

Rr. Thanas Ziko

P. 65/1, Sh.3

Ap. 9

Tirana, Albania

<http://www.respublica.org.al/>

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

24 July 2015

**I. INTRODUCTION**

1. In its Concluding Observations (CCPR/C/ALB/CO/2, 22 August 2013) in respect of Albania, the Human Rights Committee (“HRC”) called upon the Albanian State (“State Party”) to among others: “[…] 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) Furthermore, the HRC indicated to the State Party that it should inform it of the implementation of this recommendation within one year from the adoption of the Concluding Observations.[[2]](#footnote-2)

2. By its letter dated 9 June 2015, the Special Rapporteur for Follow-up to the Concluding Observations drew the State Party’s attention to its failure to submit the relevant information and called upon it to do so by 1 August 2015.

3. The present communication, submitted by the Albanian NGO Res Publica, concerns the follow-up to the aforementioned recommendation. Res Publica is an Albanian public interest law organization, working to promote and safeguard respect of fundamental human rights through strategic litigation, advocacy, human rights education, research and policy development. Res Publica currently represents, in the context of domestic and international judicial proceedings,[[3]](#footnote-3) three of the four families of victims (the families of the late Faik Myrtaj, Ziver Veizi and Hekuran Deda) of extrajudicial killings that took place on 21 January 2011. The present submission aims at providing the HRC with updated information as to the status of these proceedings and in particular of the measures undertaken by the State Party with a view to complying with the HRC’s recommendation.

**II. FAILURE BY THE STATE PARTY TO CONDUCT AN EFFECTIVE CRIMINAL INVESTIGATION INTO THE 21 JANUARY 2011 EVENTS**

4. Res Publica contends that the State Party has failed to conduct an effective criminal investigation into the loss of life at the 21 January 2011 demonstration. Res Publica considers that this failure is due to the following two mutually reinforcing reasons.

1. **Deficient domestic legal framework regarding the next of kin’s participation in criminal proceedings**

5. Already on 5 November 2011, Res Publica, as the legal representative of the families of three out of the four victims, addressed a letter to the General Prosecutor’s Office, requesting that the families’ legal representatives be allowed to participate in the criminal proceedings by reviewing the case file commissioning their own experts. Noting that this was not possible under Albanian law, Res Publica nevertheless maintained that this deficiency of the national legal framework was in violation of the international obligations incumbent on Albania and could be remedies by means of direct application of the relevant international standards such as the *UN Basic Principles on the Role of Lawyers,*[[4]](#footnote-4)the UN General Assembly Resolution A/RES/40/34 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* andthe UN *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* as well as the UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.*[[5]](#footnote-5)

6. Res Publica would like to note that it never received an answer to its letter nor was it allowed to take part, in order to defend its principals’ interests, in the criminal investigative proceedings and the subsequent criminal judicial proceedings. Nevertheless, it points out that, as the State Party itself acknowledged in the context of proceedings before the European Court of Human Rights in a for all intents and purposes identical case, the Prosecutor’s Office is under no obligation to inform the next of kin of a deceased as to the progress of the investigation or of any potential procedural rights he / she might exercise.[[6]](#footnote-6) Subsequently, the State Party submitted a unilateral declaration it which it acknowledged a procedural violation of Articles 2 and 3 of the European Convention on Human Rights.[[7]](#footnote-7) The combined reading of the submissions of the State Party suggests that the latter recognises that the domestic legal framework regarding the procedural rights of the next of kin of victims is deficient and not in conformity with the guarantees flowing from the procedural aspects of Article 2 of the European Convention on Human Rights, guarantees that mirror those set out in the various UN standards referred to above.[[8]](#footnote-8)

1. **The criminal investigation launched into the 21 January 2011 has been tainted by excessive delay, a limited scope of inquiry and the imposition of lenient sentences**

7. With the exception of the failure of domestic legal framework to provide for and regulate the victims’ next of kin participation in the investigative and judicial proceedings, Res Publica contends that the Albanian legal framework is in principle adequate and its diligent application in the present case could lead to an effective investigation into the 21 January 2011 events and the punishment of the perpetrators. Nevertheless, the criminal investigation and subsequent judicial proceedings have been ineffective while obvious lines of inquiry have not been followed. Res Publica is unfortunately not able to provide the HRC with more in-depth information since for the reasons recounted above it can only follow the developments of the judicial proceedings through the press.

