



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

THIRD SECTION

CASE OF MELI AND SWINKELS FAMILY BREWERS N.V. v. ALBANIA

(Applications nos. 41373/21 and 48801/21)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Dismissal of applicants' respective constitutional complaints as a result of either a tie vote or a failure to reach required five-judge majority for finding a constitutional violation • Neither tied vote nor qualified majority requirement constituting *per se* a violation of Art 6 • Relevant legal provisions, amended following and in response to the *Marini v. Albania* judgment, sufficiently clear as to the outcome of appeals resulting in a tied vote or any vote not producing a five-judge majority • Proper consideration of the merits and final determination of the applicants' claims • Right to access to the Constitutional Court secured

Art 6 § 1 (civil) • Fair hearing • Lack of adequate reasoning • Constitutional's court failure to provide substantive reasons and grounds for dismissing the applicants' claims

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 July 2024

FINAL

16/10/2024

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

In the case of Meli and Swinkels Family Brewers N.V v. Albania,

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Darian Pavli,

Peeter Roosma,

Andreas Zünd,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 41373/21 and 48801/21) 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 Mr Astrit Meli, an Albanian national (“the applicant”), and by Swinkels Family Brewers N.V., a company incorporated under Dutch law (“the applicant company”), on 30 July 2021 and 1 October 2021 respectively;

the decision to give notice to the Albanian Government (“the Government”) of the complaints concerning the right of access to the Constitutional Court and that court’s failure to give any reasoning for dismissing the applicants’ complaints; concerning the lower courts’ failure to provide adequate reasoning; and, in respect of application no. 41373/21, concerning the excessive length of the proceedings in the Constitutional Court and equality of arms;

the decisions to declare inadmissible the remainder of the applications;

the decision of the Dutch Government not to avail themselves of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties’ observations;

Having deliberated in private on 25 June 2024,

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

INTRODUCTION

1. The case concerns the applicants’ complaints of denial of access to the Constitutional Court, of a failure by that court to render reasoned decisions because of its dismissal of the applicants’ constitutional complaints owing to the fact that it had been unable to reach the statutory five-judge majority, and of a lack of adequate reasoning of the lower courts’ decisions. The applicant’s case also concerns equality of arms and length of proceedings before the Constitutional Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASES

2. The applicant was born in 1959 and lives in Tirana. He was represented by Mr. F. Caka, a lawyer practising in Tirana.

3. The applicant company is a limited liability company that was incorporated under Dutch law in 1930 and has its registered office in Lieshout. It is engaged in the production of and trade in alcoholic and non-alcoholic beverages. In 2019 it changed its name from Bavaria N.V. to Swinkels Family Brewers N.V. and it was represented by Mr K. Loloçi, a lawyer practising in Tirana.

4. The Government were represented by their Agent, Mr O. Moçka, General State Advocate.

5. The facts of the cases, as submitted by the parties, may be summarised as follows.

A. Application no. 41373/21: *Meli v. Albania*

6. On 22 August 2008 the applicant brought a civil action in the Vlora District Court against various private parties and the Agency for the Restitution and Compensation of Property, seeking title to a plot of land which had already been restored to third parties in restitution proceedings.

7. At a hearing held on 25 November 2009 a court-appointed expert presented her report. The applicant and his lawyer were present at that hearing. The parties put further questions to the expert, which were answered in writing at the next hearing. Neither the applicant nor his lawyer raised any complaints as to the expert's professional abilities or the report's conclusions concerning the applicant's claim to the property.

8. On 16 March 2010 the Vlora District Court, having heard the parties' arguments and the expert's report, rejected the applicant's claim of ownership of the plot, finding that the documents he had provided were insufficient to prove his ownership. That court held that the archival document submitted by the applicant lacked an accompanying map indicating the location of his ancestor's property. It accepted, however, a third party's ownership claim on the basis of evidentiary documents.

9. The applicant appealed against that decision. On 23 April 2012 the decision was upheld by the Vlora Court of Appeal, which endorsed the reasoning of the first-instance court that the evidence provided by the applicant did not prove his right to ownership over the plot of land. That court, like the District Court, held that the absence of the relevant maps to go with the archival documents made it impossible to identify the exact location of the plot of land that had belonged to the applicant's ancestor, so that it could not be determined that the land at issue in the proceedings was the land that

had been expropriated from him. In contrast, the third party had been able to provide not only the relevant archival documents to the courts, but also maps and documents related to the neighbouring plots that could prove his right to ownership of the land. The Vlora Court of Appeal considered that the expert report had been drafted in accordance with the relevant legal provisions and that the expert had been qualified to draft it. It dismissed several complaints concerning the report that the applicant had raised in his appeal. The applicant did not submit any new evidence or alternative report to the Vlora Court of Appeal to support his objections to the original report and his request for a new one.

