

ALTERNATIVE REPORT

On the execution of the decision of the European Court of Human Rights on cases represented by the Albanian Helsinki Committee

1. Executive Summary

The Albanian Helsinki Committee (AHC), pursuant to its mission, has contributed to guaranteeing respect for fundamental human rights and freedoms, by offering secondary legal aid to citizens who are part of marginalized and vulnerable groups of society, including citizens in conditions of deprivation of liberty in penitentiary institutions in our country.

After becoming familiar with the contents of the 16th Annual Report of the Committee of Ministers, “Supervision of the execution of judgments and decisions of the European Court of Human Rights for 2022,” and based on convention obligations deriving from the implementation of article 46 of the European Convention of Human Rights (ECHR), AHC presents with you this Alternative Report, for the purpose of presenting the findings regarding the legal and factual situation of the execution of some of the cases represented before the Court by AHC lawyers. This report seeks to reflect the achievements, challenges, and practical loopholes encountered in protecting and guaranteeing respect for the right to due legal process of the petitioners, a key substantial element of which is the efficient executability without delay of decision-making that seek to reinstate violated rights and the creation of positive judicial precedents.

During the period 2019-2021, AHC lawyers represented before the European Court of Human Rights three important cases such as Prizreni vs. Albania (petition no. 29309/16), Strazimiri vs. Albania (petition no. 34602/16), and Zaharia vs. Albania (petition no. 45022/16).

From the moment when these judgments assumed final form, pursuant to article 46 of the European Convention of Human Rights, which envisages in its first paragraph that “*The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties,*” AHC has followed the procedures undertaken by domestic authorities for the execution of these judgements. We note with concern that although a considerable time has passed since the judgment assumed the status of ‘final decision’ by the ECtHR, the process of execution remains partial. More concretely, none of the petitioners represented by AHC has been granted by the Albanian Government the remuneration for the material and non-material damage, issued in the respective final judgments. In the three cases represented by AHC lawyers at the ECtHR, we view the delay from the issuance of the ECtHR decision to the issuance of the Council of Ministers’ Decision to award the remuneration as procrastinated and unreasonable. In the case Strazimiri vs.

Albania, the delay goes up to 2 years and 7 months,¹ while in the case *Prizreni vs. Albania*, this delay goes up to 3 years and 3 months.² A considerable delay is also seen in the case *Zaharia vs. Albania*, whereby the Albanian Government took 1 year and 5 months, from the moment of the issuance of the final judgment by the Court, to decide on executing the amount established as its obligation.³ Currently, after a considerable time has passed, only the financial obligation in favor of the applicant Strazimiri has been executed. The government in July 2023 made it possible to execute the financial obligation, while the ECtHR's decision became final on 21.05.2020. Regarding this fact, there has been no official notification from the state authorities in the direction of AHC. Meanwhile, there is no official notification from the state authorities, and it does not appear that the decision of the ECtHR has been executed regarding the court costs and expenses in favor of the legal representatives of this citizen.

In all three cases represented by AHC, the petitioners' right for remuneration is recognized for monetary and/or financial damages going up to 40,000 euros in total and about 6,000 euros are the remuneration for taxes and expenses for representation and judicial fees. From the expiry of the three-month deadline within which these decisions assumed final form, up to the remuneration, an interest will be applied on these amounts, according to definitions in ECtHR decisions, during the period of delay. AHC views as problematic the unreasonable delays in executing the monetary amounts of remuneration for the petitioners, recognized through judicial decision, based on the difficulties that petitioners encounter due to their social-economic conditions they and their family members are in.

According to article 46 of the Convention (ECHR), the finding of violations by ECtHR places a legal obligation before the responsible State to not only pay petitioners the awarded amounts through fair justification according to article 41, but also to select, for supervision by the Committee of Ministers, the general and/or individual measures, on whether it is appropriate to approve these in their domestic legal order. These measures seek to put an end to violations found by ECtHR and correct repercussions to the extent possible. Pursuant to this article, in the context of the execution of the decision in *Strazimiri vs. Albania*, the ECtHR assigned concrete measures with regard to taking measures of a general and individual character. With regard to general measures, ECtHR asked for immediate intervention by the Albanian state to ensure the appropriate living conditions and appropriate health care services for individuals diagnosed with mental health

