Applicants:	Anxhela GJINI, Alesia CARA, Diora HOXHA, Argisa TROKA, Xhesika XHEBEXHIU, Juri TAULLAU, Isabela TABAKU, Dea GURI, Natali BLIU, Joel PLAKU, Mikel SEFERI, Reant KULLAJ, Brunelio FEJZULLA, Viki ZAÇLLI, Rei HALULI, Feruze AGALLIU, Oresti ÇAÇA, Marjo RABIAJ, Paulo QESARGJONI, Endi MUÇI, Arbëri SHEHU, Samuel DËRKA, Thimi SHKARPA, Kristina ÇELANJI, Athina PRIFTI, Almira TOTA, Zino VELESHNJA, Erdi PODO, Anxhela MIRAKA, Gani KRRASHI, Klevi GUGALLJA, Flavio ELEZI, Ledion MANE, Eugen LAZAJ, Igli HOXHAJ, Arlind KASËMI
Respondent:	**Republic of Albania**
Before:	European Court of Human Rights
Alleged violations:	Articles 4, 8, 14 ECHR; Article 2, Protocol 1 ECHR

Supplementary explanation (ANNEX not exceeding 20 pages)

Counsel for Applicants

Av. Semir SALI
Av. Esmeralda MAILLARD (Ndoci)

Contact: semir@sali-legal.com

Table of Contents

I. INTRODUCTION

1. This case is a first in the jurisprudence of the Court. It concerns legislation (Law 60/2023, or "Law") requiring medical students of the University of Medicine Tirana to: either sign an agreement forcing them to (i) waive their right to obtain their diploma after completion of their six year studies; and (ii) accept compulsory work in the territory of Albania (at locations determined by a governmental committee) for a period of 5 years (or 3 years for students currently enrolled in years 2-4; and 2 years for those in years 5-6). If students refuse to accept these conditions, they shall be forced to pay, in the form of an economic sanction amounting to five times the current full tuition fee (or ten-times for students in receipt of partial scholarships). Such compulsory work scheme devised by the impugned Law **differs fundamentally from the notion of "residency**" which is a regulatory requirement to be able obtain the licence to work as a medical doctor and which is applied equally to everyone wishing to work as a medical doctor.

2. The Applicants challenged the Law before the Albanian Constitutional Court, claiming various violations of their constitutional rights. The Albanian Constitutional Court found that the Law, indeed, violates the Applicants' right to education and work.[1] Yet, despite this finding (at least regarding the violation of the right to education), the Court failed to grant the Applicant's referral in full. Instead, the Constitutional Court simply reduced the required compulsory terms of employment from 5-3-2 years to 3-2-1 years without any explanation.[2] No other domestic remedy is possible.

3. As a result of Law 60/2023 and judgment 1/2024 of the Albanian Constitutional Court, the following rights were violated:

- Article 2, Protocol 1: the right of the Applicants to education, and more specifically, (i) their right to receive the diploma upon graduation, as well as (ii) their right to legal certainty by not having their tuition fees substantially increased as a means to coerce them into signing the agreement for compulsory work for a certain number of years.
- Article 4: the protection against compulsory labour, due to the penalty, in the form of economic sanction, to work in healthcare institutions for three, two or one year, which constitutes a disproportionate burden;
- Article 8: the right to freely choose one's profession and place of work in relation to private life and professional activities. Three judges, in their partially dissenting opinions, argued that the limitation is neither necessary nor proportionate, as there is

[1] Constitutional Court, Judgment 1/2024, paras 49; 71.
[2] Constitutional Court, Judgment 1/2024, para 72.

no shortage of medical doctors; vacant positions for medical doctors amount to only 4% of the total number of doctors providing healthcare services. Therefore, the limitation of the right to private life and professional activities does not pursue a legitimate aim and is neither necessary nor proportionate.

- Article 14: protection against discrimination in relation to indirect discrimination vis-à-vis other students in public universities who can economically afford to pay the increased fee in the form of economic sanction; and vis-à-vis other students in private universities who are not affected by the application of Law 60/2023.
- Article 6: in relation to the Constitutional Court's (i) flagrant violation of the adversarial principle and basic fair trial principles by admitting determinant evidence *ex parte* after the conclusion of the proceedings and failing to disclose such evidence to the Applicants; (ii) failure to adequately provide reasoning for refusing to entertain the discrimination claim; (iii) failure to repeal the Law despite having found a violation of the principle of legal certainty; (iv) failure to repeal article 4 paragraphs 1(c), 2(b), 3(b) of the Law, despite having found that the obligation to withhold the diploma until the fulfilment of the mandatory work period was unnecessary and unproportional; (v) failure to engage with the merits of the forced labour claim; (vi) failure to adequately state the reasons as to why a maximum period of three years of mandatory employment following the completion of studies was proportional to the aim sought.

II. STATEMENT OF THE FACTS

4. On 5 July 2023, the Council of Ministers approved the draft law "On the special treatment of students who follow the integrated study program of the second cycle "General Medicine" in public institutions of higher education". The Draft Law was not part of the planned legislative agenda. Meanwhile, the Applicants and other students immediately expressed their objections to the draft law by protesting and asking to be heard during the deliberations of the draft law in the Assembly.[3]

5. On 21 July 2023, the Assembly of Albania approved the Draft into Law no 60/2023 via an accelerated procedure.[4] Pursuant to its Article 11, the Law entered into force 15 days after publication in the Official Gazette, on 31 August 2023. The impugned provisions are as follows:

> Article 4
> Beneficiary categories of special treatment […]
> c) accepts the official transfer of the corresponding higher education diploma from the public institution of higher education, where he completed his studies, to the health institution where he is employed until the fulfilment of employment obligations

