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

THIRD SECTION

CASE OF ÇUPI v. ALBANIA

(Application no. 27187/08)

JUDGMENT

STRASBOURG

14 November 2023

This judgment is final but it may be subject to editorial revision.

In the case of Çupi v. Albania,

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

Georgios A. Serghides, *President*,

Darian Pavli,

Oddný Mjöll Arnardóttir, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 27187/08) 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") on 6 June 2008 by an Albanian national, Fatmir Çupi, born in 1986 in Mirëditë ("the applicant") who was represented by Mr S. Zeqiri, a lawyer practising in Tirana;

the decision to give notice of the complaints under Article 6 §§ 1 and 3 (c) of the Convention to the Albanian Government ("the Government"), initially represented by their Agent, Ms A. Hiçka, and subsequently by Mr O. Moçka, General State Advocate, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 17 October 2023,

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

SUBJECT MATTER OF THE CASE

1. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that he was convicted on the grounds of statements made without a lawyer.

I. CIRCUMSTANCES OF MURDER ON 9 JUNE 2004

2. On 3 June 2004 the applicant, his cousin E., and a friend B. went into hiding on the outskirts of Kaçinar.

3. On 5 and 6 June 2004 they stayed with a member of E.'s family and shared a room with the seventeen-year-old son of the household, F. They were carrying weapons and on the evening of 5 June 2004 F. heard the applicant and E. talking about killing "the old one" and "the young one". According to statements made later by F. (see paragraph 9 below), the applicant expressed his support for E. carrying out the plan.

4. On 6 June 2004 F.'s fifteen-year-old friend Gj. visited the premises and heard E. talking about "finishing off" the local police officer. During this discussion the applicant had nodded in approval and had stated that he was with E. in all his actions.

5. On 9 June 2004, B. had gone out to buy groceries and had seen the police officer in question. B. informed E. and the applicant of that, and the

applicant reportedly told E.: “Leave it, don’t go”. However, E. went out alone looking for the officer and then shot both him and his son dead. Following E.’s return home, the three of them fled to the mountains.

II. CRIMINAL INVESTIGATION

6. On 27 June 2004 the applicant gave himself up and was remanded in detention. On the same date he made statements to the police as a person accused of aggravated murder, in the absence of a lawyer. The introductory part of the record of his questioning stated that the applicant had completed the compulsory eight years of schooling and was unemployed. The part of the record concerning the presence of a lawyer read as follows:

> “[Officer:] You stand accused of aggravated murder and illegal possession of firearms and [have been informed], pursuant to Article 158 of the CCP [Code of Criminal Procedure] [which excludes family members of the accused from the obligation to testify], of your right to give explanations or not to do so. Do you wish to take advantage of this right and [the right to] a lawyer?
>
> [Applicant]: I do not have a lawyer and I will speak to my father later on to see whether he can get me one. As regards the question put by you, I understand [it] and declare that I agree to give explanations now.”

7. The applicant provided the officers with a detailed account of his activities with E. both before and after the murder. He stated that several days prior to the murder, fearing that the police officer in question was looking for them, the applicant, E. and B., had gone into hiding. On the critical date E. had been informed by B. that the officer was nearby. Subsequently, E. had gone out alone looking for the officer and had shot both him and his son. Lastly, the applicant provided a detailed account of how they had survived in the mountains after the murder.

8. On 28 June 2004 E. stated to the police officers that the applicant had approved the idea of murdering the police officer and had expressed readiness to take part in it. E. also said that on the critical date the applicant had told him “Leave it, don’t go” (see paragraph 5 above).

9. On 14 July 2004, F. and Gj. made statements to police, outlining the events as described in paragraphs 3 and 4 above.

III. THE TRIAL

10. On an unspecified date Mr S. Zeqiri, who is representing the applicant before the Court, accepted to represent the applicant in the domestic proceedings. It appears that in view of the applicant’s poor financial situation the representative did not ask for payment in advance (see paragraph 53 below). Neither did the parties sign a written agreement about fees.

11. On 8 November 2004 the prosecutor committed the applicant, E. and B. for trial before the Serious Crimes District Court (“the District Court”).

The applicant was charged with illegal possession of firearms and aggravated murder of a minor and a police officer under Article 79 §§ (a) and (c) of the Criminal Code (see paragraph 22 below).

12. The District Court heard a number of witnesses, including F. and Gj., who testified that they had heard the three accused discussing how they would settle an outstanding matter with a police officer. The court granted a request by the prosecutor to have the juvenile witnesses' statements of 14 July 2004 read out in court and included in the case file for the purposes of complementing their testimony to the court.

