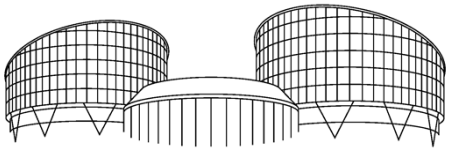

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DURDAJ AND OTHERS v. ALBANIA

(Applications nos. 63543/09 and 3 others – see appended list)

JUDGMENT

Art 2 (procedural) • Effectiveness of investigation and ensuing criminal proceedings into explosion at Gërdec weapon decommissioning facility resulting in deaths and grievous bodily injuries • Investigation adequate in that it established circumstances surrounding the incident and led to the identification of those responsible • Applicants granted access to the investigation to the extent necessary to safeguard their legitimate interests • Convictions of main accused relating to life-endangering acts and to the protection of the right to life within meaning of Art 2 • Given case did not involve intentional killings, prison sentences and time spent in prison not manifestly disproportionate to the seriousness of the acts committed • Applicants not afforded an opportunity to participate effectively in the criminal proceedings against the accused • Criminal proceedings against the Former Minister of Defence still pending for over fourteen years, plagued by significant delays, inertia of prosecuting authorities and futile attempts by the applicants to bring him to justice
Art 2 (substantive) • Victim • Non-exhaustion of domestic remedies • Adequate relevant domestic legal and regulatory framework providing for several legal bases for seeking compensation from the State • Acknowledgment in substance in administrative proceedings brought by some applicants of State's responsibility as regards substantive aspect of Art 2 together with award of compensation leading to loss of victim status of those applicants • Failure of remaining applicants to bring civil damage claim against the State

STRASBOURG

7 November 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Durdaj and Others v. Albania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Yonko Grozev,
Ivana Jelić,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 63543/09, 46707/13, 46714/13 and 12720/14) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seventeen Albanian nationals ("the applicants") on 29 January 2014, 28 May 2013, 28 May 2013 and 9 November 2009 respectively;

the decision to give notice to the Albanian Government ("the Government") of the complaints under the substantive and procedural aspects of Article 2 of the Convention and under Article 13, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 10 October 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the explosion at the Gërdec facility for dismantling decommissioned and obsolete weapons, machinery and equipment of the armed forces which resulted in the death of the applicants' next of kin or grievous bodily injuries to the applicants. Relying on Articles 2 and 13 of the Convention, the applicants complained 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 FACTS

2. The applicants were represented by Mr D. Matlija, a lawyer practising in Tirana. The applicants' details are set out in the appended table.

3. The Government were initially represented by their Agent, Ms E. Muçaj and most recently by Mr O. Moçka, General State Advocate.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. Following the collapse of the communist regime, during which a large portion of Albania's focus and resources were devoted to the country's defence system, it was estimated that the Albanian armed forces possessed a stockpile of 185,000 tonnes of ammunition stored in 1,300 depots across the country. Faced with the risk that this ammunition posed to the life and health of the population, in particular in the aftermath of the collapse of pyramid schemes in 1997 and the looting of arms depots, the authorities embarked on the process of the decommissioning and destruction of the ammunition stockpile. The decommissioning of ammunition initially took place in three State-owned and controlled military facilities (Poliçan, Mjekës-Elbasan and Gramsh).

6. On 14 March 2007 the Council of Ministers (the executive branch of the government of Albania) adopted decision no. 138 setting out the procedure for dismantling decommissioned and obsolete weapons, machinery and equipment of the armed forces, both for military and non-military use.

Permits for the export of weapons, machinery, equipment, ammunition and explosives were to be issued by the Ministry of Defence.

The ammunition, weapons, machinery, equipment and explosives of the armed forces could be sold to museums, for collection purposes or for other civilian use, only after their decommissioning (after becoming non-effective as weapons). The decommissioning procedure was to be set out by order of the Minister of Defence and with the guidance of the Chief of the General Staff of the armed forces.

The Military Export-Import Company ("the MEICO", a company established by government decision under the auspices of the Ministry of Defence) was entrusted with conducting the procedure for the sale of ammunition for decommissioning purposes and with entering into respective contracts.

The sale prices were to be fixed and approved by a commission established by order of the Minister of Defence and composed of finance experts, lawyers and economists.

A department of the Ministry of Defence's could destroy and dispose of decommissioned and obsolete weapons, machinery, equipment, ammunition and explosives.

Article 4 of Chapter IV of decision no. 138 provided that the dismantling and decommissioning process would be carried out under the strict scrutiny and security of the armed forces.

The decision of the Council of Ministers also authorised the sale, dismantling and decommissioning of ammunition with a view to reducing stocks of obsolete small-calibre ammunition.

7. On 25 April 2007 the Minister of Defence issued order no. 550 on the implementation of decision no. 138 of 14 March 2007 of the Council of Ministers. It stated, *inter alia*, as follows:

> "I order ... the requested ammunition (100 million cartridges of 7.62 by 54 mm with brass casings, 20 million cartridges of 12.7 mm with brass casings, and 20 million cartridges of 14.5 mm with brass casings) to be transferred to the MEICO for sale for the purposes of disposal and decommissioning within the country with the help of [Southern Ammunition Company], and (a) instruct the command of the armed forces to provide for this the use of an area of land under the administration of the Ministry of Defence in Gërdec, in Vorë municipality ..."

The Joint Forces Command (*Komanda e Forcave të Bashkuara*) was entrusted with (i) making available to the decommissioning process an area of land under the administration of the Ministry of Defence located in Gërdec (Vorë); (ii) transporting the ammunition to the Gërdec facility according to the schedule established with the MEICO; (iii) safeguarding the facility and controlling the entry-exit regime of its employees onto the premises; and (iv) entering into a lease contract with a US-incorporated company, Southern Ammunition Company ("SAC").

8. On 22 October 2007, the Minister of Defence issued order no. 1800 in accordance with which the Minister of Defence placed the property where the Gërdec facility was located under the management of the MEICO, which subsequently made it available to Albademil Ltd, a limited liability company incorporated in Albania, without a lease contract.

9. On 7 December 2007 the Minister of Defence issued order no. 2044 on the dismantling and decommissioning of ammunition. The MEICO was entrusted with putting the Gërdec facility at the disposal of SAC for the decommissioning process. The MEICO was ordered to enter into a contract with SAC and, among other things, to comply with the contractor's application of standard safety procedures, fire protection measures and to ensure the protection of the life and health of individuals employed during the dismantling and decommissioning of ammunition under strict observation and security conditions. The MEICO and the Joint Forces Command were to supervise the decommissioning facility and the ammunition depot therein.

10. In the meantime, on 6 June 2007 the MEICO entered into a five-month contract with SAC for the sale of the ammunition stockpile for decommissioning purposes. The objective of the contract was to dismantle small-calibre ammunition only (7.62-14.5 mm). The contract stipulated that SAC would provide the machinery for the dismantling of the small-calibre ammunition, and provide American experts to supervise the process. According to the contract, SAC would undertake to manage and control the dismantling and decommissioning of the ammunition, subject to conditions and technical safety measures defined in the relevant Albanian legislation, and the MEICO and the Joint Forces Command were to ensure the

supervision of the decommissioning facility. In turn, SAC subcontracted the work to Albademil Ltd.

11. The former plant for manufacturing tanks in Gërdec, an area located 15 km west of Tirana, was designated as the decommissioning facility. Decommissioning was envisaged only for small-calibre weapons (20 mm and smaller). It was reported that the decommissioning had been carried out without significant problems. At the time the weapons-decommissioning facility was being set up in Gërdec, the other specialised military facilities (Poliçan, Mjekës-Elbasan and Gramsh) were still in operation.

12. On 28 December 2007 the MEICO entered into a second contract with SAC for the dismantling of medium to large-calibre (20-152 mm) ordnance with brass casings, which again subcontracted the work to Albademil Ltd.

13. On 15 March 2008 at around midday a massive explosion occurred at the weapons-decommissioning facility ("the Gërdec incident"). The incident continued for several hours and twenty-six people died and around 300 were either grievously or lightly wounded. It destroyed the property of 5,829 people, causing material damage in the amount of 2,141,343,616 Albanian leks (ALL) according to the Ministry of Defence's data at the time of the event.

II. THE APPLICANTS IN THE PRESENT APPLICATIONS

14. The applicants in applications nos. 63543/09 and 12720/14, Zamira Durdaj and Feruzan Durdaj, are the parents of the late Erison Durdaj. At the time of the explosion Erison Durdaj, then aged seven, had been passing by the facility together with his cousin, Roxhens Durdaj (the first applicant in application no. 46714/13), dropping off a lunch box to Roxhens's mother and Erison's aunt who worked at the facility. Erison Durdaj was grievously injured in the explosion and was transferred to a hospital in Italy as an emergency measure, where he died on 3 April 2008. Roxhens Durdaj, then aged 11, was grievously wounded by the flames of the explosion.

15. All thirteen applicants in application no. 46707/13, as well as the second applicant in application no. 46714/13 (Alketa Hazizaj), were working at the facility and were grievously wounded in the explosion.

III. CRIMINAL INVESTIGATION

16. On the same day of the explosion, 15 March 2008, the Prosecutor General's Office opened a criminal investigation into the Gërdec incident. Four suspects, Y.P. (the head of the MEICO), M.D. (the manager of Albademil Ltd), D.M. (the facility manager employed by Albademil Ltd) and S.N. (an employee at the MEICO) were immediately taken into custody.

17. The authorities were unable to access the facility immediately as the incident continued for several hours. The evacuation of the facility and the

surrounding area and the clearance of the remaining ammunition by explosives experts took place in the days following the explosion.

18. On 29 March 2008 the investigation was extended to include the former Minister of Defence, F.M., who was at the time of the explosion a member of parliament (MP). In order to proceed with the investigation in respect of F.M., Parliament's authorisation was required in accordance with Article 73 of the Constitution. The Prosecutor General asked for the lifting of F.M.'s immunity, relying on "reasonable suspicion based on evidence demonstrating his guilt of ignoring safety rules which [had] led to the occurrence of the incident and [had] caused great economic damage to the State".

19. On 16 June 2008 Parliament authorised the Prosecutor General's investigation in respect of F.M.

20. It appears from the evidence submitted to the Court that three expert examinations were carried out in the context of the investigation. The first was conducted by the International Response Team (IRT) of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The ATF is the primary US federal unit of investigation of explosives incidents and for the enforcement of laws and regulations in that connection. It has national and international investigating authority. The second investigation was conducted by the Prosecutor General's Office, and the third by the military.

A. ATF-IRT report

1. General findings

21. The assistance of the ATF-IRT with the investigation of the Gërdec incident was requested through the United States embassy in Albania. The ATF-IRT was dispatched on 5 April 2008 to assist the Albanian authorities, namely the Prosecutor General's Office and the Tirana district prosecutor's office, in processing the site of the incident and conducting interviews.

22. The fact-finding post-explosion investigation was conducted between 7 and 11 April 2008 at the decommissioning facility to determine the origin and causes of the fire and the explosion.

23. On 7 April 2008 the ATF-IRT began conducting an incident-scene examination which was completed on 11 April 2008. The incident-scene examination included forensic mapping and photographs. The ATF-IRT assisted in witness interviews, incident-scene examination and forensic mapping and documentation. Its investigation report noted that the facility had been operated by Albademil Ltd and that decommissioning of obsolete military ordnance of calibres from 20 to 152 mm had taken place there. The information gathered during the investigation indicated that the facility had been in operation since January 2008 and up to eight trucks per day had delivered munitions to be dismantled.

24. The report stated that the process for engaging the workforce had consisted of hiring an individual with his or her entire family to work as a group, including children between 10 and 16 years of age. A specialist would supervise more than one group at a time. The workers earned money based on the amount of munitions dismantled. The investigation report noted that although safety briefings should have been conducted at the beginning of each project and at the beginning of each working day, this had not always happened, including on the day of the explosion.

25. The report also stated that no regulations on technical safety rules had been made available to workers at the facility. The interviews with workers revealed that they had not had a designated smoking area and no "no smoking" signs had been displayed. Moreover, they had not been impeded from carrying matches, lighters or tobacco on the processing facility's grounds.

26. The report further confirmed that no work uniform had been designated for the workers. Additionally, they had not been required to wear non-static clothing (100% cotton), and nor had they received any instruction on avoiding static-electricity hazards. The photographs and video-recording provided by SAC prior to the incident revealed that at least one portable fire extinguisher had been located at the south-east corner of the facility. However, there had been no automatic fire-suppression system in place.

27. On 15 March 2008 large quantities of ammunition of all kinds had been delivered from 7 to 9 a.m. The report stated that the process of dismantling had started at 9.30 a.m. Around 118 workers divided into twenty groups of three to four people had started opening the boxes in which the ammunition had been stored, extracting the projectiles, casings and gunpowder and placing them in their designated places.

28. At midday an explosion had occurred. Decommissioning operations had been taking place at the time of the explosion and around fifty workers had been in the main processing area when the fire had occurred. Workers had been unable to extinguish the fire owing to the lack of adequate equipment. At the time of the explosion there had been 1,067,855 tonnes of gunpowder, 286,476 tonnes of various types of combustibles, and 4,365,335 tonnes of TNT casings. This material had been located in various places stretched out across almost the entire surface of the Gërdec facility.

2. Conclusions of the ATF-IRT's investigation

29. The explosion had resulted in the deaths of twenty-six people and had injured approximately 300. The explosion had also damaged infrastructure, such as water and power-supply networks, roads, public buildings, schools, kindergartens and health centres.

30. The weather was not considered a factor in the explosion. On 15 March 2008 at midday the temperature was reported to have been 18°C,

humidity was at 94%, and there were northerly winds of 14.8 km/h, scattered clouds and no precipitation.

31. The exact reason for the fire remained unknown. However, aspects of the working methods could have led to the fire originating in bags of propellant. It became clear during the investigation that propellants such as black powder and double-base smokeless gunpowder were very sensitive to ignition from heat, static electricity, friction or flame. Based on the ATF-IRT incident-scene examination and the witness statements, it was concluded that the incident had been caused by a fire originating on a pushcart loaded with propellant in plastic bags which had caused an explosion of most of the stores of munitions and propellant at the facility. The fire had originated near the centre of the south end of the yard approximately 10 m inside the gate near the 122 mm decommissioning bench.

32. The most probable course of the events based on the evidence gathered was that workers had been in the process of moving plastic bags containing propellant onto pushcarts. The propellant on a cart had caught fire spreading to nearby stores of propellants and wooden ammunition boxes. The fire had burned for a short time until eventually it had caused an explosion in the area where fused and unfused military munitions had been stored.

33. In its conclusion, the report outlined a number of shortcomings based on witness statements and pre-explosion photographs and video-recordings taken a month prior to the incident. It first noted that the procedures used at the Gërdec facility had been unsafe and not in compliance with normal working standards at workplaces dealing with explosives and propellants. It further stated that the dismantling of ordnance had been performed by untrained workers using vehicles which had not complied with safety standards. The photographs taken prior to the incident revealed that rubbish, explosive materials and unsecured fused projectiles and propellant bags had been left on the floor. Furthermore, unsuitable static-producing clothing had been permitted on site and no training on how to reduce static-electricity hazards had been given. Lastly, it stated that an operation of this magnitude should never have been conducted in a location close to public roads and residences.

B. Prosecutor General's Office report

1. Findings in respect of the first contract

34. The investigation report established that by 28 December 2006, F.M. had already approved the offer of SAC to enter into a contract for the decommissioning of small-calibre ammunition and informed the Chief of the General Staff of the armed forces. On the same date, Albademil Ltd was set up with two co-owners, P.H. and M.D., who held one-third and two-thirds of the shares respectively. The report also noted that in 2006 P.H. had visited Albania several times and had had several meetings with Y.P. (the head of

the MEICO). Y.P. had provided P.H. with information relating to the legal framework applicable in Albania to set up a company. Subsequently SAC had made an offer, the content of which had been included in a fax dated 27 December 2006.

35. The report stated that the choice of Gërdec as the site of a weapons-decommissioning facility had been made in violation of the law and State regulations. The area had not been licensed for the storage and dismantling of ammunition. During the execution of this contract, the dismantling of small calibre materiel including 7.62 mm, 8 mm, 12.7 mm and 14.5 mm had been carried out. The investigation report stated that children and workers with little or no technical knowledge had been hired to work at the facility. The report also noted that they had not received any training or instructions, nor instruction on safety regulations. Three American experts were present at the facility during the first contract (concerning small calibre dismantling), but not during the second contract (concerning medium and large calibre dismantling) or on the day of the explosion.

36. The contract had stipulated the need to establish a transportation schedule (*grafiku i transportit*) but this had never been done as the parties had not been able to agree on the conditions. During implementation of the first contract, the MEICO had also been required to provide three licences: (i) for the dismantling of the ammunition, (ii) for storing the ammunition, and (iii) for the import and export of the ammunition. The report noted that the MEICO had not issued any of the above licences. The report also indicated that during the period of the first contract, a fire had broken out at the weapons-decommissioning facility, but it had been extinguished with the assistance of the American experts.

