



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

THIRD SECTION

CASE OF BIBA v. ALBANIA

(Application no. 24228/18)

JUDGMENT

Art 8 • Positive obligations • Private life • Dismissal of applicant's compensation claim for serious injury sustained by his son in an attack by another pupil with a rubber catapult at a private school during a break between classes • Educational institutions in principle under an obligation to supervise pupils during the entire time they spend in its care, including class breaks, and expected to take appropriate measures to prevent use of dangerous objects pupils on school premises or custody • Domestic courts' failure to adequately address applicant's factual claims concerning events preceding and following the incident • Civil remedy available did not provide adequate protection against attack on applicant's son's physical integrity • Children and vulnerable individuals entitled to effective protection by the authorities • Domestic legal mechanisms applied in a defective manner
Art 6 § 1 (civil) • Deprivation of access to a court due to dismissal of constitutional complaint as being lodged outside four-month time-limit calculated from date of delivery of Supreme Court's decision rather than date decision was served

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 May 2024

FINAL

07/08/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Biba v. Albania,

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Georgios A. Serghides,

Darian Pavli,

Peeter Roosma,

Andreas Zünd,

Oddný Mjöll Arnardóttir, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 24228/18) 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 Tonin Biba (“the applicant”), on 15 May 2018;

the decision to give notice to the Albanian Government (“the Government”) of the complaints under Articles 3 and 8 of the Convention that the State had failed to fulfil its positive obligations in a situation of violence inflicted on the applicant’s son by his schoolmate, and two complaints under Article 6 § 1, that the length of the civil proceedings in which the applicant sought compensation for his son’s injury had been excessive, and that the applicant had not been afforded a right of access to the Constitutional Court;

the parties’ observations;

Having deliberated in private on 5 and 26 March 2024,

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

INTRODUCTION

1. The case concerns the State’s positive obligations under Article 8 of the Convention as regards the manner in which domestic legal mechanisms were applied by domestic authorities in relation to an assault on the applicant’s son by another pupil at the private school they both attended. It further concerns the length of the civil proceedings for compensation in that respect, and the applicant’s right of access to the Constitutional Court, both the subject of the applicant’s complaint under Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1968 and lives in New York, the United States of America. The applicant was represented by Mr N. Progri, a lawyer practising in Tirana.

3. The Government were represented by their Agent, Mr O. Moçka, the State Advocate.

4. The facts of the case may be summarised as follows.

5. In 2011, the applicant's son D.B., born on 6 June 2000, was attending a private school in Tirana, "Ylber". On 20 September 2011, at about 11.45 a.m., he was hit in his right eye by a projectile from a rubber catapult used by another pupil, M.Sh., who at the time was not yet fourteen. The applicant's son consequently suffered a 90% loss of vision in the right eye.

6. On 16 December 2011 the applicant brought a civil action for compensation in the Tirana District Court against the school in his own name, but on behalf of his son, seeking compensation for the injuries suffered by his son (90% loss of vision in the right eye) in the amount of 1,526,585 Albanian Lek (ALL) which were calculated on the basis of a report by an expert, and consisted of non-pecuniary damage in the amount of ALL 157,700, and pecuniary damage in the amount of ALL 1,368,885.

The applicant claimed that the school authorities were responsible for failing to protect his son from an assault by another pupil and for failing to react adequately to the incident.

The applicant alleged that the school bore sole responsibility for this damage, as it had failed to take all necessary precautions to prevent his son's injury. The applicant claimed that one pupil had brought twenty catapults to school and had distributed them among pupils in the applicant's son's class and other classes, and that they had been used over several days on the school premises without restriction and that nobody had done anything about it. That lack of compliance with the school's regulations and discipline had resulted in the assault on his son. The applicant maintained that the pupil who had injured his son was a minor, whom his parents had entrusted to the school during school hours and who had accordingly been under the school's control.

The school had failed to offer adequate first aid to his son. The applicant alleged that the school authorities had not informed him immediately of the incident, even though his daughter, who attended the same school, had insisted that they do so. The applicant had become aware of his son's condition only after picking him up from the school at 1 p.m., the usual time, and then taking him to the nearest hospital. The lack of immediate first aid had exacerbated his son's medical condition.

He also argued that following the incident no one from the school administration had made any inquiry about his son's condition, thus showing indifference to the serious incident.

The cost of the medical treatment had been paid by the applicant's family insurance. The applicant claimed that he had approached his son's school and asked its administration to cover the medical expenses and pay compensation, but they had referred him to the school's insurers.

He further claimed that the school's secretariat had denied him access to its rules and regulations.

Relying on Articles 609, 640 and 641 of the Civil Code, the applicant contended that the school's failure to protect his son in violation of the law and the school's administrative and educational rules entailed the school's direct liability for the injuries suffered by his son. He also asserted that the school had violated the admission contract signed by the parents and the school at the beginning of each school year.

7. On 21 January 2013, the Tirana District Court dismissed the applicant's claim for compensation against the school on the grounds that the harm caused to the applicant's son had not been caused by the defendant but by a third party. In the District Court's view there had been no causal link between the damage suffered by the applicant's son and the actions or omissions of the school. Therefore, the defendant was not liable. It further held that the school had taken out third-party insurance covering all its students and that the applicant should have brought a civil action against the insurance company.

The District Court found that the school had taken measures after the incident "to ensure better care and health services" for the applicant's son "by collecting funds from other pupils' parents and had contacted the insurance company Sigal asking it to cover compensation and the cost of medical treatment" of the applicant's son, but that the applicant had refused to accept any of it.

The applicant's son's injury had been caused by M.Sh., a pupil who was a minor, and therefore his parents were directly liable to pay compensation for that injury. Indeed, they had offered compensation to the applicant, but he had refused it.

The District Court further held that the school had not assumed any legal obligation to cover medical expenses, contrary to what was claimed by the applicant, in the admission contract concluded between the applicant and the school. The admission contract had not provided for the school's responsibility for any harm that could happen to the students during their stay at the school.

8. On 31 January 2013 the applicant lodged an appeal with the Tirana Court of Appeal. In addition to the arguments he had raised before the Tirana District Court, he also maintained that his son had been in the custody of the school when the incident had occurred and that that was sufficient to establish a causal link between the school's actions and omissions and the injury suffered by his son.

He argued that all conditions for the school's liability had been met. As to the existence of actual damage he argued that it had been proven by an expert report. As to the unlawful action, he argued that the school had permitted students for many days to keep dangerous devices, namely rubber catapults, with one of which his son had been injured. The school had been at fault because his son had been injured while he had been in the school's premises

and custody. He also argued that there had been a causal link between the damage his son had suffered and the school's inaction.

He had only signed an admission contract with the school, not a contract with the insurance company. By signing the admission contract, he had entrusted his son to the school and the school had assumed the obligation to ensure his son's safety at school. He asserted that the school exercised educational activities on the basis of Order no. 58 of the Minister of Education of 24 June 1999 and, as such, was obliged to respect domestic legislation and was not immune from liability for breaches of law.

As to the contract with the insurance company, the applicant submitted that his son was a minor and he could not have been a party to any contract with the insurance company. Besides, it was the school which could have claimed compensation from the insurance company and not the applicant or his son. The applicant also argued that the defendant could have invited its own insurance company as a co-defendant in the proceedings.

As to the offer of compensation from M.Sh.'s parents, the applicant claimed that he had never received any such offer. He had not asked them for anything because his contractual relationship was with the school.

In respect of the school's liability the applicant relied on Articles 608(1), 609(1), 625(1), 640 and 641 of the Civil Code.

9. On 1 April 2014 the Tirana Court of Appeal dismissed the applicant's appeal and upheld the first-instance decision, adopting its findings of fact. It held that, for the school to be held liable for the injury caused to the applicant's son, four conditions had to be fulfilled cumulatively: there had to be financial loss, an unlawful act or omission, fault, and a causal link.