¹ Case "*Strazimiri vs. Albania*," for application no. 34602/16, dated 21.1.2020, and became final on 21.5.2020, while the decision for its execution bears the date 19.12.2022. This is about CMD no. 819, dated 19.12.2022 "On the execution of the judgement of the European Court of Human Rights, dated 21.1.2020, in the case '*Strazimiri vs. Albania*,' (for application no. 34602/16)"

² Case "*Prizreni vs. Albania*," application no. 29309/16, dated 11.6.2019, which became final on 11.9.2019, while the decision for its execution came out on 7.12.2022. This is about CMD no. 860, dated 27.12.2022 "On the execution of the judgement of the European Court of Human Rights, dated, 11.6.2019, in the case "*Prizreni vs. Albania*" (for application no. 29309/16)"

³ ECtHR decision in the case *Zaharia vs. Albania* is dated 09.11.2021. By CMD no. 369, dated 01.06.2022 "On the execution of the judgement of the European Court of Human Rights, dated 9.12.2021, on the case "*Fotaq Zaharia vs. Albania*" (application no. 45022/16)".

problems, who are deprived of liberty in the circumstances of compulsory medical treatment by judicial decision of domestic (Albanian) courts. **AHC has criticism regarding the conditions partially unacceptable for the accommodation of citizens with medical measures in the two IEPD Shënkoll (Lezha) buildings, which should have been a temporary and transitory solution, as a justification of the closing of the very problematic Zaharia IEPD, it is no longer such. In the absence of a special medical institution and, considering the almost quintupled of patients with the “medical measure” patients and the personal security measure of “compulsory hospitalization in a psychiatric hospital” (against their more reduced number, five years ago, at Zahari IEPD), AHC considers that concrete and urgent measures should be taken for a long-term solution which guarantees adequate medical treatment and infrastructure conditions that respect the human dignity of forensic patients (also known as having medical measures).**

As an individual measure in the *Strazimiri* case, the ECtHR has asked authorities to secure urgently the administration of appropriate and individualized forms of therapy for petitioners, and consider the possibility to place them in an alternative environment, outside institutions for the execution of penal decisions. This measure has not been implemented either.

Regarding the execution of ECtHR judgements for the cases *Strazimiri* and *Prizreni*, AHC has maintained continued contact and official correspondence with the State Advocacy office. Through letter no. 773/41 prot. dated 03.11.2021, the State Advocacy office informed: *“It has presented to the Committee of Ministers of the Council of Europe the action plans for the execution of the above-mentioned decisions. We bring to attention that the mentioned action plans reflect all the measures taken by Albanian authorities pursuant to ECtHR judgements and the role of the Advocacy Office in this process is a coordinating one between the responsible institutions according to the respective fields.”* The drafting and sending to the Committee of Ministers of the Council of Europe of the action plans on the execution of Court judgements, accompanied by the inaction of state bodies, raises serious doubts about the institutional will for the implementation of mandatory judgements.

In our assessment, the failure to execute in a timely manner the judicial decisions of the ECtHR puts into question for the petitioners the efficacy of the protection that the European Convention of Human Rights guarantees through this defense mechanism, when it finds that the Albanian State has violated the fundamental rights and freedoms of petitioners. This considerable delay in the execution This considerable delay in the execution of judicial decisions makes the judicial redress tool ineffective in terms of results. In some cases, the cause for this delay is the inaction or administrative and institutional bureaucracy of the responsible state actors or the lack cross-sector coordination and interaction of state institutions, and not necessarily the lack of adequate financial resources. For AHC, as a non-profit organization that protects human rights and freedoms, and also assists with advocacy services to protect the legitimate interests of the three petitioners, these causes are independent from the will of the petitioners and weaken their trust and that of the public

in general in the in the rule of law and the functioning of institutions in accordance with the obligations that derive from International Conventions that our country is a party to.

