

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

THIRD SECTION

CASE OF NIKA v. ALBANIA

(Application no. 1049/17)

JUDGMENT

Art 2 (procedural) • Fatal shooting of applicants' relative by State agents during a political protest that degenerated into violence in front of the Prime Minister's office • Authorities' failure to conduct an effective investigation capable of leading to the identification and punishment of those responsible for the events and of establishing the truth • General shortcomings in the early stages of the investigation • Failure to adequately investigate the possible responsibility for the turn of the events on the part of the commanders on the ground • Specific shortcomings in the investigation into the death of the applicants' relative
Art 2 (substantive) • Unjustified use of lethal force • Deficiencies in the legal framework at the material time governing the use of potentially lethal weapons in connection with crowd-control operations • Protection of Prime Minister's office, in the circumstances, not in itself a legitimate ground for the use of lethal force • Art 2 did not allow the use of lethal force for the protection of property as such • Need to define any exceptional circumstances that might justify the use of such force for that purpose • Relevant domestic law at the time authorising the use of firearms for the protection of property deficient in that respect • Serious defects in the planning and control of the policing operations in relation to the protest
Art 46 • Individual measures • Domestic authorities to continue efforts to elucidate circumstances of applicants' relative's death and identify and punish those responsible

STRASBOURG

14 November 2023

FINAL

14/02/2024

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



In the case of Nika v. Albania,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 1049/17) 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 three Albanian nationals, Ms Rajmonda Nika, Ms Amelia Nika and Ms Mentila Nika ("the applicants"), on 22 December 2016;

the decision to give notice to the Albanian Government ("the Government") of the complaints under Articles 2 and 13 of the Convention and to declare inadmissible the remainder of the application;

Having deliberated in private on 10 October 2023,

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

INTRODUCTION

1. The case concerns allegations of a breach of the substantive and procedural limbs of Article 2 of the Convention in connection with the death of the applicants' relative, A.N., from a fatal gunshot wound to the head that he received from State agents in the course of a protest on 21 January 2011.

THE FACTS

2. The applicants were born on the dates indicated in the appended table. They were represented before the Court by Mr A. Hakani, a lawyer practising in Tirana.

3. The Government were initially represented by their Agent, Ms A. Hiçka, and, subsequently by, Mr A. Metani, Ms E. Muçaj, Ms B. Lilo and Mr O. Moçka, General State Advocate.

4. The facts of the case may be summarised as follows.

I. THE PROTEST OF 21 JANUARY 2011

5. The applicants are family members (respectively the wife and daughters) of A.N., who died as a consequence of a gunshot wound in the head that he suffered on 21 January 2011 during a protest in front of the building housing the office of the Prime Minister of Albania ("the Prime Minister's Office").

6. Several days before the protest, the Albanian Socialist Party, then the main opposition party, announced that the protest would take place in front of the Prime Minister's Office, which was located in the main boulevard of Tirana.

7. On 19 January 2011 the Tirana Police Directorate (*Drejtoria Vendore e Policisë*) wrote to the chairman of the Socialist Party, informing him that the organiser of the protest was under an obligation to give the police written notice of the protest. In response, the Socialist Party gave the police notice on the same day. The next day the Tirana Police Directorate requested more details about the organisation of the protest, the gathering points of the protesters and their itinerary. The Socialist Party provided the requested details on the same day.

8. On 19 January 2011, the commander-in-chief of the National Guard (the official guard of honour for the State, in charge of ensuring the protection of high-ranking State officials and certain State-owned property, including the Prime Minister's Office) ordered the different units of the National Guard to be on the alert and to take specific measures and to prepare detailed plans for protecting the Prime Minister's Office from any acts of violence during the protest (Order no. 28s/1, issued on the same day). The commanders of the different units of the National Guard prepared their respective plans, which were subsequently approved by the commander-in-chief of the National Guard. In particular, the commander of the "Special Unit" prepared plan no. 28s/9 of 21 January 2011, which provided, in so far as relevant, that a:

> "group composed of [six officers] will be on standby, ready to open fire in the event of a breach of the cordons of the Second Unit and the Special Unit."

9. As regards logistics, the National Guard's plans provided that in addition to protective equipment such as special vests, helmets, anti-gas masks, officers would be equipped with assault rifles "type 56", including blank and live ammunition.

10. Similarly, the Tirana Police prepared a forty-four page "plan of measures" for guaranteeing order before, during and after the protest of 21 January 2011. That plan set out the details of the different specific tasks assigned respectively to each police directorate and department in respect of the protest; notably it instructed them to plan ahead of the protest.

11. On 21 January 2011 the protesters started gathering at around 11 a.m. in the main square of the city; at the same time the commanding officers of the National Guard gave their final instructions to their officers, including a

reminder of the provisions of the Firearms Act (Law No. 8290 of 24 February 1998 on the use of firearms) and the National Guard Act (Law No. 8869 of 22 May 2003 on the National Guard). The National Guard officers subsequently took their positions around the Prime Minister's Office. Representatives of numerous media outlets were also positioned on different sides of the Prime Minister's Office – some of them in elevated platforms that had been erected to cover the protest.

12. At around 2 p.m. the protesters arrived at the Prime Minister's Office, before the main entrance to which there were two police cordons. At around 2.30 p.m. some of the protesters started throwing hard objects at the first cordon of police officers, and the situation escalated. The second cordon of officers (which was composed of special police forces), fired tear gas. As a consequence the protesters dispersed temporarily and the police officers in the first cordon, who were not equipped with teargas masks, left their positions too. The protesters continued throwing stones and various hard objects from the sides of the building. They also regrouped in front of it. The authorities fired water cannon to disperse them. A number of trees and cars were set on fire by the protestors, who threw Molotov cocktails towards the Prime Minister's building. Several police and National Guard officers were injured.

13. At an unspecified time (around 4 p.m.) a relatively small number of protesters stormed the cast iron car gate at the north of the building and entered twenty or thirty metres into the yard beyond (that is, the area between the protective railings and the building itself). A car driven by a protestor tried to force its way through the car gate but crashed into a barrier erected to prevent such intrusions. An officer of the National Guard used a megaphone to warn the protesters in the following terms:

> "Citizens, you are breaking the rules, you are breaking the law, you have entered the safety zones; actions will be taken against you in accordance with the law."

14. Subsequently, a group of National Guard officers equipped with shields and truncheons intervened and pushed the protesters out of the yard.

15. At an unspecified time, several officers of the National Guard started using their firearms, firing with blank but also live bullets, allegedly in order to deter the protesters from continuing their assaults on the building. At around 4.10 p.m, as a result of the shots, three protesters died on the spot. A.N., who at that moment was close to the pavement opposite the Prime Minister's Office and was not engaged in any violent acts, was hit in the head by a bullet. Similarly, the other three victims were outside the Prime Minister's Office yard and none of them was engaging in violent acts.

16. Around forty-five citizens, eighty-one officers of the National Guard and twenty-seven policemen were injured as a result of the confrontations.

17. After the violence had ended, two doctors at the Trauma Hospital of Tirana – responding to media queries – stated that around thirty people had

sought medical attention in the hospital. They stated that three protesters had died of wounds that appeared to have been caused by light weapons fired from a close distance.

18. At a press conference a few hours after the protest, S.B., the then Prime Minister, stated that preliminary reports on the incident indicated that the victims had been shot at close range with weapons of a different kind from those used by the police and National Guard. He also invited the prosecutors to investigate the incident.

19. Late in the evening of the same day, a television news channel broadcast a video reportedly featuring the moment at which one of the protesters (other than A.N.) was killed. The video showed the victim, before being shot, standing on the boulevard a few metres away from the car gate to the north of the Prime Minister's Office and watching as another protester, who was inside the yard, threw an object towards the building. Suddenly, the victim fell to the ground, and other protestors approached and then carried him away. The video also appeared to show a National Guard officer firing his weapon from a window of the semi-basement of the building.

20. As for A.N., he received initial medical care at the Trauma Hospital of Tirana and was subsequently transferred for specialised care to Istanbul, where he died on 4 February 2011. He was buried in Albania on 7 February 2011.

II. THE INITIAL INVESTIGATION

A. Initial investigative measures

21. On 21 January 2011 the Tirana Prosecution Office opened an investigation into the events on the basis of suspicions that the following offences had been committed: homicide, destruction of property through fire, destruction of property, abuse of office and participation in an illegal gathering.

22. On that same evening, police investigators examined the area around the Prime Minister's Office and retrieved around five hundred bullet casings, together with twelve bullets. They also took photographs and wrote detailed descriptions of the state of the Prime Minister's Office building and the part of the boulevard where the protest had taken place. In addition, they questioned a number of protestors, doctors and journalists; from the latter the investigators also took copies of video recordings that the journalists and their colleagues had made of events during the protest. The questioning of persons of interest – around ninety-two individuals in total – continued over the following days, weeks and months.

23. On 22 January 2011 the prosecutors ordered the Forensic Medicine Institute (*Instituti i Mjekësisë Ligjore*) to perform expert examinations of the bodies of all of the victims apart from A.N. In particular, the prosecutors

instructed the experts to: examine the wounds; determine how they had been caused; analyse the entrance and exit points of any bullets, and their trajectory; and the cause of death of the those examined. Similar expert examinations were ordered and performed in respect of some of the wounded protesters.

24. The prosecutors also decided to seize some of the weapons that had been used by the officers of the National Guard during the protest. Additional weapons were also seized in the weeks that followed. The seized weapons, the shells found at the site of the protests and the clothes of the victims were subjected to expert examinations.

25. Moreover, the prosecutors ordered the National Guard to provide them with copies of all the audio recordings of the radio communications between its officers, in response to which on 6 February 2011 the National Guard stated that the communications had not been recorded.

26. On 24 and 26 January 2011 two expert chemicals reports, which had been ordered by the prosecutors in order to ascertain whether the above-mentioned three deceased victims and three of the wounded individuals had used firearms during the protests, concluded that no gunshot residue had been present on the clothes of the said individuals.

1. Attempts to arrest National Guard officers for questioning

27. In the early morning of 22 January 2022 the prosecutors issued arrest warrants (*urdhër-ndalime*) in respect of six high ranking officers of the National Guard. At 6.20 a.m. the orders were delivered to the police for execution. The subsequent events of 22 January 2011 were described by the then Prime Minister in a speech before Parliament on 23 January 2011: the Minister of the Interior, who was in charge of the police, mentioned in a telephone call to the then General Prosecutor that the officers of the National Guard would be made fully available for questioning. However, the Minister asked for the arrest warrants to be reassessed in view of, *inter alia*, the opposition's announcement that a silent march would take place on 28 January 2011 and the need of the National Guard to have all its officers at its disposal. The General Prosecutor refused the request and asked again that the police execute the arrest warrants. In the afternoon, the General Director of Police informed the General Prosecutor that owing to technical and clerical mistakes, the arrest warrants could not be executed.

28. On 24 January 2011, the Prime Minister made the following comments on the ongoing investigation into the events:

> "Although the coup plotters are sticking with their strategy, we will continue our duties as a government. I say [they] continue, because the General Prosecutor – who within a period of six hours, without any investigation, yesterday ordered the arrest of the entire chain [of command] of the National Guard – has today ordered no pre-trial detention in respect of one of the chief terrorists and chief bandits who was filmed and

photographed by the Albanian and foreign media with a revolver in his belt, at the door to the Prime Minister's Office.