37. The report concluded that the ammunition had been dismantled in the open without any protection from the rain or the sun. The investigation report also concluded that the dismantling process had greatly increased the level of risk at the weapons-decommissioning facility arising from the delivery, storage, dismantling and decommissioning of thousands of tonnes of dangerous components such as gunpowder, TNT and detonators. On 27 December 2006 the SAC had submitted an offer to dismantle and decommission ordnance which had been unavailable for military use. The offer had been submitted to the head of the MEICO, Y.P., following several prior exchanges by email, fax and in person. Y.P. had informed the Minister of Defence in note no. 1232/523 of the content of the offer, emphasising the financial advantages to the State.

2. Findings in respect of the second contract

38. On 28 December 2007 the MEICO entered into a second contract with Albademil Ltd. The investigation found that the second contract included the dismantling of large-calibre shells of between 20 and 150 mm even though F.M. had been aware that the MEICO and Albademil Ltd had not possessed

the appropriate technology for the industrial dismantling of anything other than small-calibre ammunition.

39. The investigation report stated that during the execution of the second contract, preparations had been under way to dismantle ammunition that had not been part of the army's obsolete stock but which could also have possibly been used for arms trafficking.

40. According to the report, the dismantling of large-calibre shells had started around the third week of January 2008. The main work before the explosion had comprised the extraction of the casings from the shells, the removal of detonators and gunpowder, and the clean-up of the site.

41. The report also noted that the process for obtaining the workforce had consisted of hiring an individual with his or her entire family to work as a group. A specialist had supervised more than one group at a time and set the daily work quota.

42. It was reported that a safety briefing had been conducted at the beginning of each project for each particular type of material. It also reported that at the beginning of each working day the workers had been lined up and given a safety briefing. However, it was clear from the report that the briefing had not always happened, including on the day of the explosion.

43. No regulations on technical safety rules had been made available to workers at the facility. The interviews with workers had revealed that they had not had a designated smoking area and no "no smoking" signs had been displayed. Moreover, they had not been impeded from carrying matches, lighters or tobacco on site. No work uniform had been designated for the workers. Additionally, they had not been required to wear non-static clothing, and nor had they received any instruction on how to prevent static-electricity hazards. The photographs and the video-recording provided by SAC had revealed that at least one portable fire extinguisher had been located at the south-east corner of the facility. However, there had been no automatic fire-suppression system in place. From 12 to 14 March 2018, trucks had brought more than 460 tonnes of shells to the facility. There had been approximately 1,070 tonnes of gunpowder, 286,476 detonators of various types and approximately 4,365 intact shells on site.

44. Eight trucks had arrived during the night of 14 March 2008, transporting ammunition. The following military munitions had been in the main area of the facility on the day of the explosion: 20 mm high explosive inflammable cartridges; 37 mm anti-aircraft high-explosive shells; and "fixed" shells (100 mm and 122 mm) and "semi-fixed" shells (122 mm, 130 mm and 152 mm), both with a self-destruct mechanism.

45. The trucks had not been unloaded immediately owing to the late hour and the cold weather. A large quantity of plastic bags containing propellants which had been removed from the shells had been placed in the centre of the facility in a line running north to south. Military ammunition, including

37 mm and 100 mm shells, had been lined up against the east and west walls running the length of the facility.

46. The Government did not submit a copy of the investigation file. They stated that the issue was in the hands of the Prosecutor General's Office.

47. The Prosecutor General wrote a letter to Parliament for the session where the authorisation for the prosecution of F.M. was requested. The letter reads as follows:

> "The investigations carried out at this stage indicate beyond reasonable doubt that F.M. committed intentional acts and omissions in violation of the law and by-laws. These acts had a direct effect on the Gërdec incident. F.M. issued order no. 550 of 25 April 2007 on the implementation of Council of Ministers decision no. 138 of 14 March 2007 setting out the procedure for dismantling decommissioned and obsolete weapons, machinery and equipment of the armed forces, both for military and non-military use. The order was adopted without consultation with the General Staff and the Ministry of Defence Department for the Harmonisation of Legislation and Relations with Parliament, which is obligatory. This was in flagrant violation of Article 17 of the Internal Regulations of the Ministry of Defence.
>
> Furthermore, the order provided for the dismantling and decommissioning of ordnance to take place in Gërdec. This was in flagrant violation of Article 3 of regulation no. 9603 of 19 September 2003 of the Ministry of Defence, pursuant to which all activities in the field of military munitions should be performed by licensed companies. The licence should be issued by a specific commission established by the Minister of Defence. Thus, the dismantling and decommissioning of materiel in Gërdec was carried out by an unlicensed company, Albademil Ltd, in violation of the above provision.
>
> Moreover, the designation of Gërdec as a suitable location to host a weapons-decommissioning facility was approved without seeking the opinion of the relevant military authorities, namely the General Staff. Furthermore, order no. 550 did not define the authority that would ensure the supervision of the decommissioning process at the facility.
>
> Lastly, order no. 550 did not mention who would cover the expenses of the loading and transport of ammunition from the army's depot to Gërdec, but merely entrusted this to the Joint Forces Command. Nor did the order contain the safety measures necessary for the decommissioning facility.
>
> The investigation also demonstrated that on 1 September 2007 SAC had submitted a second offer to the Minister of Defence to continue the dismantling of 20 to 152 mm shells with brass casings, despite SAC only having experience in dismantling small-calibre cartridges. In reply to a request for information by the Minster of Defence, SAC replied that it had the necessary equipment for the dismantling of large shells. The Minister of Defence not only approved the second offer but also issued order no. 1800 of 22 October 2007, in which property no. 126 (Gërdec area) was transferred to the MEICO, which subsequently transferred it to Albademil Ltd without a lease contract, in violation of a prior Council of Ministers decision.
>
> Furthermore, F.M. enacted order. 2044 of 7 December 2007 on the transfer of ordnance to the MEICO, in accordance with which the dismantling and decommissioning process was performed by an unlicensed company at an unlicensed facility. In point 8 of the order, the MEICO was entrusted with the supervision of safety standards, fire protection measures and security of the life and health of the employees

at the facility. This provision was not compliant with Council of Ministers decision no. 138, which stipulated that the dismantling and decommissioning process was to be carried out under the strict scrutiny and security of the armed forces.

Having regard to the foregoing, there is enough evidence to initiate the prosecution of F.M."

48. On 16 June 2008 the Speaker of Parliament issued a decision giving authorisation to institute criminal proceedings against F.M., an MP at the time, as requested by the Prosecutor General.

C. Military expert report of 10 February 2009

49. On 10 December 2008 a group of prosecutors from the Prosecutor General's Office commissioned an expert report.

50. On 10 February 2009 five experts in military munitions delivered a detailed report. The report stated that the transportation from the arms depot to the Gërdec weapons-decommissioning facility had been carried out using vehicles of the armed forces. There did not appear to have been a transportation schedule in place, in breach of an order issued by the Minister of Defence.

51. The report could not determine whether the Gërdec weapons-decommissioning facility had been a military site. Having examined the by-laws, the report concluded that the Gërdec area, which had been administered by the Ministry of Defence, had not been licensed to be used as a munitions depot. The decommissioning process had carried a degree of risk in and of itself, since it had consisted of the storage of munitions, their disassembly and the separation and storage of by-products. As such, the designation of the Gërdec military facility for decommissioning purposes should have been accompanied by the licensing of the warehouses and facilities where the decommissioning operations were to take place. This would have involved an analysis of the storage and processing capacities in the light of the conditions which had pertained in the facility.

52. The report drew no conclusions as to whether the safety measures had been complied with during the unloading and reception of ordnance. However, the report stated that ordnance had not been unloaded and stored in special warehouses, away from the area used for decommissioning operations. There had been no licensed warehouses to store ordnance delivered by the armed forces. The report went on to note that on entering into the second contract with the commercial contractor, a number of measures should have been taken before authorising the supply of materials and the commencement of work. Some of the measures should have included a prior inspection of the disassembly machines, compliance with fire safety measures, assessment of qualifications and training of personnel as regards technical safety measures and of the storage capability of the contractor. No such inspection had been carried out by the responsible State authority.

53. Relying on employees' statements the report found that personnel had not read or even seen any regulations concerning technical safety measures, nor had they received any training before starting work. No such information had existed for the period after entering into the second contract on 28 December 2007.

54. The report further confirmed that the disassembly of the ordnance had not corresponded to its decommissioning as envisaged in the contract. It added that the facility's infrastructure had not met the safety standards for carrying out decommissioning operations, which had taken place in two open-air locations not protected from exposure to direct sunlight. There had been no explosion-resistant containers with which to carry out dangerous and hazardous operations. The technology used for disassembly had not been safe. No machinery had been used and the equipment had not complied with the safety requirements. As regards on-site transportation, the vehicles used had not satisfied the safety measures required for working with dangerous materiel. The facility had not been equipped with fire extinguishers or an automatic sprinkler system, nor had any lightning protection system been installed.

55. The report concluded that the armed forces had been supposed to bear responsibility for securing and protecting the facility, while the MEICO had been expected to have general oversight over the decommissioning activity. It added that it could not be determined with certainty which authority had been meant to have oversight of compliance with the safety measures during the decommissioning process.

D. Medical expert reports

56. On 18 March 2008 the police requested the forensic medical examination of Roxhens Durdaj (the first applicant in application no. 46714/13). The medical examination was to establish the existence of injuries and their cause. Expert medical report no. 305 of 2 April 2008 established that Roxhens Durdaj had been grievously injured, resulting in Cat IIB-III burns of 5% on both hands (*combustion mani bilateral*) and the back of his head caused by the flames of the explosion. The report also concluded that the injuries were life-threatening.

57. On 11 August 2008 a prosecutor from the Tirana district prosecutor's office ordered a post-mortem examination of the body of Erison Durdaj (the son of the applicants in applications nos. 12720/14 and 63543/09), to be conducted by a forensic medical expert in Tirana. The expert was asked to establish the existence of any external injuries, their nature, method of infliction and the cause of death. The death certificate with the accompanying documents from Perrino Hospital in Brindisi, Italy, where he had been transferred the day after the accident, was also presented to the expert. Expert medical report no. 805 of 19 August 2008 stated that on 15 March 2008 at

1 p.m., Erison Durdaj had been admitted to the intensive-care unit of Mother Teresa University Medical Centre in Tirana, where he had received treatment for second and third-degree burns covering 60% of his body. He had been suffering from headaches and earache. On 16 March 2008 he had been transferred to Perrino Hospital in Brindisi, where he had died on 3 April 2008 at 2.50 a.m. According to the death certificate issued by the hospital, he had died of complications from the second and third-degree burns covering 60% of his body caused by the flames of the explosion. The expert medical report established a causal link between the event which had occurred and his death and established as the cause of death an acute pulmonary oedema following hypovolemic shock.

58. Medical certificate no. 891 of 5 September 2008 concerning Alketa Hazizaj (the second applicant in application no. 46714/13) established that she had been severely injured, resulting in burns on 35% of her body caused by the flames of the explosion. The report concluded that the injuries were life-threatening.

59. The medical reports of all the applicants in application no. 46707/13 concluded that they had been grievously wounded as a result of the explosion at the facility. The Court has not been provided with a copy of their medical certificates. The conclusions of their medical reports were submitted and examined in the domestic proceedings.

IV. PROCEEDINGS ON INDICTMENT

A. Proceedings before the Supreme Court

60. Criminal proceedings were instituted against thirty persons involved in the setting up and operating of the Gërdec facility, including F.M., the former Minister of Defence, and at that time an MP. The proceedings were brought before the Supreme Court, since under Article 141 § 1 of the Constitution the Supreme Court had primary jurisdiction to hear cases against MPs.

61. On 6 March 2009 Zamira Durdaj, Feruzan Durdaj, Roxhens Durdaj and other injured parties (not applicants in the present case) submitted a civil claim in the criminal proceedings under Article 62 of the Code of Criminal Procedure ("the CCP") against three of the co-accused (F.M., Y.P., and M.D.), the companies Albademil Ltd and the MEICO, and the Prime Minister's Office.

62. On 13 March 2009 the Prosecutor General's Office filed indictments against thirty accused:

F.M., the former Minister of Defence, accused under Article 248 of the Criminal Code ("the CC") of having committed abuse of office; under Article 278 of the CC of the manufacture and illegal possession of firearms and ammunition; and under Article 2 and Article 70 § 2 of the Military

Criminal Code ("the MCC") of the military criminal offence of abuse of office in complicity with a military staff member;

Y.P., head of the MEICO, accused under Article 248 of the CC of having committed abuse of office; under Article 186 § 2 of the CC of the falsification of documents; under Article 79 of the CC of homicide; under Article 152 § 2 in conjunction with Article 25 of the CC of destroying property with explosives; and under Article 2 and Article 70 § 2 of the MCC of the military criminal offence of abuse of office in complicity with a military staff member;

M.D., manager of Albademil Ltd, accused under Article 79 of the CC of having committed homicide; and under Article 152 § 2 in conjunction with Article 25 of the CC of destroying property with explosives;

D.M., facility/site manager at Albademil Ltd, accused under Article 79 of the CC of having committed homicide; under Article 152 § 2 in conjunction with Article 25 of the CC of destroying property with explosives; under Article 248 of the CC of abuse of office; and under Article 278 of the CC of the manufacture and illegal possession of firearms and ammunition;

L.H., the Chief of the General Staff of the armed forces, accused under Article 2 and Article 70 § 2 of the MCC of having committed the military criminal offence of abuse of office in complicity with a military staff member;

S.N., employee at the MEICO, accused under Article 79 of the CC of having committed homicide; and under Article 152 § 2 in conjunction with Article 25 of the CC of destroying property with explosives;

A.M., a secretary at the Ministry of Defence, accused under Article 248 of the CC of having committed abuse of office;

Sh.M., Director of the Ministry of Defence's Department for Management of Resources, accused under Article 248 of the CC of having committed abuse of office; under Article 186 §§ 2 and 3 of the CC of falsifying documents; and under Article 2 and Article 70 § 2 of the MCC of the military criminal offence of abuse of office in complicity with a military staff member;

D.Ç., a member of the Special Commission for the Categorisation of Equipment established by order of the Minister of Defence, accused under Article 2 and Article 70 § 2 of the MCC of having committed the military criminal offence of abuse of office in complicity with a military staff member;

A.T., Director of Budget in the Ministry of Defence, Chair of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed the military criminal offence of abuse of office in complicity with a military staff member;

A.L., army general, Vice Chief of the General Command, accused under Article 2 and Article 70 § 2 of the MCC of having committed the military criminal offence of abuse of office in complicity with a military staff member;

H.L., member of the Special Commission for the Categorisation of Equipment established by order of the Minister of Defence, accused under Article 2 and Article 70 § 2 of the MCC of having committed the military criminal offence of abuse of office in complicity with a military staff member;

N.M., Director of the Ministry of Defence Department for the Harmonisation of Legislation and Relations with Parliament, accused under Article 248 of the CC of having committed abuse of office;

Sh.S., commander in the armed forces, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

Z.B., commander of the Support Command, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

A.B., member of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

R.T., member of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

B.D., member of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

F.K., member of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

G.O., member of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

J.M., member of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

D.H., member of the Ministry of Defence's Commission for Price Approvals, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

F.T., member of the Special Commission for the Categorisation of Equipment established by order of the Minister of Defence, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

Z.F., member of the Special Commission for the Categorisation of Equipment established by order of the Ministry of Defence, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

H.Ç., member of the Special Commission for the Categorisation of Equipment established by order of the Minister of Defence, accused under Article 2 and Article 70 § 2 of the MCC of having committed abuse of office in complicity with a military staff member;

Ad.M., Secretary General of the Ministry of Defence, accused under Article 248 of the CC of having committed abuse of office;

Ju.M., Finance Director at the MEICO, accused under Article 248 of the CC of having committed abuse of office;

L.Sh., Director of Poliçan Munitions Factory, accused under Article 186 §§ 2 and 3 of the CC of having committed the falsification of documents;

Fi.M., Director of the Gramsh Mechanical Plant, accused under Article 186 §§ 2 and 3 of the CC of having committed the falsification of documents; and

Albademil Ltd, accused under Article 79 of the CC and Articles 2, 3 and 4 of the Law on the criminal liability of legal persons ("the LCLLP") of having committed homicide; and under Article 152 of the CC and Articles 2, 3 and 4 of the LCLLP of destroying property with explosives.

63. On an unspecified date, a number of the co-accused objected that the Supreme Court was not competent to hear their case.

64. On 22 May 2009 the Supreme Court severed the criminal proceedings against F.M. from those against the remaining co-accused, having regard to the different nature of the charges against the other co-accused and the nature of the collusion among them. It held that under Article 141 § 1 of the Constitution it was competent to hear only the charges against F.M. and sent the cases against the remaining co-accused to the Tirana District Court for adjudication.