10. A subsequent appeal on points of law brought by the applicant was dismissed by the Supreme Court on 13 June 2017.

11. On 13 October 2017 the applicant lodged a constitutional complaint. On 12 January 2018 a three-judge panel of the Constitutional Court decided that the case would be heard in camera by the plenary court.

12. On 9 March 2021, in a plenary formation that comprised six judges (there having been three vacancies on the nine-judge bench at the time), the Constitutional Court split three-three regarding the applicant's complaint of an alleged breach of equality of arms, and four-two in favour of dismissing his complaint of a breach of the right to a reasoned judgment. As a result, the complaints were dismissed because the court had failed to reach the five-judge majority on their merits required by law.

13. The reasoning of the decision consisted of only a short description of the relevant legal principles and the results of the voting and its outcome. A breakdown of the voting showing the individual vote of each of the judges was provided in a footnote. By virtue of section 73(4) of the Constitutional Court Act (see paragraph 29 below), that decision was final.

B. Application no. 48801/21: *Swinkels Family Brewers N.V. v. Albania*

14. On 22 February 2008 the applicant company registered a trademark for its product B-52, an energy drink, with the Benelux Office for Intellectual Property and on 24 June 2008 it obtained the international registration of the trademark. On 12 February 2009 the World Intellectual Property Organization extended the trademark protection to Albania.

15. Subsequently, an Albanian company, A., claimed to already own that trademark in Albania and initiated civil proceedings against the applicant company in which it sought the annulment of the applicant company's trademark in Albania. On 26 December 2012 the Tirana District Court allowed that claim. The applicant company appealed against that ruling, but it was upheld on 5 September 2013 and 9 March 2016 by the Tirana Court of Appeal and the Supreme Court respectively.

16. In the meantime, further to an application by the applicant company, the Albanian General Directorate of Patents and Trademarks (“the Directorate”) extended the trademark’s protection to include Albania.

17. Company A. lodged a complaint with the Directorate concerning the latter’s registration of the applicant company’s trademark in Albania; the complaint was dismissed and company A. then brought a civil action with the Tirana District Court. On 24 June 2013 that court partly allowed that claim by annulling the applicant company’s trademark registration in Albania for the drink in question, holding that the trademark of company A. in Albania for the drink had been registered before that of the applicant company.

18. The applicant company appealed against that decision, arguing, among other things, that the plaintiff had acted in bad faith when registering the trademark in Albania because it had known that the drink was manufactured by the applicant company and was also traded in Albania in the period 2006-2008. On 6 May 2014 and on 5 October 2017 the District Court’s decision was upheld by the Tirana Court of Appeal and Supreme Court respectively. On 5 February 2018, the applicant company submitted a constitutional complaint against those decisions.

19. On 17 January 2020 a three-judge panel of the Constitutional Court referred the applicant company’s complaint to the plenary court (see paragraph 25 below). On 29 January 2021, it was decided that the case would be heard in camera by the plenary court.

20. On 11 March 2021 the Constitutional Court, sitting in a plenary formation of seven judges (there having been two vacancies at that time), dismissed the applicant company’s appeal in a four-three vote against upholding the complaint. The applicant company’s complaint had concerned an alleged lack of adequate reasoning in the decisions of the District Court and the Court of Appeal. The Constitutional Court’s reasoning was limited to stating the fact that it could not reach the legally required five-judge majority on the issue raised. A breakdown of the voting showing the individual vote of each of the judges was provided in a footnote. By virtue of section 73(4) of the Constitutional Court Act (see paragraph 29 below), that decision was final.

C. Reforms of the Albanian Justice System

21. In 2016 Albania embarked on far-reaching reforms of its justice system which led to amendments to the Constitution and the enactment of a number of essential statutes relating to, amongst other things, the re-evaluation of all serving judges and prosecutors (otherwise referred to as the vetting process of judges and prosecutors), the re-organisation of the judiciary, including the Constitutional Court, and the establishment of new governing bodies for the justice system (see *Xhoxhaj v. Albania*, no. 15227/19, §§ 4-7, 9 February 2021). Owing to resignations and the

dismissal of a number of judges under the vetting process, the Constitutional Court lacked a decision-making quorum, and was therefore unable to reach decisions on the merits, from 23 March 2018 until 23 December 2020.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

22. The relevant parts of the Albanian Constitution read as follows:

Article 131

“The Constitutional Court decides on:

...

(f) the complaints of individuals against any acts of the public authorities or judicial decisions violating the fundamental rights and freedoms guaranteed by the Constitution, after all effective legal remedies for the protection of those rights have been exhausted, unless otherwise provided by the Constitution.”

Article 133

“...

