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Meeting: 1377<sup>th</sup> meeting (June 2020) (DH)

Communication from an NGO (European Centre) (21/04/2020) in the LULI AND OTHERS group of cases v. Albania (Application No. 64480/09) and reply from the authorities (06/05/2020)

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1377<sup>e</sup> réunion (juin 2020) (DH)

Communication d'une ONG (European Centre) (21/04/2020) relative au groupe d'affaires LULI ET AUTRES c. Albanie (requête n° 64480/09) et réponse des autorités (06/05/2020) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

21 AVR. 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

DGI Directorate General of Human Rights and Rule of Law  
Department for the Execution of Judgments of the ECtHR  
F-67075 Strasbourg Cedex  
FRANCE

20/04/2020

**COMMUNICATION**

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the European Centre**

LULI and OTHERS group of cases v. Albania (*Application No. 64480/09*)

## **A. INTRODUCTION**

### **Summary of the cases**

1. These cases concern administrative and judicial disputes before various administrative bodies and various levels of jurisdiction and relate to excessive length of these proceedings and absence of an effective remedy.

2. Case “*Luli and Others v. Albania*” originated in six applications, and alleged that applicants’ right to fair trial was breached on account of the length of proceedings before the Agency for Restitution and Compensation of Property and thereafter before the domestic courts.

The Court found that the length of the proceedings was to be attributed to the repeated referrals for fresh examination by the administrative body, which revealed “a serious deficiency in the Albanian legal system”. The Court recalled that it was for the Contracting States to organize their legal systems in such a way that the competent authorities can meet the requirements of Article 6 of the Convention, including the obligation to hear cases within a reasonable time and, where necessary, join them, suspend them or reject the further institution of new proceedings. Under Article 46 the Court called upon the Albanian authorities to introduce a remedy in respect of the delays in the proceedings (violation of Article 13).

3. This case became final on 1 July 2014 and was granted the enhanced status of the execution. The first Action Plan was submitted by the Government on 20 September 2017, and was previously updated with information’s on 15 October 2018, in which it presented legislative amendments as regards general measures of this case execution. On 31 July 2019 the Albanian Government, prepared and submitted detailed information, as requested at the meeting of the CoE, Committee of Ministers.

### **The European Centre**

4. The European Centre Foundation, member of the European Implementation Network, is an independent Albanian NGO funded in 1999. Its mission is to contribute on the consolidation of the rule of law, with a special focus on improving general knowledge on the European human rights standards. Since its establishment the Centre has been focused on raising awareness and capacity building measures which have in focus the implementation of the ECHR standards at domestic level. The Centre has continuously collaborated with the Registry of the ECtHR to enrich the HUDOC database with relevant case summaries in Albanian. Among others, the Centre is monitoring the execution of the ECtHR judgments at domestic level as this process is a crucial element in terms of compliance with the ECHR guarantees.

## **B. EXECUTIVE SUMMARY**

- On 1 April 2014 the European Court on Human Rights delivered the judgement *Luli and Others v. Albania*, which concern the excessive length of proceedings before civil courts and administrative bodies (principally the former Commission on Restitution and Compensation of Properties) between 1996 and the present. The European Court criticized, in particular, the failure of the judicial system to manage properly a multiplication of proceedings before various courts on the same issue and repeated remittals of cases back to lower levels of jurisdiction. Under Article 46 in the *Luli and Others* case, the European Court noted that the excessive length of proceedings was becoming a serious deficiency in domestic legal proceedings in Albania and that general measures at national level were undoubtedly called for to execute the judgment, in particular the introduction of a domestic remedy.
- As the length of proceedings violation was found in several other cases, all of them were grouped after *Luli and Others* became final. They were transferred to the enhanced execution procedure.
- After the presentation of the first Action Plan the Albanian Government informed the Committee of Ministers on the individual and general measures needed to address the Convention violations. Information updates were submitted on 15 October 2018, and 31 July 2019. The latest document submitted by the Government on 9 April 2020, was not drafted as an Action Plan to further proceed with the execution of the *Luli and Others* group of case.
- Albanian juridical system still has internal problems which entails permanent violations of the right to a fair trial as regards finalizing a case within a reasonable time.
- Measures presented by the Government in the latest document are not clear and do not provide a concrete plan on resolving the gaps created in the judiciary, by the dismissal of judges because of the vetting process, with the aim to make it functional and contribute in a better administration of justice.

