



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the second periodic report of Albania

Addendum

Information received from Albania on follow-up to the concluding observations*

[Date received: 13 July 2015]

Recommendation 9

The State party should intensify its efforts to conclude its investigation into the January 2011 demonstrations, ensure compliance with internal standards of investigation, and to this end, bring perpetrators to justice, punish them adequately, if convicted, and compensate victims.

1. On 21 January 2011, the Prosecution of Tirana Judicial District registered the criminal proceedings No. 285 for the offences “Homicide committed in other specific circumstances, in collaboration” and “Misuse of duty” stipulated by articles 79, letter “dh” and “ë”, and article 25 and 248 of the Criminal Code against three citizens: N.P., A. A., and A. LL.
2. On 20 April 2012, the investigations concluded and the case was sent to court.
3. Upon completion of judicial examination, the Prosecution has requested that:
 - The defendant N.P. be found guilty for the offence “Homicide committed in other specific circumstances, in a dangerous way regarding the life of many persons” where death is a direct consequence (according to article 79/ë and article 50/dh of the Criminal Code is provided a sentence (of 23 years imprisonment).
 - The defendant A.LL be found guilty for the offence “Homicide committed in other specific circumstances, against two or more persons” where death is a direct consequence and the injuring of citizens (according to article 79/dh and article 50/dh of the Criminal Code and be given a sentence (of 25 years imprisonment).

* The present document is being issued without formal editing.



4. The Court of the Judicial District of Tirana, with its decision No. 100, dated 7 February 2013, decided: to declare the three above mentioned defendant not guilty for the offences charged by the Prosecution.
5. The Prosecution has appealed this decision in the Appeal Court of Tirana, the latter with its decision No. 793, dated 18 September 2013 decided: to change the decision No.100 dated 7 February 2013 of the Judicial District Court of Tirana, as follows:
 - Declaring guilty the defendant N.P. for the offence “Homicide because of negligence” resulting in the death of a citizen (F.M), stipulated by article 85 of the Criminal Code and based on this provision, sentencing him with 1 (one) year of imprisonment.
 - Declaring guilty the defendant A.LL, for committing the offence “Homicide because of negligence” resulting in the death of the citizen Z.V., stipulated in article 85 of the Criminal Code and based on this provision, sentencing him with 3 (three) years of imprisonment.
6. The Prosecution has exercised its recourse in the Appeal Court where the appeal is under the process of examination and adjudication by this court.
7. According to the information by the General Prosecution Office, a separate part of the criminal proceedings is currently under investigation, in the context of further investigations of the criminal proceedings No. 285, of 2011, in order to identify the persons, authors of the murder of the citizen A.N., and injuring citizens A.D, I.Q., I.P., and bearing the criminal responsibility.
8. This case is still under investigation, which is continuously followed by the Prosecution of the Judicial District of Tirana, the latter guiding and controlling the investigations of these proceedings, by issuing some delegation orders, as well as conducting the relevant analysis with the State Police.
9. With regard to the investigations on the arbitrary actions performed by police bodies, on 15 February 2011 the Prosecution Office of Tirana Judicial District has registered the criminal proceedings No. 286/1 of 2011, registered on the basis of the denouncements of several citizens, participants in the protest of 21 January 2011. With regard to this criminal proceeding, numerous investigative actions have been made to identify and hold responsible the police officers, who might have performed arbitrary actions against these persons. However, due to the complexity of the case and the high number of investigations to be carried out, the case has not been concluded and investigations are ongoing.
10. In any event, in the context of procedural guarantees and independence of investigations, it is ensured that the investigation of these cases will be followed by the Prosecutors and Judicial Police Officers of the prosecution section. Meanwhile, the police structures, (as, for example, the staff of Internal Control Service attached to the Ministry of Interior) are committed to collect and provide information during the investigation and prosecution.
11. Following investigations conducted by the Prosecution of Tirana Judicial District, due to the problematic issues of the investigation of proceedings No. 286/1 of 2011, some analysis has been conducted in the Directorate of Investigation, Prosecution and Control of Other Offences and Juveniles, in the General Prosecution Office, with the participation of the group of prosecutors who follow the investigation of this criminal proceedings. Following the analysis, there was a need to conduct other investigative actions, for a thorough, objective and comprehensive investigation of these proceedings.

