

# *Strasbourg Dissappointments*<sup>1</sup>

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## **1. The prologue of the disappointments**

The European Court of Human Rights (hereinafter the Strasbourg Court) had and still has two issues of great importance for the Albanian state. The first one was the issue of fair compensation of former owners unjustly expropriated by the communist regime in relation to Law no. 133/2015 “*Law on the treatment of property*” (hereinafter Law no. 133/2015), which concluded the process of their compensation. The second is its approach to administrative and judicial practice, which respectively the Independent Qualification Commission or the Appeal Chamber have held in the process of transitional re-evaluation of judges and prosecutors, in which officials of the justice system have been dismissed during this period.

The first issue was resolved. On Thursday, 07/05/2020, the Strasbourg Court published the decision in the case “*Agim Beshiri and 11 others against Albania*”<sup>3</sup>, where the former owners complained that their property rights and the right to due process were violated from non-execution for several decades of final decisions on the financial compensation of unjustly expropriated property by the communist regime. It took the Strasbourg Court 63 pages to conclude that the claims of the former owners were procedurally inadmissible and that it had no jurisdiction to review them. With this decision 12 Albanian court cases were repatriated, of which the earliest had since 2006 that had escaped the non - resolving judicial jurisdiction of motherland.

<sup>1</sup> The very first draft of this article is published in the daily newspaper “Panorama”, d. 12 May 2020. See in the web: <http://www.panorama.com.al/zhgenjimi-i-strasburgut/>. The article was translated by Mr. Dritan Dema which the author wants to thank him very much for the help he gave with the translation and the good collaboration he is always keen to give.

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<sup>3</sup> See the case “*Agim Beshiri and 11 others against Albania*”, Ap. No. 29026/06, d. 17 March 2020, Second Section, ECHR, decision on the admissibility. See in the web: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-202475%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202475%22]}).

Seven of these requests, the earliest of 2006, one of 2008, one of 2010, one of 2011, two of 2014 and one of 2015 were declared inadmissible because they had not submitted any request to the Agency of Property Treatment (hereinafter APT) or further in the competent Albanian courts, in accordance with the provisions of the new law. Four of these requests, two in 2012 and two in 2014, were declared inadmissible because, although they had submitted a request to the Strasbourg Court, they had also submitted a request to the APT and further to the court and the proceedings for their trial were ongoing in Albania under the new law. A request filed in 2014, was declared inadmissible because, according to Law no. 133/2015, the former owners were compensated by the Albanian authorities (see paragraphs 218 - 220 of the decision).

## 2. First disappointment

From reading the decision I cannot hide the first great disappointment I have received from a jurisprudence of the Strasbourg Court, in ten years of my professional life as a judge. I did not understand how the rule of merging claims (Article 42 point 1 of the Rules of the ECtHR<sup>4</sup>) could be applied to cases where the issue of law and the fact that they raise are quite different. That is, seven cases are joined, the plaintiffs of which have not filed any claim with the Albanian administrative or judicial authorities, with five cases, the plaintiffs of which are litigants and are being tried by Albanian courts or creditors against the state, after being compensated in accordance with the Law no. 133/2015.

Further, at the end of a long waiting for international justice, the seven parties are told that your requests are inadmissible because you have not exhausted domestic remedies and that only after you have done so come and complain again in Strasbourg about the Albanian State. Meanwhile, when these cases are repatriated to the motherland, ATP will not accept them for consideration, because the deadline for considering the requests has expired, and the courts will decide not to accept the lawsuit without considering the case on the substantial merits, as their time limit for filing a lawsuit has expired. Namely, with this decision, the Strasbourg Court for these seven requesting parties has created a “*neither-in-heaven-nor-on-earth*” effect, or in other words the purgatory effect of the justice.

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<sup>4</sup> See in the web: [https://www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf)

### 3. Second disappointment

In this case, 12 applicants complained among other things that Albania had failed to execute final compensation decisions over decades, the earliest year being 1993, and claiming that a maximum of 27 years of waiting for it to execute an executive title are many and as a result Article 6 of the European Convention of Human Right (hereinafter ECHR) has been violated, in the element of completion of the execution process within a reasonable time. I did not understand why the decision reflects Articles 399/1 - 399/12 of the Code of Civil Procedure<sup>5</sup>, which regulate the special trial of compliance with reasonable deadlines and I am even more unclear of the reason which the means of this internal appeal has to do with the alleged violations by 12 requesting parties in the Strasbourg Court. If the message of these respective parts of the decision is to conclude that in the domestic legal order there is an accessible means of appeal for unreasonable terms of trial or execution, it must be acknowledged that this conclusion is erroneous in the case of these 12 claims.