2. The Constitutional Court takes its decisions by a majority of all its members, except when otherwise provided by law.”

II. THE CONSTITUTIONAL COURT (ORGANISATION AND OPERATION) ACT (LAW No. 8577) OF 10 FEBRUARY 2000, AS AMENDED BY LAW No. 99/2016

23. The Act provides that the Constitutional Court resolves constitutional disputes and rules on the Constitution’s final interpretation (section 2).

24. The Court is composed of nine members, who are appointed by the President of the Republic, the Parliament and the Supreme Court (section 7).

25. A preliminary review of the admissibility of complaints lodged by individuals is conducted by a panel of three judges, including the judge rapporteur. When no unanimity is achieved, the decision is transferred to the Meeting of Judges (section 31).

26. The Court decides on the merits of individual applications as a full bench. The quorum of the plenary session is two-thirds of the full bench, or six judges (section 32(1)).

27. Section 71/c provides that proceedings before the Constitutional Court may be reopened if an international court with binding jurisdiction over the Republic of Albania finds that an individual’s fundamental rights or freedoms have been violated “owing to a [prior] decision of the Constitutional Court”.

28. Decisions of the Constitutional Court are taken by a majority of the full bench and abstentions are not allowed (section 72(4)). The decisions should be “published with reasons” (section 72(6)).

29. Section 73(4) of the Act, which was introduced by the 2016 amendments and entered into force on 1 March 2017, provides that “where a five-judge majority is not achieved”, the complaint must be deemed dismissed (*rrëzuar*) in a definitive way. The former section 74, which provided for the possibility of lodging a fresh appeal in such cases, was repealed.

30. As of 1 March 2017 the new section 71/ç has provided for a remedy in respect of the length of proceedings before the Constitutional Court. Any party to proceedings before the Constitutional Court can request just satisfaction from the Constitutional Court if he or she considers the proceedings have lasted an excessively long time. The proceedings should have lasted more than one year for such a request to be submitted.

III. RECENT CONSTITUTIONAL COURT PRACTICE REGARDING THE REASONING PROVIDED WHEN THE REQUIRED MAJORITY IS NOT REACHED

31. In decisions no. 49 and no. 52 of 16 and 18 October 2023, respectively, the Constitutional Court did not reach the required five-judge majority on either admissibility issues or concerning the merits of some of the complaints raised by the applicants, and dismissed those complaints. By virtue of section 73(4) of the Constitutional Court Act (see paragraph 29 above) those decisions were final. In both cases the court’s reasoning contained a summary of the main “positions” on the merits expressed at the deliberations and an indication of the votes of the individual judges in support of each position.

THE LAW

I. JOINDER OF THE APPLICATIONS

32. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment pursuant to Rule 42 § 1 of the Rules of the Court.

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

33. The applicants complained that the rejection of their constitutional complaints because of the failure of the Constitutional Court to reach the required majority denied them access to that court, contrary to Article 6 § 1

of the Convention. Under the same Article they also complained of a lack of reasoning in the Constitutional Court's decisions. In application no. 41373/21, the applicant further complained about the length of the proceedings before the Constitutional Court.

The relevant part of Article 6 § 1 of the Convention reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

A. Admissibility

1. Access to the Constitutional Court and right to a reasoned judgment

(a) The parties' arguments

34. In respect of application no. 48801/21, the Government argued that the applicant company had not raised some of its Convention complaints before the domestic courts. However, they did not provide any specifics as to which complaints they were referring to.

35. Furthermore, the Government submitted that the applicant company's complaints should be declared inadmissible because they were unsubstantiated, and because the right of individual application had been abused. The complaints had been properly heard by the Constitutional Court, which had already given a conclusive reply.

36. The applicant company contended that it had not presented any knowingly untrue facts or false declarations before the Court, or otherwise acted in a way that could be considered abusive conduct. Therefore, it asked the Court to dismiss the Government's inadmissibility plea on the basis that they had made no concrete reference to nor provided any specific evidence of any abusive conduct by the applicant company.

(b) The Court's assessment

(i) Exhaustion of domestic remedies

37. As to the Government's submissions concerning the exhaustion of domestic remedies, the Court notes that they did not refer to any specific remedies and that it cannot, therefore, call into question the exhaustion of domestic remedies by the applicant company (compare *Molla Sali v. Greece* [GC], no. 20452/14, § 89, 19 December 2018, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 225, ECHR 2014 (extracts)). The Government's objection therefore must be rejected.

(ii) Abuse of the right of application

38. As to the Government's contention that the applicant company had abused its right of application, the relevant principles are set out, for example,

in *Gross v. Switzerland* ([GC], no. 67810/10, § 28, ECHR 2014). In particular, the Court stresses that an application may only be rejected as abusive in extraordinary circumstances, such as, for instance, if it was knowingly based on untrue facts (see, for example, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; and *Popov v. Moldova (no. 1)*, no. 74153/01, § 49, 18 January 2005). The applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross*, cited above, § 28). However, there is no such indication in the present case and this objection by the Government must also be rejected.

