



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

THIRD SECTION

CASE OF JAUPI v. ALBANIA

(Application no. 23369/16)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Defence in person • Applicant's trial and conviction *in absentia* for murder and attempted murder for which he was sentenced to life imprisonment • Applicant's failure to attend appeal hearing himself, after reopening of the appeal time, albeit having the opportunity to do so, and to thus make full use of all the means provided under domestic law • Applicant responsible for situation he complained of

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Examination of witnesses • Applicant's inability to examine prosecution witnesses • Good reasons for the witnesses' non-attendance • Evidence of prosecution witness without significant weight and neither the sole nor the decisive evidence in respect of the applicant's murder conviction • Defence rights not restricted to an extent incompatible with Art 6 guarantees in relation to the murder conviction • Insufficient counterbalancing factors for the disadvantages of the defence stemming from the non-attendance of prosecution witnesses whose evidence was decisive for the applicant's attempted murder conviction

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 April 2025

FINAL

29/07/2025

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

In the case of Jaupi v. Albania,

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

Ioannis Ktistakis, *President*,

Lətif Hüseynov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 23369/16) 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 Kastriot Jaupi (“the applicant”), on 22 April 2016;

the decision to give notice to the Albanian Government (“the Government”) of the complaints concerning the applicant’s right to participate in criminal proceedings against him, to cross-examine prosecution witnesses, to be tried within a reasonable time, and to be given adequate reasons for their decisions by the domestic courts, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 18 March 2025,

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

INTRODUCTION

1. The case concerns the applicant’s trial *in absentia* for attempted murder and murder for which he was sentenced to life imprisonment.

THE FACTS

2. The applicant was born in 1975 and is serving a prison sentence. He was represented by Mr Sh. Syri, a lawyer practising in Berat.

3. The Government were represented by their Agent, Ms. A. Hicka, and subsequently by Mr O. Moçka, General State Advocate.

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

I. BACKGROUND TO THE CASE

5. In 1997 the applicant’s brother, I.J., was wounded in the course of a police intervention in Berat District, during the period of civil unrest which

followed the collapse of widespread pyramid schemes. He was taken to a hospital where he died from his injuries shortly afterwards.

6. On 7 September 2000 at about 6.30 a.m. an attempt was made to assassinate I.N., the Chief of the Berat Criminal Police, and his driver, A.J., in Qafa e Koshovicës, in Fier District.

7. On 30 December 2000 at about 11 a.m. I.N. was assassinated in a bar near his house in Vlora.

II. INVESTIGATION

8. On 7 September 2000 the Fier District Prosecutor's Office opened an investigation against the applicant on suspicion of the attempted murders of I.N. and A.J., which had occurred earlier the same day in Qafa e Koshovicës, in Fier District (see paragraph 6 above).

9. On the same day I.N. made a statement to a judicial police officer of the Fier Prosecution Office. He said that on the morning of that day he had been in a car being driven by his driver A.J. He was sitting in the front passenger seat and was asleep. A shot to his left shoulder woke him and he realised that he had been wounded. He heard machine-gun fire lasting about ten to fifteen seconds. He told the driver to continue driving. After some time, they stopped in Fier and I.N. called the police. I.N. said that he had not seen the attacker because he had been asleep, and when he woke up everything had happened very fast. He had seen neither any parked vehicles at the place of the shooting nor any vehicles following them or overtaking them.

I.N. also said that about twenty days earlier he had been driving his car and had approached another car parked in the middle of the road, and had honked at the driver to move away and had then noticed that the driver had been the applicant. The applicant had driven past him and left the area. I.N. had informed the Police Commissariat about that incident, but the applicant had not been caught. The next day, while I.N. was in his office, he had been informed that the applicant's mother, L.J., wanted to see him. He had not received her, and she had come back the next day, when he had seen her in his office. She had told I.N. that he had killed her son (see paragraph 5 above), and that he had wanted to kill her other son as well. She had also told I.N. "we will kill you". After that I.N. had sent her out of his office. Two days after that a police inspector, E.Ll., had told I.N. that he had learned from a trusted informer that the applicant had been preparing an attack on I.N. and had been enquiring about his daily routine. I.N. had passed that information to the Chief of Police at the Commissariat and the Head of the District Prosecutor's Office. I.N. said that on the basis of these facts, in his opinion the person who had organised the attempt to assassinate him was the applicant.

10. On 23 November 2000 B.H. was interviewed by the judicial police. He said that in September 2000 he had been in Greece. One day, possibly

20 September 2000, at about 12.30 p.m., he had met the applicant, whom he knew, at the “Akademi” bus station in Athens, where he was sitting waiting for the bus. B.H. had told the applicant that he knew his brother, I.J., and that they [the applicant’s family] had a lot of enemies in Albania. The applicant had replied that he had made one more enemy, because some days earlier he had shot a police officer, the Chief of Berat Criminal Commissariat, I.N., in Qafa e Koshovicës, because I.N. had killed his [the applicant’s] brother. The applicant had initially thought that he had shot I.N. dead, but had later learned that I.N. had survived. The applicant also told B.H. that he knew that the police had been looking for him.

B.H. also told the police that he knew I.N. very well because he had worked for the police. After his conversation with the applicant, B.H. had telephoned I.N. and had told him that the person who had shot him was in Greece.

11. On 30 December 2000 the Vlora District Prosecutor’s Office opened an investigation against the applicant on suspicion of the murder of I.N. earlier that same day in Vlora (see paragraph 7 above).

12. During the investigation the following evidence was collected: the scene of crime report, the record of the examination of the victim’s body, the autopsy report, and the forensic reports on the weapon and cartridge used, all accompanied by photographs.

13. On 30 December 2000 the police interviewed A.L. and A.Ç.

14. A.L. said that on that same day at about 11 a.m. he had seen a man running along a street of houses which lay parallel to Vlorë-Skelë Street in Vlora. He had had a black pistol in his hand. He had been running toward the school “Ismail Qemali”, and passed A.L. at a distance of 3-4 metres from him. The man was dark-skinned, of medium height, overweight, with short black hair. The man stopped to speak to a certain A.Ç., and asked him how he had been doing, and A.Ç. answered “Good”. A.L. had also seen a policeman, B.T., running, but he had lost track of the dark-skinned man. A.L. had also seen three other civilians running after the policeman. A.L. said that he had seen the man who had been running with a pistol in his hand only from the back, and would not be able to recognise him.

15. A.Ç. said that on that day between 10.30 a.m. and 11 a.m. he had also seen, at a distance of about five metres, a man coming from Kinoteatri Street. He had been walking quickly and was carrying a gun with white handle and black barrel. When he saw the gun, A.Ç. went into a building. From there he saw the man leaving in the direction of the Ismail Qemali school on the main road. A.Ç. described the man as being 175 cm in height, of a robust build, with a somewhat dark complexion, clean-shaven and with dark, straight hair combed to one side. A.Ç. said that he would recognise that man. The police showed A.Ç. photographs of eight persons. He identified the applicant, Kastriot Jaupi, as the person he had met on the street.

16. On 31 December 2000 the police interviewed R.B. and I.Zh.

17. R.B. said that he lived in Vlora, and that in August that year he had been in Tirana with A.K., who was from Fier. While they were sitting in a restaurant in Tirana, A.K. called someone “Joti”. That Joti came to their table with another person. After that encounter R.B. had met Joti in the Mercedes bar in Fier. They had become friends and spent a lot of time together. R.B. had learned from Joti that his real name was Kastriot Jaupi, that he had spent a lot of time in Italy, that he had been accused of murders which had taken place in Berat but had been released “because he had a lot of friends”. Kastriot had told R.B. that his brother had been killed and that he had learned from his policemen friends who had participated in the operation in which his brother had been killed that I.N. had killed him. Kastriot had told R.B. that he would avenge his brother and kill I.N. irrespective of the consequences. About a week after the attempted murder of I.N. in Qafa e Koshovicës on 7 September 2000, Kastriot had told R.B. that he had done it, described the ambush and firing at the car in detail and expressed frustration that he had not succeeded. Kastriot had spoken about these events with ease.

In mid-November 2000 Kastriot had introduced R.B. to one Shuaip, presenting him as a close friend of his from childhood. Shuaip was a man of a darker complexion, dark-haired, shorter than Kastriot, but of a stronger build.

On the early morning of 30 December 2000 Kastriot had called R.B. on the telephone and asked him to meet him at Halim Xhelo high school.

When R.B. arrived, he saw that Shuaip was also there with Kastriot. Kastriot asked R.B. to lend them his car to “finish some business” and R.B. agreed. R.B. saw Kastriot sitting in the driver’s seat and Shuaip in the front passenger seat. They had both been wearing sports clothes. Kastriot was wearing a grey and black tracksuit with a black t-shirt underneath and white trainers, and Shuaip was wearing a blue tracksuit with a white t-shirt underneath and white trainers.

Kastriot told R.B. that he would leave the car at R.B.’s house. When R.B. returned home at about 11 a.m. he saw his car parked there. He had then gone shopping with his wife and when they returned the police had come to their home and had told R.B. not to touch his car because it had been used for a murder. The police took R.B. with them to the police station and there he learned that I.N. had been killed.

18. I.Zh., who had a brother called D.Zh., said that D.Zh.’s nickname was Shuaip. He said that two months ago D.Zh. had called their other brother, Z.Zh., who lived together with I.Zh. and other family members. After having spoken with D.Zh., Z.Zh. told I.Zh. that D.Zh. had told him that at the time of the killing, he had been in Fier with the applicant.