[3] *See*: https://www.reporter.al/2023/06/20/studentet-e-mjekesise-ne-proteste-kunder-kontrates-se-detyrueshme/
[4] *See*: https://top-channel.tv/2023/07/21/diploma-peng-per-5-vite-miratohet-me-71-vota-pro-dhe-23-kunder-ligji-per-studentet-e-mjekesise/

according to the 5-year term, with the right to withdraw the university degree after the fulfilment of employment obligation. […]
b) accepts the official transfer of the relevant higher education diploma from the public institution of higher education, where he completed his studies, to the health institution where he is employed until the fulfilment of employment obligations according to the 3-year term, with the right to withdraw the university degree after the fulfilment of employment obligation. […]
b) accepts the official transfer of the corresponding higher education diploma from the public institution of higher education, where he completed his studies, to the health institution where he is employed until the fulfilment of employment obligations according to the 2-year term, with the right to withdraw the university degree after the fulfilment of employment obligation. […]

Article 5
Payment of the full value of the cost of studies
The student who does not agree to sign an agreement to work in a health institution in the Republic of Albania, public or private, from the date of the right to employment with the ministry responsible for education, the ministry responsible for health and the institution of public higher education according to the provisions of points 2 and 3 of article 4 of this law, pays the full value of the cost of studies. The methodology for determining the cost of studies for the integrated study program of the second cycle "General Medicine" in public institutions of higher education and any other support for students of this study program are determined by decision of the Council of Ministers.

6. It should be noted that the term "full value of the cost of studies" differs from the "full tuition fee", in that it constitutes the total costs incurred by the public institution of higher education to provide for a study programme. Typically, the amount constituting a "full tuition fee" is substantially lower than the actual cost of studies, in view of the states' general obligation to make public higher education accessible for everyone.

7. On 2 October 2023, the academic year 2023-2024 began without the exact value of the study cost being determined yet. On the same date, the Applicants and almost all students enrolled in the integrated study program "General Medicine" at the Tirana University of Medicine decided to boycott their studies indefinitely and organize protests.[5]

8. On 9 October 2023, the Board of Administration of the University of Medicine Tirana determined the annual cost per student in the amount of **Lek 248,975.**[6] Considering that the study program "General Medicine" extends to 6 academic years, it follows that the total cost to complete the studies for students who choose not to sign the agreement according Article 5 of Law 60/2023 would amount to **1,493,850 Lek** (around EUR 15,000). This represents a

[5] *See*: https://shqiptarja.com/lajm/bojkoti-i-mjekesise-ne-javen-e-katert-studentet-vijojne-protesten-para-rektoratit-kerkojne-mbeshtetje-dhe-moszbatim-te-ligjit

[6] Tirana University of Medicine, Board of Administration, No. 3017/2 Prot., Decision No. 62, dated 09.10.2023 "For the Approval of the Cost of Studies in the Integrated Study Program of the Second Cycle "General Medicine", which is Offered by the Faculty of Medicine at the University of Medicine in Tirana ".

453.28% increase (approximately 5-fold) for students who currently pay the full tuition fee of 45,000 Lek per academic year. For students who pay the half fee of 22,500 Lek (those with an average grade above 6/10), the increase would be 1006.56% (approximately 10-fold). Additionally, categories of students who are currently exempt from the fee as they belong to protected or vulnerable categories[7] will be forced to pay the full cost of studies if they do not agree to sign the agreement according to Article 5 of Law 60/2023.

9. On 19 October 2023, a group of Members of the Assembly submitted an application to the Constitutional Court to repeal Article 4, paragraphs 1(c), 2(b), 3(b); and Article 5, first sentence of Law 60/2023. On 20 October 2023, the Applicants submitted an identical application to the Constitutional Court (drafted and represented by the same counsels).[8] In addition, the Applicants sought interim measures to suspend Law 60/2023 until the entry into force of the final judgment. The Applicants argued that the impugned provisions violated (i) the principle of legal certainty and acquired rights; (ii) the right to education and work; (iii) the right to equality before the law and protection against discrimination; and (iv) prohibition against forced labour.

10. On 8 November 2023, the plenary of the judges of the Constitutional Court decided to submit the case to a public hearing. The plenary also decided to request written opinion from the Rectorate of the University of Medicine Tirana and the Commissioner for Protection against Discrimination.[9] On 14 November 2023, the Constitutional Court decided to (i) join the cases and (ii) grant the request for interim measures and suspend the application of Law 60/2023 until the entry into force of its final decision on the merits.

11. On 21 December 2023, the case was heard in a public hearing.[10]

12. On 26 February 2024, the Constitutional Court issued its final judgment on the merits (deliberated in private on 25 January 2024) No 1/2023. On 4 March 2024, the Registry of the Constitutional Court served Judgment no 1/2024 to Counsel for the Applicants Mr Sali by email.[11] On 6 March 2024, Mr Sali acknowledged receipt of the judgment.

13. On admissibility, the Constitutional Court accepted the submissions of the Applicants, including that the impugned Law applied directly to the Applicants and that there were no alternative legal means to challenge the Law other than to seize directly the Constitutional

[7] *See*, Decision no. 269, dated 29.3.2017 "On Determining the Categories of Individuals Who Meet the Admission Criteria to a First Cycle Study Program, an Integrated Study Program or a Professional Studies Program, who are Exempted from the Annual Tuition Fee".
[8] The Lawyers could not file both applications at the same day due to missing documents in the Applicants file.
[9] *See*, Constitutional Court, Judgment 1/2024, para. 7.
[10] Mr Sali was unable to attend due to family reasons.
[11] Email dated 4 March 2024 from Ms Edmira Pacani with subject line “Dergim vendimi”.