12. The tasks assigned by the Directorate of Investigation, Prosecution and Control of Other Offences and Juveniles, in the General Prosecution Office and the tasks assigned by the prosecutors of this case along with other tasks arising from the dynamic of prosecution are currently being carried out.

13. With regard to the claims for the violation of human rights by the State Police for persons under escort, arrested/detained in police premises, in the context of the events of 21 January, the General Directorate of State Police has initiated an inspection in the structure of District Police of Tirana to re-assess the actions performed by the police officers of this district, in order to identify these violations before, during and after the protest of that date.

Recommendation 13

The State party should ensure proper implementation of pre-screening procedures at the borders and inside the country in order to ensure that persons in need of international protection are identified and referred to the asylum procedure, regardless of whether or not they entered the country in an irregular manner. They should refrain from detaining asylum-seekers on the basis of the manner of entry into the country. It should improve living conditions in transit reception facilities.

14. The issues addressed in this recommendation are treated in Chapter VI, “Removal and deportation of an alien”, of Law 108/2013 “On foreigners”.

15. Some of the key aspects of the Law relating to the issue in question are:

16. The provisions on the issuance of the removal order for the aliens are entirely aligned with those of the European Union, thus regulating the vacuum that existed in the cases of issuance of the removal order and that of imposing the step of prohibition of entry.

17. These changes clearly define when a removal order can be issued, as well as the execution deadlines for different categories. Likewise, the Law defines the limits of the period of the prohibition of entry, that accompany the removal order, as well as in a detailed way the schedule of execution of the removal order by the alien.

18. Forced removal, as a deportation form of a foreigner, is adjusted based on the principle of case-by-case evaluation of the categories, which are specified in the provisions of this Law. The principle of voluntary departure prevails in the removal of the alien.

19. The provision of deportation is drafted in full compliance with the *acquis communautaire*, fulfilling one of the recommendations of European Union experts. This provision is improved by removing the power of the border and migration central authority to deport aliens.

20. A series of alternative measures, called “interim measures” (article 115) are defined in the procedure of aliens’ removal. These measures are based on the recommendations made by the European Union experts, in full compliance with *acquis communautaire*, as well as the best models of the legislation of some European Union countries.

21. Holding at a closed centre is defined as the last resort against an alien subject to removal/ deportation from the territory, which is undertaken for cases specified in the Law, but in any case a separate assessment is required.

22. The Law provides for change of the time limits in the detention centre, where the maximum period of detention is six months. It has clearly defined the procedure for the extension of this term. This Law determines the cases of termination of the alien’s detention in the Hub.

23. The provisions on the detention in the Closed Centre as well as the alternative measures are entirely in harmony with *acquis communautaire*, guaranteeing the observance of human rights of aliens subject to detention.

24. In addition, the provision of holding juveniles in the Closed Centre is drafted entirely in line with the *acquis communautaire*.

Comments of the Ministry of Interior regarding certain provisions of Law no. 108/2013 “On foreigners”, related to their “holding in closed detention centre” (chapter VI, section V) and how are they applied in their performance.

25. **Article 120** of the above-cited Law has predicted the setting up of the Closed Centre which is:

- An administrative institution, with a certain level of security and restriction of freedom, in which only foreigners, who are subject to deportation from the territory of the Republic of Albania can be placed.
- *Must* meet all conditions of human and humane treatment, enable the provision of health care and guarantee the fundamental human rights.

26. In case of an alien’s detention in a closed centre, at the request of the latter, the local authority responsible for the border and migration takes immediate steps to take care of the family members of the detained alien, who were left without support and assistance.

27. **Article 121** predicts detention in the Closed Centre, describing it as follows:

- Detention in the closed centre is the *final* administrative action that is taken and executed by the state authority responsible at the regional level, for the treatment of aliens, towards the alien, for whom a deportation order is issued, based on a *case by case* assessment when all possible alternative measures are executed, or when from the assessment it is considered that these measures cannot be applied to the alien or to the alien readmitted on the basis of readmission agreements in force in the Republic of Albania, for the sole purpose to guarantee the conditions for his return/readmission.
- The alien is detained in a Closed Centre, set up specifically for this purpose, *in deadlines as short as possible*, until the legal proceedings are carried out, to enable his departure from the Republic of Albania, within the terms specified in this Law.
- The alien is held in a Closed Centre for a maximum period of up to 6 months.
- At the proposition of the closed centre authority, the central authority in charge for border and migration extends the alien’s detention in the centre up to other 6 months, if within the 6-month period of detention, the removal of the alien has been impossible.
- The alien is notified in writing, in the language he understand or at least in English, on the order of detention in a closed centre, which contains the reason for detention, the detention deadline, the right of the being provided legal defence by an attorney of his choice or a public defender, and to contact their relatives.