...

I wish to say to Madame General Prosecutor that the National Guard, which you wish to decapitate for your own purposes[,] protects you too – it has a duty to protect you too; it has protected you and it will protect you again, be sure, for as long as you hold [your] post.

...

The lady who releases the man armed with a gun who charged at the officers, who are protecting her, must know that she has entered into very wrong [*të gabuar*] waters and that this is not law enforcement. This is not the law enforcement for which the Albanian citizens voted. To demand the arrest of the commander-in-chief of the National Guard and those who have protected the [State] institutions, and to release the bandit who set fire to [those] institutions, makes you look very bad in front of Albanians and the world."

29. On 27 January 2011, during a meeting with family members of the officers of the police force and the National Guard, the Prime Minister criticised again – this time in offensive terms – the General Prosecutor personally in respect of the way in which the events of 21 January 2011 were being investigated.

30. On 2 February 2011, in response to a summons from a parliamentary committee of inquiry into the events of 21 January 2011 which had been established in the preceding days, the General Prosecutor appeared before the committee. She stated that the criminal investigation into the events was ongoing and that she could not respond to the committee's questions for the time being. She accordingly left the hearing, following which the members of the committee made critical comments – notably, that the General Prosecutor had displayed arrogance, had engaged in the dereliction of her duty and had disrespected the committee.

31. On 7 February 2011 police investigators re-examined the site of the protest and noted that the metal fence of the building had been damaged by impact from what appeared to have been projectiles. They took photographs of the fence.

2. *Attempts to obtain video recordings made by the Prime Minister's Office's security cameras*

32. On 23 January 2011, during a cabinet meeting, the Prime Minister stated that his office was equipped with a security-camera system that had recorded the incidents that had occurred during the protest. He added that he had asked the general secretary of the Prime Minister's Office to make the recordings available to the prosecutors.

33. On 26 January 2011 the prosecutors requested the Prime Minister's Office to provide a copy of the videos recorded by the security cameras installed around the building. In response, the Prime Minister's Office

provided the recordings made by one camera that was located on the roof of the building.

34. On 15 February 2011 the prosecutors reiterated their request, in response to which the Prime Minister's Office replied that the other cameras had been out of order since 2009.

35. On 4 March 2011 the prosecutors seized the hard drive (digital disk recorder) of the Prime Minister's Office's camera system. On the same date, the Prime Minister's Office informed the prosecutors that a second security camera had been recording on 21 January 2011 and forwarded them a video recording. The second camera had been oriented towards the metal gate to the north of the building – an area of interest for the investigation. However, the footage of the camera lasted only a few minutes and concerned the period following the end of the protest.

B. Subsequent investigative measures

36. On 7 February 2011 the prosecutors questioned a number of officers of the National Guard, including A.Ll., who held the position of deputy commander of the National Guard's "Special Unit" and who had been on duty during the events of 21 January 2011. The prosecutors posed specific questions about the National Guard's planning prior to the protests – notably to the officers who had drawn up and approved those plans. The officers were also asked whether they had been briefed before the protest on the use of firearms (including on when and under what circumstances they could fire them). Moreover, the prosecutors enquired about the way in which communication between officers had been taken place during the protests, whether those officers had fired their weapons, and other details concerning security during the protest.

37. In general, the National Guard officers stated that before the event they had been briefed by their superiors on the use of firearms and other aspects of their duties. On the date of the events in question the orders had been given orally, as the urgency of the situation had not allowed for an alternative means of communication. The different units had coordinated their actions by means of radio communications and, at certain points in the proceedings, *via* mobile phones. Orders had been given by the respective unit commanders, who had told the officers where they should station themselves and which actions they should carry out. They further stated that they had not received any specific order to use their weapons at any particular time and that they had fired into the air when they had felt that the situation had been veering out of control – notably when protesters had entered the yard of the building. A.Ll. in particular stated that warning shots with blank bullets had not been effective in deterring the protesters, who had realised that the officers were using blank bullets. The officers also stated that they could not explain the marks left by projectiles at human-height level on the metal fence

of the building. Additional officers of the National Guard were questioned over the following days and weeks.

38. On 8 February 2011 the high-ranking National Guard officers in respect of whom arrest warrants had been issued (see paragraph 27 above), surrendered to the Tirana Prosecution Office. They were questioned on the same day by the prosecutors.

39. In response to the prosecutors' questions, N.P., National Guard commander-in-chief who had directly overseen operations on the ground on the day of the protest, stated that no order had been given to the National Guard officers present at the events in question to open fire; however, he noted that all National Guard officers were at liberty to open fire on their own initiative in order to guarantee the safety of the buildings that they were guarding. He further noted that many officers had been injured and had received treatment at the National Guard's medical clinic. One officer had been sent to hospital. The National Guard commander had himself, despite the protective equipment that he had been wearing, received a blow from a stone on the eyebrow and had sought medical attention in order to stop the bleeding. When he had returned, he had been "informed" by other officers that they had fired only in the air. In response to a question regarding whether he could offer any explanation for the marks left by projectiles on the metal fence of the building (which were at human-height level) N.P. responded that he could not explain the marks.

40. On 9 February 2011 the Tirana Prosecutor's Office examined the logbook of the National Guard's operations centre (*regjistri i marrjes në dorëzim të shërbimit*), in which the main daily information, orders, tasks and activities of the National Guard are recorded. In particular, the authorities took away a copy of the pages of the logbook concerning the activities of 21 January 2011. The logbook did not contain any record of any order to use firearms. It was noted that N.P. had ordered officers to use truncheons numerous times and that at one point he had cautioned them not to "open ...fire [in any manner] contrary to the law". At 4.10 p.m. he had ordered that the protesters who had entered the northern yard be pushed back with truncheons. At 4.13 p.m. one officer had urgently requested ammunition. The Tirana Prosecutor's Office also examined a number of other internal records of the National Guard pertaining to the weapons that had been distributed to their officers on 21 January 2011 and the general organisation and planning of the National Guard officers before the demonstration had taken place.

41. Following A.N.'s death (see paragraph 20 above), on 5 February 2011 the Turkish authorities extracted a bullet from his head. On 17 February 2011 the Albanian authorities sent a rogatory letter to the Turkish authorities. In response, the bullet was forwarded to the Albanian authorities, who received it in early May 2011.

42. On 24 May 2011 the Forensics Directorate (*Drejtoria e Policise Shkencore*) of the Albanian Police delivered an expert report on the bullet that

had been found in A.N.'s head. It stated that the bullet had lost its original form and identifying characteristics owing to damage; therefore, it was not possible to determine which weapon had fired it.

43. On 6 June and 21 July 2011 the Albanian authorities sent rogatory letters to the Department of Justice of the United States of America. In as much as relevant, the U.S. authorities were asked to enhance the quality of the videos and photographs of the protest of 21 January 2011 and to perform expert examinations on various objects that were of interest to the investigation – including the hard drive of the security cameras fixed to the Prime Minister's Office building (see paragraph 35 above), and the bullets and shells that made up part of the contents of the criminal file.

44. On 13 August 2011 the U.S. authorities delivered an expert report stating that the hard disk of the Prime Minister's Office had been manually reformatted (that is to say the main index records had been manually deleted) on 22 January 2011 at 00.51 a.m. and on 28 January 2011 at 12.10 p.m. The report also stated that the data on the hard drive had been copied onto an external drive on the evening of 21 January 2011 and on 28 January 2011. Lastly, the report found that the contents of the hard drive included data showing that eleven security cameras had been configured so that they were capable of recording.

45. On 5 January 2012 the U.S. authorities delivered another expert report stating, in so far as relevant, that owing "to a lack of sufficient corresponding microscopic marks of value" it was not possible to match the bullet that had been found of the applicant's family member's body with any of the weapons submitted for examination.

46. Two other expert reports concluded that the bullets that had been found on two other victims had been fired from a Beretta handgun and an automatic MP-5 weapon respectively. On 21 January 2011 these weapons had been used, respectively, by N.P., commander-in-chief of the National Guard, and A.Ll., deputy commander of the National Guard's "Special Unit". The reports also stated that after the events of 21 January 2011 the barrel of N.P.'s pistol had been replaced with the barrel of another officer's weapon.

47. On 18 April 2012 the prosecutors charged two officers of the National Guard, A.Ll. and N.P., in connection with the death of three protesters (not including A.N.). A third officer of the National Guard, M.K., was charged with obstruction of justice (see paragraphs 56 et seq. below). On the same date the prosecutors severed A.N.'s case from the rest of the investigation on the grounds that further investigative actions were necessary in connection with his case (see paragraphs 66 et seq. below).

III. TRIAL OF THE INFORMATION TECHNOLOGY OFFICER OF THE PRIME MINISTER'S OFFICE

48. Relying on the above-mentioned forensic expert's finding that the hard drive of the security-camera system had been copied and that its contents had then been deleted (see paragraph 44 above), the prosecutors charged the information technology (IT) officer of the Prime Minister's Office with obstruction of justice.

49. The indictment stated that immediately after the protest of 21 January 2011 the prosecutors had issued an oral order to the administrative staff of the Prime Minister's Office to preserve intact the video recordings of the building's security cameras. Despite that order, the contents of the hard drive of the cameras had been copied; the hard drive had then been reformatted (see paragraph 44 above).

50. In addition, in response to the prosecutor's request, the administrative staff of the Prime Minister's Office had initially provided the recordings made by only one camera, which had been located on the roof of the building, stating that the other cameras had been out of order on the day of the events in question (see paragraphs 33-34 above). However, when the prosecutors seized the hard drive of the other cameras, the administrative staff forwarded to them the recordings made by another camera (see paragraph 35 above).

51. The prosecutors added that, according to the expert report of the U.S. authorities, more than two cameras had been operational on the date of the events in question; in fact, eleven cameras had been configured for recording (see paragraph 44 above).

52. In his own defence, the IT officer of the Prime Minister's Office stated that he had viewed two video recordings in the hard drive and had then copied them to two DVDs at the request of an officer of the National Guard. He had handed one of the DVDs to an officer of the National Guard; the other DVD had been stored in his office. He had forgotten about the second DVD and had been reminded of it only later on. He denied having reformatted the hard drive and stated that after 10 p.m. he had been at home; therefore, he could not have reformatted the drive on the night of 21-22 January.

53. The officers of the National Guard testified that they had asked the IT officer to give them a copy of the recordings made by the cameras of the Prime Minister's Office. They also testified that the "server room" had been under their supervision on the night of 21-22 January and that no one had used the equipment.

54. On 26 July 2012 the District Court of Tirana found the defendant not guilty, noting that it had not been established beyond a reasonable doubt that it was the defendant who had committed the acts alleged by the prosecutors. On 20 February 2013 that judgment was upheld on appeal; on 19 March 2015 the Supreme Court rejected an appeal on points of law lodged by the prosecution.

55. The domestic courts concluded that the hard drive had been reformatted (see paragraph 44 above) but noted that there was no evidence that it had been the defendant who had carried out that act. In fact, they noted that the statements of officers of the National Guard, who had testified that they had overseen the server room for the whole of the night in question, had contradicted the version of events advanced by the prosecution. The courts also accepted that the defendant's failure to provide the second video recording in due time had disclosed negligent conduct rather than criminal intent.

