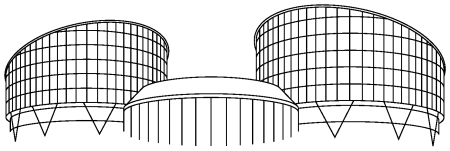

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PIHONI v. ALBANIA

(Application no. 74389/13)

JUDGMENT

STRASBOURG

13 February 2018

FINAL

13/05/2018

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

In the case of Pihoni v. Albania,

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

Robert Spano, *President,*
Paul Lemmens,
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 16 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 74389/13) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Mr Petri Pihoni ("the applicant"), on 25 November 2013.

2. The applicant was represented by Mr N. Marku, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their Agent, Ms A. Hicka of the State Advocate's Office.

3. The applicant complained under Article 3 of the Convention regarding the injuries he had sustained as a result of a police intervention and alleged that the investigation with a view to identifying and punishing the perpetrators had not been effective.

4. On 6 October 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Pogradec.

6. According to the applicant, on 6 August 2012 he witnessed a violent verbal altercation between N.P., a relative of his, and A.S. in one of the main streets of Pogradec. The applicant's intervention to calm down N.P.

and A.S. was unsuccessful. The verbal exchange became increasingly heated and ended in the use of physical violence.

7. After the eruption of the physical violence, a special police unit of the Rapid Reaction Force (*Forcat e Ndërhyrjes së Shpejtë*, hereinafter "the RRF") intervened to put an end to the violence. As a result, the applicant and the other two individuals were taken to the local police station. In his application form, the applicant submitted that he had sustained injuries as a result of the police intervention, and that on the way to the police station he had been insulted, threatened and ill-treated by RRF police officers. His requests to be taken to a hospital to receive medical treatment had gone unanswered.

A. Criminal investigations into the events of 6 August 2012

8. The relevant criminal file, which was submitted by the Government as part of their observations, indicated that two investigations had been opened into the criminal offence of the commission of arbitrary actions by a person vested with public powers in the exercise of his duties, as provided for in Article 250 of the Criminal Code (*Kodi Penal*, hereinafter "the CC").

1. Criminal file no. 303

9. A patrol report (*raport shërbimi*) drawn up by the RRF officers' team leader, V.B., and dated 6 August 2012 stated that RRF forces had been informed of a violent physical dispute in one of the main streets of Pogradec at around 7.40 p.m. As a result, they had intervened and taken three people to the local police station. According to the report, N.P. and the applicant had physically and verbally resisted the RRF officers. The report further stated that the applicant had sustained an injury to the back of his head.

10. The escort record (*formulari i raportit të shoqërimit*) in respect of the applicant, which bore the date 6 August 2012 and the time 8.10 p.m., stated that "he was bleeding from the back of his head and physically and verbally resisted the police officers."

11. It would appear that on 6 August 2012 at 8.30 p.m. the applicant telephoned a certain N.L., who was a judicial police officer working for the Minister of the Interior's Internal Control Service in Pogradec (*Shërbimi i Kontrollit të Brendshëm*, hereinafter "the ICS"), and informed him of his intention to lodge a criminal complaint against the RRF officers who had allegedly beaten him on the shoulder, leg and head with a rubber truncheon.

12. On 7 August 2012 N.L. took a statement from the applicant, who stated that he had intervened to break up a brawl between A.S. and N.P. At that moment RRF officers had arrived at the scene. The RRF officers had subsequently intervened without assessing the situation, and had beaten him with a rubber truncheon on the head, shoulder and legs. Consequently, he had sustained an open wound to his head. He had been forcibly put into a

police vehicle, where he had been subjected to psychological pressure and insulted by the RRF officers, and subsequently taken to Pogradec's police station together with N.P. and A.S. He had stayed at the police station for four hours, and the authorities had not offered him any medical aid, despite the wound on his head and other injuries to his shoulder and leg which he had sustained (see also paragraph 38 below). The applicant further stated that a certain M.S. had been present at the scene.

13. On the same day N.L. took a statement from A.S., who stated that he had met N.P. and had asked to be paid for work he had carried out in N.P.'s café bar. N.P. had made a telephone call to the applicant for help. After some moments the applicant had appeared at the scene. As they had not agreed on the sum to be paid, the applicant and N.P. had engaged in a brawl with A.S. After the RRF officers had intervened, the applicant and N.P. had objected to the orders given by the officers to get into the police vehicle, and had not complied with those orders. In A.S.'s view, the actions of the police officers had been lawful (see also paragraph 31 below).

14. On the same day at 12.20 p.m. N.L. contacted V.B. by telephone. As recorded in the patrol report (*raport shërbimi*) drawn up on 7 August 2012, V.B. stated the following:

> "Petri Pihoni, A.S. and N.P. had been involved in an argument. They [the RRF officers] were called upon to put an end to the argument, which had become more intense. In such circumstances, we [stopped them from arguing] and took them to Pogradec police station in the police vehicle. ... I would point out that N.P. and Petri Pihoni verbally and physically resisted us as they were taken to the police station. From the outset, it was noted that Petri Pihoni had sustained an injury to the back of his head (*Shtetasi Petri Pihoni që në momentin e pare të konstatimit nga ana jone ishte i dëmtuar në pjesën e pasme të kokës*). A patrol report was drawn up in relation to this event, which we will make available."

15. On 7 August 2012 N.L. drew up a record for the inspection of documents relating to the registration log (*libri i marrjes së informacionit` dhe dhënies së urdhrave*) of the local police station. The record contained entry no. 270, according to which V.B. had reported the dispute on 6 August 2012 at 8.10 p.m., and three people, namely the applicant, A.S. and N. P., had been taken to the police station.

