



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

THIRD SECTION

**CASE OF LAÇI v. ALBANIA**

*(Application no. 28142/17)*

JUDGMENT

Art 6 § 1 (civil) • Domestic court's continuing failure to assess eligibility for exemption from stamp duty, impairing very essence of right of access to court • Shortcomings in functioning of the State Commission for Legal Aid and a prevailing reluctance of judges to award exemptions, as noted by Council of Europe monitoring bodies

STRASBOURG

19 October 2021

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Laçi v. Albania,**

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

Georges Ravarani, *President*,

Georgios A. Serghides,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma,

Frédéric Krenc, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 28142/17) 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 Mustafa Laçi (“the applicant”), on 3 April 2017;

the decision to give notice of the application to the Albanian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 28 September 2021,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The case concerns the domestic courts’ continuing failure to examine the applicant’s eligibility for exemption from stamp duty, as a result of which the examination of his claim for damages on the merits has not yet started, thus constituting a restriction of his right of access to a court.

## THE FACTS

2. The applicant was born in 1968 and lives in Kavaje. He was represented by Mr D. Matlija and Mr. T. Alexandridis, lawyers practising in Tirana.

3. The Government were represented by their then Agent, Ms E. Muçaj and, subsequently, by Ms B. Lilo of the State Advocate’s Office.

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

### I. PROCEEDINGS CONCERNING THE APPLICANT’S CLAIM FOR DAMAGES

5. On 21 February 2011 the applicant and seventy other people lodged claims against the Ministry of Defence and the State requesting

compensation (without indicating the amount) for pecuniary and non-pecuniary damage for the loss of life of their family members in an explosion in an ammunition dismantling facility, the management of which had been outsourced by the authorities to private companies.

6. On 27 January 2012 the Tirana District Court severed the claims for damages. On 20 January 2014 the applicant paid a fixed amount of stamp duty (*taksa e padisë*) of 12,000 Albanian leks (ALL – approximately 98 euros (EUR)) in accordance with the domestic rules (see paragraph 22 below). On 28 February 2014 the court declared itself not competent to examine the applicant’s claim in view of the establishment and operation of the administrative courts and referred the case to the Tirana Administrative Court of First Instance (“the Court of First Instance”). The amount of compensation claimed was set at ALL 32,000,000 (approximately EUR 228,000) and the stamp duty payable was 3% of that amount, that is, ALL 960,000 (approximately EUR 6,840).

7. On 6 January 2015 the applicant, who was unemployed and living on a monthly allowance of ALL 8,000 (approximately EUR 57), asked the State Commission for Legal Aid (“the SCLA”) for an application form to seek legal aid in the form of exemption from the payment of stamp duty on account of his indigence. The request was left unanswered.

8. Following the applicant’s request for exemption from the payment of stamp duty, the Court of First Instance, at a preliminary hearing, rejected it in accordance with Article 154/a of the Code of Civil Procedure (“the CCP”) for failure to put right the deficiencies of the claim (*të metat e padisë*). On 20 November 2014 the applicant’s representative requested a reduction in the amount of compensation claimed. The request does not appear to have been examined by the court.

9. On 20 January 2015 the Court of First Instance returned the claim to the applicant without taking any action, stating that he had failed to put right the deficiencies, namely payment of the stamp duty and expert fees in full within the time-limit fixed. The court further held that the relevant tax legislation did not explicitly provide for exemption from the payment of stamp duty and expert fees, even though the applicant had shown, by submitting supporting documents, that he was unable to pay the stamp duty. On 26 January 2015 the applicant appealed against that decision.

10. On 21 December 2017 the Tirana Administrative Court of Appeal (“the Administrative Court of Appeal”) quashed the decision and remitted the case to the Court of First Instance, instructing it to: determine the value of the claim and amount of stamp duty to be paid; make an interlocutory decision indicating which party would pay the costs; and direct the applicant to request legal aid in the form of exemption from the payment of stamp duty under the Legal Aid Act 2008. In the event of refusal or no reply from the SCLA, the Court of First Instance was to assess of its own motion whether the applicant was eligible to benefit from legal aid under section

21(1) and (2) and section 13(1)(c) of the Legal Aid Act 2008. If the Court of First Instance concluded that the applicant did not meet the statutory requirements to benefit from legal aid, it could return the claim for failure to pay the stamp duty, in accordance with sections 25(a) and 21(1) of the Administrative Courts Act. On the other hand, failure to pay the expert fees did not constitute grounds to consider the claim defective, because the court could issue an order to recover the expenses (*nxjerrjen e detyrueshme të shpenzimeve*), in accordance with Article 105 of the CCP (see paragraph 17 below).