IV. TRIAL OF THE NATIONAL GUARD OFFICERS

56. According to the indictment, on 21 January 2011 between 4 p.m. and 4.10 p.m. N.P. and A.Ll. had simultaneously fired live bullets aimed directly at the protesters. Contrary to his initial statement, in which he had not mentioned firing his weapon on the day of the protest (see paragraph 39 above), N.P. had allegedly fired eleven bullets in the direction of a group of protesters, killing one of them. A.N. had allegedly been standing near that protester. Following the end of the protest, N.P. had allegedly swapped the barrel of his handgun with that of M.K. (see paragraph 46 above) – a fellow National Guard and co-accused in the proceedings – in order to conceal the fact that N.P. had fired his own handgun. Relying on expert examinations of the victims' clothes, which did not disclose any gunpowder residues, the prosecutors affirmed that the victims had not used fire arms.

57. As regards A.Ll., he had allegedly fired an automatic round (*breshëri*) of four or five shots into the air before lowering his aim and firing directly at a group of protesters, one of whom had died and others among whom had been wounded.

58. On 7 February 2013 the District Court of Tirana found N.P. and A.Ll. not guilty (see paragraph 47 above). In respect of N.P., the court acknowledged that a bullet fired from his handgun had killed one of the protestors, who had died on the spot; however, the prosecutors had failed to prove the exact circumstances of this action – in particular, whether the victim had been within N.P.'s field of vision and whether the accused had acted with the precise intention of killing the victim. Accordingly, N.P. had not committed the offence of "murder endangering the life of several persons" (*vrasje me dashje e kryer në menyrë të rrezikshme për jetën e shumë personave*) under Article 79 § (ë) of the Criminal Code. Similarly, the court found that the evidence before it proved that the second protestor had died as a result of a ricochet bullet that had been shot by A.Ll.; however, it had not been established that the accused had acted with the precise intention of killing the victim. As regards the third victim and the individuals who had been wounded the court found that there was no evidence implicating A.Ll. It accordingly concluded that A.Ll. was not guilty of the offence of the

"deliberate homicide of two or more persons" (*vrasje me dashje e kryer kundër dy ose më shumë personave*) under Article 79 § (dh) of the Criminal Code. Lastly, the court noted that the prosecutors had withdrawn the charge of obstruction of justice against M.K., who had been initially accused of having been involved in the change of the barrel of N.P.'s gun after the 21 January 2011 incident for the purposes of concealing the facts pertaining to the incident (see paragraph 46 above). The court found M.K. not guilty of that offence.

59. On 18 September 2013 the Tirana Court of Appeal found, by two votes to one, N.P. and A.Ll. guilty of negligent manslaughter (*vrasje nga pakujdesia*) under Article 85 of the Criminal Code and sentenced them to, respectively, one and three years' imprisonment. The court upheld the remainder of the first-instance judgment.

60. The appeal court, in general, agreed with the factual findings made by the first-instance court. It noted in particular that in the beginning the protest had been peaceful but that it had subsequently turned violent and the protesters had thrown objects and insulted the officers of the National Guard. It also stated that officers of the National Guard, after warning the protesters, had used live ammunition at around 4 p.m., when "around 100 protesters had opened by force one of the gates" to the Prime Minister's Office. Moreover, the court stated that officers of the National Guard, including N.P. and A.Ll., had used their firearms at almost the same time to fire into the air using live bullets in order to deter a violent crowd. It was not proven, however, that they had fired directly at the two victims in whose bodies the experts had found bullets that had been shot from the weapons of N.P. and A.Ll.

61. According to a majority of the members of the bench of the Tirana Court of Appeal, it had not been established that the accused had intended to kill those specific individuals; that fact excluded the charge of murder. In the Court of Appeal's view, even if it were true that after the protests N.P. had switched the barrel of his gun with that of another gun, that fact could not change retroactively the legal categorisation of his actions on 21 January 2011.

62. However, the court concluded that the deadly force used by the two defendants had been disproportionate, as the two victims had not been engaged in any act of violence at the moment in question. The court went on to find that the defendants should have foreseen the potential consequences of their decision to fire into the air using live bullets. The defendants were, therefore, found guilty of negligent manslaughter under Article 85 of the Criminal Code.

63. One judge appended a dissenting opinion. She stated that in her view there was sufficient evidence to conclude that N.P. and A. Ll had aimed towards the crowd of protesters directly rather than into the air. She added that in her opinion the defendants had not targeted anyone in particular but had nevertheless been able to predict the possible consequences of their

actions and therefore had acted with indirect intent (*dolus eventualis*) rather than with negligence. She concluded that they should have been found guilty of murder.

64. On 25 April 2016 the Supreme Court rejected appeals on points of law lodged by the prosecutors, N.P. and A.Ll. The court stated that appeals on points of law should not be a mere restatement of the grounds of appeal before the second-instance court and should rather state clearly the legal arguments that are submitted for the consideration of the Supreme Court. It went on to find that it did not discern any contradiction in that part of the reasoning of the Court of Appeal that addressed the parties' arguments. Noting that the issues raised in the appeals on points of law related to the evaluation of evidence rather than legal arguments, it rejected them as inadmissible.

65. The families of three of the victims lodged applications with the Court, which were resolved with friendly settlements (see *Veizi and Ded v. Albania*, (striking out) [Committee], no. 16191/13, 28 March 2017 and *Myrtaj v. Albania* (striking out) [Committee], no. 62907/16, 5 March 2019).

V. FURTHER INVESTIGATIVE MEASURES CONCERNING A.N.'S DEATH

66. On 29 January 2014 the prosecutors re-interviewed two individuals, I.P. and I.Q, who had been standing near A.N. and had also been injured by firearms during the protest of 21 January 2011. On the same date, on the basis of their statements, the Tirana Prosecutor's Office staged a partial reconstruction of the circumstances that had led to their being injured.

67. On 5 February 2014 the prosecutors re-interviewed the first applicant and several members of A.N.'s family.

68. On 2 April 2014 the prosecutors re-examined the logbook of the National Guard's operations centre.

69. From February until April 2015 the authorities re-questioned several members of the National Guard who had participated in the above-mentioned effort on 21 January 2011 to push back the protesters using truncheons. The officers stated that on the date in question they had received orders *via* radio and their personal mobile phones and in person. They did not recall receiving an order to fire into the air using live bullets.

70. On 5 May 2014 the Forensic Medicine Institute produced an expert report on A.N.'s wounds. The report stated that the examination had been ordered by the prosecutors on 21 January 2011. The experts cited the medical records that been drawn up when he had been admitted to the Trauma Hospital of Tirana. They also cited an expert report of 3 March 2011 produced by the Turkish authorities according to which a bullet had been found in A.N.'s head. Referring to these records, the 2014 report concluded that A.N. had been wounded on the left side of his forehead. The wound had been

caused by a single shot from a firearm; the shot had fractured the bone, and there was no exit point. The direction of the bullet had been from the front to the back and from left to right.

71. On 3 February 2015 the Tirana Prosecutor's Office decided to order another ballistics expert report on the bullet that had been found on A.N.'s body, and transferred the bullet to the Police Forensics Directorate. On 20 March 2015 the latter returned the package to the Tirana Prosecutor's Office noting that the Office had sent the wrong bullet.

72. Following another request for a ballistics report, on 11 September 2015 two experts re-examined the bullet. They noted that it had six lands and grooves (*vjaska*); however, they concluded that because the bullet was damaged, it was impossible to match it with the weapon from which it had been fired.

73. On 22 June 2016 a family member of A.N. requested that the General Prosecutor's Office and the Tirana Prosecutor's Office inform him of the progress of the investigation and forward him a copy of the investigation file. On 25 July 2016, the first applicant also requested from the General Prosecutor a copy of investigation file.

74. On 28 February 2020 the prosecutors concluded that all possible investigative actions had been taken to shed light on A.N.'s killing on 21 January 2011 and on the wounding of six other individuals. Noting that the perpetrators of the offences in question could not be identified, they suspended the investigation and transferred the case to the police for further steps to be taken.

75. It appears that on 20 January 2021 the Tirana Police Directorate delivered a report to the Tirana Prosecution Office suggesting that the investigation be reopened. The report suggested that additional expert reports be produced in respect of those victims who lost their lives and those who had been wounded, as well as the bullet found in A.N.'s body. In particular, it suggested that enquiries be made as to whether there had been any advance in forensic technology that might be capable of identifying the weapon that had fired the bullet found in A.N.'s body. It also suggested that all video recordings of the protest be re-examined and all persons of interest be questioned again.

76. On 2 April 2021 the prosecutors reopened the investigation.

77. On 28 May 2021 the prosecutor wrote to the Police Forensics Directorate asking whether, since 11 September 2015, there had been any technological advance – either domestically or in the European Union or the United States of America – that would allow the identification of the gun that had fired the bullet that had been found in A.N.'s body. In absence of any answer, the enquiry was reiterated on 22 September 2021.

78. On 8 July 2021 the first applicant confirmed to the Tirana Prosecution Office that she had been informed of the actions that the prosecutors had taken until 28 February 2020 and asked for any updates regarding their actions since

that date. On 15 July 2021 the prosecutors responded that the first applicant would be informed of any findings at the end of the investigation.

79. On 4 October 2021 the Police Forensics Directorate responded to the prosecutors (see paragraph 77 above), informing them that there had been no technological advance that could enable the yielding of a different result from those obtained until that date in respect of the bullet that had killed A.N. They also stated that they had no detailed information regarding whether any such technological advance had occurred elsewhere and suggested that the prosecutors lodge an enquiry with the United Kingdom's National Ballistics Intelligence Service and the U.S. Federal Bureau of Investigation's laboratory.

80. On 21 January 2022 by means of a letter rogatory, the Albanian authorities requested the Italian authorities to perform an expert examination of the bullet that had been found in A.N.'s body. No further information has been provided in this regard.

81. On 23 January 2023, as reported in the local media, the Minister of Justice lodged a criminal complaint with the Special Prosecution Office Against Anti-corruption and Organised Crime ("the Special Prosecution Office") in connection with the events of 21 January 2011 against N.P., the Prime Minister and the Minister of the Interior, who had been in office at the time of the events in question. The complaint was reportedly based on media reports that an audio recording of radio communications had emerged which showed that N.P., the then commander-in-chief of the National Guard, had ordered the National Guards officers to open fire. Reportedly, the Special Prosecution Office forwarded the Minister of Justice's complaint for reasons of jurisdiction to the Tirana Prosecution Office.

82. On 16 February 2023, according to domestic media reports, several family members of the victims of 21 January 2011 (including A.N.'s) lodged a fresh criminal complaint with the Special Prosecution Office. They reportedly stated in their complaint that they possessed a new piece of evidence – namely, the above-mentioned audio recording mentioned (see paragraph 81 above) – and that they would hand it over only to the Special Prosecution Office because they had no trust in the Tirana Prosecution Office, which had dragged the case out for twelve years.

