

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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**DH-DD(2013)1028**

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Meeting: 1186 meeting (3-5 December 2013) (DH)

Item reference: Action plan (19/08/2013)

Communication from Albania concerning the case of Laska and Lika against Albania (Application No. 12315/04).

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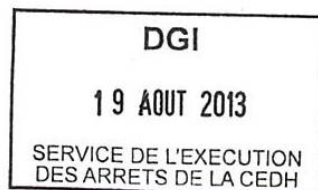
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Réunion : 1186 réunion (3-5 décembre 2013) (DH)

Référence du point : Plan d'action

Communication de l'Albanie relative à l'affaire Laska et Lika contre Albanie (requête n° 12315/04)  
**(anglais uniquement)**

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### ACTION PLAN

Execution of the judgment of the European Court of Human Rights  
**Laska & Lika v. Albania**, (12315/04), judgment of 20/04/2010, final on 20/07/2010

#### I. Case description

1. The case of Laska and Lika, concern the unfairness of criminal proceedings due in particular to the irregularities at the investigation stage, in convicting the applicants that relied on the positive identification of the applicants made by eyewitnesses at the identification parade. However, neither the assistance provided subsequently by a lawyer nor the adversarial nature of ensuing proceedings could cure the defects which had occurred during the criminal investigation (violation of Article 6 § 1);

#### II. Individual measures

##### *Payment of just satisfaction on case Laska & Lika*

Pecuniary damage	Non Pecuniary damage	Costs and expenses	Total
	4 800 Euro x 2		9 600 Euro
Paid on dated 18/10/2010			

2. The request of applicants Vladimir Laska and Artur Lika with object "Review of the decision no.64, date 24.05.2002 of the district court of Puke", has been registered by the Supreme Court by no. 53204-01468-00-2010. The Supreme Court held the decision no.01468/2010, date 7.03.2012, deciding:

- To quash the decision no. 793 date 26.12.2002 of the Supreme Court
- To quash of the decision no. 145 date 09.09.2002 of the Appeal Court of Shkodër
- To remit the case for fresh examination before the Appeal Court of Shkoder with another judicial body

3. The applicant Artur Lika was arrested on date 31.03.2001 and henceforth was sentenced to 13 years imprisonment by decision no.64, date 25.05.2002 of Puka District Court according to articles 140, 25, 278/2 of the Criminal Code<sup>1</sup>. While was imprisoned, he benefited 6 months sentence reduction. Also, he asked to be transferred from high security prison of Burrel to another prison of ordinary security. The district court of Mat gave consent to his request and decided to transfer him in an ordinary security prison by decision date 7.10.2008.

<sup>1</sup> Decision became final on date 9.09. 2002 according to decision of Shkoder appeal court no.145, date 9.09.2002

4. The applicant Lika profited early release on parole from the prison of Burrel date on 25.02.2010 by decision no.12, date 25.02.2010 of Mat district court under probation supervision for the rest of his sentence in jail 2 years, 7 months and 17 days. This decision became final by decision of Tirana appeal court no. 406, date 4.04.2011. Also we inform that the prosecution office has not lodged a request before the Supreme Court against this decision. Currently, the applicant Lika is free under the terms of early release on parole<sup>2</sup>.

5. The applicant Vladimir Laska was arrested on date 31.03.2001 and henceforth was sentenced to 13 years imprisonment according to the decision no. 64, date 25.05.2002 of Puke district court. While was imprisoned, he benefited 7 months reduction from his sentence. Also, he asked to be transferred from high security prison of Burrel to another prison of ordinary security. The Mat district court gave consent to his request and decided to transfer him to an ordinary security prison by decision no.116, date 26.12.2006. This decision became final by decision of Tirana appeal court no. 616, date 19.09.2007.

6. The applicant Laska profited early release on parole from the prison of Burrel by decision<sup>3</sup> no.2, date 24.02.2010 of Mat District Court, according to the criteria set out in article 64 of Criminal Code<sup>4</sup>, under probation supervision for a period of 3 years. Such decision, although was quashed by decision no.798, date 20.10.2010<sup>5</sup>. Therefore, the applicant required before the Supreme Court the suspension of the criminal decision no.64, date 24.05.2002 of the Puka district court. The Supreme Court decided by Order No.13, Date 9.02.2012 to suspend the decision<sup>6</sup>. Accordingly, the applicant is currently free<sup>7</sup>.

7. The proceedings before the retrying court, which is the Appeal Court of Shkodër was registered on date 28.06.2012. Finally, the retrying Court by decision no. 224, date 17.06.2013 decided to quash the conviction decision no.64, date 24.05.2002 of the Puka District Court and to dismiss the case under the reasons that there was lack of sufficient evidences. Therefore both applicants as formerly released on parole now are free from any criminal charges. The State Advocacy has addressed a letter to the Court asking for updated information in case the right for recourse before the Supreme Court is exercised by prosecution office and in such case to keep being informed on any following measures regarding the transferal of the case to the

<sup>2</sup> Referring to the response of the general department of prisons by official letter Prot no. 3530/5, Date 22.05.2012, also to the official letter no. 1068/1, date 13.02.2013.

<sup>3</sup> Referring to such decision, applicant Laska has complied with the criteria of early release on parole like as: has served more than ¼ of his sentences in jail; has accomplished his social integration; has accomplished his rehabilitation; he is not a recidivist on committing crimes; his family economic conditions are not sufficient; his parents health conditions are very bad.

