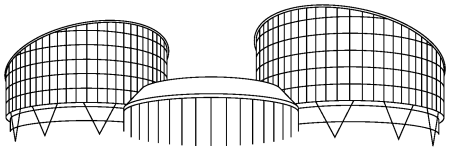

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 39468/09
Fredi BELERI and Others
against Albania

The European Court of Human Rights (First Section), sitting on 10 May 2016 as a Chamber composed of:

Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Linos-Alexandre Sicilianos,
Paul Mahoney,
Aleš Pejchal,
Robert Spano,
Pauliine Koskelo, *judges,*

and Abel Campos *Section Registrar,*

Having regard to the above application lodged on 23 June 2009,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Alfred Beleri, Mr Koço Llazari, Mr Vangjel Kolila, Ms Sofika Rapo and Mr Angjello Kokaveshi, are Albanian nationals who were born in 1972, 1938, 1971, 1985 and 1959 and live in Greece. They were represented by Mr I. Ktistakis, a lawyer practising in Ekali and Athens.

2. The Albanian Government ("the Government") were represented by their then Agent, Ms E. Hajro of the State Advocate's Office.

A. The circumstances of the case

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

4. The applicants are originally from Himara, a town located on the south-west coast of Albania. They say they belong to the Greek-speaking minority. The fifth applicant was the president of a minority association, called the Union of Himariotes, in Greece ("the association"). He also published the periodical *Himara* in Greek, ("the newspaper"), the association's journal. The newspaper was apparently distributed to Himariotes living in Greece. The first applicant was a board member of the association.

5. It is apparent from the case file that the autumn 2003 issue of the newspaper urged Himariotes living in Greece to organise themselves to cast their votes in the October 2003 local government elections in Albania. The newspaper ran headlines and articles which were the subject of domestic legal proceedings in Albania, as set out in paragraphs 26-29 below.

6. On 12 October 2003 local government elections for city councils and mayors were conducted in Himara and elsewhere in Albania. It was reported that a number of incidents occurred on polling day, including in Himara.

7. In the evening of 12 October 2003, following reported irregularities, the applicants protested in front of the Local Government Election Commission. They carried Greek flags and shouted pro-Greek slogans, demonstrating their support for one of the candidates.

8. It would appear that on 13 October 2003 the applicants left Albania for Greece, where they are currently living.

1. Judicial proceedings against the applicants

9. Between 13 and 17 October 2003 the prosecutor's office opened a criminal investigation against the applicants on charges of incitement to national hatred (*thirrja për urrejtje nacionale*) and denigration of the Republic and its symbols (*poshtërimi i Republikës dhe i simboleve të saj*) under Articles 266 and 268 of the Criminal Code ("the CC"). According to records of the search for the people involved of 15 October 2003, which were submitted by the Government as part of their observations, it is apparent that the authorities tried unsuccessfully to find the applicants.

10. On 18 October 2003 the Vlora District Court ("the District Court") made an order *in absentia* for the applicants to be remanded in custody. The measure was notified to the lawyer in the case, appointed by the court of its own motion.

11. On 5 November 2003 the District Court declared the applicants to be fugitives, in accordance with Article 351 of the Code of Criminal Procedure.

12. On 8 December 2003 the prosecutor in the case notified the applicants' court-appointed lawyers of the charges against them. On the same day, the prosecutor committed the applicants for trial *in absentia*.

13. The first hearings, which had been due on 24 December 2003, and 16 January, 2 February and 16 February 2004, were adjourned by the trial court in order to allow the applicants to attend the proceedings. However, owing to their continued absence the court continued the trial *in absentia*.

14. On 24 September 2004 the District Court found the applicants guilty of the charges and sentenced four of them *in absentia* to three years' imprisonment. The fourth applicant was sentenced *in absentia* to one year and six months' imprisonment.

15. It would appear that on an unspecified date the applicants became aware of the District Court's decision because on 17 November 2004 all of them authorised a lawyer to represent them in appeal proceedings.

16. The applicants' lawyer lodged an application for leave to appeal out of time, which was granted by the District Court on 17 December 2004.

17. Following the appeal lodged by the applicants' lawyer, that the trial proceedings had been conducted *in absentia*, on 13 April 2005 the Vlora Court of Appeal ("the Court of Appeal") quashed the judgment of 24 September 2004 on the grounds of procedural irregularities and remitted the case for fresh examination by a different bench of the District Court.

