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Meeting: 1514<sup>th</sup> meeting (December 2024) (DH)

Item reference: Action Plan (14/10/2024)

Communication from Albania concerning the case of Durdaj and Others v. Albania (Application No. 63543/09)

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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1514<sup>e</sup> réunion (décembre 2024) (DH)

Référence du point : Plan d'action (14/10/2024)

Communication de l'Albanie concernant l'affaire Durdaj et Autres c. Albanie (requête n° 63543/09) (**anglais uniquement**)

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DGI

14 OCT. 2024

**ACTION PLAN**

*Execution of the judgment of the European Court of Human Rights  
Application No. 63543/09, 46707/13, 46714/13 et al  
“Durdaj and Others v. Albania”  
Judgment of 7.11.2023, Final on 7.02.2024*

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH**A. Case description**

The case concerns the effectiveness of the investigation and the ensuing criminal trial relating to an explosion in 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, resulting in deaths and grievous bodily injuries. 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).

Considering the overall effectiveness of the investigation, the European Court has found that the applicants had been deprived of the possibility to participate effectively in the criminal trial against those accused in the Gërdec incident which claimed the lives of their next of kin or caused them grievous life-threatening injuries.

Moreover, the manner in which the authorities approached the prosecution of the former Minister of Defence, in respect of whom the criminal proceedings for abuse of office are still pending, was not in compliance with their procedural obligations under the Convention because no final decision at national level has been adopted, and the investigation has been plagued with inefficiency and delays.

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. The European Court 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.

Therefore, 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 on account of the lack of the applicants' involvement in the criminal trial of the twenty-nine accused and the manner in which the authorities had approached the Minister of Defence prosecution.

**B. Individual measures****1. Payment of the just satisfaction**

The European Court of Human Rights awarded 12,000 euros (EUR) jointly to the applicants in applications nos. 63543/09 and 12720/14 and EUR 10,000 to each of the applicants in applications nos. 46707/13 and 46714/13, in respect of non-pecuniary damage and EUR 8,000 jointly to all the applicants in respect of costs and expenses. The

Council of Ministers adopted Decision no. 177, dated 27.3.2024 "For the execution of the judgment of the European Court of Human Rights "Durdaj and Others v. Albania". The Ministry of Finance has paid the just satisfaction to the applicants on 8.5.2024.

Pecuniary damage	NonPecuniary damage	Costs and expenses	Total + Interests
	162,000	8000	170.000+210 euro
Paid on 8/05/2024			

## ***2) Other individual measures***

The Court did not indicate any individual measure to put an end to the violations in question, but it concluded that there has been a violation of the procedural limb of Article 2 of the Convention on account of the lack of the applicants' involvement in the criminal trial of the twenty-nine accused and on account of the manner in which the Albanian authorities approached the prosecution of F.M.

In this respect, the Government considers important to update the Committee of Ministers in relation to the criminal proceedings against the Former Minister of Defence.

The Special Prosecution Against Corruption and Organized Crime, based on the request made by the heirs of the victims of the Gërdec incident (citizens Feruzan Durdaj and Zamira Durdaj), on 05.05.2021 submitted a request with the object "Revocation of the decision to dismiss the criminal proceedings against F.M, decision no. 6, dated 14.09.2009, of the Criminal College of the Supreme Court."

At the termination of these proceedings, the Special Court of Appeal for Corruption and Organized Crime in Tirana, with decision no. 205, dated 24.09.2021, decided:

1. To amend decision no. 60, dated 27.07.2021, of the Special Court of First Instance for Corruption and Organized Crime in Tirana.
2. To accept the request of the Special Prosecutor and revoke the dismissal decision no. 6, dated 14.09.2009, of the Criminal College of the Supreme Court.
3. To return the acts to the special prosecutor to continue the proceedings.

Based on Article 329/c paragraph (3) of the Criminal Procedure Code, as well as in implementation of decision no. 205, dated 24.09.2021, of the Special Court of Appeal for Corruption and Organized Crime in Tirana, the Special Prosecution Against Corruption and Organized Crime has resumed investigations by registering criminal proceedings no. 279, dated 27.10.2021, for the criminal offenses of "Abuse of office" committed in cooperation, provided by Articles 248 and 25 of the Criminal Code, as well as for the commission of the criminal offense "Abuse of office" in cooperation with military personnel-command , provided by Articles 70/2 and 2 of the Military Criminal Code and Article 25 of the Criminal Code.

