



## Investigation into the murder of an Albanian in central Athens did not meet the procedural requirements set out in Article 2 of the Convention

In today's Chamber judgment<sup>1</sup> in the case of Gjikondi and Others v. Greece (application no. 17249/10) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 2 (right to life)** of the European Convention on Human Rights under its procedural limb.

The case concerned the murder of an Albanian national, Luan Berdellima, by an unidentified individual in central Athens. The applicants are the deceased's parents and sister.

The Court found in particular that the applicants had not been associated with the investigation into their relative's death to the extent required under the procedural limb of Article 2 of the Convention, that the competent authorities had not dealt with the case with the necessary diligence, and that the question of the existence of a racist motive had not been examined.

The Court also held that there was no evidence enabling the Court to conclude that the State had failed in its obligations under Article 34 of the Convention (right of individual application).

### Principal facts

The applicants, Ana Gjikondi and Sefit Berdellima, Violeta Berdellima et Ana Gjikondi, are Albanian nationals who were born in 1938, 1948 and 1972 respectively and live in Gramsh (Albania). They are the parents and sister respectively of Luan Berdellima, who was killed in the centre of Athens in 2004 by an unidentified individual.

On 11 August 2004 Luan Berdellima and two other Albanian nationals (V.D. and I.S.) had a verbal altercation with I.L. outside a pizzeria in the centre of Athens. I.L. then left the scene of the altercation. Some time later the same day, Luan Berdellima returned to the pizzeria to meet his friend V.D. He was struck in the face by a man who had dismounted from a motorbike, and was left lying unconscious on the ground. He was taken to hospital and died of his injuries on 25 August 2004.

On 26 August 2004, V.D. lodged a complaint with the public prosecutor with the Athens Criminal Court against I.L. and an unidentified person, alleging that they had committed the attack. He explained, in particular, that during their altercation I.L. had told them, in a threatening tone, *"you're going to find out who I am and what I'm going to do about you, and you'll regret ever having set foot in Greece"*. On 30 August 2004 the Sub-Directorate on Offences against Life and Property found that the incident had amounted to deliberate homicide committed by two unidentified persons, and transmitted the file to the prosecution, which ordered an investigation for the purposes of identifying the perpetrators. On 23 June 2005 the applicants applied to join the proceedings as civil parties. On 14 December 2007 the Indictments Division of the District Court committed I.L. for trial. That decision was upheld on appeal and at cassation level. According to the applicants, they were never notified of those decisions.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

On 15 and 21 January 2010 the Assize Court held two hearings in the absence of the applicants and of V.D. and I.S. The statement made by V.D. during the preliminary investigation was read out at the hearing, his appearance in court having been deemed impossible because he lived abroad. Before the Court the applicants allege that V.D. and I.S. had been intimidated and, fearing for their lives, had left Greece for Albania and had refused to testify. On 12 February 2010 I.L. was acquitted for lack of evidence.

Meanwhile, three further procedures were initiated – proceedings concerning alleged flaws in the main proceedings, an investigation into a police officer's possible involvement in the events and an investigation into alleged omissions by the judges responsible for the case – and subsequently discontinued.

## Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), Article 6 (right to a fair hearing) Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination), the applicants complained of the investigation and the judicial proceedings conducted in the present case. They also alleged that the authorities had committed several procedural errors, and had, in particular, failed in their obligation to ascertain whether the facts had been motivated by racism and omitted to question the Albanian witnesses. The Court decided to consider those complaints solely under Article 2.

Relying on Article 34 (right of individual application), they complained that they had on several occasions been refused access to the various case files in order to obtain copies and apply to the Court.

Relying on Article 46 (binding force and execution of judgments) the applicants invited the Court to ask the Government to reopen the criminal proceedings.

The application was lodged with the European Court of Human Rights on 26 March 2010.