16. On 10 August 2012 N.L. referred a criminal offence to the Pogradec prosecutor's office. His report described the events as mentioned in the statement made by the applicant on 7 August 2012 (see paragraph 12 above) and the statement made by A.S. on the same day (see paragraph 13 above). The report also referred to the registration log of the police station and the telephone conversation N.L. had had with V.B. (see paragraph 14 above). N.L. had been unable to question the RRF officers, as they had left for Tirana on the morning of 7 August 2012.

17. On 10 August 2012 the Pogradec district prosecutor (hereinafter "the district prosecutor") opened criminal file no. 303 in response to the information transmitted by the ICS for a preliminary investigation into the

offence of the commission of arbitrary actions as provided for in Article 250 of the CC.

18. On 13 August 2012 the district prosecutor ordered that a number of procedural actions should be taken, such as: the examination of a forensic medical report in respect of the applicant (see paragraph 20 below), the questioning of the applicant, the examination of the four people who had knowledge of the events, the collection of information about the identity of the RRF police officers, and any other action as appropriate.

2. Criminal file no. 347

19. On 3 September 2012 the Pogradec prosecutor's office opened criminal file no. 347 in response to a criminal complaint lodged by the applicant on 8 August 2012 against the RRF police officers in relation to the criminal offence of the commission of arbitrary actions as provided for in Article 250 of the CC. The applicant's criminal complaint stated the following:

> "... at the time I intervened to break up the fight [between N.P. and A.S.], Rapid Reaction Force officers, without enquiring about the situation, came from behind and physically attacked me without any warning, beating me with hard objects on my back, legs and head, also causing a wound which was later treated at the hospital. At the time I was physically attacked, I told police officers not to use any violence, as I was not part of the dispute and had simply intervened to prevent it.
>
> ... despite my statements, and without enquiring about the situation, they took me by force and used psychological pressure [by threatening me with] the rubber truncheon as I was taken to the local police station. After [I asked them] not to insult me and exert pressure on me, the team leader said, 'we'll see to you, shut up and give me your name' (*ta tregojmë neve ty po qepe dhe më jep emrin këtu*). No medical aid was offered to me, despite the serious injuries which I had sustained. It would appear that the RRF officers had come from Tirana."

20. The applicant had submitted a forensic medical report (no. 204) dated 7 August 2012, which had been ordered by N.L., the judicial police officer, in support of the criminal complaint. The medical examination had found that the applicant had been injured by a hard, blunt object (*mjet i fortë mbretës*), which had caused a wound requiring stitches, three scratches (*dërrmishje*), an oedema and an ecchymosis. The above injuries had resulted in the applicant being unable to work for nine days.

21. The district prosecutor decided that further investigation was required in order to identify the perpetrators and determine criminal responsibility in respect of the offence of the commission of arbitrary actions under Article 250 of the CC. On 3 September 2012 the district prosecutor ordered that a number of procedural actions should be taken, such as: the inspection of the registration log of the police station, the collection of information about the identity of the RRF police officers, the holding of an identification parade to identify the police officers, the taking

of statements from the applicant and other people who had knowledge of the events, and any other action as appropriate.

22. On 6 September 2012 the applicant made another statement in which he said that he had seen a group of police officers wearing uniforms of the State police getting out of a police car, but had not noticed when they had arrived at the scene. Afterwards he had been beaten with a rubber truncheon on the head and on the back of his body. He was unable to name any of the police officers, given the events, but stated that he would be able to recognise them at an identification parade. He had noticed that they were part of an RRF unit. In spite of his explanations that he was a bailiff, he had been pulled by the arm and put inside a police vehicle and taken to the local police station. On the way to the police station one of the police officers had remained standing with his arm raised, ready to hit the applicant with the rubber truncheon he had in his hand. No reasons had been given to the applicant for his detention at the police station. Despite the fact that he had been bleeding from the back of his head as a result of blows received from rubber truncheons, no medical assistance had been offered. He had been released from the police station at around 11.15 p.m., after which time he had gone to hospital to receive treatment. He stated that the events might have been recorded by the security cameras of a nearby bank.

23. On 10 September 2012 the district prosecutor requested that video footage be provided by a nearby bank whose security cameras were believed to have registered images of the events of 6 August 2012. On 14 September 2012 the bank submitted video footage on a CD-ROM. A record dated 30 January 2013 on the examination and collection of evidence recorded an expert's findings to the effect that the video footage was not relevant to the investigation (*nuk paraqesin asnjë interes për hetimin*).

24. On 10 September 2012 the district prosecutor asked the local police station to provide information relating to the identity of the RRF officers who had been on duty in Pogradec on 6 August 2012. On 17 September 2012 the Pogradec police station responded that the RRF team had been led by V.B., who was responsible for disclosing the information relating to the identity of the members.

3. Joinder of the criminal files

25. On 18 September 2012 the district prosecutor decided to join both criminal files under file no. 303.

26. On 18 September 2012 the district prosecutor ordered that a number of procedural actions should be taken, such as: questioning of the applicant, inspection of the registration log of the police station, inspection of the registration log of the local hospital's emergency ward, examination of the forensic medical report in respect of the applicant (presumably the report set out in paragraph 20 above), collection of information about the identity of

the RRF officers, questioning of four people who had knowledge of the events, examination of video footage from the nearby bank, and any other action as appropriate.

27. Most likely on 17 October 2012, although the date on the record reads 17 January 2012 (17/01/2012), A.E., who owned a bar close to the site where the brawl had taken place, made a statement. He stated that two people had been having a fight with a third person. RRF officers had intervened to break up the fight. They had not used any rubber truncheons, in spite of the resistance shown by some of the people put into the police vehicle.

28. On 7 November 2012 a judicial police officer inspected an order for the deployment of RRF forces (*urdhër për daljen me shërbim*). According to that order, a team of six RRF police officers from Tirana, led by V.B., had been made available to the local police station to assist with random patrols during the busy summer season.