Court.[12] However, the Constitutional Court found the discrimination claim to be inadmissible *ratione materiae* on the basis that, in essence, the claim concerned the value of the financial costs of the studies and that the methodology for the calculation of the cost of the studies was prescribed by sub-legal acts that could be challenged before lower courts.[13]

14. As regards the other submissions, the Constitutional Court decided to group them in two categories and entertain: (i) the claim concerning the violation of the right to education (article 57 of the Constitution) vis-à-vis the right to legal certainty and acquired rights (article 4 of the Constitution); and (ii) the remaining claims concerning violation of the right to work (article 49 of the Constitution) and the prohibition against forced labour (article 26 of the Constitution) vis-à-vis the right to work (article 49 of the Constitution).

15. On the merits, the Constitutional Court found that the claim concerning the violation of the principle of legal certainty was founded.[14] In addition, the Constitutional Court found a violation of the right to work, considering that the terms of five, three, and two years of compulsory work were disproportionate to the aim sought and ordered the Government to submit to the Assembly amended legislation reducing the compulsory work terms up to a maximum of three, two and one year, respectively.[15] Three judges appended partially dissenting opinions, arguing that the Constitutional Court should have granted the Applicants' Referral in full.

16. On 30 April 2024, the Government issued a new draft bill implementing the order of the Constitutional Court. Considering that the proposed amendments simply implement the Constitutional Court's judgment, there is no prospect of success for any renewed challenge before the Constitutional Court.

III. ALLEGED VIOLATIONS

A. Violation of Article 6(1) of the Convention.

1. The Constitutional Court failed to adequately provide reasoning for refusing to entertain the discrimination claim. The Constitutional Court's reasoning was grossly arbitrary and amounted to denial of justice.

17. At paragraph 37 of Judgment no 1/2024, the Constitutional Court found that:

[12] Constitutional Court, Judgment 1/2024, para. 31.
[13] Constitutional Court, Judgment 1/2024, para. 37.
[14] Constitutional Court, Judgment no 1/2024, para. 49.
[15] Constitutional Court, Judgment no 1/2024, paras 71-72.

> Although the applicant has claimed that this [discrimination] principle is violated by the impugned legal provisions, essentially, he has linked the claim to the value of the financial cost of studies that must be borne by students who refuse to sign the agreement with public health institutions. The court notes that the methodology for determining the costs of studies and its value is not determined by law no 60/2023, but was approved by sub-legal acts of the bodies of the UMT, which implemented this law, but which is not the subject of this constitutional judgment and, moreover, may be subject to the control of ordinary judicial jurisdiction. Consequently, the claim for violation of Article 18 of the Constitution cannot be considered in these constitutional proceedings.[16]

18. At the outset, the Applicants recall that they did not challenge the methodology for determining the costs of studies.[17] Instead, the Applicants argued that Article 5 was designed to operate as mechanism to force them, through an economic sanction, to sign the agreement for compulsory work.[18] This created a significant disparity whereby students in receipt of scholarships and in dire financial need would have no choice but to sign the agreement, while those who could afford the higher fee would be "relieved" from compulsory work. As a consequence, the Applicants argued that because of Article 5, the compulsory scheme did not apply equally to all medical students. Instead, it indirectly discriminated on the basis of economic status against those in dire economic need and in receipt of social benefits; and against those enrolled in public universities.

19. The Applicants submit that no rational person could conclude that, in the discrimination section,[19] the Applicants were in fact challenging the "value of the financial cost of studies that must be borne by students who refuse to sign the agreement with public health institutions".[20] Instead, they were challenging the unlawful difference in treatment between persons in comparable circumstances.

20. Had the Constitutional Court considered the discrimination claim admissible, it would have had no choice but to declare a violation of the right to equality before the law and protection against discrimination in connection with the right to education and to work (and protection against forced labour) and ultimately grant the referral in its entirety. The Applicants base this conclusion on two main points:

(a) Despite the fact that the interested parties (Council of Ministers and Assembly) bore the burden of proving that the law was not discriminatory against the

[16] Constitutional Court, Judgment no 1/2024, para. 37.
[17] Application to the Constitutional Court, para. 28. See also footnote 11 (underlining that the methodology did not form part of the Constitutional Challenge).
[18] Application to the Constitutional Court, para. 27.
[19] Application to the Constitutional Court, paras 66-79.
[20] Constitutional Court, Judgment no 1/2024, para. 37.

Applicants, neither party provided any evidence, or even engaged with the submissions of the Applicants in their written responses.

(b) Most importantly, during the oral hearing, counsel for the Council of Ministers acknowledged that students in dire financial need who received social welfare benefits did not have a right to choose. On cross-examination, he expressed surprise as to why such category for which the Government had paid twice should not be included in the compulsory labour scheme.[21] He added that "having the opportunity to study and the aid given by the State to study does not mean that in the end the student has the right not to serve in the Republic of Albania".[22] The applicants submit that such interpretation reduces the right to study into a banal *quid pro quo* scheme, in which the students who receive economic help are obliged to "return the investment".

21. Furthermore, the Constitutional Court is contradictory and not consistent with its own previous position on admissibility. On 8 November 2023, upon deciding that the case was admissible, the Constitutional Court decided, *proprio motu*, to request an *amicus curiae* opinion from the Commissioner for the Protection against Discrimination. According to the Constitutional Court, this was done, "taking into account the arguments submitted in the referral, and the constitutional rights affected in this case".[23] This strongly suggests that the Constitutional Court considered, in fact, the discrimination claim to be admissible, and that the reasoning in paragraph 37 amounted to an excuse to avoid considering such claim in the merits.

22. Accordingly, in view of the Court's case-law,[24] the Applicants submit that the Constitutional Court's refusal to entertain the merits of the discrimination claim was arbitrary and amounted to a denial of justice, in violation of Article 6(1) of the Convention.

2. The Constitutional Court failed to repeal the Law despite having found a violation of the principle of legal certainty.

