



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

THIRD SECTION

DECISION

Application no. 53488/15
Francesco BECCHETTI and Others
against Albania

The European Court of Human Rights (Third Section), sitting on 26 September 2023 as a Committee composed of:

Georgios A. Serghides, *President*,

Darian Pavli,

Oddný Mjöll Arnardóttir, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 53488/15) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 21 October 2015 by the applicants listed in the appended table (“the applicants”) who were represented by Mr A. Saccucci, a lawyer practising in Rome;

the decision to give notice of the application to the Albanian Government (“the Government”), initially represented by their Agent, Ms A. Hicka, and subsequently by Mr O. Moçka, General State Advocate;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the fact that the Italian Government did not seek to exercise their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court);

the comments submitted by the Res Publica, who was granted leave to intervene by the President of the Section;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

A. Facts of the case

1. The case concerns two issues, principally: the fourth applicant's complaint under Article 3 of the Convention about her handcuffing at a hearing; and some statements of the Prime Minister for which the applicants claim that they run contrary to their right to be presumed innocent.

2. The applicants are shareholders in a number of commercial companies. The first applicant is also the owner of Agon Channel, a privately owned television channel broadcasting in Albania and Italy. Criminal proceedings were instituted against the applicants on charges of forgery of documents and money laundering.

3. At a hearing, held on 9 June 2015, concerning a security measure against her, the fourth applicant was brought to the hearing room wearing handcuffs.

4. On 9 June 2015 the Prime Minister ("PM") posted a message on Twitter, making reference to "dirty money that fed" the applicants' company. He also, on 12, 15 and 17 June 2015 participated in some television programmes where he commented on the investigation into money laundering in Albania.

5. On 23 February 2022 the applicants were convicted at first instance. All applicants lodged their appeals which are still pending.

B. Relevant domestic law and practice

6. Law no. 8328/1998, as in force at the relevant time, provided for the protection of the fundamental rights of persons in pre-trial detention, including their protection from inhuman or degrading treatment. Articles 57 and 58 of that Law regulate the use of restraining measures, including the use of handcuffs during transfers of detainees. Under Article 71, the competent district court shall consider any complaints related to "matters concerning the rights of detainees," unless otherwise provided in the Code of Criminal Procedure.

7. In its decision no. 57 of 21 December 2012, the Constitutional Court considered the presumption of innocence (guaranteed by Article 30 of the Constitution) as one of the constituent elements of fair trial.

8. In its judgment no. 47 of 7 November 2011, the Constitutional Court stressed that the principle of the presumption of innocence was violated if a court decision reflected an opinion that an accused was guilty before he had been proven guilty according to law. Even if there was no formal statement to that effect, it was sufficient that the reasoning implied that the accused was guilty.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 3 of the Convention

9. The Government alleged that the fourth applicant had not exhausted domestic remedies because she could have lodged a civil action for damages.

10. The Court notes that the alleged ill-treatment of the fourth applicant consisted of her being handcuffed during her transfer from detention to a court and during a hearing, and of being photographed by media representatives while handcuffed. The Court considers that, even assuming that the treatment at issue reached the level of severity for Article 3 to be applicable (compare *Kashavelov v. Bulgaria*, no. 891/05, §§ 38-40, 20 January 2011, and *Pranjić-M-Lukić v. Bosnia and Herzegovina*, no. 4938/16, § 72, 2 June 2020), it cannot be considered that such a treatment would require criminal prosecution of those responsible. In the Court's view, a civil action for damages would suffice in the circumstances of the present case. The Court, however, notes that the applicant has not lodged a civil claim for damages in that respect and/or a complaint under Law no. 8328 (see paragraph 6 above), nor in fact has she brought the situation in any other form to the authorities' attention (compare *Radkov and Sabev v. Bulgaria*, nos. 18938/07 and 36069/09, § 38, 27 May 2014, and *Costiniu v. Romania* (dec.), no. 22016/10, § 29, 10 February 2013).

11. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Alleged violation of Article 6 § 2 of the Convention

12. The Government objected that the applicants had not attempted any remedy in respect of their complaint under Article 6 § 2 of the Convention that their presumption of innocence had been violated by some statements of the Prime Minister, either in the context of the criminal proceedings against them, or in separate civil proceedings by lodging a claim for damages.

13. The applicants argued that there existed no effective remedy in Albania in respect of their complaint under Article 6 § 2 of the Convention and that none of the remedies invoked by the Government had a prospect of success. They also argued that a remedy could have been used to challenge judgments and decisions but not statements of public officials in media.

14. The Court recalls that the principle of the presumption of innocence is above all a procedural safeguard, and one of the elements of a fair criminal trial required by Article 6 § 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308; *Konstas v. Greece*, no. 53466/07, § 29, 24 May 2011; and *Mamaladze v. Georgia*, no. 9487/19, § 63-65, 3 November 2022).

15. The Court further notes that the Convention is directly applicable in Albania, the right to be presumed innocent is guaranteed both in the Albanian Criminal Code and the Albanian Constitution and that the practice of the Constitutional Court shows that it has addressed that issue as an aspect of a fair trial (see paragraphs 6 and 7 above). The criminal proceedings against the applicants are still pending. They are able to raise the issue of compatibility of the Prime Minister's impugned statements with their right to be presumed innocent in the context of the criminal proceedings against them, and, as the case may be, before the Constitutional Court. The Court has already held that a constitutional complaint is, in principle, an effective remedy and is thus required for exhaustion purposes in respect of an applicant's right to a fair hearing under Article 6 of the Convention (see, *mutatis mutandis*, *Balliu v. Albania* (dec.), no. 74727/01, 30 September 2004; *Beshiri and Others v. Albania*, no. 7352/03, §§ 30-34, 22 August 2006; *Jakupi v. Albania* (dec.), no. 11186/03, 1 December 2009; and for a similar conclusion, *Muçaj v. Albania* [Committee], no. 37814/10, § 26, 11 July 2023). There is nothing to suggest in domestic law that the statements of public officials, and their alleged impact on a defendant's right to presumption of innocence, cannot be subject to review by the criminal courts or, as the case may be ultimately, the Constitutional Court (compare *Ringwald v. Croatia* (dec.) [Cte], nos. 14590/15 and 25405/15, § 52, 22 January 2019). Furthermore, the practice of the Constitutional Court, in particular, includes the possibility of review of factual situations that might affect constitutional rights, such as claims of excessive length of judicial proceedings (see *Bara and Kola v. Albania*, nos. 43391/18 and 17766/19, § 35, 12 October 2021).

16. However, the applicants have not raised their complaint under Article 6 § 2 of the Convention within the context of the criminal proceedings against them nor have they lodged a constitutional complaint in that respect. As to the applicants' contention that none of the above-described remedies had a prospect of success, the Court reiterates that the applicants' mere doubts as to the prospect of success and the effectiveness of the available domestic remedies, unsupported by any convincing evidence, is not a plausible reason for failure to make use of these remedies (see *Kunqurova v. Azerbaijan* (dec.), no. 5117/03, 23 June 2005; *Guliyev and Ramazanov v. Azerbaijan* (dec.), no. 34553/02, 14 February 2006; and *Costiniu*, cited above, § 28).

17. It follows that this complaint is premature and, accordingly, must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

BECCHETTI AND OTHERS v. ALBANIA DECISION

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 October 2023.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President

Appendix

List of applicants:

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Francesco BECCHETTI	1966	Italian	London
2.	Liliana CONDOMITTI	1941	Italian	London
3.	Mauro DE RENZIS	1955	Italian	Rome
4.	Erjona TROPLINI	1978	Albanian	Tirana