29. On 13 December 2012 N.P., one of the parties involved in the fight, stated that he had sustained blows from a rubber truncheon used by the RRF officers. They had forcibly put him, the applicant and A.S. into a police vehicle. The police officers had not introduced themselves when they had arrived at the scene, and had not warned any of them by saying "Stop, police". On the same day Ni.P., a relative of the applicant and N.P., stated that the RRF officers had used rubber truncheons on the applicant, N.P. and A.S.

30. On 4 January 2013 P.B., who had been on duty at the local police station on 6 August 2012, stated that the applicant and two other people (N.P. and A.S.) had been brought to the police station at 8.00 p.m., following the RRF intervention to break up a fight amongst them. None of those people had made any complaints. P.B. had provided them with a decision directing them to have a medical examination.

31. On 15 January 2013 A.S. gave another statement and stated that he had been hit on his back by the applicant. As a result, he had reacted and hit back. The fight had continued for a few minutes and A.S. had targeted the applicant. N.P. had been been drunk and had collapsed on the ground (see also paragraph 13 above). On the same day J.K., an eyewitness and a relative of A.S., stated that the RRF officers had intervened to break up the fight, but had not used any force or hit the three people. A.S. had been hit on his back by N.P. Afterwards, he had been attacked by the applicant. A.S. had reacted and hit both of them back. He also stated that it had been N.P. who had made a telephone call to the applicant for help.

32. On 21 January 2013 V.B., who had been the RRF officers' team leader at the time of the events, gave a statement. According to that statement, on 6 August 2012 at 7.40 p.m. he and his team had been informed by a plain-clothed police officer that a brawl was taking place in one of Pogradec's main streets. When the team had arrived at the scene,

they had seen that seven to eight people were involved in a violent fight, hitting each other with blunt objects such as beer bottles and wooden sticks. Three of them (the applicant, N.P. and A.S.) had been the most aggressive. Two of them (the applicant and N.P.) had subdued the third person (A.S.) and were kicking him. The RRF officers had intervened, broken up the fight and escorted the three people to the local police station. The three people had claimed that they had sustained injuries, some of which were visible. As a result, N.P. had been taken to hospital for treatment. The applicant had subsequently been released.

On 7 August 2012, following instructions they had received, V.B. and his team had left Pogradec. On the same day V.B. had received a telephone call from a certain N.L., to whom he had given an explanation about the intervention (see paragraph 14 above).

V.B. further stated that on 25 December 2012 he had complied with a summons to appear at the Pogradec police station to give a further explanation. Upon his arrival, he had run into the applicant, who had continued to watch him and his colleague closely at the police station for more than an hour. He had refused to take part in an identification parade, owing to the fact that he had not been informed of such a procedural action, he and his colleague had been the only police officers wearing distinct RRF uniforms, and the applicant had been observing them for more than an hour. In his view, an identification parade would have been contrary to the provisions of Articles 171 and 172 of the Code of Criminal Procedure (*Kodi i Procedurës Penale*, hereinafter "the CCP") and decision (no. 7/2005) of the Constitutional Court.

33. S.H., who was one of the RRF officers, had also complied with the summons to appear on 25 December 2012 at the Pogradec police station to give a further explanation. He had also declined to take part in an identification parade, for the same reasons as those mentioned above by V.B..

On 21 January 2013 S.H. gave a statement. In addition to confirming the facts set out in V.B.'s statement, he added that the applicant had actively resisted their order for him to get into the police vehicle. The applicant had also exerted psychological pressure on the officers, stating "You'll see what I'll do to you". Given the circumstances, the police officers had been unable to use any equipment (rubber truncheons, automatic weapons or tear gas canisters) or handcuff the people inside the vehicle.

34. On 21 January 2013 G.B., I.M. and A.D., who were the three other RRF officers, gave statements which contained the same information that had been provided by V.B and S.H. No mention was made of their being summoned to give explanations on 25 December 2012.

35. On 22 January 2013 a judicial police officer inspected Pogradec police station's registration log, according to which the applicant had entered the police station at 8.20 p.m. and had made no complaints (*nuk kam*

pretendime). It would appear that the applicant had left the police station at 10.30 p.m. The registration log of the local hospital showed that the applicant had reported to the emergency ward at 11.00 p.m. with a wound caused by tearing and a contusion on the back of his head (*vulnus laceratum, contusio capitis regionis occipitalis*).

36. On 13 February 2013 the district prosecutor decided that another expert report should be produced by a group of specialist doctors from the Forensic Medicine Institute (*Instituti i Mjekësisë Ligjore*, hereinafter "the FMI"). That decision referred to the first forensic medical report (no. 204) which had been issued in respect of the applicant (see paragraph 20 above). It further mentioned that the RRF police officers had stated that they had not used any objects or equipment to break up the fight. It also referred to the statements given by A.S. and J.K., according to which A.S. had exchanged blows with both the applicant and N.P. In such circumstances, it was important to identify the blunt object that had been used to cause the applicant's injuries as stated in the first forensic medical report.

37. On 5 March 2013 the FMI informed the prosecutor's office that they had been unable to identify the object that had caused the applicant's injuries.

38. On 12 April 2013, during questioning by a judicial police officer, the applicant stated, among other things, that he had not been involved in a dispute, nor had he been struck by A.S. or struck back at A.S himself. The applicant denied having received a telephone call from his relative N.P. for help. He confirmed that he had not been able to identify the police officers, since he had been hit from behind (see also paragraph 12 above).

