



Albanian authorities should identify and punish those responsible for shooting of applicants' relative during 2011 protest in front of PM's office

In today's **Chamber** judgment¹ in the case of [Nika v. Albania](#) (application no. 1049/17) the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 2 (right to life and investigation) of the European Convention on Human Rights.

The case concerned the death of the applicants' husband and father after he had been shot in the head in 2011 during a demonstration in front of the Albanian Prime Minister's office. The protest had resulted in violent confrontations between demonstrators and the authorities. The applicants alleged in particular that the commander-in-chief of the National Guard, in charge of protecting the Prime Minister's office, had ordered his men to open fire on the protestors.

The Court found that the question of possible command responsibility had not been answered in the ensuing investigation, which had focussed on individual responsibility of the National Guard officers and not on the sequence or nature of any orders given by those in their chain of command. There had also been a series of other shortcomings in the investigation, including the deletion of video recordings of the incident and no follow up of key lines of enquiry such as bullet marks found at human height on the iron fence surrounding the Prime Minister's office. Such deficiencies raised doubts as to whether the authorities had been attempting to divert or inappropriately interfere with the investigation.

It also found shortcomings in the then legal framework governing the use of firearms in the context of crowd-control operations and serious defects in the planning and control of the protest. The authorities had not shown that the use of lethal force by the National Guard officers that had resulted in the death of the applicant's relative had been absolutely necessary. Indeed, the Albanian Government itself accepted that the use of force had been excessive.

Lastly, it held under [Article 46 \(binding force and implementation\)](#) that the authorities should continue to try to elucidate the circumstances of the death of the applicants' relative and to identify and punish those responsible.

This press release is also available in [Albanian](#).

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicants, Rajmonda, Amelia and Mentila Nika, are Albanian nationals who were born in 1984, 2009 and 2010, respectively, and live in Lezhë (Albania). They are the wife and daughters of A.N., who was shot in the head on 21 January 2011 during a protest in front of the Prime Minister of Albania's office in Tirana. He died in hospital on 4 February 2011.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The protest was organised by the Albanian Socialist Party, the main opposition party at the time. It had informed the authorities about the demonstrators' gathering points and their itinerary several days in advance. The National Guard were on alert and the police had prepared a plan for guaranteeing order.

On the day itself the situation quickly degenerated when some of the protesters started to throw rocks at the first of two cordons of police officers. Despite the police firing tear gas and a water cannon, a group of protesters stormed an iron gate to the north of the building and entered the courtyard beyond. A group of officers, equipped with shields and truncheons, managed to push the protesters out of the courtyard.

However, very soon afterwards, several officers of the National Guard started to use their firearms, firing blank and live bullets. Three protesters died on the spot, and the applicants' relative was hit in the head with a bullet. None of the four victims had been in the courtyard of the Prime Minister's office; they were on a nearby pavement. Nor had they been involved in the violence.

The confrontations resulted in 45 other citizens being injured, as well as 82 officers of the National Guard and 27 police officers.

The prosecuting authorities opened an investigation the same day, issuing arrest warrants for six suspects, officers of the National Guard. When questioned the officers strongly denied shooting directly at the crowd, maintaining that they had only shot into the air for deterrence purposes. They also maintained that no orders had been given, at any time, to shoot into the air or otherwise, and that each officer had made that decision on his own.

Ultimately, in 2013 two of the officers were found guilty of negligent manslaughter in respect of two of the victims. They were sentenced, respectively, to one and three years' imprisonment. The Tirana Court of Appeal concluded that the National Guard officers' use of force had been excessive and that they should have foreseen the consequences of their decision to fire live bullets in the air. The court did not however find it proven that the officers had fired directly at the two victims, who had most likely been killed by a ricochet bullet. In any event, shooting in the air had constituted a lawful means to repel the protestors who had been attempting to break into the Prime Minister's Office.

The investigation into A.N.'s death was severed from the main case and is still ongoing. A number of ballistics reports have been carried out on the bullet extracted from A.N.'s head, but it has been impossible to match it to the weapon from which it was fired because it was damaged.

The applicants brought compensation proceedings and in 2017 were each awarded over 100,000 euros in damages. In those proceedings the Administrative Court of Tirana held that the officers of the National Guard had used their weapons on 21 January 2011 in violation of the Firearms Act. It concluded that the State authorities were responsible for A.N.'s death.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life), the applicants alleged that the authorities' use of force during the protest had been excessive and that the investigation into their relative's death had been ineffective.

The application was lodged with the European Court of Human Rights on 22 December 2016.

Res Publica, a non-governmental organisation, was granted leave to intervene in the proceedings as a third party.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere Pastor Vilanova (Andorra), *President*,
Jolien Schukking (the Netherlands),

Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Investigation

Although the authorities' response to the incident had been prompt, the Court considered that there had been a number of shortcomings which raised doubts as to whether the authorities had been attempting to divert or inappropriately interfere with the investigation.

