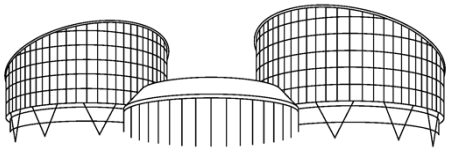

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SUPERGRAV ALBANIA SHPK v. ALBANIA

(Application no. 20702/18)

JUDGMENT

Art 6 § 1 (civil) • Deprivation of access to a court due to dismissal of constitutional complaint as being lodged outside four-month time-limit calculated from date of adoption of Supreme Court's decision rather than date fully reasoned decision served

STRASBOURG

9 May 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Supergrav Albania Shpk v. Albania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 20702/18) 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") by an Albanian company, Supergrav Albania Shpk ("the applicant company"), on 23 April 2018;

the decision to give notice to the Albanian Government ("the Government") of the complaint concerning the applicant company's right of access to the Constitutional Court and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 11 April 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the applicant company's right of access to the Constitutional Court, which declared its constitutional complaint inadmissible as having been lodged out of time. The main issue in the present case is whether the four-month time-limit for lodging a constitutional complaint was to be counted from the date when the Supreme Court's decision had been served on the applicant company or from the date the decision had been delivered.

THE FACTS

2. The applicant company was registered in 2006 in Burrel. It was represented by Mr D. Prifti, a lawyer practising in Tirana.

3. The Government were represented by their then Agent, Mr A. Metani, and subsequently by Mr O. Moçka, of the State Advocate's Office.

4. The facts of the case may be summarised as follows.

5. The applicant company brought a civil action in the Mat District Court against the Mat regional police, seeking damages in connection with the

dismantling of its machinery. On 13 July 2012 the first-instance court dismissed the claim, and that decision was upheld by the Tirana Appeal Court on 11 April 2013.

6. The applicant company then lodged a further appeal with the Supreme Court, which on 28 January 2016, without the parties being present, adopted a decision rejecting the appeal because it did not contain any legal grounds for appeal. That decision concerned only the operative part without the full reasoning. At the material time, notification of the Supreme Court's decisions was given through an announcement on its official website and the depositing of the reasoned decision at the Supreme Court's registry. There is no indication in the case file, or in the parties' observations, of the date on which the decision of the Supreme Court, with its full reasoning, was issued or whether it has been published on its website. In its observations of 21 April 2019, the applicant company claimed that the decision had not yet been published as of that date.

7. On 8 November 2016 Law no. 99/2016 of 6 November 2016 was published in the Official Journal. It shortened the time-limit for lodging a constitutional complaint from two years to four months "from the time of obtaining knowledge of the interference (*konstatimi i cënimit*)" with a constitutional right or freedom. It also provided that the new time-limit would be applicable as of 1 March 2017.

8. On 20 September 2017 the applicant company sent a letter to the Supreme Court, asking that the court's decision be served on it. The reasoned decision was served on the applicant company on 26 September 2017.

9. The applicant company lodged a constitutional complaint on 4 October 2017. On 8 November 2017 the Constitutional Court declared it inadmissible as being lodged outside the four-month time-limit, counting from the date on which the contested Supreme Court decision had been adopted. It held that the applicant company ought to have enquired in a timely fashion about the outcome of its case before the Supreme Court.

RELEVANT DOMESTIC LAW

10. Section 19 of Law no. 8588 of 15 March 2000, as in force at the relevant time, provided that the decisions of the Supreme Court were to be delivered ("*shpallur*") with the full reasoning no later than thirty days from the date of the termination of the judicial examination of a given case.

11. Under Article 482 of the Code of Civil Procedure, as in force at the material time, the lists of cases indicating which appeals were to be examined by the Supreme Court had to be published no later than fifteen days prior to the date of examination. No personal notifications were to be sent to the parties to a hearing before the Supreme Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

12. The applicant company complained of a breach of its right of access to a court on account of the Constitutional Court's calculation of the time-limit for lodging a constitutional complaint. It relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

13. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

14. The applicant company maintained that its right of access to the Constitutional Court had been violated, because the four-month time-limit for lodging a constitutional complaint had been calculated from the date when the decision of the Supreme Court had been delivered and not from the date when it had been served on the applicant company.