11. On 22 January 2018 the Ministry of Defence, which was the defendant in the proceedings, lodged a cassation appeal with the Supreme Court, before which the proceedings still appear to be pending. The cassation appeal did not challenge the applicant's lack of financial means, but maintained that the Court of First Instance had correctly interpreted and applied the relevant provisions concerning his exemption request.

## II. THE AUTHORITIES' LETTER TO THE APPLICANT

12. Following the outcome of the applicant's claim for damages before the Court of First Instance, on 19 February 2015 the Secretary General of the Ministry of Justice ("the Ministry") informed the applicant's lawyer (in relation to another matter) that no application form to request exemption from the payment of stamp duty had been prepared yet, and that a number of regulatory acts needed to be adopted before the SCLA could provide such a form. Additionally, the Ministry explained that the SCLA could, in some instances, defer the payment of stamp duty or allow payment in several instalments. Lastly, the Ministry stated that in the absence of a decision by the SCLA within ten days, the relevant court could grant legal aid in one of the forms prescribed by law if the statutory requirements were met.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. DOMESTIC LAW AND PRACTICE

#### A. Code of Civil Procedure ("the CCP")

13. Article 104, which was repealed in 2017, provided that stamp duty (*taksa mbi aktet*) was determined on the basis of the value of the claim, which was indicated by the claimant. However, the court could determine the value of the claim if there were obvious doubts as to the amount indicated by the claimant, who, as a rule, was liable to pay stamp duty.

14. Article 105/b, as introduced in 2001, provides that individuals who are exempted from the payment of stamp duty will be exempted from the payment of other costs and expenses.

15. Under Articles 102 and 156, stamp duty is payable at the time of lodging a claim. In the event of failure to pay, a single judge will return the claim to the claimant without taking any further action whatsoever, in accordance with Article 154/a, indicating that the deficiencies be put right within the time-limit fixed. A special appeal may be lodged against the decision.

16. According to Article 158/a the court, at a preliminary hearing, can decide to exempt a claimant from the payment of stamp duty in the cases provided for by law. In such a case, Article 106 provides that court fees will be borne by the defendant to the extent determined by the court.

17. Under Article 105, expert fees have to be paid in advance by the party requesting an expert report. The court can, however, order the other party to pay the expert fees or that they be split between all parties to the proceedings, if the circumstances of the case and the financial situation of the parties so require.

#### **B. Administrative Courts Act**

18. Article 25 of the Administrative Courts Act provides that the presiding judge carries out a number of actions within seven days of the date of the claim being lodged, such as asking the claimant to put right the deficiencies of the claim within ten days, deciding that an expert report be drawn up when there is a need for special knowledge, and carrying out other actions provided for in Article 158/a of the CCP. These actions are carried out by way of interlocutory decisions. Failure of the parties to take part in the preliminary actions does not constitute grounds for dismissal of the case, even if they are summoned and duly notified.

#### **C. Legal Aid Act 2008, as amended (Law no. 10039 of 22 December 2008, as amended by Laws nos. 143/2013 and 77/2014)**

19. The Legal Aid Act 2008 was in force until 1 June 2018, when it was repealed by the Legal Aid Act 2017 (Law no. 111 of 14 December 2017). Section 11 provided for two types of legal aid: primary legal aid (that is, information on legislation and the legal system, the rights and obligations of individuals, and assistance in drafting legal documents) and secondary legal aid (that is, legal counsel and representation in criminal, civil and administrative proceedings). Under section 12, which was amended in 2013, free legal aid could also be granted in the form of exemption from the payment of stamp duty and other costs and expenses.