As to the applicant's case, it noted that the causal link was missing between the acts and omissions of the school and the injury suffered by the applicant's son. Also, the school had not committed any fault. In that respect the Appeal Court explained that it would have been impossible for the school to stop the students from keeping rubber bands since such bands were used for securing rolled-up banknotes and were not banned in school. For that reason, the school authorities could not have foreseen that such an incident might happen. Furthermore, even though the incident had occurred when the applicant's son was at school, it happened during a break when he had been leaving his classroom to head for the physical education class, at a time when the pupils had not been under the direct control of a teacher, and therefore the school could not be held liable for the actions of its pupils. However, the Appeal Court disagreed with the District Court's reasoning concerning the admission contract, finding that the contract could not exclude the school's liability. Since the contract could not anticipate all hypothetical scenarios, the resolution of unforeseen events is governed by the general tort liability provisions of the Civil Code.

The school had insurance covering all its pupils and on that basis the applicant was entitled to seek compensation from the insurance company but had refused to do so.

Also, M.Sh.'s parents were liable for their son's actions under Article 613 of the Civil Code.

As to what the school had done after the incident, the Appeal Court held that the school "took measures after the incident to ensure care and the best medical treatment" for the applicant's son, and had also collected donations from parents of other pupils and had contacted the insurance company to ensure the cost of the applicant's son's medical treatment in a "serious medical institution" was covered.

10. On 31 January 2013 the applicant lodged a further appeal with the Supreme Court. He argued in particular that the incident in question had occurred on the school's premises and that the school had been legally obliged to prevent such an incident.

11. On 26 September 2017 the Supreme Court, sitting in camera, without the presence of the applicant or his lawyer, dismissed the applicant's appeal on the grounds that under Article 472 of the Code of Civil Procedure the Supreme Court could assess on the merits an appeal against a Court of Appeal decision only if there had been an incorrect application of substantive or procedural law. The Supreme Court considered that the applicant's grounds of appeal did not fulfil those requirements.

12. The Supreme Court's decision was served on the applicant on 10 January 2018, on which date the applicant became aware of the reasons for that decision.

13. On 8 February 2018 the applicant lodged a constitutional complaint in the Constitutional Court. Relying on Article 42 of the Constitution and Articles 6 and 13 of the Convention, as well as Article 3 of the Convention on the Rights of the Child, he complained that the decisions of the lower courts lacked adequate reasons and had not taken into account the best interest of his son. In particular he objected to the lower courts' conclusion that the school had not been responsible for the injury sustained by his son and argued that the school was responsible for any damage caused to minor children at the school premises and as long as they were under the school's care. He also argued that the school had the obligation to take all necessary measures to prevent the incident at issue.

14. On 15 February 2018 the Constitutional Court declared the applicant's complaint inadmissible because it had been lodged outside the statutory four-month time-limit which had started to run on 26 September 2017, when the Supreme Court took the decision complained of.

15. On 19 November 2021 the applicant submitted to the Court an authorisation signed by his son to be represented before the Court by the applicant and Mr Progri (see paragraph 2 above).

RELEVANT DOMESTIC LAW

I. THE CONSTITUTION

16. The relevant part of Article 54 of the Constitution provides:

“Article 54

1. Children [and] the young ... have the right to special protection by the State.

...

3. Every child has the right to be protected from violence, mistreatment ...”

II. THE CONSTITUTIONAL COURT ACT

17. Law no. 99/2016 of 6 November 2016, published in the Official Journal no. 210 on 8 November 2016, amended the Constitutional Court Act. Section 30 was repealed. A newly-introduced Section 71(a) shortened the time-limit for lodging an individual constitutional complaint from two years to four months “of obtaining knowledge of the interference [with a constitutional right or freedom]” (*konstatimi i cënimit*). Section 86(3) of Law no. 99/2016 provided that section 71(a) of the Constitutional Court Act should enter into force on 1 March 2017. Law no. 99/2016 as such entered into force fifteen days after its publication in the Official Journal (section 88), that is on 23 November 2016.

III. THE CIVIL CODE

18. The relevant part of the Civil Code provides:

**TITLE IV
LIABILITY IN TORT
CHAPTER I
GENERAL PROVISIONS
Liability in tort
Article 608**

“A person who culpably and illegally causes harm to another person or damages another’s property shall be obliged to indemnify the other person for the damage they have caused.

The person who caused the damage shall not be liable upon proving that he is not culpable. Causing damage shall give rise to liability wherever it is the consequence of the breach or impairment of the interests or rights of others as protected by the legal order or by custom.”

Article 609

“Compensation shall be payable for harm and damage that is the direct and immediate consequence of the action or omission of the person who caused the harm and damage.

Failure to prevent an occurrence by a person legally obliged to take steps to prevent it shall render him liable in tort.

...”

Article 613

Torts by minors or persons without capacity to act

“A minor under the age of fourteen and other persons lacking legal capacity shall not be held liable in tort.

The parents, guardians and those with parental responsibility for minors ... shall be liable for the damage caused by the illegal conduct of children under fourteen, of persons under their control and those overseen by and living with them who lack capacity, unless they prove that they could not have prevented the damage from occurring.”

Article 614

“A minor who has reached the age of fourteen may be liable in tort.

The parents or those who have custody [of a minor] shall be liable for damage caused by them as described in the preceding sections, except when the minor receives income from his own work or possesses property, and unless they prove that they could not have prevented the damage from occurring.”

Article 615

Damage caused by persons without legal capacity

“Teachers and other persons in charge of minors or persons teaching a trade or profession shall be liable for any illegal harm or damage caused to others by the students or persons in their charge or by persons being instructed by them in a trade or profession, while they were directly under their control, unless they prove that they could not have prevented the harm or damage.

...”

CHAPTER III INDEMNITY

Article 640

“The pecuniary damage to be indemnified may consist of the value of the damage caused and consequential loss of profit. Expenses reasonably incurred in order to avoid or diminish the damage caused shall also be indemnified if they were incurred in order to mitigate liability for the harm and damage caused, as well as the reasonable expenses incurred to ensure indemnification in extra-judicial proceedings.”

Article 641

“A person who has caused harm to another person’s health shall be obliged to indemnify that person for the loss and harm caused, taking account of any consequential restriction of the ability of the impaired person to work and any medical expenses or other consequential expenditure.”

IV. THE CIVIL PROCEDURE CODE

19. Article 192 provides that any party to the proceedings has the right to call as a third party anyone with whom they believe they have a common interest in the case or from whom they may request a guarantee or compensation regarding the case in question.

20. Article 195 also makes it possible for a third-party, with the consent of both parties, to replace one of the parties in the proceedings.

21. On 30 March 2017 Law no. 38/2017 was enacted. It entered into force on 6 November 2017 and introduced amendments to the Code of Civil Procedure. Section 399 of that law introduced a new remedy for excessively protracted civil proceedings, allowing for orders for the proceedings to be accelerated and for compensation to be paid. It set a maximum of two years for the adjudication of a civil case in each of the courts of first instance, appeal courts and the Supreme Court. The process for seeking such a remedy was to lodge a request with a higher court, and in the case of the Supreme Court, with a different Chamber of that court.

V. LAW No. 7952 ON EDUCATIONAL INSTITUTIONS

22. Law no. 7952 “On the pre-university education system” was enacted on 21 June 1995 and was amended by Law no. 8337 of 30 July 1998; Law no. 8872 of 29 March 2002; Law no. 9903 of 17 April 2008; and Law no. 9985 of 11 September 2008.