13. The applicant asked the court to exclude from the case file his statements of 27 June 2004 made in the absence of a lawyer (see paragraphs 6 and 7 above). The court rejected the request, finding that he had waived his right to a lawyer. The court held, moreover, that the statements made by the applicant during the investigation should be included in the case file in order to rebut the applicant's testimony given during the trial.

14. In addition, the court admitted a statement made by E. on 28 June 2004 (see paragraph 8 above).

15. The applicant denied the charge of murder and maintained that it should be reclassified as "failure to report a crime" and "supporting a criminal offender".

16. On 7 October 2005 the District Court found the applicant guilty as charged and sentenced him to twenty-five years' imprisonment. The court stated that, while the applicant had not participated in the commission of the murder, his assistance, by way of being present, accompanying and offering support and advice, had given E. the courage and confidence to commit the offence. It further considered that the juveniles' testimony during the trial needed to be analysed in conjunction with the statements they had made on 14 July 2004, during the investigation (see paragraphs 9 and 12 above). In view of that evidence, as well as E.'s statements during the investigation, the court concluded that the applicant's conversations with E. demonstrated that he had entered into a clear agreement to help murder the police officer and his child. Lastly, the court concluded that certain relevant events had been established through a number of sources, including the applicant's own statement of 27 June 2004.

17. The applicant appealed, arguing, among others, that on 27 June 2004 he had been questioned without a lawyer being present.

18. On 29 December 2005 the Serious Crimes Court of Appeal ("the Court of Appeal") upheld the applicant's conviction, but reduced the sentence to twenty-two years' imprisonment. In reply to the applicant's arguments, the court stated that the applicant had consented to being questioned in the absence of a lawyer and that his statement had been examined in the light of the other evidence in the case file. In addition, it found that the minors' statements of 14 July 2004 had been taken in compliance with domestic law.

19. On 15 November 2006 the Supreme Court upheld the Court of Appeal's decision. It further reduced the applicant's sentence to twenty years' imprisonment.

20. On an unspecified date, the applicant lodged a constitutional complaint. In addition to his previous arguments he stated that on 27 June 2004 he had not had sufficient means to afford a lawyer and that the authorities should have appointed a State-funded lawyer to assist him.

21. On 18 December 2007 the full bench of the Constitutional Court dismissed the complaint. The court found that on 27 June 2004 the applicant had not requested legal assistance. Had he made such request the authorities would have been under an obligation to appoint a State-funded lawyer as required by 296 § 1 of the CCP (see paragraph 28 below). The court also noted that the applicant had consented to giving explanations in the absence of a lawyer, thereby waiving his right to legal assistance.

IV. RELEVANT DOMESTIC LAW

22. Article 79 §§ (a) and (c) of the Criminal Code, as in force at the material time, provided that the intentional murder of a minor or a police officer amounted to aggravated murder and carried a sentence of life imprisonment with a minimum of twenty years.

23. Article 34/a § 2 of CCP, as in force from 1 August 2017, requires the authorities to provide a suspect with a written "letter of rights" containing information about his or her defence rights, including the right to remain silent and the right to a lawyer of the suspect's own choosing or free legal assistance subject to certain conditions, before the first questioning takes place.

24. Article 49 §§ 1 and 2 of the CCP, as in force until 1 August 2017, read:

> "1. A defendant who has not chosen a lawyer or who has been left without one shall be assisted by a lawyer appointed by the authority conducting the proceedings, if he or she so requests.
>
> 2. When the defendant is under the age of eighteen or has a physical or mental disability that prevents him or her from exercising the right of defence, the assistance of a lawyer shall be mandatory."

25. The relevant part of Article 49 § 1 of the CCP, as in force from 1 August 2017, reads:

> "1. The authority conducting the proceedings shall immediately assign a State-funded lawyer to a defendant who has not chosen a lawyer or has been left without one[,] when:
>
> ...
>
> (ç) he or she is accused of a criminal offence carrying a sentence of not less than fifteen years;"

26. Article 151 § 4 of the CCP, as in force at the relevant time, provided that unlawfully obtained evidence could not be used in court and that such an exclusion could be made, including of the court's own motion, at any point in the proceedings.

27. Article 158 § 1 of the CCP, as in force at the relevant time, read:

> "1. The following are not compellable witnesses:
>
> (a) individuals who are in a close relationship of consanguinity with the defendant ..."

