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Meeting: 1514th meeting (December 2024) (DH)

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Communication from Albania concerning the case of Nika v. Albania (Application No. 1049/17)

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Communication de l'Albanie concernant l'affaire Nika c. Albanie (requête n° 1049/17) (**anglais uniquement**)

ACTION PLAN*Execution of the judgment of the European Court of Human Rights**Application No. 1049/17**Nika v. Albania**Judgment of 14.11.2023, Final on 14/02/2024***A. Case description**

The case concerned the fatal shooting of applicants' relative by State agents during a political protest that degenerated into violence in front of the Prime Minister's office in 2011, resulting in the death of applicants' relative from a gunshot wound. The applicants alleged in particular that the commander-in-chief of the National Guard, in charge of protecting the Prime Minister's office, had ordered his men to open fire on the protestors.

The European Court of Human Rights held, unanimously, that there had been a breach of the substantive and procedural limbs of Article 2 of the European Convention on Human Rights.

As regards, the procedural aspect of Article 2, the Court has found that the investigation could not be regarded as an effective one capable of leading to the identification and punishment of those responsible. The Court has identified general shortcomings in the early stages of the investigation, including the deletion of video recordings of the incident and no follow up of key lines of enquiry such as bullet marks found at human height on the iron fence surrounding the Prime Minister's office. These deficiencies raised doubts as to whether the executive authorities had been committed from the outset to shedding full light on the serious events and to not diverting or interfering inappropriately with the criminal investigation. Furthermore, the Court has 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.

The Court has found a violation of the substantive aspect of Article 2 of the Convention. The Court concluded 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. The Court has noted that the Government itself has accepted that such a use of force was disproportionate.

The Court abstained from formulating general measures, noting that the domestic laws regulating the use of firearms had in the meantime been amended prohibiting shooting in the air as a means of crowd dispersal. As regards individual measures, the Court, noting that the criminal investigation was still open, considered that the authorities should continue (in so far as that proved feasible) their efforts aimed at elucidating the

circumstances of A.N.'s death, and at identifying and punishing those responsible, where appropriate.

B. Individual measures

1. Payment of the just satisfaction

The applicants did not submit a claim for just satisfaction.

2. Other individual measures

As regards individual measures, the Court noted that the criminal investigation is still open. With that in mind it considered 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.

In this regard, the Government would like to inform the Committee of Ministers on the measures taken to address the findings of the Court in relation to the general and specific shortcomings in the criminal investigations into the death of the applicant's relative.

Preliminary investigations are ongoing (on the events of 21 January 2011). Criminal proceedings no.138, was registered on 15.07.2024 in the Special Prosecution Office Against Corruption and Organized Crime, following the Decision (69), dated 12.03.2024, of the Criminal College of the Supreme Court (submitted to the Special Prosecution's secretariat on 11.07.2024), which ordered the Special Prosecution Against Corruption and Organized Crime to register the criminal proceeding for the complaint dated 16.02.2023, by the citizen Rajmonda Nika. The Decision of the Supreme Court take into consideration the judgment of the European Court of Human Rights (dated 14 November 2023 — the case of Nika v. Albania), where the ECHR found violations of Article 2 of the European Convention on Human Rights, both in its substantive and procedural aspects.

In addition, by Decision dated 23.07.2024, due to material competence, the acts of criminal proceedings no.285 initiated in 2011, were transmitted from the Prosecution at the First Instance Court of General Jurisdiction Tirana to the Special Prosecution. Criminal investigation no.157 dated 29.7.2024 was registered.

By Decision dated 29.07.2024, the Head of the Special Prosecution Against Corruption and Organized Crime, based on Article 79.1 "a" and "b" of the Criminal Procedural Code, decided to merge criminal proceeding no.157/2024 with criminal proceeding no. 138/2024.

Preliminary investigations are ongoing and the Government will inform the Committee of Ministres, as soon as more information will be available.

C. General measures

As regards general measures, the Court abstained from formulating general measures, but noted that 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. It considered that the findings of the Court will help to ensure the proper execution of the judgment under the supervision of the Committee of Ministers.

1. Effectiveness of the investigation

The Government in respect of the shortcomings identified by the Court in the criminal investigation refers to the submissions of the Albanian authorities in the case of “Durdaj and Others v. Albania”.

Following the Constitutional amendments of 2016, the prosecutorial system changed from a centralized system to an independent body, ensuring the coordination and control of its actions as well as respecting the internal independence of prosecutors to investigate and prosecute, in accordance with the law. Prosecutors exercise their functions, act, submit requests and make decisions independently based on the principle of legality, objectivity and impartiality.