23. Section 44 of Law no. 7952 allows the Ministry of Education and Science to issue licences to private educational institutions in which the teaching is carried out in the Albanian language. Such licences are granted when the [strategic] plans, educational programs and the conditions for their realisation do not conflict with the Albanian national interest or with legislation, public order, moral norms and public safety, and when the necessary resources and teaching personnel are available. The criteria and procedures for licensing private secular schools in which teaching is in the Albanian language are regulated by the Ministry of Education and Science. If those regulations are contravened by such an institution, the Ministry of Education and Science can withdraw its licence.

24. Section 46 provides that, in order to obtain a licence, private educational institutions must prove that they have teaching personnel with relevant education and the appropriate qualifications and that they are equipped with teaching resources suited to the requirements of their [educational] plan and teaching programmes.

25. Section 66 provides that the State must ensure the safety of teachers and students as well as the security of educational institutions and their premises.

VI. LAW No. 10433 (2011) ON [ADMINISTRATIVE] INSPECTIONS

26. Law no. 10433 entered into force, for its most part, on 20 July 2011. It was therefore in force, in the relevant parts, on the day of the school incident giving rise to the present case, and it was binding on the Ministry of Education Inspectorate in charge of overseeing private schools.

27. Under section 25 of Law no. 10433, a random inspection of a relevant entity may be carried out when it is considered necessary on the basis of information provided by another State body, or when particular events, accidents or incidents have affected or risk affecting the life or health of individuals. Such an inspection may also be authorised on the basis of a complaint or information provided by [private] third parties, which give rise to a reasonable suspicion that an entity [subject to inspection laws] may have breached legal requirements.

RELEVANT INTERNATIONAL LAW

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD OF 20 NOVEMBER 1989

28. The relevant part of the Convention on the Rights of the Child (ratified by Albania on 27 February 1992) reads as follows:

“Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(...)

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

THE LAW

I. THE APPLICANT'S STANDING

29. The first issue to be determined is whether the applicant was entitled to bring an application in his own name for an alleged violation of the rights of his son.

30. The Government argued that the rights under Article 8 of the Convention were of an eminently personal nature and not transferable to another person. In their view the applicant had brought a civil action in the domestic courts only as the father of a victim. The applicant's son, the direct victim, did not suffer from any disability and had legal capacity to express his own will. The Government contended that the applicant had been acting only as a representative of his son and could not have had the standing of victim himself. The applicant's son had reached the age of majority in June 2018 and had thus acquired full legal capacity. Furthermore, there was no direct link between the suffering of the applicant's son and the application lodged by the applicant in his own name.

31. The applicant argued that he had brought the application on behalf of his son, as he had done in the domestic proceedings, and that, even when his son reached majority, owing to his disability, he had not been able to participate in any proceedings.

32. On this point the Court observes that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions, both procedural and substantive, be interpreted and applied so as to render its safeguards practical and effective. In this context, the position of children under Article 34 qualifies for careful consideration, as they must generally rely on other persons to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense. A restrictive or technical approach in this area is therefore to be avoided and the key consideration in such cases is that any serious issues concerning respect for a child's rights should be examined (see *Tonchev v. Bulgaria*, no. 18527/02, § 31, 19 November 2009, with further references).

33. The Court has dealt with a similar situation in several cases. Thus, in the above-cited case of *Tonchev* the application was brought by the father, in his own name, of a child who was injured by a private person. The Court accepted the father as the applicant, given that the child had been a minor at the time of the events, as well as at the time when the application was lodged with the Court, and that the father had brought the domestic proceedings, on behalf of his son (*idem.*, §§ 32 and 33). The Court concluded that there had been no violation of Articles 3 and 8 of the Convention, given that "the treatment complained of did not entail adverse effects for the physical or moral integrity of the applicant's son" (*idem.*, §§ 41 and 42).

34. In the case of *M.S. v. Ukraine* (no. 2091/13, 11 July 2017) the application was also brought by the father of a child who had allegedly been sexually abused, in his own name and in the name of the child. In that case the domestic proceedings, namely a request that a criminal investigation be carried out, were brought by the applicant's mother. The Court accepted as applicants both the father and the child (*idem.*, §§ 51-53). The Court found violations of Article 8 of the Convention "on account of the lack of an effective investigation into the alleged sexual abuse of the applicant's child" (*idem.*, § 68) and because "of the determination of the applicant's child's place of residence" (*idem.*, § 86).

35. In the case of *Blyudik v. Russia* (no. 46401/08, 25 June 2019) the application was brought, in his own name, by a father, complaining under Articles 5 and 8 of the Convention about the placement of the child in a closed educational institution. The Court accepted the father as applicant, given that the child had been a minor at the time of the domestic proceedings and at the time the application had been brought with the Court. Furthermore, the father had been entitled to act on the daughter's behalf and defend her interests by virtue of the Russian Family Code, and he had requested that the supervisory review proceedings concerning the child's placement in the said institution be initiated by the prosecutor (*idem.*, §§ 41-44). The Court found a violation of Article 5 § 5 of the Convention, holding that "the applicant, acting in the interests of his daughter, did not have an 'enforceable right to compensation' under Article 5 § 5 of the Convention for his daughter's placement in the closed educational institution for minors" (*idem.*, § 64). The Court also found a violation of "the applicant's and his daughter's right to respect for their family life under Article 8 of the Convention" (*idem.*, § 76).

36. The Court sees no reason to depart from the above approach in the present case. In that connection it observes that at the time of the events in issue, as well as when the application was lodged, the applicant's son was still a minor (see paragraph 5 above). It was also the applicant who brought the domestic proceedings (see paragraph 6 above, and compare *Tonchev*, cited above, § 32). Moreover, upon reaching majority age, the applicant's son authorised both the applicant and the lawyer representing the applicant to also represent him before the Court (see paragraph 15 above). Therefore, in the light of the above principles, it can be concluded that the applicant was entitled to apply to the Court to protect his son's interests.

37. The Court is therefore satisfied that the applicant was entitled to lodge the application on behalf of his son (compare the above cited-cases of *Tonchev*, § 33; *M.S.*, §§ 51-53; and *Blyudik*, §§ 41-44; as well as *Caamaño Valle v. Spain*, no. 43564/17, §§ 33 and 34, 11 May 2021).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicant, relying on Article 3 and Article 8 of the Convention, complained that the State had failed to fulfil its obligations as regards the incident in which his son had suffered a serious injury. The Court being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018; see also *Darboe and Camara v. Italy*, no. 5797/17, § 111, 21 July 2022), will examine the complaint from the standpoint of Article 8 of the Convention alone, the relevant part of which reads as follows:

Article 8

“1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. *The parties’ submissions*

39. The Government argued that the applicant had not raised any issue under Article 8 of the Convention in the domestic courts. They claimed that the applicant only sought compensation of damage before the domestic courts, claiming that “the damage caused to our child is a direct consequence of the omission of the management staff of the defendant party”, and that his claim concerned pecuniary damage. They also argued that before the Constitutional Court the applicant had only raised complaints concerning due process and “illegality of the courts’ decisions”.

40. The applicant contested these arguments.

2. *The Court’s assessment*

(a) **Applicability of Article 8 of the Convention**

41. The Court has previously held, in various contexts, that the concept of private life is a broad term not susceptible to exhaustive definition. It includes a person’s physical and psychological integrity (see *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018; see also *Remetin v. Croatia*, no. 29525/10, § 90, 11 December 2012). However, the Court emphasises that not every act or measure of a private individual which adversely affects the physical and psychological integrity of another will interfere with the right to respect for private life guaranteed by Article 8. It reiterates that a severity threshold is necessary for the applicability of Article 8 in such a situation (see

Nicolae Virgiliu Tănase v. Romania [GC], no. 41720/13, § 128, 25 June 2019, with further references).

