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

THIRD SECTION

DECISION

Applications nos. 41411/11 and 58014/16
Renaldo BREGU against Albania
and Natasha NOKSHIQI against Albania

The European Court of Human Rights (Third Section), sitting on 28 September 2021 as a Committee composed of:

María Elósegui, *President,*
Frédéric Krenc,
Darian Pavli, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above applications lodged on 30 June 2011 and 30 September 2016 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case (application no. 41411/11), Mr Renaldo Bregu, is an Albanian national who was born in 1979 and lives in Tirana ("the first applicant"). The applicant in the second case (application no. 58014/16), Ms Natasha Nokshiqi, is an Albanian national who was born in 1972 and lives in Tirana ("the second applicant"). The applicants were represented before the Court by Mr T. Aleksandridis and Mr D. Matlija, lawyers practising in Tirana.

2. The Albanian Government ("the Government") were represented by their then Agents, Ms A. Hicka, Mr. A Metani, Ms E. Muçaj and, subsequently, by Ms B. Lilo of the State Advocate's Office.

A. The circumstances of the cases

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

1. Application no. 41411/11: Bregu v. Albania

3. At the time of the events complained of, the first applicant was in receipt of a monthly unemployment allowance of 6,340 Albanian leks (ALL – approximately 55 euros, EUR). Following the payment of the last unemployment allowance at a certain time between December 2010 and January 2011, the first applicant wished to challenge its low amount before the domestic courts and to complain about the fact that the allowance ceased to be paid after one year.

4. However, due to the amount of stamp duty (*taksa e padisë*), which was ALL 12,000 (approximately EUR 98) and had to be paid at the time of lodging a claim, the applicant did not file any claim to that effect.

2. Application no. 58014/16: Nokshiqi v. Albania

5. On 30 November 2014 the second applicant was taken to a police station in Tirana for having allegedly made an illegal electricity connection. She took her minor daughter with her to the police station, despite the police officers' instructions that she should not. On 1 October 2015 the Tirana prosecutor's office decided to discontinue the criminal proceedings against the applicant.

6. On an unspecified date the applicant lodged a claim for damages with the Tirana Administrative Court of First Instance ("the Court of First Instance") requesting compensation for the psychological damage caused to her minor daughter by the police. Following an application for free legal aid, on 8 February 2016 the State Commission on Legal Aid ("SCLA") granted the application so that the applicant could benefit from legal aid in the form of legal representation before the domestic courts. The costs of legal representation were to be borne by the SCLA.

7. At a preliminary hearing on 17 February 2016 the Court of First Instance found deficiencies (*me të meta*) in the claim for damages as the applicant had failed to pay the stamp duty (*taksën e padisë*) and returned the claim so that the applicant could put right the deficiencies. Upon payment, the Court of First Instance resumed the proceedings.

8. On 17 March 2016 the Court of First Instance assigned two experts, whose costs were to be borne by the applicant, in order to assess the physical and psychological health of the applicant's daughter.

9. On 31 March 2016 the applicant asked to withdraw the claim for damages owing to her inability to pay the experts' fee. On the same date the Court of First Instance accepted the request and decided to discontinue the proceedings (*vendosi pushimin e çështjes*). The decision stated that a special appeal lay against it (see also paragraph 13 below). It appears that no appeal was lodged against this court decision.

B. Relevant domestic law and practice

1. Code of Civil Procedure (CCP)

10. Article 102 provides that court fees consist of stamp duty (*taksa mbi aktet*) and other legal costs and expenses. According to Article 104, which was repealed in 2017, stamp duty was determined on the basis of the value of the claim, which was indicated by the claimant, and it was payable at the time of lodging a claim (see also Article 156). In the event of failure to pay, a single judge returns the claim to the claimant without taking any further action whatsoever, in accordance with Article 154/a, indicating that the deficiencies be put right within the time-limit fixed. A special appeal may be lodged against the decision.

11. Article 105/b, as introduced in 2001, provides that individuals who are exempted from the payment of stamp duty will be exempted from the payment of other costs and expenses. According to Article 158/a, the court, at a preliminary hearing, can decide to exempt a claimant from the payment of stamp duty in the cases provided for by law.

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

13. Article 158/a provided that a special appeal lay against a decision discontinuing the proceedings. According to Article 443, the special appeal was to be lodged within five days of the decision discontinuing the proceedings.