20. The Legal Aid Act 2008 provided for the setting up of the SCLA, which was responsible for, amongst other things, considering applications for legal aid (sections 6 and 10). Under section 16(4) and (6), as amended in

2014, requests for legal aid in the form of exemption from the payment of stamp duty had to be made using a specific application form. Section 21/1, introduced in 2013, provided that the SCLA would examine requests for legal aid in the form of exemption from the payment of stamp duty within ten days of receipt. If the SCLA did not take a decision or rejected the request, the court, at a preliminary hearing, could decide a claimant's exemption from the payment of stamp duty and other costs and expenses if the conditions under section 13(1)(c) were met. If the SCLA decided that a claimant was unable to pay stamp duty owing to his or her financial situation, even if the conditions under section 13(1)(c) were not met, it could order that payment be deferred or made in instalments.

21. Section 13(1)(c), as amended in 2014, provided that a person could benefit from free legal aid if he or she had inadequate financial means to pay stamp duty and was a recipient of social protection or satisfied the requirements to receive such protection, or was a victim of domestic violence or human trafficking.

#### **D. National Taxes Act (law no. 9975 of 28 July 2008, as amended)**

22. The National Taxes Act lays down, amongst other things, the types of taxes and fees applicable in the country and procedures for their calculation. Section 11 provided for the payment of certain service fees (*tarifa shërbimi*), such as court fees, which would be determined by a joint order of the Minister of Finance and the relevant State authorities. Pursuant to section 11, a joint practice direction issued by the Minister of Justice and Minister of Finance (direction no. 13 of 12 February 2009), as amended in 2010, stated that stamp duty for a claim for damages the value of which was less than ALL 100,000 (approximately EUR 714) was ALL 12,000. If the value of the claim exceeded ALL 100,000, the stamp duty would be 3% of the amount claimed.

23. In 2010 a new statutory provision was introduced providing for exemption from the payment of certain service fees for certain categories of individuals (law no. 10280 of 20 May 2010). However, no provision was made for exemption from the payment of court fees.

#### **E. Domestic case-law**

##### *1. Constitutional Court's decision no. 7/2013*

24. On 27 February 2013, prior to the adoption of the 2013 and 2014 amendments to the Legal Aid Act, the Constitutional Court ruled by a majority that compliance with the requirement under domestic law to pay stamp duty at the time of lodging a claim, even by people without financial means, did not constitute a breach of an individual's right of access to a court. It stated that a claimant who lodged a claim was required to pay

stamp duty in advance as a percentage of the value of the claim. An ordinary judge, having regard to the circumstances of the case and the financial situation of the claimant, could decide, on a case-by-case basis, to exempt him or her from the payment of stamp duty in order to ensure respect for the right of access to a court. In such a case, the stamp duty would be paid from the State budget. The Constitutional Court further pointed out that the SCLA was to provide legal aid to certain categories of individuals in accordance with the Legal Aid Act 2008.

25. The dissenting opinion stated that there was a breach of an individual's right of access to a court on account of the requirement to pay stamp duty, because the domestic legislation did not provide for an exemption from the payment of stamp duty for persons without financial means. It stated that the requirement to pay stamp duty was *sine qua non* for the continuation of the proceedings. It also stated that the majority's interpretation of the provisions of the CCP and Legal Aid Act left room for arbitrariness in the absence of a clear legal framework for the criteria for exemption.

## 2. Lower courts' decisions

26. In their written observations, the Government provided the following domestic courts' decisions concerning exemption from the payment of court fees. On 26 March 2015, in a similar case relating to the award of pecuniary and non-pecuniary damages for the loss of life of the claimants' family member, the Administrative Court of First Instance, having examined the claim for damages on the merits, ordered that the stamp duty and costs and expenses which the claimants had paid upon lodging the claim would be borne by the defendants, which were State bodies, in accordance with, *inter alia*, Articles 102 and 106 of the CCP.

27. On 18 October 2018, at a preliminary hearing in proceedings concerning a claim for the payment of pecuniary and non-pecuniary damages, the single judge of the Administrative Court of First Instance granted a request for exemption from the payment of stamp duty owing to the claimant's indigence, pursuant to Articles 104 and 158/a of the CCP.

28. On 25 September 2019 the Tirana District Court granted a request for legal aid in the form of representation in civil proceedings under the Legal Aid Act 2017 because the claimant's monthly retirement pension was lower than the minimum monthly income fixed by the Government.

29. On 1 November 2019 the Administrative Court of First Instance accepted a claimant's request for exemption from the payment of stamp duty because he met the statutory requirements under the Legal Aid Act 2017 as he was in receipt of disability allowance.