## **C. INDIVIDUAL MEASURES**

5. The case "*Luli and others v. Albania*". The applicants, on 11.02.2015, have submitted before the Durrës District Court a request on "Amendment of decision no. 166, dated 28.02.2011 of the ARCP Tirana...", "Amendment of the decision no. 30, dated 16.05.2012, of the ROARCP Durrës...", "The partial quashing of decision no. 738, dated 19.12.2003 of the former CRCP Durrës...". The trial court was informed of violations found by the European Court and is aware of the necessity to bring the proceedings rapidly to an end to comply with the standards of Article 6 of the Convention. According to the new law no. 133/2015 "On the Treatment of property and finalization of the property compensation procedure", the

competent court for the adjudication of the case, under Article 29 of the aforementioned law, is the Durrës Court of First Instance. On 27.12.2018 the District Court of Durrës issued the decision no. 2082. This decision, which was appealed by one of the applicants Luljeta Çelkupa, on 27.02.2019.

6. The Government declared to inform the Committee of Ministers within the next 6 months for the results of the proceedings. This deadline might be impossible to respect because of the backlog of the Appeal Court of Durres and the suspension of all juridical activities due to COVID-19.

#### **D. GENERAL MEASURES**

7. First of all, we would like to underline that the document submitted by the Government to the Committee of Ministers on 9 April 2020, it is not an Action Plan with concrete measures and set deadlines, but only an updated information.

As regards the general measures mentioned in it, here we will provide some additional information which can be useful in terms of proper execution of *Luli and Others* group of cases.

##### **1) *Administrative measures to properly administer of justice***

8. The information provided by the Government presented all attempts of justice governing bodies to address the current problems related to the administration of justice. Even though, the Albanian justice system was going through an in-depth reformation in order to insure its independence and impartiality, now that we are almost four years after these amendments a clearer picture should be seen. However, the Government did not provide specific Action Plan regarding the administrative measures to properly administer of justice.

9. As concern the new juridical map, for which the High Juridical Council has started working on February 2019, there is no clear information when it should be finalized and ready to implement.

10. The backlog in almost every First Instance or Appeal Court having in mind here the normal and special jurisdiction courts is still a problem. If we refer to the last decision and discussion of the High Juridical Council, at appeal level the most problematic is the Tirana Court of Appeal in which one judge has to decide on 400 cases<sup>1</sup>. The same situation, or worse, is presented even at the Administrative Court of Appel, in which now there are being adjudicated cases registered in 2017. As regards the First Administrative Courts the situation is no better. In

<sup>1</sup> <http://klgj.al/wp-content/uploads/2019/12/MBLEDHJE-E-KLGJ-së-Datë-04.11.2019.pdf> p. 6 [consulted on 20.04.2020]

Shkodra the backlog per judge is 945 cases<sup>2</sup>. The worst case scenario is faced at the Supreme Court in which until early November 2019 there were pending 32,106 cases<sup>3</sup>.

11. All level courts declared that they are facing difficulties with the case management system ICMIS especially regarding the lot for appointing judges in every case and respecting the principle of impartiality, which entail delays in terms of everyday court administration<sup>4</sup>.

12. Taking into account all legal requirement related to delivering justice within a reasonable time, the situation is to be considered more than problematic. Thus, the Government shall present a detailed Action Plan with specific measures and timelines to resolve the abovementioned situation.

**2) *The measures taken to fill the created vacancies in the judiciary system, including the Supreme Court and the Constitutional Court of the Republic of Albania***

13. As regards measures to fill created vacancies in the judiciary system with a special focus on Supreme and Constitutional Courts there is some level of progress. However, both this courts are still out of function.