<sup>4</sup> Article 64 "The prisoner could be released earlier and on bail only for specific reasons, if by his behavior and work tells that by the time of punishment, the purpose of his education is fulfilled, and when he has spent: - not less than ¼ of the punishment for crimes that have the punishment by imprisonment from 5 to 25 years; In the time spent in jail, the timing benefited by amnesty or forgiveness is not counted. It is not allowed to release early and on bail a recidivist convicted for deliberately committed crimes. Early and on bail release is revoked by the court, when the convict of a deliberately committed crime, during on bail period, perpetrates another penal act (on purpose), as much serious or more serious than the first one; in this case, the dispositions of blending the punishments could be applied.

<sup>5</sup> Find enclosed herewith.

<sup>6</sup> Find enclosed herewith.

<sup>7</sup> Idem, footnote 7.



Supreme court in due time. Therefore, given the fact that the Decision no.224, date 17.06.2013 of the Shkoder Court of Appeal cannot be considered final yet, until the right for recourse before the Supreme Court shall be exhausted, we will keep the Committee informed in the due course with the updated information regarding this case.

### **III. General measures:**

#### **1. Publication**

8. The judgment of the European Court for the cases Laska & Lika has been translated in Albanian language, has been published in the Official Gazette and has been disseminated to all the relevant judicial authorities.

#### **2. Legal effects**

9. The judgments of ECtHR have direct effect in the domestic legal system based on the article 122 and article 17/2 of the Constitution, also according to article 46 of ECHR.

#### **3. Legislative measures**

10. In view of the problematic encountered in this judgement, The Ministry of Justice has considered to proceed with the amendment of Criminal Procedure Code in its article 450, in order to provide as a legal criteria the reopening of proceedings on criminal cases, according to the ruling of ECtHR judgements finding violations in respect of the guarantees to the right for a fair trial. The outcome of the amendment process is awaited to be completed in the forthcoming 4 months of this year. Therefore, the draft act shall be forwarded for adoption before the Council of Ministers until the June of 2013<sup>8</sup>.

11. In addition, by letters No.695/1, Date 7.02.2013 as well as by letter with Prot No. 627/109, Date 29.03.2013 has been proposed a legal initiative to the Ministry of Justice aiming to review the provisions of Criminal Procedural Code that deal with the procedures for recognition of object and recognition of persons, following the ruling of the European Court in the case Laska and Lika. Such amendment aims to make obligatory the presence of the lawyer in such proceedings in safeguard of defendant's rights. As such, shall be considered by the working group in charge with the amendment of the CPC<sup>9</sup>.

12. By the same letter was asked for the training of prosecutors and the officers of the judicial police in relation to the precise understanding of the difference between the recognition of persons from the recognition of objects.

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<sup>8</sup> Referring to the official letter of the Ministry of Justice, No. 695/1, Date 7.02.2013.

<sup>9</sup> Idem, footnote 13

13. All the above mentioned proposals related to the amendment of Criminal Procedural Code shall be taken into account by the working group which was set up in the Ministry of Justice for the preparation of amendment of the Criminal Procedural Code. The draft law on the amendment of this Code shall be ready for approval until June 2013.

#### 4. Other general measures

14. By letter by Prot no.311/3, date 19.03.2013 has been send information to the Prime Minister; Minister of Justice; Minister of Foreign Affairs, on the Decision taken by the Committee of Ministers on the group of cases Caka.

15. Letters<sup>10</sup> has been send to the Ministry of Justice to take into account the problematic which has been raised in the ECtHR judgments on criminal cases, with the view to take concrete preventive measures.

16. In follow up of judgment of ECtHR on "Laska & Lika" case, the General Prosecution Office issued the Circular no.3942/3 Prot, Date 27.01.2011, which had been delivered to all the local prosecution offices. The Circular aimed to instruct and guide the prosecutors to carry their duties during in compliance with the ruling of ECtHR in order to avoid the same violations happen in the future again. Such circular have been implemented rigorously by all the prosecution district offices according to letter no.486/1, date 14.02.2013 of the General Prosecution Office of Tirana,

17. Aiming to find redress of the violations found in the judgments' of ECtHR, the School of Magistrates has considered to include in the curricula for the initial training and the continuing training of judges, specific topics on issues concerning the ECtHR hitherto judgments on criminal cases related to article 6 of ECHR. In addition, the School of magistrates has organized seminars, round tables for identification of main key issues that need to be resolved according to the Courts' ruling. Also, the training of the judges, police officers, prosecutors, with the assistance of the General State of Advocate shall have in its focus the due importance of the presence of the defendant before the trial, always he asks for that.

18. In addition, other round tables and seminars have been organized aimed at bringing into discussion topics related to the present case. First we mention the Round Table organized in Tirana on 5 October 2012 "On certain aspects of the implementation of European Convention of Human Rights", organized by the State Advocacy, in cooperation with other stakeholders. The participants in the Round Table were representatives from the Supreme Court and Constitutional Courts. Secondly, we mention the round table date on 9.05.20013 that took place in the Ministry of Justice under the organization of General State Advocate, where were present participants from public institutions that deal with the problematic of this

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<sup>10</sup> Letter by Protocol no.627/88, date 8.02.2013 and letter by prot no.627/109, date 29.03.2013.

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case. More concretely, there were present representatives from the Legislation Codification Department and Department for the Inspection of Judiciary in the Ministry of Justice; High Council of Justice; School of Magistrates; the Supreme Court; The State Police Department.