2. Viewpoint on the execution of the decision “Strazimiri vs. Albania”

2.1 Obligations deriving from this decision for the Albanian state and measures reported by responsible institutions:

The Albanian Helsinki Committee represented before the European Court of Human Rights, the case Strazimiri vs. Albania, presented to this Court on June 11, 2016 by application (no. 34602/16). The subject of this request was the inappropriate medical treatment of the petitioner, for which the ECtHR found violations of article 3 (prohibition of torture) and 5 (right to freedom and safety) of the Convention (ECHR). By its decision of January 21, 2020, the Court set a series of obligations for the Albanian state:

“.....The Court considers that the respondent State should expeditiously take the necessary measures of a general character in order to secure appropriate living conditions and the provision of adequate health care services to mentally ill persons who are subject to deprivation of liberty on the basis of a court-ordered compulsory medical treatment. The respondent State, subject to supervision by the Committee of Ministers, remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention. The Court considers that the respondent State should create an “appropriate institution” by refurbishing existing facilities or building a new specialized facility for housing persons like the applicant with a view to improving their living conditions. Any such facility must comply with the therapeutic purpose of this form of deprivation of liberty, aimed at curing or alleviating the mental-health condition of the detainees, including, where appropriate, bringing about a reduction in or control over their dangerousness and facilitating their reintegration into society. Pharmacological treatment should be combined with other recognized forms of therapeutic treatment, as part of an individualized treatment plan in respect of each individual. For these purposes, the authorities should also ensure the recruitment of a sufficient number of qualified mental health care workers in such facilities. Furthermore, the authorities should consider, where appropriate, the possibility of outpatient mental health treatment. Insofar as individual measures are concerned, the authorities should secure as a matter of urgency the administration of suitable and individualized forms of therapy to the applicant, and consider the possibility of his placement in an alternative setting outside of the penal facilities.”

“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, the following amounts, to be converted in to the currency of the respondent State at the rate applicable at the date of settlement:

- (i) *Eur 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;*
- (ii) *Eur 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses.”*

After this decision took final form on 21.05.2020, by letter no. 681, dated October 14, 2021, AHC sought information from the State Advocacy Office regarding the legal steps undertaken for the execution of the ECtHR judgement.⁴ The office of the State Advocate, by letter no. 773/41, dated 03.11.2021, made known that the Plan of Measures undertaken for the execution of the decision only focused on those of a legislative nature, measures for the transfer of the category of patients including the applicant in IEPD Lezha, and measures for the execution of the financial remuneration that has been recognized as an obligation for the Albanian State in the ECtHR decision.⁵

In January 2023, the State Advocate’s Office asked for the bank information of the applicant for the execution of the financial remuneration. Afterwards, AHC asked IEPD Shënkoll in January 2023⁶ to take measures to open a bank account for citizen A.S., who is in this institution. Having no reaction from IEPD Shënkoll, AHC addressed the institution with another letter after three months, in April 2023,⁷ seeking information about the measures taken for the effective execution of the decision. In response to the latest request, IEPD Shënkoll (Lezha) announced the successful opening of the bank account for this citizen. It was argued that the delay had to do with the lack of the citizen’s identification document, a key criterion for opening a bank account. AHC lawyers have taken measures for addressing the bank information to the Ministry of Finance and Economy, informing the State Advocate’s Office, while we await procedures to be taken by the responsible institutions. Meanwhile, the financial obligation in favor of the applicant Strazimiri was executed by the Government in July 2023. The decision of the ECtHR on this case was made final on 21.05.2020. In the assessment of AHC, the time elapsed from the adoption of the ECtHR’s final decision, until the execution of the relevant compensation, is very long and not justified. We also single out the fact that in the direction of the AHC, there was no official notification from the state authorities on the transfer of the monetary amount in favor of the citizen Strazimiri. AHC assesses as problematic the lack of an official notification from the state authorities regarding the execution of payments for court costs and expenses in favor of the legal representatives of this citizen.

2.2 Decision of the Albanian High Court, after ECtHR’s decision-making

Before addressing the ECtHR, AHC helped the applicant address the High Court against the Tirana Appeals Court that upheld the Tirana District Court decision of 2014, which had rejected his request to interrupt the inhuman treatment and his placement in a special medical institution

⁴ Letter no. 681 prot., dated October 14, 2021

⁵ Letter no. 773/41 prot., dated 03.11.2021

⁶ Letter no. 74 prot., dated 30.01.2023

⁷ Letter no. 259 prot., dated 14.04.2023

under the Ministry of health. Although the apple was submitted to the High Court in January 2016, due to the high backlog of cases in this court, its decision-making only took place in July 2021, that is five years later.