14. The High Council of Judiciary adopted all needed regulations for the evaluation of candidates who came outside the judiciary [non-judges]. The appointment of the first 3 vacancies took more than 6 months. Under the non-judges' category are still vacant 3 positions, 2 of which the procedure has not started yet. In the meantime, the HJC opened 6 positions for judges at the Supreme Court for candidates who came inside the system. This process will take at least 2 other months [not to count here the delays caused by COVID-19]. Until now the Supreme Court has only 4 judges out of 19, an insufficient number to form any quorum for deliberations. This Court has a backlog of more than 32,000 pending cases. In this line as the Government mentioned it was adopted an Action Plan to reduce the number of cases as soon as possible. However, this scenario is difficult to be implemented for the moment.

15. As mentioned by the Government, Constitutional Court has now 4 appointed judges out of 9, and cannot make any deliberation because it has not the needed *quorum*. Even though the process of verification of candidate by the Justice Appointment Council is complex and it is a real need that it should be speeded up. The problem in the appointment of constitutional judges was not only the latest, but even a disagreement between the Assembly and the President of the Republic, which caused major protest in the capital.<sup>5</sup> Venice Commission was

<sup>2</sup> Idem, p. 5-6. [consulted on 20.04.2020]

<sup>3</sup> Idem. [consulted on 20.04.2020]

<sup>4</sup> Idem, p. 7. [consulted on 20.04.2020]

<sup>5</sup> <https://www.euractiv.com/section/enlargement/news/albania-opposition-rallies-to-stop-coup-detat-over-reforms/> [consulted on 20.04.2020]

invited to deliberate and opinion in this regard, but it is estimated to be delivered in June. This political tension between both institutions shall be avoided with the final aim to make the Constitutional Court functional, after more than two years of non-existence.

16. The number of judges at lower level courts is and will remain an issue due to the vetting process, as result of which the dismissal rate has created several vacancies appeared across Albania's judiciary. As mentioned by the Government, the Albanian authorities are implementing a re-distribution plan as a matter of priority with the High Judicial Council for judges to fill the gaps in the busiest courts.

17. As carefully presented by the High Juridical Council, in its plenary session of 23 January 2020, for the current academic year 2019-2020 will be graduated as judges 19 magistrates. Meanwhile, in 2021 the School of Magistrates cannot graduate any new judge, because the programme for the current students started with a delay. For these reasons, followed by a detailed analysis of the current judges in office the HJC decided that the School of Magistrates shall recruit 40 new magistrates<sup>6</sup> for the position of judges who will start the programme in 2020 and will finish it in 2023.

18. Taking into account all the above mentioned situation, we would propose to the Committee of Minister to can ask the Albanian Government to provide altogether with the HJC a detailed recruitment plan, with estimated dates to complete the vacancies and relevant court organics, including legal provisions which imply how these courts are functional to freely deliberate.

***3) Information related to the possible retrospective application and legal restriction on the award of compensation that exceeds the value of the lawsuit's object, as well as the efficiency of legal remedies in general***

19. The Government mentioned that progress have been made in terms of interpretation of the legal provisions regarding retroactive effect of “just satisfaction” and efficiency of legal remedies. Even the positive feedback made so far, which should be re-evaluate on permanent bases, because as the Government itself underlined the practice is not still sustainable, two possible measures can be undertaken.

20. The Government can plan as a more general measure a dedicated awareness raising campaign for all involved parties. Meanwhile, a dedicated Continuous Training Programme can be designed together with the School of Magistrate, as the major part to implement this general measure is the discretion of judges.

<sup>6</sup> <http://klgj.al/wp-content/uploads/2020/02/MBLEDHJE-E-KLGJ-së-Datë-23.01.2020.pdf> p.17-27 [consulted on 20.04.2020]

## ***E. CONCLUSIONS AND RECOMMENDATIONS TO THE CM***

Taking into account all the above mentioned arguments, the European Centre suggests that the Committee of Ministers might request to the Albanian Government:

- To present a detailed Action Plan with all general measures to be implemented and estimated timelines as regards administration of justice and vacancies in the judiciary. This Action Plan is a realistic need, as *Luli and Others* group of cases point out the systemic problem of Albanian judiciary “*length of proceedings*”, and the lack of execution of this case reflects everyday more this problem.
- To foresee an implementation of a tailored awareness raising and capacity building programme for the effectiveness of legal remedies.