This special procedure, as presented by the new law in Albania, has entered into force on 05.11.2017 and the retroactive force of the amending law is not such as to financially compensate everyone who in the Albanian courts or bailiff service has not been able to enjoy fundamental rights during decades of litigation or execution process. This means that this remedy for 12 pairs of applicants is accessible, not to the lawsuits that they appealed to the Strasbourg Court, but to those that they have today or will have in the future in Albania. So, I found this part of the decision irrelevant to the judgment and as such it gave me the perception of a bit of balm for the forsaken of justice (see paragraph 212 of the decision).

With this position held, we must expect in the future jurisprudential of the Strasbourg Court, that any Albanian applicant to this court who has claimed violation of the right to due legal process, for the completed trials in all judicial levels in Albania before 05.11.2017, in the element of reasonable time, would be in vain. This is because each of them had to exhaust the request for violation of the reasonable time limit created by the civil procedural law in 2017. Exactly, the Court that the cornerstone of jurisprudence has the principle of non-transformation of material and procedural rights into theoretical and illusory, in the case of the confrontation of Albanian citizens with their state, it refuses to give justice, citing the principle of subsidiarity and repatriating them to the motherland. However, legally this repatriation, even for the claims of violation of the reasonable time limit for the processes before 05.11.2017, has created a purgatory effect and constitutes a legal repatriation to procedural means completely inaccessible, theoretical and illusory.

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<sup>5</sup> The Albanian Civil Procedure Code is amended by the Law no. 38/2017 with this part of regulation and these articles entered in to force in 05.11.2017. There is no provision that this possibility has retrospective effect.

#### 4. Third disappointment

I did not understand what has changed in the jurisprudence of the ECtHR from the case “*Sharrxhi and others against Albania*”<sup>6</sup> of January 2018 (the explosive demolition of the land-sea palace in Vlora, in south of Albania) to the case “*Agim Beshiri and others against Albania*” and in May 2020. Meanwhile, in January 2018 the Strasbourg Court, when the Supreme Court had 8 judges in its effective staff, due to the fact that the decision of the Administrative Appellate Court was suspended and that the trial of the case had not been listed in the Supreme Court for two years, it was concluded that in these conditions the recourse and the third instance trial in Albania could not be an effective mean of appeal. It was the very first case-law of ECtHR that the bankruptcy of one European supreme courts was internationally acknowledged and that was the case of the Albanian Supreme Court. This unique conclusion of ECtHR was an extraordinary invitation for immediate access to its international jurisdiction for unresolved Albanian litigants forgetting about the principle of subsidiarity.

All of a sudden, in May 2020, when the Supreme Court originally had three months with three judges, it was one year with one judge and not even two months since three judges had been newly appointed, and when for years a case in one of the appellate courts is a world-known fact that it takes years to complete the trial, the Albanian courts in the eyes of the Strasbourg Court become effective means of appeal, so much so that it seems premature to judge their effectiveness while trials in these impossible trials forums are still ongoing (see paragraph 219 of the decision).

Meanwhile, it remained inexplicable for me from reading the decision, why in 63 pages of reasoning, where detailed information were given about normative bylaws, inter-ministerial measures taken given by government statistics about facts that have and have not relevance to the issue is not clearly and accurately reflected in the fact that, according to Law no. 133/2015, the final and enforceable decision in all cases of property compensation issues, is not the decision of the appellate court, according to article 451, letter “ç” of the Code of Civil Procedure, but it is the decision of the Supreme Court. I need to add here the fact that, recently, this interpretive attitude and approach of the law has been maintained by the Civil Chamber<sup>7</sup> and the Administrative Chamber<sup>8</sup> of the Supreme Court. I consider that this fact was of fundamental importance to the Strasbourg Court for

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<sup>6</sup> See the case “*Sharrxhi and Others v. Albania*”, Ap. No. 10613/16, d. 11 January 2018, First Section, ECtHR. See in the web: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-179867%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179867%22]}).

