

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

THIRD SECTION

DECISION

Application no. 57271/14
Ndue MARKU
against Albania

The European Court of Human Rights (Third Section), sitting on 23 September 2025 as a Committee composed of:

Úna Ní Raifeartaigh*, President*,
Darian Pavli,
Mateja Đurović*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 57271/14) 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") on 8 August 2014 by an Albanian national, Mr Ndue Marku ("the applicant"), who was born in 1966, lives in Tirana, and was represented by Mr M. Gjoci, a lawyer practising in Tirana;

the decision to give notice of the complaint under Article 7 of the Convention to the Albanian Government ("the Government"), represented by their Agent, Mr O. Moçka, General State Advocate, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant, who at the time was a lawyer at the Ministry of Defence, was convicted of abuse of office in connection with the 2008 explosion at the Gërdec facility (see *Durdaj and Others v. Albania*, no. 63543/09 and 3 others, §§ 5-13, 7 November 2023). The case concerns the foreseeability of his conviction.

A. Background

2. In December 2006 a US-incorporated company, Southern Ammunition Company ("SAC"), expressed interest in buying and decommissioning old ammunition in Albania. SAC submitted an offer to the Military Export-Import Company ("the MEICO"), a State company under the auspices of the Ministry of Defence.

3. The applicant, as the head of the Ministry of Defence's legal department, was part of the working group that had drafted the regulation governing the sale of ammunition for decommissioning purposes. On 14 March 2007 the Council of Ministers adopted Decision no. 138 "On the procedure for handling unused military weapons, technology and equipment" ("Decision no. 138").

4. Decision no. 138 regulated the sale of small-calibre ammunition for decommissioning purposes (see paragraph 49 below). The MEICO was entrusted with conducting the sale procedure in such cases, taking into account the buyer's experience in decommissioning and dismantling ammunition.

B. First contract

5. On 25 April 2007 the Minister of Defence issued an order designating SAC as the contractor for the decommissioning process.

6. On 6 June 2007 the MEICO and SAC signed their first contract which concerned ammunition of calibres of between 7.62 and 14.5 mm.

C. The second contract and subsequent events

7. On 1 September 2007 SAC submitted a second offer to the Ministry of Defence to enter into a contract concerning ammunition of calibres of between 20 and 152 mm.

8. On 22 November 2007 Colonel D.Ç., Director of the Ministry of Defence's Department of Military Logistics, prepared a draft order to be signed by the Minister of Defence. According to the draft order, ammunition of calibres of between 20 and 152 mm was to be sold to SAC for decommissioning purposes.

9. The draft order was subsequently approved by L.H., the Chief of the General Staff of the armed forces.

10. On 22 November 2007 the applicant, as the Ministry of Defence's lawyer, reviewed the draft order. Having identified no legal issues, the applicant inserted his initials to signify that he had checked the legal compliance of the document.

11. On 7 December 2007 the Minister of Defence signed the draft order, which became Order no. 2044. On 28 December 2007 the MEICO entered into a second contract with SAC.

12. On 15 March 2008 at around midday a massive explosion occurred at the weapons-decommissioning facility in Gërdec. Twenty-six people died and around 300 were wounded.

D. The trial

13. Criminal proceedings were instituted against thirty persons, including the applicant.

14. The applicant was charged with having committed abuse of office under Article 248 of the Criminal Code on account of his review of the draft order.

1. Military expert report

15. On 10 December 2008 the prosecutors asked military experts to determine whether the ammunition that had been sent for decommissioning in Gërdec was small-calibre ammunition as provided in Decision no. 138.

16. On 10 February 2009 the experts stated that calibre was not among the criteria used by the Albanian armed forces to categorise ammunition. Accordingly, the term "small-calibre" appearing in Decision no. 138 did not feature in other military documents.

17. The experts added that they had reviewed a number of training manuals and additional literature which classified ammunition according to calibre. A Russian publication of 1956 considered that ammunition of calibres of up to 70 mm was small-calibre ammunition, whereas ammunition of calibres of between 70 and 155 mm was medium-calibre ammunition. In a publication of 1985, the Albanian armed forces referred to that same classification.