Procedural independence of the prosecution is ensured in article 24 and 25 of the Criminal Procedural Code stipulating that the prosecutor is independent in the exercising of his functions. Instructions on a concrete case may be issued by the superior prosecutors, as foreseen in the law on the Organisation and Functioning of Prosecution, but they are not mandatory.

This reform led to a profound reform of the legal and institutional framework of the judiciary and prosecution services and put in place legal guarantees to strengthen the independence of the judiciary and prosecution, including the creation of the Specialised Structure for Anti-Corruption and Organised Crime which comprises the Special Prosecution Office and the National Bureau of Investigation (independent from Prosecutor General). SPAK is in charge of investigating and prosecuting criminal offences of corruption, organised crime and criminal charges against high-level officials. The SPO is operational since December 2019.

This new structure of the prosecutorial system and the justice system in general, was designated to increase the functioning and efficiency of criminal justice, and internal and external independence.

2. Measures to address the deficiencies in the legal framework governing the use of firearms in the context of crowd-control operations.

The Court noted in paragraph 177 of the judgment that the legal framework that regulates the use of firearms have in the meantime been amended and that firearms may be used by State agents only when it is necessary to protect the lives of persons. Shooting into the air as a means of crowd dispersal is forbidden.

In this regard the Government emphasizes that subsequent to the events of 21 January 2011, major amendments to the legal framework governing the use of firearms and control of crowds during demonstrations have been introduced.

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), which entered into force on 23 August 2014. It introduced a number of important safeguards concerning the use of firearms. Article 4 of this law provides the conditions and general principles for the use of firearms by state agents and other entities entitled by law to use firearms.

Article 4.1 of the new law no. 72/2014 mandates the use of firearms by state agents or other entities entitled by law only when “absolutely necessary” and as a “measure of last resort” to prevent or neutralize violent and dangerous actions of persons which poses high threat to the life and health of that person and the life and health of third parties and only when other means of the use of force have been ineffective.

Article 7 prohibits the shooting of firearms into the air, as a mean to disperse a demonstration, and article 12 requires all police officers to undergo trainings on the use of firearms.

The Government considers that the wording of Article 4.1 is in full conformity with the standards laid down in the Convention and the Court’s case law. It refers explicitly to the general principles of “absolutely necessary” and a “measure of last resort” in accordance with standards developed by the Convention and the ECtHR case-law.

In addition, article 8¹ sets out an exhaustive list of situations in which State agents or other entities entitled by law could make use of firearms which is compatible with the Convention. On the other hand, article 9 specifies that the use of firearms should only be envisaged as a last resort and had to be preceded by warning shots, or in extreme situations shots should be fired aiming the lower parts of the body.

Furthermore, 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).

Article 4 states the principles of the National Guard's activity, highlighting the principle of respecting fundamental human rights and freedoms and that of proportionality.

¹ The right to use firearms”, it is specified that:

Police officers and other subjects, in fulfilling their respective functional duties, may use firearms if there is no other way:

- To protect their own life and health, as well as the lives of other persons from unavoidable attacks or to prevent the continuation of a criminal act that poses a high risk to life;
- To arrest or prevent the escape of a person who violently resists lawful orders given by the police officer and whose actions pose a clear and real risk to the life of the police officer or other persons;
- To prevent the escape from a place of mandatory residence of a person who poses an unavoidable risk to the lives of others and who does not obey lawful orders given by the police officer;
- To repel an attack on a public or private object if it is clearly visible that the life of the person securing it, or of other persons, is in danger.

Article 7.1(nj) of this law states that the use of arms by the national guard is regulated in accordance with the provisions of the law no. 72/2014, which as explained above refers to the principles of “absolutely necessary” “measure of last resort” and “strict proportionality.

Pursuant to the 2014 Use of Firearms Act, on 14 October 2015 the Government adopted a regulation on the use of firearms (Decision of the Council of Ministers No. 839, dated 14.10.2015 "On the approval of the regulation 'On the use of firearms) where among others in Article 10 " Avoidance of public danger" it is stated that: “Firearms cannot be used under any circumstances in the case of peaceful gatherings/protests, whether they are lawful or unlawful."

By Decision of the Council of Ministers No. 303, dated 26.05.2021, another regulation was adopted on "The type of weapons and neuromuscular substances and other means of use of force by the State Police ".

