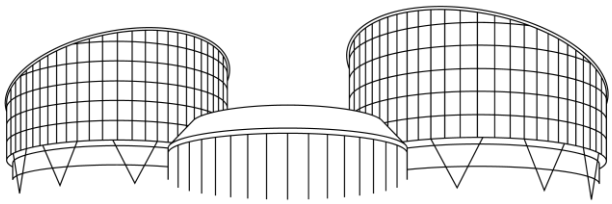

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF GRORI v. ALBANIA

(Application no. 25336/04)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Grori v. Albania,

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

Nicolas Bratza, *President,*
Josep Casadevall,
Giovanni Bonello,
Kristaq Traja,
Ljiljana Mijović,
Ján Šikuta,
Päivi Hirvelä, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 27 November 2007, 29 January 2008 and 18 June 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 25336/04) 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 Arben Grori ("the applicant"), on 9 July 2004.

2. The applicant was represented by Mr A. Kasapi, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their then Agents, Mr S. Puto and Mrs S. Mëneri.

3. The applicant alleged, in particular, that the Albanian courts had ruled on his detention, converting a sentence imposed by the Italian courts, in flagrant breach of the legal requirements deriving from laws in force at the material time. He relied on Article 3, Article 5 § 1 (a), Article 6 § 1 and Article 7 of the Convention and Article 2 of Protocol No. 7 to the Convention.

4. On 6 September 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 7 December 2004 the application was given priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and is currently serving sentences of life imprisonment and 15 years' imprisonment in Peqin High Security Prison (Albania).

A. Background to the case

7. On 6 October 1997 the Italian authorities issued an arrest warrant in respect of the applicant, charging him with the premeditated homicide of an Albanian national in Milan, Italy.

8. On 2 February 2001 the applicant was sentenced *in absentia* to life imprisonment by the Milan Assize Court of Appeal on a count of murder and to five years' imprisonment on a count of illegal possession of firearms.

9. On 16 February 2001 the Italian authorities issued a second arrest warrant concerning the applicant which related to a new charge against him, namely participation in a criminal organisation and international narcotics trafficking. From the documents in the file it transpires that during the period of the proceedings before the Italian courts the applicant was carrying on a lawful business and resided in Albania.

10. On 29 April 2001 Interpol Albania transmitted to the Tirana Police the two arrest warrants mentioned above. On the same date the Chief of the Tirana Criminal Police ordered that "the arrest warrants be immediately enforced".

11. On 30 April 2001 Interpol Rome sent a fax to the Albanian authorities seeking the initiation of criminal proceedings against the applicant for crimes committed on Italian territory.

B. Criminal proceedings on charges of international narcotics trafficking

1. The applicant's initial arrest

12. On 30 April 2001 the applicant was arrested in Albania on the strength of the arrest warrant issued on 16 February 2001 by the investigating judge at the Milan Court of Appeal. The charge related to the applicant's involvement in a criminal organisation and international drug trafficking.

13. On 1 May 2001 the applicant was remanded in detention for 15 days.

14. On 12 May 2001 the Tirana District Court, ("the District Court"), dismissed an appeal by the applicant against the grounds of his arrest. On the same day, the prosecutor informed the applicant about the charges against him, namely participation in a criminal organisation and international narcotics trafficking.

15. On 15 May 2001 the District Court upheld the prosecutor's application and ordered the applicant's detention in prison for an undetermined period. On 4 June 2001 the Supreme Court upheld the decision.

16. In June and December 2001 the General Prosecutor's Office repeatedly requested the Italian authorities to transmit the evidence that grounded the charges against the applicant. In January 2002 the request was also repeated by the Albanian Minister of Justice.

2. The initiation of criminal proceedings

17. On 30 July 2002 the General Prosecutor's Office instituted criminal proceedings in the Tirana District Court, charging the applicant with international narcotics trafficking (hereinafter "the criminal proceedings").

18. On 29 December 2003 the District Court found the applicant guilty of establishing a criminal organisation and international narcotics trafficking and sentenced him to 19 years' imprisonment. According to the applicant, the conviction related to a new charge of which he had never been informed. On 25 June 2004 the Tirana Court of Appeal, ("the Court of Appeal"), upheld the District Court's judgment but changed the applicant's sentence to 17 years' imprisonment. The applicant appealed to the Supreme Court. On 23 June 2006 the Supreme Court changed the qualification of one of the criminal offences of which the applicant had been convicted. It upheld the Court of Appeal's judgment and changed the applicant's sentence to 15 years' imprisonment. A constitutional complaint by the applicant to the Constitutional Court against the above-mentioned judgments is still pending.

C. Proceedings for the validation and enforcement in Albania of the sentence imposed by the Italian court

1. The request for the validation of the Italian courts' sentence and the applicant's second arrest

19. On 21 February 2002, while the applicant was in detention on remand on the charges of participation in a criminal organisation and international narcotics trafficking (see paragraph 12 above), the Milan public prosecutor's office asked the Italian Ministry of Justice to request the Albanian authorities to validate in Albania the sentence imposed on the

applicant by the Milan Assize Court of Appeal on 2 February 2001, which had become final on 30 January 2002.

20. On 28 March 2002 the Italian Ministry of Justice, among other things, informed the Milan public prosecutor's office that the Italian authorities could not seek the validation and enforcement in Albania of a criminal judgment delivered by the Italian courts, in view of the fact that neither country was party to any international agreement on the matter. On the same day the Italian Ministry of Justice transmitted the above-mentioned judgment, for information purposes, to the Albanian Embassy in Rome.

21. On 8 April 2002 the Albanian Embassy in Rome, in a letter with the misleading heading "*Transfer of an Albanian national currently detained in Italy*", informed the Albanian Government of the "request for extradition" by the Italian Ministry of Justice concerning the applicant, who, according to the Embassy's letter, was "serving a sentence in Italy".

22. On 23 April 2002 the Governments of Italy and Albania signed an agreement for the transfer of sentenced persons, which was ratified by the respective parliaments in 2003 and 2004.

23. On 3 May 2002 the Albanian Ministry of Justice, under Article 512 of the Albanian Code of Criminal Procedure ("the CCP"), requested the General Prosecutor's Office to institute proceedings for the validation and enforcement in Albania of the judgment concerning the applicant delivered by the Italian court.

24. On 15 May 2002 the District Court, in a single-judge panel, ordered the applicant's detention pending the proceedings for the validation and enforcement in Albania of the Milan Assize Court of Appeal's judgment of 2 February 2001. The applicant was served with the decision while he was in detention in connection with the criminal proceedings referred to above (see paragraphs 17-18 above).

2. Ordinary judicial proceedings

25. On 10 May 2002, under Articles 512 and 514 of the CCP, the General Prosecutor's Office initiated proceedings before the District Court for the validation and enforcement in Albania of the judgment delivered by the Milan Assize Court of Appeal (hereinafter "the validation and enforcement proceedings").

26. According to the applicant's submissions to the District Court in May 2002, Article 514 of the CCP required, *inter alia*, his consent for the validation and enforcement in Albania of the Milan Assize Court of Appeal's judgment, which consent he decided not to give (see paragraph 85 below).

27. On 13 June 2002 Parliament adopted amendments to the provisions of the Code of Criminal Procedure, which, *inter alia*, repealed the requirement of the detainee's consent provided for in point (e) of Article 514 of the CCP (see paragraph 86 below).

28. On 17 June 2002 the General Prosecutor filed further observations with the District Court, pointing out, among other things:

> "...in spite of the fact that the consent of the sentenced person is required by Article 514 (e) of the CCP for the validity in Albania of a sentence imposed by a foreign authority, this should be interpreted only in circumstances involving the transfer of sentenced persons and not in such a manner as to hinder the course of justice. Moreover, Parliament, by Law no. 8813 of 13 June 2002, abrogated point (e) of Article 514 of the CCP..."

29. On 20 June 2002 the District Court rejected the General Prosecutor's request as not being in compliance with the requirement in Article 514, point (e), of the CCP. The court held:

> "...the requirement laid down in Article 514, point (e), of the CCP is necessary for the validity and enforcement in Albania of a sentence imposed by a foreign authority in accordance with the Convention on the Transfer of Sentenced Persons and the provisions of domestic law. In accordance with the wording of the above-mentioned Article, the consent of sentenced persons is required without any distinction between the circumstances of the transfer of detainees or the validity of the sentence imposed by a foreign court. Moreover, Law no. 8813 of 13 June 2002, which abrogates point (e) of Article 514, is not applicable in the present case since it has not come into force for the time being ..."

