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

FIRST SECTION

DECISION

Application no. 14627/21
Luka BERLEC against Slovenia
and 2 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 8 February 2022 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Lorraine Schembri Orland, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the three applications listed in the appended table against Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 March 2021 by the applicants listed in the appended table ("the applicants"), who were represented by Mr S. Vesenjak, a lawyer practising in Maribor, and Mr J. Toplak, from Maribor;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The application concerns the death of F.B., who died in a work-related accident, and the complaints raised by his wife and two children under Article 2 of the Convention.

2. F.B. worked for an explosive manufacturer, company K, when, in 2007 he, together with two co-workers, died in an explosion which occurred while they were carrying out preparatory works for a destruction of expired hand grenade igniters. This took place on the polygon of Slovenian Civil Protection and Disaster Relief (hereinafter "the CPDR"), which company K was allowed to use temporarily. Company K used the polygon after the CPDR finished with their training. The applicants alleged that the incident had devastating

consequences for their mental and physical health as well as their financial situation, as they were wholly dependent on F.B.'s income.

3. In 2008 the applicants lodged a compensation claim against company K, but the latter went into liquidation in 2009. On 3 March 2010 the applicants instituted civil proceedings for compensation against the State, claiming that the latter should be liable for the damage resulting from F.B.'s death because it owned the polygon in question, the activity in question had been dangerous and the State had been the owner of the expired hand grenade igniters. The Ljubljana District Court dismissed the claim. The Ljubljana Higher Court dismissed their appeal and the Supreme Court dismissed their appeal on points of law. Their constitutional complaint was not accepted for consideration.

4. It appears from the domestic decisions that company K had a valid licence to produce and destroy army material; that it had used the polygon in question on several occasions prior to the accident, based on an agreement with the Ministry of Defence; that after the accident the use of the polygon was immediately suspended and several investigations were conducted by, *inter alia*, the Ministry of Defence and the inspection authorities as well as within the criminal justice system. Criminal proceedings were instituted against company K's employee who had been in charge of the operation and its supervision. It further appears that those carrying out the destruction were experienced workers but that irregularities in the preparatory works, such as the simultaneous presence of the three workers in the hole in which the destruction was to take place and their inadequate protection equipment, might have led to the fatalities.

5. The applicants complained about the domestic courts' decisions which in their opinion disregarded the principles related to Article 2 of the Convention. In particular, they alleged that there had been a violation of the aforementioned provision because of the State's failure to enact proper regulations and provide supervision regarding dangerous activities such as that which led to F.B.'s death. They also invoked Article 13 of the Convention in this regard.

THE COURT'S ASSESSMENT

6. Having regard to the identical subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

7. The Court has summarised the principles regarding the State's positive obligations with respect to any activity, whether public or not, in which the right to life may be at stake, in *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, §§ 157-61 and 188-93, 28 February 2012.

8. In the present case several investigations concerning the accident were carried out. However, the applicants have not submitted any details regarding those investigations and their findings. They have limited their complaints to

the civil proceedings they instituted against the State in 2010. The Court will thus confine its examination to this aspect of the case, while bearing in mind that it constitutes only one part of the State's response to the incident which led to F.B.'s death.

9. The Court reiterates that whenever a State undertakes or organises dangerous activities, or authorises them, it must ensure through a system of rules and through sufficient control that the risk is reduced to a reasonable minimum. If nevertheless damage arises, it will only amount to a breach of the State's positive obligations if it was due to insufficient regulations or insufficient control, but not if the damage was caused through the negligent conduct of an individual or the concatenation of unfortunate events (see *Stoyanovi v. Bulgaria*, no. 42980/04, § 61, 9 November 2010).

10. As regards the regulation of the activity concerned in the present case, which no doubt was of a dangerous nature, the relevant domestic law provided, *inter alia*, that the explosive substances were to be destroyed in line with the instructions of the manufacturer, at the specifically designated location, and no more than 50 kg at a time. The destruction could be carried out only by professionally trained persons with a prior notice given to the competent authorities. A company handling the explosives was required to meet specific legal requirements and hold a licence obtained from the Ministry of Defence. The domestic courts examined in detail the legal framework regulating the destruction of explosive materials and found it to be adequate. The Court, having regard to the information in its possession, sees no reasons to find otherwise.

11. Regarding the practical measures taken by the domestic authorities with a view to mitigate any risk to life inherent in the activity in question, the applicants argued that "Instructions for the Use of the Polygon" should have been applied also when the polygon was used by company K, meaning that the latter's activity would have needed to be supervised by state officials, and not only by company K's employees. However, as established by the domestic courts, which are best placed to interpret domestic law, the aforementioned Instructions applied only to the activities of the CPDR. The domestic courts noted that company K, which had exercised a purely commercial activity at the time in question, had had a valid licence for handling explosives and had notified the authorities of the destruction of the expired hand grenade igniters, which were owned by company K (and initially produced for a foreign country), in advance. The domestic courts also established that the polygon, at which the explosion had taken place, had been best suited and equipped for the destruction of non-exploded devices, that it had been handed to company K in an appropriate state and that the presence of the rescue teams was ensured. The Court finds nothing in the case file casting any doubt on these findings. It furthermore notes that the applicants did not argue that there had been previous reports of irregularities or anything else relevant brought to the attention of the State authorities which should

have prompted them to withdraw company K's licence or take any other appropriate measures, such as ensure additional supervision.

12. As regards the response of the domestic authorities to the accident, the applicants provided no arguments calling into question the effectiveness of the investigations conducted in this regard. As to the civil proceedings, which are the subject matter of the applications, the domestic courts examined the applicants' claim from the perspective of the right to life and the related positive and negative obligations of the State. The domestic courts relied on the principles established in the Court's case-law and thoroughly examined the applicants' arguments. Having regard to the nature of these proceedings and the arguments put forward by the applicants, the Court finds that the civil courts submitted the applicants' case to a sufficient scrutiny.

13. Consequently, the Court finds no appearance of a violation of Articles 2 and 13 of the Convention. It follows that the applications must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 3 March 2022.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President

APPENDIX

No.	Application no.	Case name	Applicant Year of Birth Place of Residence Nationality
1.	14627/21	Berlec Luka v. Slovenia	**Luka BERLEC** **1994** **Kamnik** **Slovenian**
2.	15329/21	Berlec Andreja v. Slovenia	**Andreja BERLEC** **1965** **Kamnik** **Slovenian**
3.	15335/21	Berlec Špela v. Slovenia	**Špela BERLEC** **1986** **Bondi** **Slovenian**