*Excessive delays*

8. More than four years after the 21 January 2011, the case against two police officers is still pending before the High Court. This excessive delay was been criticised by among other the European Parliament which in its recent Resolution on Albania called upon the authorities to “…proceed without undue delay to deliver justice for the victims of the events of 21 January 2011”.[[9]](#footnote-9) Earlier, the Member of the European Parliament and Rapporteur for Albania Eduard Kukan had noted that “What happened on January 21st, four years ago, should have been investigated and justice should be made. The fact that it is being delayed for so long is a bad sign […] I am surprised that it is taking so long, because the government changed and the situation is the same.”[[10]](#footnote-10)

*The limited scope of inquiry of the criminal investigation*

9. As of the date of writing, the only alleged perpetrators that are facing criminal proceedings are the two National Guard officers who have been found guilty of shooting and killing two of the victims (charges against them for the death of the third victim, the late Hekuran Deda, were dropped as it could not be established that the bullet that killed him was fired from their service firearms, while in relation to the fourth victim Aleks Nika, the investigation did not manage to find the bullet that killed him and as a result no charges were preferred against any individual). Previously, another defendant (an IT expert) accused of deleting crucial footage from the servers was found not guilty – without however the authorities reopening the investigation in order to identify the identity of the person(s) that deleted the footage. It also appears that the investigating authorities did not examine whether higher ranking police / state officials could also be implicated in the events. It should be recalled in this respect that at the time many allegations had been made to the effect that the order to fire on the demonstrators had originated in the higher levels of the Government; indeed, the then PM Sali Berisha had accused the Socialist Party that was then in opposition as using the demonstration in order to stage a coup; moreover, the then PM also accused the Prosecutor General of colluding with the opposition in staging the coup while he also called upon the police to not execute the Prosecutor General’s order to arrest six National Guard officers that were allegedly implicated in the shootings.[[11]](#footnote-11) Two years later, the Council of Europe’s Commission for Human Rights noted that a number of officials responsible for the acts of violence that took place on 21 January 2011 had not been brought before justice.[[12]](#footnote-12)

10. On a positive note, Res Publica welcomes the recent General Prosecutor’s decision to launch a criminal investigation as to the criminal responsibility of those state officials who shielded the six National Guard officials from arrest. Res Publica has no further information as to the scope or the outcome of this investigation.

*The imposition of lenient criminal sanctions*

11. To date, only two National Guard officers have been found guilty in relation to the violent events of 21 January 2011. These are Agim Llupo and Ndrea Prendi, sentenced to three and one years in prison for the deaths of Ziver Veizi and Faik Myrtaj respectively. Nevertheless, none of them are actually serving their sentences as the time they were on remand corresponds to the length of prison terms they were sentenced to. Their case is currently pending before the Supreme Court which has the power to reclassify the offence and impose heavier sanctions.

**III. FAILURE BY THE STATE PARTY TO REACH AN OUT-OF-COURT SETTLEMENT WITH THE VICTIMS’ FAMILIES**

12. In early 2014 and on the strength of the various statements by the then PM Edi Rama in which he had characterised the death of the four victims as a state-perpetrated crime, Res Publica approached the PM’s Office with a view to reaching an out-of-court settlement regarding the three families it represented (the families of the late Faik Myrtaj, Ziver Veizi and Hekuran Deda). Under the terms of the proposed settlement as envisaged by Res Publica, the State Party would compensate all the members of the three families (i.e. the victims’ spouses, their children as well as other relatives who lived under the same roof and had close family ties with the victims). Employing a formula used by valuation experts appointed by domestic courts, Res Publica considered that the total compensation award would amount to approximately 300,000 EUR per family.

13. Preliminary meetings and consultations were very fruitful and indeed in July 2014, the PM issued an order setting up a work group tasked with assessing the damage sustained by the families of the victims, determining the level of compensation and identifying the most appropriate way of disbursing the compensation. The experts would be appointed with the agreement of the families of the victims and the members of the working group would present their findings within sixty days. Representatives of the PM’s Office proposed, and Res Publica accepted, that the settlement also include the fourth family not represented by Res Publica, namely that of Aleks Nika.[[13]](#footnote-13)

14. Nevertheless, by 21 January 2015 the working group had convened only a few times and no settlement had been reached. Then on the eve of the fourth anniversary of the tragic events of 21 January 2011, a representative of the PM’s Office informed Res Publica that no settlement would be reached and that the State Party had decided to grant the families of the victims with a special pension. On the next day, by means of a press statement where the death of the four victims was qualified as murder, the Government announced their decision to grant a special pension to members of the victims’ families.[[14]](#footnote-14)

15. In an interview to BIRN (Balkan Investigative Reporting Network), published on 26 January 2015, Res Publica’s Executive Director referred to the failure to reach a settlement with the authorities and expressed his criticism as to the reluctance of the Government to provide compensation to the families of the victims of the events of 21 January 2011. In particular, he noted that he was surprised by the failure of the authorities to agree to a settlement, given that it was not disputed between the Government and the relatives of the victims’ that state officials were responsible for the four deaths.