65. On the same date the Supreme Court severed the civil claim submitted by Zamira Durdaj, Feruzan Durdaj and Roxhens Durdaj from the criminal proceedings against all the co-accused, including F.M., having regard to the complexity of the criminal proceedings, the large number of co-accused, the fact that a number of the alleged criminal offences had been committed in collusion, the loss of twenty-six lives and the resultant large-scale economic damage. The court further stated that, taking account of the large number of injured parties, the determination of pecuniary and non-pecuniary damage required specialist expert reports, which would be obtained during the civil proceedings. It remitted the civil claim to a civil bench of the Tirana District Court.

66. Having been served with a copy of the Supreme Court's decision, on 25 May 2009 the applicants' lawyer requested that Judge B.I. withdraw from the examination of the case because his daughter had acted as a representative for two of the co-accused in a commercial transaction. On the same date the applicants' lawyer requested that Judges E.S. and I.B. withdraw from the examination of the case on account of their participation on the bench that had examined some of the prosecutor's applications during the course of the criminal investigation.

67. On 17 June 2009 Zamira Durdaj, Feruzan Durdaj and Roxhens Durdaj lodged a constitutional complaint against the Supreme Court's decision. They alleged that the Supreme Court's decision to waive their right to participate in the criminal proceedings as civil parties had violated their right to a fair trial. Furthermore, they contended that the Supreme Court had not elaborated

on why the concurrent examination of the civil case would have delayed the criminal proceedings; it had also deprived them of any opportunity of participating in the criminal trial by, for example, cross-examining witnesses, submitting additional documentation, commissioning expert reports and putting forward witnesses, thereby violating the principle of the adversarial nature of judicial proceedings.

68. On 15 July 2009 the Constitutional Court dismissed their complaint. It found that the Supreme Court had acted in accordance with, *inter alia*, Article 62 § 3 of the CCP. Its decision was provisional and did not examine the merits of the civil action. The complaints did not concern any breach of constitutional safeguards related to a fair trial. The decision was served on the applicants' lawyer on 17 July 2009.

B. Criminal proceedings against twenty-nine accused

1. Trial before the Tirana District Court

69. The criminal proceedings against twenty-nine accused, including Albademil Ltd, continued on 11 June 2009 before the Tirana District Court.

70. It appears that on an unspecified date in 2009, the Tirana District Court rejected the requests of four of the co-accused for the application of the summary procedure (*gjykimi i shkurtuar*).

71. Over 200 hearings were conducted over a period of three years. At least sixty-two witnesses gave testimony, including several of the applicants, as detailed in the following paragraphs.

72. Feruzan Durdaj (the second applicant in applications nos. 63543/09 and 12720/14) gave his evidence on 7 December 2009. He stated, *inter alia*, as follows:

> "Around midday my wife called me and said that the whole of Gërdec village was on fire. She added that she could not find our son, E.D. When I arrived in Vorë, I tried to reach Gërdec village, but my wife, [who was] accompanied by five or six kids, convinced me to save the remaining children and not to go there. When we arrived in Tirana, I tried to find my seven-year-old son. According to my wife, he had gone with his cousin to take a meal to my sister-in-law, the late Ra.Du. I finally found my son but I did not recognise him immediately owing to his burns. The next day, on 16 March 2008, my son and I went to a hospital in Italy."

73. At the hearing held on 14 December 2009, Shaban Brahushi (one of the applicants in application no. 46707/13) gave his evidence. He stated, *inter alia*, as follows:

> "I did not see any equipment other than the cement block used to dismantle the shells. I did not have a work contract or social security cover. I was not assisted by an expert, nor did I receive training. I had no knowledge of the American company and I had never dismantled ammunition before."

74. At the hearing held on 18 January 2010, Alketa Hazizaj (the second applicant in application no. 46714/13) and Rabie Gërdeci (one of the

applicants in application no. 46707/13) gave their evidence. Alketa Hazizaj stated, *inter alia*, as follows:

> "I worked for [the duration of the two contracts entered into by SAC] with my husband, my father-in-law and my brother-in-law. We did not sign any contracts and there were no rules on technical safety. Instructions about the work were provided by the director. We were aware that M.D. and D.M. were the owners of the facility. We did not know what to do in the event of fire and no instructions were given in that regard. The daily work quota was very high, but we tried to cope ... as we were in need. We never complained about the daily work quota as we were scared we would be fired."

Rabie Gërdeci stated, *inter alia*, as follows:

> "I worked together with my husband at the facility without a contract. We signed a blank piece of paper, and received instructions from D.M., the facility manager. I know that the big boss was M.D., who I saw from time to time at the facility. During the execution of the first contract, there had been machinery for dismantling munitions, which was not the case during the second one. The daily work quota was high. My husband complained about the daily work quota to D.M. and was subsequently fired."

75. At the hearing held on 29 January 2010, Dylbere Prini (one of the applicants in application no. 46707/13) gave her evidence. She stated, *inter alia*, as follows:

> "I worked in the weapons-decommissioning facility in 2007 together with my daughters, Blerta and Arta, who were 17 and 16 years old respectively. D.M. explained the rules, divided [us into] groups and [gave us] tasks. Sometimes the senior staff member for our group, Vangjel, gave us instructions."

76. At the hearing held on 29 January 2010, Mirela Hazizaj (one of the applicants in application no. 46707/13) gave her evidence. She stated, *inter alia*, as follows:

> "I worked at the facility without a contract. I had no experience of working with ammunition before and nobody instructed us on what to do. No rules were available. The daily work quota was set by the director. I saw no equipment for use in the event of fire and no instructions were given [about what to do in such an event]. No rules about technical safety were provided."

77. On 12 March 2012 the Tirana District Court adopted a first-instance judgment, which ran to over 573 pages.

The Tirana District Court found nine of the accused not guilty (A.M., A.L., Z.B., A.B., R.T., B.D., A.M., J.M. and Fi.M.). In respect of Sh.L., the case was remitted back to the prosecution.

The Tirana District Court convicted nineteen of the accused and sentenced them to a fine, probation or prison terms ranging from three to eighteen years. The court applied an overall sentence for each of the accused calculated on the basis of the offences committed simultaneously or consecutively which varied between the sum of all the individual penalties and the most severe one.

Y.P. was found guilty of a violation of the safety rules at work, destruction of property by negligence and abuse of duty in collusion with the military command structure. He was sentenced to eighteen years' imprisonment.

M.D. was found guilty of a breach of the rules on explosive, flammable or radioactive substances and sentenced to ten years' imprisonment; he was also forbidden from holding public office for a period of five years.

D.M. was found guilty of a violation of the safety rules at work, destruction of property by negligence and of the production and possession of arms and ammunition, and sentenced to eighteen years' imprisonment.

L.H. was found guilty under Article 70 § 2 of the MCC of abuse of duty, and sentenced to six years' imprisonment. Additionally, he was prevented from holding public office for a period of four years.

S.N. was found guilty of the criminal offence of a breach of the safety rules at work and destruction of property by negligence, and sentenced to ten years' imprisonment.

The following accused were found guilty as charged (see paragraph 62 above): Sh.M. (sentenced to three years' imprisonment); D.Ç. (sentenced to three years' imprisonment); A.T. (sentenced to one year's imprisonment); H.L. (sentenced to three years' imprisonment); N.M. (sentenced to one year's imprisonment); Sh.S. (given probation); F.K. (sentenced to one year's imprisonment); G.O. (sentenced to three years' imprisonment); J.M. (sentenced to three years' imprisonment); D.H. (sentenced to one year's imprisonment); F.T. (sentenced to three years' imprisonment); Z.F. (sentenced to three years' imprisonment); and H.Ç. (sentenced to three years' imprisonment).

Albademil Ltd was fined ALL 25,000,000 and given a permanent ban from participating in public procurements and from engaging in any activity related to munitions for a period of ten years.

78. The Tirana District Court established the facts of the case as follows.

During the period of the first contract, the dismantling process, for which American experts had provided assistance, had targeted small-calibre ammunition (7.62, 8, 12.7 and 14.5 mm). In the period of the second contract, no American experts had been present, and the decommissioning had also included heavy ammunition of calibres of between 20 and 152 mm. The ammunition had been transported by military vehicles and unloaded in the open air, unprotected from exposure to the sun and rain. The boxes of ammunition had not been stored in specially licensed warehouses, away from the decommissioning area.

During the period of the second contract, employees had been hired without taking into account age, sex, health status, qualifications or knowledge of the decommissioning process or ammunition. According to witness testimonies, children as young as eight or nine years of age had helped their parents out with their daily tasks. At least ten minors, between the ages of 14 and 17, had testified that they had been hired to work at the

decommissioning facility. Some of the applicants (applications nos. 63543/09 and 12720/14) stated in their testimony that their seven-year-old son had never worked at the facility, but had, on the day of the incident, been taking a meal to one of his relatives who had been employed there.

Throughout the whole process, employees had not received any training for the work they had been supposed to carry out, nor had any other training related to evacuation in the event of a fire been conducted. Employees had not been informed of any technical safety regulations in their work with explosives, flammable substances and detonators, nor had there been any technical safety regulation available during the dismantling process. In fact, there had been no proper machinery there for the decommissioning of ammunition during the period of the second contract.

Although there had been some high-pressure fire extinguishers, no training had been conducted regarding their use, nor had there been an automatic sprinkler system in place. During the period of the first contract, fire had broken out in some areas, but it had been extinguished thanks to the intervention of employees and some of the American specialists. No serious damage had resulted from the fires.

According to the decision, as of 26 December 2007 (in the period of the second contract) the armed forces had not been able to ensure the protection of the facility, since, by an order of the Ministry of Defence, ownership had been transferred to the MEICO, which had thus become responsible for securing the facility.

79. All the defendants appealed against the first-instance judgment.

2. Case-law developments of the Constitutional Court

80. On 26 March 2012 the Constitutional Court in its decision no. 14, unrelated to the case in issue, stated that the summary procedure improved judicial efficiency. It further referred to decision no. 2/2003 of the Joint Colleges of the Supreme Court (*Kolegjet e Bashkuara të Gjykatës së Lartë*) which had established that the summary procedure had been valuable for the judiciary because it had simplified and shortened proceedings, increased the speed and effectiveness of trials and consequently decreased by one-third defendants' sentences, and lastly avoided recourse being had to life imprisonment.

3. The Tirana Court of Appeal's judgment

81. On 13 February 2013, following appeals by the prosecution and those accused who had been found guilty by the Tirana District Court, the Tirana Court of Appeal adopted a judgment, which ran to 546 pages, ruling as follows.

82. Relying on the Constitutional Court's decision of 26 March 2012, it applied the summary procedure in respect of four of the accused (Y.P., M.D.,

D.M. and Albademil Ltd), who had appealed against the provisional decision of the District Court rejecting their request for the application of the summary procedure. The application of the summary procedure entailed the automatic reduction of sentences by one-third.

83. As regards Y.P., the Tirana Court of Appeal found him not guilty of the criminal offences of a violation of the safety rules at work and destruction of property, as the charges in that respect were not supported by evidence, but it found him guilty of a breach of the rules on explosive, flammable or radioactive substances and of abuse of duty, and reduced his sentence to ten years' imprisonment. The Court of Appeal held that his conviction for a breach of the rules concerning the use, manufacture, storage, transport and sales of explosive or flammable substances had resulted in deaths and serious bodily injuries to others and qualified as a serious crime.

84. As regards D.M., the Tirana Court of Appeal upheld his guilty verdict for the criminal offences of a breach of the safety rules at work and destruction of property, but discontinued the criminal proceedings in respect of the criminal offence of the illegal manufacture and possession of weapons and ammunition, and reduced his sentence to twelve years' imprisonment. The Court of Appeal held that his actions had resulted in the deaths and injuries of people working at the Gërdec facility and its surroundings.

85. As regards M.D., the Tirana Court of Appeal upheld his guilty verdict for the criminal offence of a breach of the rules on explosives, flammable or radioactive substances, and reduced his sentence to six years and nine months' imprisonment. The Court of Appeal held that his acts or omissions had caused the deaths of 26 persons and for 27 to be grievously wounded, 109 less seriously wounded, 67 injured and for 61 to require medical treatment.

86. The guilty verdict was upheld for Albademil Ltd, but the fine imposed by the Tirana District Court was reduced by one-third, owing to the summary procedure.

87. The guilty verdict was upheld and the sentences remained unchanged in respect of the following people: S.N. (ten years' imprisonment); L.H. (six years' imprisonment); and D.Ç., G.O., J.M., F.T., Z.F. and H.Ç (three years' imprisonment). As regards S.N, the Tirana Court of Appeal held that the Tirana District Court had found that he had been the person responsible for strictly overseeing the rules on explosive, flammable or radioactive substances, which he had failed to do, resulting in the death and grievous injuries of others which qualified as a serious crime.

As regards L.H., the Court of Appeal held that, as Chief of the General Staff of the armed forces, he had been aware that the technology being used for the dismantling and decommissioning of the small-calibre ammunition had not been suitable, which had in particular increased the level of danger inherent in that process and had entailed extraordinary consequences.

88. In respect of H.L. and Sh.M., the Court of Appeal upheld their guilty verdict but amended their sentence to one year's imprisonment with three years' probation.

89. In respect of B.D., Z.B., R.T. and A.B., the Court of Appeal reversed their non-guilty verdict, found them guilty as charged, and sentenced them to one year's imprisonment with three years' probation. They were also banned from holding public office for three years.

90. In respect of Sh.S., the Court of Appeal reversed his guilty verdict and found him not guilty.

91. The Court of Appeal upheld the non-guilty verdict in respect of five of the accused (A.M., A.L., Ad.M., Ju.M. and Fi.M.).

92. The decision of the Tirana District Court to remit the case to the prosecution in respect of L.Sh. was upheld.

4. Supreme Court's judgment

93. Following appeals by the prosecution and the accused Y.P., S.N., M.D., D.M., Sh.M., D.Ç., A.T., L.H., N.M., Z.B., A.B., R.T., B.D., F.K., G.O., J.M., D.H. and Albademil Ltd, on 19 July 2013 the Supreme Court upheld the Tirana Court of Appeal's judgment.

94. The Supreme Court's judgment was not notified to the applicants. They submitted newspaper articles of 29 July 2013 reporting on the outcome of the Supreme Court's decision. The articles stated that the full text of the decision would be deposited with the Supreme Court's registry at a later date.

95. Y.P. and J.M. lodged a request with the Constitutional Court to annul the judgments of the Tirana District Court, the Tirana Court of Appeal and the Supreme Court. The Constitutional Court rejected the request on 26 November 2015.

5. Subsequent reduction of sentences

96. On 3 March 2014, the Tirana District Court adopted a decision on the conditional release of Y.P. on condition that for a period of three years he did not commit another criminal offence.

97. On 18 March 2013 the Tirana District Court reduced M.D.'s sentence by seventy days. He was released from prison on 21 March 2013 on account of his exemplary behaviour in prison.

98. On 21 April 2014 the Tirana District Court reduced S.N.'s sentence by ninety days on account of the regret he had shown. Under new Law no. 22/2014 on amnesty he benefited from a one-year reduction of his sentence.

99. On 12 March 2015 the Tirana District Court adopted a decision on the conditional release of D.M.

C. Criminal and civil proceedings against F.M.

100. After the Supreme Court had severed, on 22 May 2009 (see paragraph 64 above), the criminal proceedings against F.M. from those against the remaining twenty-nine accused, the proceedings against F.M continued before the Supreme Court.

101. On 1 August 2009 F.M. was re-elected as an MP.

102. On 14 September 2009 the Supreme Court, by a majority of three votes to two, discontinued the proceedings against F.M. on account of his parliamentary immunity, since no fresh authorisation had been requested by Prosecutor following his re-election.

1. Private prosecution by Roxhens Durdaj and Alketa Hazizaj

103. On an unspecified date in 2009 Roxhens Durdaj and Alketa Hazizaj, in their capacity as injured parties, instituted criminal proceedings before the Supreme Court against F.M. under Article 91 of the CC for grievous injury by negligence.

104. On 1 March 2010 the Supreme Court decided to discontinue the criminal proceedings against F.M., finding that the constituent elements of the offence (*mens rea* and *actus reus*) had not been made out. It further held that the applicants Roxhens Durdaj and Alketa Hazizaj had failed to substantiate that they had been grievously injured as a result of the Gërdec incident. Roxhens Durdaj and Alketa Hazizaj lodged a constitutional complaint against that decision.

105. On 9 May 2012 the Constitutional Court quashed the Supreme Court's decision of 1 March 2010, finding, *inter alia*, that the Supreme Court, by deciding to discontinue the criminal proceedings, had taken on the attributes of the prosecutor's office and overstepped its competence. It remitted the case for re-examination to the Supreme Court.

