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The impact of judicial delays on guaranteeing the right to property and the right to a trial within a reasonable time in Albania

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Abstract

The right to a trial within a reasonable time, often summarized by the maxim “*justice delayed is justice denied*,” has gained increasing significance in recent years, particularly in the context of property-related proceedings. This principle, enshrined in the Constitution of Albania and international legal instruments, ensures that parties receive timely court decisions, thereby safeguarding the effective restoration of their violated rights. Compliance with this principle is not solely the responsibility of the judiciary; parties to the proceedings are also expected to contribute by avoiding unnecessary delays, cooperating with investigations, implementing court orders, and adhering to procedural deadlines. Such cooperation facilitates efficient judicial processing and supports the administration of justice. In Albania, adjudication within a reasonable time remains a critical challenge. The increasing number of cases reviewed by the European Court of Human Rights underscores a systemic problem. While the legislature has established statutory deadlines for trials across all court levels, practical implementation often falls short. Structural difficulties within the judicial system, compounded by reforms such as the judicial map and the vetting process (*procesi vetting*), have resulted in staff shortages and increased workloads for judges, limiting their capacity to manage caseloads effectively. These systemic issues have caused significant delays, particularly in cases concerning property rights, thereby affecting both the fundamental right to property and the broader right to due process. The present study focuses on the intersection of these two rights—property rights and the right to a timely trial—and seeks to analyze how delays in judicial proceedings impact their effective protection in Albania.

Keywords: Property law, reasonable trial time, due process of law, procrastination of court proceedings, judicial efficiency, ECtHR jurisprudence, constitutional guarantees, workload of courts.

1. Introduction

The right to a trial within a reasonable time constitutes a fundamental element of due process. Due process extends beyond a subjective individual right, functioning as a constitutional principle that safeguards numerous fundamental human rights and freedoms. Its primary purpose is to protect individuals against arbitrary or unlawful interventions by public authorities, ensuring adherence to procedural justice standards. In Albania, the right to be tried within a reasonable time is explicitly recognized as a constitutional principle, enshrined in the Constitution, international legal instruments, and civil procedural legislation. Article 42/2 of the Constitution guarantees that every person has the right to a fair and public trial, conducted within a reasonable time by an independent and impartial court established by law, for the protection of their constitutional and legal rights, freedoms, and interests. Similarly, Article 6/1 of the European Convention on Human Rights (ECHR) ensures that every individual is entitled to have their case heard fairly, publicly, and within a reasonable time by an independent and impartial tribunal for disputes concerning civil rights and obligations. Additionally, Article 28 of the Code of Civil Procedure imposes a duty on courts to decide all claims submitted in lawsuits without exceeding reasonable time limits, guaranteeing a fair, independent, and impartial adjudication. Respect for the right to a timely trial is particularly significant in cases involving property rights. Unjustified delays in judicial proceedings can directly impede the effective exercise of property rights by creating legal uncertainty, limiting the ability to possess, use, or dispose of property, and, in many instances, depriving individuals of the enjoyment of their property. Even when procedural delays do not constitute formal restrictions or expropriation, they constitute indirect interference with property rights, infringing upon the principle of peaceful enjoyment guaranteed by both the Constitution and the ECHR. Consequently, failure to adjudicate property disputes within a reasonable time constitutes not only a procedural violation but also a substantive infringement of property rights.

2. Assessing respect for the right to a trial within a reasonable time

Delays in civil proceedings, similar to those in criminal cases, have direct and significant consequences for the parties involved. Property disputes are particularly sensitive due to their economic implications, as prolonged litigation can prevent the effective enjoyment and utilization of property rights, including associated financial benefits. Extended proceedings create legal and economic uncertainty, restricting the ability to sell, donate, invest, or otherwise exploit property, often diminishing its value and generating additional tension among parties, which can adversely affect family or commercial relationships. Decisions of the European Court of Human Rights (ECtHR) against the Albanian state highlight the systemic nature of these delays. Judicial inefficiency not only infringes upon fundamental rights and freedoms but also undermines the subjective rights for which individuals have invested time,