30. On 24 July 2002 the Court of Appeal dismissed an appeal by the General Prosecutor. The court upheld the reasoning set out in the District Court's judgment and held that Law no. 8813 of 13 June 2002 could not be applicable retroactively on the ground that it would have resulted in more severe provisions being applied to the applicant's detriment.

31. On an unspecified date in 2002 the General Prosecutor lodged an appeal with the Supreme Court (Criminal Division) against the Court of Appeal's judgment.

32. On 29 October 2002, in order to harmonise and amend the courts' practice (*për unifikimin dhe ndryshimin e praktikës gjyqësore*), the President of the Supreme Court relinquished jurisdiction in favour of the Supreme Court's Joint Benches.

33. On 30 January 2003 the Supreme Court, Joint Benches, quashed the judgments of the Court of Appeal and the District Court and remitted the case for fresh consideration to the District Court. In its judgment, the Supreme Court interpreted provisions of the CCP relating to extradition, the transfer of sentenced persons and the validity and enforcement in Albania of sentences imposed by foreign courts, giving its definition from the standpoint of international law principles and inter-State cooperation. The court held that in circumstances where no ruling could be given on a specific issue because the relevant provisions were inadequate, a legal basis could be provided by international customs, namely the principle of good will and reciprocity, and treaties. In the present case, finding that the requirement laid down in Article 514, point (e), of the CCP was inadequate, it considered that the European Convention on the International Validity of

Criminal Judgments and the European Convention on the Transfer of Sentenced Persons provided a sufficient basis for the validation and enforcement in Albania of the Milan Assize Court of Appeal's judgment.

34. The judgment stated, in so far as relevant, the following:

> "The transfer of sentenced persons has been regulated by the European Convention on the Transfer of Sentenced Persons as ratified by the Parliament of the Republic of Albania and published in the Official Journal no. 22 of 1999 (...). The European Convention on the International Validity of Criminal Judgments has been signed but not yet ratified by the Parliament. As such, this Convention cannot be considered a constituent part of the domestic legal corpus and is not directly applicable. However, its signature and the approval of the engaging provision according to which the State recognises and respects the generally recognised norms and principles of the international law, guide us to understand, interpret and justly apply the provisions of the CCP at issue.
>
> (...)
>
> In the case of validity and enforcement of a foreign criminal judgment, the reference to and the solution of the case in accordance with point (e) of Article 514 of the CCP, at the material time, would be nonsense. Were the court to regard the consent of the sentenced person as essential, that would lead to an *ad literam* interpretation of the provision, as applied by the District Court and the Court of Appeal. However, the interpretation of a legal provision is rather complex. In the event the *ad literam* interpretation leads to an absurdity [nonsense], a logical and systemic interpretation prevails. According to this interpretation, the said provision shall be interpreted in a reasonable manner. This means that the notion of "the consent of the sentenced person" cannot be broadly interpreted. It should be narrowly interpreted so as not to lead to an absurdity, which would be the case, were the appellant to give his consent to serve the criminal sentence in his country. As it transpires from the acts, the appellant was tried *in absentia* since he absconded from the Italian justice.
>
> (...)
>
> **The consent of a person sentenced by a foreign court is a *sine qua non* for the determination of the question whether the sentence is served in the sentencing State or in the detainee's country of origin, that is in the prisons of the country of which he is a citizen [emphasis added in the original text].**
>
> (...)
>
> This decision of the Supreme Court, Joint Benches, finally resolves the problem, holding that **the lack of consent by the sentenced person for the validation of a foreign criminal judgment is not an obstacle for the Albanian courts to proceed with such a validation and recognition [emphasis added in the original text]**.
>
> During the examination of the case, the appellant's counsel stated that there is no bilateral agreement between Albania and Italy as regards the validity and enforcement of criminal judgments. They maintained that such an act would impinge upon the sovereignty of the Albanian state, which is exercised by the Parliament through the ratification of an international or bilateral agreement. This claim is unfounded. The Albanian Parliament manifested its sovereign will through the enactment of the CCP,

whose provisions at issue should be applied in accordance with their meaning and the unified interpretation of the Supreme Court as outlined above.

It must be underlined that in the absence of signed and ratified instruments, the generally recognised norms of the international law may apply in accordance with the principle of good will and reciprocity. Pursuant to the CCP, the Ministry of Justice is responsible for jurisdictional relations with foreign authorities, including the Italians.

According to Article 512 of the CPP, it is within the discretion of the said Ministry as a manifestation of the political will of the Albanian State, to request the validation before a court of a foreign judgment. The Court shall not examine this kind of discretion. It shall only examine whether the request has been made by the competent authority in accordance with the law and whether the documentation is complete."

3. Retrial proceedings

35. In the retrial proceedings before the District Court, the applicant claimed that there had been no request by the Italian authorities for the validation of the Italian criminal judgment against him, having also regard to the Italian authorities' letter of 28 March 2000 (see paragraph 20 above). Furthermore, he added that there was no bilateral agreement between the two States for such a validation to take effect. The applicant also relied on the fact that he had not given his consent for the validation.

36. On 20 May 2003 the District Court, sitting as a bench of three judges, relied entirely on the judgment of the Supreme Court of 30 January 2003. It held that the sentence imposed by the Milan Assize Court of Appeal was compatible with the provisions of the Albanian CCP as amended by Law no. 8813 of 13 June 2002. It ruled that the applicant should serve cumulative sentence of life imprisonment in Albania on a count of murder and a count of illegal possession of firearms.

37. The presiding judge, E.K., expressed a partly dissenting opinion on the above-mentioned judgment, reminding the court that the relevant statutory provisions laid down a maximum penalty of 25 years' imprisonment instead of life imprisonment as imposed in the applicant's case.

38. According to the applicant's submissions in the present proceedings before the Court, the District Court applied those parts of Law no. 8813 of 13 June 2002 that contributed to the aggravation of his situation. Moreover, in accordance with Article 13 of the CCP as amended by the above-mentioned Law, the court should have sat in a single-judge formation in his case. Furthermore, he maintained that, having regard also to Judge E.K.'s dissenting opinion, the composition of the bench could have influenced the outcome of the proceedings.

39. On an unspecified date in 2003 the applicant filed an appeal, invoking the same grounds as he did before the District Court.

40. On 10 September 2003 the Court of Appeal dismissed the appeal and upheld the District Court's judgment, fully relying on the Supreme Court's judgment of 30 January 2003.

41. The applicant noted that at the last hearing of the appeal proceedings, Judge Sh.B., who had presided over the trial until that moment, had been substituted by Judge D.B. without a formal decision.

42. The applicant produced to the Court two Court of Appeal judgments which have the same text but were delivered by two different benches: the first by a bench presided over by Sh.B. and the second by another bench presided over by D.B.

43. On 9 October 2003 the applicant lodged an appeal with the Supreme Court. He relied on almost the same grounds of appeal as he did before the District Court and the Court of Appeal. Moreover, the applicant challenged the application of the generally recognised norms of international law as inadequate and imprecise.

44. On 30 January 2004 the Supreme Court dismissed the applicant's appeal as the grounds of appeal fell outside the scope of Articles 432 and 448 § 2 of the CCP (see paragraphs 82 and 83 below).

45. In April 2004 the applicant appealed to the Constitutional Court challenging the Supreme Court's judgments of 30 January 2003 and 30 January 2004. He alleged that the proceedings had been unfair in various respects. In particular, he complained that the criminal proceedings had been in breach of the CCP's requirements as laid down in Articles 13 (composition of courts), 514 (sentenced persons' consent) and 512 (for the validation and enforcement in Albania of a sentence imposed by a foreign authority, a request addressed by the foreign authority and a valid international and/or bilateral agreement had to be in force in both countries). The applicant maintained that no request for the validation of the sentence had been addressed by the Italian authorities to the Albanian Minister of Justice, nor had there been any international convention in force between the countries at the material time.

46. On 12 July 2004 the Constitutional Court dismissed the applicant's appeal. It found the Supreme Court's judgments of 30 January 2003 and 30 January 2004 constitutional. Moreover, it held that even though the composition of the District Court's bench of 20 May 2003 was in breach of the law, it did not render the process unconstitutional as a whole. As regards the existence of two judgments delivered by different benches of the Court of Appeal on 10 September 2003, the Constitutional Court noted that there was only one judgment in the case file, which corresponded to the bench that had decided the case.