42. As to the present case, the Court notes that it is not disputed between the parties that another pupil at the private school attended by the applicant's son had injured the applicant's son by launching a catapult projectile into his eye, resulting in 90% loss of vision in that eye (see paragraph 5 above). The nature of these consequences is such that they have, without a doubt, impacted the everyday life of the applicant's son ever since to such an extent that they have had an adverse effect on his private life. Furthermore, there appears to be no reason in principle why the notion of "private life" should be taken to exclude attacks on one's physical integrity (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91; *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII; *Sandra Janković v. Croatia*, no. 38478/05, §§ 30 and 31, 5 March 2009; and *V.C. v. Italy*, no. 54227/14, § 85, 1 February 2018).

43. Therefore, given the nature and substance of the applicant's complaints, they fall to be examined under Article 8 of the Convention, which entails an obligation on the State to safeguard the physical and psychological integrity of a person (see *A and B v. Croatia*, no. 7144/15, § 106, 20 June 2019, with further references).

(b) Exhaustion of domestic remedies

44. The general principles on exhaustion of domestic remedies have been summarised in *Vučković and Others v. Serbia* ([GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and *Gherghina v. Romania* ((dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015).

45. The Court has held, in particular, that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (see *Vučković and Others*, cited above, § 71). Article 35 § 1 also requires that the complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance (*idem.*, § 72).

46. As to the present case, the Court notes that the applicant chose to bring civil proceedings against the school his son attended. The applicant claimed compensation of both pecuniary and non-pecuniary damage. He argued that the school had failed to protect his son and had not adequately reacted to the incident (see paragraphs 6, 8 and 10 above).

47. In his constitutional complaint, the applicant complained about the domestic courts' findings that the school had not been responsible for the injury his son had suffered while he had been in the care of the school and in school premises.

48. Before the Court the applicant brought the same arguments he had presented in the civil proceedings, namely, that the school had done nothing

in the period leading to the incident to address the problem of catapults at school premises which had led to his son being seriously injured; that the school personnel had failed to monitor the conduct of the pupils; and that their reaction after the incident had been insufficient, in not promptly asking for medical assistance to his son, and not informing the parents immediately (see paragraphs 6, 8 and 13 above).

49. Comparing the applicant's arguments before the domestic courts with the complaints he brought before the Court, the Court considers that the applicant brought the substance of his complaints under Article 8 of the Convention before the domestic courts, including in his constitutional complaint, even though he did not rely expressly on Article 8 of the Convention.

50. It follows that the Government's objection as to the exhaustion of domestic remedies has to be dismissed.

(c) Conclusion as to admissibility

51. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

52. The applicant maintained that the State had failed to adequately supervise a licensed private school. He maintained that on the day of the incident his son had not received any medical assistance between 11.45 a.m. and 1 p.m. and that the school had not informed him promptly that his son had been injured. He argued that his son had suffered grave pain and long-term loss of balance, and that if there had been immediate medical intervention, the permanent damage caused to his son could have been minimised.

53. He further argued that the school was responsible for the injury of his son, but so was the State which had licensed the school and had a legal obligation to supervise it.

54. He also objected to the national courts' findings that the school bore no responsibility, despite the fact that the domestic courts had admitted that the injury had been inflicted on his son during the school day. He submitted that the domestic courts had not addressed his argument that one pupil had brought twenty catapults into school and that these had been "openly" used by students on school premises over several days and that no one had controlled or stopped their use.

55. As to the domestic courts' holding that he should have brought an action against the school's insurance company, the applicant submitted that

it had been open to the school, as the defendant in the civil proceeding he had instituted, to invite the insurance company to join those proceedings, under Article 192 of the Civil Procedure Code (see paragraph 19 above).

56. The Government disagreed with the applicant's claims and submitted that the injury to the applicant's son had been the result of an incident that had occurred while children were playing at school. The school had taken all necessary measures, such as starting disciplinary proceedings against the child who had caused the damage and eliminating the presence of such devices for the future as they might present a potential risk to the children.

57. The Government argued further that, instead of suing the school, the applicant should have brought a claim for compensation against the parents of the pupil who had caused the injury to his son. He could have also asked for compensation from the insurance company with which the school had insured all its pupils. The national courts had given adequate reasons for their decisions dismissing the applicant's claim.

2. *The Court's assessment*

(a) **General principles**

58. In the case of *Durđević v. Croatia* (no. 52442/09, §§ 103-107, 18 October 2011) which concerns violence among pupils, the Court established general principles as follows:

“103. As regards school discipline, the Court held as follows in its above-cited judgment in *Costello-Roberts v. the United Kingdom*:

‘27. The Court notes first that, as was pointed out by the applicant, the State has an obligation to secure to children their right to education under Article 2 of Protocol No. 1 ... It recalls that the provisions of the Convention and its Protocols must be read as a whole (see the *Kjeldsen, Busk Madsen and Pedersen v. Denmark* judgment of 7 December 1976, Series A no. 23, pp. 26 and 27, paras. 52 and 54, and the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, p. 40, para. 103). Functions relating to the internal administration of a school, such as discipline, cannot be said to be merely ancillary to the educational process (see, *mutatis mutandis*, the *Campbell and Cosans v. the United Kingdom* judgment of 25 February 1982, Series A no. 48, p. 14, para. 33). That a school's disciplinary system falls within the ambit of the right to education has also been recognised, more recently, in Article 28 of the United Nations Convention on the Rights of the Child of 20 November 1989 which entered into force on 2 September 1990 and was ratified by the United Kingdom on 16 December 1991. This Article, in the context of the right of the child to education, provides as follows:

“2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.”

Secondly, in the United Kingdom, independent schools co-exist with a system of public education. The fundamental right of everyone to education is a right guaranteed equally to pupils in State and independent schools, no distinction being made between the two (see, *mutatis mutandis*, the above-mentioned *Kjeldsen, Busk Madsen and Pedersen* judgment, Series A no. 23, p. 24, para. 50).

Thirdly, the Court agrees with the applicant that the State cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals (see, *mutatis mutandis*, the *Van der Mussele v. Belgium* judgment of 23 November 1983, Series A no. 70, pp. 14-15, paras. 28-30).

28. Accordingly, in the present case, which relates to the particular domain of school discipline, the treatment complained of although it was the act of a headmaster of an independent school, is none the less such as may engage the responsibility of the United Kingdom under the Convention if it proves to be incompatible with Article 3 or Article 8 or both.’

104. The Court considers that the same applies as regards issues of school discipline in relations among pupils.

...

106. While the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91; *Botta v. Italy*, 24 February 1998, § 33, *Reports of Judgments and Decisions* 1998-I; *Mikulić*, cited above, § 57; and *Sandra Janković v. Croatia*, no. 38478/05, § 44, ECHR 2009-... (extracts)).

107. As regards respect for private life, the Court has previously held, in various contexts, that the concept of private life includes a person’s physical and psychological integrity. Under Article 8 States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *X and Y*, cited above, §§ 22 and 23; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247-C; *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 118, 10 October 2002; *M.C. v. Bulgaria*, no. 39272/98, §§ 150 and 152, ECHR 2003-XII; *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008; and *Sandra Janković*, cited above, § 45).’’

59. In the context of the provision of an important public service such as education, the essential role of the education authorities is to protect the health and well-being of the students, having regard, in particular, to their vulnerability relating to their young age. Thus, the primary duty of the education authorities is to ensure the students’ safety in order to protect them from any form of violence while they are under the supervision of the education authorities (see *F.O. v. Croatia*, no. 29555/13, § 82, 22 April 2021, with further references).

60. As regards school discipline, the Court has held that it falls within the ambit of the right to education and that the State cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, §§ 27 and 28, Series A no. 247-C, as regards the conduct of teachers). The Court considers that the same applies as regards issues of school discipline in relations among pupils (see *Đurđević*, cited above, § 104).