23. The Applicants recall that the principle of legal certainty "is implicit in all the Articles of the Convention and constitutes one of the fundamental aspects of the rule of law".[25] It is further recalled that the Albanian Constitutional Court has long accepted that the principle of legal

[21] *See*, Written Reply, para. 3, referring to https://www.youtube.com/watch?v=wH7CEeOlV2M at 4:05:11 – 4:05:53.
[22] *See*, https://www.youtube.com/watch?v=wH7CEeOlV2M at 4:08:00 – 4:08:33.
[23] Constitutional Court, Judgment no 1/2024, para. 7.
[24] *See*, for instance, *Dulaurans v. France*, no. 34553/97, paras 33-34 and 38, 21 March 2000*; Khamidov v. Russia*, no. 72118/01, para. 170, 15 November 2007; *Anđelković v. Serbia*, no. 1401/08, para. 24, 9 April 2013; *Bochan v. Ukraine (No. 2)*, [GC], paras 63-64, 5 February 2015.
[25] *See Nejdet Şahin and Perihan Şahin v. Turkey*, no. 13279/05, para. 56, 20 October 2011.

certainty is a constitutional principle inherent to the rule of law as protected by Article 4 of the Albanian Constitution. It is for this reason that the Applicants complained violation of the principle of legal certainty (along with acquired rights and legitimate expectations) as their first claim.

24. In its judgment, the Constitutional Court accepted in full the Applicants' submissions in respect the principle of legal certainty. The Court concluded that:

> The deterioration of the legal situation of the students, by prescribing new obligations and rules, which they did not know and did not accept before, does not comply with the principle of legal certainty, therefore the claim of the Applicants in this regard is founded.[26]

25. Yet, despite finding a violation of the principle of legal certainty, the Constitutional Court failed to grant the Applicants' request in the *dispositif* of the judgment. Instead, the Court went on to repeal entirely different provisions from those requested by the Applicants.

26. Moreover, the reasoning of the Constitutional Court applies equally regardless of whether the obligation to work for the Government after the completion of studies was five years, or three years as the Court indicated.

27. It follows that the failure, by the Constitutional Court, to repeal the impugned provisions of Law 60/2023, after a finding of violation of the principle of legal certainty, was entirely contradictory to its reasoning and constitutes a flagrant denial of justice and violation of Article 6(1) of the Convention.

> *3. The Constitutional Court failed to repeal article 4 paragraphs 1(c), 2(b), 3(b) of the Law, despite having found that the obligation to withhold the diploma until the fulfilment of the compulsory work period was disproportionate.*

28. At paragraph 69 of the Judgment, the Constitutional Court accepted that:

> The interested parties have not managed to justify in what way the conclusion of agreements and the retention of the diploma until the "fulfilment of employment obligations", […] will bring the desired effect.[27]

Moreover, the Court concluded that:

> Forcing students to choose between signing or not signing the agreement, with the consequence that in case of signing, the diploma is officially transferred to the health institution where they are employed until "fulfilment of employment obligations" **has led to a complete denial of the right to choose the place of work**, according to the

[26] Constitutional Court, Judgment no 1/2024, para. 49.
[27] Constitutional Court, Judgment no 1/2024, para. 69.

conditions and criteria that the students were familiar with and accepted at the moment they started their studies or competed for this purpose.[28] (emphasis added)

29. Like the above, it is submitted that, despite finding a violation of the principle of the right to education and work, the Constitutional Court failed to grant the Applicants' referral in the *dispositif* of the judgment. Instead, the Court went on to repeal entirely different provisions from those requested by the Applicants.

30. Furthermore, the Court's reasoning contradicts its statements in paragraph 71 and the *dispositif* of the judgment. If the contested law "has led to a complete denial of the right to choose the place of work," it is patently illogical to believe that this "complete denial" can be adequately addressed merely by reducing the compulsory work period from five years to three years, as ordered by the Constitutional Court.

4. The Constitutional Court failed to engage with the merits of the compulsory labour claim.

31. The Applicants recall their submissions before the Constitutional Court regarding the forced labour claim.[29] The Applicants claimed that the Law compelled them, against their will, to sign the agreement and work for the Government, or face an economic sanction. In the case of students without financial means, such a choice was non-existent. Likewise, first-year students, had no real choice. They had to sign the agreement or forfeit the right to study.

32. As mentioned above, the Constitutional Court decided to group the claims and consider the forced labour claim pursuant to article 26 of the Constitution (and relevant international human rights conventions) alongside the claim concerning the violation of the right to work pursuant to article 49 of the Constitution.[30] However, despite joining the claims, the Constitutional Court entirely failed to address the forced labour claim, even though the legal test concerning the latter is substantially different from the test concerning the right to work.

33. The Constitutional Court found that the requirement of mandatory work for a period of five years following completion of studies was excessive and ordered the Government to submit, within three months, a new bill reducing this requirement to a maximum of three years (for the first-year students and less for third, fourth and fifth year-students). However, the Constitutional Court failed to consider whether the obligation to work for five or three years constituted forced labour within the meaning of Article 26 of the Constitution or Article 4(2) of the Convention.

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[28] Constitutional Court, Judgment no 1/2024, para. 71.
[29] Application to the Constitutional Court, paras 80-84.
[30] *See*, Constitutional Court, Judgment 1/2024, para. 38.

34. In view of the foregoing, the Applicants request the Court to find a violation of Article 6 of the Convention.

5. The Constitutional Court failed to adequately state the reasons as to why a maximum period of three years mandatory employment following the completion of studies was proportional to the aim sought.

35. At paragraph 72 of the Judgment, the Constitutional Court decided that, considering that the requirement to work for five years was excessive -- and keeping into consideration the experience of other states such as Sweden, Spain, Denmark, Kazakhstan or South Africa -- it should review the period of compulsory work from five years to three years. Yet, the Court failed to provide any reasons as to why three years were proportionate, especially considering its own acknowledgment that there was no emergency in terms of the number of medical doctors in Albania and that, according to current projections, there would be a surplus of medical doctors within two to-three years. Additionally, the Court did not cite any authority to support its assertion that other states have implemented similar schemes.