2. Tirana District Court

18. The applicant denied the charge and alleged that the wording of Article 248 of the Criminal Code did not allow him to foresee which acts or omissions could engage his criminal liability.

19. On 12 March 2012 the Tirana District Court delivered its judgment, which ran to 573 pages and included a section on each defendant.

20. On the basis of the expert reports, the court found that the procedures used at the Gërdec facility had been unsafe. While the exact reason for the fire could not be established, the most probable course of the events based on the evidence gathered was that workers had been moving propellant using a pushcart which had recently been repaired using welding techniques and which therefore still retained heat.

21. On the basis of the evidence and the arguments examined, the court found the applicant, who was represented by a lawyer, guilty on account of his involvement in the preparation of Order no. 2044. He was sentenced to one year's imprisonment and ordered to pay a fine.

22. The court described the drafting process, as set out in paragraphs 8-11 above, and referred to the applicant as a co-author of the draft order, presumably on account of the fact that he had checked the legal compliance of the document. The court further considered that the legal deficiencies in the order were attributable to all the individuals who had contributed to its preparation, including the applicant.

23. The court identified the following incompatibilities between the order and the law.

(a) Calibre

24. Decision no. 138 provided only for the decommissioning of small-calibre ammunition, whereas the draft order also covered medium-and large-calibre ammunition.

25. The court attached significant weight to the fact that the applicant had been a member of the working group that had drafted Decision no. 138 (see paragraph 3 above), and that, consequently, he could not have been unaware of its wording.

26. The court noted that the distinction between various calibres had been made clear by the experts, who had concluded in their report that ammunition of calibres of above 70 mm could not be classified as small-calibre ammunition (see paragraphs 15-17 above).

(b) Contractor's licences, experience and equipment

27. The SAC did not possess a licence to carry out the decommissioning of medium- and large-calibre ammunition as required under Regulation no. 9603 of 18 September 2003 concerning the import and export of military equipment. Section 3.1 of that regulation defined a licence as "professional permission in writing that may be withdrawn and that allows the holder to carry out one or more activities relating to the export and import of weapons, ammunition, military equipment and the distribution and trade thereof". The authors of the draft order, including the applicant, had failed to request that SAC obtain the required licence. They had also failed to request documents attesting to the contractor's previous experience, the equipment to be used, and compliance with the safety requirements under Section IV (3) of Decision no. 138 (see paragraph 49 below).

3. Appeal

28. The applicant appealed and submitted that the court had failed to establish and delimit his professional purview. The applicant was a civil

servant, not a military officer, and his job was limited to giving legal opinions on the draft legal instruments submitted to the Minister of Defence.

29. As stated by the experts, there was no legal instrument defining which ammunition should be classified as small-calibre ammunition, and the lower court had not cited any such legal instrument. That question was technical in nature and not legal, as evidenced by the fact that the prosecutors had commissioned an expert report in order to clarify the matter.

30. The applicant submitted that the lower court had been wrong to refer to Regulation no. 9603, which governed imports and exports, in so far as the decommissioning process was carried out domestically. Moreover, the court had not explained why it had considered that the applicant's job had been to restate in the draft order licensing obligations that appeared elsewhere.

31. Similarly, it was not for the applicant to evaluate technical aspects such as SAC's experience, the equipment to be used or the advisability of doing business with it.

32. The applicant added that Article 248 of the Criminal Code, which provided for the offence of abuse of office, was ambiguously worded and incompatible with Article 7 of the Convention, in that it was a "blanket provision" referring to other laws in order to qualify the offence. He argued that the lower court had unreasonably expanded the scope of the offence, thus making it unforeseeable.

33. The applicant submitted that it was wrong that he had been convicted alongside the military officers, even though he had no technical military training. The court had failed to individualise the offence. As a lawyer, he did not have the technical expertise to question the specifications set out by the military officers and could not evaluate the subject matter of those decisions.

34. The applicant added that the MEICO employed its own legal officer and that he himself should not have been held liable for that lawyer's work.