30. On 23 December 2019 the Administrative Court of First Instance granted a request for legal aid in the form of representation in administrative proceedings under the Legal Aid Act 2017 because the claimant's monthly



income was lower than the minimum monthly income fixed by the Government.

## II. COUNCIL OF EUROPE MATERIAL

### A. Commissioner for Human Rights

31. Following his visit to Albania from 23 to 27 September 2013, the Commissioner for Human Rights (“the Commissioner”) expressed concerns about the issue of excessive court fees and considered that district and appellate court judges needed to be provided with clear guidance concerning the implementation of the Constitutional Court’s decision no. 7/2013 relating to that subject matter, which, in his view, could be developed by the Supreme Court in close consultation with the Constitutional Court (see Report CommDH(2014)1).

32. The Commissioner noted the concerns expressed by the People’s Advocate that the Constitutional Court’s decision did not provide clear indications as to what would be the legal basis for the exemption from the payment of court fees, given that there was a clear legal obligation to pay stamp duty upfront and exemptions from payment were exceptional. The Commissioner referred to another report in which it had been noted there was no possibility for the courts to reduce court fees in special circumstances, including on the basis of inability to pay, except in those instances where the persons belonged to a specific category exempted from taxes (namely, if they proved that they were recipients of social protection or satisfied the requirements to receive such protection; or were victims of domestic violence or human trafficking).

33. In a follow-up letter of 11 March 2016 (CommDH (2016)44) to the then Albanian Minister of Justice, the Commissioner reiterated his concerns about the lack of effective implementation of the Legal Aid Act 2008, which continued to hinder access to justice by certain vulnerable social groups. He pointed to shortcomings of the functioning of the SCLA, which was demonstrated by the low number of requests for legal aid it had received.

34. The Commissioner further expressed concerns that “reportedly, judges [we]re reluctant to exempt persons with financial constraints from the payment of court fees. As a result, few persons ha[d] been granted the exemption”. In his view, the 2013 amendments to the Legal Aid Act, which tasked the SCLA with granting exemptions from the payment of stamp duty and other costs and expenses under certain conditions, had not borne any fruit since reportedly nobody had benefited from that possibility.

## **B. European Commission Against Racism and Intolerance**

35. In its fifth monitoring cycle report on Albania, which covered the situation in the country up to 10 December 2014, the European Commission Against Racism and Intolerance (ECRI) expressed concerns about the ineffectiveness of the free legal aid system. Persons in need of legal aid were not able to present the required detailed application documents to the SCLA, which only dealt with a small number of cases per year, and its budget was too low to hire lawyers for all persons in need.

In spite of the Constitutional Court’s decision no. 7/2013, ECRI reported that “judges were however reluctant to make use of th[e] power” to exempt claimants from paying stamp duty. ECRI expected that judges would start making use of that power and was of the view that the authorities should ensure that a lawyer was appointed to claimants through the legal aid system in discrimination cases considered urgent.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant complained that the domestic courts’ failure to examine the merits of his claim for damages on account of his failure to pay stamp duty had constituted an unjustified restriction of his right of access to a court under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

#### **A. Admissibility**

##### *1. The parties’ submissions*

37. The Government submitted that the applicant no longer had any interest in pursuing his case before the Court since the decision of the Administrative Court of Appeal had been in his favour. That decision showed that the domestic system provided sufficient remedies which were effective in theory and in practice.

38. The Government also submitted that the applicant had not complied with the six-month time-limit without providing any details. They further contended that the complaint was premature, given that the applicant had lodged the application with the Court prior to the Administrative Court of Appeal’s decision. Lastly, the Government considered that the complaint was unfounded.

39. The applicant submitted that the Government had not stated the deadline from which the six-month time-limit had started to run. In any event, his application was not premature. He had first lodged his claim with the domestic courts in 2011 and to date had not yet received a determination of his case. Consequently, in his view, the domestic courts had not provided a practical and effective remedy exempting him from the obligation to pay court fees.

## 2. *The Court's assessment*

40. The parties did not dispute the applicability of Article 6 to the proceedings at issue. The Court, noting that the proceedings concerned the applicant's claim for damages, and therefore related to "the determination of his civil rights" for the purposes of that Article, does not see any reason to hold otherwise (see, for example, *Kreuz v. Poland*, no. 28249/95, § 35, 19/06/2001).