18. On 23 September 2005, following an appeal by the prosecutor, the Supreme Court upheld the Court of Appeal's judgment.

2. Re-hearing proceedings

19. On 7 December 2005 the District Court resumed the proceedings. On 15 December 2005 the District Court ordered that the applicants be informed of the judicial proceedings against them by posting a public notice.

20. According to the Government, hearings scheduled for 7 and 12 December 2005, and 9 January and 16 February 2006 were adjourned in order to allow the applicants' to attend the re-trial.

21. On 18 January 2006 the prosecutor confirmed that the applicants' whereabouts could not be established.

22. On 19 January 2006 the District Court declared the applicants to be fugitives, in accordance with Article 351 of the Code of Criminal Procedure and continued with the trial *in absentia*.

23. Hearings due on 27 January, 6 April and 6 July 2006 were adjourned on the grounds that witnesses needed to be summoned for questioning, that one of the judges had to be transferred to another court and that a judge had to be absent for health reasons.

24. The applicants remained absent from the re-trial proceedings and on 18 July 2006 the District Court found them guilty of the charges and sentenced each of them *in absentia* to three years' imprisonment. It found

that by making anti-Albanian statements the applicants' actions had been capable of inciting national hatred, as proscribed by Article 266 of the CC. The court further held that the applicants had publicly denigrated the Republic of Albania and its constitutional order, proscribed by Article 268 of the CC, as a result of not paying due respect to the Albanian flag and national anthem while displaying the Greek flag and singing the Greek national anthem; by writing press articles and issuing publications which portrayed Himara as Greek territory; and by refusing to recognise any government other than that of Greece.

Material evidence relied upon by the District Court

25. The court examined a videotape of the applicants making public statements on 12 October 2003. The second and third applicants, Mr Koço Llazari and Mr Vangjel Kolila, had publicly shouted, "Al-Qaeda" and "Albania al-Qaeda", while sticking their tongues out and showing their middle fingers. The third applicant had addressed a crowd of people in Greek from a podium while displaying a cross that he was wearing around his neck. The fourth applicant, Ms Sofika Rrapo, had wrapped herself in a Greek flag which she had been carrying with her. The third and fourth applicants had taken out other small Greek flags and waved them. Six photographs showing the applicants carrying out the actions mentioned above had also been obtained as evidence.

26. The court also examined the autumn 2003 issue of the newspaper. One of its front page headlines read:

> "Fervently and in unison. The response of Himara for its own rights. Vote with dignity and not subserviently! What you failed to accomplish, Himariotes, you may finish now."

27. The above headline topped an article which called on Himariotes "to be united against communism in Albania, which has been persecuting them since 1941 and continues [to do so] even today".

28. Furthermore, the front page of the newspaper contained an announcement that buses were being made available for anyone wishing to cast their votes in Himara during the local government elections of 12 October 2003.

29. Another article, on page 5, by a certain H. K., had the following headline: "The battle for Hellenisation starts in Himara." The court decision quoted the following excerpts from the article:

> "These elections are the best way to achieve the Hellenisation of Vorio Epirus... The battle of all battles will be waged in Himara. The [united] forces of Himariotes who proclaim their Hellenisation will be tested in Himara so that it can be recognised as a Greek town, so that it can have a Greek school and enjoy all the rights that other minorities have in Europe. Every Greek Himariot who is absent from that battle has no right and is less than Greek. ... The vote is the only option for those who declare themselves to be Greeks and to fight against those who profess to be 'socialists' or,

even worse, 'Himariotes' (*këto zgjedhje janë më të duhurat për Elinizimin e vorioepirotëve... Beteja e betejave do të jetë në Himarë, në Himarë maten forcat e Himariotëve që deklarojnë Elinizmin e tyre dhe që Himara të njihet si zone me kombësi greke, të ketë shkollë greke dhe të ketë të gjithë të drejtat që kanë në Evropë të gjithë minoritetet. Cilido Himariot Grek që do të mungojë në këtë luftim, nuk ka asnjë të drejtë dhe është shumë pak për grek...Vota është rruga e vetme për ata që deklarojnë grek dhe japin betejën e tyre kundrejt atyre që deklarojne 'spocialiste' apo më e keqj 'himariotë'*)".

Himara is Greek and this needs to be demonstrated. I think that the sacrifice demanded from the Greek Himariotes is not too great. Himara will win, Vorio Epirus will win."