resources, and trust in the legal system. Prolonged adjudication is therefore not only a legal issue but also a source of significant economic and social impact for parties involved, contributing to increased procedural costs and reduced public confidence in the justice system. While expedient proceedings are necessary to safeguard legal rights, the requirement for speed must be balanced with the need to maintain fairness and impartiality. Parties must be afforded adequate time to prepare and present their cases fully. The Organization for Security and Co-operation in Europe (OSCE, 2013) has identified recurring issues that compromise the right to a timely trial in Albania, including irregular summoning of parties and witnesses, inefficient preparation of trials, failure to present participants without justifiable cause, inadequate case administration, and delays in issuing reasoned decisions. A critical aspect in assessing compliance with the reasonable time principle involves determining the start point of a trial and defining what constitutes a “reasonable” duration. Generally, a case begins upon the submission of a request to the competent court and concludes upon receipt of a final decision. According to ECtHR jurisprudence, in some cases, the calculation of duration includes the execution phase if it is essential to realizing the acquired right. Assessment of compliance requires consideration of case complexity, litigant behavior—including unjustified postponements or procedural tactics—and judicial management of the process. Courts are obligated to actively prevent unnecessary delays and procedural abuses. Domestic legislation has also codified these standards. The 2017 amendments to the Code of Civil Procedure introduced provisions for adjudicating claims regarding violations of reasonable trial duration, accelerating procedures, and awarding damages. Article 399/2 establishes indicative deadlines for the completion of investigations, trials, and enforcement of final decisions, differentiated by case type and court level. For instance, first-instance civil trials are expected to conclude within two years, with appeals and Supreme Court civil cases also subject to a two-year timeframe. The article additionally allows parties to request extensions in consideration of case complexity, dispute nature, conduct of the court or other parties, and other relevant factors. Periods when proceedings are suspended for legal reasons, postponed at the request of parties, or delayed due to objective impossibilities are excluded from the calculation. Despite these clear statutory deadlines, implementation remains challenging. OSCE monitoring indicates that procrastination of civil and administrative cases is common, leaving parties in prolonged uncertainty and increasing procedural costs (OSCE, 2013). Contributing factors include court overcrowding, inefficient case administration, frequent hearing postponements, and litigant behaviors aimed at delaying proceedings. Consequently, even though the law establishes concrete time limits, adherence in practice is often lacking, resulting in violations of the right to a trial within a reasonable time and, in the context of property disputes, limiting the effective exercise of ownership rights.

3. OSCE Monitoring on Case Management and Judicial Delays

Monitoring activities of court hearings conducted by the Organization for Security and

Co-operation in Europe (OSCE, 2013) have identified multiple factors contributing to unreasonable delays during both the preparatory phase and the conduct of hearings. A primary issue involves unsuccessful summons of participants, often caused by incomplete or inaccurate address information, which has been exacerbated following the implementation of Albania's new address system. In many cases, courts fail to act promptly when summons are unsuccessful, thereby compromising the right to a trial within a reasonable time. Current practice typically requires judges to wait until the scheduled hearing to ascertain the absence of a party, only then deciding to issue a new summons and postpone the session. This procedural approach prolongs the resolution of cases unnecessarily. Delays are further compounded during examination procedures that require court-appointed experts. The process often involves multiple hearings: an initial hearing to appoint the expert and define evidence requirements, a subsequent hearing for assignment of duties and submission of expert evidence, and a final hearing for the expert's conclusions. Parties frequently request additional deferrals to analyze expert reports, resulting in further hearings and prolongation of the proceedings. OSCE reports indicate that approximately 10.2% of monitored sessions were postponed due to expert-related reasons, often in combination with other procedural factors, reflecting a lack of active case management in Albanian courts (OSCE, 2013). Rather than controlling the pace of proceedings, courts routinely approve requests for additional hearings, which contributes to procedural inefficiency. The issue extends beyond first-instance courts to appellate proceedings. Recent judicial reforms have centralized appellate jurisdiction, leaving only a single Court of Appeals in Tirana for general cases. According to a study by the Center for Public Information Issues (INFOÇIP), the Court of Appeals of Tirana faces critical delays that infringe upon the right to a timely trial. The primary cause is a shortage of judges, while doubling the judicial panel has been recommended as a mitigation strategy. Observations indicate that delays in 2022 have worsened compared to prior years, including 2016, when judicial reforms began. These delays affect both the review of cases and the issuance and clarification of court decisions, exacerbating legal uncertainty for parties.