19. On 8 January 2001 S.M., Sh.O. and Shp.O. were interviewed by the judicial police as part of their investigation.

20. S.M. said that on 30 December 2000 he had seen two persons, one white and one of Roma origin, standing in the courtyard of B.M.’s house in

Levan, Fier, together with B.M.'s sons. The person of Roma origin addressed S.M. and asked him where he was from, and told him that he was called Shuaip. S.M. also said that he would be able to recognise those two persons.

The police presented photographs of eight persons to S.M. He recognised D.Zh. and the applicant as the persons he had seen on 30 December 2000 at B.M.'s house in a village near Qafa e Koshovicës.

21. Sh.O. said that he lived in the village of Levan in the Fier district. B.M. was his father's sister and lived in the same village. On 5 January 2001 Sh.O. had gone to her home, where he had seen two men he did not know. B.M. told Sh.O. that they were from Berat, but had not told him their names. The next day, on 6 January 2001, Sh.O. had seen them again in the courtyard of B.M.'s home. One of the men was of Roma ethnicity, of medium build, with black hair combed backwards. The other man was white, also of medium build but slimmer than the other man. Sh.O.'s brother, Xh.O., told Sh.O. that the man of Roma ethnicity was a brother of one Zamir from Berat, who was married to Sh.O.'s aunt, S. The other man was a friend of Zamir's brother. Sh.O. said that the two men had been staying at B.M.'s house for several days. He had not seen them after 7 January 2001. He said that B.M. must have known them since they had stayed at her house.

22. Shp.O., son of B.M., said that on 1 January 2001 he had seen two men at his mother's house. She had told him that they were from Berat. Shp.O. had recognised one of the men, a man of Roma ethnicity, as Shuaip, a brother-in-law of S. from Berat. The other man, unknown to Shp.O., was white. Shp.O. had seen them again when he visited his mother's house on 3 January 2001. He had spoken to them, and they had said that they had been in Italy and would like to go there again.

23. On 9 January 2001 the police showed Sh.O. photographs of eight persons. He identified both D.Zh. and the applicant as persons he had seen at the house of B.M. on 5 and 6 January 2001.

24. On 11 January 2001 the police interviewed B.M. She said that she lived in the village of Levan in the Fier district. On the evening of 31 December 2000 two men, who were unknown to her, had come to her house. B.M. said that at the time her husband Q., her daughters So. and Sa., her son Shp., with his wife D., and her other son, F., had also been at her house.

One of the men, of Roma ethnicity, had told her that he was the brother-in-law of her sister S., who lived in Berat, which meant that he was a brother of Zamir, B.M.'s sister's husband. He said that they had just arrived in Vlora, having come by speedboat from Italy, hired a car and found themselves in Levan at night, so they had asked to spend the night at her house. The other man was white.

B.M. said that she had not seen that they had mobile telephones or any weapons. The men had left her house on foot on 1 January 2001 and headed in the direction of the village of Levan.

25. On 15 January 2001 the police showed B.T., an eyewitness of the shooting (see paragraph 35 below), photographs of eight persons. He identified D.Zh. as the person who had shot I.N. dead.

26. On 15 February 2001 Th.N., the father of I.N., was interviewed by the prosecutor. He said that his son, I.N., had been warned that he would be killed. The assassins were the Jaupi brothers from Berat, whether working alone or with other persons. He knew about the assassination of his son near his house from what his son had told him previously.

The motive for the killing of his son was linked to his performance of his duties as a policeman, and was related to the killing of the applicant's brother in 1997 in the course of a police intervention (see paragraph 5 above). After that I.N. had started to receive threats from the Jaupi family.

In 1998 the Jaupi brothers had invited I.N. to lunch in Ura Vajgurore, near the airport, but he had declined the invitation. After I.N. was assigned to the Berat Police, he told Th.N. that the Jaupi brothers, E. and Kastriot, had plans to murder him, and that they had paid certain people to follow him when he went from Vlora to Berat. Th.N. said that I.N. had known that they would ambush and kill him somewhere outside Berat. His concerns had been increasing daily in the days before his death.

As regards the attempt on his son's life that occurred on 7 September 2000 at about 6.30 a.m. in Qafa e Koshovicës, it had been publicly commented that the Jaupi brothers had been behind it. After that his son had sought a transfer, telling the Minister of Interior about his concerns.

For a while I.N. had been posted to the Delvina Police Commissariat as its Chief of Police. I.N. had soon learned that the applicant had been organising his assassination somewhere along the Coastal Road [*Rruga e Bregut*]. Th.N. also said that his son had told him that he had been taken off duty by an order of the Minister of the Interior, and thus left without any protection.

At the beginning of December 2000 an unknown person had rung I.N.'s home and told I.N.'s wife, who had answered the telephone, that I.N. would be killed "as soon as he leaves his house".

On 26 December 2000 I.N. had met with Bi.M., the Head of the State Police, who had told him that he could not be posted elsewhere because he had been taken off duty, and that the Minister of Interior had previously been considering sending him to Italy.

On 29 December 2000 I.N. had been seriously concerned for his life, and had thought that he would be killed near his house. In the opinion of Th.N., his son had been threatened.

27. On 28 November 2001 the applicant was arrested in Spain under an international arrest warrant issued on 27 October 2000 by the Berat District Court in connection with charges of murder of one Sh.T. in 1997, and illegal possession of firearms, and another international arrest warrant issued on 12 January 2001 by the Vlora District Court in connection with the killing of I.N. The applicant was served with the arrest warrant which contained the

charges brought against him. The applicant challenged the request for his extradition to Albania in the Spanish courts (see paragraph 43 below). The Spanish Constitutional Court quashed the lower courts' decision to extradite the applicant, on procedural grounds. In these proceedings the applicant's lawyer presented as evidence a translated copy of the judgment of the Vlora District Court of 4 July 2003, convicting the applicant *in absentia* of the murder of I.N. It appears that while these proceedings were ongoing, there was also a pending request for the applicant's extradition to Italy on suspicion of attempted murder committed in that country.

28. On 27 July 2002 the investigation into the attempted murder of I.N. and A.J. was joined to that of the murder of I.N.

III. PROCEEDINGS ON INDICTMENT

29. On 24 September 2002 the applicant was indicted by the Vlora Prosecutor's Office in the Vlora District Court on charges of the attempted murder of I.N. and A.J. on 7 September 2000 in Qafa e Koshovicës and the murder of I.N. on 30 December 2000 in Vlora, under Article 79 (c) in conjunction with Article 25 of the Criminal Code.

30. The trial started on 27 December 2002, and was held in the Vlora District Court in the applicant's absence because he was in detention in Spain, having been arrested at the request of the Albanian authorities in connection with the criminal proceedings. He was represented by a lawyer appointed by his family. The lawyer asked for the trial to be adjourned until the applicant had been informed of the trial, but the trial court declined.

31. During the trial, the witnesses E.Ll., B.T., A.L., E.B. and L.J. gave evidence. The witnesses A.J., A.Ç, B.M., Sh.O. and S.M. did not appear at the trial. The statements they had given to the police were read out to the trial court. At a hearing on 26 May 2003 A.L. gave his statement (see paragraph 14 above).

32. At a hearing on 18 June 2003 the applicant's mother, L.J., said that the police, namely officer I.N., had killed her son I.J. She stressed that not only had I.N. killed her son, but he had harassed her family, and had "entered a blood feud" with them. Because of that he had to die, because "blood can be washed only with blood" and for that reason her son, the applicant, had started to "mess" with I.N.

33. At a hearing held on 25 February 2003 the witnesses E.B. and B.T. gave their evidence.

34. E.B., a waiter at the bar where I.N. was killed, said that on 30 December 2000 at about 10 a.m. I.N. had been in the bar drinking coffee when a man appeared behind him and fired several shots at him from the distance of about four to five metres. I.N. had slumped over and fallen. The gunman had held a pistol with both hands. He had worn a tracksuit with the hood up, was overweight and of medium height. E.B. had not had a good look

at his face and said that he would not recognise him again. After the shooting, the gunman had left in the direction of the shopping district.

35. B.T., a policeman who was then off duty and wearing civilian clothes, said that on 30 December 2000 he had been drinking coffee with I.N. in the Bar Shelgu in Skelë street in Vlora. I.N. had been seated with his back turned to the road. After some moments, B.T. had heard a noise and thought it was fireworks. I.N. had stood up, reached for his belt, bent over, and fallen down. B.T. had heard three to four shots. He had seen a man wearing black clothes, somewhat overweight, with a dark face, who had shot at I.N. from a distance of about three to four metres. B.T. had started to run after that man.

B.T. had called the police by radio and reported the killing of I.N. while he was chasing the perpetrator.

He had also seen another man running away with the perpetrator. B.T. had seen both of them in profile from the right.

The District Court gave B.T. a copy of the statement he had given to the police. The applicant's lawyer objected.

After reading the statement he had previously made, B.T. said that the gunman had been wearing a black sweatshirt and had short and somewhat curly hair. He said that he would recognise the gunman and the person who had been with him.

In answer to a question by the presiding judge B.T. said that the gunman was 1.70 to 1.75 metres tall.

36. At a hearing on 12 March 2003 the prosecutor reported that several attempts to serve summonses on the witness R.B. at his home address had been unsuccessful, and that the only available information on his whereabouts was that he was abroad. The applicant's lawyer requested that R.B. be summoned again. The District Court ordered that he be brought to the trial by the judicial police, but he could not be found.