35. Lastly, he contended that the court had failed to explain what elements had led it to conclude that the applicant had acted with criminal intent in carrying out the acts and omissions for which he had been convicted.

4. Tirana Court of Appeal

36. On 13 February 2013 the Tirana Court of Appeal upheld the applicant's conviction and his prison sentence; however, it overturned the fine.

37. As regards Y.P., who was head of the MEICO, the court rejected the prosecutors' charge of homicide. It found no indication that the defendant had intended to cause the incident or the deaths. The court found him guilty of a "breach of rules concerning explosive, flammable or radioactive substances" and of abuse of office. The court adopted an identical approach to the homicide charges against a number of the other defendants and to their lack of "intent".

38. As regards the applicant, in its discussion of the offence of abuse of office, the court stated that intent (*dashja*) was a necessary element.

39. The court found that Order no. 2044 was unlawful in so far as it was inconsistent with Decision no. 138 because it allowed for the decommissioning of ammunition of a certain calibre in respect of which the contractor was neither equipped nor licensed.

40. The Court of Appeal, like the District Court, also noted that the applicant had been a member of the working group which had drafted Decision no. 138 and that he could not therefore have been unaware of its contents. It found that, having failed to comply with Decision no. 138, the applicant had contributed to an inappropriate contractor having been selected for the decommissioning process.

41. In respect of L.H., the Chief of the General Staff of the armed forces and a member of the working group on Decision no. 138, who had also been indicted, the court stated:

> "The process [of decommissioning] governed by [Order no. 2044] drafted by the accused D.Ç., L.H., H.J. and [the applicant] is strictly military, with proper technical elements, and because of that and the experience and knowledge of the accused, who were high-ranking officers, the [order] should have been drafted in a way that reflected, without risk, the decommissioning process ..."

42. The CoA also found that "the MEICO was tasked with entering into contracts for carrying out [decommissioning] operations, by making a preliminary evaluation of the technical capabilities and safety measures of the decommissioning process".

5. Supreme Court

43. On 25 February 2013 the applicant lodged an appeal on points of law, reiterating his previous arguments. He added that the Court of Appeal had found that Order no. 2044 was "a strictly military" instrument with "proper technical elements" (see paragraph 41 above) and yet it had convicted him, a lawyer, in relation to its contents.

44. In addition, the applicant submitted that the Court of Appeal had clearly stated that it had been the MEICO's task to evaluate the capabilities and safety measures of the decommissioning process (see paragraph 42 above) and yet it had also convicted him for the failure to carry out such acts.

45. Lastly, he complained that the Court of Appeal had stated that intent was a necessary element of the offence (see paragraph 38 above) and yet it had failed to explain why it had concluded that the applicant had acted with criminal intent, while also finding that the explosion had been unintentional (see paragraph 37 above).

46. On 19 July 2013 the Supreme Court rejected the applicant's appeal as it was not based on grounds falling within its jurisdiction.

6. Constitutional Court

47. On 23 January 2014 the Constitutional Court dismissed the applicant's appeal, finding no violation of the *nulla poena sine lege* principle.

RELEVANT DOMESTIC LAW

A. Criminal Code

48. Article 248 of the Criminal Code, as in force at the material time, read as follows:

> "The deliberate commission [...] of actions or omissions in breach of the law, which constitutes a failure to properly perform one's duties, by a person exercising public functions and [...] that has caused damage to the lawful interests of the State, individuals, or other legal persons shall be punishable, if it does not constitute another offence, by up to seven years of imprisonment and a fine of three hundred thousand to one million [Albanian] lek."

B. Decision no. 138 of the Council of Ministers

49. Chapter IV of Decision no. 138 reads, in so far as relevant, as follows:

> "1. The Ministry of Defence, in order to reduce obsolete stocks of small-calibre ammunition that has been withdrawn from service, may carry out sales for the purposes of dismantling and decommissioning. This process shall include the sale of ammunition, supervision of the process of the decommissioning and dismantling of ammunition and of the by-products derived from them ...
>
> 3. The procedure for the sale of ammunition for dismantling and decommissioning purposes shall be carried out by the MEICO on a contract basis. When entering into contracts with different entities, the following shall be taken into account: the bidder's experience in the field of armaments and ammunition; the bidder's technical capacities; the type of technology used in the demilitarisation and decommissioning process; deadlines; environmental impact; compliance with security measures during the dismantling and decommissioning process; and the costs ..."

