonable length of proceedings, which entered into force on 5 November 2017. The relevant provisions read as follows:

Chapter X - Examination of requests for finding a breach of the reasonable time requirement, acceleration of the proceedings and just satisfaction

Article 399/1 - Scope

"1. The courts, depending on the level of jurisdiction of [domestic] proceedings as specified in this Chapter, shall be competent to examine requests for just satisfaction from a person who has suffered pecuniary and non-pecuniary damage on account of the unreasonable length of proceedings, as defined in Article 6 § 1 of the [Convention].

..."

Article 399/2 - Reasonable time

"1. For the purposes of Article 399/1, in so far as the investigation, trial or enforcement of a final decision is concerned, reasonable time shall mean:

a) in administrative proceedings in the first-instance and appellate courts, termination of the proceedings within one year of commencement at each level of jurisdiction;

b) in civil proceedings in the first-instance court, termination of the proceedings within two years, in the appellate court [termination of the proceedings within] two years, and in the Supreme Court [termination of the proceedings within] two years;

c) as regards enforcement proceedings in respect of a civil or administrative decision, the period of one year shall start on the date of submission of the enforcement request, save for [the enforcement of] periodic or time-dependent obligations;

ç) in the investigation of criminal offences, the maximum duration of an investigation as specified in the Code of Criminal Procedure;

d) in a criminal trial in the first-instance court, a trial for offences [of a duration of] two years and misdemeanours one year, in the appellate court [conclusion of] a trial for offences within one year and misdemeanours six months, and in the Supreme Court [conclusion of] a trial for offences within one year and misdemeanours six months.

...

3. Periods of time during which the proceedings have been suspended for lawful reasons or postponed at the request of the party complaining under this Chapter, or during which there were circumstances that made it objectively impossible [for the court] to proceed [with the examination of the request], shall not be taken into account in the determination of the length of proceedings.

..."

Article 399/6 - Competent court to examine requests

"1. A request for finding a breach [of the reasonable time requirement] and acceleration of the proceedings shall be lodged with the competent court ... as follows:

...

b) where the case in which a breach [of the reasonable time requirement] is alleged is pending before the appellate courts, the request shall be examined by the competent bench of the Supreme Court.

c) where the case in which a breach [of the reasonable time requirement] is alleged is pending before the Supreme Court, the request shall be examined by a different bench of the Supreme Court.

...

2. Where there is a final decision finding a breach [of the reasonable time requirement] and ordering acceleration of the proceedings, the requesting party may file a claim for compensation under paragraph 3 of this Article.

3. The claim for compensation shall be filed with the first-instance court of general jurisdiction where the institution in respect of which a breach has been found is based. The claim shall become time-barred within six months of the final decision finding a breach.

..."

Article 399/7

"1. The examination of a claim lodged under Article 399/6 § 3 shall be carried out in accordance with the usual procedural rules within a period of three months of the claim being filed.

2. The examination of a request lodged under Article 399/6 § 1 shall take place in private and the court shall take a decision within forty-five days of the request being lodged ...

3. Should the authority examining [the main] proceedings take the action requested by the complaining party within thirty days of the request [under Article 399/6 § 1] being lodged, the examination of the request shall be discontinued.

..."

Article 399/8 - Decision

"1. After reviewing the request, the court shall:

a) accept the request, find a breach [of the reasonable time requirement] and order that within a time-limit certain procedural action be taken in the trial or enforcement proceedings [which is the subject of the complaint];

b) dismiss the request.

2. The decision of the court is final and binding."

Article 399/9 - Acceptance of a request

"1. The court shall accept a request when it observes a breach of the reasonable time requirement under Article 6 § 1 [of the Convention].

2. In determining whether there has been a breach, the court shall assess the complexity of the case, the subject matter of the dispute, proceedings or trial, the conduct of the parties and the trial bench during the proceedings, or the conduct of the bailiffs and anyone else involved in the case."

Article 399/10 – Decision on just satisfaction

"1. After examining the claim, the court shall make an award of between 50,000 [EUR 400] and 100,000 [Albanian] leks [EUR 800] for each year or month of the year exceeding the reasonable time period [laid down in Article 399/2].

2. The award shall take account of:

a) the complexity of the proceedings which led to the finding of a breach;

b) the conduct of the bench or the bailiffs and the parties;

c) the nature of the interests at issue;

ç) the value and importance of the case in relation to ... enforcement, regard also being had to the parties' personal circumstances."

(b) Domestic case-law regarding the new remedy in respect of the length of proceedings

(i) Constitutional Court's decisions

38. In its admissibility decisions nos. 269 and 270 of 7 December 2017 and no. 49 of 22 February 2018, the Constitutional Court, having regard to the new remedy introduced by virtue of Articles 399/1 et seq. of the CCP, which the complainants had failed to exhaust in respect of the length of non-enforcement and finished proceedings, declined to examine the complainants' constitutional appeals in that regard.

(ii) Supreme Court's decisions

39. As regards a request filed under Article 399/6 § 1 (b) of the CCP concerning the length of proceedings before the appellate courts, the Government provided a printout of the Supreme Court's online case list showing that that court had received such requests from certain

complainants. In this connection, they also provided examples of a number of Supreme Court decisions. In decision no. 1 of 24 January 2018, which was taken a month and two days after the request was lodged, the Supreme Court's administrative bench accepted the claimant's request and found a breach of the "reasonable time" requirement by the appellate court. It ordered the Administrative Court of Appeal to continue the proceedings in accordance with the procedural rules provided for in the CCP.

40. In decision no. 5 of 17 April 2018, which was taken a month and twelve days after the request was lodged, the Supreme Court's administrative bench discontinued the proceedings before it (*pushimin e shqyrtimit*) in accordance with Article 399/7 § 3 of the CCP on the grounds that the Administrative Court of Appeal before which the proceedings were pending had decided to examine the claimant's appeal at a public hearing on 12 April 2018.

41. In decision no. 4/8 of 31 January 2019, which was taken six months and fourteen days after the request was lodged, the Supreme Court's administrative bench accepted the claimant's request and found a breach of the "reasonable time" requirement by the appellate court. It ordered the Administrative Court of Appeal to schedule the examination of the claimant's case as soon as practicable.