47. The judgment stated, in so far as relevant, as follows:

> "The Constitutional Court considers that the arguments raised in the Supreme Court's, Joint Benches, judgment [of 30 January 2003] are not in breach of the Constitution or [international] conventions. The mutual recognition [validation] of

court judgments serves to strengthen legal cooperation between States and the achievement of certain objectives in relation to the freedom of liberty, security and justice. The principle of reciprocity presupposes the application of mutual and legal instruments in inter-state relations. In international law, reciprocity is defined as the right to equality and mutual respect amongst countries. International criminal doctrine and case-law have confirmed that cooperation amongst countries can occur even in the absence of bilateral treaties, on the basis of the principle of reciprocity.

As a rule, the principle of reciprocity applies through international instruments such as treaties and agreements, which envisage mutual rights and obligations. But, in exceptional cases, in the absence of such agreements, the States are not precluded from directly applying the principle of reciprocity, the generally recognised norms of international law and good will. Their application is in the interest of strengthening the States' cooperation in the fight against organised crime and criminality.

The Constitutional Court notes that the judgment of the Supreme Court, Joint Benches as regards Articles 512 and 514 is not unconstitutional. They [the Supreme Court] rightly concluded that there was no conflict between those provisions and the international conventions' provisions. The domestic provisions should apply in accordance with the interpretation made by the [Supreme Court] Joint Benches.

(...) It may be understood (...) that the request for the validation of a foreign court judgment may be made even in the absence of an agreement, on the basis of good will, generally recognised norms and the principle of reciprocity."

D. Medical treatment

48. On 24 September 2003, 13 January 2004 and 16 February 2004, in view of the deterioration in the applicant's health, his representative and his father requested the Ministry of Justice and the prison authorities to allow him to be examined by appropriate doctors.

49. From 23 August 2004 to 31 August 2004 the applicant underwent in-patient treatment and examinations at Tirana Prison Hospital. During that period an initial magnetic resonance imaging (MRI) scan was carried out. He was diagnosed as suffering from multiple sclerosis (MS). The doctors reported that, even when the disease was quickly detected and treated, it was capable of causing shock, organ damage, permanent disability or death.

50. On 29 September 2004 a second MRI scan was carried out.

51. On 5 October 2004 the applicant's representative informed the Registry that the applicant's state of health had deteriorated and that he consequently needed further treatment and an essential medical examination by specialist neurologists. He filed two reports regarding the applicant's state of health, which the doctors reported had worsened.

52. On 7 January 2005 Tirana High Security Prison requested authorisation from the Tirana prosecutor's office for medical examinations at Tirana Prison Hospital in respect of the applicant and eight other inmates.

53. On an unspecified date in January 2005 the Tirana prosecutor's office gave its approval in relation to the other eight prisoners and rejected the request concerning the applicant, stating that it was not competent to rule on his transfer from prison. It designated the General Prosecutor's Office as the competent authority.

54. On 13 January 2005 Tirana High Security Prison reiterated its request to the General Prosecutor's Office concerning the applicant's medical treatment, but received no response. On 17 January 2005 the prison requested the Ministry of Justice's General Prison Unit to designate the competent authority to decide on the applicant's transfer for medical purposes.

55. On 16 February 2005 the applicant initiated criminal proceedings against the Tirana prosecutor's office, complaining that its neglect in ensuring his medical care had contributed to the worsening of his health, which constituted discrimination *vis-à-vis* those prisoners who had been allowed to have medical treatment.

56. On 26 February 2005 the applicant was transferred to Peqin Prison, a high-security prison located approximately 100 km from Tirana Prison Hospital and detained under a high-security regime.

57. From February 2005 onwards the applicant was refused the opportunity to meet his lawyers and have any other contact with them.

58. On 15 April 2005, following repeated requests by the doctors of Peqin Prison, the applicant was sent to Tirana Prison Hospital for a medical examination. Following consultations among the doctors of that hospital and Tirana Civil Hospital on 19 April 2005, the applicant's diagnosis was confirmed and they concluded that it was imperative for his health that he be treated with interferon-beta.

59. In a letter of 23 May 2005 the applicant's representative informed the Registry that from April 2005 the prison authorities had suspended the applicant's medical treatment, contrary to the doctors' opinions, and that he was treated with vitamins and anti-depressant drugs.

60. In a letter of 28 June 2005 the applicant's representative informed the Registry that without a court decision, the applicant had been placed under the special prison regime provided for in section 43 of the Prisoners' Regime Act, which derogated from the conditions for ordinary detention laid down in the Act.

61. On 4 November 2005, following persistent requests by the applicant, the General Directorate of Prisons assessed him and reported on the medical treatment he was being given, finding that he was being treated mainly with drugs prescribed to cure rheumatism.

62. In 2005 the applicant initiated several sets of criminal proceedings against the Head of Tirana Prison Hospital, complaining of negligence in the provision of medical care to him. On unspecified dates the General Prosecutor's Office dismissed his applications, and appeals by the applicant

against the prosecutor's decisions are still pending before the domestic courts.

63. From 21 to 24 February 2006 the doctors confirmed that the applicant suffered from multiple sclerosis. They reported deterioration in the applicant's health, caused by the total lack of medical treatment for over two years. Fearing for his life, they strictly recommended that the applicant immediately receive adequate medical treatment.

E. Interim measure indicated by the Court

64. In response to the applicant's request of 3 January 2008, the President of the Chamber decided, on 10 January 2008, to indicate to the Albanian Government an interim measure under Rule 39 of the Rules of Court, stating that "the applicant should immediately be transferred to a civilian hospital in order that a medical examination of his condition can be carried out and that he can be given the treatment appropriate to his condition." The President also decided to request the Government to immediately inform the Court of any decision to retransfer the applicant to Peqin High Security Prison, attaching any relevant medical certificate supporting his retransfer.

65. In the afternoon of 10 January 2008, given that it was the first time that an interim measure was being applied in respect of Albania, the Registrar of the Fourth Section, ("the Registrar"), spoke to the Government's Agent over the telephone and officially notified the content of the interim measure and the importance of complying therewith. The Government's Agent was informed that a copy of the notification of the indication under Rule 39 would be subsequently sent by facsimile.

66. Several attempts to send the notification by facsimile were unsuccessful in the evening of 10 January 2008. On the morning of 11 January 2008, having regard to the recurring problem with the facsimile, a scanned copy of the notification was sent by electronic mail to the Government Agent who acknowledged receipt thereof (also via electronic mail). On the same morning, the Government's Agent informed the Court in a telephone conversation that she had urgently contacted the Ministry of Justice, the Ministry of Health, the General Prosecutor's Office and other responsible state institutions in order to comply with the Court's interim measure. In their written submissions, the Government confirmed the above statement.

67. From 11 January to 22 January 2008 the Government did not provide any information concerning any measures taken to comply with the Court's interim measure of 10 January 2008.

68. On 23 January 2008 the applicant informed the Court that he had not yet been transferred.

69. On 24 January 2008 the applicant's letter was forwarded to the Government, drawing their attention to the fact that a failure to comply with an interim measure could give rise to a violation of Article 34 of the Convention.

70. On 25 January 2008, following an order of the General Directorate of Prisons, the applicant was transferred to Tirana Prison Hospital with a view to being taken to hospital for the conduct of medical examinations. On the same day the applicant refused to be transferred to hospital and started a hunger strike. He alleged that the authorities had to provide him with the appropriate treatment instead of conducting medical examinations.

71. On 28 January 2008, the Registrar made several calls to the applicant's representative and to the Government Agent. The Registrar urged the applicant to end the hunger strike and to comply with the Court's interim measure about his transfer to hospital, where a medical examination of his situation would be conducted. The Registrar also called upon the authorities to comply with the Court's interim measure and to refrain from any use of force, as alleged by the applicant.

72. On the same day, the applicant was transferred to the neurology ward of Tirana University Hospital Centre's (*Qendra Spitalore Universitare* – "the UHC") where he had specialised medical examination.

73. On 29 January 2008, following a letter of the UHC that the applicant's presence was no longer required, the applicant was transferred to Tirana Prison Hospital.