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

Kristina **Pardalos** (San Marino), *President*,  
 Linos-Alexandre **Sicilianos** (Greece),  
 Aleš **Pejchal** (the Czech Republic),  
 Krzysztof **Wojtyczek** (Poland),  
 Armen **Harutyunyan** (Armenia),  
 Tim **Eicke** (the United Kingdom),  
 Jovan **Ilievski** (the Former Yugoslav Republic of Macedonia),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### Article 2 (right to life)

First of all, the Court noted that the proceedings had lasted about five and a half years (from 26 August 2004 to 12 February 2010), that the preliminary phase had lasted about four years and eight months, and that during that time, the prosecuting authorities had implemented no investigative measures between February 2005 and March 2006. Furthermore, the only suspect identified (I.L.) had not been questioned until July 2006, that is to say almost two years after the events. The Court considered that even though the present case had been somewhat complex and had involved taking statements from witnesses living abroad, the length of the preliminary phase, which had included a one-year period of inertia, might well have jeopardised the effectiveness of the investigation, despite the diligence subsequently displayed by the Assize Court.

Secondly, the Court noted that on 23 June 2005 the applicants had declared their intention to join the proceedings as civil parties. It observed, however, that none of the applicants had been present during the hearings before the Assize Court. On the one hand, Ms Gjikondi (the deceased's sister) had been heard as a witness in November 2004 and January 2005 and had then received no further information on the progress of the case. The Government submitted that she had not given her new address; the applicants pointed out that the Greek Helsinki Monitor had sent the investigating judge a fax in April 2007 informing him of their change of address. The Court noted from a copy of the fax in question that Ms Gjikondi had properly forwarded her address in Albania. On the other hand, Mr and Ms Berdellima (the deceased's parents) had been living in Albania throughout the criminal proceedings and had informed the competent authorities of that fact on 23 June 2005. They had informed the judicial authorities that their lawyers were prepared to ask their clients directly to travel to Greece, in due time, to give evidence. However, neither the decisions of the Indictment Divisions nor the summonses to the hearing before the Assize Court had been served on them.

The Court considered that the authorities had been under an obligation to keep the applicants informed of the progress of the investigation, without the applicants having to submit any requests for information. Even if Ms Gjikondi had received a summons to appear in court, the Court considered that the seriousness of the complaints before the domestic courts was such as to oblige the Assize Court at least to check whether the applicants had lost interest in pursuing the case or had waived their right to be heard. The Assize Court's judgment had not referred to the applicants' request to join proceedings as civil parties. The Court also noted that the applicants' request for a copy of the file of the main proceedings had been dismissed in February 2010. Moreover, the applicants had not received copies of several case papers and items of evidence gathered during the proceedings commenced on 17 November 2004 concerning the involvement of a police officer. Consequently, the Court rejected the Government's preliminary objection regarding the applicants' lack of victim status.

Thirdly, the Court noted that the judicial authorities had been alerted of the possibility of a racist motive when V.D. had lodged his complaint. However, no action had been undertaken to investigate the existence of such a motive. In particular, I.L. had never been questioned on his general attitude to the victim's ethno-cultural group, nor had the authorities sought to ascertain, for example, whether he had in the past been involved in violent acts with racial overtones or if he had had sympathies with extremist or racist ideologies. The Court held that the authorities ought to have conducted a more detailed assessment of all the facts in order to uncover a possible racist motive.

Consequently, the Court found that the applicants had not been associated with the investigation into their relative's death to the extent required under the procedural limb of Article 2 of the Convention, that the competent authorities had not assessed the case with the requisite level of diligence, and that the question of whether there had been a racist motive had not been examined. **It therefore found a violation of Article 2 of the Convention.**

### Other articles

The Court saw no evidence before it to conclude that the State had failed in its obligations under Article 34 (right of individual application) of the Convention.

Under Article 46 (binding force and execution of judgments), the Court pointed out that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposed 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 in its domestic legal order.

### Article 41 (just satisfaction)

The Court held that Greece was to pay each of the applicants 13,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 jointly in respect of costs and expenses.

*The judgment is available only in French.*

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