42. In decision no. 9 of 28 February 2019, which was taken twenty-one days after the request was lodged, the Supreme Court's administrative bench discontinued the proceedings before it in accordance with Article 399/7 § 3 of the CCP on the grounds that the appellate court before which the proceedings were pending had already taken a decision in the claimant's case.

43. As regards a request filed under 399/6 § 1 (c) of the CCP concerning the length of proceedings before the Supreme Court, the Government provided a copy of only one Supreme Court decision. In decision no. 7/13 of 15 February 2019, which was taken a month and nineteen days after the request was lodged, the Supreme Court's criminal bench discontinued the examination of the request in accordance with Article 399/7 § 3 of the CCP because the complainant's cassation appeal had been dismissed by the Supreme Court on 13 February 2019.

44. As regards a claim for compensation filed under Article 399/6 § 3 of the CCP, the Government submitted copies of three domestic decisions. In decision no. 6853 of 27 July 2018 the Tirana District Court, recognising that a Constitutional Court decision had acknowledged a fourteen-year delay in the enforcement proceedings, partly allowed the claim for compensation and awarded the claimant ALL 700,000 (approximately EUR 5,700) for the delay. In examining the claim, the court held that, even though it had been lodged prior to the entry into force of the new remedy, it would refer, by analogy, to the statutory provisions relating to the new remedy in determining the amount of compensation. The court dismissed the claim for

late payment interest on the outstanding debt and stated that the decision was amenable to appeal.

45. In decision no. 11-2019-4385 of 25 July 2019 the Durrës District Court, recognising that a prior court decision had acknowledged a delay in the proceedings at one level of jurisdiction (the district prosecutor's office), allowed the claim for compensation and awarded the claimant ALL 100,000 (approximately EUR 800) for the delay.

46. In decision no. 8016 of 25 November 2019 the Tirana District Court, recognising that a Supreme Court decision had acknowledged a fifteen-month delay in the proceedings at one level of jurisdiction (the Administrative Court of Appeal), allowed the claim for compensation and awarded the claimant ALL 180,000 (approximately EUR 1,400) for the delay. The decision stated that it was amenable to appeal.

4. Other relevant domestic law

47. Higher education institutions, including the election of their rectors, are governed by the Higher Education Act (Law No. 80/2015 of 22 July 2015 "On Higher Education and Scientific Research in Higher Education Institutions"). Section 39(1) provides that the rector is the highest academic authority of a higher education institution. Under section 39(2), the rector is elected by members of the assemblies of academic staff of the main constituent units (faculties) and by students. Under section 39(3), the rector holds the academic title of "professor" and may come from within or outside of the ranks of the academic staff. Other eligibility criteria for candidates wishing to apply for the position of university rector may be laid down in the statute of a particular higher education institution. Under section 39(7), the rector serves a four-year term, renewable once.

48. In accordance with section 131 of the Higher Education Act, the Ministry of Education adopted a regulation on the organisation of the first elections of the governing bodies of higher education institutions. Rule 4 § 8 stated that the successful candidate for a position was the person who had received the majority of the valid votes cast. Rule 6 established the Electoral Committee, which was responsible for, amongst other things, organising and managing the elections, declaring the successful candidate for the position of university rector and examining complaints filed by candidates. Under Rule 39, the Electoral Committee's decisions could be appealed against to the Appellate Committee, the decision of which was amenable to appeal before the national courts. Rule 20 laid down the eligibility criteria for candidates wishing to apply for the position of rector.

B. Council of Europe material

49. Following the introduction of the new remedy concerning the excessive length of proceedings (see paragraph 37 above), at its 1377th

meeting of 4 June 2020 the Committee of Ministers (CM/Notes/1377/H46-1, Notes on the Agenda) stated the following regarding the status of execution of the *Luli and Others v. Albania* judgment:

> **"Status of execution**
>
> ...
>
> *General measures*
>
> ...
>
> *3) Developments in respect of excessive length of judicial proceedings:*
>
> - *Increase of the average length of proceedings as a result of the vetting of judges*: ... the authorities report an increase of the average length of judicial proceedings and growth of the backlog of cases for the period 2017-2019. This negative trend is due to the vetting process launched in 2017 and still ongoing whereby the credentials of judges at all levels have been verified [reference omitted].
>
> As a result, 60% of the vetted magistrates were either dismissed or they resigned [reference omitted], including judges at the Supreme Court and the Constitutional Court (these two courts had until recently only one judge each). The Supreme Court currently has a backlog of nearly 35,000 cases, with part of it accumulated from May 2019 to March 2020, when it was unable to form a judicial formation to adjudicate cases.
>
> The authorities underline the extraordinary nature of this situation; that it will have only short-term effects and consider that it cannot be attributed to inadequate actions or inactions on their part ...
>
> The newly composed Supreme Court is now able to adjudicate cases in judicial formations of three judges (required in the majority of cases before it) as a result of three new judicial appointments in March 2020 ...
>
> ...
>
> - *Action plan on reducing the backlog of the Supreme Court*: In December 2019 an *ad hoc* committee was set up upon the High Judicial Council's initiative to propose an action plan to reduce the backlog and increase the efficiency of the Supreme Court. It has already proposed concrete actions in a memorandum.
>
> ...
>
> *4) Developments in respect of the acceleratory and compensatory remedy:*
>
> - *Functioning and efficiency of the remedy*: Since November 2017, a new acceleratory and compensatory remedy for excessive length of judicial proceedings has been functioning in Albania. It applies to proceedings before all criminal, civil and administrative courts, criminal investigations and enforcement proceedings. It does not apply to proceedings before administrative bodies, in respect of which the authorities consider there are sufficient legislative and judicial review guarantees. The requests for compensation or acceleration are filed with the ordinary courts or the Constitutional Court, depending on the jurisdiction.
>
> The authorities report an increase in the past two years of the use of the remedy but acknowledge that the number of filed requests continues to be low. The statistics show that only a small number of the filed requests have been accepted by the

courts (for example, for 2019, out of 40 requests filed with the Supreme Court, 1 was accepted, 13 were dismissed and 26 are still pending; out of 93 requests filed with the district and appellate courts, 19 were accepted)."