30. The court also relied on the statements of witnesses and police officers who were on duty on the day and who confirmed that the applicants had made such statements in public and that they had stirred up the crowd, which had led to a disruption of public order and the vote-counting process.

31. The decision reads, in so far as relevant, as follows:

"Defendants Angjello Kokaveshi and Alfred Beleri, through their active criminal acts as stated in their article in the *Himara* newspaper, whose publisher is Angjello Kokaveshi, are the principal organisers of the criminal acts that took place in Himara during the voting in the local elections on 12 October 2003. They are the main organisers of the protest that occurred on 12 October 2003 because they: published articles in the nationalist, chauvinist *Himara* newspaper a few days ahead of polling day; called on Himariotes to unite; stated that Himara is Greek, that they are Greek and that this is the battle of battles, that a war should be waged for Hellenisation and not Albanianisation, that Vorio Epirotes should fight in order to proclaim their Hellenisation so that Himara could be recognised as Greek territory; stated in the newspaper that no Greek Himariotes should be spared from this war or, otherwise, they could not lay claim to be called Greek; stated in their publication that this is a war of Hellenisation against communism, against Albanianisation, against socialists ... and democrats ...; informed, organised and secured the transportation of Himariote immigrants already living in Greece to Himara; incited them through their words and statements in favour of Himara's secession from Albania; carried out criminal acts to incite national hatred against the Albanian population, State and Government; and incited people to use violence and other arbitrary acts against the population, police officers and commissioners.

...

Defendants Angjello Kokaveshi and Alfred Beleri actively participated in the protest of 12 October 2003 in front of the Himara municipality building. [They] incited the crowd to use violence and carry out other arbitrary acts which endangered public order and peace. [As a result] a policeman who was on duty at a polling station in Himara was injured; pressure was exerted upon other citizens who were casting their votes; Himara's central street was blocked; an explosion in Himara occurred and attacks on polling stations and commissioners took place.

As regards defendants Vangjel Kolila, Koco Llazari and Sofika Rrapo, the court considers that after examining the transcript of the examination of the videotape, the photographs as well as the witnesses' statements, they [the defendants], through the use of slogans, such as "Albania is Al Qaeda", "Himara is Greek", "This is Greek land", "Turks away from Himara", "Turkey did not subdue us, let alone Albania", "We shall remove Albanians from Himara", "We shall remove foreigners from

> Himara", were in charge of the protest which took place in front of the Himara municipality building during the voting process in Himara and during the vote counting process, [and] were the main perpetrators of criminal acts. As a result of the slogans chanted before the crowd, they incited national hatred against the rest of the population ... Their actions endangered public order and peace. [As a result] a policeman who was on duty at a polling station in Himara was injured; pressure was exerted upon other citizens who were casting their votes; Himara's central street was blocked; an explosion in Himara occurred and attacks on polling stations and commissioners took place.
>
> Defendants Vangjel Kolila [who went to every polling station and held meetings], Koco Llazari [who held speeches] and Sofika Rrapo [who held the Greek flag, with all of them handing out small flags and calling on people to embrace the Greek flag] played a decisive role in inciting the protesters to chant slogans of a nature that promoted national hatred and the carrying out of violent and arbitrary acts against the population. [Such] actions jeopardised public order and peace.
>
> Defendants Angjello Kokaveshi and Alfred Beleri through the publication of the *Himara* newspaper and the use of statements such as "Himariotes are Vorio Epirotes", "Himara is Greek", "Hellenisation versus Albanianisation" ... have denigrated the Republic of Albania and its constitutional order.
>
> Defendants Vangjel Kolila, Koco Llazari and Sofika Rrapo, by waving and raising the Greek flag and stating that this [land] is part of Greece and not Albania, by singing the Greek anthem and showing disrespect for the Albanian flag, anthem, police and institutions ... in the presence of a huge crowd of people, have publicly denigrated the Republic of Albania, its constitutional order, flag and anthem."

32. In imposing its sentence, the court took into account the limits on penalties provided for in Articles 266 and 268 of the CC, the fact that the offences had been committed in collusion and in public, the applicants' criminal responsibility and degree of guilt, as well as the need to try and prevent that kind of criminal activity in Himara. The court dismissed the arguments of the applicants' lawyer that their actions should have been classified as minor offences *(kundërvajtje penale*), in accordance with the Freedom of Assembly Act. It held that their acts, namely their calls to national hatred, their violence and other arbitrary acts against the population and the law-enforcement authorities, their denigration of the Republic of Albania, its constitutional order, flag and anthem fell to be considered under the CC and did not give rise to the application of the Freedom of Assembly Act.