106. On 10 December 2012 the Supreme Court decided to discontinue the proceedings against F.M. because of the Amnesty Act 2012. That decision concerned only the charges under Article 91 of the CC for grievous injury by negligence.

2. Proceedings instituted by the Association

107. On 14 January 2010 the Association of families of victims of the Gërdec incident ("the Association"), of which all the applicants were members, requested the prosecutor to institute criminal proceedings against F.M.

108. Having not received a response to its request, the Association lodged a civil action with the Tirana District Court on 21 January 2011, and on 2 May 2011 the Tirana District Court held that it was not competent to examine the Association's civil action. Following an appeal by the

Association, on 13 June 2011 the Supreme Court dismissed the appeal, finding that the Association could not be considered an "injured party" within the meaning of Article 58 of the CCP and it therefore had no locus standi. According to the decision, only an individual could be considered an injured party.

3. Private prosecution by Aishe Selami, Rabije Gërdeci, Dylbere Prini and Bege Aliu

109. On an unspecified date in 2011 all the applicants, in their capacity as injured parties, instituted criminal proceedings under Article 91 of the CC before the Tirana District Court against F.M. and six of the other accused for having committed grievous injury by negligence. They also sought damages. Having regard to the fact that F.M. was an MP, on 25 April 2011 the Tirana District Court decided that it was not competent to continue the proceedings and transferred the case file to the Supreme Court, which on 23 January 2012 decided to continue the proceedings only in respect of the applicants Aishe Selami, Rabije Gërdeci, Dylbere Prini and Bege Aliu, the remaining applicants having failed to sign the action or appear before that court.

110. On 24 January 2012 the Supreme Court decided to discontinue the criminal proceedings against F.M. lodged by Aishe Selami, Rabije Gërdeci, Dylbere Prini and Bege Aliu, finding that the constituent elements of the offence (*mens rea* and *actus reus*) had not been made out. It severed the proceedings against the remaining co-accused and remitted the case for examination to the Tirana District Court.

111. On 8 November 2012 the Amnesty Act was enacted (see paragraph 155 below).

112. On 26 October 2012 an amendment to the Constitution of Albania came into force to the effect that Parliament's authorisation was no longer required for the institution of criminal proceedings against an MP. As a result, the applicants lodged a request with the Prosecutor General's Office to institute criminal proceedings against F.M.

4. Public prosecution instituted upon a complaint by Feruzan Durdaj and Zamira Durdaj

113. On 25 April 2013, in a televised interview with Voice of America, the Prosecutor General stated that no criminal proceedings would be instituted against F.M. unless there were new facts. In his view, the applicants and other victims had not submitted new facts other than those already investigated.

114. On 26 February 2021 Feruzan Durdaj and Zamira Durdaj lodged a request with the Special Prosecution against Corruption and Organised Crime to initiate criminal proceedings against F.M. Following that request, on 5 May 2021 that body submitted their request to the Supreme Court asking

that its decision of 14 September 2009 to discontinue the criminal proceedings against F.M. be annulled (see paragraph 102 above).

115. On 1 June 2021 the criminal panel of the Supreme Court declared itself incompetent to decide on the request of the Special Prosecution and transferred the case to the Special Court of First Instance on Corruption and Organised Crime.

116. On 27 July 2021 the Special Court of First Instance on Corruption and Organised Crime rejected the Special Prosecution's request.

117. On 2 August and 10 August 2021, respectively, the Special Prosecution and Feruzan Durdaj and Zamira Durdaj lodged appeals against the decision of the Special Court of First Instance on Corruption and Organised Crime with the Special Court of Appeal on Corruption and Organised Crime.

118. On 24 September 2021 the Special Court of Appeal on Corruption and Organised Crime reversed the decision of 27 July 2021 of the Special Court of First Instance on Corruption and Organised Crime, approved the Special Prosecutor's request to annul the decision of the Supreme Court of 14 September 2009 to discontinue the criminal proceedings against F.M. and sent the case for further proceedings to the Special Prosecution.

119. On 1 October 2021 F.M. lodged a constitutional complaint asking that the decision of 1 June 2021 of the criminal panel of the Supreme Court be annulled (see paragraph 116 above). It was rejected by the Constitutional Court on 13 December 2021.

120. On 1 November 2021 F.M. lodged an appeal before the Supreme Court against the decision of 24 September 2021 of the Special Court of Appeal on Corruption and Organised Crime (see paragraph 118 above), which was dismissed on 21 December 2021. The Supreme Court held*, inter alia*, that the Special Court of Appeal on Corruption and Organised Crime had correctly applied the substantive and procedural law and adequately addressed all the arguments raised in F.M.'s appeal.

121. On 11 January 2023 the Special Prosecution informed the applicants of its decision to continue the proceedings against F.M. only on charges of the abuse of office and to close the investigation against F.M. on other charges. The applicants wrote to the Special Prosecution on 23 January 2023, asking that F.M. be prosecuted also for murder in aggravated circumstances or breach of safety rules at work.

122. In January 2023 the Special Prosecution charged F.M. with abuse of office perpetrated personally and in collusion with the Armed Forces chain of command and other civilian personnel of Ministry of defence, and sent the case for trial on 8 February 2023. These proceedings are currently pending before the Special Court on Organised Crime.

123. On 28 January 2023 the Special Prosecution replied to the applicants that their arguments for reclassification of offences held against F.M. could not be accepted.

V. ADMINISTRATIVE PROCEEDINGS

A. Applications nos. 63543/09 and 12720/14

124. On an unspecified date, Zamira Durdaj and Feruzan Durdaj lodged a civil action with the Tirana Administrative Court of First Instance against the Ministry of Defence, the Council of Ministers, the MEICO and Albademil Ltd. Relying on the Constitution (without referring to any specific provision), the Convention (without referring to any specific provision), Articles 608 and 626 of the Civil Code, Law no. 8510 of 15 July 1999 on the non-contractual responsibility of institutions of State administration (without referring to any specific provision), Law no. 8485 of 12 May 1999 on administrative procedure (without referring to any specific provision), and Law no. 9000 of 30 February 2003 on the organisation and functioning of the Council of Ministers (without referring to any specific provision), they sought compensation for the death of their son caused by the Gërdec incident. They claimed to have suffered serious harm to their health, their personality and their family life. They sought compensation for both pecuniary and non-pecuniary damage on account of the mental suffering, the consequences they had suffered in respect of their health, family and private life, the potential loss of their family income, burial expenses, health services and treatments of the traumatised family members. Iva Durdaj and Geraldo Durdaj, the victim's siblings, joined the proceedings.

125. In decision no. 1549 of 26 March 2015, the Tirana Administrative Court of First Instance allowed the applicants' claim in part. It ordered the Ministry of Defence, the MEICO and Albademil Ltd to pay each applicant ALL 8,699,381 (about 60,900 euros (EUR) at the time) in respect of the pecuniary and non-pecuniary, biological, psychological and existential damage for the loss of their seven-year-old son and ALL 7,421,601 to each of the victim's siblings (about EUR 51,950 at the time).

126. The Administrative Court held that the Ministry of Defence and the MEICO, a State-owned company under the authority of the Minister/Ministry of Defence, were responsible for the consequences of the tragedy, since they had established the Gërdec facility and had not taken adequate preventive measures to avoid the incident that had caused the damage to the applicants.

127. The Administrative Court dismissed the arguments of the Ministry of Defence and the MEICO that the applicants' claim had become statute-barred and that the Ministry did not have passive standing in the proceedings. The court held that the Ministry of Defence had been aware of the hazardous nature of the decommissioning activity, and that such activity should have been carried out under "military security" standards. However, those standards had not been complied with. The Ministry had failed in its duty to carry out the supervision of the activities at the Gërdec facility, in particular because it had been run by a State-owned company, namely the MEICO,

under the authority of the Minister of Defence, and the company did not have the requisite specialisation in order to provide military-security standards.

128. The Administrative Court, referring to judgment no. 381 of 12 March 2012 of the Tirana District Court, adopted in the criminal proceedings against the accused in relation to the tragedy, and confirmed by judgment no. 138 of 13 February 2013 of the Court of Appeal, held that the subjective liability of the Minister of Defence stemmed from his inaction to engage the armed forces to supervise the hazardous activities; and that the Minister had acted outside of the authorisation granted to him under decision no. 138 of 14 March 2007 of the Council of Ministers when he had issued order no. 2044 of 7 December 2007 on the dismantling and decommissioning of ammunition. The Administrative Court also found the Minister of Defence responsible for having ordered that the activity be conducted at a site without a licence for ammunition storage, as well as for authorising unlicensed companies to operate decommissioning technologies.

129. The Administrative Court further held that the objective liability of the Minister of Defence stemmed from his failure to undertake reasonable actions to avoid or reduce the life-threatening danger through supervision of the hazardous activities. In this respect the court relied on Article 622 of the Civil Code, finding that the State authorities and persons authorised by them had strict liability, and under no circumstances nor by any law in force could a State authority or body authorised by them avoid "non-contractual responsibility" and the duty to licence and supervise hazardous activities. The Administrative Court also relied on decision no. 138 of 14 March 2007 of the Council of Ministers, finding that according to this decision the dismantling procedure should have been conducted under the supervision of the armed forces and that orders nos. 550 of 25 April 2007 and 2044 of 7 December 2007, both issued by the Minister of Defence, had not been in compliance with the provisions and limitations stipulated by the above-mentioned decision of the Council of Ministers. Moreover, the Minister of Defence, as the most senior official of the armed forces at that time, had been responsible for the supervision of the dismantling procedure.

130. The Administrative Court found that the hazardous activities being carried out at the Gërdec facility had resulted in loss of life and other damage caused to the claimants and that they had suffered a violation of their legitimate rights.

131. The Administrative Court held that the State authorities were under the burden to prove that they had taken all available and effective measures to avoid or prevent the accident, and that they had failed to prove this. The Administrative Court, relying on the judgment of the Tirana District Court adopted in the criminal proceedings, held that the defendants had not taken any preventive measures to ensure that minimal safety standards were observed; the work processes at the Gërdec facility had been chaotic and the decommissioning activities had been carried out in the absence of the

required licences; the employees had had no appropriate training for performing such work; the activities had been carried out in violation of military technical regulations; the site had not met the criteria set out in decision no. 138 of 14 March 2007 of the Council of Ministers; and the setting up of the Gërdec facility and its operation had not been monitored or supervised by the responsible State authorities.

132. The court dismissed the claims against the Council of Ministers as not grounded on the law and not supported by any evidence.

133. The defendants lodged appeals against the first-instance judgment and that judgment was upheld on appeal on 24 May 2017 by the Administrative Court of Appeal.

134. On an unspecified date, the applicants lodged a civil claim with the Tirana Administrative Court of First Instance for compensation for the destruction of their property in the explosion.

135. On 8 June 2015 the Tirana Administrative Court of First Instance partly allowed the applicants' action for compensation and awarded them ALL 3,626,015 in compensation for the destruction of their immovable property in the explosion.

B. Application no. 46707/13

136. On an unspecified date Sabrije Picari and her family members lodged a civil claim with the Tirana Administrative Court of First Instance against the Ministry of Defence, the MEICO and Albademil Ltd. They claimed ALL 30,000,000 in respect of pecuniary and non-pecuniary damage, including health-related, existential and moral damage, in connection with the risk to her life caused by the explosion at the Gërdec facility.

137. On 26 March 2015 the Tirana Administrative Court of First Instance awarded Sabrije Picari ALL 11,049,837 (about EUR 77,300 at the time) in respect of pecuniary damage, including health-related, existential and moral damage (on account of the loss of her income, taking into account the income she had been earning before the accident, medical and pharmaceutical expenses and expenses related to her daily care by third persons); and ALL 6,761,029 (about EUR 47,300 at the time) in respect of non-pecuniary damage.

138. The reasoning of the Administrative Court's judgment corresponded to that in the case brought by Zamira Durdaj and Feruzan Durdaj.

139. On an unspecified date, G.K. and his family members, who are not applicants before the Court, lodged a civil claim with the Tirana Administrative Court of First Instance against the Ministry of Defence, the MEICO, Albademil Ltd and SAC. They claimed ALL 19,000,000 in respect of pecuniary and non-pecuniary damage, including health-related, existential and moral damage. On 30 December 2014 G.K. was awarded ALL 13,000,000.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. The Constitution

140. The relevant provisions of the Constitution provide as follows:

Article 21

"The life of a person is protected by law.

Article 44

Everyone has the right to be (...) indemnified in compliance with law if he is damaged because of an act, unlawful act or omission from state bodies.

Article 141

1. The Supreme Court has original and review jurisdiction. It has original jurisdiction when adjudicating criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies, judges of the High Court, and judges of the Constitutional Court.

..."

141. Until 17 September 2012, under Article 73 § 2 of the Constitution Parliament's authorisation was required before the institution of a criminal investigation in respect of an MP.

142. On 18 September 2012 Article 73 § 2 of the Constitution was amended to allow the criminal investigation of an MP without Parliament's prior authorisation. This amendment came into force on 26 October 2012.

B. The Code of Criminal Procedure ("the CCP")

1. Injured party

143. Under Article 58 of the CCP an injured party resulting from the commission of a criminal offence or his or her heirs has the right to request the prosecution of the offender and compensation for damage. The injured party has the right to make requests of the prosecutor and seek the collection of evidence.

144. Under Article 61 a person who has suffered pecuniary damage caused by the commission of a criminal offence may lodge a civil claim during the criminal proceedings seeking compensation for damage. Under Article 62 the application should be submitted prior to the commencement of the judicial examination. In accordance with Article 62 § 3, a court may decide to sever the civil claim from the criminal proceedings if its examination would delay or complicate the criminal proceedings.

145. Article 70 provides that the final decision adopted in criminal proceedings as to the whether the criminal offence was committed and by whom is binding for a court assessing the civil consequences of the offence in question.

2. Summary procedure

146. The relevant domestic law and case-law as regards the summary procedure were described in *Cani v. Albania*, no. 11006/06, §§ 34-35, 6 March 2012.

147. In its unifying decision no. 2 of 29 January 2003, the Supreme Court stated, *inter alia*, that a court should annul its decision for the use of the summary procedure if the parties complain of the authenticity of legal acts or documents. Consequently, the continuation of the normal judicial examination should be ordered. The Supreme Court also held that application of the summary procedure could not be granted in respect of a defendant who was being tried in a set of proceedings which was also directed against other co-defendants who had not sought the use of the summary procedure. Only when the disjoinder of cases was allowed in accordance with the law – specifically under Article 93 of the CCP – could the summary procedure be adopted in respect of the accused that had applied for its application.

148. On 26 March 2012 the Constitutional Court ruled that a provisional decision given by a district court rejecting an accused's application for the summary procedure to be applied was amenable to appeal before the court of appeal. The accused could challenge the provisional decision at the same time as he or she was appealing against his or her conviction on the merits.

C. The Criminal Code ("the CC")

149. The relevant provisions of the Criminal Code read as follows:

Article 25
Definition of complicity

"Complicity is the commission of the criminal offence by two or more persons in concert with each other."

Article 79
Murder committed in other qualifying circumstances

"Murder committed:

...

(ë) in a dangerous way involving the lives of many persons, shall be punished by no less than twenty years or life imprisonment."

Article 91
Serious injury due to negligence

"Serious injury due to negligence constitutes a criminal offence and shall be punished by a fine or up to one year's imprisonment."

Article 248
Abuse of office

"Deliberate acts or omissions, in violation of the law and amounting to the failure of a person carrying out public functions to perform his or her duties properly, where he or she or other persons have unjustly obtained material or non-material gain or where [the acts or omissions have] caused damage to the legitimate interests of the State, citizens or other legal entities, and where they do not constitute another criminal offence, shall be punishable by a fine or up to seven years' imprisonment."

Article 278
Illegal manufacture and possession of weapons and ammunition

"Manufacturing arms and military ammunition, explosives, bombs, or mines without the permission of the competent State authorities is punishable by five to fifteen years' imprisonment.

Possession of military ammunitions, without authorisation from the competent State authorities is a criminal offence and is punishable by a fine or up to two years' imprisonment.

Possession of arms, bombs or mines, or explosives at one's residence, without the permission of the competent State authorities, is punishable by one to five years' imprisonment.

Possession of arms, bombs or mines, or explosives in a motor vehicle in public spaces or in premises open to the public, without the permission of the competent State authorities is punishable by seven to fifteen years' imprisonment.

Where the offence involves large quantities [of weapons or ammunition], is committed in collusion, repeatedly, or leads to serious consequences, it is punishable by ten to twenty years' imprisonment."

D. The Military Criminal Code (the "MCC")

150. Article 2 of the MCC provides that that it is to be applied in respect of the Albanian citizens who have committed a criminal offence in the sphere of the State defence.

151. Article 70 of the MCC defines the offence of the abuse of office and reads as follows:

"Deliberate acts or omissions, in violation of the law, in the course of fulfilling one's duty, where such actions result in serious consequences for the State or the legitimate interests of citizens, are punishable by a fine or dismissal from the army or up to five years' imprisonment.