15. The Government argued that it had been the practice of the Constitutional Court to calculate the four-month time-limit for lodging a constitutional complaint from the date a contested decision had been adopted. They were of the view that access to the Constitutional Court could be subject to stricter rules than for the ordinary courts. The applicant company could have learned of the Supreme Court's decision from the website of that court.

2. The Court's assessment

(a) General principles

16. The relevant principles on the right of access to a court and, in particular, on access to superior courts have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018). The Court reiterates in particular that the right of access to courts may be subject to limitations, which, however, must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be

achieved (ibid., § 78). The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Kart v. Turkey* [GC], no. 8917/05, § 79, ECHR 2009, and *Arrozpide Sarasola and Others v. Spain*, nos. 65101/16 and 2 others, § 98, 23 October 2018).

(b) Application of these principles to the present case

17. Applying the above principles in the circumstances of the present case, the Court notes that access to the Constitutional Court for individual applicants, both natural and legal persons, is secured through the possibility of lodging a constitutional complaint. Such access is, however, restricted by, *inter alia*, time-limits for lodging a constitutional complaint.

(i) Legitimate aim

18. The Court must first examine whether the restriction pursued a legitimate aim. There is no doubt that fixing time-limits for access to superior courts is generally permissible. Rules governing the procedure and time-limits applicable to legal remedies are intended to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty, and litigants should expect the existing rules to be applied (see *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 33, ECHR 2000-I, and *Lay Lay Company Limited v. Malta*, no. 30633/11, § 56, 23 July 2013).

19. More specifically, as regards the shortening of the time-limit for the lodging of a constitutional complaint from two years to four months, the Court notes that a constitutional complaint is in principle lodged against final judicial decisions and other acts. However, a decision of the Constitutional Court is capable of quashing such decisions and returning the proceedings to a previous stage, before an appeal or a trial court. The shortening of the time-limit in question, in the Court's view, was aimed at strengthening legal certainty and served to avoid lengthy periods before the final outcome of a given case was reached (see *Çela v. Albania*, no. 73274/17, § 23, 29 November 2022).

20. The Court therefore considers that the shortening of the time-limit for lodging a constitutional complaint pursued a legitimate aim.

(ii) Proportionality

21. It remains to be ascertained whether, in the light of all the relevant circumstances of the case, there was a reasonable relationship of proportionality between that aim and the means employed to attain it.

22. In respect of time-limits governing the lodging of appeals, it is not the Court's task to take the place of the domestic courts. It is primarily for the

national authorities, notably the courts concerned, to resolve problems of interpretation of domestic legislation. The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the lodging of appeals (see *Jensen v. Denmark*, no. 8693/11, § 35, 13 December 2016).

23. However, an issue concerning the principle of legal certainty may arise, not merely as a problem of interpretation of a legal provision in the usual way, but also in the form of an allegation of an unreasonable construction of a procedural requirement which prevents a claim from being examined on the merits and thereby entails a breach of the right to the effective protection of the courts. Thus, while time-limits are in principle legitimate limitations on the right to a court, the manner in which they are applied in a particular case may give rise to a breach of Article 6 § 1 of the Convention, for example if the time-limit for lodging an appeal starts to run at a moment when the party did not and could not effectively know the content of the contested decision of the lower court (ibid., § 36).

24. As to the present case, the Court notes that the applicant company did not contest the application of the four-month time-limit to its case, but argued that it should have been counted from the date when the Supreme Court's decision had been served on it, and not from the date the decision had been delivered, as the Constitutional Court had held. Thus, the main issue in this case is whether the time-limit for lodging a constitutional complaint should have been counted from the date when the Supreme Court's decision was adopted or on the date when the reasoned decision was served on the applicant.

25. According to the relevant domestic law and practice at the time, prior notice of hearings held by the Supreme Court was supposed to be published in its premises and on its website; no personal notice was given to the parties. Furthermore, there were no provisions in domestic law clearly providing for service of the Supreme Court's reasoned decisions to the parties, and no such service occurred in practice. Also, it appears that in the case at issue there was no hearing at all; the Supreme Court adopted a decision for the summary dismissal of the applicant company's appeal on 28 January 2016, sitting in camera. Thus, the applicant company had no knowledge of it. The Supreme Court's reasoned decision was served on the applicant company on 26 September 2017, following its written enquiry, and that is the time at which the applicant company had the first opportunity to become acquainted with the existence and reasoning of the Supreme Court's decision.