Firstly, senior officials had made hasty public statements just after the incident saying that the victims had been shot at close range and with weapons that were different to those used by the National Guard and the police force. The General Prosecutor had been subjected to harsh criticism by the then Prime Minister and in a parliamentary inquiry which had been launched in parallel to the ongoing criminal investigation. Such an approach had to have had a negative impact on the effectiveness of the investigation, not least because of the potential to dissuade witnesses from cooperating.

Furthermore, although arrest warrants in respect of the suspected officers of the National Guard had been issued, they had not been enforced, apparently owing to clerical mistakes. It was the officers themselves who had turned themselves in 18 days later, meaning both a loss of precious time as well as of an opportunity to minimise collusion or distortion of the truth.

Most importantly, video recordings of the incident, saved on an external drive located in the server room of the Prime Minister's Office, had been erased. Any concerns as to whether that had been deliberate had not been dispelled in proceedings brought against an Information Technology Officer, which had failed to establish who had deleted the recordings and how.

Other shortcomings in the investigation included the authorities' failure to investigate the possibility that demonstrators, including the applicants' relative, had been directly targeted and to what extent commanding officers had been responsible for the turn of events. No exact timeline for the events had been drawn up, including the sequence and nature of the orders given by those in the chain of command and the precise moment when the various victims had been shot. Indeed, certain key lines of enquiry, such as bullet marks found at human height on the iron fence surrounding the Prime Minister's Office, had not been followed up.

Lastly, as concerned shortcomings in the investigation into the death of the applicant's relative, the Court found that the authorities had failed to carry out an expert report on the victim's body in good time and the applicants had made complaints about being side-lined, which the Government had not refuted with evidence.

The Court therefore found, overall, that the investigation in the case had not been effective as it had failed to establish the truth or lead to the identification and punishment of those responsible, in violation of Article 2.

Use of force and death of the applicants' relative

Even though the national courts had found the State responsible for the death of the applicants' relative and they had received compensation, the circumstances of the shooting have still not been clearly established. In particular, it has not been proved at the national level that their relative had

died as a result of the use of a firearm by an individual National Guard officer. Nor has the identity of that officer or any other implicated person been established. The Court therefore rejected the Government's argument that the applicants had lost their victim status.

The Court went on to find that there had been three main areas of shortcomings in the use of force and the resulting death of the applicants' relative.

Firstly, there had been deficiencies at the time in the legal framework governing the use of firearms in the context of crowd-control operations. The Court found it problematic that the relevant domestic law had authorised the use of firearms for the protection of property without clearly defining which circumstances exactly would justify such action. The law has since changed to include the condition that the lives of those in charge of defending a property had to be at risk.

Next, the Court went on to identify serious defects in the planning and control of the protest, despite the fact that the authorities had had time to prepare as it had been announced several days in advance. It pointed out in particular that there had been no clear instructions on either the use of lethal force or crowd control, no adequate coordination between the National Guard and the police and no clear chain of command. The amount of tear gas available and just one water cannon had been insufficient to disperse the crowd, and the regular police had not been issued with teargas masks, meaning they had had to retreat and leave the National Guard to handle the crowd on their own.

Lastly, the Court considered that the authorities had failed to show that the use of lethal force that had resulted in the death of the applicants' relative had been absolutely necessary in the circumstances. The national proceedings had not looked into whether the security forces could have made more use of other means of crowd control, which the Court noted had only been used sparingly on the day of the events and for which the authorities had provided no explanation. Nor had it ever been alleged that the applicants' relative had posed any serious threat to the National Guard and the Court could not accept the argument that defending a building had been legitimate grounds for the use of lethal force. Even if it were to accept the argument that officers had just fired warning shots in the air, it was difficult to imagine how doing so at a prudent angle could have struck the applicants' relative in the head, even as the result of a ricochet, when he had been standing at street level. Indeed, the Albanian Government itself had accepted that the use of force had been "disproportionate".

There had therefore been a violation of Article 2 as concerned the death of the applicants' relative.

Article 41 (just satisfaction)

The applicants did not submit a claim for just satisfaction.

Article 46 (binding force and implementation)

There have been amendments to the laws regulating the use of firearms since the incident and shooting in the air as a means of crowd dispersal is now forbidden. The Court held that it was for the Committee of Ministers, the executive arm of the Council of Europe, to assess whether those general measures, and others, suggested by Albanian Government were effective and to follow up on implementation.

It also considered that the authorities should continue to try to elucidate the circumstances of the death of the applicants' relative and to identify and punish those responsible.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive

the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.