Where the offence is committed by middle or high-ranking officers, it is punishable by three to eight years' imprisonment."

E. Civil Code

152. The relevant part of the Civil Code provides:

"TITLE IV
LIABILITY IN TORTS
CHAPTER I
GENERAL PROVISIONS
Liability in torts
Section 608

The person culpably and illegally causing damage to another in person or in rem shall be obliged to indemnify the caused damage.

The person having caused the damage shall not be liable upon proving that he is not culpable. The damage shall be illegal wherever it emerges out of the breach of impairment of the interests of rights of others, being protected by the legal order or good customs.

Section 609

The damage shall be direct and immediate consequence of the action or omission of the person. Failure to avoid an occurrence by a person being legally obliged to avoid it shall render him liable in torts.

(...)

Article 622
Liability due to carrying out a hazardous activity

The person carrying out a hazardous activity, regarding its very nature or the nature of items applied, and causing damage to third parties, shall be obliged to indemnify the damage, unless he establishes that he has made use of all the appropriate and necessary arrangements for avoiding the damage."

F. Law no. 8510 of 15 July 1999 on non-contractual responsibility of institutions of State administration

153. Sections 1 and 3 of that Law (as amended by Law no. 10005 of 23 October 2008) provides that the bodies of the state administration are liable for non-contractual pecuniary and non-pecuniary damage caused to natural or legal persons, private, domestic, or foreign. They are under the obligation to compensate the damage they caused to the interests of private persons in the exercise of their public functions, when: (i) they commit illegal actions or omissions; (ii) they commit lawful acts or omissions, which cause damage to the lawful interests of private natural or legal persons; (iii) because of the non-functioning of the technical means by which the State administration bodies exercise their activity, the legitimate interests of private natural or legal persons are violated; (iv) they cause constant danger to private natural or legal persons; and (v) when they commit a corrupt act in the exercise of their functions.

G. The Amnesty Act

154. The Amnesty Act was enacted on 8 November 2012, in the framework of the 100th anniversary of independence. Under section 5 of the Amnesty Act criminal prosecution could not be commenced, and if it had already commenced it had to be discontinued, in respect of those criminal offences which had been committed before 30 September 2012 and in respect of which the Criminal Code prescribed a sentence of up to two years' imprisonment or another more lenient punishment.

II. RELEVANT COUNCIL OF EUROPE MATERIAL

155. On 15 March 2023 the Committee of Ministers of the Council of Europe adopted the Recommendation CM/Rec (2023)2 on rights, services and support for victims of crime. Article 10 of the recommendation addresses in the following terms the victims' right to be heard in the criminal proceedings against the offender:

> **"Article 10 – Right to be heard**
>
> 1. Member States should ensure that victims may be heard and may provide evidence during criminal proceedings.
>
> 2. Member States are encouraged to allow victims to be heard also during post-trial proceedings.
>
> 3. In accordance with national law, member States are encouraged to allow for the provision of evidence to be at the initiative of the victim and not to restrict it to an obligation to testify during the investigation or the trial.
>
> 4. To the extent possible, and in accordance with the rights of the defendant, member States are encouraged to consider the victims' availability in planning and postponement of court and post-trial proceedings.
>
> 5. In accordance with national law, member States are encouraged to ensure that this right to be heard concerns any decision which can be assumed to have a considerable impact on the victims' interests. This encouragement could particularly concern:
>
> a. any decision concerning the provision of information to and by the victim, including, *inter alia,* the right to interpretation and translation;
>
> b. if applicable, any decision to refrain from referral to restorative justice processes, in those cases where the victim has requested such referral;
>
> c. any decision not to prosecute an offender;
>
> d. if applicable, any decision to resort to forms of out-of-court settlement;
>
> e. any decision concerning compensation awards to the victim during the course of criminal proceedings;
>
> f. any decision to receive State compensation;
>
> g. any decision concerning the protection of the victim.

6. The procedural rules under which victims may be heard and may provide evidence and the extent to which the victims' right to be heard should be taken into account by authorities are determined by national law."

THE LAW

I. JOINDER OF THE APPLICATIONS

156. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

157. The applicants complained under both the substantive and procedural aspects of Article 2 of the Convention that the State was responsible for the explosion at the Gërdec facility which had killed their close relatives or caused grievous bodily injuries to the applicants, and that the investigation into that incident and the subsequent proceedings on indictment had fallen short of the requirements of that Article. The applicants in applications nos. 46707/13 and 46714/13 also complained under Article 13 of the Convention that they had had no effective remedy for their complaints. The Court being master of the characterisation to be given in law to the facts of a case, considers that the issues raised in the present case should be examined solely from the perspective of Article 2 of the Convention (compare *Jelić v. Croatia*, no. 57856/11, §§ 107-09, 12 June 2014, and *M. and Others v. Croatia*, no. 50175/12, § 52, 2 May 2017).

158. The relevant part of Article 2 of the Convention reads as follows:

"1. Everyone's right to life shall be protected by law. ..."

159. The Court notes at the outset that the Government did not challenge the applicability of Article 2 of the Convention. Indeed, in view of the fact that the applicants were the survivors of an ammunitions explosion who received life-threatening injuries, Article 2 is applicable (compare, for example, *Vovk and Bogdanov v. Russia*, no. 15613/10, § 57, 11 February 2020). Also, there is no issue of applicability of Article 2 in respect of the applicants who are the next of kin of the victims who were killed by the explosion at the Gërdec facility.

A. Procedural aspect of Article 2 of the Convention

1. Admissibility

(a) The parties' submissions

160. The Government submitted that applications nos. 63543/09 and 12720/14 had been lodged outside of the six-month time-limit, considering that the Supreme Court's judgment had become final on 19 July 2013. In that connection they pointed out that they were not aware how the applicants had been informed of the Supreme Court's decision since under domestic law there had been no obligation incumbent on the Supreme Court to notify them. However, the Government maintained that as a rule, the Supreme Court's decisions were published on the internal system of data storage and on its website within twenty-four hours of a hearing.

161. The Government also claimed that the criminal proceedings were still pending and therefore the applications were premature.

162. The applicants in applications nos. 63543/09 and 12720/14 submitted that they had become aware of the Supreme Court's decision on the evening of 29 July 2013, the date of the publication of the online article. Thus, the start date for the six-month period should be that of 29 July 2013, and they had therefore complied with the requirement to lodge their application within six months of the date of the final domestic decision. They argued that as there had been no obligation under domestic law on the Supreme Court to notify the parties of its decisions, the six-month period had started to run from when they had become aware of its decision.

163. The applicants argued that criminal proceedings had been the only effective remedy available to them as injured parties. They contended that the criminal proceedings they had instituted had not been concluded owing to the Amnesty Act being applied in respect of the accused. The applicants submitted that in the absence of any legal means available to them to challenge the effects of the Amnesty Act, the six-month time-limit had started running from the date of the Supreme Court's decision no. 7 of 10 December 2012 terminating the criminal proceedings by virtue of the Amnesty Act. They relied on the case in *Evrim Öktem v. Turkey* (no. 9207/03, § 20, 4 November 2008).

164. With regard to the Supreme Court's decision of 24 January 2012, four applicants (Aishe Selami, Beg Aliu, Dylbere Prini and Rabie Gërdeci), whose case had been declared admissible but rejected on the merits, contended that they had been planning to lodge a constitutional complaint with the Constitutional Court by the end of 2012 (within the two-year statutory time-limit to lodge a constitutional complaint under Albanian law). They further argued that the entry into force of the Amnesty Act in November 2012 had rendered the lodging of a constitutional complaint devoid of any purpose.

165. The remaining applicants in application no. 46707/13 submitted that the reopening of the criminal proceedings against the former Minister of Defence, F.M., which had been the only remedy available to them, had been precluded by the entry into force of the Amnesty Act. All the applicants in application no. 46707/13 contended that their application to the Court had been submitted within the six-month time-limit from the last District Court decision of 3 December 2012.

(b) The Court's assessment

(i) Compliance with the six-month time-limit

166. Application no. 12720/14 was lodged with the Court on 29 January 2014. The last domestic decision was given by the Supreme Court on 19 July 2013. The applicants maintained that they had learned of the decision in an online article on 29 July 2013. Having regard to the fact that the Supreme Court's decision was not publicly available to everyone and that the applicants, who had an established interest in the case, were not able to obtain the full text of the Supreme Court's decision prior to 29 July 2013, the Court considers that the application was lodged within the six-month time-limit (see, among other authorities, *Ryakib Biryukov v. Russia*, no. 14810/02, §§ 30-37, ECHR 2008 concerning the general principles for the "pronouncement" of domestic decisions under Article 6 § 1 of the Convention).

167. No issue arises as regards compliance with the six-month time-limit in respect of application no. 63543/09, it having been lodged on 9 November 2009, within six months of the Supreme Court's decision of 22 May 2009 which severed the civil action from the criminal proceedings. No issue arises in relation to applications nos. 46707/13 and 46714/13 either, as the applicants lodged their applications within six months of the entry into force of the Amnesty Act and of the last domestic court's decision.

(ii) Exhaustion of domestic remedies

168. Given the Government's contention that the applicants have not exhausted domestic remedies because either their civil claims for damages are still pending or they did not lodge such claims at all, the Court will at this juncture address the question of the adequacy of such claims in respect of the procedural aspect of Article 2 of the Convention.

169. In that connection, the Court reiterates that even in cases of non-intentional interferences with the right to life or physical integrity, there may be exceptional circumstances where an effective criminal investigation is necessary to satisfy the procedural obligation imposed by Article 2 (see, in the context of dangerous activities, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 160, 25 June 2019; and *Vovk and Bogdanov*, cited above,

§ 64; see also, in the context of medical negligence, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 215, 19 December 2017).

170. The Court has held that in the context of dangerous activities where it is established that the negligence attributable to State officials or bodies on that account goes beyond an error of judgment or carelessness, in that the authorities in question, fully realising the likely consequences and disregarding the powers vested in them, failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy which individuals may exercise on their own initiative (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 93, ECHR 2004-XII).

171. In the present case a massive explosion occurred at a facility carrying out a dangerous activity, set up by the State authorities and under their control. The reports obtained during the domestic proceedings established that neither the choice of the site, nor its operation had been in compliance with safety and other rules. The explosion was of an extremely vast nature and resulted in the deaths of twenty-six people and injuries to over 300. Given the scale of the events and the involvement of the State officials in it, the Court considers that in the circumstances of the present case a criminal-law response was required under the procedural aspect of Article 2 of the Convention, notwithstanding that the present case concerns an accident and not intentional killing (compare *Öneryıldız*, cited above, § 113).

172. It follows that the Government's objection as to the exhaustion of domestic remedies in respect of the procedural aspect of Article 2 of the Convention must be dismissed.

(iii) Conclusion as to the admissibility of the procedural aspect of Article 2

173. The Court notes that the complaints under the procedural aspect of Article 2 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicants

174. The applicants submitted that in the context of the criminal proceedings they had instituted in their capacity as injured parties, no investigation, let alone an effective one, had taken place. This had been because all three sets of proceedings (two against the former Minister of Defence and one against the remaining co-accused) had been terminated

when they had barely begun, owing to the entry into force of the Amnesty Act.

175. The applicants contended that the former Minister of Defence's criminal liability had never been assessed by the domestic courts. On the contrary, F.M. had been protected from criminal investigation either owing to the refusal of the prosecutor to continue investigating his potential criminal liability following his election to a second parliamentary term, despite the fact that following the October 2012 Constitutional amendment Parliament's authorisation was no longer necessary to launch criminal proceedings against F.M., or owing to the enactment of the Amnesty Act. Furthermore, the applicants contended that the Amnesty Act had not served a pressing social purpose and had not struck a fair balance between the public interest and the applicants' right to the truth.

176. As regards the investigation stage, they argued that their request to the prosecutor's office to be given access to the case file had been denied and that only following the judicial review of their request had they been given access.

177. As regards the trial stage, the applicants contented that, following the Supreme Court's decision to sever their civil claim, they had been completely excluded from the proceedings on indictment against the twenty-nine accused.

178. Lastly, the applicants complained that the sentences imposed on the defendants in the domestic proceedings had been disproportionately lenient in view of the acts they had committed.

(ii) The Government

179. The Government argued that during and immediately after the incident a criminal investigation had been opened in connection with the Gërdec incident in order to identify the perpetrators, and the applicants had been granted victim status. They further submitted that the police officers and the prosecuting authorities, despite the stressful conditions, had taken emergency procedural measures and carried out initial procedural steps and shown the necessary diligence for the identification and committal to trial of the offenders.

180. The Government further argued that the proceedings in relation to the former Minister of Defence, F.M., had been discontinued owing to his re-election on 1 August 2009 as an MP.

181. His prosecution had been discontinued pursuant to Article 73 § 2 of the Constitution, which had provided that it had not been possible to prosecute MPs in the absence of parliamentary authorisation.

182. Overall, the Government insisted that, apart from putting in place the relevant legal framework, they had taken all possible actions to prosecute the perpetrators of the incident.

(b) The Court's assessment

(i) General principles

183. Where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 of the Convention entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 138, ECHR 2008 (extracts)). In this connection, the Court has held that if the infringement of the right to life or to physical integrity was not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (ibid., § 139, with further references).

184. However, there may be exceptional circumstances where an effective criminal investigation is necessary to satisfy the procedural obligation imposed by Article 2. Such circumstances can be present, for example, where life was lost or put at risk because of the conduct of a public authority that goes beyond an error of judgment or carelessness. Where it is established that the negligence attributable to State officials or bodies on that account goes beyond an error of judgment or carelessness, in that the authorities in question – fully realising the likely consequences and disregarding the powers vested in them – failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy that individuals may exercise on their own initiative. In the particular context of dangerous activities, the Court has considered that an official criminal investigation is indispensable given that public authorities are often the only entities to have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused an incident (see *Öneryıldız*, cited above, §§ 71 and 93; *Oruk v. Turkey*, no. 33647/04, §§ 56-66, 4 February 2014; *Vovk and Bogdanov*, cited above, § 64; and *Budayeva and Others*, cited above, § 140).

185. The relevant principles applicable to the effective investigation have been summarised by the Court on many occasions as follows (see, for example, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 229-39, 30 March 2016): those responsible for carrying out an investigation must be independent from those implicated in the events in question; the investigation must be "adequate"; its conclusions must be based on thorough, objective and impartial analysis of all relevant elements; it must be carried out promptly and with reasonable expedition (ibid., § 240); and the

victim or the next of kin when the victim did not survive should be able to participate effectively in the investigation in one form or another to the extent necessary to safeguard their legitimate interests (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 185, ECHR 2012, and *Neškoska v. the former Yugoslav Republic of Macedonia*, no. 60333/13, § 49, 21 January 2016). These elements are inter-related and each of them, taken separately, does not amount to an end in itself. Rather, they are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015).

186. In order to be "effective", as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate. This means that it must be capable of leading to the establishment of the facts and of identifying and – if appropriate – punishing those responsible. This is not an obligation of results, but of means (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II*; Mustafa Tunç and Fecire Tunç v. Turkey* [GC], cited above, § 173; and *Armani Da Silva*, cited above, § 233).

187. In cases of dangerous activities, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, first, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved in whatever capacity in the chain of events in issue (see *Öneryıldız*, cited above, § 94, and *Budayeva and Others*, cited above, § 142).

188. Moreover, the requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law (see *Öneryıldız*, cited above, § 95). While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the domestic courts should not under any circumstances be prepared to allow life-threatening offences to go unpunished.

189. As regards the sanction, the Court has held that although substantial deference should be granted to the national courts in the choice of appropriate sanctions for ill-treatment and homicide, the Court must intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Bektaş and Özalp v. Turkey*, no. 10036/03, § 50, 20 April 2010, and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 61, 20 December 2007). The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the

right to life are not undermined (see *Vazagashvili and Shanava v. Georgia*, no. 50375/07, § 84, 18 July 2019, with further references).

190. Lastly, the Court has already held that when an agent of the State is convicted of a crime that violates Article 2 or 3 of the Convention, the subsequent granting of an amnesty or pardon could scarcely be said to serve the purpose of an adequate punishment. On the contrary, States are to be all the more stringent when punishing their own agents for the commission of serious life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider themselves to enjoy by virtue of their very office (see *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 157, 26 May 2020).

(ii) Application of these principles to the present case

(α) Investigation

– *Whether the investigation was adequate*

191. As to the investigation in the present case, the Court first notes that, as soon as they learned about the incident at the Gërdec facility, the competent domestic authorities, namely the Prosecutor General's Office (hereinafter the "Prosecutor"), embarked of its own motion on the investigation of the circumstances of the incident, on the same day the incident took place.

192. The Albanian authorities also sought assistance from the ATF-IRT, the US federal unit of investigation of explosives incidents, with national and international investigating authority, thus ensuring the required expertise.