41. The Court will first address the Government's objection that, in view of the Administrative Court of Appeal's decision of 21 December 2017, the applicant lost his victim status and no longer had any interest in pursuing his application before the Court. The Court points out that, in principle, even a favourable decision for an applicant is not sufficient to deprive him or her of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V). In this connection, the Court notes that the Administrative Court of Appeal did not acknowledge the applicant's lack of access to a court, but remitted the case to the Court of First Instance to review the request for legal aid in the form of exemption from the payment of court fees. Furthermore, the applicant was not provided any redress, as an assessment of his personal circumstances has not yet taken place. In fact, the domestic courts have not made a determination of the applicant's claim for damages considering that as of 22 January 2018 the opposing party's cassation appeal on the interim question of payment of stamp duty appears to be pending before the Supreme Court. The Court considers, therefore, that for the purposes of Article 34 of the Convention, the applicant has not lost his victim status and that the Government's objection in this regard should be rejected.

42. The Court further considers that, in spite of the Government's objection to the applicant's compliance with the six-month time-limit, no issues arise in this respect in view of the proceedings pending before the domestic courts. As regards the Government's objection that the complaint was premature, the Court notes that the applicant submitted a claim for damages for the loss of his wife's life on 21 February 2011 (see paragraph 5 above) and that that claim has not yet been examined on the merits by the

domestic courts despite several steps being taken by him in that regard. In view of the fact that more than ten years have lapsed since the lodging of the claim with the domestic courts without a final determination of the merits, the Court considers that this issue is at the heart of the applicant's complaint of an unjustified restriction of his right of access to a court and should be joined to the examination of the merits of the complaint.

43. Furthermore, this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties submissions*

#### **(a) The applicant**

44. The applicant maintained that the domestic system did not offer effective remedies for his Convention complaint. In his view, the domestic court decisions provided by the Government were merely evidence of the uncertainty surrounding the issue of exemptions from the payment of stamp duty and costs and expenses in general.

45. The applicant contended that he had been prevented from having his case examined by the domestic courts on account of his financial inability to pay the stamp duty. In fact, the Court of First Instance, which had recognised his indigence, had dismissed the case solely on the grounds of its non-payment. In its cassation appeal, the Ministry of Defence had not contested the applicant's indigence, but had argued that the Court of First Instance had correctly applied and interpreted the domestic law in not granting him an exemption from the payment of stamp duty.

46. The applicant maintained that the restriction of his right of access to a court had been of a purely financial nature, unrelated to the merits of the claim or its prospects of success. Additionally, the lack of clear legislative and regulatory guidance relating to the modalities of granting a request for exemption from the payment of stamp duty, as pointed out in the dissenting opinion to the Constitutional Court's decision no. 7/2013 (see paragraph 25 above), made judges reluctant to grant such requests.

47. Lastly, the applicant submitted that, contrary to the Government's allegations that his rights had been ensured by the Administrative Court of Appeal's decision, he had not yet been exempted from the obligation to pay court fees. The appellate court had not decided to exempt him from this obligation, but had instead remitted the case to the first-instance court with instructions to review the applicant's request for exemption. The applicant

further submitted that the delay in having the merits of his claim for damages examined had rendered his right of access to a court theoretical and illusory. This meant that the very substance of his right of access to a court had been impaired.

**(b) The Government**

48. The Government maintained that the upfront payment of stamp duty was imperative to guarantee the well functioning of the judicial process and served the public interest.

49. Furthermore, they submitted that the applicant's right of access to a court had been recognised by the domestic courts, as the Administrative Court of Appeal's decision had embodied all the principles articulated in the Court's case-law. Domestic law and case-law, including the Constitutional Court's decision no. 7/2013, showed that the system provided effective remedies and that the applicant's contention that his access to a court had been restricted due to his inability to pay the stamp duty was unfounded.

*2. The Court's assessment*

**(a) General principles**

50. The Court reiterates that the right of access to a court is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals. The limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 of the Convention if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Pasquini v. San Marino*, no. 50956/16, § 156, 2 May 2019).

