

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES



Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

Date: 21/08/2024

DH-DD(2024)935

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1507th meeting (September 2024) (DH)

Item reference: Action Plan (19/08/2024)

Communication from Albania concerning the case of Cupi v. Albania (Application No. 27187/08)

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1507^e réunion (septembre 2024) (DH)

Référence du point : Plan d'action (19/08/2024)

Communication de l'Albanie concernant l'affaire Cupi c. Albanie (requête n° 27187/08) (**anglais uniquement**)

19 AOUT 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH**ACTION PLAN**

Execution of the judgment of the European Court of Human Rights
Çupi v. Albania, application no.27187/08, judgment of 14.11. 2023

I. CASE SUMMARY

The application concerns the complaint of the applicant under Article 6 §§ 1 and 3 (c) of the Convention that his conviction had been based on, among other things, on statements, which had been obtained in the absence of a lawyer, in breach of his rights to a fair trial and to legal assistance.

In the judgment of 14.11. 2023, the Court concluded that the domestic courts have not established in a convincing manner whether the applicant's waiver of legal assistance had been voluntary. The Court stated that while the applicant was informed, albeit summarily, of his "right to a lawyer", it was not clear whether this referred to a lawyer of his own choosing or to a lawyer provided by the authorities free of charge.

Therefore, because the applicant was not informed specifically of his right, that he could ask the authorities to provide a lawyer for him, the Court held that it was questionable whether it was the applicant's informed choice to waive his right to counsel or in practice it was impossible for him to obtain legal assistance of his own choosing at that time.

The Court carried out an individual assessment of the particular circumstances of the case, examining the legislation in force at the material time, the age of the applicant who at the time of his questioning had just turned eighteen, and his limited education and professional experience and concluded that it was not convinced whether, the applicant could foresee the consequences of the purported waiver of his right to legal assistance.

The Court further noted that the domestic courts did not engage in examining the circumstances surrounding a defendant's waiver of defence rights. Instead, they relied exclusively and without further inquiry on the record of 27 June 2004 and the fact that he had not expressly asked for a lawyer in finding that he had waived his right to legal assistance. Accordingly, the Court concluded that the applicant's right to legal assistance was restricted and that the restrictions in question were not justified by any "compelling reason".

Then, the Court examined the overall fairness of the proceedings in the specific circumstances of the case.

In this regard, the Court underlined that the applicant's right not to be convicted on the basis of statements given without legal assistance is not confined to actual confessions or to remarks which are directly incriminating; for statements to be regarded as self-incriminating it is sufficient for them to have substantially affected the accused's position.

In the present case, even though other relevant evidence has been examined by the courts, the approach of the authorities to the investigation and the qualification of the applicant's actions was significantly influenced by the detailed statements given by him on 27 June

2004 and constituted an integral part of the evidence upon which the conviction was based.

In the Court's view, the domestic courts placed considerable weight on the applicant's detailed description in his statements of 27 June 2004, and despite repeated requests from the applicant to exclude his statements of 27 June 2004 from the case file, the domestic courts rejected his requests.

In this context, the Court cannot conclude that the overall fairness of the proceedings was not prejudiced by the statements made by the applicant on 27 June 2004 in the absence of a lawyer.

There has accordingly been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. INDIVIDUAL MEASURES

a. Payment of just satisfaction

The European Court of Human Rights rejected the claims of the applicant in respect of non-pecuniary damage and costs and expenses. The Court stated that it cannot speculate as to the outcome of the proceedings against the applicant had there not been a violation of Article 6 §§ 1 and 3 (c) of the Convention. The Court considered that the finding of a violation constitutes sufficient just satisfaction in the present case.

b. Other individual measures/reopening of the proceedings

The Court indicated that the most appropriate form of redress in the present case would, in principle, be the reopening of the proceedings, if requested.

Based on the above findings of the Court, the State Advocate's Office has addressed a special letter to the General Jurisdiction of Lezha¹, and to the Supreme Court, in which the translated judgment and a summary of the findings of the Court in the judgement has been sent. In addition, the State Advocate Office has requested the courts to take into consideration the findings of the European Court in case the applicant requests the reopening of the criminal proceedings.

Conclusion: The Government will update on the execution of individual measures as soon as more information is available on possible proceedings before the District Court of General Jurisdiction of Lezha.

III. GENERAL MEASURES

The Government emphasizes that the events took place before the implementation of the extensive judicial reform in Albania which started in 2016. This reform, among others, introduced numerous amendments to the Code of Criminal Procedure aiming at the approximation of the legislation with the European standards and European Convention on Human Rights. It also aimed at improving access to and efficient functioning of justice in Albania and strengthen the fairness of judicial proceedings in the criminal sphere.

¹ Letter of the State Advocate Office no 25/5 dated 2.5.2024

The Court in the judgment has already noted that the amendments in the legislation referring to Article 34/a § 2 of CCP, as in force from 1 August 2017, which requires the authorities to provide a suspect with a written “letter of rights” containing information about his or her defence rights, including the right to remain silent and the right to a lawyer of the suspect’s own choosing or free legal assistance subject to certain conditions, before the first questioning takes place.

Having regard that the other violations in the present case resulted from the shortcomings in the assessment of the particular circumstances of the case and examination of evidence by the domestic courts, the Government is of the opinion that the dissemination of the Court’s judgment to relevant authorities and domestic courts will effectively prevent similar violations in the future.

a. Publication and Dissemination

The judgment of the European Court of Human Rights “Çupi v. Albania”, application no.27187/08, judgment of 14.11. 2023 has been translated in the Albanian language and has been published in the Official Gazette no.5 dated 9.1.2024².

Furthermore, the State’s Advocate Office has prepared a summary of the main findings of the Court in the judgment “Çupi v. Albania” and has disseminated the translated judgment to, the Supreme Court, the Constitutional Court, the High Council of Justice, the General Prosecutor Office and School of Magistrates.

The School of Magistrates as one of the main institutions for conducting continuous trainings for judges and prosecutors was asked to include in the calendar of the trainings for article 6 of the Convention the findings of the Court in the in the judgment “Çupi v. Albania.

Based on the above considerations and measures undertaken in response to the European Court’s judgment, the Government considers that there is no need for further general measures to be undertaken in the present case.

IV. CONCLUSION

Having regard to the above considerations, the Government is of the opinion that no further individual and general measures are necessary to be undertaken by the Albanian authorities to remedy the violation of article 6 of the Convention in the present case.

The Government will update on the execution of individual measures as soon as more information is available.

² <https://qbz.gov.al/eli/vendim/2023/11/14/27187-08/b43cdb8f-bca0-482a-99b0-1e1eb5255789;q=%C3%A7upi%20kunder%20shqiperise>