39. On 13 May 2013 the district prosecutor, by a reasoned decision, decided to stay the investigation in accordance with Article 326 of the CCP, and referred the case file to the ICS for further actions to identify the perpetrators. The decision described all the evidence that had been obtained, as well as the statements that had been given by the applicant and the other people who had either been involved in or had witnessed the brawl on 6 August 2012. In so far as relevant, the decision stated the following:

> "J.K. gave information about the event, stating that Petri Pihoni had been involved in the dispute, having been informed [about it] by telephone by N.P. ... Petri had struck A., who had hit back in response ... the police officers had escorted A.S., N.P. and Petri [to the police station]. [J.K.] saw that both N.P. and Petri resisted the police officers by declining to get into the police vehicle ... [J.K.] confirmed that the officers' actions were correct ... none of them touched or used force against them [A.S., N.P. and the applicant].
>
> ...
>
> A.E. was questioned in relation to the events. He runs a private business close to the site. His statement indicates that a physical dispute was taking place between three people. All the people were having a fight [by the time] an RRF police car arrived. The police officers called on those people to stop fighting, but they continued to have

a fist fight until the officers intervened, pulled them by their arms and got them into the [police] vehicle. [A.E.] stated that he had not seen any officers using rubber truncheons.

...

Drawing on the facts and evidence collected during the course of [the investigation in respect of] criminal file no. 303, the result is that we are not confronted with the criminal offence of the commission of arbitrary actions as provided for by Article 250 of the Criminal Code.

... In the instant case, it was proved that Petri Pihoni was involved in a physical argument with some people. Despite his own statements, the statements given by A.S., J.K. and A.E. indicate that N.P. called Petri, who appeared at the scene and became involved in a debate about the sum that N.P. owed A.S. The debate escalated into a physical dispute in which Petri struck A.S., who hit back in response.

In such circumstances, the RRF officers witnessed a violent dispute and took the three people to the police station with a view to [their] giving explanations about its causes.

I consider that the officers' actions ... are in compliance with (sections 4, 92, 95 and 96 of) the State Police Act and cannot be classified as arbitrary actions which affect the freedom of citizens.

As regards the criminal complaint that physical violence was used by the RRF officers when Petri was taken to the police station, I consider that doubts arise as to whether the offence of abuse of power as provided for by Article 248 of the CC has been committed. This is the case, given the injuries sustained by Petri, which may have been caused while he was escorted [to the police station] by RRF officers ...

During the investigation, Petri Pihoni was questioned on several occasions as to whether he could identify the RRF officers who might have struck him. He responded that he was unable to proceed with the identification [procedure] because the blows had come from behind and he was unable to identify the officer who had struck the blows.

The remaining evidence obtained during the investigation does not shed any light on this [incident]. Having regard to the fact that criminal responsibility is individual and not collective, I consider that the investigation should be stayed."

B. The applicant's requests for information

40. Having not received any response from the Pogradec prosecutor's office about the progress of the investigation, on 27 December 2012 the applicant sought the assistance of the Albanian Rehabilitation Centre for Trauma and Torture ("the Centre"). On the same date the Centre unsuccessfully asked the prosecutor's office to provide it information about the applicant's case.

41. On 11 May 2013 the Centre repeated its request to the Pogradec prosecutor's office. It also complained to the Prosecutor General's office that no information had been provided to the applicant about the progress of the investigation eight months after the incident. It does not appear that a reply was given.

42. On 7 June 2013 the Pogradec prosecutor's office informed the applicant that on 13 May 2013 it had stayed the investigation. A copy of the decision of 13 May 2013 was enclosed.

43. On 27 November 2013 the Centre asked the prosecutor's office to provide it with a copy of the investigation file. No reply was given.

C. Subsequent developments after communication of the case to the Government

44. On 7 July 2017, under Rule 54 § 2 (a) of the Rules of Court, the Court asked the parties to submit any new factual information that might have come to light after the prosecutor's decision of 13 May 2013.

45. On 27 July 2017 the district prosecutor replied to the applicant that the investigation in respect of criminal file no. 303 into the criminal offence of the commission of arbitrary actions was still stayed, and the file was still with the Korca Police Directorate. The district prosecutor further informed the applicant that it had not been possible to identify the perpetrators of the criminal offence.

46. On 6 September 2017 the district prosecutor, having regard to his decision of 13 May 2013, replied to the Government that no criminal offence of the commission of arbitrary actions had been committed. Furthermore, he informed the Government that doubts had arisen as to whether the offence of abuse of power had been committed. In any event, the evidence obtained had not shed any light in this regard. The criminal file had been sent to the ICS for further actions. The latter had not identified any need to reinitiate the investigation. It had not identified any new facts which had come to light after the proceedings had been stayed. The applicant had been duly informed about the outcome of the investigation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code ("the CC")

47. Article 66 provides that the prosecution of criminal offences punishable by a term of imprisonment of five to ten years is time-barred after ten years. The prosecution of criminal offences punishable by a term of imprisonment of up to five years is time-barred after five years.

48. Article 248 of the CC prohibits actions and omissions as a result of abuse of power committed by a person vested with public powers, and punishes those actions with a term of imprisonment of up to seven years, if they do not constitute any other criminal offence.

49. Article 250 of the CC prohibits arbitrary actions committed by a person vested with public powers in the exercise of his duty, and punishes those actions with a fine or a term of imprisonment of up to seven years.

B. The Code of Criminal Procedure ("the CCP")

50. The provisions of CCP which were in force at the material time were as follows:

51. Article 24 § 2 of the CCP provided that a prosecutor had the right not to commence, or to discontinue, an investigation. Article 24 § 4 provided that the orders and directives of a higher-ranking prosecutor were binding upon a lower-ranking prosecutor. Article 24 § 5 provided that a higher-ranking prosecutor, either *proprio motu* or following an appeal, had the right to amend or revoke the decisions of a lower-ranking prosecutor.

52. Under Article 58 of the CCP, the victim of a criminal offence or his heirs had the right to request prosecution of the offender and compensation for damage. The victim had the right to make requests to the prosecutor and seek the collection of evidence.