Based on the significance of the case, the Criminal College, based on article 437/1/b of the Criminal Procedure Code, deemed it necessary to review the case in a judicial hearing, with the presence of the parties and listening to them due to the problems and complexity of the case. By decision no. 18, dated 15.07.2021, the High Court decided⁸ to accept the request of applicant Arben Strazimiri who was represented by AHC lawyers, and ruled to interrupt the inhuman and degrading treatment of citizen Arben Strazimiri, by placing him in a specialized medical institution, according to law no. 79/2020, dated 25.06.2020, “On the execution of criminal decisions” and law no. 81/2020, dated 25.06.2020, “On the rights and treatment of individuals convicted to imprisonment and detainees.” This final and binding decision, issued by a domestic judicial instance, just like the decision of the ECtHR, has not been fully executed. The applicant is still accommodated in a penitentiary institution, IEPD Shënkoll, which responds to the Ministry of Justice. Although the placement of part of citizens remanded to the medical measure of compulsory medication in this institution was presented by authorities as a temporary measure, is actually not such. Also, due to the problems that AHC has noticed in its monitoring missions, we find that this institution does not meet the legal criteria of a special medical institution or the standards the ECtHR has referred to in its tasks in the decision Strazimiri vs. Albania.

2.3. There is still no special medical institution (findings and conclusions from AHC’s verification mission at IEPD Shënkoll, Lezha):

Thanks to the cooperation that AHC has with the General Directory of Prisons (GDP), we were informed that at the end of November 2021, the process to transfer 314 citizens with medical measures (of these 217 citizens with the measure ‘compulsory hospitalization’ and 97 with ‘temporary hospitalization’) was managed and conducted successfully from IEPD Kruja (Zahari).⁹ These citizens were accommodated at 2 buildings of IEPD Shënkoll (Lezha).¹⁰ Meanwhile, female citizens for whom the Court had issued medical measures, remain accommodated and treated at the premises of the Tirana Prison Hospital Center. This process marked the official shutting down of IEPD Kruja (Zahari), known as the most problematic prisons with regard to poor infrastructure, which placed accommodated citizens in the conditions of treatment with elements of inhuman and degrading treatment.

For the purpose of verifying the level of guaranteed fundamental rights and freedoms of this category of citizens, accommodated at IEPD Shënkoll (Lezha), a team of observers authorized by AHC undertook a thematic monitoring mission in March 2023. Some of the key findings and

⁸ The College considered that decision no. 2206, dated 22.01.2015, of the Tirana Court of Appeals, and decision no. 1394, dated 20.11.2014, of the Tirana Judicial District Court, should be changed.

⁹ Letter no. 12815/2 prot., dated 03.12.2021, to AHC by the General Director of Prisons

¹⁰ Letter no. 681 prot., dated October 14, 2021

recommendations addressed to the monitored IEPD, the General Directory of Prisons and line Ministries (that of Justice and that of Health and Social Protection):

- a) On the day of the monitoring, there were 230 patients accommodated with the medical measure “compulsory medication at a medical institution” and 174 citizens with the medical measure “temporary hospitalization in a psychiatric hospital,” while the official capacity of the institution is 186 persons. AHC found with concern that this institution was in the conditions of disturbing overcrowding. This situation represents a violation of Rule 18.4 of European Prison Rules, and of the standards elaborated by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),¹¹ as well as the consolidated practice of the European Court of Human Rights.¹²
- b) Citizens placed under ‘medical measure,’ after the closing down of the IEPD Zahari (Kruja), still remain accommodated in inappropriate premises that do not ensure adequate special medical treatment for the health conditions of these citizens and place them in the conditions of deprivation of liberty according to a penitentiary regime.¹³ Building IV and V of IEPD Shënkoll (Lezha) where these citizens have been accommodated, in our opinion, have not been built according to the standards that a special health care institution should fulfill. We find that these buildings have been built as prison buildings and are equipped with heavy metal doors, i.e., institutions of a real penitentiary nature. Also, taking into consideration the poor infrastructure conditions, and the lack of proper social and recreational premises, it is our opinion that these premises at IEPD Shënkoll do not fulfill the conditions for minimal standards of a therapeutical premise for the accommodated patients.
- c) Referring to data that AHC possesses from earlier verification missions at IEPD Zahari, in 2018, it is reported that there were 88 patients, of which 34 with the medical measure of “temporary hospitalization” and 54 with the medical measure of “compulsory medication.”¹⁴ Presently, we find with concern the quadrupling increase of these patients accommodated at IEPD Shënkoll or 316 more than five years ago. Taking into consideration the disproportionality between actual infrastructure capacities and the insufficiency of human resources, AHC judges that the appropriate treatment of these