193. Both the Prosecutor and the ATF-IRT conducted the on-site searches as soon as possible, interviewed witnesses, including the applicants, and examined video-recordings and photographs of the facility from prior to the incident.

194. The Prosecutor also asked for a report from the military experts and in total three reports were produced, one by the Prosecutor, one by the ATF-IRT and the third by military experts.

195. These reports established the most probable cause of the accident and pointed to a number of failures as regards the setting up and operating of the Gërdec facility and the lack of adequate security measures (see paragraphs 21-55 above). The main points of all three reports may be summarised as follows.

196. The choice of Gërdec as the site of a weapons-decommissioning facility had been made in violation of the law and State regulations. The area had not been licensed for the storage and dismantling of ammunition. The Gërdec area, which had been administered by the Ministry of Defence, had not been licensed to be used as munitions depot. An operation of such

magnitude should have never been conducted in a location close to public roads and residences.

197. The procedures used at the Gërdec facility had been unsafe and not in compliance with normal working standards at workplaces dealing with explosives and propellants. The decommissioning process had carried a degree of risk in and of itself, since it had consisted of the storage of munitions, their disassembly and the separation and storage of by-products. As such, the designation of the Gërdec military facility for decommissioning purposes should have been accompanied by the licensing of the warehouses and facilities where the decommissioning operations were supposed to take place. However, ordnance had not been unloaded and stored in special warehouses, away from the area used for decommissioning operations. There had been no licensed warehouses to store ordnance delivered by the armed forces. On entering into the second contract with the commercial contractor, a number of measures should have been taken before authorising the supply of materials and the commencement of work. Some of the measures should have included a prior inspection of the disassembly machines, compliance with fire safety measures, assessment of qualifications and training of personnel as regards technical safety measures and of the storage capability of the contractor. No such inspection had been carried out by the responsible State authority.

198. The disassembly of the ordnance had not corresponded to its decommissioning as envisaged in the contract. The facility's infrastructure had not met the safety standards for carrying out decommissioning operations, which had taken place in two open-air locations not protected from exposure to direct sunlight. There had been no explosion-resistant containers with which to carry out dangerous and hazardous operations. The technology used for disassembly had not been safe. No machinery had been used and the equipment had not complied with the safety requirements. As regards on-site transportation, the vehicles used had not satisfied the safety measures required for working with dangerous materiel. The facility had not been equipped with fire extinguishers or an automatic sprinkler system, nor had any lightning protection system been installed. Rubbish, explosive materials and unsecured fused projectiles and propellant bags had been left on the floor.

199. The transportation from the arms depot to the Gërdec weapons-decommissioning facility had been carried out using vehicles of the armed forces. There did not appear to have been a transportation schedule, in breach of an order issued by the Minister of Defence.

200. As to the workers, after implementation of the second contract on 28 December 2007, they had not read or even seen any regulations concerning technical safety measures, nor had they received any training before starting work. The dismantling of ordnance had been performed by untrained workers using vehicles which had not complied with safety

standards. The interviews with workers had revealed that they had not had a designated smoking area and no "no smoking" signs had been displayed. Furthermore, they had not been impeded from carrying matches, lighters or tobacco on site. No work uniform had been designated for the workers. Additionally, they had not been required to wear non-static clothing, and nor had they received any instruction on how to prevent static-electricity hazards.

201. The armed forces had been supposed to bear responsibility for securing and protecting the facility, while the MEICO had been expected to have general oversight over the decommissioning activity.

202. A medical report was also commissioned concerning the injuries the victims of the incident had sustained.

203. The investigation as a whole resulted in the filing of indictments against twenty-nine persons, including a former Minister of Defence, 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 (see paragraph 62 above). All the above-mentioned reports produced during the investigation served as the basis for the indictments and were used as evidence in the trial against the accused.

204. The Court thus concludes that the investigation was adequate in that it generally succeeded in establishing the circumstances surrounding the incident and identified those responsible for it (*Mustafa Tunç and Fecire Tunç*, cited above, §§ 183-209, and *Hanan v. Germany* [GC], no. 4871/16, §§ 211-219, 16 February 2021).

– *Participation of the applicants in the investigation phase*

205. The Court notes the applicants' allegation that they requested the Prosecutor's office for access to the case file at the investigation stage and that their request was denied and they were only given a copy of it at the end of the investigation. However, the applicants have not submitted any documents to support their allegations. On the other hand, the Government have not disputed these allegations.

206. Even assuming that the applicants' statement in that respect is correct, the Court notes as follows.

207. As regards the accessibility of the investigation and the existence of sufficient public scrutiny, the Court has already emphasised the importance of the right of victims and their families and heirs to know the truth about the circumstances surrounding events involving a massive violation of rights as fundamental as that of the right to life. However, the Court notes that this aspect of the procedural obligation does not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or for them to be consulted or informed about every step (see *Brecknell v. the United Kingdom*, no. 32457/04, § 77, 27 November 2007; *Mezhiyeva v. Russia*, no. 44297/06, § 75, 16 April 2015; and *Hovhannisyan and*

Nazaryan v. Armenia, nos. 2169/12 and 29887/14, § 173, 8 November 2022; see also *Gürtekin and Others v. Cyprus* (dec.), nos. 60441/13 and 2 others, § 29, 11 March 2014; *Mujkanović and Others v. Bosnia and Herzegovina* (dec.), nos. 47063/08 and 5 others, § 40, 3 June 2014; and *Fazlić and Others v. Bosnia and Herzegovina* (dec.), nos. 66758/09 and 4 others, § 38, 3 June 2014).

208. Even though the applicants were not given access to the investigation case file while the investigation was ongoing, they were ultimately provided with full access to that file at the end of the investigation. In that connection the Court notes that the incident in question took place on 15 March 2008 and the investigation was concluded within a year. It follows that the investigation was prompt, and the applicants did not have to wait for many years to learn about the results of the investigation (contrast *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, §§ 140-41, 24 May 2011).

209. Furthermore, as stated above, the Court finds that the authorities established all the relevant facts during the investigation, and the applicants have not pointed to any particular oversights or omissions on the part of the investigating authorities, or a particular fact that has not been established, or a particular line of inquiry that was not followed.

210. In these circumstances, the Court considers that the applicants were granted access to the investigation to the extent necessary to safeguard their legitimate interests (compare *Gribben v. the United Kingdom* (dec.), no. 28864/18, § 136, 25 January 2022).

(β) Criminal trial against twenty-nine accused

– *Charges brought against the accused and the sanctions imposed*

211. The Court notes that following the investigation, indictments were preferred against twenty-nine accused in connection with the Gërdec incident and that they were tried before the Tirana District Court. Therefore, the issue to be assessed is whether the judicial authorities, as the guardians of the laws laid down to protect the lives and physical and moral integrity of persons within their jurisdiction, were determined to sanction those responsible. While it is true that it is not the Court's task to address issues of domestic law concerning individual criminal responsibility, or to deliver guilty or not guilty verdicts, in order to determine whether the respondent Government have fulfilled their international law responsibility under the Convention, the Court must have regard to the national courts' considerations when convicting the main accused and to the punishment imposed on them as a result. While doing that, the Court should grant substantial deference to the national courts in the choice of appropriate sanctions. However, it must still exercise a certain power of review and intervene in cases of manifest disproportion between the

gravity of the act and the punishment imposed (see *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 66, 8 April 2008, with further references).

212. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow acts of grave negligence which resulted in loss of life or created a serious risk to life to go unpunished, or for serious offences to be punished by excessively light punishments. The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, might be deemed to have submitted the case to careful scrutiny, so that the deterrent effect of the judicial system in place and the significance of the role it was required to play in preventing violations of the right to life are not undermined (ibid., §§ 61-62; see also *Armani Da Silva*, cited above, § 285; *Sabalić v. Croatia*, no. 50231/13, § 97, 14 January 2021; and, generally, *Öneryildiz*, cited above, §§ 116-18).

213. As to the charges brought against the accused, they referred to the criminal offences of homicide, abuse of office, falsification of documents and a violation of safety rules.

214. Twenty-four accused were found guilty. None of the main accused was ultimately found guilty of homicide, but of other criminal offences such as a violation of safety rules, production and possession of arms and ammunition at work, abuse of duty and destruction of property by negligence.

215. Whereas in cases concerning intentional killings, in particular by State officials, the procedural obligation under Article 2 of the Convention would in principle require that an adequate charge be preferred which has to refer to the killing, that is not necessarily the case when it comes to specific charges related to deaths resulting from accidents. In such circumstances the national authorities are better placed to assess the role, duties and position of each individual as regards the incident and his or her responsibility in that respect.

216. In the present case, even though none of the main accused was ultimately convicted of homicide, all the offences for which they were convicted were related to the Gërdec incident and their convictions specifically referred to causing death and injuries to a number of persons. Thus, the convictions of the main accused do relate to life-endangering acts and to the protection of the right to life within the meaning of Article 2 (contrast *Öneryildiz*, cited above, § 116).

217. As regards the sentencing, the Court has previously found a violation of the procedural aspect of Article 2 of the Convention in cases where State officials had caused death by acts of police brutality and where the execution of sentences imposed on them had been suspended (see *Ali and Ayşe Duran*, cited above, §§ 70-72; *Bektaş and Özalp*, cited above, § 50; *Fadime and Turan Karabulut v. Turkey*, no. 23872/04, § 47, 27 May 2010; and *Külah and Koyuncu v. Turkey*, no. 24827/05, § 60, 23 April 2013); or the sentence was

enforced with a significant delay (see *Kitanovska Stanojkovic and Others v. the former Yugoslav Republic of Macedonia*, no. 2319/14, §§ 31-33, 13 October 2016); or they were not punished owing to the punishment becoming time-barred (see *Przemyk v. Poland*, no. 22426/11, § 71, 17 September 2013, and *Nina Kutsenko v. Ukraine*, no. 25114/11, § 150, 18 July 2017); or the sentence was too lenient (see *Przemyk*, cited above, § 72, where a police officer was initially sentenced to four years' imprisonment for charges of battery resulting in death, and then the sentence was reduced to two years' imprisonment, and *Yeter v. Turkey*, no. 33750/03, § 68, 13 January 2009, where a police officer was initially sentenced to ten years' imprisonment for charges of torture resulting in death, and then the sentence was reduced to four years and two months' imprisonment and he served only nineteen days of it); or where the police officers who committed murder were not banned from public service (see *Vazagashvili and Shanava*, cited above, § 92, where two police officers convicted for aggravated murder of the applicant's son were sentenced to twelve years' imprisonment but could potentially join the law-enforcement system of the respondent State anew after they have served their prison sentences); or where the trial court suspended the pronouncement of the judgment for the offence of unlawful killing on the ground that it had not been intentional (see, for example, *Kasap and Others v. Turkey*, no. 8656/10, § 60, 14 January 2014, and *Hasan Köse v. Turkey*, no. 15014/11, § 37, 18 December 2018).

218. The Court first notes that the present case does not involve intentional killing, but negligence, albeit grave. However, even charges concerning grave negligence resulting in death cannot be compared to those brought against State officials for intentional killings.

219. As regards the sanctions imposed on the main accused, the Court notes that Y.P. and D.M. were initially sentenced to eighteen years' imprisonment, M.D. and S.N. to ten years' imprisonment and L.H. to six years' imprisonment.

220. However, the Tirana Court of Appeal applied the summary procedure in respect of Y.P., D.M. and M.D. which entailed an automatic reduction of their sentences by one-third. Thus, Y.P. was sentenced to ten years' imprisonment, D.M. to twelve, and M.D. to six years and nine months' imprisonment, whereas the sentences for S.N. and L.H. were upheld.

221. Subsequently, Y.P. was conditionally released, after serving five years, nine months and eighteen days of his sentence. M.D. was granted a seventy-day reduction of his sentence on account of his exemplary behaviour in prison. He served five years and six days of his sentence. S.N.'s sentence was reduced by ninety days. D.M. served six years, eleven months and twenty-seven days.

222. The issue is whether the courts applied careful scrutiny in determining the sanctions for those found responsible, having regard to the magnitude of the Gërdec incident and the number of casualties. While it is

true that some of the sentences were subsequently reduced, the reductions in the initial sentences did not render them disproportionally lenient. As to the fact that the accused then served even less time in prison, the Court notes that after a convicted person starts to serve his or her sentence, a conditional release or a reduction in sentence is a normal feature in criminal justice systems and may be the result of various circumstances, such as the convicted person's behaviour in prison. The time the main accused spent in prison cannot be regarded as manifestly disproportionate to the seriousness of the acts committed by them.

– *Participation of the applicants in the criminal proceedings*

223. 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. Zamira Durdaj complained to the Constitutional Court that the disjoinder of the civil claim from the criminal proceedings had prevented her from participating in the criminal proceedings because it had deprived her of any opportunity of participating in the criminal 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, finding that the Supreme Court had acted in accordance with domestic law and not addressing her specific complaints about being denied active participation in the criminal trial against those responsible for the Gërdec incident in which her son had lost his life.

224. The Court notes that, once the Supreme Court severed the applicants' civil claim from the criminal proceedings, they were no longer informed of any of the steps taken in the criminal proceedings. The Court notes that that occurred on 22 September 2009, before the trial before the Tirana District Court had even begun. Once the trial against the twenty-nine accused had commenced before the Tirana District Court, the applicants were not informed of the hearings and were not invited to participate in the trial in any capacity.

225. 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, even though the hearings held before the domestic courts were, in principle, open to the public and the hearing schedules might have been available (see *Seremet v. Bosnia and Herzegovina, Montenegro and Serbia* (dec.), no. 29620/05, § 36, 8 July 2014), the applicants would only have been able to follow the trial as members of the general public, without any specific rights. They would not have had a real

opportunity to participate actively in the trial in the ways outlined by Zamira Durdaj in her complaint to the Constitutional Court.

226. In addition to this, the decisions and judgments adopted in the course of the criminal proceedings were not served on the applicants and they had no right of appeal against them. Thus, in the course of the criminal proceedings, the applicants had no procedural rights.

227. As to the Government's claim that the applicants could have exercised their rights in the course of the proceedings related to a civil claim for damages, the Court notes that it has already established that the State's procedural obligation under Article 2 of the Convention in the circumstances of the present case required a criminal-law response, and that therefore the applicants had to be afforded an opportunity to participate effectively in the criminal proceedings, including at the trial stage, to the extent necessary to safeguard their legitimate interests (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 73, ECHR 2002-II; see also paragraph 155 above). This cannot be compensated for by the possibility for the applicants to lodge a civil claim in separate civil proceedings, since those proceedings would only examine the applicants' civil claim and not the criminal responsibility of the accused. The requirement to allow for involvement of the victims can hardly be satisfied when victims of violations under Article 2 of the Convention or their next of kin have no possibility to participate in criminal proceedings against perpetrators of such violations (compare *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III; *Boboc and Others v. the Republic of Moldova*, no. 44592/16, § 53, 7 June 2022; *Shavadze v. Georgia*, no. 72080/12, § 35, 19 November 2020; *Vazagashvili and Shanava*, cited above, § 91; *Iorga v. Moldova*, no. 12219/05, §§ 35 and 36, 23 March 2010; and *Pisari v. Moldova and Russia*, no. 42139/12, § 59, 21 April 2015).

(γ) Proceedings against the former Minister of Defence

228. Article 2 does not entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence (see, among many authorities, *Budayeva and Others*, cited above, § 144). In other words, the respondent State is not under an obligation to prosecute the individuals whom an applicant wishes to see held to account (see *Van Melle and Others v. the Netherlands* (dec.), no. 19221/08, 29 September 2009). On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished (see *Mazepa and Others v. Russia*, no. 15086/07, § 69, 17 July 2018, and *Ranđelović and Others v. Montenegro*, no. 66641/10, § 123, 19 September 2017; see also *Öneryıldız*, cited above, §§ 95-96).

229. In the present case the Prosecutor intended to institute a criminal investigation, *inter alia*, in respect of F.M., the Minister of Defence, for which the prosecution needed Parliament's consent under the applicable law at the

time. Parliament initially waived parliamentary immunity in order to allow the criminal investigation and prosecution of F.M. As a result, a criminal investigation was opened in respect of him. During the investigation evidence was collected which in the prosecution's view provided a sufficient basis for filing an indictment against F.M. The indictment was preferred before the Supreme Court on charges of the criminal offences of abuse of office, the manufacture and illegal possession of firearms and ammunition, and the military criminal offence of abuse of office in complicity with a military staff member (see paragraph 62 above). However, F.M. was then re-elected as an MP (see paragraph 101 above). This re-election gave him renewed parliamentary immunity, which prevented the pursuit of the criminal proceedings against him and the Supreme Court discontinued the proceedings against F.M. on 14 September 2009 (see paragraph 102 above). After that, the prosecution did not ask for fresh authorisation from Parliament which resulted in any further attempts to establish F.M.'s responsibility for the Gërdec incident being ceased (compare *Carter v. Russia*, no. 20914/07, § 145, 21 September 2021). Neither the prosecution nor the Government have provided any explanation as to why a new parliamentary authorisation was not sought.