74. On 30 January 2008 the Government provided the Court with a copy of the applicant's medical file following the medical examinations of 28 January 2008. A doctors' panel had concluded that the applicant suffered from multiple sclerosis. The doctors' panel recommended that the applicant be treated with interferon beta with a view to stabilising his health and preventing progression of the disease. The doctors were unable to accurately describe the progression of the disease over the years, as he had not been under medical care. They expressed the view that the applicant's health did not present any urgency and, under these circumstances, patients were usually treated as out-patients without any need to be hospitalised.

75. On 14 July 2008 the Government confirmed that the applicant's treatment with interferon beta had started on 17 June 2008 in accordance with the doctors' panel's conclusions. The treatment was being administered every other day and it would appear that the applicant's health has been stable ever since.

76. On 16 September 2008 the President of the Chamber decided to refuse the applicant's request for the application of a renewed Rule 39 indication. The Government, however, were requested "to inform the Court on a regular basis about the applicant's state of health and to provide medical evidence of this, bearing in mind that the applicant's health conditions may necessitate specialised assistance while in prison."

77. On 12 March 2009 the Government informed the Court that the applicant has been regularly provided with interferon beta and other medicines appropriate to his health.

II. RELEVANT DOMESTIC LAW

A. The Constitution

78. Article 4 §§ 1 and 2 of the Constitution provides that the law constitutes the basis and delimits the boundaries of the activities of the State and that the Constitution is the highest law in the Republic of Albania.

79. Article 5 of the Constitution provides that the Republic of Albania applies international law that is binding upon it.

B. Code of Criminal Procedure

80. The Code of Criminal Procedure, in its relevant parts, provides as follows:

1. Article 13 § 2

81. Article 13 § 2, point (ç), of the CCP, as amended by section 1 of Law no. 8813 of 13 June 2002 (in force from 11 July 2002), provides that "...district courts shall sit in a single-judge formation in cases concerning cooperation with foreign authorities...".

2. Articles 432 and 448

82. Article 432 provides that an appeal to the Supreme Court should be made when: (a) the criminal law has not been respected or has been applied erroneously; (b) there have been breaches resulting in the nullity of the court's judgment in accordance with Article 128 of the CCP; (c) there have been procedural violations that have affected the adoption of the decision.

83. Article 448 § 2 provides that a judgment of retrial proceedings may be appealed to the Supreme Court only in so far as it does not relate to any grounds that were previously decided upon by the Supreme Court.

3. Article 512

84. Article 512, on the validity in Albania of foreign sentences, provides that the Ministry of Justice, when informed of a sentence imposed by a foreign authority concerning Albanian citizens, must send the prosecutor's office a copy of the judgment and any relevant documents. The Ministry of Justice requests the validation of a foreign sentence when it considers that in

accordance with an international convention, the decision in question must be executed or any other effects of it must be recognised in Albania.

4. Article 514

85. Article 514 of the Code of Criminal Procedure, before being amended by Law no. 8813 of 13 June 2002, provided that a foreign court's sentence could not be recognised and enforced in Albania in any of the following circumstances: (a) the sentence had not become final according to the laws of the State in which it had been imposed; (b) the sentence contained provisions which ran counter to the principles of the rule of law as applied by the Albanian State; (c) the sentence had not been imposed by an independent and impartial court or the defendant had not been summoned to appear before the trial or had not been granted the right to be questioned in a language that he understood and to be assisted by a defence lawyer; (ç) there were justified reasons to believe that the proceedings had been influenced by considerations regarding race, religion, sex, language or political beliefs; (d) the act for which the sentence was imposed was not provided for as a criminal offence in Albanian law; (dh) a final decision had been delivered or criminal proceedings were in progress in Albania in respect of the same act and against the same person; or (e) the sentenced person or his representative had not granted his consent.

86. Section 64 of Law no. 8813 of 13 June 2002 (in force from 11 July 2002) provides: "Article 514 § 1, point (e), of the CCP shall be abrogated."

C. Criminal Code, as amended by Law No. 8204 of 10 April 1997, Law No. 8279 of 15 January 1998, and Law No. 8733 of 24 January 2001

87. Article 78 of the Criminal Code, as in force at the time when the offence was committed in 1997, provided that a person convicted of premeditated homicide should be sentenced to a term of fifteen to twenty-five years of imprisonment and, where there were aggravating circumstances, to life imprisonment or death.

88. Taking into consideration the revival of blood feuds in the north and the north-east region of Albania, Law no. 8733 of 24 January 2001, which came into force on 13 March 2001, amended *inter alia* Article 78 of the Criminal Code by adding a new paragraph that regulates revenge killings in order to stop the total destruction of families. The new provision, in force at the time the Italian sentence was converted by the Albanian courts, reads as follows:

Article 78

"1. A person convicted of premeditated homicide shall be sentenced to a term of fifteen to twenty-five years of imprisonment.

2. A person convicted of premeditated homicide because of an interest or/and vendetta shall be sentenced to a term of between twenty years and life imprisonment."

D. The Act on the Rights and Treatment of Prisoners (Law no. 8328 of 16 April 1998 as amended by law no. 9888 of 10 March 2008 – "The Prisoners' Rights Act")

89. Section 33 of the Prisoners' Rights Act, as in force at the material time, provided that, in the absence of medical treatment in the prison's health unit and when necessary, the prisoner may be transferred to a prison hospital or other medical institution, upon the order of the prosecutor. The prisoner has the right to appeal within five days to the district court against the prosecutor's refusal [to transfer him to a hospital].

III. RELEVANT INTERNATIONAL MATERIALS

A. European Convention on the International Validity of Criminal Judgments (European Treaty Series (ETS) no. 70)

90. The Convention entered into force in respect of Albania on 23 January 2004. It was signed by Italy on 4 February 1971 and for the time being has not been ratified. Thus, it was not in force in respect of either country on 20 May 2003, when the applicant was convicted by the Tirana District Court. Its relevant provisions read as follows:

Article 3

"1. A Contracting State shall be competent in the cases and under the conditions provided for in this Convention to enforce a sanction imposed in another Contracting State which is enforceable in the latter State.

2. This competence can only be exercised following a request by the other Contracting State."

B. Convention on the Transfer of Sentenced Persons (ETS no. 112) and the Additional Protocol thereto (ETS no. 167)

91. The objectives of the 1983 Transfer Convention, including its Additional Protocol of 1997, are to develop international cooperation in the

field of criminal law and to further the ends of justice and social rehabilitation of sentenced persons. The Preamble to the Transfer Convention states that these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society. Its provisions, in so far as relevant, read as follows:

Article 1 – Definitions

"For the purposes of this Convention:

(...)

c. "sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred;

d. "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence".

Article 3 – Conditions for transfer

"1. A sentenced person may be transferred under this Convention only on the following conditions:

a. if that person is a national of the administering State;

(...)"

92. The Transfer Convention entered into force in respect of Albania on 1 August 2000 and in respect of Italy on 1 October 1989. The Additional Protocol has not been ratified to date by either country.

C. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

93. The CPT visited Albania in 2005, 2006 and 2008. In 2005, the delegation inspected, *inter alia*, Tirana Prison Hospital.

1. Relevant findings of the 2005 report (made public on 12 July 2006)

94. In this report (CPT/Inf (2006) 24) the CPT found that the health-care facilities, "were of a very poor quality in all the establishments visited. For instance, a piece of equipment as basic as weighing scales was absent everywhere. Needless to say, such a state of affairs also hampers the adequate oversight of the nutrition provided in the establishment, as well as the supervision of hunger strikes which occurred from time to time. It is also of concern that no running water was available in the dentist's surgery

at Tirana-Vaqarr Prison. Further, both at Tepelena Prison and Tirana-Prison No. 313, the state of cleanliness and hygiene in the doctors' consultation rooms left much to be desired."

95. The CPT further noted "a number of serious shortcomings as regards the medical screening upon admission in the prisons visited (in particular, examinations not being carried out systematically or only in a very perfunctory manner)." It also expressed its concern "that newly arrived remand prisoners were not systematically screened for transmissible diseases (such as hepatitis B and C, HIV, syphilis and tuberculosis), and that no information was being provided to inmates regarding the prevention of such diseases".

96. The CPT noted that at Prisons nos. 302 and 313 a number of medical files were not available. When "found", those files contained nothing other than the names of the prisoners concerned.