28. Article 296 § 1 of the CCP, as in force until 1 August 2017, made it mandatory to have a lawyer present during the questioning by the judicial police of a person under investigation. In accordance with the same provision, when a lawyer could not be found or did not attend a questioning, the prosecutor was required to appoint a State-funded lawyer for the suspect.

THE COURT'S ASSESSMENT

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

29. The applicant complained that his conviction had been based on, among other things, his statements of 27 June 2004, which had been obtained in the absence of a lawyer, in breach of his rights to a fair trial and to legal assistance under Article 6 §§ 1 and 3 (c) of the Convention.

A. Admissibility

30. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The general principles with regard to access to a lawyer, the right to remain silent, the privilege against self-incrimination, the waiver of the right to legal assistance and the relationship of those rights to the overall fairness of the proceedings under the criminal limb of Article 6 of the Convention can be found, among others, in *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08 and 3 others, §§ 249-74, 13 September 2016); *Simeonovi v. Bulgaria* ([GC], no. 21980/04, §§ 110-20, 12 May 2017); and *Beuze v. Belgium* [GC], no. 71409/10, §§ 119-50, 9 November 2018).

1. Whether the applicant waived his right to legal assistance

32. The Court has held that in order for a purported waiver of the right to counsel to comply with the "knowing and intelligent" standard, the applicant

has to be notified of his or her rights (see *Ibrahim and Others*, § 272, and *Simeonovi*, § 115, both cited above).

33. The Court notes that the authorities' obligation under domestic law to provide defendants with a "letter of rights" containing information about their rights, including their right to remain silent and to have a lawyer of their own choosing or free legal assistance subject to certain conditions, did not come into force until 1 August 2017 (see paragraph 23 above). The applicant was therefore not provided with a "letter of rights" prior to his first questioning.

34. The Court further notes that the applicant was informed with reference to Article 158 of the CCP (see paragraphs 6 and 27 above) of his right not to testify against a person with whom he was related, namely his cousin E., and within the same sentence the applicant was informed of his right "to give explanations or not to do so" (see paragraph 6 above). It is doubtful that this wording was sufficiently clear for the applicant to understand that he had the right to remain silent in respect of the charges against him.

35. While the applicant was informed, albeit summarily, of his "right to a lawyer", it was not clear whether this referred to a lawyer of his own choosing or to a lawyer provided by the authorities free of charge. In response, the applicant stated that he did not have a lawyer and would ask his father to secure one later (see paragraph 6 above). In the Court's view, it is also open to doubt whether this answer indicated the applicant's informed choice to waive his right to counsel or reflected the fact that in practice it was impossible for him to obtain legal assistance of his own choosing at that particular time.

36. The Court does not overlook the fact that at the relevant time Article 49 § 2 of the CCP provided for mandatory legal representation only for minors, or that mandatory representation for offences carrying a minimum sentence of fifteen years was only introduced on 1 August 2017 (see paragraph 25 above). At the time of his questioning the applicant had just turned eighteen years old and had had only a limited education and no professional experience. He faced a sentence of between twenty years' and life imprisonment (see paragraph 22 above) and it is questionable whether he could foresee the consequences of the purported waiver of his right to legal assistance (see *Simeonovi*, cited above, § 115, with further references). The Court notes that the trial court or the courts in subsequent proceedings did not engage with any of the above issues, despite the applicant's specific challenges on appeal (see *Rodionov v. Russia*, no. 9106/09, § 167, 11 December 2018, for the domestic court's obligation to examine the circumstances surrounding a defendant's waiver of defence rights). Instead, they relied exclusively and without further inquiry on the record of 27 June 2004 and the fact that he had not expressly asked for a lawyer in finding that he had waived his right to legal assistance (see, in particular, paragraph 21 above).

37. In this connection, as already noted in paragraph 35 above, the Court cannot conclude that the domestic courts have established in a convincing manner whether or not the applicant's waiver of legal assistance had been voluntary (see *Bozkaya v. Turkey*, no. 46661/09, §§ 49-51, 5 September 2017). As the applicant was not informed that he could ask the authorities to provide a lawyer for him, the Court is unable to attach any decisive weight to the fact that he did not make such a request in the circumstances of the case.

38. Accordingly, the Court concludes that the applicant's right to legal assistance was restricted.

2. Whether there were "compelling reasons" justifying the restriction

39. The Court reiterates that restrictions on access to a lawyer for compelling reasons, at the pre-trial stage, are permitted only in exceptional circumstances, must be of a temporary nature and must be based on an individual assessment of the particular circumstances of the case (see *Simeonovi*, § 130, cited above).

