



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

Communicated on 12 January 2016

FIRST SECTION

Application no.53488/15  
FrancescoBECCHETTI and OTHERS  
against Albania  
lodged on 21 October 2015

**STATEMENT OF FACTS**

The application was lodged by four applicants, whose list is set out in the appendix. The applicants are represented before the Court by A. Saccucci, a lawyer practicing in Rome.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants are shareholders in a number of commercial companies. MrBecchetti is also the owner of Agon Channel, a privately owned television channel broadcasting in Albania and Italy.

An administrative investigation was carried out by the authorities into a number of commercial transactions performed by the applicants' commercial companies. It was suspected that commercial transactions had been concluded fictitiously in order to evade taxes and obtain other benefits. The case file was referred to the prosecutor's office which, in 2014, opened a criminal investigation.

*1. The applicants' arrest*

On an unspecified date the prosecutor's office requested that the first, third and fourth applicants be detained on remand. No request was made in respect of the second applicant.

**(a) As regards the first and third applicants**

On 5 June 2015 the Tirana District Court ("the District Court"), sitting in a single-judge formation, ordered the first and third applicants' remand in custody. The first applicant was charged with forgery of documents and money laundering under Articles 186 § 2 and 287 § 2 of the Criminal Code

(“CC). The third applicant was charged with failure to pay taxes, forgery of documents and money laundering under Articles 181, 186 § 2 and 287 § 2 of the CC. Both applicants were absent from the hearing.

On 5 June 2015 the District Court ordered the freezing of the first and third applicant’s assets.

On 16 July 2015 the prosecutor informed the first and third applicants in writing of the charges against them.

The first and third applicants appealed against the District Court’s decision alleging that it was grounded on insufficient evidence. They were both represented by a lawyer of their choosing.

On 5 August 2015 the Court of Appeal, sitting in the same composition, dismissed the applicants’ appeals.

Their appeals (*rekurs*) to the Supreme Court are currently pending.

**(b) As regards the second applicant**

On 5 June 2015 the District Court ordered the freezing of the second applicant’s assets. No security measure was sought by the prosecutor or imposed by the court.

On 16 July 2015 the prosecutor informed in writing the second applicant of the charges against her under Article 287 § 2 of the CC.

**(c) As regards the fourth applicant**

On 5 June 2015 the District Court, sitting in a single-judge formation, ordered the fourth applicant’s placement under house arrest. She was charged with money laundering under Article 287 § 2 of the CC. The fourth applicant alleges that she was brought to the hearing room wearing handcuffs and that she was met with flashes of cameras and video cameras. She submitted a photograph in support of this allegation as well as video footage on a CD-ROM.

On the same day the District Court ordered the freezing of the fourth applicant’s assets.

The fourth applicant appealed against the District Court’s decision alleging that it was grounded on insufficient evidence.

On 26 June 2015 the Court of Appeal dismissed her appeal.

Her appeal (*rekurs*) to the Supreme Court is currently pending.

*2. Public statements concerning the applicants*

On 9 June 2015 the Prime Minister (“PM”) posted a message on Twitter as follows: “decriminalization, a fig leaf that falls and leaves the DP [the opposition] uncovered when crime is struck at. Freezing the source of dirty money which fed AgonCH[annel] [is] a success! - *dekriminalizimi, gjethefikujëbie e nxjerrcullak PD-nëkurgoditetkrimi! Bllokimiiburimittëparasësëzezëqëushqente Agon Channel, njësukses*”.

On 12 June 2015 the PM, in a televised interview broadcast on the television programme “*Talk Show*” on VizionPlus, a privately owned television channel, further explained his Twitter message. The applicants submitted video recording of the interview, whose relevant excerpts are follows:

“Host: ... You have said that ‘freezing the source of dirty money which fed Agon Channel is a success. Can you reveal something more? This means that you knew that there was a source of dirty money?’

PM: This is not true.

Host: You tweeted that message yourself.

PM: Yes. Twitter has 140 characters and one should be as concise [as possible]. It is about a massive money laundering scheme, which has been under investigation for a long period of time by the Government structures and it was reported for profound investigation to the prosecutor’s office. This is not connected at all with Agon Channel in the sense of a media outlet which is being fought against; because there is no greater shame to become the advocate of a screen [media], as regards freedom to inform, when the screen is switched on and off, set in operation through sources of dirty money.

Host: The fact is that this is a highly sensitive case, because we are talking about a media [outlet]; it concerns free speech. There is, undoubtedly, no other sector which is excluded from corruption, crime, but the fact is that this case carries such sensitivity.