97. As regards the treatment of patients with serious medical conditions, the CPT observed that a number of individual cases illustrated alarming shortcomings in some of the establishments. The relevant excerpts state:

> "At Tepelena Prison and Tirana-Vaqarr Prison, the delegation met two prisoners who, due to their health condition (severe psychosis and an advanced stage of cancer, respectively), were in urgent need of specialised treatment in a hospital setting. However, no initiatives had been taken to transfer the prisoners concerned to the Prison Hospital. During the end-of-visit talks, the delegation requested the Albanian authorities to take urgent measures in respect of the two above-mentioned cases. In their letter of 14 July 2005, the Albanian authorities confirmed that both prisoners had been transferred to the Prison Hospital.
>
> At Tirana-Vaqarr Prison, the delegation met a prisoner suffering from diabetes who was not receiving a special diet. The CPT must stress that such a state of affairs amounts to a denial of treatment. Further, in the case of another prisoner at Tirana-Vaqarr, who was suffering from tuberculosis, the delegation observed that there had been a considerable delay in transferring the prisoner concerned to the Prison Hospital. Further, no protective measures had been taken during his transfers to the hospital, in order to avoid other prisoners or members of staff becoming infected with the disease."

98. The CPT recommended that the Albanian authorities review the provisions of health care in the establishments visited.

2. Relevant findings of the 2006 report (made public on 6 September 2007)

99. In this report (CPT/Inf (2007) 35) the CPT noted the domestic authorities' failure to implement their recommendations, particularly as regards the medical examinations on admission to pre-trial detention facilities.

100. The CPT noted that "no improvements had been made as regards the general provision of health care in either establishment visited,

notwithstanding various recommendations made by the CPT in the reports on the 2003 and 2005 visits".

101. As regards one of the pre-trial detention facilities that the CPT visited, it noted that "conditions in the health-care facilities were appalling. The delegation received many complaints from inmates about delays in having access to the doctor and the quality of the health care provided; the delegation observed itself, on the spot, the case of one inmate in need of urgent medical care who had been left in a state of total neglect".

102. The CPT raised the issue of long delays which had been observed in transferring inmates who were in urgent need of hospitalisation to a hospital. "The 2006 visit demonstrated that this problem had not yet been resolved. The delegation was informed that general hospitals were reluctant to admit detainees from pre-trial detention facilities, due to security considerations, while transfers to the Prison Hospital in Tirana were reportedly difficult, because the Prison Hospital falls under the authority of the Ministry of Justice".

3. Relevant findings of the 2008 report (made public on 21 January 2009)

103. In this report (CPT/Inf (2009) 6) the CPT found that the provision of general health care appeared on the whole to be adequate in most of the establishments visited, despite situations which gave rise to particular concern. It also noted some improvements as regards medical examinations on admission, even though that "remains a particularly problematic area in the Albanian prison system".

104. The CPT found that there had been shortcomings in the provision of specialist care, notably the provision of dental care and psychiatric care.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. The applicant complained that the lack of adequate medical treatment in prison amounted to ill-treatment contrary to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

106. The Government contested the applicant's argument. They submitted that the applicant had received all necessary treatment in the prison hospital and had undergone several medical examinations. However, they maintained that since the applicant had failed to raise the issue with the competent domestic court, in accordance with the Prisoners' Rights Act, his complaint under Article 3 was inadmissible for non-exhaustion of domestic remedies.

107. The applicant maintained his allegations. He submitted that the medical assistance he had received in the prison hospital was inadequate. The authorities were fully aware of his illnesses (see paragraphs 52 and 58 above). His father had enquired about his health on many occasions. However, all the replies he had received from the prison administration were of a general character and contained no detailed information about the treatment he was receiving. The applicant specifically pointed to the fact that the prison authorities had treated him with inappropriate drugs, thus causing him pain and worsening his health. Lastly, the applicant maintained that the Government had failed to prove the adequacy of the remedies required to be exhausted since all his complaints against the prison hospital doctors had been rejected by the prosecutor as unsubstantiated.

108. The Court reiterates that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. The rule is based on the assumption that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24). At the same time, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

109. The Court observes that the applicant lodged several complaints with the competent authorities, bringing his grievances to the attention of the domestic authorities at a time when they could reasonably have been expected to take appropriate measures. The applicant's description of his health problems in his complaints was detailed and coherent. The authorities possessed a record of his medical history and were aware of the

recommendations made by civilian doctors regarding the medical treatment required. However, the complaints were all dismissed by the prosecutor as unsubstantiated.

110. The Court notes that the Government failed to prove that the remedy referred to would have been effective in practice. They did not submit any domestic courts' decisions to substantiate their position. There is no indication that such a remedy would have been capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success. The Court therefore dismisses the Government's objection.

111. Having regard to the above considerations, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

112. The applicant maintained that the authorities' failure to give him the medical treatment he required, according to the civil doctors' opinion and prescriptions, amounted to ill-treatment. He relied on the medical reports on his state of health, and particularly on those dated 19 April 2005 and 12 December 2006, which highlighted the lack of medical treatment received by the applicant for a prolonged period of time and the repercussions of this on the deterioration of his health.

113. The Government contended that the applicant had received accurate and adequate medical treatment. In their submission, from the time of his arrest in 2001 onwards the applicant had received in-patient treatment in Tirana Prison Hospital on nine occasions, being provided with adequate medical treatment and examinations. The Government concluded that the applicant's complaint under Article 3 was unsubstantiated.

114. Following the Court's indication of the interim measure under Rule 39 of the Rules of Court, the Government submitted that providing the applicant with interferon beta entailed extremely high costs for the prison administration. They accepted, however, that this medication is available free of charge to the general public in hospitals.

2. The Court's assessment

115. The Court notes that the parties presented differing accounts of the medical assistance received by the applicant in prison. Consequently, the Court will begin its examination of the applicant's complaints under Article 3 with the establishment of the relevant facts.

(a) Establishment of facts

116. In the present case, the applicant claimed that he had not received adequate medical treatment or examinations, appropriate to his condition, while in detention.

117. It is not disputed by the parties that after his arrest in 2001 until August 2004 the applicant received in-patient treatment in the prison hospital for various symptoms and syndromes. Notwithstanding his young age, the applicant suffered from, among other things, difficulties in locomotion with paraesthesia and strong pain located in the lower extremities, dysuria and constipation. Only in August 2004, following a detailed examination, was the applicant diagnosed as suffering from initial multiple sclerosis (see paragraph 49 above).

118. From January to September 2005 the applicant was sent to the prison hospital for treatment and examinations on only one occasion, notwithstanding his repeated requests. Thus, on 19 April 2005 a group of civilian doctors examined him, confirmed the diagnosis of multiple sclerosis and prescribed continuous treatment with interferon-beta in accordance with medical protocols (see paragraph 58 above).

119. The Court finds, with concern, that during his detention from April 2005 to 28 January 2008, the date on which the applicant underwent a medical examination as a result of the Court's indication of the interim measure to the respondent Government, the applicant was left for long periods of time without receiving adequate medical treatment. The last medical report on the applicant's state of health confirmed that the progression of the disease over the years was due to the lack of medical care (see paragraph 74 above).

120. On at least two occasions, the applicant's father asked the prison administration for an independent medical examination of the applicant's health to be conducted and for adequate medical treatment to be provided to him (see paragraph 48 above). However, those requests were refused: as follows from the medical certificate produced by the Government, any subsequent medical examination of the applicant was possible only with the approval of the prosecutor. It is alarming that the issue of the medical examination of the applicant was left to the discretion of the prosecutor, not the doctors, to decide whether the applicant needed any additional medical examinations.

121. In sum, the above factors tend to support the applicant's allegation that his medical care in prison was inadequate. In such circumstances, it is for the Government to counter this finding. The Government did not, however, produce any document to justify why the authorities refused to provide the applicant with the medical treatment prescribed by the civilian doctors, or to explain how the treatment with vitamins and anti-depressant drugs could be considered adequate (see paragraph 59 above), (see, *mutatis mutandis*, *Ostrovar v. Moldova*, no. 35207/03, § 86, 13 September 2005).

They simply, and rather vaguely, claimed, without elaborating or substantiating further, that the applicant had undergone "in-patient treatment several times in the prison hospital facility". Accordingly, the Court considers that the Government have not provided a plausible explanation for the deterioration of the applicant's health in prison.