51. The Court has established that, while the requirement to pay court fees in the civil courts in connection with claims they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention (see *Stankov v. Bulgaria*, no. 68490/01, § 52, 12 July 2007), the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed are factors which are material in determining whether or not a person enjoyed his right of access and had "a ... hearing by [a] tribunal" (see *Kreuz*, cited above, § 60). The Court is especially mindful of the importance that restrictions on access to a court which are of a purely financial nature and which are completely unrelated to the merits of the claim or its prospects of success should be

subject to particularly rigorous scrutiny from the point of view of the interests of justice (see, amongst other authorities, *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65, 26 July 2005; *Teltronic-CATV v. Poland*, no. 48140/99, § 61, 10 January 2006; *Apostol v. Georgia*, no. 40765/02, § 60, ECHR 2006-XIV; and *Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, § 45, 20 December 2007).

52. Furthermore, the Court has considered to be excessive, and therefore impairing the very essence of the right of access to a court, high court fees which were not justified by the applicant's financial situation but calculated on the basis of a set statutory percentage of the sum at stake in the proceedings (see *Weissman and Others v. Romania*, no. 63945/00, §§ 39-42, ECHR 2006-VII (extracts)).

**(b) Application of those principles in the present case**

53. In the present case, the applicant lodged a claim for damages for the loss of his wife's life. Pursuant to domestic law, he was required to pay stamp duty, which was calculated on the basis of a set percentage, laid down by law, of the amount claimed. The Court has not ruled out that the aim pursued by the general rules on the payment and collection of court fees serves the interest of justice and, as such, can be accepted as compatible with the Court's case-law (see *Kreuz*, § 59, and *Weissman and Others*, § 35, both cited above).

54. However, it is not disputed by the parties that owing to his poor financial situation as a result of his unemployment status, the applicant was unable to pay the high stamp duty which amounts to one hundred and twenty times the level of his monthly allowance (see paragraphs 6 and 7 above). The central issue in this case is therefore whether the domestic authorities carried out an assessment of his financial situation in accordance with the requirements of Article 6 of the Convention, so that the obligation to pay the high stamp duty did not impair the essence of his right of access to a court.

55. The Court has held that a party seeking exemption from the payment of court fees should act with the requisite diligence when presenting to the courts evidence concerning his or her financial standing, and is under an obligation to cooperate faithfully with the courts in the matter (see, for example, *Elcomp sp. z o.o. v. Poland*, no. 37492/05, § 41, 19 April 2011). In this connection, the applicant applied, to no avail, to the SCLA in accordance with the provisions of the Legal Aid Act. His application for exemption from stamp duty remained unanswered. The Court notes the shortcomings in the functioning of the SCLA since its establishment, which were reported by the Council of Europe monitoring bodies in 2013 and

2014 (see paragraphs 33 and 35 above) and highlighted in a letter sent by the Ministry of Justice to the applicant in 2015 (see paragraph 12 above).

56. The applicant also made a request for exemption from stamp duty to the Court of First Instance, which rejected the request and returned the claim for damages to him without taking a decision on the merits. The Court notes that, despite being in possession of supporting documents from the applicant about his poor financial situation, the Court of First Instance, while acknowledging his indigence (see paragraph 9 above), failed to make an assessment of his personal circumstances in accordance with what appeared to be the clear provisions of section 21/1 of the Legal Aid Act. Furthermore, the court appears to have disregarded the interpretation made by the Constitutional Court in its decision no. 7/2013.

57. In this connection, the Court takes note of the situation prevailing in Albania at the relevant time in respect of which the Council of Europe monitoring bodies expressed serious concerns, stating that “judges [we]re reluctant to exempt persons with financial constraints from the payment of court fees” (see paragraphs 34 and 35 above). The Court further considers that the amount of stamp duty payable by the applicant was excessively high in view of the level of monthly allowance he received (see paragraph 7 above). The restriction in question was imposed at the very initial stage of the proceedings.

58. Following an appeal by the applicant, the Administrative Court of Appeal quashed the Court of First Instance’s decision and remitted the case to a different bench of the same court, giving a number of relevant directions to be observed. However, owing to a cassation appeal filed by the defendant, namely the Ministry of Defence, the proceedings appear to have been pending before the Supreme Court since 2018. Consequently, the domestic courts have not yet carried out an individualised assessment of the applicant’s financial situation in order to determine whether he should be exempted from stamp duty. The examination of his claim for damages on the merits is yet to start.