37. At a hearing held on 27 March 2003 the witnesses R.B., A.J., B.H., A.Ç., Sh.O., B.M. and Sh.M. did not appear. The prosecutor reported that according to the information from the judicial police, they were all abroad in unknown places, and attempts to summon them had been unsuccessful. The District Court therefore decided to read out the statements they had given to the police during the investigation. The applicant's lawyer objected. He said that pressure had been put on the witness B.M. by the police. After the witness statements had been read out, the applicant's lawyer said that they were contradictory and not true, and that those witnesses were illiterate.

38. The Court sent summonses to the witnesses B.H., S.M., I.Zh. and Z.Zh., but they were not served. The District Court ordered that they be brought to court by the police, but they could not be found. They did not appear at a hearing held on 8 May 2003. The prosecutor said that the judicial police had reported on 23 April 2003 that the police had checked the addresses of all the witnesses and learned that B.H. had emigrated to Greece and that the other witnesses had gone abroad, without further details.

The District Court therefore decided to read out the statements B.H. and I.Zh. had given to the police during the investigation (see paragraphs 10 and 18 above).

After the witness statements had been read out, the applicant's lawyer said that B.H.'s statement had been fabricated and those of I.Zh. and Z.Zh. were invalid because they had not been made in accordance with the law, given that I.Zh. and Z.Zh. were illiterate and had not signed their statements.

39. At a hearing on 26 May 2003 the Vlora District Court established that the witness Th.N. was in Russia undergoing medical treatment, and therefore the statement he had made to the prosecutor during the investigation (see paragraph 26 above) was read out.

40. At a hearing on 4 June 2003 the witness E.Ll., a policeman, gave his evidence. He said he had been in the Berat Police Commissariat between 2 May 1999 and 20 June 2001. I.N. had been there as the Chief of the Criminal Police. An unknown person had telephoned E.Ll. in August 2000 and warned him not to be too close to I.N. because I.N. was going to be assassinated. E.Ll. had asked who had been speaking, and the answer had been that E.Ll. had done him a favour and that the warning had been given to return the favour to E.Ll. After E.Ll. insisted that he reveal his identity, the speaker had said that the Jaupi family were planning to assassinate I.N. because of an "old problem".

After a couple of days E.Ll. had informed I.N. of that conversation.

I.N. had told E.Ll. that he had been at the applicant's house, where he had encountered the applicant's mother and sister and his sister's husband and had told them: "If you want to kill me, do it now. I am at your house and unarmed."

After a couple of days, the same man had called E.Ll. again and said that I.N.'s visit to the applicant's house had been a wrong move.

E.Ll. said that one Sunday I.N. had left for Vlora. The next day E.Ll. had been ordered to go to Fier because an attack had been carried out on I.N. in Qafa e Koshovicës. That same evening the same man had again called E.Ll. and told him to be careful. After that attack, everyone in the Berat Police Commissariat had told I.N. to move out of Berat.

In answer to a question by the prosecutor, E.Ll. explained that the "old problem" he had referred to was the murder of the applicant's brother in 1997.

To a further question from the prosecutor, E.Ll. replied that I.N. had told him that he had not seen the person who had shot at him on 7 September 2000.

41. On 4 July 2003 the Vlora District Court convicted the applicant as charged and sentenced him to life imprisonment.

As to the applicant's motive, the District Court found that the applicant's brother I.J. had been seriously injured and died in 1997 as result of an exchange of gunfire with the police in the Berat District during the period of civil unrest that followed the collapse of the pyramid schemes. Criminal proceedings for the killing of the applicant's brother had been discontinued

on 10 May 2000. The District Court found that the applicant and his parents had held I.N. responsible as a member of the police forces which had been involved in the events of 1997. The District Court saw the killing of I.N. by the applicant as an act of revenge for the death of the applicant's brother. In support of that conclusion, it also referred to the evidence given by the applicant's mother during the trial (see paragraph 32 above).

The District Court established that the applicant had devised a plan to kill I.N.

The Vlora District Court relied on circumstantial evidence in dealing with the criminal offence of the attempted murder of I.N. and A.J., which included allegations that the applicant had held I.N. responsible for the death of his brother, I.J. The Vlora District Court established that on 7 September 2000 in Qafa e Koshovicës in Fier, the applicant and other unidentified persons had ambushed I.N. and A.J. as they passed by in a car. I.N. had been injured by one projectile but survived. The District Court referred to the statement B.H. had given to the police in which he said that he had met the applicant in Athens and that he had told him that he had shot I.N.

As to the murder of I.N. on 30 December 2000, the District Court established that the applicant and his friend D.Zh. had travelled together by a coach from Fier to Vlora that morning. When they arrived at the coach terminal in Vlora, they met R.B. and the applicant had asked him to lend him his car so he could drive to the centre of Vlora to "run some errands". R.B. consented. While the applicant and D.Zh. were travelling in the car along the Vlora-Skelë road, they had seen I.N. sitting in a bar with B.T. near I.N.'s house. After they parked the car, they approached I.N. from behind. The applicant stayed behind a corner of the bar, while D.Zh. approached I.N. from the back at a distance of about two metres, pulled out his gun and shot at I.N. several times. I.N. made an attempt to pull out the pistol he carried on him but did not succeed. He fell to the ground and died almost immediately. The applicant grabbed D.Zh. and they left the crime scene in haste and drove to B.M.'s house in the village of Levan in the Fier District, where they hid, avoiding the police chase.

The Vlora District Court concluded that the above course of events had been fully proved by all the evidence. It found that there had been an agreement between the applicant and D.Zh. The applicant had organised the assassination of I.N. and ensured the collaboration of his close friend D.Zh. The Vlora District Court relied on a variety of direct, circumstantial and forensic evidence, namely reports from the crime scene, the autopsy report, ballistic reports, the results of identification parades, photographs, and the witness statements of A.J., R.B., E.Ll., B.H., B.T., A.L., E.B., A.Ç, B.M., Sh.O., S.M., Th.N., and L.J. In particular, it stressed that the applicant's mother, L.J., had stated before the court that the killing of her son I.J., had been carried out by the police, and that the victim, I.N., had not only had

killed her son, but had also harassed her family, and had to die, and that the applicant had therefore started to “mess” with him.

42. No appeal was lodged against the District Court’s judgment within the prescribed time-limit, and the judgment became final.

IV. PROCEEDINGS ON APPEAL

43. The applicant was released from detention in Spain on 24 May 2004. After the applicant’s extradition to Albania had been ordered by two levels of courts in Spain, on 13 February 2006 the Constitutional Court refused the extradition request.

44. On 20 October 2008 the applicant was arrested in Italy and extradited to Albania. The applicant contended that he had only then learned of his conviction and sentence. Accordingly, on 24 October 2008 he applied for leave to appeal out of time under Article 147 § 2 of the Code of Criminal Procedure (CCP).

45. On 20 November 2008 and 16 February 2009, the Vlora District Court and Vlora Court of Appeal respectively rejected the applicant’s application on the basis that the applicant had been represented at the trial by a lawyer appointed by his family, who could have brought an appeal on his behalf. In addition, both courts found that the applicant should be presumed to have been aware of the criminal proceedings against him and that he had not presented any evidence to rebut that presumption. Under Article 147 § 2 of the CCP, the burden of proving that he was unaware of the proceedings against him was on the applicant.

46. On 2 July 2009 the Supreme Court granted the applicant’s application for leave to appeal out of time, quashing the previous decisions of the Vlora District Court and the Vlora Court of Appeal. The Supreme Court found no conclusive evidence that the applicant had been aware of the trial proceedings and his conviction, and that the burden of proof that the applicant had been aware of the proceedings and conviction was on the State.

47. On 8 July 2009 the applicant brought an appeal in the Vlora Court of Appeal requesting a partial reopening of trial proceedings (*“përsëritjen pjesërisht të shqyrtimit gjyqësor”*) under Article 427 of the CCP because of his absence from the trial. In relation to his conviction for the attempted murder of I.N. and A.J. on 7 September 2000, the applicant contended that the witness statements of R.B. and B.H. had been fabricated. According to those statements, the applicant had confessed to witness B.H. at a bus stop in Athens that he had organised and carried out the ambush of I.N. and A.J. at Qafa e Koshovicës. Furthermore, he contested the statements of witness R.B. according to which the applicant had also confessed to having committed the criminal offence in question. Lastly, the applicant submitted that neither B.H. nor R.B. was an eyewitness and as they had been absent from the trial their evidence had to be rejected.

In relation to his conviction for the murder of I.N., the applicant submitted that according to their evidence, the witnesses B.T., E.B. and A.B. (all of whom had been present at the crime scene) had only seen one person shoot the victim, I.N., contrary to the conclusions of the Vlora District Court. That person, the applicant contended, was D.Zh., and there was no evidence that the murder had been ordered or organised by the applicant.

The applicant also contested the finding of the trial court that he had threatened I.N. and asserted that there was no evidence of that. He submitted that there had been procedural irregularities as to some of the evidence presented.

48. The Vlora Court of Appeal listed a hearing for 12 February 2010 and summoned the applicant and his lawyer. It dismissed the request that the evidence of all the witnesses be reheard, holding that it sufficed that the evidence had been presented before the first-instance court.