50. The relevant part of the Committee of Ministers' decision of the same date (CM/Del/Dec(2020)1377/H46-1) stated as follows:

"The Deputies:

...

As regards general measures

5. noted with concern the increase of the average length of judicial proceedings and case backlog in the past three years as a result of judicial posts becoming vacant following the vetting of judges, the Supreme Court and the Constitutional Court having been particularly affected by these developments; urged, therefore, the authorities to employ all possible means to ensure that progress is made with the judicial appointments, especially at the Supreme Court and the Constitutional Court, and in reducing of the backlog of cases at the Supreme Court;

...

7. noted with interest the increase in the use of the acceleratory and compensatory remedy for excessively lengthy judicial proceedings, while observing that the number of requests lodged remains low and only a small number are accepted by the domestic courts; invited the authorities to provide additional information on the grounds for dismissal of such requests and on awareness-raising measures for the general public about the existence and modalities of the remedy;

8. invited the authorities to inform the Committee whether the legal provision which does not allow the awarded compensation to exceed the value of the object of the lawsuit needs to be further amended to be fully operational and Convention-compliant or, alternatively, to provide examples of domestic case-law showing that it is applied in conformity with the Convention; invited them further to demonstrate that the domestic judicial practice providing redress in pending judicial proceedings also for the delays that predate the introduction of the remedy is consolidating."

THE LAW

I. JOINDER OF THE APPLICATIONS

51. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment pursuant to Rule 42 § 1 of the Rules of the Court.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

52. The applicants complained that the length of the proceedings, especially those pending before the Supreme Court, had been in breach of the "reasonable time" requirement under Article 6 § 1 of the Convention.

The second applicant further complained that the court proceedings had been unfair and that the domestic decisions had not been adequately reasoned.

Article 6 § 1 of the Convention reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time."

A. As regards application no. 43391/18: *Bara v. Albania*

1. Admissibility

53. The Government did not challenge the applicability of Article 6 of the Convention to the impugned administrative proceedings. The Court considers that, while the Government did not object to the applicability of the Convention, it should consider the issue of its own motion (see *Blečić v. Croatia*, no. 59532/00, § 67, 29 July 2004; *Tănase v. Moldova* [GC], no. 7/08, § 131, ECHR 2010; and *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020).

54. The Court reiterates that the guarantees of Article 6 § 1 of the Convention apply only to "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law. Therefore, in order to establish whether the civil head of Article 6 is applicable in the present case, and, consequently, whether the first applicant could rely on the guarantees of that Article, the Court should first examine whether he had a "right" which could arguably be said to be recognised under domestic law, and secondly whether that right was a "civil" one. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, lastly, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among other authorities, *Baka v. Hungary* [GC], no. 20261/12, § 100, 23 June 2016).

55. The Court also observes that neither Article 6 nor any other provision of the Convention or its Protocols guarantees, as such, a right to appointment or promotion in the civil service. The Court has, however, accepted that the right to a lawful and fair promotion procedure or to equal participation in a competition for public office could be regarded as rights recognised in domestic law, at least arguably where the domestic courts have recognised their existence and examined the relevant complaints of the applicants (see, for example, *Regner v. the Czech Republic* [GC], no. 35289/11, § 105, 19 September 2017, and *Frezadou v. Greece*, no. 2683/12, § 28, 8 November 2018, and the references cited therein).

56. As regards the existence of a right in the present case, the Court notes that domestic law gave candidates who fulfilled the statutory requirements specified in the relevant provisions the right to apply for the

publicly funded position of university rector. Furthermore, domestic law provided for judicial remedies against any procedural irregularities in the election for the position of university rector (see paragraphs 47 and 48 above). As a result, the first applicant was one of three candidates who met the statutory eligibility requirements and possessed the necessary qualifications to run for the publicly funded position of university rector. In the academic election, the first applicant was ranked second. He subsequently challenged its lawfulness and the results before the administrative bodies and national courts. The Court notes that the courts did not dismiss his complaints against the administrative decisions on the grounds of the non-existence of a right, but because there had been no irregularities in the conduct of the election. In these circumstances, the Court considers that the first applicant could arguably claim to have a right to participate in a lawful and fair academic election process for the publicly funded position of university rector.

57. As regards the civil nature of the right, the Court considers that the election and subsequent appointment to the publicly funded position of university rector undoubtedly concerns the exercise of an individual's professional career and, consequently, his or her pecuniary interests. Furthermore, the applicant had access to the domestic courts to challenge the outcome of the election (see, for example, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II).

58. Lastly, the Court accepts that the proceedings at issue were directly decisive for the applicant's rights in so far as the proceedings could have ended in the annulment and rerunning of the academic election, which in turn could have led to him being elected to the esteemed publicly funded position of university rector. In this connection, in *Tsanova-Gecheva v. Bulgaria* (no. 43800/12, § 84, 15 September 2015) the Court held that the proceedings were decisive for the applicant's right to a lawful and fair promotion procedure in so far as they could have ended in the annulment of the contested procedure and the organisation of a new competition for the post, if the domestic courts had allowed the applicant's appeal (see also *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, § 43, 9 October 2012).

59. In the light of the foregoing, the Court finds that Article 6 of the Convention under its civil head is applicable to the present case.

60. Furthermore, the Court, noting that the complaint concerning the length of the proceedings is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, declares it admissible.

2. Merits

61. The first applicant submitted that there had been a breach of the "reasonable time" requirement under Article 6 § 1 of the Convention on

account of the delay by the Supreme Court in examining his cassation appeal. He pointed out that on 27 October 2016 he had lodged that appeal with the Supreme Court, which had failed to take any steps to review it until 24 February 2021, when it had decided to remit the case for re-examination by a different bench of the Administrative Court of Appeal. He further argued that he had not contributed in any way to the delay in the proceedings; on the contrary, he had asked the Supreme Court several times to review his case. Moreover, he submitted that, as a university rector's term of office was limited to four years, the dispute had been time sensitive and should have prompted the Supreme Court to take a decision quickly. Lastly, he contended that in his opinion, the delay before the Supreme Court had been due to the ongoing justice reforms, which had caused the Supreme Court to operate with very few judges.