6. The Constitutional Court flagrantly violated the adversarial principle and basic fair trial principles by admitting evidence and failing to disclose such evidence to the Applicants

36. Prior to the oral hearing, on 14 November 2023, the Constitutional Court notified the Applicants and the interested parties (Council of Ministers and Assembly of the Republic) to file any request for admission of evidence **until 11 December 2023, at 12:00hrs.**

37. Before the deadline of 11 December 2023, the Applicants submitted written evidence (Official letter with statistics by the Ministry of Health) showing that there was no emergency in terms of a lack of medical doctors. The evidence indicated that only 4% of the total 5,400 medical doctor positions were vacant, demonstrating that there was no necessity for a compulsory labour scheme. This evidence was also notified to the Government and the Assembly.

38. On 11 December 2023, the Registry of the Constitutional Court notified to the Applicants the submissions of the Council of Ministers, which consisted of a (i) Response and (ii) request for revocation of interim measures. **No evidence was submitted by the Council of Ministers**.[31]

[31] Email dated 11 December 2023 from Ms Edmira Pacani with subject line "Dergim parashtrimesh KM".

39. On 14 December 2023, the Registry of the Constitutional Court transmitted to the Applicants the Response of the Assembly of the Republic. **No evidence was submitted by the Assembly of the Republic**.[32]

40. On 21 December 2024, at the end of the hearing, the President of the Constitutional Court decided to admit the evidence submitted within the deadline set by the Constitutional Court. The President instructed the parties to provide written answers to the oral questions by the Judges, by 8 January 2024. The President stressed that such written answers would not constitute evidence. According to the President:

> You will have time until 8 January to deposit the written answers to the questions asked. In the meantime, we invite you to present the concluding statements. **If you do not have any other evidence … the Court did not request for other evidence, it asked clarifications – therefore, if you agree we will admit the evidence as they are, except for the written answers, which are not evidence, they are, in fact, clarifications.**[33]

41. During the oral hearing, Counsel for the Government claimed, without evidence, that the actual vacancy number of medical doctors was 1000 and that he would provide written evidence to support this later. Considering that the deadline for requesting the admission of evidence had already expired, the Applicants requested the Court to reject any evidence submitted after the conclusion of the hearing, as it was flagrantly out of time and in clear violation of fair trial rights and the adversarial principle. However, it appears that the Court reached its decision – that the legislative intervention was necessary – exclusively on evidence produced by the Government in a letter sent on 5 January 2024.[34] Furthermore, the Applicants were **never notified of such letter**, and were never given an opportunity to respond or refute such evidence. According to the Constitutional Court, the evidence produced during the proceedings showed that the total number of medical doctors is 5400, which accounts to 1.93 per 1000 inhabitants. The number of vacant posts for medical doctors is 482; the number of medical doctors in pension age is 213 and the number of those that emigrate every year is around 200.

42. It follows that by admitting determinant evidence *ex parte* after the conclusion of the proceedings and failing to disclose such evidence to the Applicants, the Constitutional Court committed a flagrant violation of the Article 6(1) of the Convention.

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[32] Email dated 14 December 2023 from Ms Edmira Pacani with subject line "Dergim dokumentacioni".
[33] *See* video of the hearing https://youtu.be/wH7CEeOlV2M?t=17372 at 4:49:56 – 4:50:00.
[34] *See*, Constitutional Court, Judgment 1/2024, para 67 and Partially Dissenting Opinion of Judge Xhaferllari paras 12-13; Partially Dissenting opinion of Judge Toska, para. 11.

B. Violation of Article 2(1) of the First Protocol to the Convention (right to education)

43. At the outset, the Applicants submit that the acknowledgment by the Albanian Constitutional Court of the violation of the principle of legal certainty (*see submissions concerning violation of Article 6 of the Convention*) is, in and of itself, sufficient for the Court to find that there has been a violation of Article 2 of the First Protocol by the Respondent State. In the alternative, the Applicants submit that the Court should find a violation based on the following submissions.

44. The Applicants recall that, since Article 2 of Protocol No. 1 to the Convention applies to higher education, any State setting up such institutions will be under an obligation to afford an effective right of access to them.[35] The Applicants further recall Recommendation no R(98) 3 of the Committee of Ministers to Member States on Access to Higher Education, points 8.1-8.6.[36] General Comment 13 of the UN Committee on Economic, Social and Cultural Rights provides, inter alia, that the term accessibility in Article 13(2) of the International Covenant On Economic, Social And Cultural Rights comprises (i) non-discrimination; (ii) physical accessibility; and (iii) "economic accessibility - education has to be affordable to all […] whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education".[37]

45. Applying the above principles to the impugned provisions, it appears that none are respected. Indeed, Article 5 of Law 60/2023 (which remains in force), will continue to coerce students into signing the agreement to work for 3, 2, or 1 year.

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[35] *Leyla Şahin v. Turkey* [GC], no. 44774/98, paras 136-137, 10 November 2005.

[36] 8.1. Public funding for higher education should support the aims and objectives of access policy stated in paragraphs 2.1 to 2.4 above, with the ultimate goal that all citizens should have fair and equal opportunities for higher education. […]
8.3 To reduce the financial barriers to wider access to higher education, financial support should be provided for student subsistence, taking into account the cost of dependants. Priority should be given to meeting the needs of those from lower income groups. Incentive scholarships to students with high academic grades may play a complementary role.
8.4. Financial arrangements should recognize the additional needs of disabled students and those with children.
8.5. Where tuition or registration fees are introduced, it is desirable:
- to treat fees as a limited student contribution to the cost of higher education in partnership with the taxpayer, rather than as a substitute for public funding;
- to make the payment of the student contribution contingent on income, for example by a comprehensive scheme of financial aid covering the cost of fees for students on low incomes;
- to regulate fees at a comparable level in all public institutions;
- to commit any fee income to additional spending.
This paragraph may not be interpreted as a recommendation in favour of fees.