122. The Court therefore accepts the applicant's account of his health problems and the medical assistance he received while in detention. In particular, the Court accepts that from October 2004 to April 2005 the applicant was refused a medical examination and in-patent treatment in the prison hospital, and that the medical treatment provided in prison was inappropriate and inadequate to his health condition. Throughout his detention from October 2004 onwards the authorities failed to monitor his disease and provide adequate medical treatment, which aggravated his health condition. From May 2005 to 28 January 2008 the applicant was considered not to need additional medical treatment, notwithstanding the reports on him by civilian doctors. Only on 17 June 2008 was the applicant provided with the necessary treatment, as a result of the medical examination of 28 January 2008.

123. The Court will now examine whether these facts, taken together with other relevant circumstances of the case, amounted to "inhuman or degrading treatment", as the applicant suggested.

(b) Examination of the complaint

124. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy*, no. 26772/95, § 119, ECHR 2000-IV).

125. The Court further reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

126. In exceptional cases, where the state of a detainee's health is absolutely incompatible with detention, Article 3 may require the release of such a person under certain conditions (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99,

5 April 2001). There are three particular elements to be considered in relation to the compatibility of the applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention; and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel v. France*, no. 67263/01, §§ 40-42, ECHR 2002-IX).

127. However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It rather imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court accepts that the medical assistance available in prison hospitals may not always be at the same level as in the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; see also *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79; and *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI). In *Farbtuhs v. Latvia* (no. 4672/02, § 56, 2 December 2004) the Court noted that if the authorities decided to place and maintain a seriously ill person in detention, they should demonstrate special care in guaranteeing such conditions of detention that corresponded to his special needs resulting from his disability (see also *Paladi v. Moldova*, no. 39806/05, § 81, 10 July 2007).

128. The Court takes note of the CPT reports which, while not containing information that is directly relevant to the actual conditions of the applicant's detention and his state of health, may nevertheless inform the judgment of the Court by providing an accurate picture of the overall situation in prisons in Albania during the period in issue (see, for example, *I.I. v. Bulgaria*, no. 44082/98, § 71, 9 June 2005).

129. Turning to the present case, the Court notes that the evidence from various medical sources confirmed that the applicant had several serious medical problems which required regular medical care. However, nothing suggests that his diseases were in principle incompatible with detention. The prison had a medical unit, where the applicant was examined on several occasions, and his disease could presumably have been treated in that unit.

130. At the same time the Court refers to its finding that the applicant did not receive the requisite medical assistance (see paragraphs 121 and 122 above). Even while in the prison hospital, he clearly suffered from the physical effects of his medical condition. As to the mental effects, he must have known that he risked at any moment a medical emergency with very serious consequences and that no qualified medical assistance was available. Not only was the applicant refused appropriate medical assistance by the authorities, he was also placed under a high-security regime, being denied

the opportunity to contact his representatives (see paragraphs 56 and 57 above). This must have given rise to considerable anxiety on his part.

131. The Court cannot accept the Government's argument that the applicant's treatment with interferon beta would place a huge burden on the state budget. While the Court does not underestimate the financial difficulties invoked by the Government, it notes that this medication is provided free of charge to the public in hospitals. The Government provided no legitimate grounds to justify depriving the applicant of the same entitlement as other members of the public to have his medication costs met in full by the respondent State.

132. The applicant suffered from a very serious disease, multiple sclerosis. Even if quickly detected and treated, this disease is capable of causing disability (cognitive, judgment, and memory disorders, spastic paraparesis, pain, poor coordination, and sphincter dysfunction) and death. The risk of the disease, associated with the lack of adequate medical treatment and the long duration of his term of imprisonment, intensified his fears on that account. In these circumstances the absence of timely medical assistance, added to the authorities' refusal to offer him the adequate medical treatment prescribed by the civilian doctors, created such a strong feeling of insecurity that, combined with his physical suffering, it amounted to degrading treatment within the meaning of Article 3.

133. There has accordingly been a violation of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

134. The applicant complained that his imprisonment from 30 April 2001 onwards had been unlawful in that the authorities had failed to justify his arrest and subsequent detention on any of the specific grounds provided for in Article 5 § 1 and that it had been a consequence of arbitrary proceedings.

135. The Court considers that the applicant's complaint falls to be examined under Article 5 § 1 (a) and (c) of the Convention, which in so far as relevant, read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court; ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

A. Admissibility

1. The parties' submissions

136. The Government maintained that the applicant's arrest and detention had complied with Article 5 § 1 of the Convention. The Government did not submit any objections as regards the admissibility of this complaint.

137. The applicant contested the Government's argument.

2. The Court's assessment

138. The Court observes that the applicant was initially detained on 30 April 2001 on the strength of criminal charge relating to his alleged involvement in drug trafficking. It emerges from the parties' pleadings that the essence of their observations concerned the applicant's detention as of 15 May 2002 in respect of the proceedings concerning the validation and enforcement of the Italian court's judgment.

139. On that understanding, the Court will examine the lawfulness of the applicant's detention from 15 May 2002. The Court considers that the end date should be taken to be 29 December 2003, the date on which the applicant was convicted of drug trafficking in the first set of proceedings. Following that date, there was a legal basis for his detention under Article 5 § 1 (a) of the Convention.

140. Furthermore, the Court is prepared to treat the applicant's detention as of 15 May 2002 as falling within the ambit of Article 5 § 1 (a) of the Convention. For the Court, as regards proceedings concerning the recognition of the validity and enforcement of sentences issued by a foreign court, the presumption is that the detention of an individual is “lawful detention ... after conviction by a competent court”.

141. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

142. The Government maintained that the applicant's detention complied with Article 5 § 1 of the Convention. They submitted that on 15 May 2002 the authorities had ordered his detention in prison

notwithstanding the fact that he was already held in custody on the basis of another set of proceedings against him. The detention had been based on the relevant domestic provisions as interpreted by the Supreme Court in its judgment of 30 January 2003. Accordingly, it had also complied with the requirements of Article 5.

143. The applicant contested the Government's arguments.

144. With reference to the legal basis for his detention, the applicant observed that, according to the Government's submissions, it was based on the general provisions of the European Convention on the Transfer of Proceedings in Criminal Matters, even though that Convention had not been ratified by Albania at the material time whereas, according to the court's decisions, his detention was based on the general provisions of international law. Accordingly, none of the above-mentioned provisions could be considered to fulfil the "lawfulness" requirement of Article 5 § 1 of the Convention. Lastly, the applicant maintained that his detention had been unlawful since it was not based on any legal provision in force at the material time and was the consequence of arbitrary proceedings.

145. He referred to the Court's case-law and in particular to its *Bozano* judgment (*Bozano v. France*, judgment of 18 December 1986, Series A no. 111, p. 25-26, §§ 58-59).

2. The Court's assessment

(a) General principles

146. Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, p. 36, § 65 and *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, p. 16, § 37).

147. All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 22, § 40), save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5 § 1 is an exhaustive one (see *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV, and *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 17, § 42) and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, p. 25, § 58, and *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, p. 848, § 42).

148. The Court reiterates that "where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be

satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail" (see *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III).

149. The Court further recalls that the authorities must also conform to the requirements imposed by domestic law in the proceedings concerning detention (see *Van der Leer v. the Netherlands*, judgment of 21 February 1990, Series A no. 170-A, §§ 23-24; *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, § 27; *Erkalo v. the Netherlands*, judgment of 2 September 1998, 1998-VI, § 57).

150. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can, and should, exercise a certain power of review of such compliance (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, § 41).

(b) Application of the general principles to the present case

151. The Court recalls that the applicant was detained on 15 May 2002 pending the outcome of the validation and enforcement proceedings in Albania in respect of the sentence imposed by the Milan Assize Court of Appeal.

152. The Court must ascertain whether there was a lawful basis for the applicant's detention in the second set of proceedings.

153. The Court notes that at the time of the applicant's detention on 15 May 2002 proceedings for the validation and enforcement of a sentence imposed by a foreign court were governed by Articles 512 and 514 of the Code of Criminal Procedure ("CCP"). According to those provisions, the proceedings were to be brought before the district courts following a request by the Minister of Justice "once he had notice of the imposition of a foreign sentence concerning an Albanian citizen". Moreover, the validity and enforcement of a foreign sentence were conditional, *inter alia*, on consent being given by the person concerned (Article 514 (e) – see paragraph 72 above).

154. The District Court and the Court of Appeal, in their decisions of 20 June 2002 and 24 July 2002, found that the imperative nature of the above-mentioned consent requirement left no discretion to the courts to apply Articles 512 and 514 without the applicant's consent. These courts considered that any failure by the applicant to give his consent rendered the

Italian sentence unenforceable in Albania and, accordingly, there was no legal basis for his detention (see paragraphs 29 and 30 above).