62. The Government accepted that the proceedings before the Supreme Court had not complied with the "reasonable time" requirement under Article 6 § 1 of the Convention; however, they explained that the delay in having the first applicant's cassation appeal examined had been due to the reform of the judiciary and, in particular, the vetting of judges, which had been a necessity for the Albanian judicial system. They submitted that the relevant domestic authorities had adopted secondary legislation and a number of internal regulations, and had been acting swiftly to finalise the procedure for the appointment of additional judges to the Supreme Court.

63. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, amongst many authorities, *Sürmeli v. Germany* [GC], no. 75529/01, § 128, ECHR 2006-VII).

64. Turning to the first applicant's case, the proceedings started on 23 April 2016 (see paragraph 7 above), when the applicant lodged an administrative complaint against the Electoral Committee's decision, as it was then that a "dispute" within the meaning of Article 6 § 1 arose (see, for example, *Mitkova v. the former Yugoslav Republic of Macedonia*, no. 48386/09, § 49, 15 October 2015). Following a recent decision given by the Supreme Court on 24 February 2021 (see paragraph 14 above), the case was sent back for re-examination to the Administrative Court of Appeal, before which the proceedings are currently pending. To date, they have thus lasted over five years and four months at three levels of jurisdiction.

65. The Court recognises that the overall length of proceedings may at first sight appear reasonable. In fact, the administrative review procedure and initial judicial review procedure were concluded rather swiftly. However, in the present application, the Court is concerned with the period between 27 October 2016, when the first applicant filed a cassation appeal with the Supreme Court, and 24 February 2021, when that court accepted

the cassation appeal and sent the case back for re-examination by a different bench of the Administrative Court of Appeal. That period lasted a total of four years, three months and twenty-nine days. In this connection, the Court is unable to agree with the Supreme Court's finding in its decision of 13 July 2021 that the case disclosed a delay of one year and six months, limited to the period of time which ran from the date when the cassation appeal had been registered with that court until the date when the first applicant had lodged his request under Articles 399/1 et seq. of the CCP.

66. The Court agrees, on the other hand, with the Supreme Court's finding that the subject matter of the proceedings, which concerned the lawfulness and outcome of the election for the publicly funded position of university rector, did not raise any exceptionally complex issues of fact or law.

67. As regards the first applicant's behaviour, the Court notes that throughout the proceedings he behaved in a diligent manner, without causing any delays, and on several occasions requested that the proceedings be expedited.

68. The Court notes that it does not appear from the case file that the Supreme Court took any procedural steps in respect of the applicant's cassation appeal, as his case lay dormant until 24 February 2021. The Government suggested that the delay had been caused by the vetting process. The Supreme Court put forward the same explanation in its decision of 13 July 2021. In this connection, the Court observes that in 2016 Albania introduced sweeping reforms of the entire justice system, which led to amendments to the Constitution, the organisation and functioning of the highest courts in the country, such as the Supreme Court, including the manner in which its judges were to be elected by various institutions, and paved the way for the vetting of all serving judges and prosecutors.

69. However, prior to the institution of the vetting process, the Supreme Court had accumulated a backlog of 16,777 cases (see paragraph 28 above). Delays before the Supreme Court had also been pointed out and criticised by the Constitutional Court. Proceedings before the Supreme Court were being conducted contrary to section 60 of the Administrative Courts Act, which required administrative cassation appeals to be examined within ninety days, as further found by the Constitutional Court (see paragraphs 35 and 36 above).

70. In addition, the Supreme Court continued to operate and examine cassation appeals until at least 21 May 2019, after which it lacked the required statutory quorum to take any decisions (see paragraph 25 above). Consequently, it was open to the Supreme Court to examine the first applicant's cassation appeal until that date. While not disregarding the understandable delay stemming from the far-reaching justice system reforms and the vetting process, the Court notes that States have a general obligation to organise their legal systems so as to ensure compliance with

the requirements of Article 6 § 1, including that of a fair hearing within a reasonable time (see *Krastanov v. Bulgaria*, no. 50222/99, § 74, 30 September 2004).

71. The Court also takes note of the Supreme Court's interpretation of Article 399/2 § 3 of the CCP to the effect that periods of time during which "circumstances made it objectively impossible [for the court] to proceed" with the consideration of a case - which included, in its view, the effects of the ongoing justice sector reforms on the functioning of the Supreme Court itself - were not to be counted in the overall length of proceedings (see paragraph 15 above). While it is not for the Court to decide on the proper interpretation of domestic law, it considers that, in the circumstances of the present application, such an approach would not be consistent with its case-law under Article 6 § 1 on the "reasonable time" requirement as it may shift to individual litigants the full burden of any delays caused by justice sector reforms.

72. Finally, in determining what was at stake for the applicant, the Court accepts that the case was not directly relevant to the applicant's means of subsistence, benefits or allowances, as he continued to be employed as a doctor and university lecturer. He was neither dismissed nor suspended from work, proceedings which, by their nature, would have called for expeditious decisions (see, for example, *Launikari v. Finland*, no. 34120/96, § 36, 5 October 2000, which concerned an employment dispute about the applicant's dismissal, and *Hajrudinović v. Slovenia*, no. 69319/12, § 45, 21 May 2015, which concerned the applicant's claim for redundancy payments). Notwithstanding this, in view of the four-year term of office for the position of rector, the Court considers that the case was of importance for the applicant and should have prompted the Supreme Court to examine it with diligence.

73. There has accordingly been a violation of Article 6 § 1 of the Convention.

B. As regards application no. 17766/19: *Kola v. Albania*

1. Admissibility

(a) As regards the complaint about the length of proceedings

74. The Government submitted that the second applicant had failed to avail himself of the domestic remedy provided for by Articles 399/1 et seq. of the CCP. They argued in particular that, under Article 399/6 § 1 (c), complaints regarding the length of proceedings that were ongoing before a bench of the Supreme Court could be lodged, at any time, with a different bench of the Supreme Court.

75. The second applicant disagreed and maintained that the Supreme Court had not been functional as it had had an insufficient number of

judges. Therefore, he argued that in practice there had been no domestic effective remedy for his complaint.