[37] United Nations, Committee on Economic, Social and Cultural Rights, General Comment 13, E/C.12/1999/10, 8 December 1999, para. 6.

46. Moreover, the updated law will retain the obligation in Article 4 to withhold the diploma until after the fulfilment of the required 3, 2, or 1 year of mandatory work for the Government. This is despite the Constitutional Court's finding that "the interested parties have not managed to justify in what way the conclusion of agreements and the retention of the diploma until the "fulfilment of employment obligations", […] will bring the desired effect"[38] and that "forcing students to choose between signing or not signing the agreement, with the consequence that in case of signing, the diploma is officially transferred to the health institution where they are employed until "fulfilment of employment obligations" **has led to a complete denial of the right to choose the place of work**".[39]

1. The impugned provisions do not pursue a legitimate aim.

a) The obligation to pay the full cost of the studies for students who refuse to sign the agreement for mandatory work following the completion of their studies.

47. In their application to the Constitutional Court, the Applicants claimed that there was no objective and reasonable justification for the obligation laid down in the first sentence of Article 5 of Law 60/2023.[40] During the oral proceedings, counsels for the Government and the Assembly displayed confusion as to the legitimate aim of the mechanism laid out in Article 5 of the Law. For instance, when one of the judges commented that the obligation to pay the full cost of studies in the event of not signing the agreement resembled, in fact, to an economic sanction, Counsel for the Government responded that it was actually a fee that had to be returned by the students to the state budget. However, just a few minutes later, Counsel for the Government admitted that the goal was not "to protect the budget" but "to coerce, through this payment, the possibility of staying in the Republic of Albania; so it is a way, **a coercion mechanism** for young students to stay in the Republic of Albania".[41] (emphasis added).

48. As the Applicants already stated in their submissions to the Constitutional Court, both arguments adduced by the Government fall short of justifying a legitimate aim.

49. As regards the "protecting the taxpayers" argument, it is submitted that the right to education is not subject to a "*quid pro quo*" relationship. Fees must be treated as a limited student contribution to the cost of higher education in partnership with the taxpayer, rather than

[38] Constitutional Court, Judgment no 1/2024, para. 69.
[39] Constitutional Court, Judgment no 1/2024, para. 71 (emphasis added).
[40] Application to the Constitutional Court, paras 46-49.
[41] *See*, Written Reply, para. 7, referring to https://www.youtube.com/watch?v=wH7CEeOlV2M, at (3:42:50 – 3:43:08).

as a substitute for public funding. Moreover, there was no financial hardship from the Government which could in theory justify such an immediate and steep increase of the "tuition fee".

50. As regards the "coercive mechanism", the Applicants contended that, even if *arguendo*, the ultimate aim was to ensure that medical doctors would work within Albania, **such an objective cannot be achieved through illegitimate means, such as economic coercion or sanction**.[42]

51. Unfortunately, the Constitutional Court failed to engage with the above arguments and instead considered arguments relating to the right to education solely from the perspective of legal certainty. The Court is, therefore, invited to remedy such violation.

b) The requirement to withhold the diploma until the fulfilment of the mandatory employment

52. During the proceedings, the Applicants argued that there is no objective and reasonable justification for the requirement laid by article 4(1)(c); 4(2)(b) and 4(3)(b) to transfer of the diploma from the university to the relevant public health institution until the fulfilment of the compulsory work period. The Government and Assembly did not provide any justification for this requirement, nor did the Constitutional Court address this claim.

2. The impugned provisions are not necessary in a democratic society, nor proportionate relative to the aim sought.

53. As indicated above, the Constitutional Court did not apply the necessity and/or proportionality test when considering the alleged violations of the right to education. Therefore, the Applicants recall their previous submissions before the Constitutional Court and incorporate them by reference.

54. In summary, the Applicants submit that the obligation to pay the full cost of studies, which represents a tenfold increase, is an extraordinarily harsh measure which is not necessary to protect the state budget, and that negatively affects the right to education, particularly students with limited financial means.

55. Considering the income of an average Albanian family, such an increase effectively impairs the Applicants' right to access higher education.

[42] *See*, written reply, para. 24.

C. Violation of Article 4(2) of the Convention (forced labour)

56. The Applicants adopt the definition contained in Article 2 of ILO Convention No. 29 (and endorsed by the Court) to consider "forced or compulsory labour" as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[43]

57. The work is exacted under the menace of an economic sanction: pursuant to Article 5 of Law 60/2023 (not repealed by the Constitutional Court), students who refuse to sign the agreement will pay the full cost of the studies. As acknowledged by the Government's representative, the aim of such payment is to coerce students to sign the contract. Similarly, those who sign the contract and later refuse to work for the Government will be forced to pay the full cost of the studies.

58. The Applicants did not offer themselves voluntarily: while it may be argued that the work required does not fall outside the ambit of the profession chosen; or that the Applicants knew that they would work as medical doctors once finishing their studies, it cannot be said that they foresaw that they would (i) work for the Government at wherever location its authorities decide; and (ii) that this work would last for such a considerable amount of time. In addition, the scheme provided by the Law is unique and cannot be found in any other jurisdiction.[44] In this regard, the Applicants stress that the compulsory work scheme devised by the impugned Law **differs fundamentally from the notion of "residency**" which is a regulatory requirement to be able to obtain the licence to work as a medical doctor and is applied equally to everyone wishing to work as a medical doctor.