155. While the proceedings before the Tirana Court of Appeal were pending, Law no. 8813 of 13 June 2002 (which entered into force on 11 July 2002) made several changes to the CCP, *inter alia*, abrogating the above-mentioned consent requirement contained in Article 514 (e). An appeal was lodged with the Supreme Court by the General Prosecutor's Office seeking the application of the newly amended law in the instant case. The Supreme Court relinquished jurisdiction in favour of the Joint Benches, the competent body for ensuring unification of case-law.

156. In its judgment of 30 January 2003 the Supreme Court, Joint Benches, decided to disregard the provisions of Article 514 (e) without formal reference to the applicability of the new law. A similar approach was taken by the Constitutional Court, in the retrial proceedings, the competent judicial body for assessing the compatibility of domestic provisions with the Constitution, which, in its decision of 12 July 2004, upheld the Supreme Court's reasoning (see paragraphs 46 and 47 above).

157. The Supreme and Constitutional Courts confined themselves to considering that the CCP's "old" provision of Article 514 was inadequate and that a legal basis could be provided by the generally recognised norms of international law in accordance with the principle of good will and reciprocity. They referred to two treaties, namely the European Convention on the International Validity of Criminal Judgments and the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto.

158. However, the European Convention on the International Validity of Criminal Judgments was not in force in respect of either country at the material time (see paragraph 90 above). Neither the Supreme Court nor the Constitutional Court suggested that either Convention was in force in respect of Albania.

In fact, the Supreme Court's search for a more adequate legal basis for the applicant's detention, led it to import into domestic law provisions of international law instruments which had not yet entered into force with respect to the Republic of Albania.

159. Having regard to the above rulings, the applicant's detention was not based on the provisions of the CCP, as amended by the new provision abrogating the consent requirement. Indeed, the domestic courts were themselves unsure as to which version of the CCP to apply in the applicant's case. In any event, had the domestic courts opted to use the new provision, this would have resulted in a retroactive validation of the applicant's detention.

160. For the Court, the legal basis ultimately found by the Supreme Court can scarcely be said to meet the qualitative components of the "lawfulness" requirement as regards the applicant's detention and the conversion of the sentence imposed by the Italian courts.

161. It cannot therefore be said that the applicant was able to foresee, to a degree that was reasonable in the circumstances, that his detention from 15 May 2002 and the conversion in Albania of the sentence imposed by the Italian courts, was in accordance with a procedure prescribed by domestic law.

162. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

163. The applicant complained of the unlawfulness of the proceedings concerning the validity and enforcement in Albania of the prison sentence imposed on him by the Italian courts. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law..."

164. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It should therefore be declared admissible. However, having regard to its findings above under Article 5 § 1, the Court considers that it need not examine separately whether the facts give rise to a breach of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 7 § 1 OF THE CONVENTION

165. The applicant further complained that the domestic courts, by failing to apply a more lenient provision subsequently introduced in respect of the offence in question and allegedly envisaging a less severe term of imprisonment, had breached the provisions of Article 7 of the Convention, which in its relevant parts reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

166. The Government contested that argument, arguing that this provision was not applicable in the circumstances of the case.

167. According to the Court's case-law, Article 7 of the Convention generally embodies the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and prohibits in particular the retrospective application of the criminal law where it is to an

accused's detriment (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 22, § 52).

168. Turning to the present case, the Court observes that the Albanian courts applied the penalty of life imprisonment to the applicant as provided for by the law in force at the time he had committed the offence, notwithstanding the fact that the applicable penalty for the same offence at the time the sentence was imposed by the Albanian courts was considerably more favourable to him.

169. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24). The complaints should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

170. In the present case, the Court observes that the applicant did not raise any complaint about the applicable criminal penalty in his appeals to the Court of Appeal, the Supreme Court or the Constitutional Court. It is for this reason that none of the higher courts examined such a complaint.

171. The Court concludes that the applicant failed to exhaust domestic remedies as provided by the domestic legal system. It therefore rejects this complaint in accordance with Article 35 §§ 1 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

172. The applicant complained that the delayed transfer to hospital, notwithstanding the interim measure indicated to the Government under Rule 39 of the Rules of Court, had violated his rights guaranteed under Article 34 of the Convention.

173. Article 34 of the Convention reads as follows:

> ""The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

174. Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

2. Notice of these measures shall be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

A. The parties' submissions

1. The Government

175. The Government submitted that the Court's interim measure of 10 January 2008 had been immediately forwarded to the responsible State authorities (the Ministry of Justice, the Ministry of Health, the General Prosecutor's Office and the prisons' directorate), which displayed their commitment to comply with the Court's decision. From 22 to 24 January 2008 the senior management of the responsible State authorities conducted a number of meetings with a view to taking the necessary measures to ensure the applicant's transfer to hospital.

176. The Government stated that the applicant's transfer from a high security prison, such as the Peqin Prison, to a hospital was a delicate undertaking, which necessitated the adoption of special security measures for the protection of the applicant's life and public order in the hospital.

177. The Government pointed to the applicant's refusal to transfer to hospital on 25 January 2008 on the ground that he sought medical treatment with interferon beta, instead of the conduct of a medical examination. According to the Government, the applicant refused to take any meals on that day and sought his transfer back to Peqin Prison. Furthermore, they submitted that the decision to administer interferon beta had to be taken by a panel of specialised doctors. No such panel had met to discuss the applicant's case.

178. On his transfer to the hospital, the Government noted that the applicant was in good physical condition. He communicated freely and moved without any difficulty.

2. The applicant

179. The applicant complained that the Government had completely failed to take any measures for the enforcement of the Court's interim measure. He maintained that no orders had been issued for his transfer to a hospital.

180. In the applicant's view, the Government failed to submit any supporting documents justifying their arguments as to an imminent risk to his life and the disruption of public order in the hospital as a result of the transfer. He also objected to the manner in which the medical examination was conducted and the procedures used. The applicant alleged that a number

of tests had not been performed and claimed that some documents were missing from the medical file.

B. The Court's assessment

1. General principles

181. Article 34 of the Convention requires Member States not to hinder in any way the effective exercise of an applicant's right of access to the Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 100, ECHR 2005-I).

182. The obligation in Article 34 not to interfere with an individual's effective exercise of the right to submit and pursue a complaint before the Court confers upon an applicant a right of a procedural nature – which can be asserted in Convention proceedings – distinguishable from the substantive rights set out under Section I of the Convention or its Protocols (see, for instance, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 470, ECHR 2005-III).

183. In *Mamatkulov and Askarov* (cited above, §§ 104, 125 and 128), the Court held that the failure to comply with an interim measure indicated under Rule 39 of the Rules of Court could give rise to a violation of Article 34 of the Convention.

184. In *Paladi v. Moldova* ([GC], no. 39806/05, 10 March 2009) the Court stated:

> "87. The Court reiterates that the obligation laid down in Article 34 *in fine* requires the Contracting States to refrain not only from exerting pressure on applicants, but also from any act or omission which, by destroying or removing the subject matter of an application, would make it pointless or otherwise prevent the Court from considering it under its normal procedure (ibid., § 102). It is clear from the purpose of this rule, which is to ensure the effectiveness of the right of individual petition (see paragraph 86 above), that the intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with (see paragraph 78 above). What matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34.
>
> 88. The same holds true as regards compliance with interim measures as provided for by Rule 39, since such measures are indicated by the Court for the purpose of ensuring the effectiveness of the right of individual petition (see paragraph 86 above). It follows that Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court.
>
> 89. Furthermore, the Court would stress that where there is plausibly asserted to be a risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention, the object of an interim measure is to preserve and protect the rights and interests of the parties in a dispute before the Court, pending the final decision. It follows from the very nature of interim measures that a decision on

whether they should be indicated in a given case will often have to be made within a very short lapse of time, with a view to preventing imminent potential harm from being done. Consequently, the full facts of the case will often remain undetermined until the Court's judgment on the merits of the complaint to which the measure is related. It is precisely for the purpose of preserving the Court's ability to render such a judgment after an effective examination of the complaint that such measures are indicated. Until that time, it may be unavoidable for the Court to indicate interim measures on the basis of facts which, despite making a *prima facie* case in favour of such measures, are subsequently added to or challenged to the point of calling into question the measures' justification.