76. The Court reiterates the general principles regarding the exhaustion of domestic remedies set out in a number of judgments (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69-77, 25 March 2014). It further reiterates that the decisive question in assessing the effectiveness of a remedy concerning procedural delays is whether or not there is a possibility for the applicant to be provided with direct and speedy redress, rather than the indirect protection of the rights guaranteed under Article 6 (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 195, ECHR 2006, and *Sürmeli*, cited above, § 101). In particular, a remedy shall be "effective" if it can be used either to prevent the alleged violation from occurring or continuing, or to afford the applicant appropriate redress for any violation that has already occurred (see *McFarlane v. Ireland* [GC], no. 31333/06, § 108, 10 September 2010).

77. The Court notes that Albania has introduced an acceleratory/preventive remedy in respect of the length of proceedings, which entered into force on 5 November 2017 (see paragraph 37 above). Under Articles 399/1 et seq. of the CCP, a party to criminal proceedings may file a request for acceleration of the proceedings.

78. Turning to the present case, the Court notes that the second applicant lodged his cassation appeal with the Supreme Court on 27 March 2017. On 5 November 2017 the new remedy entered in force and there is no indication that he lodged a request with the Supreme Court for expedition of the cassation proceedings.

79. However, the Court is not convinced that a request for expedition of the proceedings would have been effective in the circumstances of his case. Even assuming that the second applicant had made a request for expedition of the proceedings, the functioning of the Supreme Court was so seriously impaired by the resignation and dismissal of its judges from office (see paragraph 25 above) that as of 31 July 2018 the Supreme Court, sitting as a bench different from that to which the cassation appeal had been allocated, would not have been able to examine it owing to the insufficient number of judges (see paragraphs 25 and 33 above). Furthermore, even assuming that the Supreme Court might have accepted the applicant's request for expedition and allocated it to a judicial formation, starting from 22 May 2019 the Supreme Court did not have the necessary quorum of judges to examine any cassation appeals whatsoever. In the exceptional circumstances of the present application, it follows that the Government's objection as to the second applicant's failure to file a request for expedition of the proceedings before the Supreme Court must be dismissed.

80. Lastly, the Court considers that, having regard to the fact that the second applicant was faced with a "continuing situation" of the partial non-

functioning of the Supreme Court as at 31 July 2018 and the lack of a quorum of the Supreme Court to examine any cassation appeals as at 22 May 2019, which were of a provisional duration, and the fact that he lodged his application with the Court without undue delay, no issues arise as to compliance with the six-month time-limit (see, for example, *Cone v. Romania*, no. 35935/02, § 22, 24 June 2008; and, *a contrario*, *Sokolov and Others v. Serbia* (dec.), nos. 30859/10 and 6 other applications, § 33-36, 14 January 2014).

81. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

(b) As regards the complaint of the unfairness of the proceedings

82. The Government submitted that the case was still pending before the Supreme Court. Further to its decision of 1 March 2016 and the remittal of the case for re-examination, the Court of Appeal subsequently reviewed and provided sufficient reasons for the second applicant's conviction.

83. The second applicant contested that view, arguing that the appellate court's decision had been insufficiently reasoned.

84. The Court notes that on 24 March 2021 the Supreme Court declared the second applicant's cassation appeal admissible and, consequently, it is pending examination on the merits. In these circumstances, and having regard to the fact that it is open to the applicant to complain of the unfairness of the domestic proceedings before the Constitutional Court after the delivery of judgment by the Supreme Court (see *Delijorgji v. Albania*, no. 6858/11, § 59, 28 April 2015, with further references), the Court rejects this complaint as premature in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Merits

85. The second applicant maintained that the length of the criminal proceedings against him had been unreasonable.

86. The Government submitted that on 23 March 2017 the Court of Appeal had upheld, at final instance, the applicant's conviction. In their view, that decision marked the end of the judicial proceedings against him, the length of which had been reasonable.

87. As regards the delays before the Supreme Court, the Government argued that that the situation was *sui generis* for objective reasons related to the conduct of the justice system reforms, to which it was difficult to apply the requirements set forth in the Court's case-law. They contended that there was no evidence in the case file of any poor organisation by the domestic courts or judicial administrative staff. In any event, the Government

submitted that the backlog before the Supreme Court was temporary and that prompt remedial action had been taken to deal with the situation.

88. The Court refers to the general principle set out in paragraph 63 above regarding the assessment of the reasonableness of the length of proceedings.

89. Turning to the present case, it is uncontested by the parties – and the Court agrees – that the proceedings against the second applicant started on 24 November 2011, when he was charged with premediated murder and illegal possession of firearms (see paragraph 17 above). As regards the end point of the proceedings, the Court is unable to accept the Government's contention that the proceedings ended on 23 March 2017 when the Court of Appeal upheld the applicant's conviction (see paragraph 20 above), in so far as that decision has been appealed against and has not yet acquired the force of *res judicata*. In this connection, the Court reiterates that on 5 March 2021 the Supreme Court declared the second applicant's cassation appeal against the appellate court's decision admissible. It follows that the criminal proceedings against the second applicant are still ongoing and that, to date, they have lasted nine years, nine months and sixteen days at three levels of jurisdiction.

90. The Court considers that the criminal proceedings, which concerned two criminal charges and two co-defendants, were not particularly complex and primarily involved questions of sufficiency of the evidence.

91. As to the second applicant's behaviour, there is no indication that he caused or contributed to the delay of the proceedings.

92. Turning to the conduct of domestic authorities, the Court notes that the District Court and the Court of Appeal gave a total of three decisions regarding the applicant's conviction within a reasonable time. There have, however, been at least two significant periods of judicial delay.

93. The first period, which started in May 2013 and lasted almost two years and ten months, concerned the proceedings before the Supreme Court, which, on 1 March 2016, accepted the second applicant's cassation appeal and remitted the case for re-examination by a different bench of the Court of Appeal. The Government provided no explanation for that delay.