<sup>7</sup> See the Decision no. 75/396, d. 13.05.2020; the Decision no. 112/489, d. 13.05.2020 and the Decision no. 128, d. 06.05.2020 of the Civil Chamber of the Supreme Court.

<sup>8</sup> See the Decision no. 45/327, d. 08.06.2020 and the Decision no. 56/348, d. 08.06.2020 of the Administrative Chamber of the Supreme Court.

the conclusion that it was not able to reach it in a way, prematurely, as it admits in the decision.

## 5. Fourth disappointment

I did not understand what has changed in the jurisprudence of the Strasbourg Court on the issue of the seven claims identified above, which have not filed any claim or lawsuit in Albania under Law no. 133/2015, with the case “*Siliqi and Others v. Albania*”<sup>9</sup> of 2015; with the case “*Metalla and Others v. Albania*”<sup>10</sup> of 2015; with the case “*Luli v. Albania*”<sup>11</sup> of 2014; with the case “*Sharra and Others v. Albania*”<sup>12</sup> of 2015; “*Rista and Others v. Albania*”<sup>13</sup> of 2016; with the case “*Halimi and Others v. Albania*”<sup>14</sup> of 2016; with the case “*Karagoji and Others v. Albania*”<sup>15</sup> of 2016, decisions of the Strasbourg Court which were issued after the pilot decision “*Manushaqe Puto and others v. Albania*”<sup>16</sup> and after the entry into force of Law no. 133/2015. All these jurisprudential decisions of the Strasbourg Court are identical in the circumstances of the fact and the issues of law that arise for resolution as the circumstances of the fact are presented and the issues of law in the seven claims identified in paragraph 218 of the decision. However, their legal fate is diametrically different. For all decisions of 2015 and 2016, the Strasbourg Court did not take into account the new law to determine its jurisdiction and

<sup>9</sup> See the case “*Siliqi and Others v. Albania*”, Ap. Nos. 37295/05 and 42228/05, d. 10 March 2015, Fourth Section, ECtHR. See in the web: file:///C:/Users/Florjan%20Kalaja/Downloads/001-152778.pdf.

<sup>10</sup> See the case “*Metalla and Others v. Albania*”, Ap. Nos. nos. 30264/08, 42120/08, 54403/08 and 54411/08, d. 16 July 2015, Fourth Section of the ECtHR. See in the web: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22metalla%20and%20others%22%5D%2C%22itemid%22:%5B%22001-156069%22%5D%7D>}.

<sup>11</sup> See the case “*Luli v. Albania*”, ap. no. 30601/08, d. 15 September 2015, Fourth Section of the ECtHR. See in the web: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22luli%22%5D%2C%22itemid%22:%5B%22001-157342%22%5D%7D>}.

<sup>12</sup> See the case “*Sharra and Others v. Albania*”, Applications nos. 25038/08, 64376/09, 64399/09, 347/10, 1376/10, 4036/10, 12889/10, 20240/10, 29442/10, 29617/10, 33154/11 and 2032/12, d. 10.11.2015, Fourth Section of the ECtHR. See in the web: <https://www.reporter.al/wp-content/uploads/CASE-OF-SHARRA-AND-OTHERS-v.-ALBANIA.pdf>

<sup>13</sup> See the case “*Rista and Others v. Albania*”, ap. Nos. nos. 5207/10, 24468/10, 36228/10, 39492/10, 39495/10, 40751/10 and 48522/10, d. 17 March 2016, Fourth Section of ECtHR. See in the web: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22rista%22%5D%2C%22itemid%22:%5B%22001-161410%22%5D%7D>}.

<sup>14</sup> See the case “*Halimi and Others v. Albania*”, ap. No. 33839/11, d. 7 April 2016, Fourth Section of the ECtHR. See in the web: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22halimi%22%5D%2C%22itemid%22:%5B%22001-161809%22%5D%7D>}.

<sup>15</sup> See the case “*Karagoji and Others v. Albania*”, ap. No. 32382/11, d. 7 April 2016, First Section of the ECtHR. See in the web: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22karagoji%22%5D%2C%22itemid%22:%5B%22001-161806%22%5D%7D>}.

