Rr. Thanas Ziko

P. 65/1, Sh.3

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Tirana, Albania

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**ADDITIONAL SUBMISSION ON THE FOLLOW-UP TO THE HUMAN RIGHTS COMMITTEE 2013 CONCLUDING OBSERVATIONS IN RELATION TO ALBANIA**

9 November 2015

**I. INTRODUCTION**

1. By its submission dated 24 July 2015, Res Publica brought to the attention of the Special Rapporteur for Follow-up to the Concluding Observations a series of developments regarding the measures undertaken by the Albanian Government with a view to complying with the Human Rights Committee’s recommendation to the Albanian Government to: “[…] intensify its efforts to conclude its investigation into the January 2011 demonstrations, ensure compliance with international standards of investigation, and to this end, bring perpetrators to justice, punish them adequately, if convicted, and compensate victims.”[[1]](#footnote-1)

**II. FURTHER INFORMATION ON THE GRANTING OF SPECIAL PENSIONS TO THE FAMILIES OF THE VICTIMS OF THE 21 JANUARY 2011 DEMONSTRATIONS**

2. In paragraphs 12 – 18 of their submission dated 24 July 2015, Res Publica set out the initiatives it undertook with a view to securing compensation for the families of the victims as well as the Albanian Government’s response. In particular, Res Publica referred to the Government’s intention of awarding special pensions to the families of the victims, as provided for by Article 5 of the Law 7703/1993 *On Social Insurance* and its concerns regarding first, the lawfulness of such a measure and second, the adequacy of the compensation granted.

3. In mid-August, Res Publica was informed by some members of the victims’ families that, in addition to pensions or financial benefits they were receiving, they also started receiving additional sums. When they inquired as to the origin of these sums, they were informed that these were paid to them under the terms of Council of Ministers’ Decision No. 112, dated 21 January 2015 which entered into force following publication in the Official Gazette, namely on 12 March 2015.[[2]](#footnote-2) After contacting member of the different families (with the exception of the family of Aleks Nika), Res Publica can attest that all of them are currently in receipt of these special pensions / benefits.

4. According to the Decision,[[3]](#footnote-3) the legal basis for the granting of these special benefits (to be paid in the form of pensions to those not already benefitting from a different kind of pension, or in the form of supplementary family benefits for those beneficiaries already receiving a pension) is article 5 of Law 7703/1993 *On Social Insurance,* as amended. At the same time however, the Decision acknowledges that the granting of the pensions / benefits is not based on a solid legal premise – a point already raised by Res Publica in paragraph 17 of its submission dated 24 July 2015-; according to the Decision, the granting of the pensions / supplementary family benefits is “…*by exception to the criteria set out in Council of Ministers’ Decision No. 429 dated 12 February* [sic] *2002…*” [Emphasis added].[[4]](#footnote-4) In light of the express acknowledgment by the Council of Ministers of the lack of a clear legal basis for the granting of the pensions, Res Publica is concerned that in the future, the administration might decide to rescind the Decision and request the return of the sums paid.

5. Furthermore, under the terms of the Decision, each beneficiary family (regardless of the number of its members) is entitled to a sum of money *up to* 50,000 ALL (approximately 390 USD) per month; the exact amount to be paid out will depend on whether members of the beneficiary family receive additional pensions or supplementary benefits. Thus a family where a person already receives a monthly pension of 30,000 ALL, the benefit to be paid under the Decision will be set at 20,000 ALL. The Decision has retroactive financial effect and the pensions / supplementary benefits will be paid out from January 2015 onwards. Last, should members of the family disagree as to the distribution of the pension / benefit among them, this will be distributed to each of them on equal shares.

6. Res Publica maintains that the compensation awarded to the beneficiaries is very low and does not reflect the pecuniary and non-pecuniary harm the families of the deceased have sustained, nor is it in line with usual amounts in damages awarded by domestic courts. By way of comparison, in the case of *Ceka v. Albania,* the domestic courts awarded to the elderly mother of a person killed while under police custody a sum of 17,257 EUR in non-pecuniary damages, plus costs and expenses. With a view to unilaterally striking out the case (that had in the meantime been declared admissible, with the European Court intimating that the level of compensation was too low to deprive the applicant of her victim status), the Government proposed (and the European Court approved) the payment of an additional sum of 10,000 EUR in non-pecuniary damages and costs and expenses, with the European Court stipulating that the award was without prejudice to those already awarded or to be awarded by domestic courts.[[5]](#footnote-5) In the instant case, and in addition to the payment of compensation for non-pecuniary damages, the families of the four victims would also be entitled to the payment of pecuniary damages due to the deaths of their husbands / father who were the main breadwinners of their families.

7. Concluding, Res Publica considers that, due to their tenuous legal basis and their being set at a low level, the state pensions / benefits awarded to the families of the victims do not constitute adequate and sufficient reparation.

Thank you for taking the above into consideration.

Respectfully submitted,



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Executive Director

Res Publica

1. Concluding Observations in respect of Albania, CCPR/C/ALB/CO/2, 22 August 2013, paragraph 9. [↑](#footnote-ref-1)
2. **Annex 1**, Copy of Albanian Official Gazette, Issue 34, year 2015, 12 March 2015. [↑](#footnote-ref-2)
3. **Annex 2**, English version of Decision No. 112, dated 21 January 2015 (unofficial translation). [↑](#footnote-ref-3)
4. The author of the text obviously referred to Decision No. 429 dated **12.09. 2002** *On eligibility conditions, benefit amount and procedures for granting special state pensions and supplementary allowances to special state pensions.* As its title suggests, the Decision sets out the conditions for the granting of state pensions. See Annex 12 to Res Publica’s submission dated 24 July 2007, reproduced in the present submission as **Annex 3**, Information on Eligibility criteria for the granting of a special state pension as they appear on the website of the Albanian Institute for Social Insurance. [↑](#footnote-ref-4)
5. **Annex 4**, European Court of Human Rights, *Ceka v. Albania* (strike out), no. 26872/05, 23 October 2012, paragraphs 28-33, 35 and 42. [↑](#footnote-ref-5)