94. The second period equally concerns the proceedings before the Supreme Court, which started on 27 March 2017 and are still pending, thus lasting over four years and two months. In response to the Government's argument that this delay was caused by the justice system reforms and the vetting process, the Court reiterates that, notwithstanding the far-reaching justice system reforms and the understandable delay stemming therefrom, the respondent State has a general obligation to organise its legal systems so as to ensure compliance with the requirements of Article 6 § 1, including that of a fair hearing within a reasonable time (see also paragraph 70 above).

95. The Court also notes that from 2012 the Supreme Court's backlog has gradually increased and remains very significant (see paragraphs 28 and

29 above). Therefore, the Court is unable to accept the Government's argument that the backlog before the Supreme Court is only temporary, or that, despite recent measures undertaken to reduce its backlog (see paragraph 29 above), sufficiently prompt and comprehensive remedial action had been taken over a number of years to deal with the situation.

96. Lastly, the Court accepts that owing to the seriousness of the criminal charge against the second applicant and its impact on his rights, the proceedings called for some level of expedition.

97. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

98. The first applicant complained under Article 13 of the Convention of the lack of an effective remedy with regard to his complaint about the length of the proceedings.

Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

99. The Government did not contest the admissibility of the complaint.

100. The Court notes that the first applicant's complaint under Article 13 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds under Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

101. The first applicant complained that in the circumstances of his case, the remedy provided for by Articles 399/1 et seq. of the CCP had not been effective within the meaning of Article 13 of the Convention.

102. The Government did not challenge that view.

2. The Court's assessment

103. The Court reiterates that in the case of *Luli and Others* (cited above), it held that, under Article 46 of the Convention, the State should introduce a domestic remedy as regards the undue length of proceedings. In response to the above judgment, the Albanian legislature has made provision for an acceleratory/preventive and compensatory remedy, in

accordance with Articles 399/1 et seq. of the CCP. The Court will therefore assess the overall effectiveness of this remedy within the meaning of Article 13 of the Convention, before determining whether it was effective in the first applicant's case.

(a) Compliance in principle of the new remedy with the requirements of Article 13

104. The relevant principles relating to the application of Article 13 of the Convention to complaints of a violation of the right to a hearing within a reasonable time are set out in a number of judgments (see, among other authorities, *Kudła*, cited above, § 157; *Scordino (no. 1)*, cited above, §§ 182-89; *Sürmeli*, cited above, §§ 97-101; and *McFarlane v. Ireland* [GC], cited above, § 108).

105. The Court reiterates, in particular, that remedies available to an individual at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they can be used to expedite the proceedings before the national courts or provide the individual with adequate redress for delays that have already occurred. Where a domestic legal system has made provision for bringing an action against the State, such an action must remain an effective, sufficient and accessible remedy in respect of the excessive length of judicial proceedings. Its sufficiency may be affected by excessive delays and depend on the level of compensation (see *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, §§ 173, 7 July 2015).

(i) As regards the acceleratory/preventive remedy

106. Turning to the new acceleratory/preventive remedy introduced into Albanian legislation, the Court notes that Article 399/2 of the CCP defines what length of administrative, civil and criminal proceedings is considered reasonable. A party may file a request for finding a breach of the "reasonable time" requirement and expedition of the proceedings in accordance with Article 399/6 § 1 of the CCP. Such a request is to be examined in private by the competent court. Under Article 399/8 § 1 of the CCP, if the competent court finds a breach of the "reasonable time" requirement, it orders that certain procedural actions be taken within a time-limit to be defined by that court. The court's decision is final. The Court further notes that the criteria laid down in Article 399/9 of the CCP for finding a breach of the "reasonable time" requirement are as developed in the Court's relevant case-law, namely the complexity of the case, the conduct of the parties and what is at stake for the claimant.

107. The Court therefore considers that the procedure for the implementation of the acceleratory/preventive remedy will have an effect on the length of the proceedings as a whole, either by speeding up the proceedings or preventing them taking an unreasonably long time. This is

further supported by the Supreme Court's decisions relied on by the Government (see paragraphs 39 and 43 above) and show that the preventive remedy in question has produced results not only *de jure* but also *de facto*. In this connection, the Court observes that the Supreme Court's decisions were taken promptly. The Court emphasises the importance of conducting speedy proceedings in examining a request made under Article 399/6 § 1 of the CCP for the acceleratory/preventive remedy to remain effective.

108. The Court further considers that it is necessary to emphasise that, in assessing compliance with the "reasonable time" requirement, the domestic courts should take into account the entire length of the proceedings and examine the overall duration of all stages of the proceedings, instead of limiting their assessment of the length of domestic proceedings to the stage in respect of which an individual has made a request under Article 399/6 § 1 of the CCP (see, *mutatis mutandis*, *Rutkowski and Others*, cited above, §§ 212-213). In addition, in directing that certain procedural actions be taken by the responsible authority in order to speed up the delayed proceedings, the competent court should lay down a reasonable time frame for the procedural measures for the remedy to remain effective.

109. In the light of the foregoing, the Court considers that, at this stage, there is no reason to believe that a request for finding a breach of the "reasonable time" requirement and expedition of the proceedings, as introduced into Albanian legislation with effect from 5 November 2017 under Articles 399/1 et seq. of the CCP, would be ineffective.

(ii) As regards the compensatory aspect of the remedy

110. The Court notes that Article 399/6 § 3 of the CCP provides for the possibility to obtain damages caused by the unjustifiable length of proceedings. The Court reiterates that where a State has taken a significant step by introducing a compensatory remedy, it must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned (see *Scordino (no. 1)*, cited above, § 189).

111. The Court notes that a claim for compensation is to be lodged with the first-instance court of general jurisdiction upon the finding of a breach of the "reasonable time" requirement. The claim will become time-barred within six months of the finding of that breach. Under Article 399/7 § 1, the claim is to be examined in accordance with the usual procedural rules within three months of being lodged. If the claim is allowed, the competent court will make an award in accordance with Article 399/10, having regard to the criteria laid down in paragraph 2 thereof, as developed in the Court's case-law, namely the complexity of the proceedings, the conduct of the bench and what was at stake for the claimant.

112. The Court takes note of the decisions of the domestic courts regarding the compensatory aspect of the new remedy (see paragraphs 44-46 above) and considers it necessary to address certain questions concerning the effectiveness of this particular aspect.