49. A hearing was held in the Vlora Court of Appeal on 12 February 2010. The applicant, who was in pre-trial detention at the time was notified of the hearing, and offered the opportunity of being taken to the hearing. However, he decided not to attend, and to be represented by his lawyer, the same one chosen by his family to represent him at the trial in the Vlora District Court.

The applicant's lawyer read out the appeal application. He argued that the applicant had been detained in Spain and had not been able to attend his trial for that reason. He asked for all the witnesses to be called again but that request was rejected on the grounds that no procedural rules had been breached during the trial at first instance that would have made the presentation of the prosecution evidence invalid.

50. On 12 April 2010 the Vlora Court of Appeal dismissed the appeal and confirmed the applicant's conviction. It found that the applicant's conviction at first instance had been the result of a fair trial without any procedural irregularities, in which a great deal of evidence had been presented by the prosecution that had been conclusive as to the applicant's guilt for organising the murder and D.Zh.'s guilt for carrying it out. In particular, it refused the applicant's request for the proceedings to be reopened under Article 427 of the CCP, finding that all the evidence had already been assessed at first instance in the presence of the applicant's lawyer, who had been appointed by his family, albeit not in the presence of the applicant. The Vlora Court of Appeal noted that the applicant was in detention but had chosen not to take part in the proceedings before it, and that his interests were sufficiently protected by his appointed lawyer.

51. On 4 May 2010 the applicant lodged an appeal with the Supreme Court and presented the same arguments as in his appeal to the Vlora Court of Appeal (see paragraph 47 above). On 4 July 2013 the Supreme Court summarily dismissed the appeal as not raising any of the grounds of appeal listed in Article 432 of the CCP.

52. On 25 February 2014 the applicant lodged a constitutional complaint. He challenged the manner in which the evidence had been gathered, and argued, *inter alia*, that he had not been properly notified of the charges against him and that the lower courts had not given adequate reasons for their decisions.

53. On 29 September 2014 the Constitutional Court accepted the applicant's constitutional complaint in part and remitted the case to the Supreme Court. The Constitutional Court dismissed the applicant's complaints concerning the manner in which the witnesses' evidence had been obtained and the reasons given by the lower courts. It acknowledged that there had been some irregularities in the way some of the evidence had been gathered by the prosecution but found that this had been insufficient to render the proceedings unfair, in view of the corroborating evidence against the applicant. Furthermore, the Constitutional Court dismissed the applicant's complaint about the trial court's alleged failure to notify the applicant of the trial proceedings on the basis that the trial court had previously found that the applicant was a fugitive. It also dismissed the complaint about his right to be heard, holding that the Supreme Court had granted his request for leave to appeal and that, even though he had been tried *in absentia*, he had had an opportunity to appeal against his conviction.

However, the Constitutional Court accepted the applicant's constitutional complaint about the fairness of the proceedings in the Supreme Court. It held that the Supreme Court ought to have given reasons for its decision as to whether the applicant's request for the reopening of the proceedings was well-founded or not. It accordingly quashed the Supreme Court's decision and sent the matter back for re-examination.

54. On 5 November 2015 the Supreme Court again dismissed the applicant's appeal, upholding the decision of the Vlora Court of Appeal of 12 April 2010. It observed that the thrust of the applicant's complaints concerned the taking and interpretation of evidence by the lower courts, which was out of the scope of its jurisdiction. As to the alleged procedural violation of the right to a fair trial, the Supreme Court considered that there was nothing in the file to support that conclusion. It found that the courts had followed all the appropriate procedural steps in giving notice of the criminal proceedings against him to the applicant and that his interests had been represented by a lawyer, who had initially been appointed by his family and subsequently also chosen by the applicant himself. In addition, the Supreme Court observed that the applicant had waived his defence rights through his absence, which it found he had done voluntarily, both at the first-instance trial and, importantly, in the Vlora Court of Appeal when it was deciding on his application for a partial reopening of proceedings (see paragraphs 49 above). The Supreme Court found that the applicant had voluntarily chosen not to benefit from the guarantees provided for by Article 427 § 4 of the CCP.

55. On 27 February 2017 the applicant lodged a fresh constitutional complaint. He argued, *inter alia*, that he had been tried in his absence and that in the renewed proceedings the adversarial principle had been violated because his request that all the evidence be called again had been rejected, and therefore he had had no practical opportunity to challenge the evidence against him.

56. On 22 May 2017 the Constitutional Court dismissed all the applicant's renewed constitutional complaints, noting that it had already adjudicated on them and that in respect of the disputed decision the Supreme Court had complied with the instructions of the Constitutional Court in its decision of 29 September 2014.

RELEVANT DOMESTIC LAW

I. THE CRIMINAL CODE

57. Article 79-c provides that a murder of, *inter alia*, a police officer is punishable by imprisonment for not less than twenty years or by life imprisonment.

II. THE CODE OF CRIMINAL PROCEDURE

58. The relevant provisions of the Code of Criminal Procedure (as in force at the relevant time) read as follows:

Article 147 – Leave to appeal out of time

“1. The prosecutor, the defendant, private parties and defence counsel may request an extension of time if they establish that they had no opportunity to comply with a time-limit because of unforeseen events or force majeure.

2. In the event of conviction *in absentia*, the accused may request an extension of the time allowed for appeal against the judgment where he can establish that he had no effective knowledge of the proceedings.

3. A request for an extension of time for an appeal must be lodged within ten days of the date of the cessation of the unforeseen events or force majeure [referred to in paragraph 1], and in respect of an application under paragraph 2 [within ten days] of the date on which the defendant first had effective knowledge of the decision. (...)

...

5. A decision on the extension of a time-limit for appealing [against a judgment] may be appealed against in conjunction with an appeal against the decision on the merits of the case.

6. An appeal may be made to the Court of Appeal against a decision refusing leave to appeal out of time.”

Article 427

Retrial [*Përsëritja e shqyrtimit gjyqësor*]

“1. When a party’s appeal includes a request for the re-taking of the evidence presented at the trial before a first instance court or the taking of new evidence, the [appeal] court, where it deems this necessary decides that the trial be re-opened in whole or in part.

2. Where fresh evidence is discovered after the trial in the first-instance, or comes to light during the appeal, the court decides whether or not that evidence will be taken.

3. The [appeal court] may order a re-trial of its own motion if it considers that necessary in the interests of justice.

4. The [appeal] court orders a re-trial when it has been proved that the defendant did not participate in a trial in a first-instance court on account of not being notified [of the trial] or was unable to appear for lawful reasons.

5. A re-trial ordered under the previous paragraphs of this provision should begin immediately and, when this is not possible, the trial may be adjourned for no longer than ten days.”

59. The relevant provisions of the Code of Criminal Procedure (as amended by Law No. 35/2017 of 30 March 2017) read as follows:

Article 450 – Grounds for revision [*Rastet e rishikimit*]

“An application for revision [of a final judgment] may be made:

(...)

(c) if, subsequent to the judgment, new evidence has emerged or has been found which, independently or together with previous evidence, show that the judgment is erroneous;

(...)

(e) if the European Court of Human Rights has adopted a judgment which makes a revision of the case necessary ...

(...)

(g) if the person has been tried *in absentia* ... and requests a re-trial. The application for review shall be made within thirty days of the date on which the defendant learns [of the trial *in absentia*] ...”

Article 455 – Conduct of re-trial

(...)

“(2) The provisions governing trial at first instance shall be respected, within the limits of the grounds presented in the revision request.”

THE LAW

I. SCOPE OF THE CASE

60. In his initial application, as well as in his reply to the Government's observations, the applicant raised, among others, complaints under Articles 2 and 3 of the Convention about the death of his brother, and under Article 6 §§ 1 and 2 of the Convention that the judges of the Vlora Appeal Court were not impartial and that his right to be presumed innocent had been violated. At the communication stage these complaints were declared inadmissible by the President of the Section, sitting as a single judge (under Rules 27A § 2 (a) and 54 § 3 of the Rules of Court read in conjunction with Rule 12) and consequently the Government were not given notice of these complaints. Such a decision is final (Article 27 § 2 of the Convention and Rule 54 § 3) and the Court therefore will not re-examine those complaints (see *Mazepa and Others v. Russia*, no. 15086/07, §§ 61-62, 17 July 2018, and *Korporativna Targovska Banka AD v. Bulgaria*, nos. 46564/15 and 68140/16, § 115, 30 August 2022).

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) AND (d) OF THE CONVENTION

61. The applicant complained that he had not been allowed a retrial after being tried in his absence, and that he had had no opportunity to question the prosecution witnesses R.B. and B.H. He also complained that the Supreme Court had not given adequate reasons for its decision, and complained about the length of the proceedings. He relied on Article 6 §§ 1 and 3 (c) and (d) of the Convention, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

(...)

(c) to defend himself in person ...;

(d) to examine or have examined the witnesses against him and to obtain the attendance and examination of the witnesses on his behalf under the same conditions as the witnesses against him;

...”

A. Admissibility

1. *The applicant's right to take part in the proceedings against him and to question the prosecution witnesses*

62. The Government claimed that the applicant had not properly exhausted available domestic remedies because he had not made a fresh constitutional complaint about the Supreme Court's decision of 5 November 2015 (see paragraph 54 above). The Government also contended that the final domestic decision had been taken by the Supreme Court on 5 November 2015 whereas the present application had been made to the Court on 22 April 2016, outside the six-month time-limit under Article 35 § 1 of the Convention as in force at the relevant time.