¹¹ According to the General Report no. 31 of CPT, “Overcrowding can turn a prison into a human warehouse and undermine any efforts to give practical meaning to the prohibition of torture and other forms of ill-treatment. The resultant lack of personal space and privacy puts all prisoners at risk, especially the most vulnerable,” accessible at: <https://rm.coe.int/1680a63c72>

¹² In a series of cases, the European Court of Human Rights has found violation of article 3 of the Convention. Neshkov and others vs. Bulgaria, 2015; Varga and others vs. Hungary, 2015; Torreggiani and others vs. Italy, 2013; Sukachov vs. Ukraine, 2020, etc.

¹³ The personal security measure of ‘temporary hospitalization in a psychiatric hospital,’ envisaged by article 239 of the CPC should be executed in the premises of a civilian psychiatric hospital. The medical measure of ‘compulsory medication in a medical institution,’ according to article 46 of the PC and article 28, paragraph 1 and 2 of Law no. 44/2012 “On mental health,” amended, is executed at Special Medical Institutions, part of the integrated health care system of the Ministry of Health and Social Protection.

¹⁴ <https://ahc.org.al/gjendje-e-rende-e-personave-me-probleme-te-shendetit-mendor-ne-sistemine-burgjeve/>

citizens, according to the requirements of the ECtHR decision-making in the Strazimiri case and in reference to international standards, is partially lacking. The current accommodation of citizens in the two buildings of IEPD Shënkoll violates particularly the standards of Rule 12.1 of the European Prison Rules.¹⁵

- d) With regard to the infrastructure conditions, we found with concern the presence of humidity in the corridors of buildings 4 and 5, inappropriateness of conditions in the physical confinement room, the premises for common activities and airing premises. The current conditions are insufficient, bear premises for the violation of human dignity of these citizens, and do not guarantee a re-socializing and adequate premises for them
- e) With regard to the situation in the sector of social issues services, we highlighted some irregularities in the documentation and proper administration of personal psycho-social files by the responsible institutional personnel, including lack of documentation for the treatment plan in a periodical manner. Files were not filled out in a regular manner while notes on psycho-social services were documented only the personal notebooks of education specialists. This practice does not guarantee respect for individualized psycho-social treatment of citizens, as envisaged in articles 13, 14 paragraph 2 of law no. 81/2020 and article 3 paragraph 3, 20 paragraph 1 letter k) of the General Prison Rules.
- f) Referring to the situation in the health care sector, AHC observers found a series of deficiencies in the approved personnel structure of this institution. Concretely, there are 5 vacancies in the health care sector.¹⁶ Also, we found that 3 vacancies are for the position ‘custodian for patients with medical measures.’ The conduct of medical checks was done entirely upon request of the citizens and checks without prior request could only be done for those cases that needed continued and periodical oversight. This form of their treatment does not guarantee systematic medical oversight by the medical personnel, at any time and without delay. These situations reflect the lack of periodical and individualized follow-up in medical treatment, an obligation envisaged in articles 13 of law no. 81/2020 and 19 of the General Prison Rules.
- g) With regard to diabetic citizens, patients accommodated in IEPD Shënkoll with medical measure or temporary hospitalization in a psychiatric hospital, the periodicity of tests to measure diabetes was low. Also, we found that there was a lack of proper periodical tests in order to evaluate necessary medication.¹⁷ This practice does not guarantee respect for article 41 of law no. 81/2020. For these citizens, it resulted that there was no specified food

¹⁵ According to this rule, “Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose. If such persons are kept in IEPD, in extraordinary circumstances, there should be special regulations that takes into account their status and needs.”

¹⁶ According to the staffing structure approved for IEPD Shënkoll, there should be 22 employees, while there were 5 vacancies in the position of the cardiologist, psychiatrist, clinical biochemical lab doctor, and nurse (2).

¹⁷ These citizens are subjected to tests minimally once in three months and, more concretely, measurement of ‘momentary diabetes.’ AHC observers consider that this practice is not sufficient to evaluate pertinent medication of diabetic citizens because a specific test of ‘glucose hemoglobin’ test should be conducted and not momentary diabetes, which is a measurement done every day, for the purpose of continued monitoring of the state of diabetic citizens.

diet, which runs counter to article 36 of law no. 81/2020 and rule 22.1, of the European Prison Rules, and does not guarantee healthy and sufficient food in accordance with their health condition.