40. The Government have failed to demonstrate the existence of any exceptional circumstances which could have justified the restrictions on the applicant's right. As a result, the restrictions in question were not justified by any compelling reason.

3. Overall fairness of the proceedings

41. The Court must subsequently determine whether, notwithstanding the restriction of the applicant's right to a lawyer, which creates a presumption that the proceedings were unfair within the meaning of Article 6 § 1 of the Convention (see *Ibrahim and Others*, cited above, § 273, and *Schmid-Laffer v. Switzerland*, no. 41269/08, §§ 36-40, 16 June 2015), there is any reason to conclude that, exceptionally, the proceedings as a whole were fair. The onus will be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice (see *Ibrahim and Others*, §§ 264-65, and *Simeonovi*, § 118, both cited above), and in light of the principles set out in the *Ibrahim* judgment (§ 274).

42. The Government made no submissions in this regard.

43. The Court has already noted that the applicant had just turned eighteen years old and had had only a limited education and no professional experience. It has already found, too, that he had not been properly informed of his rights to legal assistance and to remain silent (see paragraphs 39 and 40 above).

44. Furthermore, the Court notes that the applicant's statement of 27 June 2004 was admitted as evidence before the domestic courts and regarded by them as relevant to the case. The domestic courts established the complicity of the applicant with E. mainly on the basis of the statements by the two

minors, but they also found the applicant's statement of 27 June 2004 important to corroborate certain events prior to and after the shooting. Indeed, the District Court appeared to place considerable weight on the fact that the applicant had been present and "accompanied" E. in the planning of the murder and on the applicant's detailed description in his statements of 27 June 2004 of the circumstances in which he had spent time with E. (see paragraph 16 above). The applicant repeatedly requested that his statements of 27 June 2004 be excluded from the case file but the domestic courts rejected his requests (see paragraph 13 above). This also suggests that the domestic courts regarded the applicant's statements of 27 June 2004 as relevant to the case.

45. The applicant's right not to be convicted on the basis of statements given without legal assistance is not confined to actual confessions or to remarks which are directly incriminating; for statements to be regarded as self-incriminating it is sufficient for them to have substantially affected the accused's position (see, *mutatis mutandis*, *Bjarki H. Diego v. Iceland*, no. 30965/17, § 58, 15 March 2022). In the present case, even though other relevant evidence has been examined by the courts, the approach of the authorities to the investigation and the qualification of the applicant's actions was significantly influenced by the detailed statements given by him on 27 June 2004 about his activities with E. prior to and after the murder and thus constituted an integral part of the evidence upon which the conviction was based (compare *Sitnevskiy and Chaykovskiy v. Ukraine*, nos. 48016/06 and 7817/07, § 84, 10 November 2016; *Mehmet Zeki Çelebi v Turkey*, no. 27582/07, § 71, 28 January 2020 ; and *Brus v. Belgium*, no. 18779/15, § 33, 14 September 2021).

46. In this context, the Government have not shown, and neither can the Court conclude, that the overall fairness of the proceedings was not prejudiced by the statements made by the applicant on 27 June 2004 in the absence of a lawyer.

47. There has accordingly been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. REMAINING COMPLAINTS

48. The applicant also complained that the way in which the authorities had questioned the two juveniles on 14 July 2004 and the way in which their statements had been assessed by the domestic courts had amounted to a violation of the "fair trial" requirement under Article 6 § 1 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

ARTICLE 41 OF THE CONVENTION

A. Damage

49. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and made no claim for pecuniary damage.

50. The Government submitted that the claim was excessive.

51. The Court cannot speculate as to the outcome of the proceedings against the applicant had there not been a violation of Article 6 §§ 1 and 3 (c) of the Convention. The Court considers that the finding of a violation constitutes sufficient just satisfaction in the present case. It therefore rejects the claim.

52. However, the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested.

B. Cost and expenses

53. The applicant claimed 300,000 Albanian leks (approximately EUR 2,400) in respect of the costs and expenses incurred in the proceedings in the domestic courts and EUR 3,710 in respect of the costs incurred before the Court. His representative submitted two itemized invoices signed by himself and stated that in view of the applicant's difficult financial circumstances he had not asked the applicant to make any payment in advance (see paragraph 10 above).

54. The Government objected to both claims.

55. Regard being had to the lack of supporting documents signed by the applicant and showing that he undertook an obligation to pay his lawyer, no award is made under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

3. *Holds* that there is no need to examine the merits of the remaining complaints;

4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President