16. In the evening of the same day, PM Edi Rama gave an interview on television to journalist Rudina Xhunga. When asked about the allegations made in the article published by BIRN the same day, the PM dismissed them as “stupidities” and argued that the families had never seized the authorities with a request for compensation but had only requested that justice be done. He also noted that in any case the state cannot unilaterally make a compensation award as the disbursement of such an award presupposes the existence of a judicial decision. The PM also reiterated his conviction that the killings of the four demonstrators constituted a state crime and announced his intention of engaging a foreign legal firm with a view to assisting the authorities in elucidating the circumstances of the tragedy.[[15]](#footnote-15)

17. Regarding the granting of special state pensions, and although further details have not been announced nor any such pension have to date been granted, it appears that the legal basis of the granting of these pensions will be Article 5 of Law 7703/1993 on Social Insurance, as currently in force.[[16]](#footnote-16) While welcoming the Government’s decision to provide at least some form of reparation to the families of the victims, Res Publica cannot see how Article 5 of Law 7703/1993 can be interpreted as authorising the granting of a pension in the circumstances of the case. This is not a mere formalistic issue since in the future the authorities might, precisely on the ground of lack of a sound legal basis, revoke the pensions. Additionally, such pensions are payable only to particular individuals and cannot be paid to other relatives; in the instant case therefore, only the spouses of the victims would be entitled to pension whereas other family members would not be entitled to any kind of compensation for the loss of their relatives. Finally, it should be noted that the maximum special state pension cannot be higher than 400 EUR per month.

18. Last, following consultations with its principals, Res Publica will be filing lawsuits for damages before the administrative courts. The reason behind the delay in filing them is solely the inability of the families to raise the necessary courts fees which need to be paid in advance and before the first hearing of the case (Res Publica is representing the families of the victims free of charge). Currently the court fees (minus the necessary fees for the appointment of experts which will also be incurred by the claimants) stand at 1% of the amount of damages sought; in the instant case, each of the families of the victims will have to pay 3,000 EUR in court fees, at a time when the average monthly salary stands at approximately 200 EUR. Whereas in principle under Albanian law the claimants can request to be exempted from the obligation, in practice Albanian courts are highly reluctant to grant such exemptions.[[17]](#footnote-17)

Thank you for taking the above into consideration.

Respectfully submitted,



Dorian Matlija

Executive Director

Res Publica

1. Concluding Observations, para. 9. [↑](#footnote-ref-1)
2. Ibid, para 25. [↑](#footnote-ref-2)
3. Namely before the European Court of Human Rights, case of *Veizi and Others v Albania,*  appl. no. 16191/13. [↑](#footnote-ref-3)
4. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. [↑](#footnote-ref-4)
5. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. See **Annex 1**, Res Publica letter to the General Prosecutor’s Office, dated 5 November 2011. The letter is in Albanian but the relevant references to the UN instruments can be easily discerned and for reasons of convenience have been highlighted. [↑](#footnote-ref-5)
6. **Annex 2**, European Court of Human Rights, *Ceka v. Albania,* no. 26872/05, decision on admissibility dated 22 February 2011, page 11. The relevant excerpt has been highlighted. [↑](#footnote-ref-6)
7. **Annex 3,** European Court of Human Rights, *Ceka v. Albania,* no. 26872/05, decision on admissibility dated 22 February 2011, page 3. The relevant excerpt has been highlighted. [↑](#footnote-ref-7)
8. Thus for example in the case of *McCann and Others v the United Kingdom* (Grand Chamber, no. 18984/91), the European Court referred to and took into consideration the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and in particular to articles 9 to 17 that, according to the Court, “contain a series of detailed requirements that should be observed by investigative procedures in such deats” (ibid, at para. 140). [↑](#footnote-ref-8)
9. **Annex 4**, European Parliament, 2014 Progress Report on Albania, P8\_TA-PROV(2015)0181, dated 30 April 2015, paragraph 11. [↑](#footnote-ref-9)
10. **Annex 5**, Article published at the Top Channel news portal, entitled “Kukan: January 21st delays, a bad signal”, dated 21 January 2015. [↑](#footnote-ref-10)
11. **Annex 6**, Human Rights Watch press release *Albania: Independent Inquiry needed into Protester Deaths”,* dated 26 January 2011. [↑](#footnote-ref-11)
12. **Annex 7**, Council of Europe, Commissioner for Human Rights press release entitled “Albania needs to improve rule of law”, dated 26 September 2013. [↑](#footnote-ref-12)
13. See **Annexes 8a** and **8b**, Order 192/2014 *on the Creation of an Inter-Institutional Working Group to Evaluate the Damage Suffered by the victims of 21 January 2011*, dated 31 July 2014, in Albanian and English respectively. [↑](#footnote-ref-13)
14. **Annex 9**, Press Statement of Minister of State for Relations with Parliament, entitled “The State assumes full responsibility for the murder of the four citizens on January 2011”, dated 21 January 2015. The press statement was uploaded at the PM Office’s official website and is available in English at

    <http://www.kryeministria.al/en/newsroom/press-releases/the-state-assumes-full-responsibility-for-the-murder-of-the-four-citizens-on-january-20111421867288> [↑](#footnote-ref-14)
15. **Annex 10**, Transcript of interview by PM Edi Rama to Top Channel journalist Rudina Xhunga, aired on 26 January 2015 (excerpts). [↑](#footnote-ref-15)
16. **Annex 11**, Law 7703/1993 on Social Insurance. See also **Annex 12**, Eligibility criteria for the granting of a special state pension as they appear on the website of the Institute for Social Insurance. [↑](#footnote-ref-16)
17. **Annex 13,** Council of Europe, European Commission against Racism and Intolerance, CRI(20015)18, published on 9 June 2015, para. 22 (excerpts). [↑](#footnote-ref-17)