<sup>16</sup> See the case “*Manushaqe Puto and others v. Albania*”, ap. nos. 604/07, 43628/07, 46684/07 and 34770/09, d. 4 November 2014, Fourth Section of the ECtHR. See in the web: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22puto%22%5D%2C%22itemid%22:%5B%22001-147862%22%5D%7D>}.

jurisprudence, although it had entered into force and the ATP had become fully operational during this time, while in 2020 it does the opposite.

## 6. Fifth disappointment

I did not understand how it differs the legal case that was filed for settlement before the Strasbourg Court in four decisions of May 22, for these seven requests identified in paragraph 218 of the decision, 2018, specifically in the cases of “*Topi v Albania*”<sup>17</sup>, “*Hysi vs. Albania*”<sup>18</sup>, “*Malo v. Albania*”<sup>19</sup>, “*Muça v. Albania*”<sup>20</sup>. In the latter, the observance of Article 6 of the ECtHR for convicts *in absentia* was presented for a solution in the criminal process with presumption of knowledge about the criminal proceeding. The Albanian Government asked the Strasbourg Court to declare these claims inadmissible and consequently to cede these issues to its international jurisdiction, under the Article 450 of the Criminal Procedure Code as amended in 2017.<sup>21</sup>

The new amendments, trying to apply the ECtHR’s standards on this matter<sup>22</sup>, provided that convicts *in absentia* could request a review of the final criminal court decision, although the requests were submitted years ago on 01.08.2017, the moment when the legal changes of 2017 came into force. The ECtHR assessed in these four cases on the same date that the legal changes could not resolve the issue of retroactive applicants and therefore did not deviate from international jurisdiction, finding Albania in violation of Article 6 of the ECtHR in these cases. All of a sudden, the Strasbourg Court, two years later, decided to repatriate seven claims - exactly identical substance of the procedural issues - to the parent justice system, in which the legal deadlines have expired for months. Again, returning to a justice of inaccessible material and procedural means, theoretical and illusory.

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<sup>17</sup> See the case “*Topi v Albania*”, Ap. No. 14816/08, d. 22 May 2018, Second Section of the ECtHR. See in the web: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22topi%22\],%22itemid%22:\[%22001-183117%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22topi%22],%22itemid%22:[%22001-183117%22]}).

<sup>18</sup> See the case “*Hysi vs. Albania*”, ap. No. 72361/11, d. 22 May 2018, Second Section of the ECtHR. See in the web: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22hysi%22\],%22itemid%22:\[%22001-183121%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22hysi%22],%22itemid%22:[%22001-183121%22]}).

<sup>19</sup> See the case “*Malo v. Albania*”, ap. No. 72359/11, d. 22 May 2018, Second Section of the ECtHR. See in the web: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22malo%22\],%22itemid%22:\[%22001-183120%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22malo%22],%22itemid%22:[%22001-183120%22]}).

<sup>20</sup> See the case “*Muça v. Albania*”, ap. No. 57456, d. 22 May 2018, Second Section of the ECtHR. See in the web: [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22muca%22\],%22itemid%22:\[%22001-183119%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22muca%22],%22itemid%22:[%22001-183119%22]}).

<sup>21</sup> See the Law no. 35/2017, the amendments of which entered into force on 01.08.2017.

<sup>22</sup> See for example the case “*Sejdovic v. Italy*”, ap. No. 56581/00, d. 1 March 2006, decision of the Grand Chamber of the ECtHR.

## 7. Sixth disappointment

I did not understand what has changed in the way the Strasbourg Court drafts its decisions, where universally after the factual part of the case and the positive law, it puts in the decision the claims of the applicant first, who is the initiating subject of the trial and then further, that of government, one that is supposed to be judged as a violator of fundamental human rights and freedoms. In this decision of May 2020, the Strasbourg Court even formally had first established the defence arguments of the government and then further, presented the arguments of the requesting individuals.

For the first time I noticed that maybe even in this formal and unimportant element on the substance of the matter, perhaps it is done upon the negligence of the draftsman in the way the decision was drafted, there may be room to perceive something reasonable. For the first time I noticed in a jurisprudence of the Strasbourg Court that the arguments claimed by the government were taken for granted and that they were then used to declare inadmissible the claims of 12 applicants.