26. In that connection the Court reiterates that the parties should be able to avail themselves of the right to lodge an appeal from the moment they can effectively apprise themselves of court decisions imposing a burden on them or which may infringe their legitimate rights or interests. Otherwise, the courts could substantially reduce the time for lodging an appeal or even

render any appeal impossible by delaying service of their decisions. As a means of communication between the judicial body and the parties, service makes the court's decision and the grounds for it known to the parties, thus enabling them to appeal if they see fit (see *Miragall Escolano and Others*, cited above, § 37). As regards Albania, the Court has already held, albeit in the different context of *in absentia* rulings, that the time-limit for lodging a constitutional complaint should have been counted from the date the applicant had learned of the decision to be contested (see *Shkalla v. Albania*, no. 26866/05, §§ 31 and 53, 10 May 2011).

27. The Court considers that in order to be able to lodge a well-argued constitutional complaint, the applicant company had to know the content and the full reasoning of the Supreme Court, albeit a summary reasoning. Given that the applicant company was not able to become acquainted with the Supreme Court's reasoned judgment, or even the mere fact that the appeal had been rejected, until 26 September 2017, it cannot be said to have had an effective right to a constitutional complaint prior to that date (compare *Georgiy Nikolayevich Mikhaylov v. Russia*, no. 4543/04, § 54, 1 April 2010).

28. If the position of the Constitutional Court is accepted, that would create a situation in which the applicant company had no opportunity to study the text of the Supreme Court's judgment prior to lodging its constitutional complaint. Such a situation is difficult to reconcile with Article 6 of the Convention, which, according to the Court's established case-law, embodies as a principle linked to the proper administration of justice the requirement that court decisions should adequately state the reasons on which they are based (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I; *Angel Angelov v. Bulgaria*, no. 51343/99, § 38, 15 February 2007; and *Georgiy Nikolayevich Mikhaylov*, cited above, § 55).

29. As to the Government's argument that the applicant company could have learned of the Supreme Court's decision through that court's website, the Court notes, first, that the Government have provided no evidence that this specific decision has ever been published on the Supreme Court's website. It is also noteworthy that the appeal had been pending before the Supreme Court for several years before it was dismissed in camera and without any prior notification to the parties. Most importantly, and as a matter of principle, the usual practice of the Albanian Supreme Court at that time was to publish the operative part of its decision when it was adopted, after which a significant time could elapse before the entire decision, with reasoning, was published. Thus, it could happen that the entire period for lodging a constitutional complaint would expire before the full reasoning of the Supreme Court's decision was published and made available to the parties. In that connection the Court notes that prior to 1 March 2017, the time-limit for lodging a constitutional complaint had been two years. Given the significant length of that time-limit, it might not have been entirely unreasonable to expect applicants to learn of the Supreme Court's decisions

from its website, in the absence of personal service, since they had ample time to do so. However, a new four-month time-limit appears too short for applicants to have had sufficient time to learn of the reasoning in the Supreme Court's decisions through that court's website, in particular given the frequent time lag between the adoption of the operative part and the full reasoning of its decisions.

30. In view of the above, the Court considers that the four-month time-limit for lodging a constitutional complaint should have been calculated, under the present circumstances, from 26 September 2017, when the Supreme Court's decision was served on the applicant company. However, the Constitutional Court counted that time-limit from 28 January 2016, when the Supreme Court had adopted its decision, and declared the applicant company's constitutional complaint inadmissible as being lodged out of time. The applicant company was thus deprived of its right of access to the Constitutional Court.

31. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of the applicant company's right of access to the Constitutional Court.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

33. The applicant company claimed 2,050,843 euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage.

34. The Government deemed these sums unfounded and excessive.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

36. The applicant also claimed EUR 64,500 for the costs and expenses incurred before the domestic courts and before the Court.

37. The Government deemed those sums unfounded and excessive.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to

quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 9 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President