(iii) *Conclusion as to the admissibility of the complaints concerning the applicants' right of access to the Constitutional Court and the reasoning provided by that court*

39. The Court considers that the complaints concerning the applicants' right of access to the Constitutional Court and the latter's alleged failure to provide adequate reasoning for its decisions in the applicants' cases are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. *Length of proceedings before the Constitutional Court*

(a) *The parties' arguments*

40. In respect of application no. 41373/21, the Government invited the Court to dismiss the applicant's complaint about the excessive length of proceedings on the ground that he had failed to exhaust the domestic remedy introduced by section 71/ç of the Constitutional Court Act for excessive length of constitutional proceedings, which would have enabled him to have them accelerated and/or to seek compensation for the excessive length of such proceedings.

41. The applicant argued that the remedy in question was not an effective one. From 23 March 2018 the Constitutional Court had lacked the quorum to decide on any cases, so submitting a complaint concerning the excessive length of proceedings had not had any prospect of success and could not have addressed his complaint.

(b) *The Court's assessment*

42. The Court considers that the claim that submitting a length of proceedings complaint with the Constitutional Court was not an effective remedy because the Constitutional Court was not functional at the time cannot be accepted in the circumstances. The lack of quorum was a temporary situation (see paragraph 21 above) and, therefore, any complaint lodged with the court during that period would have been examined as soon as the

Constitutional Court regained the necessary quorum. While the applicant could have reasonably considered that the proceedings could not have been accelerated during the period while the Constitutional Court remained non-operational owing to the lack of a quorum, it was nevertheless open to the applicant to pursue the compensatory remedy once the court had regained its quorum. The Court considers that the applicant was required to give that court the opportunity to rule on his complaint about the length of proceedings under section 71/ç of the Constitutional Court Act (see paragraph 30 above, compare *Fullani v. Albania* (dec.), no. 4586/18, § 77, 20 September 2022). His failure to do so means that his complaint concerning the length of the proceedings is inadmissible for non-exhaustion of domestic remedies and must be rejected under Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. The parties' submissions

43. The applicant submitted that he had not obtained a final determination by the Constitutional Court on his complaints about the alleged breach of the principle of equality of arms and the lack of adequate reasoning in the decisions of the lower courts. Furthermore, the decision that dismissed those complaints had not contained any reasoning. The only information provided in the decision concerned how the judges had cast their votes.

44. The applicant company complained that in its case the Constitutional Court had not adopted a decision on the admissibility or the merits and, therefore, had left the company without a final determination of its claim. It claimed that by rejecting its complaints because of the failure to reach the required five-judge majority, the Constitutional Court had not provided the applicant company with any reasoning for the decision, thus restricting its right to a proper determination of its civil claims. The decision had lacked any reasoning for either the majority or minority views.

45. As to the Government's argument that the Albanian Constitutional Court's practice was comparable to the tied vote system of the Supreme Court of the United States of America ("the US Supreme Court"), the applicant company contended that the comparison was superficial. The legal arrangement for such cases in the US Supreme Court differed significantly from the Court's case-law in this respect. A request for a rehearing could be filed against any judgment of the US Supreme Court, and such requests were more likely to be granted in cases where the dismissal was due to a tied vote. Furthermore, petitions dismissed owing to an evenly divided Supreme Court had no precedential value. The applicant company argued that both of those elements were inconsistent with the Court's approach to the principle of legal certainty.

46. The Government maintained that the applicants had had a fair hearing in accordance with Article 6 § 1 of the Convention and that there had been no

violation of the applicants' right of access to the Constitutional Court. They submitted that after the case of *Marini v. Albania* (no. 3738/02, 18 December 2007), in which the Court had concluded that the dismissal without prejudice of the relevant case had left the applicant without a final determination of his civil claim, Albania had undertaken a constitutional and legal reform to address the issue.

47. The changes provided that whenever the Constitutional Court could not reach the five-judge majority the complaint would be dismissed with prejudice and in a definitive way (see paragraph 29 above). The domestic law did not preclude the possibility of cases being tried by a bench of fewer than nine judges. The changes were reflected in the abrogation of section 74 of the Constitutional Court Act and the amendments to sections 72 and 73 (see paragraphs 28 and 29 above). Therefore, the applicants had received a clear and final determination of their complaints, which had been dismissed based on the relevant legal provision. The applicants had been apprised of the judges' positions and votes.