PM: Nowhere is there any principle that, insofar as free speech is being nurtured by dirty money in the way of a commercial media [outlet], it must be treated with caution. There should be no restraint, no mercy.

Host: Critics say that you are giving a verdict when you mention ‘dirty money’ and it would appear that there is no need to have a trial or carry out another investigation.

PM: I represent the Albanian government, the structures of the Albanian State, the structure of the Albanian executive power, which have carried out an investigation and reported an outrageous (*skandaloz*) scheme of fraud and money laundering to the prosecutor’s office. I defend this belief because it has been formulated by State structures. I am not saying that there should be punishment or there should not be punishment, how to punish, how much to punish, whom to punish. I am talking as to why I have said that and why I stand by such belief.”

On 15 June 2015 the PM appeared in a televised interview broadcast on the television programme “5 pyetjenga Babaramo” on A1 Report, a privately owned television. The relevant extracts of the interview, whose video was submitted by the applicants in a CD-ROM, read as follows:

“Host: I would like to ask about the Becchetti case. Unless I am mistaken, you publicly stated, via Facebook and Twitter, that he has laundered money. In the meantime, following your statement, this controversial character has brought a civil claim against the Albanian State before international arbitration seeking damages at 160 million euros and he claims that the courts and the prosecutor’s office are under your authority (*kontroll*). Do you think that your statement was premature, rash and may backfire?

PM: I made no hasty statement. I simply hailed an investigation which was carried out by State structures, in which the General Directorate of Taxes and other specialised structures were involved, as a success and, I, most certainly, have the right and obligation to support State structures in their investigative actions against economic crime and corruption. I believe in the integrity of that investigation and I did not hand down a verdict, but I considered that freezing the source of dirty money which finances a media outlet was a success; you know it better than me, as do all your colleagues, that there are mind-blowing and outrageous inflows of offers for a country like Albania (...). The fact that you do not voice it does not make this truth a lie and, on the other hand, this is not connected to the media but it relates to the financing of a criminal economic activity, as has been indicated by the investigation.

Host: The prosecutor’s file does not reveal clearly whether it concerns money laundering or tax evasion. What took place? How did it operate?

PM: I am not a prosecutor; I can simply say that I consider it a success that an investigation was carried out into economic crime. As to the nature of the economic crime, this is assessed by the prosecutor and examined by the court.

Host: The person concerned has drawn a parallel line between him and Khodorkovsky on one hand and you and Putin on the other. There is a sort of symmetry. If you, the PM speaks out, gives a verdict without...

PM (interjects): I did not give a verdict (whatsoever)...

Host (continues): a decision being given by the court...

PM: I did not hand down a verdict. I considered that the investigative actions of the State structures were a success.”

Following two more questions asked by the host in respect of a possible link of this investigation with Agon Channel as a media outlet, the PM stated as follows:

“This is not about Agon Channel and Agon Channel was not targeted. An extremely suspicious source of financing giving rise to economic crime was struck at. There is no Agon Channel issue (...)

No media outlet has been under investigation. An extremely suspicious economic activity that is stretched like an octopus, consisting of many elements, has been under investigation.”

On 17 June 2015 the PM appeared in a televised interview broadcast on the television programme “*Opinion*” on TV Klan, a privately owned television channel. The relevant extracts of the interview, whose video was submitted by the applicants in a CD-ROM, read as follows:

“Host: My two last questions. PM, you made a statement when the prosecutor’s office issued an arrest order against as well as the seizure of bank accounts belonging to an Italian investor, one of the biggest investors in Tirana (interrupted by the PM) you immediately made a statement that exerts pressure on the justice.

PM. I understood.

Host: My second question, was the seizure imposed by the prosecutor’s office a retaliation against the stance of the media outlet he owns?

PM: (...) the investor in question has been investigated by the Albanian Government structures in cooperation with the Italian Government structures.

...

An investigation had been ongoing and I became interested after it had occurred. When I tweeted, I did not refer to a media [outlet] ...

...

Turning to what I posted, I spoke about the source of funding, not about the media [outlet]. Twitter has 140 characters, one cannot make longer explanations. I stated that it was a success because that breed of investor has caused this State and this people enormous damage by manipulating trials and, in the meantime, by holding hostage the Albanian State in a concession in respect of which he has utterly failed to comply with a single condition. I have nothing against him. I do not know him at all. I am talking about the phenomenon. It is an outrageous phenomenon against which we have waged a war and which we will combat until the end.”