3. Appeal proceedings

33. On 19 July 2006 and 27 December 2007 the applicants appealed to the Vlora Court of Appeal and the Supreme Court, respectively. Relying on the Freedom of Assembly Act, the applicants sought to have their acts for participation in unlawful protest classified as minor offences and their imprisonment commuted to a fine. They also contested the witnesses' statements as being unreliable.

34. On 14 November 2006 the Court of Appeal put out a public summons for the applicants.

35. On 26 December 2006 the Court of Appeal dismissed the appeal. The court stated that the evidence contained in the case file, such as the videotape, demonstrated that all the applicants had actively participated in the unlawful protest by chanting slogans against the Republic of Albania, pushing away law-enforcement officers, waving and distributing Greek flags or sticking their tongues out and showing their middle fingers. The contents of the *Himara* newspaper constituted additional corroborating evidence of the commission of the offence by the applicants. Witness testimony corroborated that they had uttered slogans and made various calls, which had been in Albanian, as also evidenced by the recorded material.

36. The Court of Appeal further stated that conducting an unlawful (*i paligjshëm*) protest during the local elections – a direct exercise of sovereignty by citizens – in front of the building which housed the institution that provided for the good conduct of such an important political activity, had struck at social relationships which had been established to secure equality, public peace and order. It had also struck at the inviolability of the Republic, its constitutional order, symbols, anthem and crest, as protected by criminal legislation. The applicants' acts had not only consisted of the use of symbols or signs that incited violence or discrimination within the meaning of the Freedom of Assembly Act. Their calls and slogans and the publication of the newspaper had also aimed at inciting hatred against that part of Himara's population which did not identify itself as being of Greek origin. They had caused problems relating to the maintenance of public order, to the denigration of State authority and to defiance of the constitutional order, national flag and anthem. As such, they had come within the ambit of Articles 266 and 268 of the CC.

37. On 4 February 2009 the Supreme Court, in a reasoned decision, dismissed the applicants' appeals. It considered that the lower courts had made a correct classification of the applicants' criminal acts under Articles 266 and 268 of the CC and that their conviction had been based on the evidence contained in the case file.

38. In a dissenting opinion, Judge S.S of the Supreme Court expressed the view that the applicants' acts should have been examined as minor offences which had led to the disruption of public order, under Article 274 of the CC, which would have resulted in a fine.

B. Relevant domestic law

1. Constitution of Albania

39. The relevant Articles of the Constitution read as follows:

Article 2

"1. Sovereignty in the Republic of Albania belongs to the people.

2. The people exercise sovereignty through their representatives or directly.

..."

Article 3

"The independence of the state and the integrity of its territory, the dignity of the individual, human rights and freedoms, social justice, the constitutional order, pluralism, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for, minorities are the bases of the State, which has the duty to respect and protect them."

Article 17

"1. Limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it.

2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights."

Article 22

"1. Freedom of expression is guaranteed.

2. The freedom of the press ... is guaranteed.

3. Prior censorship of means of communication is prohibited."

Article 23 § 1

"1. The right to information is guaranteed."

Article 42 § 2

"In the protection of his constitutional and legal rights, freedoms and interests, or in defending a criminal charge, everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial court established by law".

Article 47

"1. The freedom to have peaceful meetings, without arms, and to participate in them is guaranteed.

2. Peaceful meetings in squares and places of public passage are held in accordance with procedures provided by law."

2. Criminal Code ("CC")

40. The relevant provisions of the CC read as follows:

Article 1/b – The duty of criminal legislation

"It is the duty of the criminal law of the Republic of Albania to protect the independence of the State and its territorial integrity, human dignity, fundamental rights and freedoms, the constitutional order, property, the environment, the coexistence and good understanding of Albanians with national minorities as well as religious coexistence from criminal offences, and to prevent such offences.

Article 266 – Incitement to national hatred

"Endangering public order by inciting national hatred against other sections of the population, by insulting or defaming them, or by requesting the use of force or arbitrary actions against them, may result in a fine or a term of five years' imprisonment."

