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### DH-DD(2022)91

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Meeting: 1428<sup>th</sup> meeting (March 2022) (DH)

Communication from the applicant (17/01/2022) in the case of Sharxhi and Others v. Albania (Application No. 10613/16) (appendices in Albanian are available at the Secretariat upon request)

Information made available under Rule 9.1 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 : 1428<sup>e</sup> réunion (mars 2022) (DH)

Communication du requérant (17/01/2022) relative à l'affaire Sharxhi et autres c. Albanie (requête n° 10613/16) (des annexes en albanais sont disponibles auprès du Secrétariat sur demande) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 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

17 JAN. 2022

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Rome, 17 January 2022

Directorate General of Human Rights and Rule of Law  
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*Sent by email ([dgi-execution@coe.int](mailto:dgi-execution@coe.int))*

**RE: APPLICATION No. 10613/16 – SHARXHI AND OTHERS V. ALBANIA | NON-EXECUTION OF THE JUDGMENT DELIVERED BY THE EUROPEAN COURT OF HUMAN RIGHTS – SUBMISSIONS PURSUANT TO RULE 9(1) OF THE RULES OF THE COMMITTEE OF MINISTERS FOR THE SUPERVISION OF THE EXECUTION OF JUDGMENTS (1428<sup>TH</sup> CM MEETING, 8-10 MARCH 2022)**

Dear Sir/Madam,

We refer to the above matter and to our previous submissions of 7 September 2018, 28 November 2018, 7 May 2019, 21 June 2019, 4 May 2020 and 7 April 2021, concerning the execution of the judgment delivered by the European Court of Human Rights on 11 January 2018 in the case of *Sharxhi and Others v. Albania* (hereinafter, the “Judgment”).

The first examination of the execution has been scheduled for the 1428<sup>th</sup> meeting of the Committee of Ministers (8-10 March 2022).



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Accordingly, pursuant to Rule 9(1) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, the applicants submit the following observations.

\* \* \*

1. The applicants note with deep regret and serious concern that no step forward has yet been made with regard to the execution of the Judgment, notwithstanding reiterated assurances given in this respect by the Albanian Government in its previous correspondence with the Committee of Ministers.
2. Even more regretfully, in its note dated 15 February 2021, the Albanian Government openly stated that it will not comply with the Judgment's award because of the “serious implication for the state budget” and the “objective impossibility” to proceed with the payment.
3. As pointed out in our previous correspondence, the Judgment **became final on 28 May 2018** pursuant to Article 44 § 2 ECHR and the three-month time-limit for the payment of just satisfaction started running from that date. Accordingly, **payment was due no later than 28 August 2018**.
4. As of today, however, no payment has yet been made by the respondent Government, including with respect to the Council of Ministers' decision of 9 April 2014, which awarded partial compensation to the applicants (see §§ 33-34 of the Judgment). This failure continues notwithstanding the assurances given by the Albanian Government to the effect that it “is taking all the possible measures to ensure the execution of the judgment in the *Sharxhi* case, initially by enforcing the Council of Ministers' decision of 9 April 2014”.
5. The applicants have repeatedly urged the Agent of the Albanian Government to comply with the Court's judgment and to provide information about the payment of the principal amount awarded by the Court and of the default interests accrued starting from 28 August 2018. The Agent acknowledged receipt of the correspondence and gave assurances that the matter would be brought to the attention of the “responsible authorities”, stating that the Albanian Government “recognizes its international obligations and will execute the above judgment in accordance with Article 46 of the Convention”.
6. A similar commitment was also made by the Albanian Government in the Action Plan submitted to the Committee of Ministers on 10 May 2019, and more recently in the



**Information Note** submitted on **15 February 2021**, where the State Advocate General stated the following.

- *“due to the large sum at stake (13,447,300 EUR), the Ministry of Finance and Economy has requested to pay the just satisfaction awarded by the Court in installments”;*
- *“This position of the Ministry of Finance and Economy has been confirmed lately by letter dated January 12, 2021 emphasizing the objective impossibility for the limited state budget during these difficult times, to proceed with payment, and suggesting the determination of the modalities of the payment and financial installments through negotiations with the beneficiaries”;*
- *“a working group was decided to be established for the execution of the ECtHR decision “Sharxhi and Others v. Albania” aiming at setting up of a negotiating team with the beneficiaries”;*
- *“due to the unexpected events of November 2019, with the worst earthquake the country has experienced in decades and the unforeseen circumstances surrounding the COVID-19 pandemic, the working group has not yet been established”;*
- *“Due to these unforeseen events, the Consultative Council by decision no. 9 dated 26.12.2019 decided to postpone the discussion on the individual measures for the enforcement of the judgment “Sharxhi and Others v. Albania” after the termination of the state of emergency”;*
- *“Furthermore, the Government notes that the Sharxhi case is pending before the domestic courts which are expected to examine the case and deliver a final judgment on the claims of the applicants in this case”;*
- Notwithstanding the above, *“The Albanian Government remains fully committed to respect international obligations and ensuring the execution of the ECHR judgments”.*

7. In respect of these submissions, the applicants wish to make the following remarks.

8. First, despite the rhetorical commitments made by the Albanian Government, **the applicants and their representatives have not received any information regarding the execution of the Judgment**, including information about the decision to postpone the establishment of the negotiating working group and the discussion on individual measures “after the termination of the state of emergency”.