VI. COMPENSATION PROCEEDINGS BROUGHT BY THE APPLICANTS

83. On 19 September 2016 several members of A.N.'s family, including the applicants, lodged a civil claim for damages against the National Guard and the Ministry of the Interior with the first-instance Administrative Court of Tirana. The claim was based on several procedural provisions, including Articles 2, 3 and 8 of the Convention, the Articles of the Civil Code regulating tort liability in case of the death of a person and the Non-Contractual Liability

of the State Act (Law no. 8510 of 15 July 1999 "On the non-contractual liability of State administrative authorities" as amended). The plaintiffs submitted that on 21 January 2011 the defendants had acted unlawfully and had caused the death of A.N., thereby causing pecuniary and non-pecuniary damage to them.

84. In their submissions, the National Guard asked the court to "resolve the matter in accordance with the law".

85. On 30 January 2017 the first-instance Administrative Court of Tirana upheld the claim and awarded each applicant 12,834,097 leks (approximately 103,524 euros).

86. The court referred to the judgments described in paragraphs 58-64 above and noted that on 31 July 2014 the Prime Minister's Office had established a working group to "assess the damage suffered by the victims of the events of 21 January 2011". The court considered that the latter reflected the fact that the authorities had accepted that the death of the protesters on 21 January 2011 had occurred as a result of unlawful actions or omissions on the part of State agents.

87. The court went on to find that on 21 January 2011 officers of the National Guard had used their weapons in violation of the Firearms Act (see paragraph 89 below). It referred to the Court's jurisprudence in respect of the States' negative and positive obligations under Article 2 of the Convention and concluded as follows:

> "In this case, the court refers, in addition [to Albanian law], to the European Convention on Human Rights as well as the case-law of the European Court of Human Rights.
>
> ...
>
> On the basis of this interpretation of the European Court of Human Rights, the court reaches the conclusion that the Republic of Albania, represented by the defendants in this trial, is responsible for the loss of the life of the late A[.] N[.], on 21 January 2011 – not only on the grounds of Albanian law but also pursuant to European Convention of Human Rights, as they have failed to take all necessary measures to avoid the loss of life of the deceased.
>
> In the case under trial, it fell to the State authorities (the respondents) to [prove] that they had undertaken all possible measures [against risks to life], regardless of whether [those risks] had been known to them or not, for the prevention of damage."

88. In the absence of any appeal the above-noted judgment became final and, according to the Government's submissions before the Court, the damages have been paid in full.

RELEVANT LEGAL FRAMEWORK AND MATERIAL

I. DOMESTIC LAW

A. Firearms Act of 1998 (Law no. 8290 of 24 February 1998 on the use of firearms, as amended by Law no. 10291 of 24 June 2010)

89. The relevant Articles of the Act read:

"Article 2

The Armed Forces of the Republic of Albania, other armed police established by law (which are not members of the Armed Forces) and armed civil guards have the right to use firearms to protect their own or another's life, health, rights and interests from an unjust, real and immediate attack, provided that the defence is proportional to the danger of the attack ([that is, it must constitute] necessary defence), and ... it is required to meet a real and immediate danger that threatens them or another person or their property with serious damage, provided that it is not provoked by them and the damage caused is not greater than the damage repelled ([that is, the use of firearms is justified by] extreme necessity).

...

Article 5

Firearms may not be used:

a) against persons who appear to be minors ([that is,] children), women and the elderly;

b) in public places where there are gatherings of people, and the lives of others are put at risk.

In such cases firearms can only be used against specific persons who commit visible acts of violence against [other] persons or property that constitute serious violations of the law and when the use of other restrictive measures has failed to render the desired results."

90. The 1998 Firearms Act was repealed and replaced by the 2014 Firearms Act (Law no. 72/2014 of 10 July 2014 on the use of firearms). The relevant Articles of the 2014 Firearms Act read:

"Article 4

Conditions of use of the weapon

1. Employees of the State police and other subjects [*subjektet e tjera*] may use a service firearm in exercise of their duties and in accordance with the provisions of this law only when it is absolutely necessary and only as a last resort to prevent or neutralize violent and dangerous actions [undertaken by] a person that represent a large risk to the life and health of that person and third parties, [and] when other forceful means have not yielded results or have not achieved the lawful objectives of the [officer's] tasks.

2. The [pre-emption] of a risk through the use of firearms by subjects who are entitled to that right shall be undertaken in order to protect their own or another's life, health, rights and interests from a real, unjust and immediate attack, provided that the level of the defence is proportionate to the dangerousness of the attack – and when required to

face a real and immediate danger that threatens him/her or another person or his/her property with serious damage – provided that it has not been provoked by him and the damage caused is not greater than the damage repelled.

...

Article 7

Avoidance of public danger

1. The use of firearms to avoid a public danger represented by a violent assembly of persons must be undertaken in accordance with the provisions of this law.

2. The use of firearms is allowed only against specific armed persons, who commit obvious acts of violence against the life of a person or [a member of the] police service [or] the other services that carry and use weapons, when the use of other coercive measures has not yielded the desired results.

3. It is prohibited to shoot into the air with firearms at gatherings of people as a way of dispersing them."

B. National Guard Act of 2003 (Law No. 8869 of 22 May 2003 on the National Guard of the Republic of Albania, as amended by Law no. 9366 of 31 March 2005)

91. Article 25 of the Act reads:

"The officer of the [National] Guard shall use his weapon in the cases provided under the law no. 8290, dated 24.2.1998 "On the use of firearms", and when there is an attack against:

domestic or foreign high State dignitaries;

the guards and buildings being guarded."

92. The 2003 National Guard Act was repealed and replaced by the 2021 National Guard Act (Law no. 33/2021 of 16 March 2021 on the National Guard of the Republic of Albania). The relevant Articles of the 2021 National Guard Act read:

"1. The National Guard is responsible for and performs the following main tasks:

...

nj) uses the firearms of the National Guard, in accordance with the legislation in force regulating the use of firearms."

II. COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

93. Following a special visit to Albania between 13 and 15 February 2011 in order to assess the human rights aspects of the events of 21 January, the Council of Europe Commissioner for Human Rights ("the Commissioner") released his report on 22 February 2011 (CommDH(2011)9). The report described the events of 21 January in the following terms:

"6. On 21 January 2011, soon after the demonstrators assembled in front of the Prime Minister's Office, violent clashes occurred between a group of several hundred people and the police located in front of the building.

7. There are different and conflicting perceptions of what really happened and how the situation evolved and spiralled out of control. Political blocs offer contradicting accounts on the question of who provoked the outbreak of violence – the demonstrators or the police. According to the governmental authorities, the protest was staged by the opposition in order to overthrow the government by force, whereas the opposition maintains that it was the police who provoked the protestors almost immediately after the demonstration began.

8. It seems clear that a group of demonstrators did commit violent acts against the police and the Guard of the Republic, by throwing stones and using sticks from banners to hit them. Some protesters also burnt cars parked close to the demonstration venue. In response, the police employed a variety of means such as truncheons, water cannons, tear gas and rubber bullets. As a result of violent clashes between demonstrators and police, dozens were injured on both sides.

9. At a later stage during the demonstration, firearms were used by members of the Guard of the Republic. Four protesters died and several other persons sustained injuries caused by gunfire, which raises questions about the lawfulness and proportionality of the use of force.

10. The Prime Minister and the Minister of the Interior informed the Commissioner that the Guard of the Republic was entitled to use lethal force under specific circumstances once the security perimeter of government buildings was breached. While the Commissioner understood that all four killings in fact occurred outside the security perimeter of the Prime Minister's Office building, the Ministers maintained that there were attempts from the protesters to enter the yard."

94. As regards the arrest warrants issued in respect of the above-mentioned officers of the National Guard, the Commissioner noted:

"21. The Office of the General Prosecutor started investigations into the events on 21 January 2011. The first focus was understandably on the deaths of the four persons who had been hit by bullets. Already in the morning of 22 January the General Prosecutor issued detention orders with regard to six chief officers of the Guard of the Republic with a view to taking their statements in relation to the events of 21 January. The orders were not executed by the police authorities until 8 February 2011, when the six officers made statements to the prosecutors.

22. The Commissioner learnt that the General Prosecutor herself had been criticised by leading politicians and that her standing therefore had become an issue in the polarised political discourse. However, representatives of both political blocs stated to the Commissioner that there was no alternative to the General Prosecutor for these investigations. Nevertheless, the Commissioner understood that the work of her Office will be followed critically."

95. The Commissioner added:

"28. The sum of all this is that the Office of the General Prosecutor is faced with an extraordinarily difficult task. The focus has to be on preparing prosecutions against those suspected of having committed crimes. It has to be recognised that some of the acts committed this day must be regarded as crimes irrespective of the political climate and who started the negative spiral of violence. This is the case of the lethal shootings;

the attacks by some demonstrators against the police; and unprovoked police violence during arrests and transport of persons apprehended."

96. In conclusion the Commissioner stated:

"V. Conclusions

29. There is a need for thorough, impartial and credible investigations into the human rights violations which took place on 21 January 2011. Those responsible for the violent acts and other human rights violations should be held to account. This is necessary in order to establish justice but also to prevent such serious developments in the future.

30. The Commissioner welcomed the fact that representatives of both political blocs stated that the investigations have to be undertaken by the Office of the General Prosecutor; there is no alternative. However, the Office and not least the General Prosecutor herself have been targeted by unfortunate and highly critical political statements. This should be avoided from now on.

31. Obviously, the deep political polarisation makes the task of the Office of the General Prosecutor particularly delicate and difficult. It is crucial that everyone avoids interfering in the ongoing investigations and that the relevant authorities, including the police, cooperate fully and promptly with the [prosecutor's] Office."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

97. The applicants, relying on Articles 2 and 13 of the Convention, complained that the authorities' use of force against A.N. during the protest of 21 January 2011 had amounted to a violation of the substantive limb of Article 2 of the Convention. They also complained of the ineffectiveness of the investigation into the death of their family member. The Court being master of the characterisation to be given in law to the facts of a case, considers that the issues raised in the present case should be examined solely from the perspective of Article 2 of the Convention (compare *Jelić v. Croatia*, no. 57856/11, §§ 107-09, 12 June 2014, and *M. and Others v. Croatia*, no. 50175/12, § 52, 2 May 2017) which reads as follows:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Procedural limb

1. Admissibility

98. The Government submitted that the investigation was ongoing and that domestic remedies had therefore not yet been exhausted.

99. The applicants did not comment.

100. The Court notes that the Government's plea of inadmissibility on the basis of the allegation that the complaint was premature is closely related to the merits of the applicants' complaint regarding the alleged ineffectiveness of the investigation. The Government's objection must therefore be joined to the merits of the applicant's complaint under the procedural aspect of Article 2.

101. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' arguments

102. The applicants submitted that there had a been a violation of the procedural limb of Article 2 of the Convention on account of the ineffectiveness of the investigation. They argued that the investigation had neither proceeded with reasonable expedition nor been independent. In their view, the domestic authorities had hindered the investigation by not executing the prosecutor's arrest warrants (see paragraph 27 above) and by concealing relevant video recordings (see paragraph 44 above).

103. The applicants took issue with the prosecutors' decision to sever A.N.'s case from those of the three other victims of the protest (see paragraph 47 above). In their view (quite apart from the question of who had fired the bullet that killed A.N.), under Albanian criminal law it had been possible to charge with murder – in collusion with each other – the commander-in-chief of the National Guard and those other officers who had used live ammunition. In that regard, they also complained that they had not been granted victim status in the criminal proceedings against the officers of the National Guard, and nor had they been duly kept informed by the prosecutors of the progress of the investigation.

