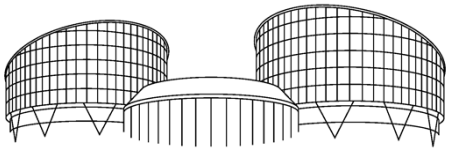

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ÇELA v. ALBANIA

(Application no. 73274/17)

JUDGMENT

Art 6 § 1 (civil) • Dismissal of constitutional complaint due to unforeseeable application of new four-month time-limit introduced after lodging of complaint, depriving applicant of right of access to a court • Constitutional Court's interpretation of procedural limitations not in compliance with legal certainty principle • Absence of clear legislation and judicial practice concerning starting point for calculation of new time-limit • Disproportionate burden on applicant

STRASBOURG

29 November 2022

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 Çela 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. 73274/17) 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 national, Mr Pëllumb Çela ("the applicant"), on 9 October 2017;

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

the parties' observations;

Having deliberated in private on 8 November 2022,

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

INTRODUCTION

1. The present case concerns the applicant's right of access to the Constitutional Court, which declared his constitutional complaint inadmissible as having been lodged out of time. The main issue in the present case is whether the newly introduced four-month time-limit for lodging a constitutional complaint was to be applied to the applicant's case.

THE FACTS

2. The applicant was born in 1953 and lives in Tirana. He was represented by Mr S. Hazizaj, a lawyer practising in Tirana.

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

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

5. On an unspecified date a third party, A.A. lodged a claim with the Tirana District Court against the applicant and the Çela-X Ltd. company, of which the applicant was the sole owner, seeking that the applicant vacate certain premises; he also sought damages. During the proceedings before the first-instance court further claims were lodged against the defendants by two

companies. On 6 October 2014 the first-instance court upheld the abovementioned claims. The applicant and the other defendant appealed against that judgment; on 16 October 2015 the Tirana Appeal Court upheld the first-instance judgment. The applicant and the other defendant then lodged an appeal with the Supreme Court, which dismissed it on 11 November 2016.

6. On 2 June 2017 the applicant and the other defendant lodged a constitutional complaint, which was declared inadmissible by the Constitutional Court on 29 June 2017 as being lodged outside the four-month time-limit, counting from 11 November 2016 when the Supreme Court's decision had been adopted.

RELEVANT LEGAL FRAMEWORK

LAW No. 8577 ON THE ORGANISATION AND FUNCTIONING AND THE FUNCTIONING OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ALBANIA (THE CCA)

7. Section 30 of the Constitutional Court Act of 10 February 2009 (as in force before amendments thereto enacted in November 2016) reads as follows:

Section 30

"1. The lodging of a complaint with the Constitutional Court shall be subject to the time-limits set out in this law.

2. A complaint lodged by an individual [in respect of an alleged] violation of his constitutional rights may be lodged no later than two years from the occurrence of that [alleged] violation. If the law provides a remedy, the individual may lodge a complaint with the Constitutional Court after exhausting all legal remedies in respect of the protection of his rights. In such cases, the time-limit for the lodging of a complaint is two years from the notification of the final-instance body's decision."

8. Law no. 99/2016 of 6 November 2016, published in the Official Journal no. 210 on 8 November 2016, amended the CCA. Section 30 of the CCA was repealed. A newly-introduced Section 71(a) of the CCA shortened the time-limit for lodging an individual constitutional complaint from two years to four months "of obtaining knowledge of the interference [with a constitutional right or freedom]" (*konstatimi i cënimit*). Section 86(3) of Law no. 99/2016 provided that section 71(a) of the CCA should enter into force on 1 March 2017. Law no. 99/2016 as such entered into force fifteen days after its publication in the Official Journal (section 88), that is on 23 November 2016.

THE LAW

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

9. The applicant complained that his right of access to the Constitutional Court had been violated, contrary to 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

10. The Government submitted that the applicant had abused his right of application but did not provide any arguments in that respect.

11. The applicant disagreed.

12. The Court notes that the Government's objection is unsubstantiated and must be rejected.

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' submissions

(a) The applicant

14. The applicant argued that there were no clear rules concerning the calculation of the time-limit for lodging a constitutional complaint. In particular, no provision specified that that time-limit was to be calculated from the date on which a Supreme Court's decision was adopted. He submitted that in his case the previous two-year time-limit for lodging a constitutional complaint should have been applied because the Supreme Court's decision had been adopted on 11 November 2016 – that is to say before 1 March 2017, when the newly introduced four-month time-limit had entered into force. Therefore, his constitutional complaint, lodged on 2 June 2017, had been lodged within the prescribed and applicable time-limit.

(b) The Government

15. The Government maintained that Law no. 99/2016 had been adopted on 6 November 2016 and published on 8 November 2016, and had provided that the new time-limit would be applicable from 1 March 2017 – thus giving ample opportunity for all interested to became acquainted with the new time-limit.