9. No contact with the applicants’ representatives has been engaged for the purpose of executing the Judgment. The applicants’ reiterated requests addressed to the State General Advocate over the last three years remained completely unheard, forcing them into a state of total uncertainty about the expected timing of the enforcement.



10. The absence of any progress in the execution of the Judgment has recently been stigmatized also by the **Albanian Supreme State Audit Institution** (*Kontrolli i lartë i shtetit*, “*KLSP*”) in its **2021 report** on the activities of the State Advocate’s Office (Annex no. 1).
11. Particularly, the KLSH analyzed the correspondence between the various State entities involved in the execution process and noted that the execution of the Court’s Judgment in the case of *Sharxhi* is completely stalled. The KLSH has expressed its deep preoccupation for this situation, which further bears negative consequences for the State budget given the magnitude of the default interests that continue to accrue on the award for just satisfaction made by the Court (*ivi*, p. 45).
12. Second, the extraordinary circumstances created by the 2019 earthquake and by the 2020 Covid pandemic cannot be a valid excuse for Albania’s failure to fully and promptly comply with the Judgment. Indeed, the Judgment became final on 28 May 2018 and the payment of just satisfaction was due by 28 August 2018, i.e. well before the occurrence of the events that the Government now seeks to rely on as a belated justification for its failure to enforce the Judgment in due time.
13. According to a well-established rule of customary international law, necessity may not be invoked by a State as a ground for not complying with its international obligations if *a*) the international obligation in question excludes the possibility of invoking necessity, or *b*) the State has contributed to the situation of necessity (see Article 25 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001).
14. As for the first requirement, Article 15 ECHR allows a High Contracting Party to enter a derogation from its obligations under the Convention in case of a state of emergency threatening the life of the nation in accordance with the conditions and procedures set forth therein. Albania has not made any official derogation under Article 15 ECHR regarding its obligations under Articles 41 and 46 ECHR. Therefore, it is precluded from invoking necessity as an excuse for its failure to comply with the Judgment under the Convention.
15. As for the second requirement, Albania has contributed to the situation of necessity, by failing to promptly comply with the Judgment within the prescribed time-limit when no exceptional circumstances could justify such failure. By this conduct, it has further



aggravated the financial consequences of the Judgment on its budget, which now include a substantial amount of default interests.

16. Third, the 2019 earthquake and the 2020 pandemic also severely affected the applicants who have suffered the unlawful destruction of their homes in breach of the Convention and who have not yet been able to receive any monetary relief to cope with the current economic adversities. On balance, it is the applicants' position as victims of serious human rights violations that must prevail over the current State budget's constraints allegedly resulting from the state of emergency.
17. Fourth, the serious financial implications of the Judgment are the consequence of multiple outrageous violations of the applicants' rights under the Convention of unprecedented gravity, for which officials of the Albanian central and local governmental authorities should be held directly and personally accountable.
18. It must be recalled in this respect that the decision to demolish the Jon Residence was publicly announced by the spokesman of the Minister of Home Affairs on 3 December 2013 (following the decision on expropriation adopted by the Council of Ministers) and implemented the day after by the mayor of Vlora with the assistance of the National Construction and Urban Planning Inspectorate and of the local police. The demolition was carried out abruptly without waiting for the termination of the expropriation procedure which was set forth for 28 December 2013 (see §§ 29-31 of the Judgment).
19. This set of events clearly indicates that individual members of the central and local governmental authorities have willfully committed serious violations of domestic law resulting into grave breaches of the Convention and causing substantial pecuniary damages to the State's budget. In a democratic State governed by the Rule of Law, those responsible for such devastating consequences should be personally called to account for their actions before the competent judicial authorities and to repay the Albanian people of the damages they have caused to the State budget.
20. Fifth, the Government's allegation that the payment of just satisfaction is "objectively impossible" due to the large sum at stake and to the limited State budget during these difficult times is clearly disingenuous.
21. The liability of Albania under the Judgment (which amounts € 13,447,300, plus default interests currently totaling € 1.482.334,56) can be covered through the ordinary State budget without causing any significant inconvenience to the management of the financial



resources needed to cope with the current state of emergency. Indeed, Albania has received and continues to receive substantial financial assistance from the international community; for instance, a package of 1,15 billion euros was made available for the reconstruction process after the earthquake (see the 2019 Update, Report No. 147451-AL, *Albania Systematic Country Diagnostic* published by the World Bank Group, p. 7). Moreover, Albania disposes of official reserve assets and other foreign currency assets for over 4,6 billion dollars (see the official information available on the web site of the Bank of Albania at <https://www.bankofalbania.org>).