104. Furthermore, the applicants criticised the domestic authorities for failing to request from the Turkish authorities (or to perform themselves in a timely fashion) expert examinations of the wound of A.N., in order to clarify the trajectory of the bullet, any additional material carried by the bullet, why the bullet had lost its original form, and other potential questions of relevance to the investigation. They stated that similar examinations had been carried out on the other three victims (see paragraph 23 above), but not on A.N. The applicants also raised, more broadly, the question of whether the Albanian

authorities had ever requested and obtained any report compiled by the Turkish forensic experts who had removed the bullet from A.N.'s head.

105. The Government argued that the prosecutors had undertaken all reasonable investigative steps necessary to elucidate each aspect of the case. They pointed out that they had ordered numerous expert reports regarding the weapons of the officers of the National Guard, the bullet found in A.N.'s body, the crime scene, and so on. They had also asked for specialised assistance from U.S. experts and had questioned numerous witnesses.

106. The Government also pointed out that a copy of the case-file had been provided to the applicants and that they had also been kept aware of developments regarding the case through the media, which had paid considerable attention to every new development in the investigation.

(b) The Court's assessment

(i) General principles

107. The relevant principles applicable to the obligation to carry out an effective investigation have been summarised by the Court in, for example, the case of *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, 30 March 2016), as follows:

> "229. Having regard to its fundamental character, Article 2 of the Convention contains a procedural obligation – as described below – to carry out an effective investigation into alleged breaches of its substantive limb (see *Ergi v. Turkey*, 28 July 1998, § 82, *Reports* 1998-IV; *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII; *Giuliani and Gaggio* [*v. Italy* [GC], no. 23458/02, § 298 [ECHR 2011 (extracts)]; and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 69, 14 April 2015).
>
> 230. A general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, taken in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alia*, agents of the State (see *McCann and Others*, cited above, § 161). The State must therefore ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Zavoloka v. Latvia*, no. 58447/00, § 34, 7 July 2009, and *Giuliani and Gaggio*, cited above, § 298).
>
> 231. The State's obligation to carry out an effective investigation has in the Court's case-law been considered as an obligation inherent in Article 2, which requires, *inter alia*, that the right to life be "protected by law". Although the failure to comply with such obligation may have consequences for the right protected under Article 13, the procedural obligation of Article 2 is seen as a distinct obligation (see *İlhan v. Turkey* [GC], no. 22277/93, §§ 91-92, ECHR 2000-VII; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 148, ECHR 2004-XII; and *Šilih v. Slovenia* [GC], no. 71463/01, §§ 153-54, 9 April 2009). It can give rise to a finding of a separate and independent "interference". This conclusion derives from the fact that the Court has consistently

examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation of Article 2 on that account) and the fact that on several occasions a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint as to its substantive aspect (see *Šilih*, cited above, §§ 158-59).

232. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III; *Giuliani and Gaggio*, cited above, § 300; and *Mustafa Tunç and Fecire Tunç*, cited above, § 177). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports* 1998-IV; *Giuliani and Gaggio*, cited above, § 300; and *Mustafa Tunç and Fecire Tunç*, cited above, § 177). What is at stake here is nothing less than public confidence in the State's monopoly on the use of force (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 106, 4 May 2001; *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II; and *Giuliani and Gaggio*, loc. cit.).

233. In order to be "effective" as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai and Others*, cited above, § 324, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This means that it must be capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (see *Giuliani and Gaggio*, cited above, § 301, and *Mustafa Tunç and Fecire* Tunç, cited above, § 172). This is not an obligation of result, but of means (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII; *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014; and *Mustafa Tunç and Fecire Tunç*, cited above, § 173). The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death (as regards autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; on the subject of witnesses, see, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; and, as regards forensic examinations, see, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Moreover, where there has been a use of force by State agents, the investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances (see, for example, *Kaya v. Turkey, 19 February* 1998, § 87, *Reports* 1998-I). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Avşar v. Turkey*, no. 25657/94, §§ 393-95, ECHR 2001-VII); *Giuliani and Gaggio*, cited above, § 301; and *Mustafa Tunç and Fecire Tunç*, cited above, § 174).

234. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009, and *Mustafa Tunç and Fecire* Tunç, cited above, § 175). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. The nature and degree of scrutiny must be assessed

on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Velcea and Mazăre v. Romania*, no. 64301/01, § 105, 1 December 2009, and *Mustafa Tunç and Fecire Tunç*, cited above, § 175). Where a suspicious death has been inflicted at the hands of a State agent, particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation (see *Enukidze and Girgvliani*, cited above, § 277).

235. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Hugh Jordan*, cited above, § 109; *Giuliani and Gaggio*, cited above, § 303; and *Mustafa Tunç and Fecire Tunç*, cited above, § 179; see also *Güleç*, cited above, § 82, where the victim's father was not informed of the decision not to prosecute, and *Oğur*, cited above, § 92, where the family of the victim had no access to the investigation or the court documents).

236. However, disclosure or publication of police reports and investigative material may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and therefore cannot be regarded as an automatic requirement under Article 2. The requisite access of the public or the victim's relatives may therefore be provided for in other stages of the procedure (see, among other authorities, *McKerr v. the United Kingdom*, no. 28883/95, § 129, ECHR 2001-III, and *Giuliani and Gaggio*, cited above, § 304). Moreover, Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (see *Velcea and Mazăre*, cited above, § 113, and *Ramsahai and Others*, cited above, § 348).

237. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-04, Reports 1998-VI, and *Kaya*, cited above, §§ 106-07). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *McKerr*, cited above, §§ 111 and 114, and *Opuz v. Turkey*, no. 33401/02, § 150, ECHR 2009).

238. It cannot be inferred from the foregoing that Article 2 may entail the right to have third parties prosecuted or sentenced for a criminal offence (see *Mastromatteo*, cited above, § 90; *Šilih*, cited above, § 194; and *Giuliani and Gaggio*, cited above, § 306) or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see *Zavoloka*, cited above, § 34 (c)). Indeed, the Court will grant substantial deference to the national courts in the choice of appropriate sanctions for homicide by State agents. (...)."

(ii) Application to the present case

(α) General shortcomings in the early stages of the criminal investigation

108. In the case at hand, the Court notes that the Tirana Prosecutor's Office's reaction to the incident was prompt: on the very day of the incident the Tirana Prosecutor's Office opened an investigation and started collecting evidence in the area in which the protest had occurred (see paragraph 21 above).

109. However, the subsequent hasty public statements made by senior officials to the effect that the victims had been shot at close range and with weapons that were different from those in use by the National Guard or the police force (see paragraphs 17-18 above) raise doubts as to whether the executive authorities were committed from the outset to shedding full light on those serious events and to not diverting or interfering inappropriately with the criminal investigation (compare *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 148, 1 July 2014).

110. Those doubts were not dispelled by the then Prime Minister's harsh criticism of the prosecutor's line of inquiry and the above-mentioned personal attacks against the General Prosecutor (see paragraph 28-29 above), which were also noted by the Commissioner (see paragraphs 94-96 above). It is furthermore relevant that a parliamentary committee of inquiry was quickly established in parallel with the ongoing criminal investigation – not for the purpose of elucidating the facts and possible State responsibility for the 21 January 2011 events (compare *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 310, ECHR 2011 (extracts)), but to inquire into alleged abuses committed by the prosecutors investigating the events; the General Prosecutor was summoned and subjected to harsh public criticism by members of that committee (see paragraph 30 above). The Court considers that these actions, seen in their overall context, could not but have had a negative impact on the effectiveness of the investigation – not least because of their potential to dissuade potential witnesses from cooperating with the ongoing investigation.

111. Within a few hours of the incident, the prosecutors issued arrest warrants in respect of six suspects who were officers of the National Guard (see paragraph 27 above). However, those arrest warrants remained unexecuted, allegedly on account of administrative defects (see paragraph 27 and 94 above) and the suspects entered the authorities' custody only when they themselves decided to surrender eighteen days later (see paragraph 38 above). Neither the case-file material nor the Government's observations provide any explanation as to why the various authorities involved did not cooperate to address and resolve the police's assertion that the orders included certain administrative defects and to subsequently execute them swiftly. Discord of this nature within the law-enforcement agencies should not preclude them from discharging their obligation to demonstrate diligence and promptness in dealing with such a serious matter (see *Askhabova v. Russia*, no. 54765/09, § 153, 18 April 2013).

112. The non-execution of the arrest warrants led to the loss of eighteen days, between the date when the arrest warrants were issued (see paragraph 27 above) and the date on which the prosecutors were able to question the main suspects (see paragraph 38 above). Most importantly, besides the loss of precious time, the authorities lost irretrievably the opportunity to question the suspects immediately after the incident, thereby

minimising any chance of collusion or distortion of the truth (compare *Jaloud v. the Netherlands* [GC], no. 47708/08, § 207, ECHR 2014).

113. Lastly, the Court cannot overlook the authorities' lack of expedition and diligence in providing to the prosecutors the video recordings in the possession of the Prime Minister's Office concerning the incident (see paragraph 35 above) or to the prosecutor's failure to seize those recordings immediately after the events of 21 January 2011.

114. Most importantly, the fact that a large part of the video recordings were erased (see paragraph 55 above) in the immediate aftermath of the incident, as established by the national courts, raises serious concerns as to whether their deletion may have been deliberate and effected for the purpose of concealing the truth. Those doubts were not dispelled by the domestic proceedings, which were unable to determine the precise circumstances and the identity of the person(s) who had ordered and carried out the deletion of the recordings while they had supposedly been in the safekeeping of National Guard personnel. Quite apart from the question of whether the erasure of recordings can be attributed to the respondent Government, the Court notes that the recordings were saved in an external drive that was located in the server room of the Prime Minister's Office; given that they were in the custody of the domestic authorities, those authorities were under an obligation to keep them intact and safe from any third-party interference (see *Lovpyginy v. Ukraine*, no. 22323/08, § 106, 23 June 2016, where the loss by the investigator of a video recording was viewed as one of the factors contributing to the ineffectiveness of the investigation in question).

(β) Failure to adequately investigate the possible responsibility for the turn of events on the part of the commanders on the ground

115. The Court notes, on the basis of the material at its disposal, that the criminal investigation appears to have focused exclusively on the identification of the person who was directly responsible for A.N.'s death and that no inquiry was held into whether the actions or omissions on the part of the National Guard's commanding officers on 21 January 2011 might have contributed to A.N.'s death.

116. The applicants argued that the simultaneous lethal shooting of the four protesters, and the non-lethal injuries inflicted on many others, cannot be reconciled with the version of events according to which National Guard officers had fired their weapons individually; the applicants further argued that in fact, viewed in conjunction with other evidence, it strongly suggested that a general order had been given to fire directly at the crowd (see paragraph 140 below). These claims raise a number of pertinent questions relating to the quality of the investigation.

117. Firstly, the investigation does not appear to have determined the precise chronology of (i) the moment(s) at which the four primary victims were shot (some of which were caught on video recordings made by the media

and other bystanders) or (ii) the non-fatal gunshot wounds suffered by several other persons. This could have been an important element in assessing the precise sequence and nature of the injuries sustained by the various victims and how they might have been caused. The Court of Appeal found in this respect that several National Guard officers had, at almost the same time, raised their firearms and fired into the air using live bullets in order to deter a violent crowd (see paragraph 60 above).