THE COURT'S ASSESSMENT

50. The applicant complained under Article 7 of the Convention that he could not have foreseen that he could be held criminally liable as a result of reviewing the legality of the draft Order no. 2044.

51. The Government disagreed.

52. The relevant principles have recently been summarised in *Saakashvili v. Georgia* (nos. 6232/20 and 22394/20, §§ 141-43, 23 May 2024).

53. The Court has already observed that where lives have been lost in the context of dangerous activities potentially engaging the responsibility of the State, there may be certain exceptional cases where an effective criminal investigation is necessary to satisfy the procedural obligation imposed by

Article 2. It has also held that, in respect of the Gërdec incident, the criminal investigation was adequate in that it generally succeeded in establishing the circumstances surrounding the incident and identified those responsible for it (see *Durdaj and Others v. Albania*, no. 63543/09 and 3 others, §§ 183-204, 7 November 2023).

54. The applicant's criminal liability, as determined by the Court of Appeal, rested on his involvement, as a legal adviser to the Ministry of Defence, in drafting the order authorising SAC to deal with ammunition which was not of a small calibre, and for which the company did not have proper licences, equipment or expertise. Firstly, contrary to the applicant's submissions, both matters raised questions of legality and were not purely technical in nature. Neither the fact that the domestic authorities had appointed military experts to examine the first matter, nor the experts' answers nor the Court of Appeal's finding in respect of L.H. (see paragraphs 15-17 and 41 above) have any bearing on the Court's conclusion in that regard. Secondly, in so far as the applicant disputed the Court of Appeal's conclusions, the Court reiterates that it is not its task to substitute its own view for that of the domestic authorities. Given the subsidiary nature of the Convention system, it is not the Court's function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention and unless that domestic assessment is manifestly arbitrary (see *Vasiliauskas v. Lithuania*, [GC], no. 35343/05, § 160, ECHR 2015).

55. In the present case, the Court discerns no such arbitrariness.

56. The applicant maintained that there existed no legal definition of small-calibre ammunition. However, the domestic courts concluded, in adversarial proceedings, that it was within the scope of his work as a legal adviser to advise the Minister of Defence that Decision no. 138 authorised the dismantling of small-calibre ammunition only.

57. Next, the legal question for the applicant to address remained whether SAC had the capacity to deal safely with the ammunition that was actually given for dismantling. While the initial assessment of these aspects may have been carried out by MEICO and the military officers, the courts established that it was the applicant's professional duty to ensure that - or at least enquire whether - the private contractor proposed for the dismantling process under Order no. 2044 had complied with the required legal conditions. The Court finds no grounds to conclude that such an interpretation of the relevant domestic law by the courts in the criminal proceedings at issue was either unreasonable or inconsistent with the essence of the offence of abuse of office (compare *Saakashvili*, cited above, § 152).

58. As regards the alleged lack of the element of intent, contrary to the applicant's submissions, the domestic court's finding that the explosion had been unintended is not relevant to *mens rea* in relation to his own omissions as chief legal adviser (as opposed to mere negligence in fulfilling his duty).

Although it would have been desirable for the domestic courts to have provided more extensive reasoning with regard to his intent, the degree of dereliction of duty on the part of the applicant was found to be such that it went beyond mere negligence.

59. To sum up, the Court is satisfied that there was a legal basis for the applicant's conviction and sentence for abuse of office. The conclusions drawn by the domestic courts as to the constituent elements of the criminal offence and their application to the applicant's conduct must be considered to have fallen within those courts' remit to interpret and apply national law, and the applicant, who was a high-ranking officer in the Ministry of Defence, could reasonably have foreseen that his conduct would render him criminally liable under those provisions.

60. The Court therefore considers that the complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 October 2025.

Olga Chernishova
Deputy Registrar

Úna Ní Raifeartaigh
President