- h) Referring to the practice encountered for the procedures of physical confinement of citizens with medical measures, we found that not all concrete cases when patients are subjected to them are highlighted in the physical confinement register. Also, we found in 2 cases the placement of citizens under physical confinement for over 24 hours. This situation runs counter to article 96, paragraph 7 of the General Prison Rules, which envisages explicitly that isolation in a confined room, as a temporary restriction measure, is used only exclusively and only for a few hours, and it should in no case go beyond 24 hours.

In May 2023, AHC addressed the concrete findings and recommendations to the responsible institutions, such as the monitored institution IEPD Shënkoll, the General Directory of Prisons, Ministry of Justice, and Ministry of Health and Social Protection, but there has been no response from these institutions. IEPD Shënkoll said that this category of citizens are accommodated at IEPD Lezha as a transitory measure, until they are taken under the care of the Ministry of Health and Social Protection for good. IEPD Shënkoll, until the moment of the transfer of these citizens to an appropriate institution, has asked for AHC's cooperation to make the Ministry of Justice aware of the progress and level of fulfillment of AHC recommendations.

3. Overview of the execution of ECtHR decision, on *Zaharia v. Albania*:

In the case *Zaharia v. Albania*,¹⁸ after the failure of efforts to reach a solution by agreement, on November 9, 2021, the three-judge committee of the European Court decided to unregister the application of applicant Fotaq Zaharia after accepting the unilateral request of the Albanian Government. In the unilateral statement, the Albanian Government expresses its regret that that the applicant is subjected to inhuman and degrading treatment, in violation of article 3 of the Convention, pledging inter alia that:

“The authorities take it upon themselves that the applicant is examined by a a group of specialist doctors, within three months from the date of notification of the European Court decision, for the purpose of a re-evaluation of his current health condition and the issuance of a recommendation for surgery that may improve his health condition. In accordance with domestic law and procedures, the applicant will be offered the possibility to appoint a doctor of his own choosing to become a member of the doctors’ team.

Subject to securing the procurement of any medication and/or medical equipment as well as the applicant’s written consent to any surgical intervention, the authorities undertake to implement, within three months from the occurrence of all of the above events, the recommendations which will be made by the team of specialist doctors, including, but not limited

¹⁸ In the context of the adjudication of application *Zaharia v. Albania* on application no. [45022/16](#).

to, the performance of any surgical interventions at the Tirana Trauma Hospital or another equivalent state-run civilian hospital on the same terms as such medical interventions are made available to the general public and are covered by the Albanian public health care system.

The Government declare that they are prepared to pay 13,000 euros (thirteen thousand euros) to cover any and all pecuniary and non-pecuniary damage, as well as 2,000 euros (two thousand euros) to cover all costs and expenses, plus any tax that may be chargeable to the applicant. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them.”

In its decision-making, the ECtHR stressed that if the Government does not respect the conditions of the unilateral declaration, the request would be reinstated in the list of cases pursuant to article 37§2 of the Convention (Josipović v. Serbia (decision), no. 18369/07, March 4, 2008).¹⁹

3.1. Medical re-examination without result and effective solution to the systematic and grave health condition of the applicant

AHC notes that the unilateral statement of the Albanian Government for the health re-examination of the applicant has not brought about any positive effect for the treatment and solution of his health condition. The health condition of citizen Fotaq Zaharia remains particularly grave and the IEPD where the citizen is accommodated admits that it does not meet the conditions for effective therapy.²⁰

In parallel, AHC continued to represent in domestic courts the judicial processes initiated earlier on this citizen, before he addressed the ECtHR. Because of delays created as a result of vacancies due to the vetting process, the judicial process in the Appeals Court on “Release of applicant Fotaq Zaharia due to his detention in inhuman and degrading conditions, incompatibility of his health condition with imprisonment, which jeopardizes his health and life,” lasted about 3.5 years. By decision no. 567, dated 14.06.2022, the Tirana Appeals Court ruled to overturn the decision of the Kruja First Instance Court and send the case back for retrial.