118. A second set of questions relates to the sequence and nature of any orders given by the National Guard's commanders on the ground, who appeared to have been in some degree of radio contact with each other (see paragraph 37 above) at the critical moments of the violent confrontation. The National Guard personnel and senior officers questioned by the investigators and the national courts 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. The Court has doubts as to whether such a version of events may be considered credible as reflecting a mode of operation for a centralised and specialised armed force that finds itself facing a hostile crowd; it would also appear to go against the instructions and rules of engagement that the National Guard command issued to its units in preparation for the protest (see paragraph 8 above, see also paragraph 167 below).

119. Thirdly, and regardless of the nature of any orders that may or may not have been given, the applicants have argued, both at the domestic level and before the Court, that there was a failure to duly investigate whether any of the National Guard personnel shot directly at the crowd. The applicants asserted that the killings had been broadcast on television; the Court notes in this respect that the officers questioned by the national authorities strongly denied such a possibility, maintaining that they had only shot into the air for the purposes of deterrence. The Tirana Court of Appeal concluded that the two persons for whose deaths the two National Guard officers had been found criminally liable had likely been the unintended victims of shots fired into the air by the respective officers in question, and that those shots had ricocheted off hard objects before hitting the victims.

120. It is not for the Court to resolve such factual disputes or to cast into doubt the factual findings of the national courts, unless strong reasons exist for doing so. Be that as it may, it seems clear that a number of circumstances and indications that could have shed further light on these aspects were not investigated in depth by the national authorities. These include: as already noted, the failure to reconstruct the precise chronology of the gunshot injuries sustained by the demonstrators and the respective locations in which the victims had been standing when shot; the failure to systematically analyse the forensic characteristics of the gunshot wounds sustained by those multiple demonstrators who had suffered non-lethal injuries (including in respect of the angle and trajectory of the projectiles), which would have complemented the findings relating to the four persons who had lost their lives; and the

failure to account for the large number of marks left by projectiles found, at human height level, on the metal fencing on either side of the entrance gate, where much of the violent confrontation had taken place (see paragraph 31 above).

121. Taken together, these shortcomings are sufficient for the Court to conclude that the national authorities failed to seriously and adequately pursue certain key lines of inquiry relating to the nature of any orders given by those in the chain of command during the events – including but not limited to the use of deadly fire, and the possibility of demonstrators having been directly targeted by armed personnel.

122. Neither was an inquiry of any kind undertaken by any domestic authority in order to determine whether on 21 January 2011 there had been any failure in regard to the planning, coordination and execution of the State agents' duties. Similarly, there is no evidence before the Court to indicate that the governmental working group (upon which the Tirana Administrative Court relied in its judgment – see paragraph 86 above) or any other public authority carried out such an inquiry. A detailed inquiry of this nature could have shed light on whether any other additional factors – such as the absence of any coordination between the National Guard and the police and the failure on the part of the officers of the National Guard and the police to exercise any effective overview and command – played any role in the events leading to the loss of life on that day, including the fatal shooting of A.N. (compare *Giuliani and Gaggio*, cited above, §§ 107-120, where a detailed parliamentary inquiry was carried out). Such a detailed inquiry could have drawn conclusions that would have helped to prevent similar incidents from occurring in the future.

(γ) Specific shortcomings in respect of the investigation into A.N.'s death

123. In respect of the investigation phase, which focused exclusively on A.N.'s death, the Court notes that no exact timeline for the events in question was established, including in relation to the shooting of the other victims.

124. As regards the forensic examination of the body of A.N., the Government did not respond to the applicants' allegation that such an examination had been carried out in respect of the other victims but not in respect of A.N. (see paragraph 104 above). Although the Government were requested to provide a copy of the investigation case file, they did not provide a copy of the rogatory letter sent to the Turkish authorities in 2011 so that it could be clarified what examinations they had requested be performed on the body of A.N. Nor did the Government provide any of the reports produced by the Turkish authorities in that regard.

125. The expert report of 5 May 2014 (see paragraph 70 above) – which relied on earlier reports (namely, the medical records dating from when A.N. had been initially admitted to Tirana Trauma Hospital and a report drawn up by the Turkish authorities when they had extracted the bullet from A.N.'s

body) and was produced several years after the victim's death – does not dispel the doubts raised by the applicants in this regard. In this connection it is unclear why that expert examination was not performed in good time and on the body of the victim itself rather than on the basis of earlier reports.

126. At this juncture, the Court agrees with the Council of Europe Commissioner's finding that domestic authorities had been faced with a difficult and delicate task in investigating the events of 21 January 2011 (see paragraphs 94-96 above). The Court recognises that the domestic authorities made significant efforts to identify the weapon that had fired the bullet that killed A.N. Indeed numerous ballistics examinations were performed on the bullet; however, it appears that it has not been possible to identify the weapon that fired it, owing to the damage that was caused to the projectile.

127. As regards the applicants' involvement in the investigation, they maintained repeatedly that they had not been kept informed by the authorities regarding the main developments of the investigation and pointed to the two letters that they had sent to the prosecutors requesting a copy of the case file (see paragraph 73 above). The Government did not submit any evidence in support of their contention that the applicants had in point of fact been involved in and kept informed of developments in the investigation. The applicants' letter of 2021 (see paragraph 78 above), in which they acknowledged having been kept informed of investigative developments that had occurred prior to 2020, does not suffice to justify the conclusion that they were involved in the procedure to the extent necessary to safeguard their legitimate interests (see *Tsintsabadze v. Georgia*, no. 35403/06, § 76, 15 February 2011, and *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 70, 31 July 2014). That is all the more so given that, as pointed out above, a number of the applicants' questions concerning the investigation remain unanswered to date.

(δ) Conclusion

128. In view of the above-noted considerations, the investigation that has been carried out in this case cannot be regarded as an effective one capable of leading to the identification and punishment of those responsible for the alleged events and of establishing the truth (see, *mutatis mutandis*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 191-193, ECHR 2012 and *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, § 144, 24 May 2011).

129. The Court therefore concludes that Government's preliminary objection must be dismissed and that there has been a violation of Article 2 of the Convention under its procedural limb.

B. Substantive limb

1. Admissibility

(a) The parties' arguments

(i) The Government

130. The Government pointed out that the violation of the substantive limb of Article 2 of the Convention had been recognised by domestic courts, which had awarded damages to the applicants (see paragraph 85 above). In response to the third-party submissions (see below), the Government repeated once again that it had been acknowledged by the national courts that the force used by State agents on 21 January 2011 had been disproportionate and submitted that the complaint was therefore inadmissible for want of victim status.

(ii) The applicants

131. The applicants did not submit comments in this connection.

(iii) The third-party

132. Res Publica, a non-governmental organisation promoting the protection of and respect for human rights, argued, in particular, that the domestic remedies to be exhausted within the context of the alleged violations of Article 2 of the Convention were of a criminal nature, save for those remedies pertaining to the argument that the loss of life had been due to an error of judgment or carelessness.

(b) The Court's assessment

133. The Government submitted that the applicants had lost their victim status because the Administrative Court had acknowledged that the State authorities had been responsible for the death of their close relative, A.N., and in that respect had awarded each applicant compensation in the amount of ALL 12,834,097 (approximately EUR 103,524) in respect of non-pecuniary damage.

134. However, as regards the payment of compensation and the substantive aspect of Article 2, the Court has held that, in the area of the 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) do not constitute 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*, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 227, ECHR 2014 (extracts)). This is so because, if the authorities were able to confine their reaction to incidents of

unlawful use of force by State agents to the mere payment of compensation (while not doing enough in respect of the prosecution and punishment of those responsible) it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibitions on killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007, and the cases cited therein). The possibility of seeking and receiving compensation constitutes only one of the measures necessary to obtain redress for death resulting from unlawful use of force by State agents. The other avenue of necessary redress is constituted by the obligation of the State to carry out an effective investigation capable of leading to the identification and punishment of those responsible (ibid., § 234; see also *Kelly and Others v. the United Kingdom*, no. 30054/96, § 105; and *Nikolova and Velichkova*, cited above, §§ 56 and 57).

135. The Court also notes that whereas the Government acknowledged that "disproportionate violence was used ... by the National Guard", they did not accept that A.N.'s death was the result of an act of wilful killing. The Court has held that where it is not clearly established from the outset that a death has resulted from an accident or another unintentional act, and where the hypothesis of unlawful killing is at least arguable on the facts, the Convention requires that an investigation that satisfies the minimum threshold of effectiveness be conducted in order to shed light on the circumstances of the death. The fact that an investigation ultimately accepts the hypothesis of an accident has no bearing on this issue, since the obligation to investigate is specifically intended to refute or confirm one or other hypothesis (see *Mustafa Tunç and Fecire Tunç*, cited above, § 133).

136. In the present case the circumstances of A.N.'s death were not established from the outset in a sufficiently clear manner. Various explanations were possible, and none of them was manifestly implausible in the initial stages. Thus, the State was under an obligation to conduct a full investigation. In that connection the Court also notes that, even though the Administrative Court did find the State authorities responsible for the death of A.N., it did not clarify the circumstances of A.N.'s death in any meaningful way so as to clearly establish whether the use of lethal force had been justified. Instead, it only perfunctorily concluded, without any assessment of the facts of the case, that the State had been responsible for A.N.'s loss of life "not only on the grounds of Albanian law but also under the European Convention of Human Rights, as [it had] failed to take all necessary measures to prevent the loss of life of the deceased", without specifying what those preventive measures should have been. Such an approach cannot in any respect compensate for the lack of an effective investigation (in that respect, see the Court's conclusion in paragraph 128 above).

137. It follows that the payment of damages, given the circumstances of the present case, cannot absolve the State from its obligations under Article 2 of the Convention to carry out an effective investigation capable of leading to the identification and punishment of those responsible. The Court considers that those obligations would be rendered illusory if an applicant's victim status was to be remedied merely by the awarding of damages (see *Nikolova and Velichkova*, cited above, § 55, and the cases cited therein; see also paragraph 134 above).

138. In that respect the Court's assessment of the admissibility of the substantive complaint under Article 2 is tied to the Court's assessment of the procedural protections available (see, for example, *Kopylov v. Russia*, no. 3933/04, § 121, 29 July 2010; *Nikolova and Velichkova*, cited above, §§ 55-56; *Gäfgen v. Germany* [GC], no. 22978/05, § 119, ECHR 2010; and *Darra v. France*, no. 34588/07, §§ 22-53, 4 November 2010).

139. As to the present case, the Court has already found that the investigation into the circumstances of A.N.'s death was flawed in several respects and that the State authorities have not complied with their procedural obligations under Article 2 of the Convention. Therefore, the Court rejects the Government's objections as to the admissibility of this complaint. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' arguments

(i) The applicants

140. The applicants submitted that on 21 January 2011 the commander-in-chief of the National Guard had ordered that his men open fire on the protesters (including A.N.) and that the officers had accordingly all fired at the same time, thereby causing the death of four protesters. The shootings had been captured on camera and broadcast by the local television stations for everyone to see.