For the same reasons, the fact that the damage which an interim measure was designed to prevent subsequently turns out not to have occurred despite a State's failure to act in full compliance with the interim measure is equally irrelevant for the assessment of whether this State has fulfilled its obligations under Article 34.

90. Consequently, it is not open to a Contracting State to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated. Neither is it for the domestic authorities to decide on the time-limits for complying with an interim measure or on the extent to which it should be complied with. It is for the Court to verify compliance with the interim measure, while a State which considers that it is in possession of materials capable of convincing the Court to annul the interim measure should inform the Court accordingly (see, *mutatis mutandis*, *Olaechea Cahuas v. Spain*, no. 24668/03, § 70, ECHR 2006-X; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 131, ECHR 1999-IV; and *Orhan v. Turkey*, no. 25656/94, § 409, 18 June 2002).

91. The point of departure for verifying whether the respondent State has complied with the measure is the formulation of the interim measure itself (see, *mutatis mutandis*, the International Court of Justice's analysis of the formulation of its interim measure and actual compliance with it in *LaGrand*, cited in paragraph 62 above). The Court will therefore examine whether the respondent State complied with the letter and the spirit of the interim measure indicated to it.

92. In examining a complaint under Article 34 concerning the alleged failure of a Contracting State to comply with an interim measure, the Court will therefore not re-examine whether its decision to apply interim measures was correct. It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation."

2. Application of the above principles to the present case

(a) Whether there was a failure to comply with the interim measure

185. The Court notes that the respondent Government were officially informed of the interim measure under Rule 39 on 10 January 2008 by a telephone conversation between the Registrar and the Government's Agent. The message was sent by electronic mail on the morning of

11 January 2008, following several unsuccessful attempts to send it by facsimile in the evening of 10 January 2008 and the morning of 11 January 2008.

186. The content of the interim measure included instructions to the domestic authorities to transfer the applicant to a hospital for medical examinations and appropriate treatment. Despite becoming aware of the interim measure at the latest on the morning of 11 January 2008, it was only on 28 January 2008 that the domestic authorities transferred the applicant to a hospital for medical examinations to be carried out.

187. It follows that the interim measure was not complied with for a period of seventeen days.

(b) Justification of the failure to comply with the interim measure

188. The Court will now determine whether there were objective impediments which prevented the Government's compliance and whether the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see *Paladi*, cited above, § 92.) The Court shall take into account the applicant's conduct and his medical condition in so far as the Government's actions to comply with the interim measure are concerned.

189. The Government submitted that the applicant's transfer to hospital entailed the adoption of security measures and coordination amongst various domestic institutions.

190. The Court reiterates that interim measures are to be complied with as a matter of urgency (see *Paladi*, cited above, § 98). In this connection, it observes that there is nothing in the case file to demonstrate that the domestic authorities took any action from 11 January to 24 January 2008. Despite the Government's argument about the security concerns that such a transfer entailed, the Court doubts that it was impossible for the domestic authorities to hold urgent meetings immediately following the notification of its interim measure to the respondent Government. Since the principal authorities had been informed by the Government's Agent about the Court's interim measure on the morning of 11 January 2008 (see paragraph 66 above), the Court sees no justification for the delay in arranging the necessary meetings. It observes with concern that the first meetings were only held from 22 to 24 January 2008. Furthermore, the Government failed to keep the Court informed about their compliance with the interim measure throughout this period.

191. Accordingly and despite the urgency and seriousness of the interim measure of 10 January 2008, the domestic authorities displayed a lack of commitment to assisting the Court in preventing the commission of irreparable damage. Deficiencies of this kind are incompatible with the duties incumbent on the Contracting States under Article 34 with regard to

their capacity to comply with interim measures with the required promptness (see *Paladi*, cited above, § 97).

192. As regards the applicant's conduct, the Court considers that he was responsible for a delay of at most three days (see paragraph 70 above). The Court finds the applicant's behaviour regrettable at a time when the interim measure was applied in order to verify the true seriousness of his condition. However, it does not find substantiated any other relevant delay imputable to him.

193. In their observations, the Government submitted that the applicant's good physical condition showed that the risk had not been as serious as previously thought.

194. The Court notes that there was no acceptable explanation for the domestic authorities' failure to take immediate action to comply with the interim measure. It recalls that the fact that the damage which an interim measure was designed to prevent subsequently turns out not to have occurred, despite a State's failure to act in full compliance with the interim measure, is equally irrelevant for the assessment of whether the respondent State has fulfilled its obligations under Article 34 (see *Paladi*, cited above, § 89).

195. The Court concludes that the domestic authorities' delay in complying with the interim measure at issue, in the absence of any objective justification, constitutes a violation of Article 34 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

196. Lastly, the applicant complained that in declaring his appeal in the retrial proceedings inadmissible *de plano* on 30 January 2004, without giving reasons, the Supreme Court had violated Article 2 of Protocol No. 7 to the Convention, which reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
>
> 2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

197. The Court, at the outset, finds that the applicant is in essence complaining about the domestic courts' failure to give reasons for their decision, a complaint more appropriately considered under Article 6 § 1 of the Convention rather than under Article 2 of Protocol No. 7.

198. The Court reiterates that the right guaranteed to a litigant under Article 6 of the Convention includes the right to have reasons for decisions given by a domestic court in his case. However, the corresponding

obligation on a domestic court to give reasons for its decisions cannot be understood as requiring a detailed answer to every argument adduced by a litigant. The extent to which the duty to give reasons applies may vary according to the nature of the decision at issue (see, for example, *Helle v. Finland*, judgment of 19 December 1997, *Reports* 1997-VIII, p. 2929, § 56).

199. The Court observes in this connection that the applicant appealed to the Supreme Court on the ground that the lower courts' decisions were defective in law. The Court considers that the limited reasons given by the Supreme Court in its *de plano* decision formula, however, implicitly indicated that the applicant had not invoked one of the points of law falling within the scope of the leave to appeal process. The Court observes that, where a Supreme Court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see, *mutatis mutandis*, *Nerva v. the United Kingdom* (dec.), no. 42295/98, 11 July 2000).

200. For the above reasons, the Court considers that the applicant's complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

201. 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

202. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

203. The Government contested the applicant's claim but did not submit any argument relating to the amount claimed by him.

204. The Court reiterates that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which it finds a breach imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. It follows, *inter alia*, that a

judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII; *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II; *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I; *Menteş and Others v. Turkey* (Article 50), judgment of 24 July 1998, *Reports* 1998-IV, p. 1695, § 24; and *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

205. The Court reiterates that it has found violations of several Convention provisions by the respondent State. The applicant was provided with inadequate medical treatment contrary to Article 3. He was detained arbitrarily contrary to Article 5 as regards the second set of proceedings which concerned the validation and enforcement in Albania of an Italian court judgment. Moreover, the Court has also found that Article 34 of the Convention was breached.

206. As regards the violation under Article 5 of the Convention, the Court notes that the applicant sustained non-pecuniary damage only as regards the period from 15 May 2002 to 29 December 2003, from which date his detention was governed by the District Court's judgment in relation to the criminal proceedings.

207. The Court observes that the applicant claimed compensation for non-pecuniary damage alone. Thus, it will not award any compensation for pecuniary damage. As regards the non-pecuniary damage claimed, the Court considers that it is reasonable to assume that the applicant suffered distress, anxiety and frustration, exacerbated by the deterioration of his state of health, which was further aggravated by his unlawful detention for more than a year and seven months. Deciding on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

208. The applicant also claimed EUR 7,550 for the costs and expenses incurred in obtaining an expert medical assessment and those incurred before the Court. He provided a detailed breakdown to substantiate his claims.

209. The Government contested the applicant's claims without submitting any argument.

210. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,000 covering costs under all heads.

C. Default interest

211. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 3 of the Convention, Article 5 § 1 of the Convention and Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the inadequate medical treatment provided to the applicant during his detention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention from 15 May 2002 to 29 December 2003;

4. *Holds* that it is not necessary to examine separately whether there has been a violation of Article 6 § 1 of the Convention as regards the proceedings concerning the validity and enforcement in Albania of the sentence imposed on the applicant by the judgment of the Milan Court of Appeal;

5. *Holds* that there has been a violation of Article 34 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 7,000 (seven thousand euros) in respect of costs and expenses, to be converted into the currency of the

respondent state at the rate applicable on the date of settlement, plus any tax that may be chargeable;
(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;

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

Done in English, and notified in writing on 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President