53. Under Article 61, a person who had suffered pecuniary damage as a result of the commission of a criminal offence could lodge a civil claim during the criminal proceedings to seek compensation for damage. Under Article 62, the request should be submitted prior to the commencement of the judicial examination. In accordance with Article 62 § 3, a court might decide to sever the civil claim from the criminal proceedings if its examination delayed or complicated the criminal proceedings.

54. Article 105 of the CCP provided for the right of any interested party to request copies and extracts of or separate documents from the criminal investigation file, at that party's expense.

55. Article 323 § 1 provided that a prosecutor should send a case for trial, discontinue or stay the proceedings within three months of the name of the person accused of the criminal offence being noted in the register of the notification of criminal offences.

56. Under Article 324, the prosecutor might extend the investigation for up to three months (paragraph 1). Any further extension – of not more than three months – might be done by the prosecutor in cases involving complex investigations, or when it was objectively impossible to terminate them within the extended time period (paragraph 2). The defendant and the victim were notified of the decision extending the period of investigation (paragraph 3).

57. Under Article 325 § 1, the victim might appeal to a district court against the decision of the prosecutor extending the investigation.

58. Article 326 of the CCP, which provided for the prosecutor's right to stay a criminal investigation, read as follows:

"1. When the perpetrator of the offence is unknown ... , a prosecutor may decide to stay the criminal investigation.

2. The stay of the criminal investigation is decided after all possible actions have been carried out.

3. The stayed criminal investigation can be restarted by the decision of a prosecutor."

59. At the material time, there was no specific provision in the CCP for a right to appeal against a prosecutor's decision staying a criminal investigation.

Relevant domestic case-law concerning the staying of the investigation

60. An appellant, H.S., lodged a criminal complaint concerning the death of his sister with the prosecutor's office. The prosecutor stayed the investigation on the basis of Article 326 of the CCP on the grounds that no perpetrator of the crime could be traced. The appellant instituted legal proceedings against the stay of the criminal investigation. He complained that he had not been informed of the contents of the investigation file or the stay of the criminal investigation, that the prosecutor had not questioned all witnesses, and that he had no effective remedy to complain about the decision to stay the criminal investigation. The domestic courts rejected his action. The Tirana Court of Appeal held that, since the criminal investigation had been ongoing, and since the prosecutor's office had had the discretion to determine the investigative actions to be carried out, the applicant did not have *locus standi*. It reconfirmed that there was no right to appeal against a decision to stay criminal proceedings under criminal procedural law. The appellant lodged a constitutional complaint with the Constitutional Court, which was rejected by decision no. 4 of 18 January 2013. The Constitutional Court held, *inter alia*, that, there was no remedy under domestic law against a prosecutor's decision staying a criminal investigation. However, the fact that the appellant had had access to the domestic courts indicated that he had an effective right to appeal to a court.

C. Civil Code

61. Article 608 of the Civil Code provides that anyone who unlawfully causes damage to another person or to that person's property is obliged to pay compensation for the damage. He is not liable if he proves that he is not at fault. Article 609 provides that the damage should be the result of a person's direct and immediate act or omission. Article 625 provides that a person who suffers non-pecuniary damage is entitled to compensation if: there has been damage to his health, physical or mental integrity; his honour, personality or reputation have been infringed; or his right to respect

for his private life has been infringed. Under Article 640, pecuniary damage consists of the actual loss suffered and loss of profit. Under Article 641, a person who causes damage to someone else's health should pay compensation.

D. Domestic case-law concerning the payment of damages

62. The Government submitted some domestic case-law concerning the payment of damages as part of their observations.

In unifying decision no. 12 of 14 September 2007, following a civil claim for damages against the Albanian Insurance Bureau (*Byroja Shqiptare e Sigurimeve*, a State entity) under Articles 625 and 640 of the Civil Code (*Kodi Civil*) for the death of three people in a car accident, the Supreme Court ruled as follows:

> "... domestic courts have accepted that three people lost their lives in a car accident ... substantially under Article 608 of the Civil Code...the legislature provides for the protection of the right to life, health, personality, dignity, private life and so on from the unlawful acts of a third party. If there is a violation of any of these rights as a result of the unlawful act, the injured party has the right to extra-contractual compensation ... In applying Article 609 of the Civil Code, the causal material link between the unlawful behaviour (the act or omission) and the fault and the damage should be proved. In determining the actual damage caused by the unlawful fact and the relevant compensation, the causal judicial link between them should also be proved".

An appellant had requested compensation by a State entity under Article 640 of the Civil Code for damage caused to his health as a result of a firearm injury caused by State police officers. In its decision no. 275 of 24 September 2009, the Supreme Court remitted the case for re-examination before the relevant court of appeal. It reasoned that, as a result of the appellant's injury by the State police officers, it had been duly proved that damage had been caused to his health.

In a decision of 25 November 2011 the Tirana District Court accepted a civil claim by appellants for compensation against State authorities lodged under, *inter alia*, Articles 625 and 640 of the Civil Code, as a result of their family member's death in a massive explosion at a demilitarisation facility. The court reasoned that criminal responsibility was independent from the civil obligation as to compensation, which was only related to compensation for damage inflicted by the dangerous activity of demilitarisation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

63. The applicant complained under Article 3 regarding the injuries he had sustained as a result of the police intervention and alleged that the investigation with a view to identifying and punishing the perpetrators had not been effective. Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

64. Having regard to the circumstances of this case, the Court considered it appropriate to communicate of its own motion a question under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

65. The Government contested the applicant's arguments.

A. Admissibility

1. As regards the submission of a civil claim under Articles 608 et seq. of the Civil Code and Article 61 of the CCP

66. The Government submitted that the applicant had failed to exhaust domestic remedies such as a civil claim for damages under Articles 608, 625 and 640 of the Civil Code and the unifying decision of the Supreme Court of 13 September 2007 for damage caused by the alleged offence of torture, and a civil claim in the course of criminal proceedings under Article 61 of the CCP.