4. The right to property and adjudication within a reasonable time according to the jurisprudence of the European Court of Human Rights

Analysis of European Court of Human Rights (ECtHR) jurisprudence demonstrates that prolonged delays in adjudicating property disputes can significantly infringe the right to a trial within a reasonable time, a key component of protecting property rights. Case law concerning property and adherence to reasonable deadlines highlights systemic deficiencies within Albania's judicial and administrative institutions. In *Osmani v. Albania* (application no. 8706/18, decision 5 December 2023), national courts failed to adequately justify the compensation awarded for property expropriated for public purposes, violating the applicant's property rights and undermining the principle of reasoned judicial decisions. Similarly, in *Vjola SHPK and DE SHPK v.*

Albania (application no. 18076/12, decision 30 January 2024), the proceedings at all levels extended over seven years, including more than three years in the Supreme Court, constituting a violation of the right to a trial within a reasonable time and creating legal uncertainty for the parties. In *Kokalari v. Albania* (application no. 22493/12, decision 30 January 2024), the ECtHR found that state authorities failed to address the applicant's claims for property restitution and compensation within the administrative system over an extended period. The violation was particularly pronounced between 2012 and 2019, when the Property Treatment Agency, under Law No. 133/2015, did not inform applicants about the requirements for filing the necessary documentation, resulting in non-compliance with reasonable deadlines and a denial of effective protection of property rights. Additionally, in *Jella and others v. Albania* (application no. 7564/07, decision 5 March 2024), state authorities failed to implement a decision of the CCCC regarding the return of property, obstructing peaceful possession and violating Law No. 133/2015. These cases collectively illustrate that protracted delays, unreasoned decisions, and non-implementation of judicial or administrative rulings have substantial consequences for citizens. They increase appeals to the ECtHR, expose the state to financial liabilities for compensation, and undermine public trust in the judicial system. Legal certainty over private property is weakened, adversely affecting economic development and investment. For the Albanian state, the consequences are multidimensional. Financially, prolonged delays and unimplemented decisions may lead to significant compensation obligations, including reparations mandated by the ECtHR. Legally, there is an increased risk of international appeals and adverse rulings. Institutionally, these challenges underscore the need to expand the judiciary, improve case management, and ensure strict adherence to statutory deadlines to prevent overload of both judicial and administrative systems and to restore confidence in the rule of law.

5. Conclusions and recommendations

Prolonged delays in the adjudication of property disputes and non-compliance with statutory deadlines constitute a systemic problem in Albania's courts and administrative bodies. This issue is clearly evidenced in the cases of *Osmani*, *Vjola SHPK and DE SHPK*, *Kokalari*, and *Jella and others*. Failure to observe legal deadlines infringes upon the right to a trial within a reasonable time and undermines the effective protection of property rights, rendering the application of law largely formal rather than substantive. A significant factor contributing to these delays is the transitional re-evaluation of judges and prosecutors (*vetting*), a process intended to strengthen judicial integrity. While necessary, vetting has resulted in a substantial reduction of human resources in the courts. The removal of numerous judges without immediate replacement has exacerbated the workload of the remaining judiciary, directly contributing to the prolongation of court proceedings. Court overcrowding further compounds the problem, particularly in the Appellate Court, where the volume of cases exceeds the capacity of the available judges, generating additional delays

and increasing the number of international appeals. Effective case management requires that courts actively notify parties, control the procedural flow, and minimize unnecessary postponements. Prolonged judgments leave parties in extended states of legal uncertainty and are frequently associated with rising procedural costs. These systemic inefficiencies negatively impact not only the interests of individual litigants but also public perception of the judicial system, eroding trust in its effectiveness and transparency. Insufficient court capacity to manage caseloads appropriately contributes to delays in adjudication, justification of decisions, and enforcement, while simultaneously increasing procedural expenses for both citizens and the state. Consequently, this situation constitutes a violation of the right to a trial within a reasonable time, undermines transparency, and diminishes confidence in the judicial system.

To address the systemic delays in property-related proceedings and to ensure compliance with the right to a trial within a reasonable time, several measures are recommended:

1. Increasing the capacity of courts – Expanding the number of judges and support staff to manage the existing caseload and prevent procedural delays.
2. Active case management – Courts should adopt a proactive approach, monitoring each case closely, scheduling hearings efficiently, and prioritizing cases according to their urgency and legal significance.
3. Minimizing unnecessary postponements of hearings – Ensuring timely and accurate notification of parties and restricting postponements to situations with legitimate cause, thereby reducing avoidable delays.
4. Strengthening control over administrative procedures and enforcement of decisions – Guaranteeing that judicial and administrative rulings are implemented within the statutory deadlines, preventing prolonged delays that adversely affect parties' rights.
5. Review of legal deadlines – Evaluating existing procedural deadlines and adjusting them as necessary to ensure they are realistic, practicable, and effective in the context of current judicial capacity.

The implementation of these measures is expected to enhance the efficiency of the Albanian judicial system, reinforce the protection of property rights, and increase public confidence in the administration of justice. By addressing both structural and procedural shortcomings, these recommendations aim to reduce legal uncertainty, improve access to remedies, and ensure the effective enforcement of fundamental rights.

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