Article 268 – Denigration of the Republic and its symbols

"Denigration of the Republic of Albania and [its] constitutional order, flag, emblem, national anthem or martyrs of the nation, voiced publicly or through the publication or distribution of written material, or the removal, damage or destruction of the flag or emblem of the Republic of Albania wherever displayed by official institutions, or making either of them indistinct or unusable, constitutes a minor offence (*kundërvajtje penale*) and is liable to a fine or two years' imprisonment."

3. Freedom of Assembly Act (Law no. 8773 of 23 April 2001 – "Për tubimet")

41. The Act sets down rules on holding a peaceful assembly and participating in such an assembly. That freedom can be restricted on certain defined grounds such as national security, public security, the prevention of disorder or crime, the protection of health or morals or the protection of rights and freedoms of others (section 1). Before any assembly may be held in public squares or on thoroughfares (*sheshe ose vendkalime publike*), the organisers are obliged to notify the chief of police in writing, at least three days prior to the day of the assembly (section 5). When there are serious grounds to believe that an assembly will constitute a real risk to national security, public security, the prevention of crime, or the protection of the health, rights and freedoms of others and there are no less stringent measures available, then the chief of police may ban the assembly or decide when and where it may be held (section 8). Participation in a banned assembly constitutes a minor offence and can lead to a fine (section 24).

42. Section 9 provides for the dispersal of an assembly by the police on certain defined grounds. Failure to respect police orders constitutes a minor offence and can lead to a fine (section 24).

43. It is prohibited to possess firearms and conceal one's identity which incites discrimination or violence on racial, ethnic or religious grounds

(section 18-19). Section 20 further provides that in assemblies held in squares or places of public passages or in places open to the public, the use of uniforms, signs or symbols that refer to associations or groups that have been created to incite discrimination or violence on racial, ethnic or religious grounds is prohibited. The use of clothing, objects, signs or symbols to conceal one's identity or incite violence or discrimination as provided for under sections 18-20 constitutes a minor offence and is punishable by a fine or a term of imprisonment up to six months (section 24).

4. The Electoral Code (Law no. 9087 of 19 June 2003)

44. Article 104 of the Electoral Code, as in force at the material time, provides for the maintenance of public order in polling stations (*ruajtja e rendit në qendrën e votimit*). When there is a risk of disruption of public order and the conduct of elections, the Polling Station Commission (*Komisioni i Qendrës së Votimit*) may decide to suspend the elections and seek the assistance of the police. The request must be submitted in writing and should contain a brief description of the facts and reasons for the intervention of the police.

C. Relevant international documents

45. International monitoring bodies, such as the Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights ("the OSCE/ODIHR") and the Council of Europe Congress of Local and Regional Authorities of Europe ("CLRAE"), monitored the local elections in Albania in 2000 and 2003.

COMPLAINTS

46. Under Articles 10 and 14 of the Convention, the applicants complained that there had been a breach of their freedom of expression on account of their belonging to the Greek minority.

47. In their written observations the applicants invoked a breach of Article 11 of the Convention.

48. Lastly, they complained under Article 6 § 1 of the Convention of the excessive length of the proceedings.

THE LAW

A. Alleged violation of Articles 10 and 11 of the Convention

49. In their application form the applicants alleged that there had been a breach of Article 10 of the Convention, which reads as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

50. On 10 January 2011 the applicants invoked Article 11, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

1. The parties' submissions

(a) The Government

51. The Government submitted that the applicants had not raised any complaints under Article 10 of the Convention in the domestic proceedings. They had also not invoked any domestic provisions, such as Articles 22 and 23 of the Constitution, in defence of the exercise of their freedom of expression.

52. The Government submitted that the applicants' acts, which had been committed in public, in the midst of an angry crowd of people, had been an affront to another ethnic group and to the dignity of State institutions. Their acts had caused public disorder, had been a breach of the peace and had

created anxiety among the population. They had been against values such as tolerance, social peace, the harmonious coexistence of national minorities, territorial unity and non-discrimination, which were guaranteed by the Convention. In such circumstances, the applicants' complaint had constituted an abuse of the rights and freedoms provided for by Article 17 of the Convention. As a result, they could not avail themselves of the protection guaranteed by Article 10.

(b) The applicants

53. The applicants submitted that their complaint went to the very heart of Articles 10 and 11 of the Convention, Article 10 being regarded as *lex generalis* and Article 11 as *lex specialis*. Having unsuccessfully relied on the Freedom of Assembly Act before the domestic courts, the applicants maintained that they had thereby raised a complaint under Article 10 before the national courts. In their view, the Freedom of Assembly Act was directly connected to the freedom of expression and the expression of political views via the freedom of assembly. Section 24 of the Freedom of Assembly Act provided that displaying symbols which incite discrimination, violence and hatred is a criminal offence, which is punishable by six months' imprisonment.