## 8. Seventh disappointment

I did not understand why the Strasbourg Court, in a completely procedural decision of the inadmissibility of the request for trial, or in other words in a decision to remove the case from its jurisdiction, undertakes to resolve the merits of the case of compliance with Article 6 and Article 1. of Protocol no. 1 of the ECtHR of Law no. 133/2015. Furthermore, I did not understand the connection between the non-negotiable condition of the Strasbourg Court, set at 10% of the real value of the property, as an acceptable standard of compensation for the former owners, with the content of a procedural decision of the inadmissibility of the request and the removal of the case from international jurisdiction.

I also did not understand why the Strasbourg Court in this decision ceded the principle of self-restraint beyond the limits of resolving the case in relation to the type of disposition it has made available, by taking an abstract judgment on the quality of its internal regulation, as if it had been invested in this trial according to Protocol no. 16 of the ECHR. This decision of inadmissibility, although not formally self-proclaimed, materially is the second pilot decision on the issue of former owners, after the decision in the case “*Manushaqe Puto and others against Albania*”. Not only the second but also the last in terms of jurisprudential innovations in this special Albanian issue in the Strasbourg Court. With this decision, the three-decade-old cause of the former owners died.



## 9. Final remarks

I estimate that with this procedural and in the same time material decision, the Strasbourg Court generally removed also *pro - future* concerns and the backlog of all similar Albanian cases. I do not understand whether there is room - after all that has been said and concluded in 221 paragraphs of the decision - for the considerations given in paragraph 222 thereof, where, in other words, former owners excluded from its tutoring jurisdiction are told that:

*“Do not worry and keep in mind that if the Albanian state authorities do not reimburse you the property again after and according to this decision, we are here to protect the rights that the ECtHR provides since 1957!”.*

I have the civic and professional conviction that this issue is a poor international and especially European jurisprudential development. Through which an European court precedent was set, unlike what the centuries-old legal traditions of Council of Europe member states have done, that jurisdiction and competence are determined in the moment when the court is invested and that subsequent changes to the law and fact have no relevance to them. With this *sui generis* standard for Albania in the Strasbourg Court, every member state of the Council of Europe understands that it is enough to change a law, as you have systematically violated fundamental rights or freedoms, to disable even the only hope of justice, the international one to avenge you. In this sense, I consider that from 7 May 2020 the Court of Strasbourg protects less the citizens who live and are violated in the territorial space of the Council of Europe.

Through this decision, the ECtHR showed that it is not above the member states when the issue arises to resolve general issues of the legal system. Consequently, it is concluded that the individual in the jurisdiction of the Council of Europe has no effective means of appealing to challenge the general legal problems of a Member State. With this recently promoted standard, the ECtHR showed that it remains as a European hope only for individual and episodic national legal or judicial issues.

From 7 May 2020 the first major Albanian problem in the Strasbourg Court was solved. This court already has on its agenda another similar or even bigger problem, not caused by the communist regime, but by the democratic, modern state and a member of the Council of Europe.

I do not know whether the resolution of the first case will affect the resolution of the second case. At first glance they have nothing to do with each other. But still I come to understand and feel that the philosophy of giving justice, which first aims only to be effective and to be discharged from the backlog, is not a good sign.



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ECtHR; [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22topi%22\],%22itemid%22:\[%22001-183117%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22topi%22],%22itemid%22:[%22001-183117%22]})};

The case “*Hysi v. Albania*”, ap. No. 72361/11, d. 22 May 2018, Second Section of the ECtHR; [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22hysi%22\],%22itemid%22:\[%22001-183121%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22hysi%22],%22itemid%22:[%22001-183121%22]})};

The case “*Malo v. Albania*”, ap. No. 72359/11, d. 22 May 2018, Second Section of the ECtHR; [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22malo%22\],%22itemid%22:\[%22001-183120%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22malo%22],%22itemid%22:[%22001-183120%22]})};

The case “*Muça v. Albania*”, ap. No. 57456, d. 22 May 2018, Second Section of the ECtHR; [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22muca%22\],%22itemid%22:\[%22001-183119%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22muca%22],%22itemid%22:[%22001-183119%22]})};

Law no. 35/2017, the amendments of Criminal Procedure Code which entered in to force on 01.08.2017;

The case “*Sejdovic v. Italy*”, ap. No. 56581/00, d. 1 March 2006, decision of the Grand Chamber of the ECtHR.