59. Finally, the Constitutional Court itself accepted the argument that the impugned provisions violated the principle of legal certainty because the Applicants could not foresee such obligations when they decided to study medicine.

60. The work required is not included in the exceptions provided in Article 4(3) of the Convention: more specifically, the work does not form part of the normal civic obligations, which usually concern limited work or service to be completed alongside the actual work or profession. Nor does it relate to any service exacted in case of an emergency, because it was proven during the proceedings that no emergency exists concerning the issue.

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[43] *See*, *Stummer v. Austria*, no. 37452/02, para. 118, 7 July 2011.

[44] It is noted that although the Constitutional Court referred to the practice of other states at paragraph 70 of its Judgment, it failed to provide any authority to back such claim. To the contrary, all the so-called "precedents" claimed by the Government and the Assembly were easily refuted by the Applicants as clearly distinguishable, see Final Brief, paras. 23-34.

61. The burden is clearly disproportionate: unlike all other cases decided by the Court in relation to Article 4(2) of the Convention, the present case requires the Applicants to work for three years. While the Applicants acknowledge that the original requirement of five years of service was rightly considered by the Constitutional Court as excessive and disproportionate, they note that the Constitutional Court did not provide any reasoning or methodology as to why three years would be proportionate.

62. Finally, the Applicants refer to the WHO guideline on health workforce development, attraction, recruitment and retention in rural and remote areas. Even in cases where the compulsory service schemes apply equally and without discrimination (unlike the present case), the WHO cautions that "the certainty of evidence for this intervention is low and the evidence on the effects of compulsory service on the retention of participants remains limited".[45]

D. Violation of Article 8 in connection with the right to choose a profession and the place of work.

63. Although there is no specific provision in the Convention concerning the right to work, the Court has long established a connection between the right to work and Articles 8 of the Convention, in relation to private life and professional activities. The Applicants recall that Article 49 of the Constitution of the Republic of Albania protects the right to 'earn the means of living by lawful work chosen or accepted by himself. He is free to choose his profession, place of work, as well as his own professional qualification'. Therefore, in accordance with the Court's jurisprudence, it is submitted that the complaints in relation to Article 8 ECHR have been raised in substance before the domestic courts.[46]

64. The obligation contained in Article 8 of the Convention is of a negative kind. The Court has, on many occasions reiterated that 'the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities'.[47]

65. In its judgment, the Constitutional Court found that the requirement of compulsory work was necessary,[48] but that the number of years, based also on the similar experience of other

[45] WHO guideline on health workforce development, attraction, recruitment and retention in rural and remote areas, 3.8.1 Recommendation 8, (p. 38 pdf document), at https://iris.who.int/bitstream/handle/10665/341139/9789240024229-eng.pdf?sequence=1

[46] *See Platini v France*, no. 526/18, para. 51, 11 February 2020.

[47] *Kroon et al v Netherlands*, no. 18535/91, para. 31, 27 October 1994.

[48] Constitutional Court, Judgment 1/2024, para. 67

countries (no authority was cited in this regard)[49] was excessive compared to the aim sought;[50] and instead ordered the Government to amend the law to a maximum of three years compulsory work (for first students) and two and one year for the other students.[51]

66. The Applicants submit that, based on the evidence and the reasoning of the Constitutional Court, three years compulsory work is also unnecessary and/or disproportionate relative to the aim sought.

1. There was no compelling need to justify the legislative measures

67. The only evidence before the Constitutional Court showed that currently there is only a 4% vacancy for medical doctor positions in the primary care service out of a total of 54000 medical doctors providing healthcare in the territory of Albania.[52] A simple calculation reveals that currently, there are only 216 vacant positions.[53] During the oral hearing, Counsel for the Government claimed, without evidence, that the actual number of vacancies was 1000 and that he would adduce written evidence later to support this claim. Considering that the deadline for requesting the admission of evidence had expired, the Applicants requested the Court to reject the admission of any evidence submitted after the conclusion of the hearing as out of time and in clear violation of fair trial rights and the adversarial principle. However, it appears that the Court reached its decision based on evidence produced by the Government through letter sent on 5 January 2024.[54] According to the Constitutional Court, the evidence produced during the proceedings showed that the total number of medical doctors is 5400, which accounts to 1.93 per 1000 inhabitants. The number of vacant posts for medical doctors is 482; the number of medical doctors in pension age is 213 and the number of those that emigrate every year is around 200. Based on these figures, the Court accepted the Government's submission that currently there are 1000 vacant posts.[55]

68. Despite this flagrant violation of Article 6 of the Convention and the resulting fact that the Applicants were never notified of such figures and had no meaningful way to challenge them in court, it is still evident that there was no compelling need to pass the challenged legislation.

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[49] Constitutional Court, Judgment 1/2024, para. 70.
[50] Constitutional Court, Judgment 1/2024, para. 71.
[51] Constitutional Court, Judgment 1/2024, para. 72.
[52] *See*, letter dated 17 October 2023, issued by the Ministry of Health, submitted by the Applicants as evidence.
[53] *See*, partially dissenting opinion of Judge Elsa Toska, para.14.
[54] *See*, Constitutional Court, Judgment 1/2024, para 67 and Partially Dissenting Opinion of Judge Xhaferllari paras 12-13; Partially Dissenting opinion of Judge Toska, para. 11.
[55] Constitutional Court, Judgment 1/2024, para 67.

69. The majority of the Constitutional Court acknowledged at paragraph 69 that (i) the quota of incoming students at the public university is 500 for 2024; and that the incoming medical doctors from the public university will surpass the current need for doctors within two-three years. While such acknowledgment alone is sufficient to determine that there is no necessity for the impugned provisions, the Applicants would like to stress the following:

70. First, as correctly mentioned by Judge Toska in her partially dissenting opinion, the Government itself acknowledged in their Letter to "Qendresa Qytetare" that "**The filling of 4% of vacant positions in the health system is a dynamic process and has not created a lack of provision of accessible and health services in near proximity for citizens**".[56] This evidence clearly shows that the limitation of the right was utterly unnecessary and that the Constitutional Court, based on such evidence, should have granted the Referral in full.