59. The Court therefore concludes that the applicant’s conduct in making use of the possibilities provided for by domestic law cannot be reproached. However, his efforts seem to have been thwarted by the cumulative effect of the shortcomings in the functioning of the SCLA and its failure to adopt the required implementing regulations, the apparent reluctance of national judges to exempt persons with inadequate financial means from the payment of stamp duty, the Court of First Instance’s failure to properly assess his financial situation, and the significant delay in the cassation proceedings on the interim question before the Supreme Court. As a result, the applicant continues to face uncertainty as regards the prospect of his claim for damages filed in 2011 being examined on the merits.

60. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts’ continuing failure to assess the

applicant's eligibility for exemption from stamp duty has impaired the very essence of his right of access to a court.

61. The Court therefore dismisses the Government's objection (see, *mutatis mutandis*, *Kutić v. Croatia*, no. 48778/99, §§ 25-26 and 32, ECHR 2002 II) and finds that there has been a breach of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

62. Article 46 of the Convention provides as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

63. Article 41 of the Convention provides as follows:

“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. Article 46

64. The applicant asked the Court to indicate to the respondent State to withdraw their cassation appeal to allow the proceedings before the Court of First Instance to resume shortly after the Court's judgment. Furthermore, he asked the Court to indicate to the Government to take all the necessary measures to ensure a speedy adjudication of the merits of his claim for damages by indicating time-limits for the proceedings.

65. The Court reiterates that findings of a violation in its judgments are essentially declaratory (see, amongst other authorities, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 61, ECHR 2009, and *W.D. v. Belgium*, no. 73548/13, § 167, 6 September 2016). In accordance with Article 46 of the Convention, a finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, amongst other authorities, *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; *Dybeku*, cited above, § 63; and *Sławomir Musiał v. Poland*, no. 28300/06, § 106, 20 January 2009).

66. In view of the above considerations, having regard to the particular circumstances of the case and the need to put an end to the violation of



Article 6 § 1 and insofar as individual measures are concerned, the Court considers that the national courts should ensure, as a matter of urgency, that the applicant's eligibility for exemption from the payment of court fees is assessed without undue delay.

67. In view of the Legal Aid Act 2017 which repealed the Legal Aid Act 2008, the Court does not consider that any general measures are called for. The implementation of the Legal Aid Act 2017 may, however, be subject to the Court's review depending, in particular, on the authorities' capacity to consider applications for legal aid.

## **B. Article 41**

### *1. Damage*

68. In his claims submitted under Rule 60 of the Rules of Court, the applicant argued that, in his specific circumstances, the finding of a violation as sufficient just satisfaction would be inequitable because, firstly, the case was expected to be before the Supreme Court for a long time and, secondly, because even if the issue of court fees were settled speedily, the review of the merits of his claim for damages would take place with a delay given the current backlog of the domestic courts at all levels.

69. The applicant did not make any claims in respect of pecuniary damage and claimed 10,000 euros (EUR) in respect of non-pecuniary damage as he had not received any compensation in the domestic proceedings.

70. The Government contested the applicant's claims, arguing that they were unsubstantiated.

71. The Court accepts that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards him EUR 7,500 under this head.

### *2. Costs and expenses*

72. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and EUR 3,400 for those incurred before the Court. He submitted a document containing a table of the costs and expenses incurred by his representatives.

73. The Government submitted that these claims were exorbitant and unsubstantiated.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these were actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant failed to provide a complete list of documents, such as invoices or contracts, in support of the total amount of costs and expenses incurred in the domestic proceedings. However, the Court finds that, in view of the documents in the case file, he must have incurred some costs and expenses in the proceedings before the national courts and the Court. Accordingly, in the present case, regard being had to the information in its possession, the Court considers it reasonable to award the applicant the sum of EUR 3,000.

3. *Default interest*

75. The Court considers it appropriate that the default interest rate 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. *Joins* to the merits the Government's objection that the complaint was premature and *dismisses* it after considering the merits;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

LAÇI v. ALBANIA JUDGMENT

Done in English, and notified in writing on 19 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Georges Ravarani  
President