63. The applicant argued that he had made a constitutional complaint, and that the final decision had been taken by the Constitutional Court on 22 May 2017, so he had complied with the six-month time-limit.

64. The Court observes that, contrary to the Government's contention, the applicant did lodge a fresh constitutional complaint against the Supreme Court's decision of 5 November 2015, and it was dismissed by the Constitutional Court on 22 May 2017 (see paragraph 56 above), which was also the final decision in the applicant's case.

65. Therefore, the Government's objections as to the exhaustion of domestic remedies and compliance with the six-month time-limit have to be dismissed.

66. The Court notes that these complaints 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. *Reasoning of the Supreme Court*

67. The applicant complained that the Supreme Court had not provided adequate reasons for its decision of 5 November 2015, dismissing his appeal on points of law (see paragraph 54 above).

68. The Government argued that the reasons given by the Supreme Court were adequate and sufficient.

69. The relevant general principles concerning the reasoning of judicial decisions in criminal proceedings have been summarised in *Moreira Ferreira v. Portugal* (no. 2) ([GC], no. 19867/12, §§ 83-84, 11 July 2017), and *Lobzhanidze and Peradze v. Georgia* (nos. 21447/11 and 35839/11, §§ 65-66, 27 February 2020).

70. The Court notes that the Supreme Court found that it could not examine the applicant's complaints about the assessment of evidence by the lower courts because they were about matters outside its jurisdiction. As regards the alleged procedural flaws, it held that those allegations were unfounded and that the lower courts had followed the prescribed procedure

in all respects. It also concluded that the applicant had waived his defence rights through his absence from the hearing in the Vlora Court of Appeal. The Court would stress at this juncture that it is not concerned with whether the decisions reached by the domestic courts in the present case were correct and compatible with domestic law (compare *Deryan v. Turkey*, no. 41721/04, § 34, 21 July 2015, and *Ruminski v. Sweden*, no. 17906/15, § 31, 2 May 2017).

71. The Court considers that the Supreme Court provided its view on each of the applicant's complaints and thus addressed the essential issues it was asked to deal with. It gave adequate reasons, albeit succinctly (compare *Ruminski*, cited above, § 33), and these reasons cannot be seen as automatic or stereotypical (see *Moreira Ferreira*, cited above, § 84; *Malo v. Albania*, no. 72359/11, § 32, 22 May 2018; and *Aykhan Akhundov v. Azerbaijan*, no. 43467/06, § 87, 1 June 2023). In that connection the Court reiterates that although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). In the present case the Supreme Court did not ignore a specific, pertinent and important point raised by the applicant (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011; *Rostomashvili v. Georgia*, no. 13185/07, § 59, 8 November 2018; and *Zhang v. Ukraine*, no. 6970/15, § 73, 13 November 2018).

72. The Court also observes that the Vlora Court of Appeal gave detailed and comprehensive reasons for its decision (contrast *Deryan*, cited above, § 37).

73. Therefore, reviewing the proceedings as a whole, the Court finds that the applicant's right to have his case properly examined by the domestic courts and their obligation to provide adequate reasons for their decisions was satisfied.

74. It follows that this complaint must be declared inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

3. Length of proceedings

75. The applicant argued that the overall length of proceedings had been excessive.

76. The Government contended that the proceedings had been concluded with a reasonable time.

77. The general principles concerning the length of proceedings have been summarised in *Frydlender v. France* ([GC], no. 30979/96, § 43, ECHR 2000-VII).

78. The proceedings complained about commenced on 24 October 2008 when the applicant applied for leave to appeal out of time (see paragraph 31 above) and were concluded with the Constitutional Court's decision of 22 May 2017. They therefore lasted eight years, six months and twenty-eight

days in courts at four levels of jurisdiction. Because some decisions were remitted for rehearing, there were eight decisions in all (compare *Šeliga v. Slovenia* (dec.), no. 33578/02, 30 November 2006, and *Zela v. Albania* no. 33164/11, § 45, 11 June 2024).

79. The Court considers that the case was quite complex as it involved sensitive matters related to serious criminal offences.

80. The Court finds that the applicant contributed to the length of the proceedings by lodging his first constitutional complaint some seven months after the contested decision of the Supreme Court had been given (see paragraphs 51 and 52 above). He also lodged his second constitutional complaint more than fifteen months after the contested decision of the Supreme Court (see paragraphs 54 and 55 above, and compare to *Zela*, cited above, § 47). He therefore contributed to the overall delay in proceedings by about twenty-two months.

81. The Court observes that none of the domestic courts dealing with the case took more than three years to deliver a decision. Having regard to this observation and its case-law (see, for example, *L.Z. v. Slovakia* (dec.), no. 27753/06, 27 September 2011; *Lyszczyna v. Germany* (dec.), no. 34863/04, 4 January 2008), the Court considers that the overall length of some eight years at four levels of jurisdiction, with decisions on eight separate occasions, did not exceed what could be considered reasonable in the circumstances (compare *Ekholm v. Finland* (dec.), no. 5952/03, 10 July 2007; *Steiner v. Austria* (dec.), no. 32637/96, 22 November 2001; and *Zela*, cited above, §§ 45-49).

82. The Court therefore finds that this part of the application is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The parties' arguments

83. The applicant contended that he had had no knowledge of the criminal proceedings against him. He had been detained in Spain and awaiting extradition to Albania when the trial against him had taken place. He had not been served with any documents concerning the case against him in Albania. His lawyer had asked for the trial to be adjourned until his extradition, but the Vlora District Court proceeded with the trial, thus preventing him from participating in it.

84. The applicant submitted that only after he was arrested on 20 October 2008 had he learned of the charges against him.

85. Even though his appeal out of time had been granted, his request that the witnesses be reheard in his presence had been dismissed. In particular, the courts relied on written evidence previously given by the absent witnesses B.H. and R.B.

86. They had both stated that a week after I.N. had been killed the applicant had told them that he had killed I.N., with B.H. claiming that the applicant had told him that in Athens, in Greece, and R.B. claiming he had told him that in Fier, in Albania, at the same time. However, that was not possible since the applicant could not have been in two different places at the same time. The domestic courts had not given any explanation for that. The applicant also argued that, apart from those two witnesses' implausible statements, there had been no other convincing evidence against him. The statements of these two witnesses were the sole basis for his conviction.

87. The applicant also argued that when those two witnesses had given their statements to the police, they had not been properly identified because they had not presented any identification documents.

88. The applicant further argued that the evidence given by the witnesses B.T. and A.L. to the Vlora District Court had not been given in accordance with domestic law. These two witnesses could not really remember the events at issue. The trial court then presented them with copies of the statements they had given to the police, which the police officer had written down. However, according to domestic law a witness giving evidence at trial was allowed only to consult his or her own notes, and not those written by a police officer.

89. The applicant also argued that the domestic courts had misinterpreted some other evidence, and, in particular, the evidence given by his mother, inferring wrongly that she had said that the applicant had planned to kill I.N.

90. The Government argued that the applicant had been aware of the proceedings against him, and that in the trial held in his absence all procedural rules had been complied with. In any event, he had been granted leave to appeal out of time and he had been given the opportunity of attending the hearing before the Vlora Court of Appeal to present his defence.

91. As to the evidence of the absent witnesses R.B. and B.H. being taken as written statements in their absence, the Government claimed that the authorities had made all possible efforts to summon R.B. and B.H. However, they had both been abroad and unavailable.

92. In the Government's view the evidence given by those witnesses had only been supporting evidence and it had not been decisive in establishing the applicant's guilt, and other convincing evidence had played a decisive role in that respect. The Government relied on I.N.'s report of the attempt on his life (see paragraph 9 above), the autopsy report, forensic reports, and the evidence given by other witnesses, including A.J., E.L., A.L., E.B., A.C., B.M., S.O., S.M., and Th.N., and the applicant's mother, L.J.

93. The Government further argued that the applicant's lawyer had had an opportunity to challenge all the evidence. The domestic courts had also given less weight to the evidence of the witnesses R.B. and B.H. and had weighed their evidence against other evidence.

2. *The Court's assessment*

(a) General principles as regards overall fairness of the proceedings

94. The Court reiterates that, as the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair hearing guaranteed by paragraph 1, it often examines the complaints under both provisions taken together (see, among many other authorities, *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, ECHR 2015). Moreover, where the applicant complains of numerous procedural defects, the Court may examine the various grounds giving rise to the complaint in turn in order to determine whether the proceedings, considered as a whole, were fair (see *Insanov v. Azerbaijan*, no. 16133/08, §§ 159 et seq. 14 March 2013; *Mirilashvili v. Russia*, no. 6293/04, §§ 164 et seq., 11 December 2008; and *Tuskia and Others v. Georgia*, no. 14237/07, § 98, 11 October 2018).

95. The Court's primary concern under Article 6 § 1 of the Convention is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010, and *Schatschaschwili*, cited above, § 101). Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident. In making this assessment the Court will look at the proceedings as a whole, having regard to the rights of the defence but also to the interests of the public and the victim(s) that crime is properly prosecuted (see *Schatschaschwili*, cited above, § 101; *Gäfgen v. Germany* [GC], no. 22978/05, § 175, ECHR 2010; and *Okropiridze v. Georgia*, nos. 43627/16 and 71667/16, § 80, 7 September 2023).

(a) General principles as regards trial in absentia

96. The Court reiterates the general principles as regards proceedings *in absentia* as described in the *Sejdovic v. Italy* ([GC], no. 56581/00, ECHR 2006-II (references omitted)).