48. The Government further maintained that the admissibility of the applicants' complaints had been assessed by the filtering mechanism of the Constitutional Court (the three-judge panels) (see paragraphs 11, 19 and 25 above). In each case the filtering panel had adopted a decision explaining the facts of the case and the reasons for the admissibility of the complaint. After being sent to the plenary court for a full deliberation on the merits, the cases had been dismissed, based on the relevant legal provisions, because of the failure to achieve the required majority.

49. As to the complaint that the Constitutional Court's decisions lacked any reasoning, the Government contended that all the applicants' complaints had been assessed separately and afterwards dismissed with prejudice by the Constitutional Court. The decisions had made clear the stance of each judge in both cases. The system used by the Albanian Constitutional Court was comparable to the one used by the US Supreme Court, whereby a tied vote resulted in the dismissal of the appeal. Furthermore, in view of the country's model of constitutional review and the Constitutional Court's subsidiary role to that of the ordinary courts, it could be considered that in dismissing the constitutional complaints in the cases in question, the Constitutional Court had actually endorsed the reasons given by the lower courts. Therefore, the proceedings in issue had not been rendered unfair by the failure of the Constitutional Court to provide any additional reasoning.

2. *The Court's assessment*

(a) Access to the Constitutional Court

(i) *General principles*

(α) As regards the right of access to a court

50. 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). The Court reiterates that the right of access to courts may be subject to limitations, which, however, 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 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 (*ibid.*, § 78). The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Kart v. Turkey* [GC], no. 8917/05, § 79, ECHR 2009, and *Arrozpide Sarasola and Others v. Spain*, nos. 65101/16 and 2 others, § 98, 23 October 2018).

51. Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or other superior courts. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their civil rights and obligations (see *Zubac*, cited above, § 80). These guarantees include the right to have a final determination on a matter submitted to a court including, as in the present case, a decision on the admissibility and/or merits of their constitutional complaints.

(β) Summary of the case-law on tied votes and qualified majority requirements

52. The Court has dealt with the relevant legal questions in three prior cases. In the case of *Marini* (cited above, § 118), the applicant's constitutional complaint had been dismissed without prejudice (*refuzuar*) by a seven-member bench of the Albanian Constitutional Court on the basis that the court had not reached "the required majority of votes of all members for any of the outcomes" under consideration. At the relevant time, Article 133 § 2 of the Constitution provided that the Constitutional Court "*decides with a majority of all its members*", that is to say with five votes. Section 74 of the Constitutional Court Act provided that in the case of a tied vote, or when there was "no majority for any position", the complaint was dismissed without prejudice and could be resubmitted again in the future. Three judges had appended a "minority opinion" providing reasons as to why, in their view, the lower courts' judgments had violated the applicant's right to a fair process.

No substantive reasons had been provided for the majority position, nor any details on the way the other four judges had voted.

53. In finding a violation of the applicant's right of access to a court in that case, the Court noted that "contrary to the position taken by the parties, the Court can only conclude that the Constitutional Court failed to pronounce on the applicant's appeal not as a result of a tied vote but because of its failure to reach a majority on any of the proposals submitted for deliberation. It is to be observed that no reasons were given for this state of affairs" (ibid., § 119). As a result, the failure to reach a majority on the constitutional claims at issue in that case had left the applicant without any final determination on his case and had accordingly restricted the essence of his right of access to a court (ibid., § 122).

54. While acknowledging that the case had not involved a tied vote, the Court in the case of *Marini* (cited above, § 123) proceeded to make the following *obiter dictum*:

"In contrast to other legal systems, which either preclude a tied vote or provide different alternatives to enable a final decision to be reached in the event of such a vote, in the Albanian legal system a tied vote in the Constitutional Court results in a decision which does not formally determine the issue under appeal. Moreover, no reasons are given for dismissing the appeal in such an eventuality other than that the vote was tied. Having regard to its above considerations, the Court can only conclude that the tied vote arrangements foreseen in section 74 of the CCOA [the Constitutional Court Organisation Act] do not serve the interests of legal certainty and are capable of depriving an applicant of an effective right to have his constitutional appeal finally determined."

55. In *Avdić and Others v. Bosnia and Herzegovina*, (nos. 28357/11 and 2 others, 19 November 2013), the Court found a violation of the applicants' right of access to a court owing to the decisions of the national Constitutional Court, sitting in eight- and seven-judge benches, to dismiss the applicants' appeals because a five-judge majority could not be reached on any of the proposals under consideration. In all cases, all the views expressed at the court's deliberations had been included in the judgments, which were final (ibid., §§ 8, 12 and 16). Under the rules of the court, which had been adopted by the Constitutional Court itself, decisions were to be made by a majority of all its members (five judges). Furthermore, "unless a minimum of five judges vote[d] identically on a draft decision on an appeal", the appeal was considered to have been rejected (ibid., § 35).