141. In the applicants' view, the apparent bullet marks on the iron fence surrounding the Prime Minister's office and on the road signs and trees nearby (among other indications) showed that the National Guard's fire had been aimed directly at the crowd of protesters rather than (as found by the domestic courts) into the air.

(ii) The Government

142. The Government accepted that during the demonstration on 21 January 2011 officers of the National Guard had used disproportionate violence, which had been confirmed by the findings in the criminal and administrative proceedings at the domestic level. They further acknowledged

that A.N. had not been part of the group of protesters who had attacked the Prime Minister's Office.

143. However, they submitted that certain preventive measures had been applied prior to the use of firearms, namely: securing the security perimeter of the outer fence by ensuring a police presence; the use of a concrete barrier to block vehicles; oral appeals *via* megaphone to the violent protesters to cease their violent acts; and an oral warning that firearms might be used.

144. They also contended that the police and the officers of the National Guard had received special instructions as regards the use of lethal force during demonstrations and had been informed what specific tasks they had to perform in respect of the demonstration of 21 January 2011.

(iii) The third party

145. The third party argued that the domestic legal framework, as in force at the time of the events at issue, had not been in compliance with the requirements of Article 2 of the Convention because the applicable laws had authorised the use of lethal force even in instances of a mere attack on or of the destruction of "property" and "objects". Further to this, authorisation to discharge firearms in a public space had not been subject to the precondition of a clear and imminent risk to human life.

(b) The Court's assessment

(i) Whether the respondent State took the necessary legislative, administrative and regulatory measures to reduce as far as possible the adverse consequences of the use of force

(α) General principles

146. The relevant general principles are stated in *Giuliani and Gaggio* (cited above) as follows:

> "208. Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III, and *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII).
>
> 209. The primary duty on the State to secure the right to life entails, in particular, putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI, and *Bakan*, cited above, § 49; see also the relevant paragraphs of the UN Principles, paragraph 154 above). In line with the principle of strict proportionality inherent in Article 2 (see paragraph 176 above), the national legal framework must make recourse to firearms dependent on a careful assessment of the situation (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 96). Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58)."

(β) Application of these principles to the present case

147. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August to 7 September 1990), provide, *inter alia*, that "law-enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against people by law-enforcement officials" (see *Giuliani and Gaggio*, cited above, § 154).

148. The Court reiterates that in previous similar cases it has examined the existing legal or regulatory framework in respect of the use of lethal force (see *McCann and Others*, cited above, § 150, and *Makaratzis v. Greece* [GC], no. 50385/99, §§ 56-59, ECHR 2004-XI). The same approach is reflected in the UN Basic Principles, which indicate that laws and regulations governing the use of force should be sufficiently detailed and should prescribe, *inter alia*, the types of arms and ammunition permitted. The Court will thus examine the legal framework of the use of lethal force, which the applicants considered to be inadequate (compare *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 592, 13 April 2017).

149. It is to be noted that the regulatory framework on the use of lethal force by State agents was amended in 2014 by Law 72/2014 on firearms and in 2021 by Law 33/2021 on the National Guard. However, it is not the Court's task to compare the quality of the relevant legal framework before and after the events at issue *in abstracto* (compare *Svitlana Atamanyuk and Others v. Ukraine*, nos. 36314/06 and 3 others, § 132, 1 September 2016).

150. At the time of the events at issue the relevant provisions on the use of the firearms were provided in the 1998 Firearms Act, as amended in 2010, and the 2003 National Guard Act, as amended in 2005 (see paragraphs 89 and 90 above). The former applied to the Armed Forces of the Republic of Albania, other armed police established by law (who were not members of the Armed Forces) and armed civil guards; the latter concerned the National Guard only. They were complementary. The Court notes that section 2 of the Firearms Act defined circumstances in which the use of firearms was permitted and provided safeguards in that respect – for example, the use of firearms had to constitute a response to an unjust, real and immediate attack that it should be proportionate to the risk faced. However, both the Firearms Act and the National Guard Act, as in force at the relevant time, allowed the use of firearms (and therefore potentially lethal force) for the protection of property. In that connection the Court notes that the Firearms Act stipulated that the "damage caused [should not be] greater than the damage repelled". In view of the wording of domestic law on this point, it could be argued that damage to property alone cannot generally be regarded as "greater" than the risk to a person's life. Be that as it may, the Court considers problematic the fact that at the relevant time the relevant law authorised the use of firearms for the protection of property without providing any further details as to the

kind of exceptional circumstances in which the use of firearms might be justified. Most pertinently to the case at issue, the National Guard Act also allowed the use of "weapons" "when there is an attack against buildings [that are] being guarded".

151. Furthermore, the Firearms Act, even though it generally prohibited the use of firearms "in public places where there are gatherings of people and the lives of others are put at risk", permitted some exceptions in that respect – notably for the protection of property. Even though the use of firearms for the protection of property in public places where there are gatherings of people was restricted by some safeguards (such as the stipulation that that firearms can be used only against individuals who are committing visible acts of violence that constitute serious violations of law, and only when other restrictive measures have not yielded the desired results), the Court notes that Article 2 of the Convention does not allow the use of lethal force for the protection of property as such. To the extent that it cannot be completely excluded that the use of lethal force for the protection of property might be justified in some exceptional circumstances, such circumstances have to be clearly defined. In that connection the Court notes that the new legal framework still refers to "repelling an attack against a protected object" but contains a new condition – that the lives of the personnel in charge of defending that object (or the lives of other persons) are clearly at risk.

152. Indeed, given the circumstances of the present case, the protection of property – namely, the Prime Minister's Office – was one of the justifications put forward by the authorities for the use of firearms. Further to this, the Court also notes that the cited laws did not provide that before shots were fired directly at people an oral warning should be given and a warning shot should be fired into the air.

(ii) Whether the use of lethal force was justified

(α) General principles

153. The relevant general principles were stated in *Giuliani and Gaggio*, cited above) as follows:

> "174. The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention, one which, in peace time, admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among many other authorities, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI, and *Solomou and Others v. Turkey*, no. 36832/97, § 63, 24 June 2008).
>
> 175. The exceptions delineated in paragraph 2 indicate that Article 2 extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the

achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 148, Series A no. 324, and *Solomou and Others*, cited above, § 64).

176. The use of the term "absolutely necessary" indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2. Furthermore, in keeping with the importance of this provision in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, §§ 147-150, and *Andronicou and Constantinou*, cited above, § 171; see also *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII, and *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 142, 26 July 2007).

177. The circumstances in which deprivation of life may be justified must be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also require that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Solomou and Others*, cited above, § 63). In particular, the Court has held that the opening of fire should, whenever possible, be preceded by warning shots (see *Kallis and Androulla Panayi v. Turkey*, no. 45388/99, § 62, 27 October 2009; see also, in particular, paragraph 10 of the UN Principles, paragraph 154 above).

178. The use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others (see *McCann and Others*, cited above, § 200, and *Andronicou and Constantinou*, cited above, § 192).

179. When called upon to examine whether the use of lethal force was legitimate, the Court, detached from the events at issue, cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life (see *Bubbins v. the United Kingdom*, no. 50196/99, § 139, ECHR 2005-II).

180. The Court must also be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them (see, among many other authorities, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B, and *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Though the Court is not bound by the findings of domestic courts and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact

reached by the domestic courts (see *Avşar*, cited above, § 283, and *Barbu Anghelescu v. Romania*, no. 46430/99, § 52, 5 October 2004).

181. To assess the factual evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained may also be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; and *Solomou and Others*, cited above, § 66).

182. The Court must be especially vigilant in cases where violations of Articles 2 and 3 of the Convention are alleged (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32). When there have been criminal proceedings in the domestic courts concerning such allegations, it must be borne in mind that criminal law liability is distinct from the State's responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions which are to be interpreted in the light of the object and purpose of the Convention, taking into account any relevant rules or principles of international law. The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Tanlı v. Turkey*, no. 26129/95, § 111, ECHR 2001-III, and *Avşar*, cited above, § 284)."

(β) Application of these principles to the present case

154. The Court reiterates that, when called upon to examine whether the use of lethal force was legitimate in a case in which individuals were injured or killed by State officials, it has limited capacity for establishing the facts. As a result, and in line with the principle of subsidiarity, the Court prefers to rely, where possible, on the findings of domestic authorities within the relevant jurisdiction, such as courts or a parliamentary body established for fact-finding purposes (see, for instance, *Perişan and Others v. Turkey*, no. 12336/03, § 75, 20 May 2010, and *Ceyhan Demir and Others v. Turkey*, no. 34491/97, § 95, 13 January 2005), without completely renouncing its supervising power, on the understanding that it may entertain a fresh assessment of the evidence (see *Kavaklıoğlu and Others v. Turkey*, no. 15397/02, § 168, 6 October 2015, and *Kukhalashvili and Others v. Georgia*, nos. 8938/07 and 41891/07, § 147, 2 April 2020). The Court's reliance on evidence obtained as a result of a domestic investigation and on the facts established within the domestic proceedings in question will largely depend on the quality of the domestic investigative process, and its

thoroughness and consistency (see *Finogenov and Others*, cited above, § 238, with further references).

155. The Court notes that the Administrative Court established that the State was responsible for A.N.'s death and that the Government accepted that during the demonstration on 21 January 2011 officers of the National Guard had used disproportionate lethal force. The Court sees no reason not to accept the conclusions of the Administrative Court or the Government's acknowledgment of the State's responsibility for the death of A.N. However, neither the Administrative Court nor the Government provided any details as to the circumstances that led to A.N.'s death and the acts or omissions on the part of State agents that had given rise to State responsibility under Article 2. In particular, it has not been positively proved at the national level that A.N. 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 Administrative Court held that on 21 January 2011 the officers of the National Guard had used their weapons in a manner that had been in violation of the Firearms Act. It concluded that the State authorities were responsible for the loss of life of A.N. as they had "failed to take all necessary measures to avoid the loss of life of the deceased" (see paragraph 87 above). The Court will therefore proceed on the basis, uncontested by the parties, that A.N. was killed as a result of the use of firearms by National Guard officers on 21 January 2011.

156. Within the context of the criminal proceedings against the officers of the National Guard from which the case of A.N. was severed, the Tirana Appeal Court concluded that the National Guard officers shooting into the air on 21 January 2011 (even given the fact that live bullets had been used) had constituted a generally lawful means of trying to repel the ongoing violent attacks and efforts by a group of protesters to break into the Prime Minister's Office. However, the assessment of the facts in those criminal proceedings was limited and did not yield a full account of the circumstances that had preceded the use of deadly force by the National Guard. Thus, as the Court has already established in its assessment under the procedural limb of Article 2, the prosecuting authorities failed to produce, during the course of the investigation or the proceedings on indictment, a precise chronology of the moment(s) at which the four primary victims were shot (see paragraph 117 above).

157. The Court notes that the demonstration cannot be viewed as having been peaceful, as was evidenced by the damage to property and the injuries sustained by multiple officers of the National Guard (see paragraphs 12-14 above). When at about 4 p.m. a group of protesters stormed the iron car gate on the north of the building and entered the yard beyond, the officers were confronted with acts of violence and a potential breach of the security cordons. That escalation was met first with a warning delivered by megaphone and then by an apparently successful attempt by a group of

officers, equipped with shields and truncheons, to push the protesters out of the yard. However, very soon afterwards, some officers started to use their firearms, firing blank and live bullets, which resulted in the death of three protesters on the spot, and an injury to A.N. that proved to be fatal.