In implementation of the aforementioned acts, the General Directorate of State Police has adopted a number of regulations and standard working procedures for the management and control of crowds during demonstrations, the most important of which is the Standard Operating Procedure adopted on 16.8.2023 “Planning of police operations during the organisation of assemblies”. In this standard procedure, it is specified that: police personnel assigned to public order services during gatherings/protests perform their duties without firearms. For maintaining order in gatherings and protests, firearms are carried only by police officers of the Special Unit "RENEA", part of the National Security Force Directorate. Police Officers of the Special Unit “RENEA” are trained for this purpose.

Additionally, to complete the legal framework, the following sub-legal acts were adopted:

- ✓ Decision no. 777, dated 15.12.2021 of the Council of Ministers "On the approval of the regulation of the National Guard of Albania". Specifically, Articles 47 and 48 set clear rules for the use of firearms and physical force, while Chapter IX "Arms Service", sets rules on the weapons and equipment in use, special use weapons, cases of weapon removal, weapon handover, and others.
- ✓ Decision no. 549, dated 29.9.2021 of the Council of Ministers "On the approval of the types of armament, neuro-paralytic substances, means and other restrictive devices, for the use of force by the National Guard of Albania";
- ✓ Order no. 18, dated 24.06.2022 of the Minister of Interior "On the approval of the Organizational Chart and Equipment of the structures of the National Guard".

Furthermore, the governing framework provides for the possibility to have an administrative inquiry carried out in the event of the use of firearms by police officers (article 11 of the 2014 Use of Firearms Act). Thus, on 15 January 2018 the Minister of Interior adopted guidance no. 3 which regulates the composition and rules of procedure of the Disciplinary Commission (Komisioni i Shqyrtimit Disiplinor të Rasteve të Përdorimit të Armëve) in the event of use of firearms.

This body has been set up and operates within the structures of the General Directorate of State Police, and it has the power to examine and evaluate the conduct of police operations in the event of use of firearms. The Disciplinary Commission will review cases that do not constitute a criminal offense and will recommend the initiation of disciplinary proceedings if it reaches the conclusion that the rules and standards procedures on the use of firearms have been breached.

3. Defects in the planning and control of the policing operations in relation to the protest

In relation to the measures taken to address the findings of the Court, as regards the serious defects in the planning and control of the policing operations in relation to the protest, the Government wishes to bring into attention the following :

The General Directorate of State Police, in each case of mass gatherings/protests prepares a plan of measures, which is prepared by a working group, according to specific orders from the General Director of State Police.

In order to enhance the security of Important State Objects and High State Personalities the State Police drafts cooperation plans with the National Guard, the Intelligence and Security Agency of Defense, the State Intelligence Service, the General Directorate of Fire Protection and Rescue, etc.

On 17.2.2020 a separate cooperation agreement was signed between the State Police and the National Guard to coordinate and collaborate together in order to secure public safety and the safety of senior State officeholders and State institutions.

In addition, to ensure the safety and order before, during, and after the gathering/protest, the State Police cooperates closely with local authorities and health services such as:

- The County Prefect.
- The Municipality.
- The Police Oversight Agency.
- The Municipal Police.
- The "Mother Teresa" Hospital Center, the Trauma Hospital, health centers, and first aid centers, etc.

In addition, special structures of the State Police, such as the local police directorate where the gathering/protest takes place, the Directorate of the National Security Force, the Directorate of the Special Operational Force, the Directorate of Anti-Terrorism, etc., draft specific plans of measures.

In the plan of measures, tasks are generally assigned for:

- Securing and managing police information and exchanging this information between police structures.
- Cooperation with:
 - The organizers and leaders of the gathering;

- The Medical Emergency Service to allocate vehicles and medical personnel near the location of the gathering to provide first aid if necessary;
- The fire service, to secure firefighting vehicles and their personnel during gatherings/protests near Important State Objects.

Other tasks in the plan of measures:

- Equipping and completing police officers with protective gear (helmets and protective shields, "Robocop" suits) to protect them from violence and hits with hard objects, as well as with handheld fire extinguishers, tear gas, batons, etc;
- Assigning a responsible officer who will communicate with the leaders of the gathering and the leaders of police services during the gathering;
- Instructing police personnel on the tasks they will perform, the time and place of deployment in the service sector, communication methods, etc;
- Determining the hospital centers where people will be taken for medical assistance, the emergency service routes, etc
- Identifying unexpected situations that may occur, the measures to be taken, and the actions to be performed by the State Police;
- Warnings and alerts issued by the police to the participants for stopping the gathering and dispersing, ceasing violent and illegal actions that damage public and private property with dangerous means such as incendiary and explosive substances, as well as warnings for the use of force and its means (as defined in Articles 9 and 23 of Law no. 8773, dated 23.04.2001 "On Gatherings");
- Performing procedural actions for the disruptions of order that have occurred, damages to private and public property/important state objects, identifying and bringing to justice the perpetrators of criminal acts, etc.

