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

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Significant delays in prosecution of former Minister of Defence in 2008 Gërdec ammunition-decommissioning facility explosion

In today's **Chamber** judgment[1] in the case of Durdaj and Others v. Albania (applications nos. 63543/09, 46707/13, 46714/13 and 12720/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of the procedural aspect of Article 2 (right to life) of the European Convention on Human Rights.

The case concerned an explosion, on 15 March 2008, at a facility in Gërdec set up by the State authorities for dismantling decommissioned and obsolete weapons, machinery and equipment of the armed forces. In total, 26 people died (including the seven-year-old son of two of the applicants in this case) and over 300 were injured (including 15 applicants).

The Court found that the applicants had been deprived of the possibility to participate effectively in the criminal trial. Moreover, the criminal proceedings against the former Minister of Defence, F.M., for abuse of office are still pending, thus leaving the applicants without a final conclusion as to his responsibility more than 14 years after the explosion. The national prosecuting authorities had provided no convincing explanations for their failure to resume the investigation immediately after F.M.'s re-election as MP, thus raising serious questions as to their willingness and diligence to pursue the matter and creating a potential for impunity. While the Court was not taking a stance as to his criminal responsibility, it considered that the applicants as well as the general public had the right to know not only the circumstances in which the Gerdec tragedy had taken place, but also the exact role the former Minister of Defence had played in it.

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

Principal facts

The applicants are 17 Albanian nationals who were born between 1951 and 2002 and live in Gërdec, Tirana, Berat and Vore (all in Albania).

In 2007, the Albanian authorities embarked on the process of the decommissioning and destruction of a stockpile of an estimated 185,000 tonnes of ammunition stored in some 1,300 depots across the country. The armed forces were given responsibility for securing and protecting the decommissioning facilities, while the Military Export-Import Company ("MEICO", a company established by government decision under the auspices of the Ministry of Defence) was entrusted with entering into contracts and with general oversight over the decommissioning activity.

In April 2007 an area of land under the administration of the Ministry of Defence located in Gërdec (Vore) was made available and MEICO was entrusted with leasing it to a US-incorporated company, Southern Ammunition Company ("SAC"), for the decommissioning process. Contracts were signed for SAC to provide the necessary machinery and to manage and control the dismantling and decommissioning of the ammunition, subject to conditions and technical safety measures laid down

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.

in the relevant Albanian legislation. In turn, SAC subcontracted the work to Albademil Ltd., a limited liability company incorporated in Albania.

On 15 March 2008, a massive explosion occurred at the Gërdec facility. The explosion resulted in the deaths of 26 people, and injuries to around 300. Two of the applicants (applications nos. 63543/09 and 12720/14) are the parents of Erison Durdaj, aged seven at the time, who with his cousin, Roxhens Durdaj (the first applicant in application no. 46714/13), was dropping off lunch for Roxhens's mother who worked at the facility. Erison Durdaj was grievously injured in the explosion and died as a result on 3 April 2008. Roxhens Durdaj, then 11, sustained serious burns. The 13 applicants in application no. 46707/13 and the second applicant in application no. 46714/13 (Alketa Hazizaj), were working at the facility and were grievously wounded in the explosion.

Three expert examinations were carried out in the context of the ensuing criminal investigation: the first by the International Response Team (IRT) of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) – the primary US federal unit of investigation of explosives incidents and enforcement of relevant laws and regulations and which has national and international investigating authority –; the second was conducted by the Prosecutor General's Office; and the third by the military. The three reports established that neither the choice of the site as a weapons-decommissioning facility, nor its operation had complied with licencing and safety rules.

The work processes at the Gërdec facility had been chaotic and the decommissioning activities had been carried out without the required licences; the employees had had no appropriate training; the activities had been carried out in violation of military technical regulations; and the setting up of the Gërdec facility and its operation had not been monitored or supervised by the responsible State authorities.

The investigation as a whole resulted in the filing of indictments against 29 persons, including a former Minister of Defence, F.M. who, at the time of the explosion, was a member of parliament (MP), but whose immunity was lifted in June 2008, the head of the MEICO, the manager and site manager of Albademil Ltd, the Chief of the General Staff of the armed forces and a number of Ministry of Defence employees and military personnel, as well as Albademil Ltd itself. However, following the re-election of F.M. as an MP, which gave him renewed parliamentary immunity, the prosecution did not seek fresh authorisation from Parliament to waive that immunity and the Supreme Court discontinued pursuit of the criminal proceedings against him on 14 September 2009.

During the proceedings, the applicants in applications nos. 63543/09 and 12720/14 lodged a civil claim against some of the accused. On 22 May 2009 the Supreme Court severed their civil claim from the criminal proceedings. One of the applicants complained to the Constitutional Court that the disjoinder of the civil claim from the criminal proceedings had deprived her of any opportunity to participate in the criminal proceedings and trial by, for example, cross-examining witnesses, submitting additional documentation, commissioning expert reports and applying to have additional witnesses interviewed, thereby violating the principle of the adversarial nature of judicial proceedings. The Constitutional Court dismissed her complaint.

Twenty-four of the accused were found guilty of criminal offences such as violation of safety rules, production and possession of arms and ammunition at work, abuse of duty and destruction of property by negligence. The time they spent in prison ranged from six years and seven months to ten years and 27 days.