22. In this respect, it should also be stressed that in 2020 the Ministry of Finance and Economy has allocated an amount of around 100 million euros to pay an arbitral award issued in April 2019 (i.e. more than one year after the delivery of the Judgment) by an ICSID Tribunal in the case ARB/15/28, *Hydro and others v. Albania*, as reported in the **Mid-Year Report on the Implementation of the 2020 Budget of June 2020** (see Annex no. 1 to our letter of 7 April 2021).
23. It is striking to note that **the same Mid-Year Report does not even mention the outstanding liability under the Judgment**. Indeed, in the section concerning the “*Decisions of the European Court of Human Rights*” (§ V.4.1, p. 55), it is stated that “*the Ministry of Finance and Economy has continuously complied with all decisions adopted by the CHR, through the liquidation of the respective the Council of Ministers Decisions (CDM) adopted in support of them, accurately and within the strict deadlines set by this body*” and that “[f]or the period January-June 2020, it results that the MFE has not received any draft decision regarding the payment of the CHR decisions, with a financial obligation of over EUR 10,000”.
24. In light of the above, it is clear that there is **no “objective impossibility” for Albania to pay** (or to make the necessary budgetary arrangements to pay) the award made by the Court in the case of *Sharxhi and Others* and that the only reason why the Ministry of Finance and Economy has not yet processed the payment is that the Council of Ministers has not adopted any decision in this regard.
25. **This regretful situation is another evidence of the absence of any genuine will of the current Albanian Government to comply in good faith with the Judgment.**
26. As pointed out in our previous correspondence, **the Albanian Prime Minister has openly declared in Parliament his political determination not to pay the just satisfaction awarded to the applicants** (see the applicants’ submission of 28 November





2018, § 6 ff.). Moreover, it has been reported that, during the official meeting with the President of the Court on 17 June 2019 (well before the earthquake and the Covid pandemic), the Minister of Justice of Albania openly stated that the Government would not have fulfilled its payment obligations under the Judgment. Against this background, it is self-evident that the Council of Ministers has no intention to adopt any decision to allow the payment in accordance with Article 19 of the law “On State Advocacy” as amended on 30 December 2018.

27. Rather than being grounded on objective budgetary constraints, the persistent failure by Albania to take any concrete steps to execute the Judgment is just a deliberate and politically motivated attempt to create a *state of uncertainty and necessity* that would bend the applicants to accept a settlement proposal deviating from the terms of payment dictated by the Judgment. This would seriously undermine the Court’s authority as well as the proper and effective functioning of the collective enforcement machinery established by the ECHR.
28. Sixth, the applicants reiterate their position regarding the absence of any room for a negotiation on the terms and modalities of payment in light of the Court’s Judgment which ordered just satisfaction to be **paid “in one lump sum”** accrued of default interests (see *Sharxhi and Others v. Albania*, 11 January 2018, § 198 and § 210). Any deviation from the terms of payment expressly dictated by the Judgment would call into question the *res judicata* and would imply an impermissible reconsideration of the Court’s final ruling.
29. In this respect, the applicants have just learned, through the abovementioned KLSH report, that, in response to the applicants’ unavailability to negotiate on the terms and modalities of payment, the Ministry of Finance and Economy has apparently taken the irremovable (and internationally unlawful) “previous position for full non-payment by suggesting negotiation with beneficiaries” (see letter no. 1564/2, dated 06.08.2019, cited in Annex no. 1, p. 45).
30. The Ministry’s position confirms that, as matters currently stand, the Albanian Government has no intention to enforce the Court’s Judgment. Moreover, as of today, the applicants have not been involved in any process of negotiation regarding the enforcement of the Judgment, which demonstrates that this is no more than a pretext.
31. Lastly, the pending proceedings before the Albanian High Court – to which the Government refers in its Information Note – cannot have any relevant impact on the





execution of the Judgment, given that the matter of compensation has already been finally adjudicated by the Court under Article 41 ECHR and that there is no risk of double recovery (see §§ 193-197 of the Judgment).

32. In this respect, we note that, after being inactively pending on the High Court's docket for almost 7 years, just a handful of days after the Committee of Ministers decided to add the *Sharxhi* case to the on the agenda of the upcoming CM-DH meeting, a hearing was coincidentally scheduled before the High Court. After all, despite the final judgment delivered by the European Court, the Albanian Government is still pursuing the case domestically.
33. The hearing, which was supposed to take place on 10 January 2022, was postponed. The date of the new hearing has not been yet communicated.

\* \* \*

In light of the above, the applicants respectfully invite the Committee of Ministers

- A) to initiate the **infringement procedure pursuant to Article 46 § 4 ECHR and Rule 11 of the Rules of the Committee of Ministers** by serving the Albanian Government with a formal notice to comply, due to the persistent and politically motivated failure by the Albanian Government to fulfil its payment obligations under Article 46 § 1 ECHR in the case *Sharxhi and Others*;
- B) in any case, to urge the Albanian Government to immediately enforce the final judgment delivered by the Court.

Faithfully,

Avv. Prof. Andrea Saccucci

Avv. Giulia Borgna

**Annex:**

1 – Excerpt of the 2021 report of the KLSH on the activities of the State Advocate's Office (the full report is available at: <https://panel-klsh.almotech.co/storage/phpTlM9Ar.pdf>).