## **B. Relevant domestic law**

### *1. Presumption of Innocence*

The Constitution, insofar as relevant, reads:

**Article 30**

“Everyone is innocent as long as his guilt has not been proven by a final court decision.”

The Code of Criminal Procedure, insofar as relevant, reads:

**Article 4**

“1. The accused is presumed innocent until his guilt has been proven by a final court decision. [...]”

*2. Torture, inhuman and degrading treatment*

The Constitution, insofar as relevant, reads:

**Article 25**

“No one is to be subjected to torture, cruel, inhuman or degrading treatment or punishment.”

The Criminal Code, insofar as relevant, reads:

**Article 86**

“Wilful commission of acts, which cause somebody severe physical affliction or mental distress, by a person who exercises a public function, or who incites or consents to them, either openly or tacitly, for the purpose of:

...

- d) [committing] some inhuman or degrading act;  
is punishable by between four and ten years’ imprisonment.”

*3. Civil remedy*

The Civil Code, insofar as relevant, reads:

**Article 625**

“A person who suffers from non-pecuniary damage is entitled to compensation if:

- a) there has been damage to his health, physical or mental integrity;
- b) his honour, personality or reputation has been infringed;
- c) the right to the name has been infringed;
- ç) respect to his private life has been infringed;

[...]”

*4. Criminal offences charged against the applicants*

Article 181 of the CC provides for the offence of failure to pay taxes by the time-limit allowed, which is punishable by a fine or up to three years’ imprisonment.

Article 186 § 2 of the CC provides that forgery of documents, when it has been committed in collusion with others, more than once or has resulted in serious consequences, is punishable by between six months and four years’ imprisonment.

Article 287 § 2 of the CC provides that laundering of the proceeds from a criminal offence or activity, when committed during the exercise of a

professional activity, is punishable by between seven and fifteen years' imprisonment.

## COMPLAINTS

All four applicants complain that there has been a breach of Article 6 § 2 of the Convention on account of the PM's statements and that there exists no domestic effective remedy as required by Article 13 of the Convention.

The fourth applicant complains that there has been a breach of Article 3 of the Convention on account of her wearing handcuffs at the hearing at which her house arrest was ordered and that there exists no domestic effective remedy as required by Article 13 of the Convention.

## QUESTIONS TO THE PARTIES

### A. As regards all applicants

1. When were the applicants “charged” for the purpose of Article 6 of the Convention (see, for example, *McFarlane v. Ireland* [GC], no. 31333/06, §§ 143-44, 10 September 2010)? Does Article 6 § 2 apply to the instant case?

2. Did the Prime Minister’s statements specifically refer to all applicants? Can all of them claim to be a victim, within the meaning of Article 34 of the Convention, of a breach of their right under Article 6 § 2 of the Convention?

3. Did the applicants have at their disposal an effective domestic remedy for their complaint under Article 6 § 2, as required by Article 13 of the Convention? In particular, was a civil remedy – an action for damages – accessible and effective in respect of their complaint under Article 6 § 2 (see, for example, *MiroslawGarlicki v. Poland*, no. 36921/07, 14 June 2011; *Marchiani v. France* (dec.), no. 30392/03, 27 May 2008; and *Gutsanovi v. Bulgaria*, no. 34529/10, ECHR 2013 (extracts))?

4. Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case on account of the Prime Minister’s statements?

### B. As regards the fourth applicant

5. Did the fourth applicant have at her disposal an effective domestic remedy for her complaint under Article 3, as required by Article 13 of the Convention? In particular:

(a) Did the fourth applicant object to her being handcuffed at the hearing concerning the security measure? If so, what did the District Court decide?

(b) Was a civil remedy – an action for damages – accessible and effective in respect of her complaint under Article 3?

(c) Was it open to the applicant to request the prosecution of police officers under Article 86 of the Criminal Code?

6. Did the fourth applicant remain handcuffed during the court hearing concerning the security measure? If so, was that justified? If so, has there been a breach of Article 3 of the Convention (see, for example, *Gorodnitchev v. Russia*, no. 52058/99, 24 May 2007)?

## **APPENDIX**

- 1.** Francesco BECCHETTI is an Italian national who was born on 31/08/1966 and lives in London.
- 2.** Liliana CONDOMITTI is an Italian national who was born on 02/09/1941 and lives in London.
- 3.** Mauro DE RENZIS is an Italian national who was born on 10/02/1955 and lives in Rome.
- 4.** Erjona TROPLINI is an Albanian national who was born on 02/06/1978 and lives in Tirana.