Since 26 October 2012, parliamentary immunity has not been a bar to the institution or continuation of a criminal investigation in respect of an MP. Although the applicants made several attempts to re-institute criminal proceedings against F.M. for abuse of office, they were resumed only in 2021, after a nine-year gap in his prosecution. The criminal proceedings against him are still pending.

Complaints, procedure and composition of the Court

The applicants complained under the procedural and substantive aspects of Article 2 (right to life) of the European Convention on Human Rights that the State had failed to protect their or their next of kin's right to life and that the criminal investigation into the incident had not been effective.

The applications were lodged with the European Court of Human Rights on 9 November 2009, 28 May 2013 (two applications), and 29 January 2014. Due to the similar subject matter of the applications, the Court examined them jointly in a single judgment.

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

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Ivana **Jelić** (Montenegro),
Darian **Pavli** (Albania),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),

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

Decision of the Court

Article 2

Procedural aspect (effective investigation/right to life)

The Court noted that the Prosecutor General's Office had immediately started an investigation after the explosion and had sought assistance from the ATF-IRT. Three expert reports had served as the basis for the indictments and had been used as evidence in the trial against the accused. The Court concluded that the investigation had been adequate as it had generally succeeded in establishing the circumstances and relevant facts and had identified those responsible. Even though no-one had been ultimately convicted of homicide, their convictions had all been related to the Gërdec incident, to life-endangering acts and to the protection of the right to life within the meaning of Article 2.

With respect to the criminal proceedings, the Court took into account that the case had not involved intentional killing, but grave negligence. While it was true that some of the sentences had been subsequently reduced, the reductions in the initial sentences had not rendered them disproportionately lenient. At the same time, it also noted that the Supreme Court had severed the applicants' civil claim from the criminal proceedings before the trial before the Tirana District Court had even begun and that, once the trial started, the applicants had not been informed of any of the steps taken, of any of the hearings and had not been invited to participate in the trial in any capacity. Thus, in the course of the criminal proceedings, the applicants had not had any procedural rights.

The Court has already established that a State's procedural obligation under Article 2 of the Convention requires a criminal-law response, and that victims have to be given an opportunity to participate effectively in the criminal proceedings, including at the trial stage, to the extent necessary to safeguard their legitimate interests. This cannot be compensated for by the possibility for the applicants to lodge a civil claim in separate civil proceedings, since those proceedings would not examine the criminal responsibility of the accused.

Furthermore, the criminal proceedings against F.M. for abuse of office – plagued by significant delays, inertia of the prosecuting authorities and many futile attempts of the applicants to bring him to justice – are still pending. The applicants have thus been left without a final conclusion as to his responsibility more than 14 years after the explosion. The national prosecuting authorities had

provided no convincing explanations for their failure to resume the investigation immediately after F.M.'s re-election as MP, thus raising serious questions as to their willingness and diligence to pursue the matter and creating a potential for impunity. Although under Article 2, a State is not obliged to prosecute the individuals whom a victim wishes to see held to account, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. While the Court was not taking a stance as to F.M.'s criminal responsibility, it considered that, given the evidence collected against F.M., the applicants as well as the general public had the right to know not only the circumstances in which the loss of life and severe injuries had taken place, but also the exact role the former Minister of Defence had played in the events.

The Court concluded that there had therefore been a violation of the procedural aspect of Article 2 of the Convention.

Substantive aspect (protection/right to life)

As regards the applicants' complaint that the State authorities had failed to take adequate operational and safety measures, the Court had to ascertain whether the award of damages might, in principle, be regarded as satisfying the State's obligation in respect of the substantive aspect of Article 2.

Indeed, three of the applicants had lodged civil actions with the Tirana Administrative Court of First Instance. In awarding them compensation, the Administrative Court found that the State authorities had not taken adequate preventive measures to ensure that minimal safety standards were observed at the Gërdec facility. It concluded that the hazardous activities at the facility had resulted in the death of the son of two of the applicants and injuries to the others. In the Court's view, these findings amounted to an acknowledgment in substance of the State's responsibility for the death of Zamira Durdaj's and Feruzan Durdaj's son and the risk to Sabrije Picari's life.

The Court found that, by not lodging an appeal, these applicants had tacitly accepted that they were satisfied with the sums awarded and had therefore renounced further use of the national remedies. Furthermore, the pecuniary and non-pecuniary damage awarded had not been lower than what the Court has awarded under Article 41 of the Convention in comparable cases. It followed that they could no longer claim to be victims of the violation claimed under this aspect of Article 2 of the Convention.

The applicants who had not brought a civil claim against the State in respect of their substantive complaint under Article 2 had not used all legal avenues available at national level and therefore had not provided the national authorities with the opportunity to address (and thereby prevent or put right) the Convention violation alleged against them. Accordingly, the Court rejected their complaint under this aspect of Article 2 of the Convention.

Just satisfaction (Article 41)

The Court held that Albania was to pay 12,000 euros (EUR) jointly to Zamira Durdaj and Feruzan Durdaj and EUR 10,000 each to the other applicants in respect of non-pecuniary damage, and EUR 8,000 jointly to all the applicants in respect of costs and expenses.

Separate opinion

Judge Grozev expressed a concurring opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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