56. The Court, rejecting the respondent Government's argument that the case should be distinguished from that of *Marini*, found that despite the final nature of the decisions, there had been no "final determination" of the merits of the complaints. There had been no attempt by the national authorities to find alternative solutions for the Constitutional Court procedures that could prevent such outcomes.

57. In *Loizides v. Cyprus* (no. 31029/15, 5 July 2022), the Court considered the applicant's claim of a violation of his right of access to a court

in circumstances whereby the national Supreme Court, sitting as a twelve-judge bench, had rejected his criminal appeal owing to a tied vote. Three separate “judgments” had been delivered, containing the reasoning of all twelve judges on the merits of the case (*ibid.*, § 12). National law provided that in case of a tied vote, the judgment should be issued against the party who bore the burden of proof. In a statement from the bench upon delivery of the judgments, the Chief Justice had clarified that, since the burden of quashing a conviction rested with the applicant, the appeal had been dismissed (*ibid.*, § 17). The Court further noted that, even though the case had not dealt with constitutional matters, the national jurisprudence in cases involving the constitutionality of primary legislation had determined that a tied vote resulted in a decision in favour of the challenged statute because “the presumption of constitutionality of the laws was not reversed” (*ibid.*, § 30).

58. The Court found in *Loizides* that there had been no violation of Article 6. In so doing, it noted that it had not previously interpreted a tied vote to constitute *per se* a violation of Article 6, nor could it find in the circumstances that the statutory rules on the effects of a tied vote were contrary *per se* to Article 6 (see *Loizides*, cited above, § 43). In assessing whether the judgments given were reasoned enough to allow the applicant to understand the outcome of the case, the Court noted that they contained both reasons for allowing and for dismissing the appeal, with sufficient substantiation. All things considered, the lack of reasoning in the judgments as to the operation of the statutory rules on the effects of a tied vote had not violated the applicant’s Article 6 rights in that case.

(ii) *Application of these principles to the present case*

59. The present applications involve dismissals with prejudice of the applicants’ respective constitutional complaints as a result of either a tied vote or a failure to reach the required five-judge majority for finding a constitutional violation (see paragraphs 9 and 20 above).

(α) *The tied vote and its effects*

60. With respect to the tied vote situation, the Court has previously held, in the case of *Loizides* (cited above, § 43), that a tied vote resulting in the properly reasoned dismissal of an individual appeal cannot be considered to be in breach of the right of access to a court, provided that the consequences of the tied vote for the outcome of the dispute are sufficiently clear and certain under national law. The Court sees no reason to depart from that recent interpretation. In the field of constitutional adjudication, in particular, such an approach can be considered to be in line with the principle of the presumption of constitutionality of laws and other governmental acts whose constitutionality is challenged by individual applicants.

61. The Court further notes in relation to Albania that, following its *Marini* judgment and as a direct response thereto, the rules governing the decision-making of the national Constitutional Court have changed in certain material respects. Firstly, Article 133 § 2 of the Constitution was amended to provide that “the Constitutional Court takes its decisions by a majority of all its members, except when otherwise provided by law”. Secondly, the quorum for cases heard by the plenary Constitutional Court was set at “no fewer than two-thirds of the full bench”, that is, six judges (see paragraph 26 above). Thirdly, section 73(4) of the Constitutional Court Act provides that “where a five-judge majority is not achieved, the complaint shall be deemed to have been dismissed (*rrëzuar*) [with prejudice].” As a result, a tied vote, or any other vote that does not produce a five-judge majority on any given constitutional complaint, will result in the final dismissal of the complaint (see paragraph 29 above). The Court considers therefore that the issues of legal certainty and the lack of a “final determination” identified in *Marini* do not arise in the present cases. It is clear from the relevant Constitutional Court decisions that the final votes followed a proper consideration of the merits of each complaint by the plenary court, in accordance with its normal practice.

(β) The qualified majority requirement and its effects

62. The complaints on the right to a reasoned judgment (by the lower courts) raised by both applicants were dismissed by the Constitutional Court because it did not reach the required five-judge majority. In both cases a majority of the judges in the relevant formations voted in favour of dismissing the complaints.

63. The Court notes that qualified majority requirements in constitutional adjudication are not uncommon in the European legal tradition. The rationales for such approaches tend to derive, among other considerations, from the need to respect the principle of the presumption of constitutionality of acts or to ensure the normative authority of their rulings on sensitive constitutional law matters. As with tied votes, the Court considers that a qualified majority requirement cannot be seen, *per se*, to be in violation of the right of access to a court under Article 6 of the Convention.