230. As of 26 October 2012, parliamentary immunity has not been a bar to the institution or continuation of a criminal investigation in respect of an MP. However, the Prosecutor did not pursue the reopening of the criminal proceedings against F.M. until 5 May 2021 (see paragraph 115 above). Again, neither the prosecution, nor the Government have provided any explanation as to why the investigation was not resumed immediately after the lifting of the above-mentioned bar, but only nine years later. In that connection, the Court notes that in a televised interview of 25 April 2013, the Prosecutor General stated that the investigation into F.M. would not be resumed in the absence of new evidence (see paragraph 114 above). However, that position conflicted with the fact that the prosecution had already filed an indictment against F.M. which indicated that it considered that the evidence on which the original indictment had been based was sufficient. No explanation has been provided as to why that evidence was no longer seen as sufficient or valid.

231. The criminal proceedings against F.M. were resumed only in 2021, meaning that there was a nine-year gap in his prosecution. During that period the applicants made several attempts to institute criminal proceedings against F.M. However, placing the burden on the applicants, as injured parties, to produce evidence for alleged offences that are subject to State-assisted prosecution is not acceptable. These failures raise serious questions as to the willingness and diligence of the prosecution to pursue the matter in line with the requirements of Article 2 of the Convention, creating thus a potential for impunity. The Court also notes that the judgment of 26 March 2015 of the Tirana Administrative Court, delivered in the meantime, included extensive

findings on the personal (civil) liability of F.M. for the harm caused to the Gërdec victims. Even though those findings concerned his civil liability, they could have been used in support of the prosecution's case against F.M.

232. The Court reiterates that a requirement of promptness and reasonable expedition is implicit in the context of the State's obligations under Article 2 of the Convention. Even where there may be obstacles or difficulties which prevent progress in an investigation or a trial in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in, or tolerance of, unlawful acts (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009, and *Fergec v. Croatia*, no. 68516/14, § 38, 9 May 2017).

233. In the present case the prosecution of F.M. was plagued by significant delays, inertia of the prosecuting authorities and many futile attempts of the applicants to bring him to justice (see paragraphs 103-118 above). The Court reiterates that justice delayed is often justice denied, as the existence of unreasonable periods of inactivity and a lack of diligence on the authorities' part in conducting the proceedings renders the investigation and the trial ineffective (compare *Vazagashvili and Shanava*, cited above, § 89, with further references and *Ochigava v. Georgia*, no. 14142/15, § 58, 16 February 2023).

234. As to the applicants' argument that the prosecution against F.M. had been stayed owing to amnesty being applied, the Court notes that under the Amnesty Act, enacted on 8 November 2012, the amnesty was possible only in respect of criminal offences punishable with up to two years' imprisonment. While it is true that, in its decision of 10 December 2012, the Supreme Court did apply amnesty in respect of F.M., it only concerned the charges under Article 91 of the CC for grievous injury by negligence. In any event, the Supreme Court had already, on 1 March 2020, discontinued the criminal proceedings against F.M. under similar charges, finding that the constituent elements of the offence (*mens rea* and *actus reus*) had not been made out. Therefore, the decision on amnesty, in the circumstances of the present case, did not have a crucial bearing on the prosecution of F.M.

235. The criminal proceedings against F.M. for abuse of office are still pending (see paragraph 122 above), thus leaving the applicants without a final conclusion as to his responsibility more than fourteen years after the Gërdec incident took place. While the Court is not taking a stance as to the criminal responsibility of F.M., it considers that, given the particular social significance of the Gërdec tragedy and the evidence collected against F.M. (see in particular the letter of the Prosecutor to Parliament, paragraph 47 above), the applicants as well as the general public have the right to know not only the circumstances in which the loss of life and severe injuries took place (see *Lapusan v. Romania*, no. 29723/03, § 94, 3 June 2008 and *Association*

"21 December 1989" and Others, cited above, § 144), but also the exact role the former Minister of Defence played in these events.

(δ) Conclusion

236. With respect to the criminal proceedings against the twenty-nine accused, the Court must take account of: the fact that the present case does not involve intentional killings; the nature of the convictions of the main accused; the prison sentences imposed on them by the courts; and the time they actually spent in prison (ranging from six years and seven months to ten years and twenty-seven days). In these circumstances, the Court cannot conclude that the criminal-law system, as applied in the instant case, did not have a sufficiently dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicants (contrast *Ali and Ayşe Duran*, cited above, § 72).

237. At the same time, and considering the overall effectiveness of the investigation (see paragraph 185 above), the Court has found that the applicants were not awarded an adequate opportunity to participate in the trial proceedings against those accused in respect of the Gërdec incident which claimed the lives of their next of kin or caused them grievous life-threatening injuries (see paragraphs 223-227 above). More importantly, the manner in which the Albanian authorities approached the prosecution of F.M. was not in compliance with their procedural obligations under Article 2 of the Convention.

238. The Court concludes that there has accordingly 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.

B. The substantive aspect of Article 2 of the Convention

Admissibility

(a) The parties' submissions

239. The Government first submitted that the applicants had abused their right of application. Namely, they had misled the Court by not referring to the administrative proceedings as an available avenue to seek redress.

240. The Government further contended that the applicants had not exhausted domestic remedies. Zamira Durdaj and Feruzan Durdaj had been awarded damages in connection with the death of their son by the Tirana Administrative Court of First Instance and had not appealed that judgment. The Government therefore concluded that the applicants had been satisfied with the amount awarded to them.

241. As regards applications nos. 46707/13 and 46714/13, the Government argued that they had been lodged prematurely as the applicants had not exhausted all available domestic remedies and administrative proceedings, as some of their applications were still pending before the national courts. As regards the other applicants, the Government submitted that the applicants had not properly exhausted all available domestic remedies because they had not lodged a civil claim for damages.

242. The applicants argued that, in the particular context of their case, the only effective remedy they should, to the extent possible, have used had been the criminal proceedings, which had culminated in the adoption of the Supreme Court's decision of 19 July 2013. The fact that, on the basis of domestic law, the applicants (applications nos. 63543/09 and 12720/14) had not been entitled to take part in those proceedings had no bearing on whether the criminal proceedings in the instant case had been the only remedy the applicants ought to have waited for the outcome of before lodging an application with the Court; such a lack of participation could, in fact, constitute a distinct violation of the procedural limb of Article 2. They relied on *Öneryıldız* (cited above, § 113) and *Budayeva and Others* (cited above, § 140), in which the Court had held that only criminal proceedings would be considered as an effective remedy, irrespective of any other types of remedies available to the applicants.

243. As they had not been allowed to participate in the criminal proceedings at the domestic level, the other form of remedy referred to was inadequate. Thus, the arguments put forward by the Government were not relevant.

244. The applicants in applications nos. 46707/13 and 467014/13 noted that the criminal proceedings they had instituted had been the only criminal remedy available to them (since in the Albanian legal order injuries like the ones sustained by the applicants were not subject to State-assisted prosecution; instead the victim was required to lodge a criminal complaint and take over the conduct of the proceedings, acting as a private prosecutor). Furthermore, the applicants submitted that by lodging their criminal complaints, they had been afforded the opportunity of participating in the ensuing criminal proceedings, by adducing evidence, proposing witnesses to be deposed and so forth. Only these proceedings, the applicants contended, had in principle been in conformity with the procedural requirements flowing from Article 2. On the other hand, they contended that they had not had at their disposal a remedy that would have enabled them to challenge the application of the Amnesty Act to the defendants in their cases and to request the continuation of the criminal proceedings (they referred, by analogy, to *P.M. v. Bulgaria*, no. 49669/07, § 59, 24 January 2012). The applicants stressed the importance of the fact that at no time in the domestic proceedings had the domestic courts disputed their legal standing as injured parties or considered that their complaints were not "arguable".

245. Furthermore, the compensation proceedings before the administrative courts had been launched in 2015 for one of the applicants (Rabie Gërdeci) in application no. 46707/13. Two other applicants, Sabrie Picari and Meltina Haka, had been awarded compensation in civil proceedings.

246. With regard to the applicants in application no. 467014/13, Roxhens Durdaj and Alketa Hazizaj, they had expressed their willingness to lodge an administrative complaint and had informed the Court accordingly.

(b) The Court's assessment

247. The Court does not have to address the issue of the abuse of the right of application rule since the applicants' complaints under the substantive aspect of Article 2 are in any event inadmissible on the following grounds.

(i) General principles

248. The Court considers that the issues of the applicants' victim status and the exhaustion of domestic remedies are intrinsically linked in the circumstances of the present case and should therefore be addressed together (compare *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, ECHR 2016).

249. The relevant general principles as regards the exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-75, 25 March 2014).

250. In particular, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. That means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the applicant's personal circumstances. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII).

251. As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010).

252. As regards the payment of compensation and the substantive aspect of Article 2, the Court has held that in cases of wilful ill-treatment resulting in death, the breach of Article 2 cannot be remedied exclusively through an

award of compensation to the relatives of the victim. This is so because, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice (see *Nikolova and Velichkova*, cited above, § 55, and the cases cited therein).

253. The possibility of seeking and receiving compensation represents only one part of the measures necessary to provide redress for death resulting from wilful ill-treatment by State agents. The other measures necessary to provide redress are the obligation of the State to carry out an effective investigation (see *Kelly and Others v. the United Kingdom*, no. 30054/96, § 105, 4 May 2001, and *Nikolova and Velichkova*, cited above, §§ 56-57; see also, *mutatis mutandis*, *Vladimir Romanov v. Russia*, no. 41461/02, §§ 78-79, 24 July 2008, and *Ablyazov v. Russia*, no. 22867/05, § 43, 30 October 2012). The issue of whether the investigation was capable of establishing the facts of the case and identifying those responsible is referred to in the Court's case-law as the "adequacy" of the investigation (see *Ramsahai and Others*, cited above, § 324, and *Hanan*, cited above, § 202).

254. The same applies in cases concerning death resulting from gross negligence (see, as the leading authority in that respect, *Öneryıldız*, cited above, §§ 93-94), as is the situation in the case at hand.

255. It follows from the Court's above-cited case-law, *argumentum a contrario*, that where the authorities have carried out an adequate investigation in which all the relevant facts were established and those responsible were identified and punished, the payment of adequate compensation and the acknowledgment of the State's responsibility for the death of the applicants' close relatives would, in principle, be sufficient to deprive the applicants of their victim status (compare *Göktepe v. Turkey* (dec.), no. 64731/01, 26 April 2005).

256. In that connection, the Court notes that it has already found that the investigation in the present case was adequate in that it established the circumstances of the case and led to the identification of those responsible (see paragraphs 184-97 above and 259-60 below; contrast *Çakici v. Turkey*, no. 23657/94, § 80, ECHR 1999-IV; *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006; and *Budayeva and Others*, cited above, § 163).

257. Given that the investigation was adequate, the further issue that has to be addressed as regards the applicants' victim status is the nature of redress provided in the administrative proceedings. The principles governing the assessment of an applicant's victim status are set out in the Court's case-law as follows (see, generally, *Scordino v. Italy (no. 1)* [GC], no. 36813/97,

§§ 178-92, ECHR 2006-V, and, as regards Article 2 of the Convention, *Nikolova and Velichkova*, cited above, § 49):

(a) Under the subsidiarity principle, it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention;

(b) A decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention;

(c) The applicant's ability to claim to be a victim will depend on the redress provided under the domestic remedy;

(d) The principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance. In that connection, it should be reiterated that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective.

258. The Court has also held that where the domestic courts in the civil proceedings have established the cause-and-effect connection between the failure on the part of the State authorities to take preventive measures aimed at protecting people's life and health and the applicant's accident, such findings of domestic courts amount to an acknowledgment of the State authorities' failure to fulfil the substantive positive obligation under Article 2 of the Convention (see *Zinatullin v. Russia*, no. 10551/10, § 38, 28 January 2020).

259. In cases of negligence imputable to the State, the Court had already accepted that where an applicant accepts a sum of compensation in settlement of civil claims and renounces further use of domestic remedies, he or she will generally no longer be able to claim to be a victim in respect of those matters (see *Chennouf and Others v. France*, no. 4704/19, § 39, 20 June 2023; see also *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V; *Caraher v. the United Kingdom* (dec.), no. 24520/94, ECHR 2000-I; *Hay v. the United Kingdom* (dec.), no. 41894/98, 17 October 2000; *Bailey v. the United Kingdom* (dec.), no. 39953/07, 5 September 2007; and *Gray v. Germany and the United Kingdom* (dec.), no. 49278/09, § 83, 18 December 2012).

(ii) Application of these principles in the present case

260. In the present case the applicants' complaint under the substantive aspect of Article 2 is that the State authorities, though aware of the risk to life posed by the establishment and operation of the Gërdec facility which was inherently a dangerous activity, failed to fulfil their positive obligations to take adequate safety measures.

261. The Court has to ascertain whether the proceedings providing for the assessment of the State's direct responsibility as regards its failure to take adequate operational and safety measures or to ensure that such measures were taken by private parties, and the award of damages in that respect, may, in principle, be regarded as satisfying the State's obligation in respect of the substantive aspect of Article 2 in the circumstances of the present case.

262. The Court notes that the main issue in respect of the substantive aspect of Article 2 of the Convention is the institutional liability which could have provided a basis for reparation to the victims, whereas the individual criminal responsibility of State officials is an aspect of the procedural obligations of the State (see, generally, on individual criminal responsibility in relation to unintentional interference with an individual's right to life, paragraph 212 above; see also *Budayeva and Others*, cited above, § 112). The substantive aspect of Article 2 in the present case concerns a more general failure of the State authorities to properly discharge their duties aimed at the protection of the lives of those under their jurisdiction. In respect of these allegations the only compensatory remedy after the tragic event in question was the possibility for the applicants to obtain damages.

263. As to the legal basis for seeking compensation from the State, the Court notes that there are several. First, the Albanian Constitution guarantees to everyone the right to compensation for damage caused by an unlawful act, action or omission of a State body (Article 44, see paragraph 139 above). Secondly, Articles 608 and 609 of the Civil Code provide for a general obligation on everyone to compensate damage caused culpably or illegally by an action or omission towards another person (see paragraph 148 above). Thirdly, Law no. 8510 of 15 July 1999 on the non-contractual responsibility of institutions of State administration provides for the liability of State administrative bodies for damage caused by such bodies when: (i) they commit illegal actions or omissions; (ii) they commit lawful acts or omissions, which cause damage to the lawful interests of private natural or legal persons; (iii) because of the non-functioning of the technical means by which the State administration bodies exercise their activity, the legitimate interests of private natural or legal persons are violated; (iv) they cause constant danger to private natural or legal persons; and (v) when they commit a corrupt act in the exercise of their functions (see paragraph 149 above). The Court is thus satisfied that in Albania there exists an adequate legal and regulatory framework relevant for the specific circumstances of the present case.

264. Also, immediately after the accident, an investigation into its causes was initiated by the Prosecutor General's Office and three expert reports were drawn up, including the one compiled by the ATF-IRT. These reports concluded, in general, that the choice of Gërdec as the site of a weapons-decommissioning facility had been made in violation of the law and State regulations; the procedures used at the Gërdec facility had been unsafe and

not in compliance with normal working standards at workplaces dealing with explosives and propellants; the dismantling of ordnance had been carried out by untrained workers using vehicles which had not complied with safety standards; and unsuitable static-producing clothing had been permitted and no training on how to reduce static-electricity hazards had been provided (see paragraphs 21-55 above). Thus, the circumstances in which the applicants' own lives or the lives of their close relatives were lost or put at serious risk were clearly established in those reports, which were produced during the investigation.

265. The criminal proceedings did not stop with the investigation but led to the indictment of thirty accused (see paragraph 62 above), upon which evidence was presented before the criminal courts which established the relevant facts and found a number of the accused guilty and imposed criminal sanctions on them (see paragraph 77 above). Thus, the facts relevant for a civil claim against the State were established in the course of criminal proceedings. Therefore, as to the possibility of the applicants proving their claims in the civil proceedings, the present case differs from other cases in which no investigation was opened at all or the investigation did not lead to the establishment of the relevant facts (contrast *Çakıcı*, cited above, § 80, and *İlhan*, cited above, § 62; *Eremiášová and Pechová v. the Czech Republic*, no. 23944/04, §§ 90 and 94, 16 February 2012; and *A and B v. Georgia*, no. 73975/16, §§ 35 and 43-46, 10 February 2022), which in turn negatively affected the prospect of the applicants in these cases succeeding with their civil claims.

266. On the other hand, the Court has found a violation of the procedural aspect of Article 2 in respect of the investigation against the former Minister of Defence because no final decision at national level has been adopted, and the investigation has been plagued with inefficiency and serious delays (see paragraphs 224-31 above).