(b) Application of these principles to the present case

61. The parties presented different accounts of the circumstances in which the incident occurred. Whereas the applicant argued that the school authorities had known that catapults had been circulating in the classrooms because one of the pupils had brought about twenty of them to school and distributed them among the pupils, the Government argued that the pupil who had injured the applicant's son had used rubber bands, which the pupils used for securing rolls of banknotes. The applicant also contended that the school authorities had failed to take proper steps to prevent incidents like the one at issue.

62. In that connection, the Court notes that, as a matter of principle, it cannot replace the findings of fact of national authorities with its own. Its role is supervisory, so it assesses whether the response of the national authorities to an applicant's complaint was in compliance with the State's obligations under the Convention.

63. As to the response required of domestic authorities to the situation at issue, the Court reiterates that an attack on a person's physical integrity would in principle require a criminal-law response, also in cases concerning Article 8 of the Convention (see, for example, *Remetin v. Croatia*, no. 29525/10, § 76, 11 December 2012; *Remetin v. Croatia (no. 2)*, no. 7446/12, § 70, 24 July 2014; and *Isaković Vidović v. Serbia*, no. 41694/07, § 47, 1 July 2014). However, in respect of less serious acts between individuals, which may violate psychological integrity, the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (see *Söderman v. Sweden* [GC], no. 5786/08, § 85, ECHR 2013, see also *Špadijer v. Montenegro*, no. 31549/18, § 89, 9 November 2021).

64. Whereas in the present case the attack on the applicant's son did involve physical violence, the Court notes that the perpetrator of the alleged act was a minor who was not yet fourteen and who was therefore below the age of criminal liability. Indeed, the applicant did not complain that the authorities had failed to comply with their positive obligation to conduct an effective prosecution in order to ensure adequate protection of his son's rights under Article 8 of the Convention. More specifically, the applicant maintained that the domestic courts had not fulfilled their positive obligations on account of their failure to award him compensation. Accordingly, the applicant did not claim that recourse to criminal law was the only way that the respondent State could fulfil its obligation under Article 8 to protect his son from violence at school (compare *Söderman*, cited above, §§ 87 and 88).

65. The Court is, therefore, satisfied that in the present case, involving an attack by a pupil below the age of fourteen on another pupil using a catapult,

in circumstances where there was no act of violence or deliberate omission to act on the part of any member of the school staff, a criminal investigation was not necessarily required (see, *mutatis mutandis*, *F.O. v Croatia*, cited above, § 93).

66. The Court reiterates that its task is not to substitute itself for the competent domestic authorities in determining the most appropriate methods for protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. The Court will therefore examine whether the respondent State, in handling the applicant's case, has been in breach of its positive obligations under Article 8 of the Convention (see *Sandra Janković*, § 46, and *Isaković Vidović*, § 60, both cited above).

67. Regarding the protection of the physical and psychological integrity of an individual from other persons, the Court has previously held that the authorities' positive obligations – in some cases under Articles 2 or 3 of the Convention and in other instances under Article 8, taken alone or in combination with Article 3 – may include a duty to maintain and to apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *Söderman*, cited above, § 80, with further references). In the context of violence at school, the Court reiterates that, in line with the above principles under Article 8 requiring the protection of children from any form of violence or abuse in educational institutions (see paragraphs 58-60 above), and with the relevant international standards (see paragraph 28 above), the domestic authorities must put in place appropriate legislative, administrative, social and educational measures to unequivocally prohibit any such conduct against children at all times and in all circumstances, and thus to ensure zero tolerance for any violence or abuse in educational institutions. This also relates to the necessity of ensuring accountability through appropriate criminal, civil, administrative and professional avenues. In this context, it is important to reiterate that the State enjoys a margin of appreciation in determining the manner in which to organise its system to ensure compliance with the Convention (see *F.O.*, cited above, § 91).

68. As to the Albanian legal framework at the relevant time, the Court notes that section 66 of Law No. 7952 on educational institutions provided that the State has to ensure the safety of teachers and students as well as the security of educational institutions and their premises (see paragraph 25 above). Moreover, the operation of private schools, including safety in such schools, is entrusted in general terms to the Ministry of Education. The inspection duties of the State Inspectorate, under the supervision of the Minister of Education, include verification that safety measures, plans and internal rules for the prevention of harm and the safety of the students are adequate and complied with in practice. Under section 25 of Law 10433, a random inspection may be carried out, *inter alia*, when an accident or an

incident has affected or risks affecting the life or health of individuals (see paragraph 27 above).

69. The Court notes, however, that the applicant did not request that any administrative measures or an official inquiry be undertaken (contrast *F.O.*, cited above, § 12).

70. As to the civil law mechanisms in Albania, the Court notes that Article 608 of the Civil Code provides for an obligation to compensate for physical or psychological harm caused to another person. Article 614 and Article 615 make parents and guardians, including teachers in charge of minors, liable for damage caused by minors and persons under an incapacity, unless they prove that they could not have prevented the harm or damage. The type of damage for which compensation should be awarded is defined in Article 640 and Article 641, and includes harm to health and consequential expenses (see paragraph 18 above).

71. The applicant brought a civil action against the school, seeking compensation for the injury his son had suffered in an attack by another pupil of that school. The national authorities found that the school was not responsible because, *inter alia*, the incident had occurred during a break between classes when the school authorities, in their opinion, had not been able to supervise the pupils (see paragraph 9 above). However, the Court cannot agree with that assessment. It has already held that an educational institution is in principle under an obligation to supervise pupils during the entire time they spend in its care (see *Kayak v. Turkey*, no. 60444/08, § 60, 10 July 2012).

72. It is not disputed in the present case that the incident in question occurred on the school premises during regular school hours and that the perpetrator was another pupil of that school, engaging in high-risk actions. Educational institutions are expected to take appropriate measures to prevent the use of dangerous objects by pupils on school premises or custody. Firing a hard object from a rubber band at another pupil is potentially dangerous and may lead to serious injuries, as it happened in this case.

73. Even though teaching staff cannot be expected to ensure constant supervision of each pupil in order to respond instantly to any unpredictable behaviour, school authorities are responsible for school discipline, including among its pupils, at all times when the pupils are at school, or even outside it but in the school's custody (compare *Kayak*, cited above, § 60). The protection of minors during school hours would otherwise not be ensured, since no authority would be responsible for their safety during breaks. In that connection, the Court notes that the national courts found that rubber bands, such as the one from which a missile was fired at the applicant's son, had been used for securing banknotes, but the school failed to explain why eleven-year-old pupils were in need of rubber bands to keep any presumably pocket money. The applicant claimed that another pupil had brought twenty catapults to school and distributed them among the pupils, who had openly

used them in the days prior to the incident. These allegations of the applicant were not put to scrutiny or adequately addressed by the domestic courts in their reasoned judgments.

74. As to the measures the school took after the incident, the domestic courts found that it had collected donations from the parents of other students and had contacted its insurance company, asking it to pay the costs of the applicant's son's medical treatment (see paragraphs 7 and 9 above). However, the factual claims raised by the applicant were not addressed, namely that he had not been promptly informed of the incident and that the school authorities had not promptly reacted by ensuring that his son received urgent medical treatment. The Court cannot make its own assessment of those allegations; the domestic courts should have properly examined them in their reasoned judgments.

75. The Court also notes that the domestic courts found that the school had made insurance agreements with an insurance company covering all its pupils and that, therefore, the applicant should have sought compensation from that insurance company (see paragraphs 7 and 9 above). However, the Court notes that it was the school and not the applicant who made the agreement with the insurance company. The applicant had the right, recognised under domestic law, to seek compensation from the school. Had he obtained compensation, the school could have claimed reimbursement from the insurance company, had the legal requirements for such reimbursement been met. It is therefore difficult to consider that in their overall assessment the national authorities had due regard for the principle of the best interests of the child.