16. The new time-limit had been intended to promote legal certainty and to avoid interested parties being troubled by a protracted feeling of insecurity while awaiting the final adjudication of their cases before the Constitutional Court.

17. The time-limit for the applicant to lodge a constitutional complaint had started to run from the moment at which the alleged violation of his constitutional rights had occurred – namely, on 11 November 2016 (the date of the adoption of the Supreme Court's judgment). Thus, the time-limit for the applicant's constitutional complaint had expired on 11 March 2017.

18. The Government also stressed that, unlike the situation in the case of *Shkalla v. Albania* (no. 26866/05, 10 May 2011), the applicant in the present case did not deny that he had been informed of the Supreme Court's decision on 11 November 2016. He merely disagreed with the interpretation of the Constitutional Court as to when the four-month time-limit had started to run. In that respect the Government argued that it was not for the applicant to interpret the provisions regarding the time-limit.

19. The applicant himself had created the situation he was complaining of, because he had not lodged his constitutional complaint within the four-month time-limit.

2. The Court's assessment

(a) General principles

20. The relevant principles regarding 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 stresses that the right of access to a court 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 (extracts), 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

21. Applying the above principles in the circumstances of the present case, the Court notes that access to the Constitutional Court for individuals is secured through the possibility of lodging a constitutional complaint. That

access is, however, restricted by, *inter alia*, time-limits for lodging a constitutional complaint.

(i) Legitimate aim

22. 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 Company Limited v. Malta*, no. 30633/11, § 56, 23 July 2013).

23. 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 delivered by the Constitutional Court is capable of quashing such decisions or acts and of remitting the proceedings to a lower-instance stage, or of remedying the situation complained of by other means. The shortening of the said time-limit, in the Court's view, was thus aimed at strengthening legal certainty and served to ensure that it did not take an overly-lengthy period of time to definitively resolve any case.

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

(ii) Proportionality

25. 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.

26. The case at issue concerns the question of whether the manner in which the newly introduced four-month time-limit was applied in the applicant's case gives rise to a breach of Article 6 § 1 of the Convention.

27. The Court notes at the outset that it is a generally recognised principle that procedural rules apply immediately to pending proceedings (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 35, *Reports of Judgments and Decisions* 1997-VIII, and *Galeano Peñas v. Spain*, no. 48784/20, § 52, 31 May 2022); therefore, the fact that the Constitutional Court applied the newly introduced time-limit to pending cases was not in itself contrary to the guarantees given under Article 6 § 1 of the Convention.

28. The Court reiterates that the accessibility, clarity and foreseeability of legal provisions and case-law, notably as regards rules on form, time-limits and prescription, ensure the effectiveness of the right of access to a court (see,

mutatis mutandis, *Petko Petkov v. Bulgaria*, no. 2834/06, § 32, 19 February 2013, and *Gil Sanjuan v. Spain*, no. 48297/15, § 38, 26 May 2020). In respect of cases such as the present one the Court has held that, in order to satisfy itself that the very essence of an applicant's right of access to a court was not impaired, it must examine whether the application of the time-limit in question could be regarded as foreseeable for the applicants, having regard to the relevant legislation and case-law and the particular circumstances of the case, and whether, therefore, the penalty for failing to respect that time-limit infringed the proportionality principle (see *Levages Prestations Services v. France*, 23 October 1996, § 42, *Reports* 1996-V; *Osu v. Italy*, no. 36534/97, § 35, 11 July 2002; and *Majski v. Croatia* (no. 2), no. 16924/08, § 69, 19 July 2011; see also *Zubac*, cited above, § 87 with further references).

29. With regard to the foreseeability of the restriction the Court notes that the 2016 amendments to the Constitutional Court Act were published in Official Journal no. 210 on 8 November 2016. Section 71(a) of the Act provided that the time-limit for lodging a constitutional complaint was four months. Section 86(3) of the amending Act provided that the new time-limit under section 71(a) would be applicable from 1 March 2017.

30. The applicant's understanding of these provisions was that the newly introduced four-month time-limit would be applicable in respect of final decisions adopted from 1 March 2017 onwards.

31. However, the Constitutional Court applied the four-month time-limit to all cases where a decision against which a constitutional complaint was lodged had been adopted within the four months preceding 1 March 2017.