267. However, this one aspect cannot call into question the overall adequacy of the investigation, as described above. The fact that the criminal proceedings did not comply fully with the procedural requirements of Article 2 of the Convention does not affect the fact that those proceedings led to the establishment of the circumstances of the incident and to the criminal convictions of several persons. In this connection, the Court notes that the applicants' civil claim against the State was not dependant on the outcome of the criminal proceedings against the former Minister of Defence. Indeed, the Administrative Court found, *inter alia*, that the Ministry of Defence and the MEICO, a State-owned company under the authority of the Minister/Ministry of Defence, were responsible for the consequences of the tragedy, since they had established the Gërdec facility and had not taken adequate preventive measures to avoid the incident that had caused the damage to the applicants. It held that the Minister of Defence was responsible for having ordered that the activity be conducted at a site without a licence for ammunition storage,

as well as for authorising unlicensed companies to operate decommissioning technologies. The objective liability of the Minister of Defence stemmed from his failure to undertake reasonable actions to avoid or reduce the life-threatening danger through supervision of the hazardous activities and the subjective liability of the Minister of Defence stemmed from his failure to engage the armed forces to supervise the hazardous activities. Thus, irrespective of the deficiencies of the criminal proceedings against the Minister of Defence, the Administrative Court established his civil/administrative liability for the events at issue.

268. In addition, and most significantly, the Tirana Administrative Court of First Instance held that the burden of proof rested on the State and not on the applicants as claimants of compensation for damage caused by the explosion at the Gërdec plant (see paragraph 131 above). This relieved the applicants from the demanding task of having to secure evidence for their claims and prove the State's responsibility (contrast *Yaşa v. Turkey*, 2 September 1998, § 73, *Reports of Judgments and Decisions* 1998-VI; and *Budayeva and Others*, cited above, §§ 163 and 164). That responsibility was presumed, and it was on the State to prove otherwise. Given the reports commissioned and prepared during the investigation which clearly established that the State authorities had been responsible for the setting up and operating of the Gërdec facility and for failing to impose and enforce adequate security measures, and the fact that the reports served as the main evidence in the administrative proceedings in which the applicants claimed damages, the applicants' position in those proceedings was very strong and the State had little chance of disproving its responsibility (contrast *Vilnes and Others v. Norway*, nos. 52806/09 and 22703/10, § 177, 5 December 2013; *Vovk and Bogdanov*, cited above, §§ 74 and 76; and *Ribcheva and Others v. Bulgaria*, nos. 37801/16 and 2 others, § 149, 30 March 2021).

269. The Court further notes that the findings of the criminal courts as to whether a criminal offence was committed and by whom were binding on the Tirana Administrative Court (see Article 70 of the Code on Criminal Procedure, cited in paragraph 145 above). At the time when the Tirana Administrative Court adopted its decision in the applicants' case (see paragraph 126 above), the accused in the criminal proceedings had already been found guilty in a final decision (see paragraph 93 above), which certainly reinforced the applicants' claim in the administrative proceedings.

270. There is no reason to believe that the applicants could not have sought compensation in civil or administrative proceedings from the State in respect of its positive obligations under Article 2 of the Convention by relying on the above-mentioned officially produced reports and the legal basis mentioned above. In this connection the Court also notes that the right to life is guaranteed by the Albanian Constitution (Article 21) and that the Convention is directly applicable in Albania. In order to enforce the principle of subsidiarity and give life to the provisions of domestic law guaranteeing

the same rights as the Convention, applicants are required to make use of available remedies at domestic level. In this connection the Court stresses that the principle of subsidiarity is one of the fundamental principles on which the Convention system is based; the machinery for the protection of fundamental rights established by the Convention is subsidiary to the national systems safeguarding human rights (see, among other authorities, *Vučković and Others*, cited above, § 69, and *Habulinec and Filipović v. Croatia* (dec.), no. 51166/10, § 26, 4 June 2013).

(α) Zamira Durdaj, Feruzan Durdaj and Sabrije Picari

271. Zamira Durdaj and Feruzan Durdaj lodged a civil action with the Tirana Administrative Court of First Instance, seeking compensation for the death of their son. The first-instance court accepted their claim in part and awarded them ALL 8,699,381 each in respect of pecuniary and non-pecuniary damage for the loss of their son (see paragraph 125 above).

272. Sabrije Picari also lodged a civil claim with the Tirana Administrative Court of First Instance, claiming pecuniary and non-pecuniary damage in connection with the risk to her life caused by the explosion at the Gërdec facility. She was awarded ALL 11,049,837 in respect of pecuniary damage and ALL 6,761,029 in respect of non-pecuniary damage (see paragraph 137 above).

273. As regards the issue of whether the national courts acknowledged the breach of the Convention, the Court notes that, while it appears that the Tirana Administrative Court of First Instance did not expressly state that there had been a violation of the applicants' right to life under Article 2 of the Convention or its constitutional equivalent, it did award the applicants damages for the death of their son in the case of Zamira Durdaj and Feruzan Durdaj, and for the risk to her own life in the case of Sabrije Picari. In doing so, the Tirana 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 (see paragraphs 126, 127 and 131 above); 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 for performing such work; the activities had been carried out in violation of military technical regulations; the site had not met the criteria set out in decision no. 138 of 14 March 2007 of the Council of Ministers (see paragraphs 128, 129 and 131 above); and the setting up of the Gërdec facility and its operation had not been monitored or supervised by the responsible State authorities (see paragraphs 128, 129 and 131 above). The Administrative Court concluded that the hazardous activities at the Gërdec facility had resulted in the death of the applicants' son (see paragraphs 125 and 130 above) and injuries to the other applicants (see paragraphs 130 and 137 above). In the Court's view, these findings amount to an acknowledgment in substance of the State's

responsibility for the death of the applicants' son and the State's failure to protect his life in the case of Zamira Durdaj and Feruzan Durdaj and for the risk to her own life in the case of Sabrije Picari (compare *Zinatullin*, cited above, § 38).

274. As regards the sum awarded to Zamira Durdaj and Feruzan Durdaj, the Court first notes that they did not lodge an appeal, despite having the possibility to do so. By not lodging an appeal, the applicants tacitly accepted that they were satisfied with the sums awarded. It follows that they renounced further use of the national remedies.

275. Further to this, the Court notes that Zamira Durdaj and Feruzan Durdaj, as well as Sabrije Picari were all awarded pecuniary and non-pecuniary damage in the amounts not lower than what the Court has awarded under Article 41 of the Convention in comparable cases (compare *Budayeva and Others*, cited above, § 205; *Vovk and Bogdanov*, cited above, § 81; *Cevrioğlu v. Turkey*, no. 69546/12, § 87, 4 October 2016; and *Lovyginy v. Ukraine*, no. 22323/08, § 120, 23 June 2016).

276. It follows that these applicants either can no longer claim to be victims of the violation claimed under the substantive aspect of Article 2 of the Convention because it is to be assumed that they were satisfied with the damage awarded to them and in any event the damage awarded to them is satisfactory, or that they have not exhausted domestic remedies (compare *Murillo Saldias and Others v. Spain* (dec.), no. 76973/01, 28 November 2006) because they did not lodge an appeal against the first-instance judgment and, in the event that they were dissatisfied with the outcome of their appeal, further remedies were available, namely an appeal before the Supreme Court and, possibly, a constitutional complaint.

(β) The other applicants

277. As regards the other applicants, the Court notes that they have not submitted any evidence that they lodged civil or administrative claims for damages against the State.

278. It follows that the applicants who have not brought a civil claim against the State in respect of their substantive complaint under Article 2 of the Convention have not properly exhausted domestic remedies and thus did not provide the national authorities with the opportunity – which is in principle intended to be afforded to Contracting States under Article 35 § 1 of the Convention – of addressing (and thereby preventing or putting right) the particular Convention violation alleged against them (see, for example, *Association Les Témoins de Jéhovah v. France* (dec.), no. 8916/05, 21 September 2010; *Habulinec and Filipović*, cited above, § 30; *Merot d.o.o. and Storitve Tir d.o.o v. Croatia* (dec.), nos. 29426/08 and 29737/08, § 38, 10 December 2013; and *Peacock v. the United Kingdom* (dec.), no. 52335/12, § 40, 5 January 2016).

(iii) Conclusion as to the admissibility of the complaint under the substantive aspect of Article 2 of the Convention

279. Accordingly, the complaint under the substantive aspect of Article 2 of the Convention must be rejected under Article 35 §§ 1, 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

280. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

281. Zamira Durdaj and Feruzan Durdaj (applications nos. 63543/09 and 12720/14) claimed 25,000 euros (EUR) each in respect of non-pecuniary damage. The other applicants (applications nos. 46707/13 and 46714/13) claimed EUR 10,000 in respect of non-pecuniary damage.

282. The Government contested the applicants' claims, arguing that they were unsubstantiated.

283. The Court firstly notes that the violation found relates to the procedural aspect of Article 2 only. In the domestic proceedings some of the applicants were awarded compensation on account of, *inter alia*, their suffering because of the death of their close relative (see paragraph 125 above), or because they themselves suffered serious injuries (see paragraph 137 above). However, that compensation does not concern non-pecuniary damage for the procedural defects established by the Court and therefore cannot be taken into account. The Court considers that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the above finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards Zamira Durdaj and Feruzan Durdaj jointly EUR 12,000 and the remaining applicants EUR 10,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

284. Zamira Durdaj and Feruzan Durdaj also claimed EUR 1,000 in respect of the costs and expenses incurred before the domestic courts and EUR 8,300 for those incurred before the Court. The remaining applicants

claimed EUR 1,500 in respect of the costs and expenses incurred before the domestic courts and EUR 5,550 for those incurred before the Court.

285. The Government contended that the sums claimed were exorbitant and unsubstantiated.

286. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and the fact that all the applicants were represented by the same lawyer, the Court considers it reasonable to award the sum of EUR 8,000 to all the applicants jointly covering costs under all heads, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint concerning the procedural aspect of Article 2 of the Convention admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of the procedural aspect of Article 2 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) jointly to Zamira Durdaj and Feruzan Durdaj, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) to the remaining applicants, EUR 10,000 (ten thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) jointly to all the applicants, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to them, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Grozev is annexed to this judgment.

P.P.V.
M.B.

CONCURRING OPINION OF JUDGE GROZEV

While I voted with the majority on all the findings in the present judgment, I was unable to follow it with regard to one of the grounds on which a violation of the procedural obligation under Article 2 was found. Namely, the refusal of the trial court to join the applicants' civil claim to the criminal proceedings and the absence of any other possibility for the applicants to have standing in the criminal proceedings before the domestic courts (see paragraphs 223-227 of the present judgment). All of the accused in these criminal proceedings were found guilty and received adequate sentences, which in my view excludes any claims by the applicants under the procedural head of Article 2. This judgment's finding of a violation is thus based on an expansion of the respondent States' duty to investigate loss of life, one which is neither necessary nor justified. This new interpretation and application of the principles governing the procedural obligation under Article 2 departs from the very basis on which the obligation was created in the first place, that is, establishing the relevant facts which led to the loss of life and punishing those responsible. This new approach risks creating confusion, as it raises questions about its future application that have no clear and coherent answers.

My objection to finding a violation on the ground of the applicant's lack of standing in the criminal trial is not based on any doubts as to the importance of the involvement of victims in criminal investigations. This is an important safeguard for the effectiveness of the investigation required under Articles 2 and 3 of the Convention. However, the right to involvement of the victims in the proceedings is not a stand-alone right, but only one element, among several others, of the right to an effective investigation into loss of life or credible allegations of inhuman and degrading treatment. That right has been developed in the Court's case-law over the years as a procedural guarantee that those guilty of the most serious crimes against life and physical integrity do not go unpunished, which would undermine the public trust in the justice system and the rule of law (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 237, 30 March 2016). The Court has defined this procedural right as the duty of the respondent States to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of the effective criminal-law provisions (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April 2015). The different elements of an effective investigation spelled out by the Court in its judgments, specifically independence, adequacy, thoroughness, timeliness, the participation of victims or next of kin are just that, elements used to assess whether the respondent State's failure to punish the breaches of the domestic criminal-law provisions was justified. Once this underlying obligation of the respondent State has been effectively performed, and those responsible for the loss of life or inhuman and degrading treatment under Articles 2 or 3 have

been found guilty and punished, discussion of the individual elements of an effective investigation is no longer possible. To put it simply, these individual elements of an effective investigation are not stand-alone rights.

The opposite approach, however, is precisely what has been adopted in the present case in finding a violation of the procedural obligation under Article 2. This is despite the fact that all of the accused in the criminal trial were found guilty and punished and, as the Court has held, the applicants were sufficiently involved in the proceedings at the investigation stage and the sentences imposed were adequate (see paragraphs 210 and 222 of the present judgment). For the first time, the Court has chosen to find a violation of the procedural right under Articles 2 or 3 of the Convention in a case where those responsible were found guilty and adequately punished. Further, the reasoning in support of this finding does not assess the complaint in the light of the applicable principle that the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011). The legitimate interest for the applicants' involvement has not been identified, and there is no analysis of whether and to what extent the refusal to consider the civil claim within in the criminal trial had an impact on the effectiveness of the prosecution. Thus, the only way to understand the conclusion that there has been a violation of the applicants' rights as a result of their lack of participation in the criminal trial is to regard such participation in the criminal proceedings as a separate right, completely detached from the underlying obligation for an effective investigation and for prosecution and punishment of those responsible for the loss of life.

However, the creation of such a stand-alone, independent right gives rise to a number of difficult questions, to which there are no obvious and easy answers. If one of the elements used by the Court to assess the effectiveness of the investigation can be singled out in order to find a violation, despite the fact that the underlying purpose of its existence has been achieved, what other elements could similarly be assessed separately? Is the Court going to review separately, under Articles 2 and 3, complaints about independence, refusals to accept evidentiary requests, findings of fact and the length of criminal proceedings, even if the individuals responsible were found guilty and adequately punished? If these elements of an effective investigation are no longer just that, namely elements used to assess the overall result of the criminal proceedings, but become separate rights, then what are the related domestic remedies? In the present case, the refusal to consider the applicants' civil claim was appealed against, and the related final decision was adopted long before the end of the criminal proceedings. Does the six-month time-limit start to run as of this decision, as it should if this were a separate, independent right that is unconnected to the outcome of the criminal case? If yes, then the present complaint for lack of standing in the criminal trial must be declared inadmissible with respect to some of the applicants as being out

of time (see paragraphs 67-68 of the present judgment). If there is a separate, independent right under Articles 2 and 3 for a victim to have standing in the criminal trial, what is the connection between this separate right and Article 6, where no such right exists? And finally, what would be the obligations of the respondent States in implementing the Court's judgment? A reopening of the domestic criminal proceedings so as to give the applicants standing, without changing anything in the outcome of these proceedings, is not in the interest even of the applicants themselves.

Enhanced effective participation of victims of crime in criminal proceedings would undoubtedly be a laudable development. The Committee of Ministers of the Council of Europe itself has adopted recommendations in that sense (see paragraph 155 of the present judgment). However, the shift from recommending such participation towards creating a separate, independent right to standing in criminal proceedings under Articles 2 and 3 of the Convention is a significant step, and one which I fear, given the confusion and inconsistency to which it would give rise, might undermine rather than strengthen the protection of individual rights under the Convention.

APPENDIX

List of cases:

No.	Application no.	Case name	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	63543/09	Durdaj v. Albania	**Zamira DURDAJ** 1971 Gërdec Albanian	Dorian MATLIJA
2.	46707/13	Selami and Others v. Albania	**Aishe SELAMI** 2002 Tirana Albanian **Pashk KAÇI** 1951 Tirana Albanian **Mirela HAZIZAJ** 1985 Tirana Albanian **Miselda ZGURI** 2002 Tirana Albanian **Medi CELAMI** 1979 Tirana Albanian **Rabie GËRDECI** 1978 Tirana Albanian **Shaban BRAHUSHI** 1960 Berat Albanian	Dorian MATLIJA

No.	Application no.	Case name	Applicant Year of Birth Place of Residence Nationality	Represented by
			Sabrie PICARI 1967 Tirana Albanian **Dylbere PRINI** 1962 Tirana Albanian **Adelina CANI** 1990 Tirana Albanian **Meltina HAKA** 1992 Tirana Albanian **Bege ALIU** 1933 Tirana Albanian **Esmeralda SEFAJ** 1979 Tirana Albanian	
3.	46714/13	Durdaj and Hazizaj v. Albania	**Roxhens DURDAJ** 1997 Tirana Albanian **Alketa HAZIZAJ** 1978 Vorë Albanian	Dorian MATLIJA
4.	12720/14	Zamira Durdaj and Feruzan Durdaj v. Albania	**Zamira DURDAJ** 1971 Gërdec Albanian **Feruzan DURDAJ** 1968 Tirana Albanian	Dorian MATLIJA