76. In these circumstances, the Court is not persuaded that the civil proceedings as carried out in the present case offered a proper protection for the situation at hand, in particular in view of the principle that children and other vulnerable individuals are entitled to effective protection by the authorities (see, for example, *O'Keeffe v. Ireland* [GC], no. 35810/09, § 44, ECHR 2014 (extracts)), a principle also recognised in Article 54 of the Albanian Constitution.

77. Taking into account the above considerations, the Court finds that the civil remedy available to the applicant in the circumstances of the present case did not provide adequate protection for the applicant's son against an attack on his physical integrity and that the manner in which the legal mechanisms were implemented in the present case was defective to the point of constituting a violation of the respondent State's obligations under Article 8 of the Convention, in particular given the paramount importance of the protection of the rights of children.

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

78. The applicant complained about the length of proceedings in the Supreme Court, and about a breach of his right of access to a court on account of the Constitutional Court's calculation of the time-limit within which he had had to lodge his appeal. He relied on 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. Length of proceedings

79. The Government submitted that Law no. 38/2017 of 30 March 2017, which had amended the Code of Civil Procedure, had introduced a new remedy for excessively protracted civil proceedings, enabling them to be accelerated and/or to seek compensation in case of a finding of excessive length. The applicant had not exhausted domestic remedies because he had not used that remedy.

80. As regards in particular the length of the proceedings in the Supreme Court, the Government submitted that in 2021 a series of amendments had been made to the Code of Civil Procedure with the specific aim of increasing the effectiveness of processing cases pending in the Supreme Court. At the time the Supreme Court had nine judges, three in each of its chambers (administrative, civil and criminal). A preliminary review of each case was carried out by a single judge. The efficiency of case-processing in the Supreme Court had increased by 46% from 2020 to 2021.

81. The applicant made no comments in that respect.

82. The Court notes that the new remedies for length of proceedings were adopted on 30 March 2017 and entered into force on 5 November 2017. These remedies should in principle be exhausted before bringing a complaint about the length of proceedings to the Court (see *Bara and Kola v. Albania*, nos. 43391/18 and 17766/19, § 119, 12 October 2021). Further to this, following the amendments of 12 August 2016 concerning the jurisdiction of the Constitutional Court, in principle, a constitutional appeal became an effective remedy to be exhausted for all Convention complaints (see *Fullani v. Albania* (dec.), no. 4586/18, § 79, 20 September 2022).

83. Therefore, the applicant could have, after 5 November 2017, either sought a determination of excessive length of proceedings from a different panel of the Supreme Court, under Article 399/6 (1) (c) of the Civil Procedure Code, or raised such a claim in his constitutional complaint, lodged on 8 February 2018. Had he done so and had the Supreme Court, or the Constitutional Court, found a violation of the applicant's right to a speedy

trial, he would have had the possibility, under Law no. 38/2017 of 30 March 2017, to seek compensation before a district court.

84. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Access to the Constitutional Court

85. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

86. The applicant argued in his application that his right of access to the Constitutional Court had been violated because the four-month time-limit for making a constitutional complaint had been calculated from the date on which the decision of the Supreme Court had been delivered and not from the date when it had been served on him.

87. The Government maintained that it had been the practice of the Constitutional Court to calculate the four-month time-limit for lodging a constitutional complaint from the date a contested decision had been given. They were of the view that access to the Constitutional Court might reasonably be subject to stricter rules than those which applied to ordinary courts. The applicant could have learned about the Supreme Court's decision from the website of that court.

2. The Court's assessment

(a) General principles

88. The relevant principles on the right of access to a court and, in particular, on access to superior courts have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018) and *Supergrav Albania Shpk v. Albania* (no. 20702/18, § 16, 9 May 2023).

(b) Application of these principles to the present case

89. As to the present case, the Court notes that the applicant lodged a constitutional complaint against a Supreme Court decision of 26 September 2017, that is, after 1 March 2017, when the four-month time-limit for lodging a constitutional complaint entered into force. The new four-month time-limit therefore clearly applied to the applicant's case.

90. The Court notes that the Supreme Court gave a decision on the applicant's appeal on 26 September 2017, sitting in camera, without the presence of the applicant or his lawyer (see paragraph 11 above). The

applicant therefore had no knowledge of it. The Supreme Court's decision was served on the applicant on 10 January 2018 (see paragraph 12 above), which was when the applicant had his first opportunity of reading the Supreme Court's full reasoning for its decision.

91. In view of the above, the Court considers that the four-month time-limit for lodging a constitutional complaint should have been calculated from 10 January 2018, when the Supreme Court's decision was served on the applicant. However, the Constitutional Court counted the time-limit from 26 September 2017, when the Supreme Court had given its decision.

92. The Court has previously found a violation of Article 6 § 1 of the Convention where the four-month time-limit for lodging a constitutional complaint had been counted from the date when the contested decision of the Supreme Court had been given and not from the date when it had been served on the applicant (see *Supergrav Albania Shpk*, cited above, §§ 17-31). It sees no reason to depart from that conclusion in the present case.

93. There has accordingly also been a violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to the Constitutional Court.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant claimed ALL 2,289,727 in respect of damage, of which 60% for pecuniary damage, and 40% for non-pecuniary damage because of the suffering of his son.

96. The Government contested that claim.

97. Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 199, ECHR 2014). The Court notes that the applicant did not specify his claim for pecuniary damage, which must therefore be rejected. On the other hand, the Court considers that the applicant's son, on whose behalf the application was lodged, must have suffered anguish and distress on account of the facts giving rise to the finding of a violation in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 11,700 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

98. The applicant also claimed ALL 763,142 for the costs and expenses incurred before the domestic courts.

99. The Government contested that claim.

100. 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. In the present case, the Court notes that the applicant pursued proceedings before four levels of domestic courts prior to lodging his application with the Court.

101. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs of domestic proceedings, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT,

1. *Holds*, unanimously, that the applicant had standing to bring the application on behalf of his son;
2. *Declares*, unanimously, the complaints under Article 8 and concerning his right of access to the Constitutional Court under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds*, by four votes to three, that there has been a violation of Article 8 of the Convention;
4. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's lack of access to the Constitutional Court;
5. *Holds*, by four votes to three,
 - (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 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five 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;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Concurring opinion of Judge Serghides;
- (b) Joint partly dissenting opinion of Judges Pastor Vilanova, Schukking and Roosma.

PPV
MIB

CONCURRING OPINION OF JUDGE SERGHIDES

1. Introduction

1. The applicant's complaint was that the respondent State had failed to fulfil its obligations regarding an assault on his eleven year-old son by a thirteen-year-old classmate using a catapult at the private school (licensed by the State) that they both attended; the assault caused serious injury to his son's eye. It further concerns the length of civil proceedings for compensation in that respect, and the applicant's right of access to the Constitutional Court, both the subject of the applicant's complaint under Article 6 § 1 of the Convention.

2. Being one of the four judges in the majority, I voted in favour of all six points of the operative provisions of the judgment.

3. The purpose of this concurring opinion is to elaborate on my position regarding the failure of the respondent State to fulfil its positive obligation under Article 8. Thus this opinion is limited only to the holding of the Court in point 3 of the operative provisions.

2. The importance and evolution of the doctrine of positive obligations

4. As Starmer emphasised, “in many respects positive obligations are the hallmark of the ECHR”¹, and, as Stoyanova also put it, “[t]he development of positive obligations has been one of the hallmarks of the work of the European Court on Human Rights ... in interpreting [and I would also add in applying] the European Convention on Human Rights”². States' positive obligations are as important as their negative obligations with regard to the effective protection of human rights. The relationship between positive obligations and the principle of effectiveness can be said to resemble the affinity between offspring and their forebears³.