113. In the first place, the procedural rules governing the examination of a claim for compensation must conform to the principle of fairness enshrined in Article 6 of the Convention (see *Finger v. Bulgaria*, no. 37346/05, § 130, 10 May 2011).

114. Secondly, it appears that the claim for compensation may be lodged after the finding of a breach of the "reasonable time" requirement at one level of jurisdiction. In this connection, and related to the observation made in paragraph 108 above, the Court considers that individuals should, in principle, be able to raise claims regarding the entire length of proceedings up to that point, which may, depending on the type of case, involve several levels of jurisdiction.

115. Thirdly, the Court emphasises the need to conduct such proceedings promptly in order for the remedy to remain effective. In that connection, consideration may be given to subjecting the examination of such claims to special rules that differ from those governing ordinary claims for damages, to avert the risk, if examined under the general rules of civil procedure, of the remedy not being sufficiently swift (see *Scordino (no. 1)*, cited above, § 200).

116. Fourthly, the Court considers that the amounts awarded in compensation to date are not such as to enable the Court to determine that they are unreasonable. It has previously accepted that a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, may award amounts which, although lower than those awarded by the Court, are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly (see *Scordino (no. 1)*, cited above, § 206).

117. Lastly, the Court reiterates the importance of prompt enforcement of compensation awards in order for the remedy to remain effective (see *Gaglione and Others v. Italy*, no. 45867/07, §§ 34-44, 21 December 2010).

118. That being said, the Court considers that, at this stage, there is no reason to believe that the compensatory aspect of the remedy does not afford a claimant the opportunity to obtain adequate and sufficient compensation for his or her grievances or that it would not offer reasonable prospects of success. The Court takes into account the fact that the compensatory aspect of the remedy is closer and more accessible than an application to the Court, is faster and is processed in the applicant's own language, thus offering advantages that need to be taken into consideration (see *Scordino (no. 1)*, cited above, § 268).

(iii) Conclusion

119. In the light of the foregoing considerations, the Court concludes that the remedy for speeding up proceedings and providing compensation for individuals is effective in that it can both prevent the continuation of the alleged violation of the individual's right to have his or her case heard without any excessive delay and provide appropriate redress for violations which have already occurred. Consequently, the remedy in principle fulfils the obligation of the respondent State to provide effective remedies in respect of alleged violations of an individual's rights under the Convention. The new remedy should therefore be used by individuals claiming a breach of the right to a hearing within a reasonable time (see also the Constitutional Court's decisions in paragraph 38 above).

120. However, as is demonstrated by the assessment of the first applicant's case (see paragraphs 121-124 below), it remains to be seen whether the remedy has also been effective in practice. Moreover, the Court's position as explained above (paragraph 119) may be subject to review in the future depending, in particular, on the domestic courts' capacity to develop and maintain consistent case-law under the new remedy in line with the Convention requirements. Furthermore, the burden of proof as to the effectiveness of the new remedy will lie in practice with the respondent Government (see, for example, *Taron v. Germany* (dec.), no. 53126/07, § 45, 29 May 2012).

(b) Assessment of the first applicant's case

121. The Court will now examine whether the first applicant had an effective remedy in respect of his complaint regarding the length of proceedings under Article 6 § 1 of the Convention.

122. The Court notes that, following the entry into force of the acceleratory/preventive remedy on 5 November 2017, the first applicant lodged a request for expedition of the proceedings which were pending before the Supreme Court, in accordance with Articles 399/6 § 1 et seq. of the CCP (see paragraphs 12 and 13 above). However, despite that request, his cassation appeal remained pending before the Supreme Court until 21 February 2021, whereas the request for expedition of the proceedings itself went unanswered for more than three years, that is, until 13 July 2021 (see paragraph 13 above).

123. The Court therefore considers that the acceleratory/preventive remedy in the first applicant's case did not serve the purpose of speeding up the proceedings before the Supreme Court or preventing them from becoming unreasonably long. Nor could the first applicant seek compensation for the duration of those proceedings, under Article 399/6 § 3 of the CCP, in the absence of a finding of a breach of the "reasonable time" requirement.

124. In these circumstances, the Court finds that there has been a breach of Article 13 of the Convention in respect of the first applicant.

IV. OTHER ALLEGED VIOLATION OF THE CONVENTION

125. The second applicant complained that the domestic courts shifted onto him the burden of proof in violation of the presumption of innocence, as provided for in Article 6 § 2 of the Convention which reads as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

126. The Government submitted that the case was still pending before the national courts and that the complaint was inadmissible.

127. The Court reiterates its conclusions under paragraph 84 above regarding the Supreme Court's and Constitutional Court's ability to offer a remedy for the second applicant's complaints. The Court considers that those findings are also applicable to the present complaint, which concerns an alleged breach of the presumption of innocence under Article 6 § 2 of the Convention.

128. In view of the foregoing, the Court considers that the present complaint is inadmissible for non-exhaustion of domestic remedies and must be rejected under Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

(a) As regards application no. 43391/18: *Bara v. Albania*

130. The first applicant claimed 21,000 euros (EUR) in respect of non-pecuniary damage.

131. The Government submitted that the claim was unreasonable as to quantum.

132. The Court notes that the first applicant did not submit a claim for pecuniary damages, therefore it makes no award under this head. As regards non-pecuniary damages, having regard to the above violations, the Court agrees that the amount claimed by the first applicant is unreasonable as to quantum. Making an assessment on an equitable basis, it awards the first applicant EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable.

(b) As regards application no. 17766/19: *Kola v. Albania*

133. The second applicant claimed EUR 200,000 in respect of pecuniary damage and EUR 250,000 in respect of non-pecuniary damage.

134. The Government submitted that the claims were unreasonable as to quantum.

135. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Furthermore, it agrees with the Government that the claim in respect of non-pecuniary damage is unreasonable as to quantum. Making an assessment on an equitable basis, the Court awards the second applicant EUR 2,300 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

(a) Application no. 43391/18: *Bara v. Albania*

136. The first applicant claimed 500,000 Albanian leks (approximately EUR 4,000) for the costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court. He did not provide any invoice in support of these claims, however, he provided three agreements concluded with his legal representatives.