67. The applicant submitted that a civil claim for damages could not lead to the identification and punishment of those responsible for the Article 3 violation. In any event, those remedies could only be effective after the cause of the damage had been established. The domestic case-law submitted by the Government was not applicable in his case, since all those cases were different from his. The criminal proceedings under Article 61 of the CCP could only be used in the event that a criminal charge was pressed against someone and the case was sent for trial before the domestic courts. Therefore, such a claim could not offer any prospects of success in his case, since the investigation had been stayed and no charges had been pressed against anyone.

68. The Court reiterates that, in the area of unlawful use of force by State agents – and not mere fault, omission or negligence – civil or

administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, are not adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see, *inter alia*, *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports of Judgments and Decisions* 1998-VI; *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 227, ECHR 2014 (extracts); and *Jeronovičs v. Latvia* [GC], no. 44898/10, § 76, ECHR 2016).

69. The Contracting Parties' obligation under Articles 2 and 3 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of assault could be rendered illusory if, in respect of complaints under those Articles, an applicant were required to bring an action leading only to an award of damages (see *Mocanu and Others*, cited above, § 234, and *Jeronovičs,* cited above, § 77).

70. In the present case, the Court notes that the applicant alleged that the State had failed to comply with the obligations imposed on it under the substantive aspect of Article 3 of the Convention and under the procedural aspect of the said Article to conduct an effective investigation capable of leading to the identification and punishment of those responsible for the alleged ill-treatment. In this connection, the Court observes that a civil claim for damages under the Albanian Civil Code and CCP is aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible.

71. For the reasons set out above, the Court considers that the remedies put forward by the Government are not sufficient in that they are not capable of providing redress for the situation complained of by the applicant.

2. As regards lodging a premature application and an appeal before a higher-ranking prosecutor

72. The Government submitted that the criminal proceedings had not yet been terminated, since the interlocutory decision of 7 June 2013 had triggered another opportunity to identify the perpetrators. The applicant had also failed to lodge an appeal against the prosecutor's decision of 7 June 2013 with a higher-ranking prosecutor under Article 24 of the CCP.

73. The applicant submitted that the fact that the investigation had been stayed meant that a violation under Article 3 of the Convention still continued. He further argued that no appeal against a prosecutor's decision to stay an investigation was provided for in domestic law.

74. The Court notes that one of the applicant's complaints is that the investigation of his allegation of ill-treatment was ineffective. It finds that the Government's objection that the case had not yet been terminated and that the applicant also failed to lodge an appeal under Article 24 of the CCP

is closely related to his complaint regarding the effectiveness of the investigation. It therefore joins this objection to the merits of the case under Articles 3 and 13 of the Convention.

3. Conclusion

75. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible, without prejudice to the decision ultimately to be taken on the Government's objection as to non-exhaustion of domestic remedies.

B. Merits

1. Alleged violation of the substantive aspect of Article 3 of the Convention

(a) The parties' submissions

76. The applicant submitted that the investigation file and the prosecutor's decision substantiated the fact that six police officers had used violence against him. This had been supported by other witnesses' statements. The authorities had humiliated him by publicly using violence. They had used rubber truncheons on him in front of his fellow citizens, causing him serious injuries. There was no evidence that the applicant had caused the fight or been a protagonist. Furthermore, there had been no use of any blunt objects by the applicant or the other people involved in the fight. None of the witnesses had stated that those objects had been used at the scene. The applicant further submitted that the Government had failed to show any specific behaviour on his part that had necessitated the use of violence by the police, including the unlimited use of force. Therefore, the authorities had used unnecessary and disproportionate force against him, resulting in serious damage to his health. The police actions had been unplanned, unorganised and unprofessional. Indeed, it had not been the RRF police officers' duty to protect public order in the city. The authorities' acts had constituted inhuman and degrading treatment.

77. The Government submitted that the factual circumstances of the case did not disclose that the applicant had been subjected to torture or to inhuman or degrading treatment. There had been no evidence to substantiate or create any suspicion that the police officers had used violence against him, or that his injuries had been caused by them. The applicant's statements did not constitute a "credible assertion", as they were contradictory. The investigation had proved the fact that the applicant had been a protagonist in the physical dispute which had resulted in the use of beer bottles and other hard objects. Except for the applicant's inconsistent

statements, there had been no other statements saying that the police officers had used objects like these. There was no basis for saying that the applicant's injuries had not been caused as a result of his physical dispute with the other people. Furthermore, the witnesses had not stated that they had had a physical dispute with the police. The standard of proof "beyond reasonable doubt" had not been met in the present case. The violence used by the police officers, if any, used with the aim of protecting others involved in the fight, could not be qualified as torture within the meaning of Article 3 of the Convention.

(b) The Court's assessment

78. The Court refers to the general principles set out in *Bouyid v. Belgium* [GC] (no. 23380/09, § § 81-90, ECHR 2015).

79. The Court notes that the material in its possession conclusively demonstrates that on the day of the events in issue the applicant sustained injuries. Indeed, the forensic medical report produced a day after the events on 7 August 2012 – the authenticity of which is not contested – mentions that the applicant was "injured by a hard, blunt object (*mjet i fortë mbretës*)" (see paragraph 20 above). Furthermore, the applicant was unable to work for nine days. Therefore, the Court concludes that the applicant's injuries were sufficiently serious to fall within the ambit of Article 3 of the Convention.

80. The Court observes at the outset that the parties are in dispute about whether the applicant was subjected to the use of force by the police officers at all. Therefore, it remains to be determined whether the State authorities can be held responsible for having inflicted those injuries, and held accountable under the above provision.