“81. Although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person “charged with a criminal offence” is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 guarantee to “everyone charged with a criminal offence” the right “to defend himself in person”, “to examine or have examined witnesses” and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”, and it is difficult to see how he could exercise these rights without being present (...).

82. Although proceedings that take place in the accused's absence are not of themselves incompatible with Article 6 of the Convention, a denial of justice nevertheless undoubtedly occurs where a person convicted *in absentia* is unable subsequently to obtain from a court which has heard him a fresh determination of the

merits of the charge, in respect of both law and fact, where it has not been established that he has waived his right to appear and to defend himself (...) or that he intended to escape trial (...).

83. The Convention leaves Contracting States wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6. The Court's task is to determine whether the result called for by the Convention has been achieved. In particular, the procedural means offered by domestic law and practice must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and to defend himself nor sought to escape trial (...).

84. The Court has further held that the duty to guarantee the right of a criminal defendant to be present in the courtroom – either during the original proceedings or in a retrial – ranks as one of the essential requirements of Article 6 (...). Accordingly, the refusal to reopen proceedings conducted in the accused's absence, without any indication that the accused has waived his or her right to be present during the trial, has been found to be a "flagrant denial of justice" rendering the proceedings "manifestly contrary to the provisions of Article 6 or the principles embodied therein" (...).

85. The Court has also held that the reopening of the time allowed for appealing against a conviction *in absentia*, where the defendant was entitled to attend the hearing in the court of appeal and to request the admission of new evidence, entailed the possibility of a fresh factual and legal determination of the criminal charge, so that the proceedings as a whole could be said to have been fair (...).

86. Neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial (...). However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance (...). Furthermore, it must not run counter to any important public interest (...).

(...)

92. At the same time, it is of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim – whose interests need to be protected – and of the witnesses. The legislature must accordingly be able to discourage unjustified absences, provided that any sanctions used are not disproportionate in the circumstances of the case and the defendant is not deprived of his right to be defended by counsel (...).

93. It is for the courts to ensure that a trial was fair and, accordingly, that counsel who attends trial for the apparent purpose of defending the accused in his absence is given the opportunity of doing so (...).

94. While it confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance ...", Article 6 § 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (...). In this connection, it must be remembered that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused (...).

(b) General principles as regards the admission of untested evidence of prosecution witnesses absent from trial

97. In determining whether proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be established, in particular, whether the defendant was given the opportunity of challenging the veracity of the evidence and of opposing its admission (see *Saakashvili v. Georgia*, nos. 6232/20 and 22394/20, § 124, 23 May 2024).

98. General principles regarding the admission of untested incriminating witness evidence in criminal proceedings have been summarised in *Al-Khawaja and Tahery*, cited above, §§ 118-151, and *Schatschaschwili*, cited above, §§ 100-31). The Court reiterated in those judgments that Article 6 § 3 (d) enshrined the principle that, before an accused could be convicted, all evidence against him normally had to be produced in his presence at a public hearing so it could be challenged. Exceptions to this principle are possible but must not restrict the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness who has given evidence against him – either when that witness makes his statement or at a later stage of the proceedings (see *Al-Khawaja and Tahery*, cited above, § 118).

99. In *Al-Khawaja and Tahery* (cited above, §§ 119-47) the Grand Chamber clarified the principles to be applied when a witness did not attend a public trial. These principles may be summarised as follows (see *Seton v. the United Kingdom*, no. 55287/10, § 58, 31 March 2016).

(i) The Court should first examine the preliminary question whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give their evidence during the trial and that all reasonable efforts should be made to secure their attendance.

(ii) Typical reasons for non-attendance are, as in the case of *Al-Khawaja and Tahery* (cited above), the death of the witness or the fear of retaliation. There are, however, other legitimate reasons why a witness might not attend trial.

(iii) Where a witness has not been examined at any prior stage of the proceedings, the admission of a witness statement in lieu of live evidence at trial must be a measure of last resort.

(iv) The admission in evidence of the statements of absent witnesses results in a potential disadvantage for the defendant, who in a criminal trial should in principle have an effective opportunity to challenge the evidence against him or her. In particular, he or she should be able to test the truthfulness and credibility of the evidence given by witnesses by having them orally examined in his or her presence, either at the time the statement is given or at some later stage of the proceedings.

(v) According to the “sole or decisive rule”, if the conviction of a defendant is solely or mainly based on evidence provided by witnesses whom

the accused is unable to question at any stage of the proceedings, his or her defence rights are unduly restricted.

(vi) In this context, the word “decisive” should be narrowly understood as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case. Where the untested evidence of a witness is supported by other corroborative evidence, the assessment of whether it is decisive will depend on the strength of the supporting evidence: the stronger the other incriminating evidence, the less likely it is that the evidence of the absent witness will be treated as decisive.

(vii) However, as Article 6 § 3 of the Convention should be interpreted in the context of an overall examination of the fairness of the proceedings, the sole or decisive rule should not be applied in an inflexible manner.

(viii) In particular, where a hearsay statement is the sole or decisive evidence against a defendant, its admission in evidence will not automatically result in a breach of Article 6 § 1. At the same time, where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most careful scrutiny. Because of the dangers of admitting such evidence, it would need to be weighed very carefully and would require sufficient counterbalancing factors, including the existence of strong procedural safeguards. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that allow a fair and proper assessment of the credibility of that evidence. This would permit a conviction to be based on such evidence only if it is sufficiently credible given its importance to the case.

100. Those principles were further clarified in *Schatschaschwili* (cited above, § 116), in which the Grand Chamber held that the Court had to review the existence of sufficient counterbalancing factors not only in cases in which the evidence given by an absent witness was the sole or decisive basis for the applicant’s conviction but also in those cases where, following its assessment of the domestic courts’ evaluation of the weight of the evidence, it finds it unclear whether the evidence in question was the sole or decisive basis but is nevertheless satisfied that it carried significant weight and that its admission may have handicapped the defence. The Court held that the extent of the counterbalancing factors necessary in order for a trial to be considered fair would depend on the weight of the evidence of the absent witness. The more important that evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair.

101. The Court also stresses that the quality of the evidence must be taken into consideration – including the question of whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained is unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *Bykov v. Russia* [GC], no. 4378/02,

§ 90, 10 March 2009; *Lee Davies v. Belgium*, no. 18704/05, § 42, 28 July 2009; and *Saakashvili*, cited above, § 124, see also *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010). The admissibility of evidence is however a matter for regulation by national law and the domestic courts. The Court's only concern is to examine whether the proceedings have been conducted fairly (see *Gäfgen*, cited above, § 162, and the references cited therein, see also *Okropiridze*, cited above, § 80).

(c) Application of these principles to the present case

(i) The applicant's right to take part in the proceedings against her or him

102. The Court observes that at the time of the trial in 2003 the applicant was in detention in Spain and therefore could not be present at the trial in Albania. Furthermore, he had been declared a fugitive by the trial court (see paragraph 53 above). It must be presumed that he was aware of the proceedings and of the charges against him since he had been served with the arrest warrant and other documents when Albania requested his extradition. He had challenged that request with the Spanish authorities, and in these proceedings presented as evidence a translated copy of the Vlora District Court judgment, convicting him *in absentia*. This shows that he was clearly aware of the completed proceedings against him in Albania but chose not to return there. Instead, he was arrested in Italy in 2008. The applicant has not provided any details or clarification as to the period of his detention or the timing and circumstances of his move to Italy or of whether he maintained any contacts with his family or the family-appointed lawyer throughout that period. In any event, by not returning to Albania after his release in Spain, the applicant contributed to the delays in processing his case and in his obtaining a retrial.

103. The Court observes that on 2 July 2009 the Supreme Court granted the applicant's request for leave to appeal out of time because he had been tried in his absence (see paragraph 46 above).

104. Following the trial which was held in the applicant's absence, the lawyer representing him, who had been appointed by his family, did not lodge an appeal against his conviction at first instance. The Court observes, however, that following his arrest the applicant was permitted to appeal against his conviction, although the time-limit for doing so had expired. At the hearing before the Vlora Court of Appeal he was represented by a lawyer of his own choice, the same one that had been appointed by his family during the first-instance proceedings.

105. When he was given leave to appeal out of time, the applicant was in pre-trial detention. He was not present in person at the hearing in the Vlora Court of Appeal, even though he was offered the opportunity of being taken to that hearing (see paragraph 49 above).

106. The Court has held that the reopening of the time allowed for appealing against a conviction *in absentia*, where the defendant was entitled to attend the hearing in the court of appeal and to request the admission of new evidence, entailed the possibility of a fresh factual and legal determination of the criminal charge, so that the proceedings as a whole could be said to have been fair (see *Sejdovic*, cited above, § 85). The applicant had the right to be present at the hearing before the Vlora Court of Appeal which would have enabled him to intervene in the hearing and, in particular, to present the domestic courts with his own version of the events leading to the charges against him and to request the admission of new evidence, but he did not avail himself of any of these opportunities (see *Sejdovic*, cited above, § 85, and compare *Jones v. the United Kingdom* (dec), no. 30900/02, 9 September 2003). Moreover, at that stage of the proceedings he had been assisted by a lawyer of his own choosing and should reasonably have foreseen what the consequences of his conduct would be (compare *Dembukov v. Bulgaria*, no. 68020/01, § 57, 28 February 2008).