158. The Court notes at this juncture that there was no discussion at the domestic level of whether greater use of non-lethal means of crowd dispersal could have been made. In that connection the Court notes that water cannon and tear gas were used only once, and the Government have not provided any explanation as to whether the security forces had had at their disposal sufficient means of non-lethal crowd control.

159. As regards the issue of whether the use of lethal force was legitimate, the Government accepted that it was not. The Court reiterates that the use of lethal force may only be justified on one of the grounds listed in Article 2 § 2 of the Convention, namely: (a) in defence of any person from unlawful violence; (b) to effect a lawful arrest or prevent escape; or (c) to quell a riot or insurrection. That being so, the first question that needs to be addressed is whether the use of firearms against the demonstrators on 21 January 2011 pursued any of the three above-mentioned legitimate goals. It is clear that the grounds under (b) were not applicable in the instant case. As regards the grounds under (a) and (c), the Court notes that at about 2.30 p.m. some of the protesters started to throw hard objects, including rocks, at the first cordon of regular police officers and that some of the officers sustained injuries (see paragraphs 12 and 16 above). However, the National Guard's use of firearms started shortly after 4 p.m. when a smaller group of remaining protesters stormed the yard of the Prime Minister's Office. It remains unclear in reaction to what exactly the officers started to discharge their firearms, since the protesters who broke through the security perimeter had already been pushed away by a group of officers equipped with shields and truncheons (see paragraphs 13 and 14 above). When taking into account the timeline of these events and the other evidence available in the case file, it has not been established that at the time when live bullets were fired the relatively small group of violent protesters presented a serious and immediate danger to any person – including the National Guard officers themselves or any State officials who may have been inside the building. Indeed, it appears that the primary rationale put forward during the national proceedings was that firearms had been used in defence of the security of the building. However, that in itself cannot be considered under the circumstances in question to constitute legitimate grounds for the use of lethal force. Moreover, there was no indication that there was an immediate and real risk for persons in the building or for any other persons.

160. The Tirana Court of Appeal concluded that the two persons for whose deaths the two National Guard officers were found criminally liable had been the unintended victims of shots fired into the air by the respective officers; those shots had ricocheted off hard objects before hitting the

respective victims. It also held that the manner in which the two defendants had shot into the air had constituted negligent behaviour in respect of the two victims; it furthermore held that the officers could have been expected to foresee the potential consequences of their decision to shoot live bullets into the air (see paragraph 62 above).

161. The Court further notes that it has never been alleged that A.N. presented any serious threat to National Guard personnel or to the guarded premises (contrast *Giuliani and Gaggio*, cited above, §§ 254 and 259; also compare *Kakoulli v. Turkey*, no. 38595/97, § 120, 22 November 2005). Indeed, it has been established that A.N. was standing on the sidewalk across the boulevard (opposite the Prime Minister's Building), and there is no indication whatsoever that he was in any manner involved in any violent acts (see paragraph 15 above).

162. Even if the Court accepts that the officers did nothing more than fire warning shots in the air, it has not been shown that this was carried out in a manner in line with the requirements of Article 2. In this connection the Court reiterates that, by definition, warning shots must be fired into the air, with the gun almost vertical, so as to ensure that the target is not hit (see *Oğur v. Turkey* [GC], no. 21594/93, § 83, ECHR 1999-III, and *Kakoulli*, cited above, § 118). That was all the more essential in the instant case as it concerned a demonstration attended by a large number of persons, and any negligent action on the part of the national guard officers in using firearms might have had a fatal result. It is accordingly difficult to imagine that firing into the air at a prudent angle could have struck the victim standing at the street level in the head, even as a result of a ricochet (compare *Oğur*, cited above, § 83).

163. The Court consequently considers that, even supposing that A.N. was killed by a bullet fired into the air, the firing of that shot was badly executed; no care was taken to minimise to the greatest extent possible any risk to the lives of non-violent bystanders, to the point of constituting gross negligence (ibid., § 83). Indeed, under the laws currently in force in Albania, shooting in the air is entirely prohibited as a method of crowd dispersal (see paragraph90 above).

(iii) Whether the organisation and planning of the policing operations were compatible with the obligation to protect life arising out of Article 2 of the Convention

(α) General principles

164. The relevant general principles are stated in *Giuliani and Gaggio* (cited above) as follows:

> "248. Furthermore, for the State's responsibility under the Convention to be engaged, it must be established that the death resulted from a failure on the part of the national authorities to do all that could reasonably be expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge (see *Osman*,

cited above, § 116; *Mastromatteo*, cited above, § 74; and *Maiorano and Others*, cited above, § 109).

249. According to its case-law, the Court must examine the planning and control of a policing operation resulting in the death of one or more individuals in order to assess whether, in the particular circumstances of the case, the authorities took appropriate care to ensure that any risk to life was minimised and were not negligent in their choice of action (see *McCann and Others*, cited above, §§ 194 and 201, and *Andronicou and Constantinou*, cited above, § 181). The use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that policing operations must be sufficiently regulated by national law, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force. Accordingly, the Court must take into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination. Police officers should not be left in a vacuum when performing their duties: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect (see *Makaratzis*, cited above, §§ 58-59).

250. In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, cited above, § 97; see also the Court's criticism of the "shoot to kill" instructions given to soldiers in *McCann and Others*, cited above, §§ 211-214)."

(β) Application of these principles to the present case

165. As regards the prior training of the officers involved, the Government claimed that the members of the National Guard had received special instruction as regards the use of lethal force during demonstrations and had been informed what specifics tasks they had to perform. The Court notes that this is not contested by the applicants.

166. As regards the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the operation was conducted, as well as to the way in which it unfolded. It notes in this connection that the protest in front of the Prime Minister's Office was planned and announced several days in advance, and written notice about the organisation of the protest, the gathering points of the protesters and their itinerary was submitted to the police (see paragraphs 6 and 7 above). Thus, it is clear that the authorities, the National Guard and the police were not dealing with an unplanned and spontaneous operation (compare *Michalikashvili and Others v. Georgia*, no. 32245/19, § 101, 19 January 2023; also contrast *Makaratzis*, cited above, § 69), and had sufficient time to prepare for the protest.

167. The police and the National Guard appear to have formulated plans to protect the Prime Minister's Office from any possible acts of violence

during the protest. However, on the day in question it appears that only very scant instructions were given in connection with the possibility of using lethal force– namely, that a group composed of six officers would be on standby, ready to open fire in the event of a breach of the respective cordons formed by the Second Unit and the Special Unit (see paragraph 8 above). There is no indication that precise and clear instructions were provided as to specific crowd-control measures or that there was adequate prior coordination in respect of those two factors between the National Guard and the police.

168. As to the availability of non-lethal crowd-control measures to be used against violent protesters, there was only a certain quantity of tear gas and one water cannon at the officers' disposal. This was clearly insufficient to ensure that a crowd could be dispersed without recourse to potentially lethal measures, as the crowd was not dispersed and continued to mount an attack characterised by a certain degree of violence. The use of tear gas apparently incapacitated the regular police cordon by the security perimeter of the Prime Minister's Office, because the regular police had not been issued sufficient chemical protective equipment (in the form of teargas masks), and some of them were also injured during the confrontation with the protestors. As a result, some of the police units retreated to the back of the building and did not return to their primary crowd-control positions. That left the armed National Guard units to handle all crowd control measures on their own – in immediate proximity to a violent group.

169. It also appears that no clear and precise instruction was provided as to who would give order to use lethal force (that is, live bullets) and who would make the assessment as to whether the use of firearms was absolutely necessary. In that connection the Court notes that the officers alleged that they had acted on their own motion, without having received any order to shoot; if true, that in itself indicates the chaotic way in which firearms were actually used by the National Guard officers. The absence of a clear chain of command would have been a factor that by its very nature would have increased the risk of some police officers shooting erratically (compare *Makaratzis,* cited above, § 68). The possibility that no appropriate orders were given by the commanders on the ground in such a volatile situation, as asserted by the officers during the national proceedings, also raises questions about the adequacy of the planning and the direct handling of the 21 January operations – including in respect of the use of potentially deadly force.

170. The Court also notes that the oral warning given prior to the use of firearms did not explicitly mention that the officers would shoot, but only that "action" would be taken "in accordance with the law" (see paragraph 15 above). Such a warning was vague and imprecise and could not be considered to have constituted an adequate warning prior to the use of potentially lethal weapons.

(iv) Conclusion

171. In view of the above-presented assessment, the Court concludes that the use of lethal force by National Guard officers, which resulted in the death of the applicants' close relative A.N., was not in compliance with the strict requirements of Article 2 of the Convention. The Court has found deficiencies in the legal framework governing the use of potentially lethal weapons in connection with crowd-control operations in general, serious defects in the planning and control of the event under examination, and a failure to demonstrate that the use of deadly force by the National Guard officers that resulted in the death of the applicant's family member was absolutely necessary, given the circumstances. Indeed, the respondent Government has accepted that such a use of force was disproportionate. There has accordingly been a violation of the substantive aspect of Article 2 of the Convention.

II. ARTICLE 41 OF THE CONVENTION

172. 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."

173. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

174. Article 46 of the Convention provides as far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

175. Under Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted under its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Guðmundur Andri*

Ástráðsson v. Iceland [GC], no. 26374/18, § 311, 1 December 2020, and the references therein).

176. The Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used under its domestic legal order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 295, 27 August 2019). Only exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, will the Court seek to indicate the type of measure that might be taken in order to put an end to a violation that it has found (ibid., § 296).

177. As regards general measures, the Court notes that the laws regulating the use of firearms have in the meantime been amended and that firearms may be used by State agents only when it is absolutely necessary to protect the lives of persons. Shooting into the air as a means of crowd dispersal is forbidden (see paragraph 90 above). These rules apply to the members of the National Guard (see paragraph 92 above). Since the use of lethal force by State agents and the related investigations raise complex legal and practical issues which may require a variety of measures, the Court will abstain at this stage from formulating general measures. It considers that the findings above will help to ensure the proper execution of the present judgment under the supervision of the Committee of Ministers (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 264, ECHR 2013 (extracts)). It is for the Committee of Ministers to assess the effectiveness of the measures proposed by the Albanian Government and to follow up on their subsequent implementation in line with the Convention requirements (see *Lindheim and Others v. Norway*, nos. 13221/08 and 2139/10, § 137, 12 June 2012).

178. As regards individual measures, the Court notes that the criminal investigation is still open. With that in mind it considers that the authorities should continue (in so far as this proves feasible) their efforts aimed at elucidating the circumstances of A.N.'s death, and at identifying and punishing those responsible, where appropriate.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of the procedural limb of Article 2 of the Convention;

4. *Holds* that there has been a violation of the substantive limb of Article 2 of the Convention.

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

Milan Blaško Registrar	Pere Pastor Vilanova President

APPENDIX

List of applicants:

Application no. 1049/17

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Rajmonda NIKA	1984	Albanian	Lezhë
2.	Amelia NIKA	2009	Albanian	Lezhë
3.	Mentila NIKA	2010	Albanian	Lezhë