5. The doctrine of positive obligations, as it ultimately became known, ensures that the protection of human rights is full and holistic; thus, going beyond their negative obligations, States also have and must fulfil positive obligations. The concept of positive obligations first appeared in the jurisprudence of the Court in 1968 in the *Belgian Linguistic case*⁴ where the Court held that despite the negative formulation of Article 2 of the First

¹ See Keir Starmer, “Positive Obligations under the Convention” in J. Jowell and J. Cooper (eds), *Understanding Human Rights Principles*, Oxford-Portland-Oregon, 2001, at p. 159.

² See Vladislava Stoyanova, *Positive Obligations Under the European Convention on Human Rights – Within and Beyond Boundaries*, Oxford University Press, 2023, at p. 1.

³ A resemblance which I also mentioned in paragraph 7 of my concurring opinion in *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 36925/07, 29 January 2019.

⁴ *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v Belgium (Merits)*, no. 1474/62, 23 July 1968.

Protocol to the Convention (on the right to education), States still had a positive obligation to ensure that this right was upheld¹. Since that early decision, the doctrine of positive obligations has been constantly developed and expanded by the Court. That was also the first case in which the Court referred to and applied the principle of effectiveness in its direct formulation. The acknowledgement and development of positive obligations by the case-law can also be seen as an important aspect of the Convention, evolving due to its inherent nature as a living instrument. This shows the interconnection between the doctrine of positive obligations and the doctrine that the Convention is a living instrument to be interpreted in the light of present-day conditions. Interestingly, the latter doctrine was first enunciated by the Court ten years after the former, namely in 1978, and more specifically in its judgment in *Tyrer v. the United Kingdom* (no. 5856/72, 25 April 1978).

6. As I have also argued elsewhere², the doctrine of positive obligations and the living instrument doctrine complement each other; they share the same or a common ancestor, namely, the principle of effectiveness, and they work together to secure respect for that principle. I consider both these doctrines as sub-norms and sub-methods of the principle of effectiveness in its respective capacities as a norm of international law and as a method of interpretation.

3. Reasons why the respondent State's positive obligations may be considered unfulfilled

7. Let me start by saying that a legal framework was indispensable in the present case for the protection of the applicant's son while in school and for the State's compliance with its positive obligations under Article 8. To place my submission in a more general context, legal frameworks are needed in all fields of life where human rights protection so requires, especially in cases where vulnerable people, like minors and prisoners, are concerned. In my view, such a duty to establish legal frameworks by the High Contracting Parties is implied in their obligation under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention". It is within the competence of the Court to ensure the observance of this obligation, under Article 19 of the Convention, as well as according to the principle of effectiveness, which is inherent in the Convention. Furthermore, on the need to establish legal frameworks in cases like the present, the judgment in paragraph 67 rightly states the following:

¹ See *Belgian Linguistic* case cited above, at p. 27.

² See G. A. Serghides, "The Principle of Effectiveness and the European Convention on Human Rights", in D. D'Abra, P. Ducoulombier, G. Eckert, J. P. Jacqu   and P. Wachsmann (eds), *M  langes en L'Honneur de Florence Ben  t-Rohmer - Les droits de l'homme, du Conseil de l'Europe    l'Union europ  enne*, Bruylant, 2023, 535, at pp. 545-546.

“Regarding the protection of the physical and psychological integrity of an individual from other persons, the Court has previously held that the authorities’ positive obligations – in some cases under Articles 2 or 3 of the Convention and in other instances under Article 8, taken alone or in combination with Article 3 – may include a duty to maintain and to apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *Söderman*, cited above, § 80, with further references). In the context of violence at school, the Court reiterates that, in line with the above principles under Article 8 requiring the protection of children from any form of violence or abuse in educational institutions (see paragraphs 58-60 above), and with the relevant international standards (see paragraph 28 above), the domestic authorities must put in place appropriate legislative, administrative, social and educational measures to unequivocally prohibit any such conduct against children at all times and in all circumstances, and thus to ensure zero tolerance for any violence or abuse in educational institutions. This also relates to the necessity of ensuring accountability through appropriate criminal, civil, administrative and professional avenues.”

Therefore the relevant question that arises is the following: was such a legal framework in existence at the relevant time? The national authorities, by deciding on the basis of Article 615 of the Albanian Civil Code (cited in paragraph 18 of the judgment) that the school was not responsible because the incident had occurred during a break between classes, in effect admitted that there was no pertinent legal framework, and, therefore, that they did not fulfil their positive obligations under Article 8.

However, the judgment, and rightly so, does not agree with the national authorities’ assessment regarding the school’s responsibility, *inter alia*, because, as was held in *Kayak v. Turkey* (no. 60444/08, § 60, 10 July 2012), an educational institution is in principle under the obligation to supervise pupils during the entire time they spend in its care (see paragraphs 71-73 of the judgment). In addition to what it is argued in the judgment, I argue the following. The national authorities’ interpretation and application of the words “while they were under their control” in Article 615 of the Albanian Civil Code, which limits the responsibility of teachers and other persons in charge of minors to only cover the time when pupils are in class and not in the playground, was excessively restrictive, arbitrary and was not Convention compatible. It was not in line with the principle of effectiveness. Furthermore, that interpretation was not compatible with the aim of section 66 of Law no. 7952, which provides that the State must ensure the safety of teachers and pupils as well as the security of educational institutions and their premises (see paragraphs 25 and 68 of the judgment). Article 615 should be interpreted and applied to entail the accountability of the teachers and other persons in charge in schools as well as the accountability of the State for any harm caused to minors while they are at school, no matter whether they are in class or in the playground during their break. In other words, so long as children are not with their parents or guardians, and they are in school, the school and the State should be held responsible for any injuries that they may suffer at

the hands of other children. To argue otherwise would lead to the absurd conclusion that children during school breaks are in the care of no one.

It should be underscored that the States' obligation to fulfil their positive obligations is even greater regarding vulnerable people, like children when they are in school. Moreover, Article 615 of the Albanian Civil Code should be interpreted and applied so as to be compatible with the relevant Convention provisions, namely Articles 3 and 8, which, in turn, must be interpreted and applied in harmony with Articles 3 and 19 of the UN Convention on the Rights of the Child (cited in paragraph 28 of the judgment). This is required by the principle of external coherence, which is an aspect or dimension of the principle of effectiveness.

Further, the Government argued that the applicant could and should have obtained compensation from the parents of the pupil who assaulted his son. However, the fact that the applicant could have brought a claim against the parents of the other pupil does not alter the fact that the State did not ensure that the school could be held accountable for its failings with regards to his son's injury. The applicant's contention is not that no compensation was available to him at all: rather, it is that the State failed in its positive obligation to ensure the existence of legal frameworks that would hold the school accountable for harm done to one pupil by another.

To conclude on this point, even assuming that Article 615 of the Albanian Civil Code was a sort or – part of a sort of – pertinent legal framework, given that the national authorities were not prepared to interpret it and apply it so as to be Convention compatible and that they ultimately did not effectively implement it in the present case, the end result would be the same as if there was no legal framework at all. Consequently, the respondent State did not fulfil its positive obligations relating to the protection of the applicant's son through the existence of an effective legal framework.

8. The second reason why the positive obligations of the respondent State are considered unfulfilled in the present case is stated in paragraph 74, namely, that the applicant was not promptly informed of the incident by the school authorities. Nor had they reacted promptly to ensure that the applicant's son received urgent medical treatment.

9. The third reason for finding such a failure of the respondent State to fulfil its positive obligations under Article 8 is stated in paragraph 77 of the judgment: the civil remedy available to the applicant in the circumstances of the case did not afford adequate protection for his son against bodily harm. Further, the manner in which the legal mechanisms were implemented in the present case was defective.

4. Conclusion

10. In view of what has been explained above, as well as in the judgment itself, my conclusion is that there has been a violation of Article 8 by the

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respondent State owing to its failure to fulfil its positive obligations regarding the incident in which the applicant's son suffered a serious injury.