The State Police has developed good working relations with independent institutions, such as the People's Advocate (Ombudsperson). It shares information with the People's Advocate and follows its recommendations made in respect of a certain case.

4.Publication and Dissemination and other awareness raising measures

In order to raise awareness for the findings of the Court in the present judgment, the State's Advocate Office has taken the following measures for the publication and dissemination of the judgment.

The judgment "*Nika v. Albania*" has been translated and published in the Official Gazette no.175 dated 6/12/2023².

In addition, the State's Advocate Office has prepared a summary of the main findings of the Court in the judgment "*Nika v. Albania*" and has disseminated the translated judgment and the summary of the findings to the High Prosecutorial Council, High Judicial Council, General Prosecutor Office, the Specialised Structure for Anti-

² <https://www.qbz.gov.al/eli/vendim/2023/11/14/1049-17/0e4d024b-259c-4eb3-8e55-9be2102ea87c;q=Nika%20kunder%20shqiperise>

Corruption and Organised Crime, Prosecution Offices at the courts of first level of general jurisdiction, Supreme Court, Constitutional Court, School of Magistrates, National Guard, Ministry of Interior/ State Police³.

4.1 Trainings and measures taken to raise awareness.

The State Police officers and National Guard personnel have been receiving continuous training since 2015 not only on the legislative framework but also on the practicalities of deploying personnel to ensure public safety and exercise of the right to freedom of assembly.

Regarding pre-training for maintaining order and the use of lethal force during gatherings for State Police officers:

- a. Specialized training sessions were conducted, focusing on the management of gatherings/protests in squares and public crossings, as follows:
 - o Management of gatherings, use of tear gas, and avoiding consequences," with a teaching group involving 16 (sixteen) police officers, conducted by the German Federal Police.
 - o Taking security measures in mass events (protests, gatherings, and sports activities), drafting and preparing the relevant documentation by local structures of the State Police," with the participation of 25 (twenty-five) police officers at the first management level, from public order structures of the local police directorates.
 - o Practical implementation of standard procedures, taking security measures in mass events protests/gatherings, sports activities, as well as preparing the relevant documentation by local police structures," with the participation of 25 (twenty-five) police officers at the first management level, from public order structures of the local police directorates.

In addition, the National Guard conducts general and periodic trainings based on the annual plan of the institution.

Since 2021, the curricula, based on which these types of training are conducted, have incorporated topics that address, among other things, the legality of the use of firearms and force. Based on legal provisions and in the joint agreement with the Security Academy, 30% of the curriculum of the general formation course for candidate employees to be employed in the National Guard is conducted by the academic staff of the State Police. The curriculum also includes and develops topics on crowd management. This type of course, lasting 2 months, develops a total of 16 teaching hours on legality of the use of firearms. Regarding periodic training (five-day), which is conducted throughout the calendar year, based on the annual planning of the Guard, 3 teaching hours on legality of the use of firearms are conducted. In these courses, no less than 80 employees participate monthly, which means that almost all employees are periodically familiarized with the entire legal framework that regulates the use of

³ Letters no. 1669 dated 4.4.2024

weapons. Furthermore, the Republic Guard conducts continuous training with field experts from other institutions within and outside the country.

Conclusion: The Government considers that following the events of January 21, 2011, the Government has taken concrete legislative and administrative measures, which have already demonstrated to be efficient and in conformity with the standards of the Convention.

D. CONCLUSION

Having regard to the above considerations, the Government is of the opinion that no further individual and general measures are necessary to be undertaken by the Albanian authorities to remedy the violation of article 2 of the Convention in the Application No. 1049/17 “Nika v. Albania”.

The occurrence of a number of rallies and demonstrations since 2014, without giving rise to any specific problems or incidents, is demonstrative of the improved legislative framework and the sufficient ongoing training of police officers and personnel of the National Guard.

The Government will update the Committee of Ministers in relation to the criminal proceedings into the death of the applicant’s relative as soon as more information is available.