64. Turning to the present cases, the Court notes that the five-judge majority requirement is prescribed in Article 133 § 2 of the national Constitution. Section 73(4) of the Constitutional Court Act, supplemented by the established practice of the Constitutional Court, makes it clear that in cases where such a majority is not achieved any constitutional complaint must be deemed to have been rejected in a definitive manner, with *res judicata* effect. The votes in the applicants’ cases followed a full deliberation by the plenary court on the merits of each complaint, in line with ordinary practice. The outcome of the votes and their consequences for the applicants’ complaints, under section 73(4) of the Constitutional Court Act, were clearly indicated in each respective decision. In these circumstances, the Court

concludes that no violation of the applicants' right of access to a court can be found merely on the basis of the application of section 73(4) of the Constitutional Court Act, read together with Article 133 § 2 of the Constitution, in their cases.

65. The Court acknowledges that supermajority requirements may, under certain circumstances, lead to situations that could raise more difficult questions of access to a court. Thus, in the Albanian legal system the combined operation of the quorum of the plenary Constitutional Court (six judges) and the qualified majority requirement (five votes needed to find a constitutional violation) could lead to situations where complaints are dismissed even though a majority of judges voted in favour of the individual complainant (for example by way of a 4-2 or 4-3 vote in favour of upholding a complaint). Such concerns could become more acute in circumstances where the Constitutional Court might operate for extended periods of time without a full bench, as was previously the case in Albania following the 2016 reforms of the justice system (see paragraph 21 above) and the delays in filling vacancies on its bench. In such scenarios, individuals seeking redress for alleged violations of their constitutional rights might face particularly difficult odds in reaching the required five-judge majority in their favour and reversing the presumption of constitutionality; for example, a five out of six majority would be needed to prevail in a formation with the minimum quorum of six judges.

66. The Court notes, however, that the present applicants did not put forward any explicit arguments along these lines. In both cases a majority of the Constitutional Court voted in favour of dismissing their complaints, while one complaint resulted in a tied vote. In these circumstances the Court considers that no further assessment of these questions is warranted.

(γ) Conclusion

67. Having regard to the considerations set out above, the Court finds that the applicants were not deprived of the right to a determination of the merits of their claims. The legal provisions are sufficiently clear as to the outcome of appeals that fail to secure a five-vote majority, meaning that the decision making was unequivocal, thus guaranteeing the applicants' right of access to the Constitutional Court. The Court therefore concludes that in the present case no violation of the applicants' right of access to a court can be discerned and that there has been no violation of Article 6 § 1 of the Convention in this regard.

(b) Right to a reasoned judgment

(i) General principles

68. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments

of courts and tribunals should adequately state the reasons on which they are based (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, with further references, and *Ajdarić v. Croatia*, no. 20883/09, § 34, 13 December 2011). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A, and *Higgins and Others v. France*, 19 February 1998, §§ 42-43, *Reports* 1998-I).

69. For the requirements of a fair trial to be satisfied, the parties and indeed the public, must be able to understand the judgment that has been given; this is a vital safeguard against arbitrariness. As the Court has often noted, the rule of law and the avoidance of arbitrary power are principles underlying the Convention (see, among many other authorities, *mutatis mutandis, Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005-X, and *Taxquet v. Belgium* [GC], no. 926/05, § 90, ECHR 2010). In the judicial sphere, those principles, including the proper reasoning of judgments, serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society (see *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003, and *Tatishvili v. Russia*, no.1509/02, § 58, ECHR 2007-I).

(ii) *Application of these principles to the present case*

70. In the present case, the Court has been called on to assess the applicants' arguments regarding the alleged failure of the Constitutional Court to provide adequate reasons for dismissing their constitutional complaints.

71. In this connection, the Court notes that the respective decisions were limited to noting the results of the voting and its outcome, including a brief indication in a footnote as to the way the individual judges had voted (see paragraphs 13 and 20 above). They provided no reasons as to the merits of the case, and did not give the views of the effective majority (that is, the judges who voted to dismiss the complaints) or those of the effective minority (the judges who voted in favour of upholding the complaints). As a result, the applicants had certainty as to the final dismissal of their constitutional complaints, but not as to the substantive reasons and grounds on which the Constitutional Court had reached those conclusions.

72. The Court observes that the Constitutional Court Act provides that that court's decisions should be "published with reasons" (see paragraph 28 above), although it does not specify the extent of the reasoning, if any, to be

provided when a case is dismissed owing to a failure to reach the required majority. Consequently, the Constitutional Court's compliance with the obligation to provide adequately reasoned judgments needs to be assessed primarily on the basis of that court's own practice, rather than any specific provisions in the existing legal framework.