32. At this juncture the Court reiterates that it is in the first place for the national authorities (and notably the courts) to interpret domestic law; the Court will not substitute its own interpretation for the courts' in the absence of arbitrariness. This applies in particular to the interpretation by the courts of rules of a procedural nature, such as time-limits governing the submission of documents or the lodging of appeals (see *Tejedor García v. Spain,* 16 December 1997, § 31, *Reports* 1997 VIII, and *Jensen v. Denmark*, no. 8693/11, § 35, 13 December 2016). The Court's role is limited to that of verifying the compatibility with the Convention of the effects of such an interpretation. The rules governing the time-limits, or their application, should not prevent litigants from using an available remedy. Furthermore, the Court must make its assessment in each case in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (see *Eşim v. Turkey*, no. 59601/09, § 20, 17 September 2013).

33. The Court notes that in Albania a constitutional complaint (which is available to individuals for the purpose of alleging a violation of their constitutional rights) is typically lodged against decisions of the Supreme Court that have been delivered in criminal, civil or administrative-law proceedings. Law no. 99/2016, while providing that the new four-month

time-limit would enter into force on 1 March 2017, did not specify whether the newly introduced four-month time-limit for lodging a constitutional complaint would be applied for final ordinary decisions adopted from 1 March 2017 onwards, thus creating uncertainty in that respect.

34. The Court has accepted that there was no infringement of the applicant's right of access to a court where legal provisions that might have been lacking in clarity had been supplemented by settled case-law that had been published and had been accessible and sufficiently precise as to enable the applicant (if necessary with the benefit of skilled advice) to determine what steps she should be taking (see *Cañete de Goñi v. Spain*, no. 55782/00, § 41, ECHR 2002-VIII).

35. A coherent domestic judicial practice and a consistent application of that practice will normally satisfy the foreseeability criterion in regard to a restriction on access to superior courts (see, for example, *Zubac*, cited above, § 88). When it comes to legislative amendments, they take effect after a certain period of time, in the manner of a *vacatio legis*, which allows all interested persons to become acquainted with the new rules. However, in the present case Law no. 99/2016 created uncertainty as to the manner in which the new time-limit for lodging a constitutional complaint was to be calculated; this called for fresh clarification by the Constitutional Court as to the exact method to be employed in order to calculate that time-limit.

36. Since the present case concerns a situation involving a newly introduced time-limit, the Constitutional Court's practice could not have been seen as being developed. The amendments to the Constitutional Court Act entered into force on 23 November 2016 – that is to say fifteen days after it had been published in the Official Journal of 8 November 2016, while the provision fixing a new time-limit for lodging a constitutional complaint entered into force on 1 March 2017. The applicant lodged a constitutional complaint on 2 June 2017 against the above-mentioned decision of the Supreme Court of 11 November 2016 – a decision that had been adopted before the amendments to the Constitutional Court Act had entered into force. The applicant's constitutional complaint was declared inadmissible on 29 June 2017 by the Constitutional Court as having been lodged out of time. Given that time frame, the application of section 86(3) of Law no. 99/2016 had not been clarified by the Constitutional Court at the time when the applicant lodged his constitutional complaint, and the Government have not submitted any arguments or cited any case-law to prove otherwise.

37. Therefore, for the purposes of the present case, the view of the Constitutional Court that the new time-limit applied to constitutional complaints lodged against all decisions of the Supreme Court adopted in the period between 1 November 2016 and 1 March 2017 cannot be seen as constituting established practice of which the applicant should have been aware.

38. Given the above-noted considerations, the Court is of the view that it was not unreasonable for the applicant to have expected that the newly introduced four-month time-limit for lodging a constitutional complaint applied only to complaints against Supreme Court decisions that had been delivered after 1 March 2017. Moreover, the applicant's interpretation of the procedural rules in question does not appear to be inconsistent with the wording of section 86(3) of Law no. 99/2016 (see, *mutatis mutandis*, *Kravchenko v. Ukraine*, no. 46673/06, § 45, 30 June 2016).

39. Therefore, the Court considers that given the circumstances of the instant case, the application of procedural limitations by the Constitutional Court was not sufficiently clear and foreseeable from the applicant's point of view and thus was not in compliance with the principle of legal certainty. There is nothing in the applicant's behaviour to justify that the burden of the consequences of that uncertainty should be placed on him (compare *Kravchenko*, cited above, § 47).

40. In the light of all those facts, the Court considers that a disproportionate burden was imposed on the applicant, thus upsetting the requisite fair balance between, on the one hand, the legitimate aim of ensuring compliance with the formal conditions for applying to the Constitutional Court, and on the other, the right of access to that court. In the present case, the fact that the applicant's constitutional complaint was declared inadmissible as having been lodged outside the four-month time-limit, in the absence of clear legislation and developed practice, deprived the applicant of his right of access to the Constitutional Court.

41. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

43. The applicant lodged no claim in respect of pecuniary or non-pecuniary damage or in respect of costs and expenses, and the Court sees no reasons to make any such award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the applicant's right of access to the Constitutional Court admissible;

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

Done in English, and notified in writing on 29 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President