54. The applicants maintained that their application was not an abuse of rights within the meaning of Article 17 of the Convention, since it was not based on untrue facts, the events having been confirmed by international reports relating to the local elections. The applicants belonged to the Greek national minority living in Albania and their protest had been in support of the candidate of Greek origin. They had not engaged in activities or performed acts aimed at the destruction of any of the rights and freedoms set forth in the Convention.

2. The Court's assessment

55. Firstly, the Court reiterates that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, which is in principle intended to be afforded to all Contracting States, of preventing or putting right the violations alleged against them. That rule is based on the assumption that there is an effective remedy available in the domestic system in respect of the alleged breach. The only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that those conditions are satisfied (see, most recently, *Parrillo v. Italy* [GC], no. 46470/11, § 87, ECHR 2015, and

Vučković and Others v. Serbia [GC], no. 17153/11, §§ 69-77, 25 March 2014).

56. Turning to the present case, the applicants lodged their application with the Court and relied expressly and solely on Article 10 of the Convention. It was against that background that notice of the application was given to the respondent Government by putting questions under Article 10. The Court, as master of the characterisation to be given in law to the facts of the case (see *Yılmaz and Kılıç v. Turkey*, no. 68514/01, § 33, 17 July 2008; *Women On Waves and Others v. Portugal*, no. 31276/05, § 28, 3 February 2009; *Taranenko v. Russia*, no. 19554/05, §§ 68-69, 15 May 2014), considers it more appropriate to examine this complaint solely from the standpoint of Article 10 of the Convention, not being necessary to conduct a separate examination of the case from the standpoint of Article 11. It appears from the case file that the applicants failed to raise the Article 10 complaint "at least in substance" (see *Vučković and Others* (dec.), cited above, § 72) in their appeals to the Court of Appeal and the Supreme Court (see paragraph 33 above). The applicants were also unable to demonstrate that they had made any efforts to do that. The applicants' arguments in their appeals before the Court of Appeal and the Supreme Court concerned exclusively the legal re-classification of their actions under the Freedom of Assembly Act and the unreliability of the witnesses. It does not appear that in those proceedings they had alleged, be it only in substance, that the sentences imposed on them interfered with their freedom of expression, were not provided by law, were not necessary or were not proportional in a democratic society. Given that the applicants did not raise any objections related to the lack of "an effective remedy available in the domestic system" in respect of their Article 10 complaint, the Court considers that this complaint must be dismissed for failure to exhaust domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 6 § 1 of the Convention

57. The applicants complained that the length of the proceedings had been excessive, in breach of Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

(a) The Government

58. The Government submitted that the applicants could not claim to be a "victim" within the meaning of Article 34 of the Convention because they

had absconded. The applicants had waived their right to attend the domestic proceedings, in spite of the fact that they had known of the conduct and progress of those proceedings. As a result, they could not claim a breach of Article 6 § 1 on account of the length of proceedings *in absentia*.

59. In the Government's view, the applicants had failed to lodge a constitutional appeal within the two-year statutory time-limit as regards their complaint of the length of the proceedings. In their view, a constitutional appeal was an effective remedy within the meaning of Article 13 of the Convention. They further contended that the applicants should have requested that the judicial proceedings be dealt with more speedily.

60. The Government submitted that the proceedings had started on 17 December 2004, the date on which the District Court had accepted the applicants' request for leave to appeal out of time, the applicants not having previously known of the charges against them. The proceedings finished on 4 February 2009, when the Supreme Court gave its judgment. The Government considered that the case had been complex. The applicants had contributed to prolonging the proceedings by absconding. As a result, the period during which the applicants had absconded should not be added to the length of the proceedings, which could not be considered excessive within the meaning of Article 6 § 1 of the Convention.

(b) The applicants

61. The applicants responded that there had been no effective domestic remedy available in relation to their complaint under Article 6 § 1 of the Convention as regards the length of the criminal proceedings against them. In their view, the respondent Government had not submitted any evidence to show that there had been a remedy to prevent the continuation of the violation of their rights under Article 6 § 1 of the Convention or to obtain compensation.