28. **Article 123**, paragraph 4 thereof, stipulates that, during the detention period in the closed centre, the authority responsible for border and migration, in cooperation with the closed centre authority, explores the existence of conditions to keep the detained alien closed in the centre. Depending on *the assessment of the situation*, the authority responsible for border and migration may decide on replacing his detention in the centre with appropriate temporary measures, defined in this Law.

29. **Article 125** “Detainment of unaccompanied minors” provides the rights of minors, when “exceptionally”, the unaccompanied minor, against whom a restraining order has been issued, is held in a state social centre, specially set up for this purpose, or in another centre, in the context of cooperation with international organizations that conduct missions for children, victims of trafficking or other categories of individuals in need.

- A minor may be held in a closed centre, just *in case of his highest interest or of his family*, in special facilities separate from those for adults.
- Before the detention of a juvenile in a closed centre, the opinion of a social worker and psychologist is sought.
- In case of doubt as to the age of the alien in custody, the authority responsible for the border and migration might demand the conducting of the DNA test of the detainee by the specialized governmental bodies, solely for the purpose of verifying the age. In the event of and after verification and expertise there still remain doubts about the age of the detainee, it is presumed that he is a minor.

30. Pursuant to the recommendation of the Committee, the Border and Migration Department as the competent structure in handling irregular immigration, in cooperation with the UNHCR National Office of Tirana during 2013 has conducted a specialized training with about 120 border and migration police effectives, officers at Border Crossing Points.

31. These training sessions focused on the recognition with the provisions of the new Law “On Foreigners (108/2013)” in the field of removal, deportation and detention of aliens, their rights, etc., as well as updating knowledge about the pre-screening/interviewing procedure of irregular foreigners, caught at the border or in the territory.

32. Regarding the selection procedure (pre-screening), special attention was devoted to the care the border and migration police officers should show to inform foreigners of their rights based on national legislation on foreigners or asylum.

33. During these training sessions, the stress was laid on the necessity of identifying the persons in need of international protection, especially those coming from countries at war or conflicts and about 200 manuals were distributed to the border and migration effectives, about the “rights for international protection”. In continuation, in coordination with Border and Migration Department, the UNHCR Office in Tirana will deliver this year about 200 manuals “on unaccompanied minors on the move”.

34. In Albania, asylum seekers are not detained in the closed centre, but they, after the pre-screening procedure, if found to be asylum-seekers, according to standard procedures of the border and migration police, are submitted to the asylum handling competent authorities.

35. To illustrate a legitimate action of the border and migration police, we might mention the case of a 4-member Palestinian family (2 parents + 2 minor children) under asylum procedure in the Republic of Albania, who, in early February 2014, had attempted to illegally cross the Albanian border into Greece, but was caught by the Albanian border authorities.

36. Referring to the legal provisions of the Law 108/2013 “On Foreigners”, the Border and Migration Department, after considering the case, replaced the detention measure in the Closed Centre with the alternative measure in the best interest of this family (the family was assisted by the Palestinian Embassy in Tirana).

37. Regarding the conditions in the so-called transit centres, they are at the centre of attention of governing authorities of the Border and Migration Police and with expenses of

the state budget, as well as through foreign donations and logistical assistance of the international organizations, work is going on to improve their infrastructure.

38. In addition, pursuant to the Law 108/2013 “On Foreigners”, the Border and Migration Department has drawn the draft-Guidance “On the procedures of treating the foreign nationals who do not meet or no longer meet the conditions for entry, stay or residence in the territory of the Republic of Albania”, that improves the procedures for a better fulfilment of the obligations related to human rights, clearly defining the tasks and activities of each facility responsible for handling the irregular foreigners, the ways of their collaboration, areas of responsibility, etc.