JOINT PARTLY DISSENTING OPINION OF JUDGES
PASTOR VILANOVA, SCHUKKING AND ROOSMA

(Translation)

1. The Court has found, by a majority, that there has been a violation of Article 8 of the Convention. Being in disagreement, we have thus voted against points 3 and 5 of the operative provisions of the judgment. We do, however, agree with the majority on the other points in issue in this sad case, which concerned an incident in a private school.

2. The facts have been clearly established. A thirteen-year-old pupil used a catapult to shoot a projectile into the right eye of another pupil (the applicant's son, a minor of eleven years at the relevant time), causing almost total blindness in that eye. The incident occurred while the victim was walking on the school premises. The applicant brought a civil action for compensation against the school, but was unsuccessful. He then lodged an appeal, which was dismissed for the following reasons in particular: (i) the school was not at fault because the incident had taken place outside the direct control of the teachers; (ii) the applicant should have brought an action against the parents of the minor responsible for the incident or against the school's insurance company; and (iii) the rubber bands in use in the institution had not been banned under the school rules.

3. The majority have concluded that the Albanian State was at fault because the domestic courts did not examine the case carefully (see paragraphs 73 and 74 of the judgment) and thus did not effectively protect the physical integrity of the child who was the victim (see paragraph 77 of the judgment). The violation has therefore been found on account of an insufficient examination of the incident by the Albanian civil courts.

We respectfully disagree with this conclusion for the following reasons.

4. In his application, the applicant submitted that the domestic courts had not fulfilled their positive obligations to award him compensation (see paragraph 64 of the judgment). To our knowledge, the Convention has never guaranteed a right to financial compensation for damage caused both by and to private individuals (in the present case, an eleven-year-old and a thirteen-year-old pupil) who exercise no public function or authority – particularly where such damage took place on the premises of a private school.

5. According to the Court's presentation of the case at the communication stage, the applicant claimed in his application that the State had failed to supervise a licensed private school, which had neither informed him promptly of his son's injury nor given the child the necessary medical care. In other words, the applicant's complaint "seems" to concern two separate elements: (i) the absence or insufficiency of an adequate legal framework to protect private-school pupils from accidents and provide them with care where appropriate, and (ii) the subsequent inaction of the State authorities.

The majority have used two main arguments to justify the finding of a violation under Article 8 of the Convention. They have explained that the domestic courts (first-instance and appellate courts) did not (i) analyse why the pupils were in possession of rubber bands and catapults before the incident (see paragraph 73 of the judgment), or (ii) address the applicant's argument that the school had not promptly informed him of the incident or sought treatment for the injured child (see paragraph 74 of the judgment).

At the outset, we have substantial difficulty making the connection between the applicant's claims as presented in his application – very succinctly at first glance – and the way in which the matters “referred to” the Court have ultimately been decided by the majority. An issue of congruence may well arise here (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 123-126, 20 March 2018).

6. Even assuming that the majority have not decided *extra petita*, their reasoning, which primarily consists in criticising the domestic civil courts for not having duly protected the victim's physical integrity, would appear to overlook the essential rules of civil liability as established by civil procedure. As a general rule, the onus is on the claimant to prove damage caused, by means of evidence. It is not therefore the ordinary role of the civil courts to protect the physical integrity of a minor – in the present case from a serious injury, but one falling solely within the scope of Article 8. Rather, their function is to adjudicate according to the rules of a fair hearing and on the basis of the arguments and evidence submitted by the parties to the dispute. The authorities did in fact take some steps after the incident, albeit not to the applicant's satisfaction. But such a response does not in itself amount to a violation of the Convention. We could further point out that the applicant never subsequently applied to the Ministry of Education to request an administrative inquiry (see paragraphs 27 and 69 of the judgment).

7. From a different perspective, we would like to emphasise that Article 615 of the Albanian Civil Code provides for the liability in tort of teachers for damage caused to others by a pupil – provided that the pupil in question is directly under their control (see paragraph 18 of the judgment). The domestic courts thus seem to have reasonably applied the domestic law because no one disputed that the incident had taken place while the two pupils had been walking on the premises of their private school, apparently unaccompanied. In any event, teachers' personal liability is clearly subject, under the domestic law, to (actual) direct control over the individual who caused the damage, which the domestic courts held had not been the case in the matter at hand. The applicant did not, moreover, challenge the application of that legal provision. The Court has consistently emphasised in its case-law that it is not for it to take the place of the national authorities unless there are very compelling reasons to do so.

8. Furthermore, it is stated in paragraph 71 of the judgment that an educational institution is under an obligation to supervise pupils during the

entire time they spend in its care. The judgment goes on to refer to the case of *Kayak v. Turkey* (no. 60444/08, §§ 59-60, 10 July 2012, judgment adopted by five votes to two), in which the Court found that the mission entrusted to an educational institution “[entailed] a primary duty to ensure the pupils’ safety ... during the period they spen[t] in its care”. It further stated (ibid.):

“[Even though] the teaching staff cannot be expected to supervise each pupil constantly so as to react instantly to unpredictable behaviour, the Court nevertheless considers that certain movements by pupils ... require closer supervision. This is particularly the case for ... pupils’ movements within [the educational institution].”

This obligation for the authorities was sharply criticised in the separate opinions of three of the Chamber’s judges. Judge Tulkens noted in her concurring opinion that that general obligation to supervise could not be absolute and amounted to imposing an excessive burden on the school authorities. Similarly, the two dissenting judges, Judges Sajó and Raimondi, considered that no State, “however paternalistic, [was] capable of controlling all actions taken by its citizens”.

Today, the majority have embraced the general obligation to supervise established in *Kayak* – a case-law development which we do not necessarily endorse and which, in the absence of a comparative-law survey, does not appear to be based on any European consensus. Moreover, the unequivocal stance taken in the *Kayak* judgment has apparently been abandoned since (see *Derenik Mkrtchyan and Gayane Mkrtchyan v. Armenia*, no. 69736/12, § 59, 30 November 2021). A clarification of the case-law in this area would seem to be called for.

The problem is also that the majority’s reasoning assumes – while disregarding the applicable domestic law – that States have a positive obligation whereby all educational institutions, private and public alike, are required to ensure their pupils’ safety at all times and are responsible for demonstrating their inability to prevent any damage that may occur. That amounts to introducing a presumption of State liability for any incident that takes place in an educational institution – even a private one. We consider that, by confirming and even extending *Kayak* (cited above), the Court has overstepped its role because, by doing so, it has called into question the long-established rules of liability in tort existing in many Council of Europe member States.

9. To be more precise, the Court of Appeal explained that the school had not been able to ban the pupils from having rubber bands and that the school authorities could not have foreseen that the incident would happen (see paragraph 9 of the judgment). That argument does not seem unreasonable. Regarding the medical treatment, the Court of Appeal found that the school had taken steps after the incident (see paragraph 9 of the judgment). We are not in a position to contradict that finding. However, the applicant would have needed to demonstrate that prompt medical treatment (he took his son to the hospital 75 minutes after the incident) would have saved the injured eye.

Such evidence has not been forthcoming. Finally, the issue is not so much whether the domestic courts addressed the fact that the catapult had been in the school for several days, but rather whether the school itself had been aware of this. There again, we do not know whether that fact was proved by the applicant or admitted by the school.

10. Lastly, the domestic courts never excluded the right to seek compensation for the damage caused to the victim, because they suggested that a claim be brought against the offending minor's parents based on a presumption of illegal conduct, in their capacity as holders of parental responsibility (under Article 613 of the Civil Code). There is, however, nothing to indicate that the applicant pursued that avenue. As a result, the applicant did not find himself in a situation of denial of justice. He chose to bring an action for compensation against his child's private school in the civil courts. Consequently, it is not for the State now to bear the cost of a failed procedural strategy and thus assume liability for the negligence of a purely private entity.