After this decision, first before the Kruja First Instance Court and then the Lezha First Instance Court, the trial began on the case: “*Release of applicant Fotaq Zaharia due to his detention in inhuman and degrading conditions, incompatibility of his health condition with imprisonment, which jeopardizes his health and life.*”²¹ On June 12, 2023, the Lezha Judicial District Court announced its decision that it had no competence to adjudicate the case on the grounds that the request should be adjudicated by the Tirana Court of First Instance, under whose territorial competence the IEPD Kruja falls, the place where the applicant was accommodated at the time he filed the request. Earlier, on this issue, by decision no. 21.03.2023, the Kruja Court of First Instance

¹⁹ Decision Application no. 45022/16 Fotaq Zaharia v. Albania § 22

²⁰ Letter no. 4509 prot. dated 18.04.2022 of IEPD Lezha to the AHC

²¹ This adjudication relies on Decision no. 567 dated 14.06.2022 of the Tirana Court of Appeals.

had declared its lack of competence to adjudicate the request of the petitioner, with the argument that this case should be adjudicated by the Court in whose territory the IEPD where the petitioner is currently serving his imprisonment sentence is located. In these circumstances, the disagreement over competences between the two courts will be resolved by a decision of the High Court. Although disagreements on the material or territorial competences are normal juridical situations in the activity of national courts, state institutions are failing to provide an adequate solution for citizen Fotaq Zaharia for his grave health condition, which does not fulfill the pledges of the Albanian State in its unilateral statement accepted by the ECtHR. The above request on “Release of applicant Fotaq Zaharia...” was filed by the applicant on July 7, 2017, and is yet to receive a legal solution from Albanian courts, in spite of the health condition he is in.

Regarding the execution of the ECtHR decision, for the examination by a group of doctors of citizen Fotaq Zaharia, this process should have been concluded within March 9, 2022, as highlighted in official communications between institutions.²² As a result of negligence and lack of effective coordination between responsible institutions, and the challenges that the applicant (through his family members and AHC lawyers) encountered to identify the specialist orthopedist/orthopedic traumatologist that would be part of the medical commission for his medical re-examination, this deadline has been surpassed. The biggest challenge in this regard was the hesitation of specialized doctors to make their independent, impartial, and objective contribution, although AHC published a public call for expression of interest to provide this expertise with payment, sent electronically to several private health care institutions. The process of selection of the specialist doctor encountered difficulties due to the lack of expression of interest, while it was possible to conclude it successfully in September 2022. On October 6, 2022, the medical examination of citizen Fotaq Zaharia was conducted at the Trauma University Hospital by doctors Prof. Assoc. Vilson Ruçi, Dr. Sc. Artan Distafa and Dr. Alfred Cake.²³ Part of the examination was also Dr. Dion Riza, assigned by the applicant and his family members, while the lawyer assigned by AHC for the petitioner followed the process before and during the examination through official correspondence with responsible institutions²⁴ and physical presence during the consultation.

The professional opinion of the team of specialist doctors, part of the commission established to re-examine his health condition was transcribed and conveyed by mail to AHC in January

²² Letter no. 308 prot. dated 14.04.2022

Letter no. 678/4 dated 29.04.2022 of the Ministry of Health and Social Protection to the Trauma University Hospital

²³ Establishment of the Examination Commission at the Trauma University Hospital was announced by letter no. 1542/1 prot. dated 21.07.2022 and letter no. 2163/1 prot., dated 03.10.2022

²⁴ AHC letter no. 411 prot., dated 13.07.2022 to the Trauma University Hospital and the Ministry of Health and Social Protection;

AHC letter no. 490 prot., dated September 29, 2022, to the Trauma University Hospital;

AHC letter no. 508 dated October 12, 2022, to the Trauma University Hospital;

Letter no. 697 prot., dated December 29, 2022;

AHC letter no. 219 prot., dated March 25, 2022, to the State Advocacy Office;

State Advocacy Letter no. 445/4 prot., dated 14.04.2022 to AHC;

2023.²⁵ As a result, there was another three-month delay in transcribing and forwarding the medical consultation conducted at the Trauma University Hospital. The expanded consultation of specialist doctors found that the case is peculiar and that the patient is now permanently disabled, without real opportunity to recuperate even partially. The evaluation provided by the team of specialist doctors reflects a substantial inability of domestic authorities to fully execute the ECtHR decision, referring to engagements undertaken by the Albanian Government.

In these conditions, given that the Albanian Government has failed to fulfill the conditions established in its unilateral statement regarding the appropriate health treatment of the applicant, in June 2023, in respect of article 37§2 of the Convention, the ECtHR consolidated case law, AHC asked through an official letter the Department for the Execution of Decisions of this court to consider the possibility of restoring the case to the list of pending cases. We await ECtHR's decision on this request.