107. The applicant has not alleged before the Court that he had been unable to present his own version of the facts or his own interpretation of the relevant legal provisions to the courts (compare *Correia de Matos v. Portugal* [GC], no. 56402/12, § 163, 4 April 2018). In any event, he had the opportunity to make, and did make, detailed written submissions on appeal (compare *Mulosmani v. Albania*, no. 29864/03, § 129, 8 October 2013).

108. It follows that the applicant did not make full use of all the means the domestic law gave to him. He was therefore responsible for the situation he is complaining about, upon the reopening of the proceedings (compare *Tsalkitzis v. Greece (no. 2)*, no. 72624/10, § 59, 19 October 2017).

109. The above considerations are sufficient for the Court to conclude that there has been no violation of Article 6 §§ 1 and 3 (c) as regards the applicant's right to take part in the criminal proceedings against him and to defend himself in person.

(ii) *The applicant's right to question prosecution witnesses*

110. The applicant complained that neither he nor his lawyer had an opportunity to question two witnesses, R.B. and B.H. at any stage of the proceedings. The Court only communicated questions to the Government concerning the complaints about these two witnesses and will therefore limit its analysis to the evidence given by those two witnesses.

111. Those witnesses gave their evidence before the judicial police and did not appear at the applicant's trial at the first instance. The Vlora Court of Appeal refused his request that these witnesses be called again so that the defence could question them.

112. The statement R.B. had given to the police during the investigation was read out at the trial on 27 March 2003 in the presence of the applicant's lawyer, who objected to it (see paragraph 37 above). The statement B.H. had

given to the police during the investigation was also read out at the trial, in the presence of the applicant's lawyer. The Court observes that although the applicant's lawyer initially consented to B.H.'s pre-trial statement being read out at a hearing on 8 May 2003 (see paragraph 38 above), which could have been perceived as a waiver of the applicant's right to cross-examine that witness in court (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 119-20, 18 December 2018), there were circumstances which contradict such approach. The trial was held in the applicant's absence. He then appealed against his conviction and complained in the domestic courts that he had been unable to question the witnesses B.H. and R.B., and also asked for their pre-trial evidence to be declared inadmissible (compare *Khavshabova v. Georgia*, no. 26134/19, § 44, 29 June 2023, and the cases cited therein). In such circumstances, the Court finds that the applicant did not unequivocally waive his right to have any of these two witnesses questioned.

113. The applicant's complaints concern his conviction for two distinct offences, and two separate events, namely that of an attempted murder on 7 September 2000 and a murder on 30 December 2000. The Court will assess each of these convictions separately with regard to the applicant's right to a fair trial.

(α) Conviction for murder of I.N.

– *Whether there was a good reason for the non-attendance of witness R.B. at the trial*

114. A trial court must have good factual or legal grounds for not securing a witness's attendance at trial. If there is a good reason for the witness's non-attendance, it follows that there is a good reason for the trial court to admit the untested statements of the absent witness into evidence (see *Schatschaschwili*, cited above, § 119). There are a number of reasons why a witness may not attend trial, including situations where he or she is untraceable (see *Tseber v. the Czech Republic*, no. 46203/08, § 48, 22 November 2012; *Paić v. Croatia*, no. 47082/12, § 34, 29 March 2016; and *Asani v. the former Yugoslav Republic of Macedonia*, no. 27962/10, § 44, 1 February 2018).

115. The need for the authorities to make all reasonable efforts to secure the witness's attendance at the trial further implies careful scrutiny by the domestic courts of the reasons given for the witness's inability to attend trial, having regard to the specific situation of each witness (see *Schatschaschwili*, cited above, § 122).

116. The Court notes that the Vlora District Court unsuccessfully attempted to serve a summons on the witness R.B. on several occasions. It also ordered that he be brought to court by the judicial police. However, it turned out that he was abroad, though it was not known where (see paragraphs 36 and 37 above). The Court has repeatedly stated that departure abroad does not in itself constitute sufficient reason for the absence of a

witness from the trial (see *Paić*, cited above, § 38; *Gabrielyan v. Armenia*, no. 8088/05, § 78, 10 April 2012; and *Al Alo v. Slovakia*, no. 32084/19, §§ 48-52, 10 February 2022). However, in the present case the authorities made efforts to locate R.B., but could not discover his whereabouts (compare *Tseber*, cited above, §§ 50 and 51; and contrast *Okropiritze*, cited above, § 85; *Khavshabova*, cited above, § 46; and *Asani*, cited above, § 45).

117. The Court therefore concludes that there was good reason for the non-attendance of the witness R.B. at the applicant's trial.

– *Whether the evidence of the absent witness was the sole or a decisive basis for the applicant's conviction*

118. The Court observes that, in arguing that his right to question the witness R.B. had been violated, the applicant made lengthy criticisms of how the domestic courts had reached their findings of fact and of their conclusion that the evidence supported the finding that he was guilty of the murder of I.N.

119. The Court reiterates that it is not its function to deal with alleged errors of law or fact committed by the domestic courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where they can be said to amount to “unfairness” in breach of Article 6 of the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the domestic courts. In principle, issues such as the weight attached by the domestic courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review (see, *mutatis mutandis*, *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017). An error of law or fact by the domestic court which is so evident as to be characterised as a “manifest error” – that is to say, an error that no reasonable court could ever have made – may be such as to disturb the fairness of the proceedings (see *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, § 62, ECHR 2015).

120. In particular, it is not for the Court to rule on the applicant's guilt or innocence. That is in the domain of domestic courts. The Court's role is only supervisory, to assess whether procedural rights of the defence were respected, and in that connection to review whether the proceedings as a whole were fair (compare *Ajdarić v. Croatia*, no. 20883/09, § 32, 13 December 2011; *Van Kück v. Germany*, no. 35968/97, § 47, ECHR 2003-VII; see also *Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 78, 22 June 2021).

121. In determining the weight of the evidence given by an absent witness and in particular whether the evidence given by him or her was the sole or decisive basis for an applicant's conviction, the Court has regard, in the first place, to the domestic court's assessment. The Court must make its own

assessment of the weight of the evidence given by an absent witness only if the domestic courts did not indicate their position on that issue or if their position is not clear (*Schatschaschwili*, cited above, § 124).

122. The witness R.B. said in the statement he made to the judicial police on 31 December 2000 that the applicant had told him that I.N. had killed his brother and that he would avenge the death of his brother and kill I.N. no matter the consequences. He also said that the applicant had told him that he had attempted to murder I.N. on 7 September 2000. He further said that on 30 December 2000 the applicant and his friend Shuaip had borrowed his, R.B.'s, car "to finish some business" in Vlora, and that the police had later come to his home and told him that his car had been used in the murder of I.N.

123. The Court first observes that the Vlora District Court did not explicitly state that the pre-trial statement of the witness R.B. was the sole evidence against the applicant in connection with the charge of murder of I.N. The question is therefore whether the court considered the evidence to be decisive, that is, evidence of such significance or importance as is likely to be determinative of the outcome of the case. The Vlora District Court treated R.B.'s pre-trial statement only as supporting evidence, since it related to the borrowing of R.B.'s car by the applicant and D.Zh. a few hours prior to the murder of I.N. and its alleged use by the applicant to drive to and away from the crime scene. However, the Vlora District Court did not expressly take a clear position as to the weight of R.B.'s evidence (compare *Strassenmeyer v. Germany*, no. 57818/18, § 77, 2 May 2023).

124. In making its own assessment of whether the untested evidence was decisive for the applicant's conviction, the Court will have regard to the strength of the supporting evidence: the stronger the corroborative evidence, the less likely that the evidence of the absent witness will be treated as decisive (see *Schatschaschwili*, cited above, § 123).

125. The Court observes that the Vlora District Court established the applicant's motive from the statements of various witnesses who said that the Jaupi family had blamed I.N. for the death of the applicant's brother, I.J. In particular, the Vlora District Court gave significant weight to the evidence of the applicant's mother, who said that I.N. had been responsible for the death of her son, I.J. and that I.N. had to be killed, and that that had been the reason why her other son, the applicant, had started to "mess" with I.N.

126. As regards the murder of I.N., the Vlora District Court had before it numerous pieces of evidence, namely the scene of crime report, the record of the examination of the victim's body, the autopsy report, ballistic and forensic reports with photographs, and the evidence given by the witnesses A.J., E.Ll., B.T., A.L., E.B., A.Ç., B.M., Sh.O., S.M. and Th.N., as well as the identification of the applicant and D.Zh. from photographs.

The evidence included the testimony of two eyewitnesses, one of whom was the off-duty policeman (B.T.) who had recognised the applicant's

accomplice as the person who had shot I.N., as well as A.Ç., who had identified the applicant as the person he had seen fleeing the crime scene, while walking with a gun in his hand (see paragraphs 15, 25 and 35 above). The evidence also included the information about the alleged feud between the applicant and the victim, which was reported by various witnesses, including family members of the applicant and the victim. It also included, among other things, testimony that the applicant had travelled from his hometown to Vlora on the day of the event as well as the testimony of another witness who had sheltered the applicant and his accomplice in the vicinity of Vlora on the day of the murder, while the police were searching for the perpetrators. This was confirmed by several other witnesses who had seen the applicant and his accomplice at the Levan home at the same period. The statement of the witness R.B. linked the applicant with D.Zh. on the day of the murder, but it was not the only evidence for that connection.