On 26.01.2023, the Special Prosecution completed the investigations for criminal proceedings no. 279 of the year 2021 and submitted a request to the Special Court of First Instance for the trial of the criminal case against the defendant F.M, accused of the

criminal offenses of "Abuse of office" committed in cooperation, provided by Articles 248 and 25 of the Criminal Code, as well as for the commission of the criminal offense "Abuse of office" in cooperation with military personnel-command, provided by Articles 70/2 and 2 of the Military Criminal Code and Article 25 of the Criminal Code.

Subsequently, the Special Court of First Instance for Corruption and Organized Crime decided to accept the request for the trial of the criminal case against the defendant F.M, accused of the aforementioned criminal offenses.

During the judicial process phase, the Special Court of First Instance notified all the victims of Gërdec incident, or their next of kin, to participate in the course of criminal proceedings.

Some of the victims or their next of kin chose their legal representative to participate in the trial, while others, including citizens Feruzan Durdaj and Zamira Durdaj, participated personally in the judicial process in their capacity as victim's next of kin.

All these procedural actions were carried out prior to the judgment of 07.11.2023 of the European Court of Human Rights.

From the moment of the judgment dated 07.11.2023 and onwards, the trial of the criminal case against the defendant F.M continues in the Special Court of First Instance.

The trial is in the phase of taking evidence from the parties in the judicial process and has not yet been concluded.

*Conclusion: Considering the payment of the just satisfaction and the above-mentioned developments, the Government considers that no other individual measures are necessary to remedy the violation of the procedural limb of Article 2 of the Convention. The Government will update the Committee of Ministers in relation to the criminal proceedings against the Former Minister of Defence, as soon as more information is available.*

### **C. General measures**

The Court 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 on account of the lack of the applicants' involvement in the criminal trial of the twenty-nine accused and the manner in which the authorities had approached the Minister of Defence prosecution.

#### *-Participation of the applicants in the criminal proceedings*

The Court found that the applicants had not been afforded an adequate opportunity to participate in the criminal proceedings against the accused (the twenty-nine accused).

Under Albanian legislation at the time, an injured party who had not lodged a civil claim in the course of the criminal proceedings did not have the right to actively participate in a trial against the accused by putting forward evidence, cross-examining witnesses or defendants, or making comments on the evidence collected. Thus, in the course of the criminal proceedings, the applicants had no procedural rights.

In this regard, the Government emphasizes that the events took place before the implementation of the extensive judicial reform in Albania which started in 2016.

The Criminal Procedural Code, in the meantime has undergone major changes following the extensive judicial reform undertaken by the Albanian authorities. The reform aimed at approximating the legislation with the European standards in general, including European Convention on Human Rights as well as with the case law of the ECtHR against Albania.

The amendments introduced by law no 35/2017 to the Criminal Procedural Code (CPC) address some important issues raised by the Court in the present case. The revised Article 58<sup>1</sup> of the CPC provides for the rights of the victim of a criminal offence or his/her heirs to require the prosecution of the perpetrator; to be informed about the arrest of the accused person and his release; to appeal against the decision of the prosecutor for the non-initiation of the proceeding and the decision of the prosecutor or of the judge of the preliminary hearing to dismiss the charge or the case.

In addition, article 291 of the Criminal Procedural Code amended states that the notice of the decision (not to initiate proceedings) is served promptly to those who have lodged a criminal report or a complaint, to the victim or the victim's heirs, who may file a complaint with the court, within 10 days of the notification of the decision. Articles 329/a , 329/b and 329/ç have been added as well providing for the notification and participation of the heirs of the victim in the proceedings before the Court, in cases of

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<sup>1</sup> The victim of a criminal offence has the right: a) to require the prosecution of the perpetrator; b) to seek medical care, psychological assistance, counselling and other services provided by the authorities, organizations or institutions responsible for assisting the victims of criminal offences. c) to communicate in his or her own language and to be assisted by a translator and an interpreter of the language of signs or communication facilitator for people who are not able to speak and hear; ç) to choose a defence lawyer and when it is the case to receive free legal aid pursuant to the legislation into force; d) to seek at any time information about the status of the proceedings, and to be acquainted about the acts and evidence, without breaching the principle of investigatory secret; dh) to require to receive the evidence and submit other requests to the proceeding authority; e) to be informed about the arrest of the accused person and his release under the conditions stipulated in this Code; ë) to be informed for the non-initiation of the proceeding, the dismissal of the case, the initiation and the completion of the adjudication; f) to make an appeal in the court against the decision of the prosecutor for the non-initiation of the proceeding and the decision of the prosecutor or of the judge of the preliminary hearing to dismiss the charge or the case; g) to ask a compensation for the damage and be accepted as a civil plaintiff in the criminal process; h) to be excluded, in the cases provided for by the law, from the payment of every expense for receiving the acts and judicial fee for the submission of the lawsuit connected with the status of the victim of the criminal offence; i) to be summoned in the preliminary hearing and in the first hearing; j) to be heard by the court even when none of the parties requires him to be summoned as a witness; k) exercise other rights provided for by this Code.

request by the prosecutor for dismissal of a charge or case, therefore ensuring their interest are properly protected.