71. Second, a simple calculation of the figures accepted by the Court reveals that the exact number is 895[57] (482+213+200) as opposed to 1000. Moreover, it is not clear what the government means by "pension age" and how many medical doctors retire every year.

72. Third, the Constitutional Court failed to consider the number of incoming medical doctors graduating from private universities. Had it done so, it would have been clear that there is already, a surplus of medical doctors vis-à-vis vacant positions.

73. Fourth, the Constitutional Court failed to consider the written evidence submitted by the Applicants, in which the Ministry of Health notes that the vacancies numbers fluctuate because the Government is expected to hire additional medical doctors from the Albanian diaspora through a brain gain programme "doctors for Albania".

74. Fifth, the Constitutional Court did not consider, as rightly noted by Judge Xhaferllari in her Partially Dissenting Opinion, that the Law was not part of the planned legislative agenda, and it was obvious that there was a lack of factual and statistical analysis of the actual needs for medical doctors.[58]

75. Sixth, by relying on the actual number of medical doctors (1,93 per 1000 inhabitants) as reason to justify these harsh legislative measures the Constitutional Court failed to acknowledge (i) that such number has been steadily increasing from 18.8 in 2020 and 12,5 in 2010;[59] (ii) that brain drain issues and other issues concerning the number of medical doctors in the health system are endemic in developing countries and touch all areas of society.

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[56] Partially Dissenting Opinion of Judge Toska, para. 11, referring to Letter of Ministry of Health, dated 17 October 2023.
[57] *See*, Partially dissenting opinion of Judge Toska, para. 12.
[58] *See*, Partially Dissenting Opinion of Judge Xhaferllari, paras 9-11.
[59] *See*, Letter of Ministry of Health, dated 17 October 2023.

76. Finally, the Constitutional Court clearly placed an unjustified burden on the Applicants by finding that the Applicants failed to propose any alternative measures.[60] It is, in fact, for the public authorities to justify that the measure sought is necessary and no other (more lenient) measures could have been reasonable and efficient to achieve the intended aim.

2. In any event, the ordered measures continue to be disproportionate to the aim sought.

As indicated above, the Constitutional Court failed to adequately provide reasons as to why three years of compulsory work is a proportionate limitation to the right to work. Nor did it provide any authority relating to other countries which purportedly have similar schemes in place.[61] Indeed, it is highly possible that the Court might have referred to periods of "residency" in those countries, which is fundamentally different from the scheme devised by the impugned provisions. Moreover, there is no evidence to suggest that the measures will be effective and achieve the aim sought.

E. Violation of Article 14 in connection with articles 4(2), 8, and article 2, Protocol 1 of the Convention.

77. The Applicants recall their submissions[62] before the Constitutional Court concerning the violation of the right to equality before the law and protection against discrimination and hereby incorporate them by reference. In short, the new law, as greenlighted by the Constitutional Court, will continue to render higher education inaccessible for everyone and will perpetuate the discrimination between:

- Students in dire economic conditions and those in receipt of social welfare benefits who will be *de facto* forced to sign the agreement vis-à-vis those who can afford to pay the higher fee.
- Students in dire economic conditions and those in receipt of social welfare benefits who will be *de facto* forced to sign the agreement vis-à-vis students in private universities.
- Students in public universities vis-à-vis students in private universities.

78. In essence, this law is unique because it not only mandates for compulsory work in violation of substantive provisions of the Convention, but it also fails to apply equally to everyone in similar circumstances. It establishes mechanisms that unfairly discriminate the

[60] Constitutional Court, Judgment 1/2024, para. 67.
[61] Constitutional Court, Judgment 1/2024, paras 70 and 72.
[62] Application to the Constitutional Court, paras 62-79.

Applicants vis-à-vis their colleagues in private universities and vis-à-vis other colleagues with higher economic means.

IV. ADMISSIBILITY

79. See submissions in the application form. In short, the Applicants submit that the application(s) are (i) submitted within the fourth months' time limit, since Judgment no 1/2024 was notified on 4 March 2024; (ii) have exhausted domestic remedies considering that the Constitutional Court has already decided on the claims submitted here; (iii) and that the claims are not manifestly unfounded.

V. DAMAGES

80. Considering the number of violations and the non-pecuniary damages suffered by the Applicants request the Court to award to each applicant the sum of EUR 10000 for non-pecuniary damage. Moreover, the Applicants request that the Court order the defendant state to pay any expenses incurred by the Applicants.

VI. ARTICLE 46 OF THE CONVENTION

81. Considering that the crux of the matter concerns legislation in violation of the Convention, the Applicants request the Court, in the event of finding of a substantive violation to the Convention, to order the Respondent State to take measures to repeal Law 60/2023.

VII. CONCLUSION

82. For the foregoing reasons, the Applicants respectfully request the Court to:

- Declare the application admissible.
- Hold that there has been a violation of article 4(2) of the Convention.
- Hold that there has been of article 6(1) of the Convention.
- Hold that there has been of article 8 of the Convention.
- Hold that there has been of Protocol 1, article 2 of the Convention.
- Hold that there has been of article 14 of the Convention.
- Hold that the Respondent State is to take measures to repeal Law 60/2023.
- Hold that the Respondent State is to pay EUR 10,000 to each applicant.
- Order the payment of any expenses incurred.

Respectfully submitted.

Semir SALI
Counsel (Tirana Bar)

Esmeralda Maillard (Ndoci)
Counsel (Tirana Bar)