3.2. Delays in the execution of pecuniary and non-pecuniary damages to the applicant

Taking into consideration the grave social-economic condition of the applicant, who is unable to afford payments due to his deprivation of liberty,²⁶ and of his family members, from September 2022, AHC has asked the Ministry of Finance and Economy²⁷ to take concrete and immediate measures to plan the execution of the relevant remuneration. For a period of about 7 months, until March 2023, this institution has not provided any concrete response on resolving the addressed issue. The lack of periodic and systematic information on the execution of this decision-making, as an important part of international obligations undertaken in the context of the ratification of the ECHR, forced us at the end of March 2023, to address this Ministry with another request for information. About one month later, the institution reacted by official letter of 28.04.2023,²⁸ which informed us that the Council of Ministers had taken a decision to execute the decision since June 2022. Meanwhile, in July 2022, the Ministry enabled the depositing of funds (principal and interests) in the account opened for this case. In its capacity as the legal representative of the applicant, AHC notes with concern the long period (about ten months) that it took the public authority (concretely the Ministry of Finance and Economy) to inform the lawyers of the applicant about the existence of a bank account opened for this purpose and to request from us information needed from applicant Zaharia, namely documentation such as identity card and account number, elements that enable the transfer of funds to the personal account.

²⁵ By letter no. 3/1 dated 06.01.2023.

²⁶ Article 41, paragraph 2 of law no. 81/2020 "On the rights and treatment of individuals convicted to imprisonment and detainees," and CMD no. 337, dated 06.04.2011 "On the inclusion of individuals convicted to imprisonment and detainees in the category of economically inactive persons"

²⁷ AHC letter no. 468 prot., dated September 14, 2022 to the Ministry of Finance and Economy; AHC letter no. 233 prot., dated March 31, 2023, to the Ministry of Finance and Economy;

²⁸ By letter no. 6452/1 prot., dated 25.04.2023

After becoming familiar with this key information, AHC asked IEPD Lezha to take measures to open the bank account of convicted citizen Fotaq Zaharia.²⁹ This institution enabled the opening of the account and conveyed bank data, through letter no. 6390 prot., dated 26.05.2023. This information was conveyed by the defense lawyers of the applicant to the Ministry of Finance and Economy, informing also the State Advocacy Office. AHC awaits procedures that will be taken by responsible authorities for the full execution of the material and non-material damage undertaken in the unilateral statement of the Albanian Government, admitted as a consequence in ECtHR's decision to unregister this case from the list of pending cases.

4. Overview of the execution of the ECtHR decision in the case Prizreni v. Albania:

In the case Prizreni vs. Albania, corresponding to case no. 29309/16, the ECtHR decided on 11.6.2019 to declare the request acceptable due to the violation of procedural guarantees in article 2 (right to life) and 3 (prohibition of torture) of the European Convention of Human Rights. ECtHR tasked the Albanian State to remunerate the applicant with:

“EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

EUR 1,450 (one thousand four hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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.”

After this decision became final,³⁰ it took the Albanian Government about three years and three months to make a decision for the execution of this judgement.³¹

Before this decision-making was under review of the meeting of the Albanian Government, in January 2021, AHC lawyers informed the State Advocacy Office about letters no. 614, dated 22.11.2019 and no. 619, dated 25.11.2019 submitted to the ECtHR. Through these requests, AHC sought to inform the Department for the Execution of ECtHR Judgements about the bank data of the subjects where the relevant amounts awarded pursuant to judicial decisions would be deposited, in the context of non-material damage and judicial expenses and taxes.

Although this data was conveyed electronically to the institution of the State Advocacy, there is still no official response on the undertaken steps. After the applicant's individual inquiry with

²⁹ Letter no. 371 prot., dated 18.05.2023 of AHC

³⁰ Dated 11.09.2019

³¹ CMD no. 860, dated 27.12.2022 “On the execution of the decision of the European Court of Human Rights, dated 11.6.2019, on the case ‘Prizreni vs. Albania’ (application no. 29309/16)”

the AHC offices, it was possible to convey officially a copy of the identification document and the bank account data to the Ministry of Finance and Economy, informing also the State Advocacy office. The legal attorneys of the applicant await the measures to be taken by responsible authorities for the execution of this judicial decision-making.