81. The Court notes that throughout the investigation the applicant consistently claimed that the authorities had used force against him. The applicant's account of events was corroborated by two witnesses (N.P. and Ni.P.) questioned in the course of the investigation (see also paragraph 29 above). However, equally consistently, all the police officers in question claimed the opposite. They consistently stated that the applicant had had an injury to the back of his head from the outset, that he had been involved in the fight, and that they had not used any force against him (see paragraphs 9, 10, 14 and 32-34 above). This account of events was corroborated by witnesses A.S., A.E. and J.K. in their statements of 7 August and 17 October 2012 and 15 January 2013. In these circumstances, it is clear that the whole set of events did not "lie wholly, or in large part, within the exclusive knowledge of the authorities". While the medical report in respect of the applicant was produced a day after the events, this is not sufficient for the Court to conclude, certainly not beyond reasonable doubt, that he was indeed ill-treated in breach of Article 3 of the Convention (see, *mutatis mutandis, Habimi and Others v. Serbia*,

no. 19072/08, § 89, 3 June 2014). The second expert report carried out by the FMI stated that it had been impossible to identify the object that had caused the applicant's injuries. Moreover, there were some indications to the effect that the injuries sustained by the applicant might have been caused as a consequence of him and the other people being involved in the fight before the police intervention. According to the prosecutor's decision of 13 May 2013, the applicant had been hit by another man prior to the police intervention during the physical dispute. The Court notes that the prosecutor's decision stated that doubts had arisen as to whether the offence of abuse of power had been committed, on the grounds that the injuries sustained by the applicant might have been caused while he was being escorted to the police station by the RRF officers. Nevertheless, the Court notes that, in his written observations, the applicant did not submit any claim concerning any alleged ill-treatment against him while being escorted by the police officers to the police station. He strongly maintained that the police officers had beaten him in public in the main street of the city. In these circumstances, the Court considers that it is not apparent that the applicant was still in good health when the authorities arrived at the scene (see, for instance, *Kobets v. Ukraine*, no. 16437/04, §§ 46-48, 14 February 2008).

82. In such circumstances, given all the information in its possession and in the light of the principles established by the Court in the recent case of *Bouyid*, cited above, where there was compelling evidence pointing to the fact that the applicant's injuries had been caused by police officers, as stated by that applicant (see also *Kulyk v. Ukraine*, no. 30760/06, § 83, 23 June 2016), the Court cannot but find that there has been no violation of the substantive aspect of Article 3 of the Convention.

2. Alleged violation of the procedural aspect of Article 3 of the Convention

(a) The parties' submissions

83. The applicant submitted that the authorities had failed to conduct an effective and independent investigation into the incident. They had failed to clarify how he had sustained wounds to the back of his head, his back and shoulders. No additional witnesses had been questioned and no material evidence such as hard objects had been examined by the authorities. The authorities had failed to determine which officers were responsible and thus to identify and punish the perpetrators. No medical aid had been given by the authorities, and the applicant had been sent to hospital with the help of his family members.

84. The applicant further submitted that the investigation had not been expeditious, in that he had submitted a criminal complaint in August 2012 and the authorities had only informed him in June 2013 that the

investigation had been stayed. Under Article 323 § 1 of the CCP, a preliminary investigation should take no more than three months, while in the present case the police officers had only been questioned five months after the incident.

85. Moreover, the applicant had not been involved in the investigation proceedings. Indeed, he had not been notified of the investigation being extended. He had not been provided with copies of documents from the criminal investigation file in accordance with Article 105 of the CCP. The authorities, having failed to inform him of actions taken, in accordance with Articles 58 and 105 of the CCP, had clearly denied him any effective remedy. Furthermore, the police officers had not been suspended from duty during the investigation. Moreover, according to the applicant, under Article 248 of the Criminal Code prosecution of the offence of abuse of power was time-barred after five years. The delays allowed by the prosecution and the prosecution's decision to stay the investigation had enabled the perpetrators to avoid responsibility.

86. The Government submitted that the authorities had acted diligently and that an effective official investigation had taken place with the aim of punishing the perpetrators. The authorities had accompanied the applicant to hospital so that he could receive medical aid, following his complaints regarding the injuries he had sustained. The investigation had been expeditious in that it had started within minutes of the incident taking place.

87. The Government further submitted that the prosecutor and judicial police officers had taken several procedural measures. During the criminal proceedings, the applicant had not raised any complaint concerning any omission or refusal by the authorities to carry out any procedural action. In circumstances where a possibility had existed that the applicant had made a false charge against the police officers, and where it had also been impossible to identify the perpetrators, the authorities had stayed the investigation but they had not discontinued the case. Indeed, the prosecutor's decision of 13 May 2013 had ordered the performance of specific actions to identify the perpetrators. Therefore, the investigation had not yet been closed.

(b) The Court's assessment

88. The Court refers to the general principles set out in, *inter alia*, *El-Masri* (cited above, §§ 182-185); *Mocanu and Others v. Romania* [GC] cited above, nos. 10865/09 and 2 others, §§ 316-326, ECHR 2014 (extracts); and *Bouyid* (cited above, §§ 114-123).

89. The Court reiterates that lack of conclusions arising from any given investigation does not, by itself, mean that it was ineffective. Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case

and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

90. The Court observes that, following the applicant's complaint, the domestic authorities carried out an inquiry into his allegations of ill-treatment. A number of investigative steps were taken by the authorities: witnesses were questioned, register logs of the police station were examined, the footage from the closed circuit video cameras of two nearby banks was obtained and examined, and another forensic medical report was obtained. The Court accepts that the authorities reacted to the complaints of the applicant; however, it is not convinced that their response to his allegations was sufficiently thorough or "effective" to meet the requirements of Article 3.