The European Centre wishes to express its willingness to further assist the Committee of Ministers of the Council of Europe to monitor the proper implementation of the *Luli and Others v. Albania* group of cases.

*On behalf of the European Centre*

Ina Xhepa  
Executive Director







REPUBLIKA E SHQIPËRIË

STATE ADVOCATURE  
OFFICE OF THE GENERAL STATE ADVOCATE

DGI

06 MAI 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

No. 814/144 Prot.

Tirana, on 06.05.2020

**To: Ms. Dimitrina Lilovska – Head of Section  
Department for the Execution of Judgments of the ECtHR  
DGI - Directorate General of Human Rights and Rule of Law**

**Council of Europe  
67075 Cedex  
Strasbourg  
France**

**Ref:** On the letter of the European Center

Dear Madam,

Referring to the Department of Execution of the Court Judgments letter dated 21<sup>th</sup> of April 2017, containing the letter of the European Center, allow us to clarify the following:

The Albanian Government in the Updated Information of April 2020, among others, has provided an overview of the selection processes of members of the Supreme Court and the Constitutional Court, expressing, her belief that the new justice institutions, the High Judicial Council and the Justice Appointments Council will accelerate the process of filling the created vacancies.

Furthermore, we would like to emphasize that the selection process and appointment of judges depends on a number of factors that necessarily required the right time for a transparent, fair and efficient process, such as: the adoption of new legislation, which introduced as necessary, *inter alia*, the adoption of various bylaws, the strict and detailed procedure through which passes the selection of judges, the verification of the important components of the candidates as their moral figure, professionalism as well as control of assets. For instance, out from 22 candidates for the 4 vacancies announced in the Supreme Court, only 3 of them went through the ongoing process and got appointed.

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Regarding the Organization's suggestion that the Committee of Ministers shall request *the government to draft an action plan with all general measures to be implemented and estimated timelines as regards administration of justice and vacancies in the judiciary*, the Government wishes to emphasize that by the information sent to the Committee, it has provided for the drafting of an action plan in terms of the measures to be taken, in order to eliminate the "excessive length of proceedings" in trials at all levels and to inform the Committee of Ministers within 6 months.

In regard to the second point put forward by the European Center, *as for the suggestion of raising awareness about new legislation to expedite court proceedings and fair remuneration in case of delays*, please note that the School of Magistrates has already included terms of the jurisprudence of the ECtHR and the practical implementation of new legal provisions for the excessive length of proceedings and fair remuneration<sup>1</sup>, in its training curricula, wherein judges, prosecutors and state attorneys participate on frequent basis .

Also, the Government emphasizes that, while respecting the principle of separation of powers, it has made available to the justice reform process the necessary financial fund<sup>2</sup> so that the judiciary has at its disposal all the resources they need, and has provided its contribution in cases where legislative changes are required.

Expressing my highest consideration,

Yours sincerely,

ENKELEJDA MUÇAJ

STATE ADVOCATE GENERAL



<sup>1</sup> Thematic program of continuing training of School of Magistrates, September 2019 - 15 July 2020. 53) *Judgment on requests for ascertaining violations of reasonable time, the expedition of proceedings, and compensation of damage. The meaning of judgment within a reasonable time, the practice of the ECtHR and the Constitutional Court. The judgment of claims for the ascertainment of violation of reasonable time and compensation of damage. (Article 399 I-399 I0 of the Civil Procedure Code) The role of the Court in accelerating the trial according to the provisions of the CPC and the competence for damages. The standards of reasonable time according to the jurisprudence of the ECtHR and the jurisprudence of the Constitutional Court. The challenges faced in this special trial. Unreasonable duration of litigation according to international standards. Changes in Chapter X of the Civil Procedure Code regarding the ascertainment of due process of law. Terms of trial according to Albanian legislation and Albanian judicial practice.*

<sup>2</sup> The funds allocated in 2019-2020 are in a total amount of 7.229.854.000 ALL. Letter of the Ministry of Finance and Economy, dated 6 May 2020.