127. With regard to the principle that a narrow interpretation of the term “decisive” is required (see *Schatschaschwili*, cited above, § 123, see also paragraph 99 above), the Court concludes that the evidence provided by the pre-trial statements of the witness was not decisive in the present case. It also did not carry any significant weight for finding the applicant guilty of murdering I.N.

128. The Court also finds that there was nothing arbitrary in the reasoning of the domestic courts or in their assessment of the evidence which led to finding the applicant guilty of taking part in the murder of I.N. which could constitute a violation of Article 6 of the Convention.

– *Conclusion*

129. Given that there were good reasons for the non-attendance of the witness R.B. at the applicant’s trial, and, in particular, that R.B.’s pre-trial statement was neither the sole nor the decisive evidence in finding the applicant guilty of the murder of I.N. and moreover that it did not carry significant weight in that respect, the Court finds that the applicant’s defence rights were not restricted to an extent incompatible with the guarantees provided by Article 6 of the Convention (compare *Kostecki v. Poland*, no. 14932/09, § 72, 4 June 2013; *Dimović and Others v. Serbia*, no. 7203/12, §§ 59 and 64, 11 December 2018; *Fąfrowitz v. Poland*, no. 43609/07, § 63, 17 April 2012; and *Mika v. Sweden* (dec.), no. 31243/06, §42, 27 January 2009). Accordingly, it finds no violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the applicant’s inability to examine R.B.

(β) Conviction for the attempted murder of I.N. and A.J.

130. The Court notes that the witness B.H. had given his evidence to the police during the investigation. He did not appear at the trial in the Vlora District Court.

– *Whether there was a good reason for the non-attendance of the witness B.H. at the trial*

131. The Court notes that the Vlora District Court unsuccessfully attempted to serve a summons on B.H. on several occasions. It also ordered that he be brought to court by judicial police. However, it turned out that he was abroad, although it was not known where (see paragraph 32 above). The authorities made efforts to locate B.H., but could not discover his whereabouts.

132. The Court therefore concludes that there were good reasons for the non-attendance of B.H. at the applicant's trial.

– *Whether the evidence of the absent witnesses was the sole or a decisive basis for the applicant's conviction*

133. The Court notes that the contested evidence given by the absent witnesses B.H. and R.B. to the judicial police during the pre-trial phase of the proceedings was also relied on by the domestic courts in convicting the applicant of attempted murder (the event of 7 September 2000). In his statement, B.H. reported an alleged confession of the crime to him by the applicant when they were both in Greece. R.B. also told the police that on one occasion in Tirana the applicant had told him that he had attempted to murder I.N. on 7 September 2000.

134. In addition to the evidence given by B.H. and R.B. about the events of 7 September 2000, the victim himself had also reported to the police his suspicion that the person who had shot at him on 7 September 2000 with the intention of killing him was the applicant, albeit he had no direct knowledge of who the perpetrator was because he had not seen him. Likewise, Th.N. had reported in his statement that his son, I.N. had told him the same thing. However, all this evidence was given in the police investigation and not at the trial. Also, none of those witnesses had any direct knowledge of the identity of the perpetrator.

135. Importantly, and in contrast to the position with the conviction for the murder, the Court finds that the pre-trial statements of B.H. and R.B. were "decisive" for the applicant's conviction of the attempted murder of I.N. and A.J., given that the remaining evidence concerned primarily the applicant's possible motive rather than his connection to the actual attempt on I.N.'s life.

136. In order to assess the overall fairness of the proceedings, the Court will review the existence of sufficient counterbalancing factors (see *Schatschaschwili*, cited above, § 116).

– *Whether there were sufficient counterbalancing factors for the disadvantages of the defence*

137. The Court has stressed that where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. At the same time, where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. Because of the dangers of the admission of such evidence, it would constitute a very important factor to balance in the scales and one which would require sufficient counterbalancing factors, including the existence of strong procedural safeguards. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance to the case (see *Al-Khawaja and Tahery*, cited above, § 147).

138. As to the existence of any counterbalancing factors capable of offsetting the handicaps caused by the applicant's inability to challenge the prosecution witnesses and cross-examine them in person before the trial court, the Court notes that the following elements have been identified as relevant in this context: the trial court's approach to the untested evidence; the availability and strength of further incriminating evidence; and the procedural measures taken to compensate for the lack of opportunity to cross-examine the witnesses directly at the trial (see *Schatschaschwili*, cited above, §§ 125-31 and 145).

– *The domestic courts' approach to untested evidence*

139. There is no indication in the judgments of the Vlora District Court and the Vlora Court of Appeal that they approached the statements of B.H. and R.B. with any specific caution or that they attached less weight to their statements because they did not attend the trial (compare, for instance, *Al-Khawaja and Tahery*, cited above, § 157, and *Bobes v. Romania*, no. 29752/05, § 46, 9 July 2013). On the contrary, they based the applicant's conviction for attempted murder of I.N. and A.J. primarily on the statements of B.H. and R.B. without considering the credibility of the witnesses or the reliability of their evidence (contrast *Schatschaschwili*, cited above, §§ 148-50; compare *Brzuszczyński v. Poland*, no. 23789/09, §§ 86 and 89, 17 September 2013; *Prájiná v. Romania*, no. 5592/05, § 59, 7 January 2014; and *Nikolitsas v. Greece*, no. 63117/09, § 37, 3 July 2014).

140. Furthermore, none of the domestic courts addressed the applicant's line of argument that R.B. and B.H. had both said that he, the applicant, had told them that he had shot at I.N., and that the supposed conversations with R.B. and B.H. were reported as having taken place at approximately the same time, even though the conversation with R.B. allegedly occurred in Albania

and the conversation with B.H. allegedly occurred in Athens, Greece. The applicant argued that he could have not been at two places at the same time.

– *Availability and strength of other prosecution evidence*

141. As mentioned above, the only corroborating evidence consisted of statements given by I.N. and his father, Th.N., both expressing mere suspicion that the person who had attempted to kill I.N. on 7 September 2000 had been the applicant.

142. Furthermore, neither of those witnesses testified at the trial, I.N. for an obvious reason, since he was dead, and Th.N. because he was having medical treatment abroad.

143. Even though the applicant's mother, L.J., said before the trial court that I.N. had had to be killed because, in the eyes of the Jaupi family, he had been responsible for the death of her other son, I.J., and that because of that the applicant had started to "mess" with I.N., she did not refer in any way to the events of 7 September 2000.

– *Procedural measures*

144. The Court reiterates that a witness statement taken by the judicial police cannot be regarded as a substitute for the applicant's right to cross-examine that witness in the presence of the trial judge, who will ultimately adjudicate on the question of his or her guilt (see *Schatschaschwili*, cited above, § 155; see also *Hümmer v. Germany*, no. 26171/07, § 48, 19 July 2012; *Hanu v. Romania*, no. 10890/04, § 40, 4 June 2013 *in fine*; and *Dadayan v. Armenia*, no. 14078/12, § 46, 6 September 2018; see also, *mutatis mutandis*, *Faysal Pamuk v. Turkey*, no. 430/13, §§ 70-71, 18 January 2022).

145. As to the procedural measures aimed at compensating for the lack of opportunity for the defence to directly examine the witnesses at the trial, the Court notes that B.H. and R.B. had made their statements to the judicial police in the absence of the parties. There was no opportunity for the applicant to challenge that evidence then, and neither B.H. nor R.B. attended the trial.

146. Moreover, the Court observes that the domestic courts were unable to watch a video-recording of B.H. and R.B. making their statements to the police since no such recording had been made. As noted in *Schatschaschwili* (cited above, § 127), trial courts in various legal systems do make use of that practice, which allows them, as well as the defence and the prosecution, to observe a witness's demeanour under questioning and to form a clearer impression of the witness's credibility. Neither the applicant nor the judges had such an opportunity in the present case (see, for example, *Blokhin v. Russia* [GC], no. 47152/06, § 215, 23 March 2016; *Chernika v. Ukraine*, no. 53791/11, § 73, 12 March 2020; and *Khavshabova*, cited above, § 55).

– *Conclusion*

147. The above considerations are sufficient for the Court to conclude that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention with respect to the applicant's conviction for the attempted murder of I.N. and A.J.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

150. The Government argued that the applicant had suffered no damage, and that in the event that the Court found a violation of Article 6 of the Convention, such finding would constitute sufficient just satisfaction.

151. The Court cannot speculate as to what the outcome of the proceedings against the applicant might have been had there not been a violation of Article 6 §§ 1 and 3 (d) of the Convention. The Court considers that the finding of a violation constitutes sufficient satisfaction in the present case. It therefore rejects the claim in respect of non-pecuniary damage.

B. Costs and expenses

152. The applicant also claimed EUR 3,810 in respect of costs and expenses incurred before the domestic courts and for those incurred before the Court.

153. The Government claimed that the costs and expenses incurred in the domestic proceedings had been awarded to the applicant by the domestic courts, and that the claim for costs and expenses for the proceedings before the Court was unjustified.

154. 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 to the applicant the amount of EUR 1,200 covering costs and expenses before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 §§ 1 and 3 (c) and (d) concerning the applicant's right to take part in the criminal proceedings against him and to question the prosecution witnesses R.B. and B.H. admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention as regards the applicant's right to take part in the criminal proceedings against him;
3. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention as regards the applicant's right to question prosecution witnesses in respect of his conviction for murder;
4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention as regards the applicant's right to question the prosecution witnesses R.B. and B.H. in respect of his conviction for attempted murder;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros) plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Ioannis Ktistakis
President