137. The Government submitted that the claims were not supported by relevant evidence and asked the Court to dismiss them.

138. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant did not provide any evidence showing the expenses he had incurred in connection with the request under Articles 399/1 et seq. of the CCP before the Supreme Court, in respect of which the Court found a violation. Regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,200 for the proceedings before the Court, plus any tax that may be chargeable to the first applicant.

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139. The second applicant claimed EUR 25,000 for the costs and expenses incurred before the domestic courts and the Court. In support of this claim, he submitted an invoice listing the services provided by his lawyer and the one-off payment of fees due to him.

140. The Government submitted that the second applicant had failed to submit a detailed breakdown of the amounts claimed. They further argued that the amount claimed was unreasonable and that there was no evidence that those costs had actually been incurred.

141. Regard being had to the documents in its possession and the criteria described in paragraph 138 above, the Court considers it reasonable to award the sum of EUR 1,200 covering costs under all heads, plus any tax that may be chargeable to the second applicant.

3. Default interest

142. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applicants' complaints under Article 6 § 1 of the Convention as regards the excessive length of the proceedings and the first applicant's complaint under Article 13 of the Convention as regards the lack of an effective remedy in respect of the length-of-proceedings complaint admissible, and the remainder of the second applicant's application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the excessive length of the proceedings in respect of both applicants;

4. *Holds* that there has been a violation of Article 13 of the Convention as regards the lack of an effective remedy in respect of the length-of-proceedings complaint in respect of the first applicant;

5. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,200 (one thousand two hundred euros) to the first applicant and EUR 2,300 (two thousand three hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,200 (one thousand two hundred euros) to each applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Dedov and Ravarani is annexed to this judgment.

P.L.
M.B.

JOINT CONCURRING OPINION OF JUDGES DEDOV AND RAVARANI

« A l'impossible nul n'est tenu. »

1. We voted in favour of finding a violation of Article 6 § 1 in the present case as we acknowledge that there have been unacceptable shortcomings in the timely handling of cases brought before the Supreme Court of Albania between 2016 and 2021.

2. We feel obliged, however, to highlight one point on which we have serious reservations about the findings of the judgment. What troubles us is that the periods of time between July 2018 and May 2019, when the Supreme Court had to operate with an extremely reduced number of judges, namely three and eventually four, whereas the number of judges legally provided for was nineteen, and between May 2019 and March 2020, when it was unable to sit as it lacked the necessary quorum, are counted within the overall period taken into account for assessing the length of the proceedings the applicants complained of.

3. The bloodletting the Albanian Supreme Court had to face from 2016 onwards was due mainly, if not exclusively, to the vetting process of the judiciary that had been undertaken that year by Albania, encouraged and supported by Council of Europe bodies and considered compatible with the Convention requirements by the Court (see *Xhoxhaj v. Albania*, no. 15227/19, 9 February 2021).

4. When called upon to examine the first applicant's complaint about the length of the proceedings in which he was involved in the context of the newly introduced remedy for the excessive length of judicial proceedings, the Albanian courts argued that the critical period during which the Supreme Court had not been able to operate constituted an "objective element" to be taken into account pursuant to domestic law for the calculation of the length of the proceedings. It is true that their reliance on this argument was far too general and designed to absolve the Supreme Court of any blame for the excessive length of proceedings, but the Court could easily have separated the wheat from the chaff.

5. Instead, the judgment brushes away this argument with a somewhat curious mixture of abstract and concrete elements of reasoning.

6. On the abstract side, the Court "notes that States have a general obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, including that of a fair hearing within a reasonable time" (see paragraph 70 of the judgment; this statement is reiterated in paragraph 94). We certainly do not disagree with such a statement on a principled and abstract level. However, as in so many areas, one size doesn't always fit all. In smaller countries, it can often be impossible to find enough qualified persons to occupy high judicial

functions within a short period of time. Filling vacant posts with only moderately qualified candidates is obviously not a solution, as such appointments are made for a long term and one should be aware of the fact that a short-term solution can trigger disastrous effects in the longer run.

7. On a concrete level, the judgment finds, regarding the first applicant, that "the case was of importance for the applicant and should have prompted the Supreme Court to examine it with diligence" (see paragraph 72 *in fine* of the judgment), and, as regards the second applicant, that "owing to the seriousness of the criminal charge against the second applicant and its impact on his rights, the proceedings called for some level of expedition" (see paragraph 96).

8. Here the judgment engages in a kind of micro-management and assesses the *relative* importance of the two domestic cases to which the respective applicants' complaints related. In order to be able to perform this exercise properly, the Court needed to have a full picture of the other cases pending and to be able to decide which cases were of lesser importance, so that the priority it asked the domestic courts to grant the two cases in question was really justified in practical terms. The Court, however, was not in possession of such essential information.

9. It would consequently have been preferable for the Chamber to engage in a more balanced assessment, taking into account the concrete difficulties which the judiciary faced and which neither the judiciary itself, nor the State authorities in general could fix at short notice.

10. In other circumstances, the Court has previously shown a much more careful approach to the concrete problems a small country had to face following the introduction of far-reaching judicial reforms (see, for example, *P.H. v. Ireland* (dec.) [Committee], no. 45046/16, 10 October 2017, where the Court paid tribute to the Irish authorities, which, confronted with a serious backlog and an average time of thirty-four months for completion of an appeal from the High Court to the Supreme Court, had significantly modified the national legal system by creating a new Court of Appeal, and most importantly, took into account those difficulties when assessing the overall length of the proceedings the applicant complained of).

11. As a consequence, without neglecting the shortcomings *before* the vetting process produced its dramatic effects on the judiciary, the judgment could have gone beyond paying quite modest regard to the difficulties triggered by the vetting process and actually removed the relevant period – instead of assessing it in a consolidated way (see paragraph 65 of the judgment) – from the overall delay which the two applicants had to face.

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Application no.	Nationality	Place of residence
1.	Petrit BARA	1953	43391/18	Albanian	TIRANA
2.	Eduard KOLA	1986	17766/19	Albanian	SHKODËR