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

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

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

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

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

3. Domestic case-law

17. On 27 February 2013, prior to the adoption of the 2013 and 2014 amendments to the Legal Aid Act, the Constitutional Court ruled by a majority that compliance with the requirement under domestic law to pay stamp duty at the time of lodging a claim, even by people without financial means, did not constitute a breach of an individual's right of access to a court. It stated that a claimant who lodged a claim was required to pay stamp duty in advance as a percentage of the value of the claim. An ordinary judge, having regard to the circumstances of the case and the financial situation of the claimant, could decide, on a case-by-case basis, to exempt him or her from the payment of stamp duty in order to ensure respect for the right of access to a court. In such a case, the stamp duty would be paid from the State budget. The Constitutional Court further pointed out that the SCLA was to provide legal aid to certain categories of individuals in accordance with the Legal Aid Act 2008.

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

COMPLAINTS

19. The applicants complained under Article 6 § 1 of the Convention that their right of access to court had been unjustifiably restricted on account of their inability to pay court fees.

THE LAW

A. Joinder of the applications

20. In accordance with Rule 42 § 1 of the Rules of the Court, the Court decides to join the applications, given their similar factual and legal background.

B. The applicants' complaints

21. Complaining of a breach of their right of access to a court, the applicants relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

(a) As regards application no. 41411/11

22. The Government raised three objections regarding the admissibility of the first applicant's complaint. In the first place, they submitted that the application had been lodged out of time. Secondly, they contended that the first applicant lacked victim status as it was not clear how he had been personally affected by the legal provisions that he was seeking to challenge. Lastly, they maintained that the first applicant had never initiated any proceedings before the national courts to challenge the unemployment allowance, nor had he requested exemption from stamp duty on account of his financial inability to pay.

23. The first applicant replied that he had lodged the application within the six-month time-limit, which had started to run either on 10 January 2011, when he was paid the last instalment of the unemployment allowance, or on the date when his right to file a claim before the domestic courts had become statute-barred. Moreover, he submitted that he was directly affected by the application of domestic law governing the allocation of unemployment allowance. The statutory obligation to pay stamp duty had prevented him from challenging the domestic law before the domestic courts. Lastly, his efforts to lodge a claim would have been futile as there

was no domestic case-law in which exemption from stamp duty had been granted.

(b) As regards application no. 58014/16

24. The Government submitted that the second applicant had never made a request for exemption from payment of the experts' fee. In spite of her claim that she had made such a request orally, no record could be found in the minutes of any of the hearings. In addition, she had failed to submit any evidence in support of her indigence. The second applicant's failure to make such a request had deprived the Court of First Instance of the possibility to assess her situation and determine the request in accordance with domestic law.

25. The second applicant maintained that she had made an oral request to be exempted from the payment of the experts' fee. Her request to withdraw the claim for damages had been based on her indigence, which meant that this fact was made known to the court. Even assuming that such a request had not been made orally by her legal aid representative, given that he was a legal aid lawyer, the responsibility rested with the State. In her view, the Court of First Instance should have examined her financial situation on its own initiative, since the fact that the applicant benefited from legal aid was indicative of her indigence. The second applicant maintained that there was no effective remedy in practice.

2. The Court's assessment

26. The Court considers at the outset that, in view of the objections raised by the Government and before considering the merits of the applicants' complaints, it must determine whether the applicants complied with Article 35 of the Convention, and, specifically, with the requirement of exhaustion of domestic remedies prescribed by Article 35 § 1 of the Convention. It will therefore examine this matter in respect of each application below.

(a) General principles

27. The Court reiterates that according to its well-established case-law, the six-month period normally runs from the final decision in the process of exhaustion of domestic remedies (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECHR 2002-II).

28. In connection with the exhaustion of domestic remedies, the Court has stated that those who wish to rely upon the supervisory jurisdiction of the Court as concerns complaints against a State are obliged to use first the remedies provided by the national legal system (see for example *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV). The obligation to exhaust domestic remedies therefore

requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (ibid., para 66).

29. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Pasquini v. San Marino*, no. 50956/16, § 119, 2 May 2019).

30. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 77, 25 March 2014).

(b) Application of the general principles to the present applications

(i) As regards application no. 41411/11

31. The Court notes that the first applicant wished to challenge the amount of the monthly unemployment allowance. However, he failed to institute any proceedings arguing that the amount of stamp duty was prohibitive.