73. The Court has previously noted in the case of *Marini* (cited above, § 105) that the right guaranteed to a litigant under Article 6 of the Convention includes the right to have reasons for decisions handed down by a domestic court in his or her case. In contrast to the domestic judgments in the case of *Loizides* (cited above, § 45), which contained full reasons for either allowing or dismissing the appeal with sufficient substantiation, in the current case the Constitutional Court in effect declined to provide any arguments on the merits of the complaints. The Court is unable to accept the Government's argument that in such a situation the Constitutional Court should be deemed to have endorsed the reasoning of the lower courts – especially when the applicants' complaints concerned precisely the quality of the reasoning of the ordinary courts or their compliance with fair trial guarantees. Such an approach would be especially problematic in a system of centralised constitutional review such as the Albanian one.

74. The Court must bear in mind that the courts are under an obligation to undertake a proper examination of and respond to the main pleas put forward by a litigant (see, *mutatis mutandis*, *Donadze v. Georgia*, no. 74644/01, § 35, 7 March 2006). Where, in addition, those pleas deal with the “rights and freedoms” guaranteed by the Convention and the Protocols thereto, the national courts are required to examine them with particular rigour and care (see *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 96, 28 June 2007). Thus, from the perspective of subsidiarity, the failure of the Constitutional Court to provide any reasoning in the present cases hinders the Court in assessing compliance with the Convention in the determination of the applicants' substantive Convention claims (see also the considerations in paragraph 69 above).

75. Against this background, the Court cannot but also note the more recent evolution in the practice of the national Constitutional Court, namely in providing at least a summary reasoning of the effective majority and minority positions in cases with a similar outcome to those of the current applicants (see paragraph 31 above). However, the fact remains that no such reasons were provided in the present cases.

76. Although the applicants in both cases received a final determination of their complaints by the Constitutional Court, they were not provided with the relevant legal grounds for the dismissal of their claims. This lack of adequate reasoning failed to satisfy the requirements of a fair trial. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. The applicants also complained under Article 6 § 1 of the Convention about the reasoning of the ordinary courts that dealt with their cases, and the applicant (in application no. 41373/21) further complained about an alleged violation of the equality of arms.

78. Having regard to its finding concerning the applicants' right to a reasoned judgment under Article 6 § 1 of the Convention (see paragraph 76 above), the Court notes that the applicants now have an opportunity to seek the reopening of their respective proceedings before the Constitutional Court (see paragraph 83 below), which currently has a full bench of nine judges. That would allow, in principle, for an examination of the applicants' remaining complaints under the Convention through a properly reasoned decision of that court. In these circumstances, and in line with its subsidiary role, the Court considers that it is not necessary to consider the applicants' remaining complaints at this time. It is open to them to lodge new applications with the Court, as the case may be, following a fresh determination of their constitutional complaints at the national level.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 6,480,000 euros (EUR) in respect of pecuniary damage and EUR 60,000 in respect of non-pecuniary damage.

81. The applicant company claimed EUR 15,000 in respect of non-pecuniary damage.

82. The Government deemed the sums claimed unfounded and excessive.

83. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. Given the nature of the applicants' complaints and of the violation found, the Court reiterates, as it has in many previous cases where the domestic proceedings were found to be in breach of the Convention, that the most appropriate form of reparation for the violations found would be the reopening of those domestic proceedings (compare *Sevdari v. Albania*, no. 40662/19, §§ 144-45, 13 December 2022). In this connection, the Court notes that Section 71(c) of the Constitutional Court Act provides that proceedings before the Constitutional Court may be reopened if an international court with binding

jurisdiction over the Republic of Albania finds that an individual's fundamental rights or freedoms have been violated "owing to a [prior] decision of the Constitutional Court".

84. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant. It therefore rejects this claim. On the other hand, the Court considers that the applicants must have suffered some non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, it awards each applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

85. The applicant claimed EUR 6,000 for the costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court.

86. The applicant company claimed EUR 61,164 for the costs and expenses incurred before the domestic courts and EUR 12,960 for those incurred before the Court.

87. The Government contested those claims.

88. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 4,000 and the applicant company the sum of EUR 6,000 covering costs incurred before the Court and the Constitutional Court, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applicant's complaint in application no. 41373/21 concerning the length of proceedings before the Constitutional Court inadmissible;
3. *Declares* the applicants' complaints under Article 6 § 1 of the Convention as regards access to the Constitutional Court and the right to a reasoned decision by the Constitutional Court admissible;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the alleged lack of access to the Constitutional Court;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the applicants' right to a reasoned decision by the Constitutional Court;
6. *Holds* that there is no need to examine the other complaints under Article 6 § 1 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to each of the applicants;
 - (ii) EUR 4,000 (four thousand euros) to the applicant, plus any tax that may be chargeable to him, in respect of costs and expenses;
 - (iii) EUR 6,000 (six thousand euros) to the applicant company, plus any tax that may be chargeable to it, 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;
8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 16 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President