91. More specifically, the Court notes that the applicant in the present case was not provided with satisfactory updates on the status of the investigation, or given any access to documents (see paragraphs 40-43 above; see *Barysheva v. Ukraine*, no. 9505/12, §§ 59-61, 14 March 2017). Therefore, the Court considers the Government's allegation that the applicant did not complain about the authorities' refusal to carry out any procedural action unfounded, when the applicant did not have any real opportunity to do so.

92. The Court further notes that the proceedings were initially conducted with the required expediency. However, some of the essential investigative measures were taken inexplicably late. In this connection, the Court notes that, although the applicant had complained to the authorities on the day of the incident, 6 August 2012, and had also lodged a criminal complaint against the RRF police officers two days after the incident, the police officers involved were only questioned by the prosecutor five months after the incident. In this connection, the Court reiterates that it has repeatedly underlined the importance of contacting and questioning witnesses in the immediate aftermath of such incidents, when memories are fresh (see, for example, *Doiciu v. Romania*, no. 1454/09, § 62, 5 May 2015). Furthermore, the second forensic medical report in the case was produced seven months after the incident (see *Dinu v. Romania*, no. 64356/14, § 82, 7 February 2017).

93. The Court further notes that there were also other deficiencies. The prosecuting authorities questioned two witnesses who testified in support of the applicant, and six police officers and three witnesses who testified against him. However, the reasoning in the prosecutor's decision to stay the investigation did not contain any assessment of the witness testimonies in favour of the applicant. The prosecutor did not provide any explanation as to why those testimonies were considered less credible than the statements of the police officers and the three other witnesses (see *Mustafa Hajili v. Azerbaijan*, no. 42119/12, § 52, 24 November 2016). Despite the

fact that their statements clearly conflicted with the applicant's statement, the prosecutor in charge of the case did not order a formal face-to-face confrontation between the applicant and the police officers or even an identification parade, even though the applicant explicitly asked for one (see *Chmil v. Ukraine*, no. 20806/10, § 89, 29 October 2015, and *Hilal Mammadov v. Azerbaijan*, no. 81553/12, § 96, 4 February 2016).

94. The Court also notes that the final decision in the case – the decision of 13 May 2013 to stay the investigation – does not provide any definite answer as to how the applicant's injuries were inflicted. Likewise, it does not refute the possibility that the injuries in question could have resulted from police violence, the prosecutor herself casting doubt on the cause of the applicant's injuries, without giving further reasons. Furthermore, in reply to the Government's submission that the investigation has not yet been completed, the Court notes that, even though more than four years have elapsed since the investigation was stayed, the police authorities have not taken any other investigative steps since then. The Government did not provide any document to report on the progress made by the police authorities in a further attempt to clarify the facts complained of by the applicant. Therefore, in view of the seriousness of the issues at stake, the Court does not consider that the applicant should have waited for the outcome of any further investigation by the ICS, as in any event the police authorities had not taken any further investigative measures since the staying of the proceedings by the district prosecutor on 13 May 2013 (see *mutatis mutandis*, *Barakhoyev v. Russia*, no. 8516/08, § 38, 17 January 2017).

95. As regards an appeal under Article 24 of the CCP, the Court notes that, under the domestic law as in force at the relevant time, a higher-ranking prosecutor had the right to overrule the decisions of a lower-ranking prosecutor. However, the Court notes that the CCP did not provide for any right to appeal against a prosecutor's decision staying a criminal investigation. Furthermore, in its decision of 18 January 2013 the Constitutional Court noted that there was no remedy under domestic law against a prosecutor's decision staying an investigation. Moreover, under Article 326 of the CCP, the investigation could only be reopened by a prosecutor's decision. In view of the above considerations, and also noting that the Government did not submit any domestic case-law, the Court has serious doubts as to whether the domestic courts would indeed have admitted for examination an appeal by the applicant against the decision of 13 May 2013. Taking the above-mentioned factors into consideration, the Court considers that the remedy in issue would not have provided the applicant with any adequate redress for his grievances.

96. Lastly, the Court notes the applicant's complaint regarding the independence of the investigation. The Court considers that it is not required to address this issue in the absence of any specific submission by

the applicant, and given that the investigation, taken as a whole, was ineffective owing to the deficiencies described above.

97. The foregoing considerations are sufficient to enable the Court to conclude that the investigation of the applicant's claim of ill-treatment was ineffective. Therefore, the Court dismisses the Government's preliminary objection regarding the non-exhaustion of domestic remedies, and finds that the applicant has suffered a violation of the procedural aspect of Article 3 of the Convention.

98. Having regard to its finding under Article 3, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention in this case.

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

99. In his application form, the applicant also complained under Article 3 of the Convention that he had been threatened, abused and ill-treated while being escorted to the police station. However, the applicant did not submit any specific claim in his observations before the Court.

100. In view of all the information available in the case file and the lack of submissions by both parties, the Court considers that there is no evidence that the applicant was indeed threatened or abused as alleged. The applicant's complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

102. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

103. The Government contested the applicant's claim as ill-founded on the basis of the facts and the evidence.

104. Having regard to the finding of a violation of Article 3 of the Convention under its procedural limb, and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

105. The applicant also claimed EUR 2,013 for costs and expenses incurred before the Court. That included a lump sum of EUR 1,500 as regards the legal fee for his representation and EUR 513 as regards translation, postal and photocopying expenses.

106. The Government contested the applicant's claim as ill-founded on the basis of the facts and the evidence.

107. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Gjyli v. Albania*, no. 32907/07, § 72, 29 September 2009). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,560 to cover costs under all heads.

C. Default interest

108. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to the non-exhaustion of domestic remedies, and dismisses it;

2. *Declares* the complaints regarding the alleged ill-treatment of the applicant and the effectiveness of the investigation admissible and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;

4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

6. *Holds* unanimously,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,560 (one thousand five hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President