32. The Court also notes that Article 105/b of the CCP, as introduced in 2001, provides for the possibility for a claimant to be exempted from stamp duty upon lodging a claim. When read together with Article 158/a of the CCP, the ordinary court can decide, at a preliminary hearing, to exempt a claimant from stamp duty upon lodging a claim (see paragraph 11 above). However, the applicant failed to avail himself of such a remedy as he did not institute any proceedings whatsoever.

33. The Court cannot accept the applicant's argument that, in the absence of any clear domestic case-law, this remedy was ineffective. In a legal system in which fundamental rights are protected by the Constitution and the law, it is incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to apply those rights and, where appropriate, develop them in exercising their power of interpretation (see, *A, B and C v. Ireland* [GC], no. 25579/05, § 142, ECHR 2010). If the first applicant had any doubts about the possibility of obtaining a court decision regarding his exemption from stamp duty, it was for him to dispel

those doubts by applying to the domestic courts. The Court repeats that it cannot take the place of domestic courts, as they are better placed to examine and assess the particular circumstances surrounding the applicant's allegations. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

34. In such circumstances, having regard to the remedy provided for by Articles 105/b and 158/a of the CCP, it was open to the first applicant to lodge a claim with the domestic courts and test the extent of that remedy. The fact remains that the applicant took no steps whatsoever to challenge the amount of the unemployment allowance, in particular to allow the domestic courts to assess his indigence *vis-a-vis* the legal requirement to pay the stamp duty.

35. It follows that the application in respect of the first applicant must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(ii) As regards application no. 58014/16

36. The Court notes that the second applicant, having been granted legal aid in the form of legal representation and paid stamp duty, lodged a claim for damages. She subsequently withdrew the claim owing to her inability to pay the experts' fee, without requesting an exemption from its payment. The Court will thus determine whether domestic law provided a remedy in the second applicant's case.

37. The Court notes that, under the Legal Aid Act 2008, the SCLA was empowered to consider applications for legal aid in the form of, amongst other things, exemption from the payment of costs and expenses, such as the expert's fee. However, in the present case, there is no indication that the applicant took any steps to file such an application for legal aid with the SCLA, which had already accepted her prior application for legal aid in the form of legal representation.

38. In any event, the Legal Aid Act 2008 provided that the court, at a preliminary hearing, could decide a claimant's exemption from legal costs and expenses, such as the experts' fee, if the SCLA did not take a decision or rejected an application for legal aid. The domestic court's obligation also stems from Article 105 of the Code of Civil Procedure (see paragraph 12 above). In the instant case, the parties disagree about whether the applicant made an oral request for exemption from the payment of the experts' fee before the Court of First Instance. Having examined the documents in the case file, the Court does not find any evidence lending credence to the applicant's claim that she had made such a request. By failing to make the request, the applicant did not give the Court of First Instance the

opportunity to assess her financial situation, also in view of Article 105 of the CCP which provides that the ordinary court, having regard to the circumstances of a case and the parties' financial situation, can order, amongst other things, that the payment of the experts' fee be borne by the other party to the proceedings.

39. The Court would further refer to the Constitutional Court's decision which was delivered in 2013 and clarified that the ordinary courts were capable of examining requests for exemption from the payment of stamp duty and, *mutatis mutandis*, the experts' fee. The alleged absence of any pertinent case-law could also be due to the fact that the issue was rarely put before the domestic courts for their consideration. The Court has underlined that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile, is not a valid reason for failing to pursue it (see paragraph 29 above). In the present case, if the applicant had any doubts about the possibility of being exempted from the payment of the experts' fee on the strength of the Legal Aid Act 2008 and Article 105 of the CCP, it was for her to dispel those doubts by making a request to the SCLA and/or the Court of First Instance. While the applicant had been granted legal aid in the form of legal representation, it is not for the Court to speculate on her financial situation, not least because she had paid the stamp duty. It would have been, in the first place, for the Court of First Instance to determine such a matter, since the national courts are, in the nature of things, particularly qualified to settle the issue arising before them.

40. Lastly, even assuming that the applicant had made an oral request for exemption from the payment of the experts' fee, it was open to the applicant to appeal against the Court of First Instance's decision discontinuing her case (see paragraphs 9 and 13 above).

41. In conclusion, the Court considers that the second applicant did not give the domestic courts the opportunity to put right the alleged Convention violation through the respondent State's legal system. It follows that the application in respect of the second applicant must likewise be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 21 October 2021.

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Olga Chernishova
Deputy Registrar

María Elósegui
President