In addition, following the amendment of the Criminal Procedural Code, the General Prosecutor issued Guideline No. 5 dated 26.10.2018 “On the Guarantee of Assistance to Victims and Witnesses of Criminal Offenses”, which aims at a unified understanding and implementation of the newly adopted provisions of the Criminal Procedure Code in relation to the assistance granted to the victims of criminal offences. Among other things, the Guidance provides for the responsibility of the prosecutor to ensure the effective exercise of rights granted by the domestic legislation and international acts to the victims of criminal offences (article 8). It contains as an annex the letter of the victim's rights which explicitly provides the right to information with the decisions of the prosecutor during the preliminary investigation phase and the right to appeal against these decisions. Based on the Article 35.4 (ç) of the Guidance these rights are granted to the heirs of the victims of criminal offences as well.

Furthermore, by Decision of the Council of Ministers no.729 dated 13.12.2023, it was adopted the “Cross-Sectoral Strategy for the Protection of Victims of Crime 2024-2030”, as well as its Action Plan. This strategy was drafted based on the principles of the EU strategy on victims' rights (2020-2025) and other EU relevant *acquis* which ensure access to justice for all victims of crime.

One of the policy goals of the Strategy is to ensure the right of the victims to access information, the right to support and participation in criminal proceedings, and to promote and ensure targeted support to victims with special needs, the rights of the victims that need special protection.

#### *-Overall effectiveness of the investigation*

The Court found a violation of the procedural limb of Article 2 of the Convention on account of the manner in which the Albanian authorities approached the prosecution of F.M.

The Government wishes to emphasize in this respect that 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 Procedure 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 enable the functioning and efficiency of criminal justice, control on the one hand and internal and external independence on the other hand.

Another important aspect to be considered in the light of the Courts findings as regards effectiveness investigation, is the amendment of Article 291.1 of the Code of Criminal Procedure<sup>2</sup>, which introduced a legal deadline of 15 days for the decision of the prosecutor not to initiate criminal proceedings. This short deadline aims to ensure that the “decision not to initiate proceedings” should be taken only in cases when the circumstances (that do not allow the initiation of proceedings) are clear and evident. If further investigative actions are needed, the Prosecutor should institute criminal proceedings. It is important to emphasize this aspect, as these amendments to the criminal procedural law, makes it mandatory in principle for prosecutors to conduct effective and proper investigations into any cases related to a deceased victim as a result of the use of force, medical negligence or other events/accidents.

Based on the above considerations, the Government is of the opinion that taking into account the major legal changes to the Code of Criminal Procedure and the domestic legislation which guarantee the rights of the victim under Article 2 of the Convention in its procedural aspect, there is no need for other general 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.

## **1.Publication and Dissemination**

The judgment “*Durdaj and Others v. Albania*” has been translated and published in the Official Gazette on 11.12.2023<sup>3</sup>.

In addition, the State’s Advocate Office has prepared a summary of the main findings of the Court in the judgment “*Durdaj and Others v. Albania*” and has disseminated the translated judgment and the summary of the findings to the High Prosecutorial Council, General Prosecutor Office, the Specialised Structure for Anti-Corruption and Organised

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<sup>2</sup> Amended by Law No. 35/2017 of 30.03.2017, article 152)

<sup>3</sup> <https://www.qbz.gov.al/eli/vendim/2023/11/07/63543-09/484f0983-5e46-45ff-adb9-4a24b2b82ec3;q=durdaj>

Crime, Prosecution Offices at the courts of first level of general jurisdiction, Supreme Court, Constitutional Court, and School of Magistrates<sup>4</sup>.

*Conclusion:* Based on the above considerations the Government considers that there is no need for further general measures to be undertaken in the present case to remedy the violations found by the Court and prevent future violations.

## **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 procedural aspect of Article 2, in the case Durdaj and Others v. Albania.

The Government will update the Committee of Ministers in relation to the criminal proceedings against the Former Minister of Defence as soon as more information is available.

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<sup>4</sup> Letters no.725/3/4/ 5/6/7 dated 7.3.2024