62. The applicants submitted that the proceedings had started on 18 October 2003 when security measures had first been imposed by the Vlora District Court. The proceedings had ended on 4 February 2009, thus lasting over five years and three months. The Supreme Court's decision had been made public on 4 February 2010, whereas their appeal had been lodged on 25 January 2007, with no valid justification having been provided by the Government as to why the proceedings before the Supreme Court had lasted so long.

63. Even though they had left Albania and had absconded, they had been represented by a lawyer in the domestic proceedings. Their power of attorney, dated 17 November 2004, provided evidence for such a statement. In their absence, the criminal proceedings had not been stayed, unlike in *Smirnova v. Russia* (nos. 46133/99 and 48183/99, § 35, ECHR 2003-IX (extracts)); *Yeloyev v. Ukraine* (no. 17283/02, §§ 14-15, 6 November 2008);

and *Girolami v. Italy* (19 February 1991, § 9, Series A no. 196-E). The fact that the decision in respect of serving their sentence had not been enforced did not deprive them of victim status (see *Craxi v. Italy (no. 1)*, no. 34896/97, §§ 26-28, 5 December 2002) and should not be capable of preventing them from lodging an application with the Court (see *Omar v. France*, 29 July 1998, § 40, *Reports of Judgments and Decisions* 1998-V).

64. The applicants argued that the criminal proceedings had not been complex as they had related to the application of two provisions of the CC. As to the rehearing of the case, they maintained that the frequent remittals of the case because of errors committed by the lower courts engaged the respondent State's responsibility under Article 6 § 1 of the Convention.

2. The Court's assessment

65. The Court notes that the Government raised several objections. However, it considers that there is no need to examine them separately, in so far as this complaint is in any case inadmissible for the reasons explained below.

66. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case, with reference to the criteria of the complexity of the case and the conduct of the applicant and the relevant authorities (see, amongst many other authorities, *Mikhail Grishin v. Russia*, no. 14807/08, § 170, 24 July 2012).

67. The Court further observes that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged". "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see, for example, *McFarlane v. Ireland* [GC], no. 31333/06, § 143, 10 September 2010).

68. The Court is prepared to consider the applicants were "substantially affected" on 17 November 2004, the date on which, it would appear, they took knowledge of their initial conviction *in absentia* and authorised a lawyer to represent them in appeal proceedings (see paragraph 15 above). The proceedings ended on 4 February 2009, when the Supreme Court delivered its final judgment. The proceedings thus lasted four years, two months and nineteen days over three levels of jurisdiction.

69. The Court notes that the applicants, who had left Albania on 13 October 2003 (see paragraph 8 above), continued to be absent for the entire process of rehearing the proceedings. The court conducting the re-trial declared them fugitives, in accordance with domestic law (see paragraph 22 above). In their written observations, the applicants also confirmed that they had absconded. According to the settled case-law of the

Court, an accused person cannot rely on a period of being a fugitive when he was seeking to avoid being brought to justice in his home country (see, for example, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 84, ECHR 2003-IX (extracts), and *Yeloyev v. Ukraine*, no. 17283/02, § 70, 6 November 2008, where the periods when the applicants had absconded were excluded from the overall length of the proceedings). The Court is of the opinion that the flight of an accused person has in itself certain repercussions on the scope of the guarantee provided by Article 6 § 1 of the Convention as regards the duration of proceedings. When an accused person flees from a State which respects the principle of the rule of law, it may be assumed that he or she is not entitled to complain of the proceedings being of an unreasonable duration following that flight, unless sufficient reason can be shown to rebut that assumption (see *Vayiç v. Turkey*, no. 18078/02, § 44, ECHR 2006-VIII (extracts); *Uysal and Osal v. Turkey*, no. 1206/03, § 30, 13 December 2007; and *Ventura v. Italy*, no. 7438/76, Commission's report of 15 December 1980, Decisions and Reports (DR) 23, p. 91, § 197). Since the applicants have not been able to demonstrate that there was anything to rebut the assumption in the present case, the Court considers that they cannot avail themselves of the "reasonable time" guarantee of Article 6 § 1 of the Convention. In any event, the Court considers that the proceedings were not excessively long; they lasted four years, two months and nineteen days over three levels of jurisdiction. In those circumstances, that complaint must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. The remaining complaints

70. The applicants invoked Articles 13 and 14 of the Convention.

71. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that there is no appearance of a violation of any of those Articles. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2016.

Abel Campos
Registrar

Mirjana Lazarova Trajkovska
President